MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Agenda for Board Meeting of the Authority August 11, 2021

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Authority Matters

Loans/Grants/Guarantees

Real Estate

Board Memoranda

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

July 14, 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; State Treasurer Elizabeth Muoio of the Department of Treasury; Roberto Soberanis representing Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Brian Wilton representing the Governor's Office; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Charles Sarlo, Vice Chairman; Virginia Bauer, Fred Dumont, Aisha Glover, 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; and staff.

Members of the Authority absent: Public Members Philip Alagia, and Massiel Medina Ferrara.

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. Mr. Sullivan also advised that pursuant to the Internal Revenue Code of 1986, as amended, the meeting was a public hearing and comments were invited on any private activity bond project presented at the board meeting.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the June 9, 2021 meeting minutes. A motion was made to approve the minutes by Ms. Bauer, seconded by Commissioner Caride, 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.

COVID-19 RESPONSE

ITEM: NJEDA Phase 4 Small Business Emergency Grant Program – Additional Funding
REQUEST: To approve delegation of authority to the CEO to accept $125 million un funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan Act of 2021, as contained in pending legislation for the NJEDA Phase 4 Small Business Emergency Grant Program; the execution of the corresponding MOU with the NJ Department of Community Affairs; an increase of $225 million to the delegated authority of the CEO to accept State or federal CRF or SFRF funds for the Program; and delegated authority to the CEO to increase the allowable percentage of funds dedicated to administering the program.
MOTION TO APPROVE: Ms. Bauer **SECOND:** State Treasurer Muoio **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

ITEM: Use of Coronavirus Relief Fund and Coronavirus State Fiscal Recovery Fund Appropriations and Creation of the New Jersey Community Stage Relief Grant Program
REQUEST: Approval of 1.) An MOU with the NJ Department of the Treasury whereby the NJEDA will accept $7.5 million in funds from the Coronavirus Relief Fund (CRF) including administrative costs; 2.) Delegation to the CEO to approve a MOU with the NJ Department of Community Affairs whereby the NJEDA will accept $10 million in funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan of 2021, including administrative costs; 3.) Creation of the New Jersey Community Stage Relief Grant program to make grant funding available to for-profit establishments that organize, promote, produce, manage, or host live events or performances by performing artists and have experienced revenue loss from Q2 2019 – Q2 2020; 4.) Approval to apply administrative funds to issue one or more purchase orders to hire temporary employees to administer any phase of this grant program; 5.) Delegation to Staff to accept other governmental funding and/or unrestricted gifts or grants or to dedicate previously received unrestricted gifts or grants to fund the New Jersey Community Stage Relief Grant Program; 6.) Delegation to staff to impose additional requirements as may be required by law as a condition of accepting governmental funding consistent with the parameters of the program; 7.) Delegation to staff to approve and decline individual applications to the NJ Community Stage Relief Fund (non-discretionary decisions) in accordance with the program parameters; 8.) Delegation to staff to issue final administrative decisions for appeals of non-discretionary declinations; 9.) Delegation to the CEO to accept additional funding for program or administrative costs of up to $15.5 million in funds from the Coronavirus Relief Fund (CRF) and accept additional funding for program administrative costs of up to $20.5 million from the Coronavirus State Fiscal Recovery Fund (SFRF); and 10.) Delegation to the CEO to extend the deadline for disbursement and use of funds if the NJ Treasury and/or CRF or SFRF deadlines are extended, to reallocate the funds from or to other CRF- or SFRF-funded programs, and to return to Treasury any amounts remaining after all applications have been processed and all eligible applications have been funded, or as otherwise required by law or the MOU with NJ Treasury.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Commissioner Caride **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ECONOMIC GROWTH

ITEM: Special Adopted New Rules and Concurrent Proposed New Rules - New Jersey PPE Manufacturing Tax Credit Program (N.J.A.C. 19:31-24)
REQUEST: To approve 1.) The creation of the New Jersey Personal Protective Equipment Manufacturing Tax Credit (PMTC) Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020, to encourage the development of PPE manufacturing and the creation of related jobs in the State; and 2.) Special adopted new rules and concurrent proposed new rules for the PMTC Program and to authorize staff to take actions necessary for promulgation of the new and concurrent rules in the New Jersey Register, and to submit the rules as final for promulgation in the New Jersey Register if no formal comments are received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Glover **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Approval of Targeted Industries Definitions for the Economic Recovery Fund
REQUEST: To approve the use of the Emerge Program list definitions and of targeted industries to help guide uses of Economic Recovery Fund (ERF) monies as required by the Economic Recovery Act of 2020.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Caride **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ITEM: Approval of Policy for Economic Recovery Fund Innovation Centers of Excellence
REQUEST: To approve policies for utilizing the Economic Recovery Fund to undertake development of or to invest in strategic innovation centers to accelerate economic recovery and to drive the long term growth of the State's innovation economy; and the use $55 million appropriated in the 2022 State Budget in accordance with the policies.
MOTION TO APPROVE: Ms. Glover **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

ITEM: Approval of Clean Energy MOUs between the NJ Economic Development Authority (NJEDA) and the NJ Board of Public Utilities (NJBPU) and between NJEDA and the NJ Commission on Science, Innovation and Technology (NJCSIT)
REQUEST: To approve two MOUs, 1.) To approve an MOU between the NJEDA and the NJBPU to provide $2.5 million in funding for support of the Clean Tech Seed Grant Program and expand the scope of the Clean Tech Research & Development Voucher Program, collectively known as Clean Tech Programs; and 2.) To approve an MOU between the NJEDA and the NJCSIT to allocate $2.375 million to NJCSIT to deploy a second and expanded phase of the Clean Tech Programs.
MOTION TO APPROVE: State Treasurer Muoio **SECOND:** Ms. Marley **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

ITEM: Offshore Wind Sector Initiatives MOU between the NJEDA and the NJBPU
REQUEST: To approve 1.) An MOU between the NJEDA and the NJBPU to provide $7 million in funding to the NJEDA to support the development and delivery of workforce training, education, research and innovation programs in the offshore wind industry.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Mr. Wilton **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

PORT INFRASTRUCTURE

ITEM: NJ WIND PORT – Award of Construction Manager at Risk (CMAR) Contract & Issuance of a Notice to Proceed for Phase One preconstruction Services
REQUEST: To approve the selection of the Authority's Construction Manager at Risk (CMAR) for the New Jersey Wind Port project and the initial budget for Phase One preconstruction services.
MOTION TO APPROVE: Mr. Shimko **SECOND:** Mr. Dumont **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

Ms. Dragon abstained because the NJDEP has permits pending review before the department.

ITEM: NJ WIND PORT - Request for Financial and Commercial Advisor Budget Increase
REQUEST: To approve a $2.5 million budget increase for financial and commercial advisory services pertaining to the New Jersey Wind Port project under an existing contract.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Marley **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

Ms. Dragon abstained because the NJDEP has permits pending review before the department.

ITEM: NJ WIND PORT - Request for Funding for Technical Advisory Services Budget Increase
REQUEST: To approve a $2.5 million budget increase for civil and environmental engineering services pertaining to the New Jersey Wind Port project under an existing contract.
MOTION TO APPROVE: Mr. Wilton **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

Ms. Dragon abstained because the NJDEP has permits pending review before the department.

ITEM: NJ WIND PORT – Request for Increase to Moffat & Nichol Contract to include: Engineering and Design of Beneficial Use Sites; Berthing Utilization Analysis
REQUEST: To approve an increase of $844,946 to an existing contract for design and engineering services in relation to the New Jersey Wind Port project to provide a feasibility, planning and detailed design of potential beneficial use sites proximate to the Port, as well as a detailed berthing utilization analysis pertaining to a potential second phase of port development.
MOTION TO APPROVE: Mr. Wilton **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

Ms. Dragon abstained because the NJDEP has permits pending review before the department.

INCENTIVE PROGRAMS

Angel Investor Tax Credit

ITEM: Proposed Rule Amendments: Angel Investor Tax Credit Program (N.J.A.C. 19:31-19.1)
REQUEST: To 1.) Approve proposed amendments to the rules implementing the Angel Investor Tax Credit Program based on statutory provisions pursuant to P.L.2019 c.145 and P.L.2020 c.156; and authorize staff to submit the proposed rule amendments for promulgation in the New Jersey Register and authorization to submit the proposed program rules as final adopted rules for promulgation in the NJ Register if no formal comments are received, subject to final review and approval by the Office of Attorney General and the Office of Administrative Law; and 2.) Delegation of authority to staff to approve individual applications to the Program in accordance with the program rules.
MOTION TO APPROVE: Ms. Bauer **SECOND:** State Treasurer Muoio **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

Grow NJ Modifications

ITEM: Sanofi US Services Inc. – Modification P44310
REQUEST: To consent to the following changes to the GROW NJ approval, 1.) Reduce the square footage of the non-industrial QBF from 647,325 sf to 321,180 sf for a total reduction of $353,145 sf; 2.) Decrease the amount of capital investment from $39,947,182 to $27,111,547; 3.) Decrease the number of retained jobs from 2,099 to 1,774; and therefore, as a result of these changes, the overall 10-year tax credit will be reduced from $39,943,970 to $27,106,720.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Mr. Sarlo **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

ITEM: M & A Holdings Co., LLC- Modification P44849
REQUEST: To approve the modification of the definition of "project" within the Grow NJ Incentive Agreement to exclude the replacement of a fire suppression system; and to modify the Grow NJ Incentive Agreement to add a condition requiring the replacement of the fire suppression system by February 14, 2025 or such later date as the landlord is able to undertake the project if the later date is not due to any action or inaction by M&A.
MOTION TO APPROVE: Mr. Shimko **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

Film & Digital Media Tax Credit

ITEM: Union Square Productions Inc. PROD-00264159
MAX AMOUNT OF TAX CREDITS: $3,460,100.16
MOTION TO APPROVE: Mr. Wilton **SECOND:** Mr. Soberanis **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

Cuttlefish LLC PROD-00275638
This item has been withheld from consideration.

Universal Television LLC PROD-00258408
MAX AMOUNT OF TAX CREDITS: $32,867,541.12
MOTION TO APPROVE: Ms. Bauer **SECOND:** Mr. Wilton **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

Apophenia, LLC PROD-00224123
MAX AMOUNT OF TAX CREDITS: $290,085
MOTION TO APPROVE: Ms. Wilton **SECOND:** Ms. Marley **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

BOND PROJECT

Volume Cap Renewal Resolution

PROJECT: Linden Renewable Energy, LLC PROD-00228622
LOCATION: Linden City, Union County
PROCEEDS FOR: Construction, purchase equipment, fund debt service reserve fund, pay interest on the bonds during construction and cover the cost of issuance.
FINANCING: $195,000,000 Tax-Exempt Bond
MOTION TO APPROVE: Ms. Marley **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 18

LOANS, GRANTS, GUARANTEES

Direct Loan

PROJECT: Fort Monmouth Economic Revitalization Auth. PROD- 00283199
LOCATION: Oceanport Borough, Monmouth County
PROCEEDS FOR: refinancing bonds
FINANCING: $21,782,000 Direct Loan
MOTION TO APPROVE: Ms. Marley **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 19

Hazardous Discharge Site Remediation Fund (HDSRF)

ITEM: Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.
MOTION TO APPROVE: Ms. Dragon **SECOND:** State Treasurer Muoio **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 20

PROJECT: National Park Borough - Robert Hawthorne Sanitary Landfill PROD – 00258778
LOCATION: National Park Borough, Gloucester County
PROCEEDS FOR: Remedial Action
FINANCING: $672,484.75

AUTHORITY MATTERS

ITEM: One Gateway Center Property Owner LLC – First Amendment to the Newark Office Lease
REQUEST: To approve 1.) The execution of the first lease amendment with Once Gateway Center Office LLC which increase the leased premises square feet from 10,617 sf to 16,844 sf on two floors for staff reporting to Newark; and 2.) Expending up to $500,00 for fixtures, furniture and equipment, tenant improvements, and other costs related to the occupancy of the additional leased premises.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Marley **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 21

ITEM: Independent External Compliance Auditor
REQUEST: To approve the award of the Independent External Compliance Auditor Contract.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Wilton **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 22

ITEM: Special Counsel: EO52 (Murphy 2019), Attorney General Investigation, Holtec and Cooper Legal Actions – Amendment to Retention Agreement
REQUEST: To approve additional contract funding due to the ongoing need for representation related to the subject legal matters.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Marley **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 23

ITEM: EPA Brownfield Assessment Cooperative Agreement
REQUEST: To authorize the CEO to execute a cooperative agreement with the USEPA for the NJEDA to receive a $300,000 Brownfields Assessment Grant award and any other documents necessary to effectuate the grant, provided the agreement is in substantially the same form as the Brownfield Revolving Loan Fund agreement.
MOTION TO APPROVE: State Treasurer Muoio **SECOND:** Ms. Dragon **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 24

REAL ESTATE

ITEM: Leasing Brokerage Services Contract - New Jersey Bioscience Center
REQUEST: To approve the award of the leasing brokerage services contract for the New Jersey Bioscience Center.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Soberanis **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 25

BOARD MEMORANDA

FYI ONLY: Credit Underwriting Projects Approved Under Delegated Authority – June 2021

FYI ONLY: Real Estate Division Delegated Authority for Lease and Right of Entry (ROE)/ Licenses for 2nd Quarter, 2021

PUBLIC COMMENT

Mr. Earl Gage, Council President, City of Salem, addressed the board regarding the Sustain and Serve NJ program.

Mr. Robert DeDomenico, President, CargoFish, addressed the board regarding the Clean Tech Seed Grant program.

Mayor Charles Washington, Jr., City of Salem, addressed the board regarding the Sustain and Serve NJ program.

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Bauer, 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.

Danielle Esser, Director
Governance & Strategic Initiatives
Assistant Secretary

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: August 11, 2021

Re: August 2021 Board Meeting

The New Jersey Economic Development Authority's (NJEDA's) efforts to expedite the recovery of the state's small business community and build its resilience continued throughout the months of July and August. While the emergence of the Delta variant has created new questions, we are monitoring the situation closely and remain confident that New Jersey is on track for a stronger, fairer recovery.

NJEDA staff continues to work diligently to review applications for grants of up to $20,000 through Phase 4 of the Small Business Emergency Assistance Grant Program. To date, more than 24,000 businesses have been approved for Phase 4 funding totaling more than $268 million. Since the launch of Phase 1 of the Grant Program in April of 2020, we have approved more than 67,400 grants worth a combined total of $480 million. According to publicly available data, New Jersey ranks third among states in how much in grants it has distributed to small businesses during the COVID-19 pandemic. Applications are also currently open for Phase 2 of our Small Business Emergency Assistance Loan Program, which provides low-cost financing to businesses impacted by COVID-19.

Next week, we will add to these offerings when we launch applications for the New Jersey Community Stage Relief Grant Program. This program will provide grants of up to $300,000 to eligible for-profit venues, businesses, and sole proprietors that host, organize, promote, produce, or manage live events or performances. Later today we will host a webinar that will help potential applicants understand their eligibility and prepare to submit an application. More information about the New Jersey Community Stage Relief Grant Program and a sample application are available at https://business.nj.gov/covid/covid-relief-venues.

In addition to providing support directly to businesses, we are also helping grassroots community lenders with close relationships to the most vulnerable businesses expand their offers and provide relief to more establishments. Ten micro lenders were recently awarded $200,000 grants to scale their operations to offer direct assistance to New Jersey businesses through the NJEDA's Micro Lender Support Grant Program. These funds will be used to support operating expenses associated with servicing micro and small businesses, such as hiring additional staff or opening new offices, and the buying down of interest rates of loans offered to small and micro businesses.

As we continue to roll out these COVID-19 recovery resources, we are catalyzing long-term economic growth. To support development projects that are ready to move ahead while programs being developed under the Economic Recovery Act of 2020 (ERA) take shape, we have extended the commercial component of the Economic Redevelopment and Growth (ERG) Program with $75 million and expanded the reopened Residential ERG Program from $50 million to $125 million. These programs help developers and businesses address financing gaps in development or redevelopment projects. Applications are already open for residential projects, and we will begin accepting applications for commercial projects at noon on Monday, August 16, 2021. More information about the ERG Program is available at https://www.njeda.com/erg.

We have also been preparing to break ground on the NJ Wind Port in South Jersey with renewed community outreach efforts. NJEDA staff have been on the ground at events in the communities surrounding the site

where the Wind Port will be built, helping local workers prepare for the job opportunities the project will create and guiding local businesses through the process to receive contracts for work on the port.

While the emergence of the Delta variant has reminded us all to be cautious, there are numerous indicators pointing toward a strong and equitable economic recovery for New Jersey. I am grateful for the continued hard work and flexibility of the NJEDA team as we continue to serve businesses and communities in New Jersey while navigating the challenges of our own return to the office, and thank our Board members for their steadfast support. I look forward to seeing everyone in person soon.

AUTHORITY MATTERS

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules
Main Street Recovery Finance Program (N.J.A.C. 19:31-5)

Request:

The Members are asked to approve:

1) The attached special adopted new rules and concurrent proposed new rules for the new Main Street Recovery Finance Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and

2) The creation of the Main Street Recovery Finance Program, as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 82 through 88 of P.L. 2020, c. 156) and later amended by Sections 40 through 43 of P.L. 2021 c.160, to fund individual financial assistance products that share the common purpose of supporting the growth and success of small businesses in New Jersey.

3) The utilization of $10 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Lease Assistance Grant – a grant product that will offset a portion of annual lease payments for small businesses leasing between 250-10,000 sq. ft. of new or additional space, with delegation to the Chief Executive Officer to increase funding to $20 million in the event that demand exceeds the $10 million in available funding.

4) The utilization of $15 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Improvement Grant – a grant product that will reimburse a small business for 50 percent of eligible project costs, with a maximum grant award not to exceed $50,000, associated with making building improvements or the purchase and/or installation of new furniture, fixtures and equipment, with delegation to the Chief Executive Officer to increase funding to $30 million in the event that demand exceeds the $15 million in available funding.

5) The utilization of $500,000 of Main Street Recovery Finance Program funding to be used by the Authority to cover administrative costs that are needed to administer both grant products, and approval to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer both grant products.

6) Delegation to Authority staff (Chief Community Development Officer, Managing Director – Community Development, or Director of Small Business Services) to approve individual applications to either the Small Business Lease Assistance Grant Program or Small Business Improvement Grant Program in accordance with the terms set forth in this memo and rule proposal, and as further detailed in the attached program specifications. Because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements;

7) Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations.

8) Delegation to the Chief Executive Officer to reallocate funding from the Small Business Lease Assistance Grant to the Small Business Improvement Grant, and vice versa, based on application demand.

New Jersey Economic Recovery Act:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;

- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

On Friday July 7, 2021, Governor Murphy signed P.L. 2021 c.160 further improving the programs established under the New Jersey Economic Recovery Act of 2020.

The program being presented for the Members' approval in this memorandum is the Main Street Recovery Finance Program – one of the 15+ programs under the ERA. The Main Street Recovery Finance Program is a $100 million small business support program under which individual financial assistance products will be created, all of which will share a common purpose of supporting the growth and success of small businesses in New Jersey. This memorandum requests the Members' approval to create two initial products to be funded by the Main Street Recovery Finance Program – the Small Business Lease Assistance Grant and the Small Business Improvement Grant.

Both grant programs established in this memorandum are enhancements to existing pilot grant programs that the Authority has administered for some time. The Small Business Lease Assistance Grant is an expansion of the former Small Business Lease Assistance Program, which provided small businesses grant funding to help make annual lease payments in certain targeted cities. Under that program, the Authority has provided $125,000 in grant funding to small businesses in the cities of: Trenton, Camden, Paterson, Passaic, Atlantic City, Bridgeton, Jersey City, Millville, Mt. Holly, Phillipsburg, Plainfield, Salem, and Vineland. The Small Business Lease Assistance Grant presented for the Members' consideration today has expanded not only the program eligibility, but has also removed restrictions around eligible locations and will now support small businesses statewide.

The Small Business Improvement Grant is an expansion of the former Business Improvement Incentive, which provided grant funding to reimburse small businesses for costs associated with facility renovations and improvements. Under that program, the Authority provided $678,000 in grant funding to small businesses in the following cities: Trenton, Camden, Paterson, Passaic, and Atlantic City, before the program was discontinued in 2019. The Small Business Improvement Grant presented for the Members' consideration today has expanded not only the program eligibility but has also removed restrictions around eligible locations and will now support small businesses statewide.

This memorandum provides a summary about the Main Street Finance Recovery Program, Small Business Lease Assistance and Small Business Improvement Grant including, funding limits and general details about each product, eligibility criteria, specific requirements around the individual products and overarching program fund, and the application and review process. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose and General Description

The Main Street Recovery Finance Program will establish individual products – each with slightly different requirements and forms of financial assistance, but all products established under the Program share the common purpose of supporting small business growth in New Jersey.

Each individual product established under the Main Street Program will utilize slightly different eligibility criteria based on the form of financial assistance, the eligible uses of that assistance, and what types of businesses or entities are permitted to use the funding. However, to be eligible for most products under the Main Street Program, there are several overarching statutory requirements that businesses must meet, as further clarified in the proposed new rules:

- Businesses must comply with wage requirements following execution of a grant agreement with the Authority. Specifically, a business must commit to pay its employees (full-time and part-time) the greater of $15/hour or 120% of minimum wage. For tipped employees, the business must commit to paying 120% of minimum wage. The Authority will monitor grant recipients for compliance annually against this requirement.
- Businesses that receive grant funding under either the Small Business Lease Assistance Grant or the Small Business Improvement Grant must commit to remaining in the facility and meeting the wage requirements for a period of time following the execution of the grant agreement, subject to repayment of the grant to the Authority for non-compliance. For the Lease Grant, this means businesses must meet the wage requirements and remain in the facility for five years after the grant agreement. For the Improvement Grant, a business must meet the wage requirements and commit to remaining in the facility for up to four years after execution of the grant agreement.
- For the Small Business Improvement Grant, projects with total project cost of over $50,000 must adhere to green building standards. For the purposes of the Improvement Grant, this is applicable to mechanical and lighting improvements only. Additionally, when a business utilizes contractors with 4 or more employees (in total, not specific to the project), those contractors will be subject to affirmative action requirements.

Key Definitions

The following highlights certain key eligibility requirements for the Main Street Business Recovery Assistance Program. Full eligibility details are contained in the draft proposed rules in section 5 and the ERA in section 85.

Small Business – Eligibility for the Main Street Recovery Finance Program products are limited to businesses that meet the definition of a small business as defined in the proposed new rules, which utilizes the United States Small Business Administration's (SBA) definition of a small business, and is based solely on the applicant and with no consideration of any affiliates or other businesses related to the applicant. The business must also have a physical location in the State, which cannot be a residential location unless the location is a home-based business.

Home-based business - A business that does not have a separate entrance for commercial customers and that requires customers to enter the residential portion of the property in order to conduct business, provided that bed and breakfast establishments are not considered home-based businesses. Home-based businesses are eligible only for the Small Business Improvement Grant, which can only be used by home-based businesses for the purchase and installation of furniture, fixtures and/or equipment.

Capital Improvements – The Small Business Improvement Grant can be utilized by businesses to pay for up to 50% of costs associated with capital improvements, which the proposed new rules define as expenses that a business incurs for preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems or other environmental components. Capital improvements may also include expenses that a business incurs for obtaining and installing furnishings and machinery, apparatus, or equipment.

Small Business Lease Assistance Grant

The Small Business Lease Grant provides grant funding to small businesses to offset a portion of the cost of annual lease payments, thereby enabling more small businesses to lease new or additional space and providing these businesses with liquidity. A total of $10 million of Main Street Recovery Finance Program funding will be utilized to capitalize the Small Business Lease Assistance Grant. Of this $10 million, 40 percent ($4 million) will be reserved for businesses located in a census tract that was eligible to selected as New Jersey Opportunity Zone (i.e. a New Market Tax Credit census tract). There are 715 census tracks that were eligible to be Opportunity Zones in New Jersey. Setting aside a portion of available funding under the Small Business Lease Assistance Grant to support entities in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

To be eligible for the Lease Grant, both the small business and the lease under which the business is operating or intends to operate from must meet the product eligibility parameters.

The business must first meet the definition of a small business as outlined in the proposed new rules. Furthermore, the small business must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the Department of Treasury (as determined by each Department). If a compliance issue exists, the eligible business may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The eligible business must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, the small business will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury. Small businesses must also certify, at the time of application, that they are not in default of any other program administered by the Authority or the State of New Jersey. Businesses applying for this product cannot be owned by the landlord from which they are leasing or intend to lease the facility. Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments. This will be demonstrated by a standard certification form signed by the landlord that the Authority will require applicants to provide stating that rent payments are current.

For the small business to be eligible for the grant assistance, the lease must also meet the eligibility requirements of the product. The lease must a minimum of 250 sq. ft. of office, commercial space, or retail space. While there is no maximum square footage for eligible leases under this product, the Authority will only provide grant funding for 10,000 sq. ft. of office, commercial space, or retail space,

meaning that leases with greater than 10,000 sq. ft. will only receive grant funding for 10,000 sq. ft. of the space.

The lease must be a new lease, lease amendment, or lease extension - new or amended space must be at least 250 sq. ft. larger than prior space. Because the purpose of the program is to help revitalize commercial corridors, the lease must include first-floor (street-level) space. A lease may include more than one floor, but one of the floors must be first-floor (street-level) space to be eligible.

The lease must also be a minimum of a five-year lease term, and cannot have been executed more than 12 months prior to the date of the product application. Finally, the lease must be a market-rate lease, which the Authority will review based on available commercial real estate information.

As stated before, the business must also commit to meeting the wage requirements and remaining in the facility for five years, which is the minimum term of any eligible lease. Businesses that do not comply with the wage or residency requirements, or default on their lease payments, must repay any grant funding received under this product to the Authority.

For businesses that are approved for a grant, the Authority would make two disbursements to the grantee. The first disbursement will be made after execution of the grant agreement, for an amount equal to 20% of the annual lease payment. The second disbursement will be made after 12 months of lease payments have been paid by the applicant, for an amount equal to 20% of the annual lease payment.

Applicants with multiple locations will be limited to one grant application per location. An applicant may apply for both a Small Business Lease Assistance Grant and a Small Business Improvement Grant.

Small Business Improvement Grant

The Small Business Improvement Grant provides reimbursement for costs associated with making building improvements or purchasing new furniture, fixtures and equipment. A total of $15 million of Main Street Recovery Finance Program funding will be utilized to capitalize the Small Business Improvement Grant. Of this $15 million, 40 percent ($6 million) will be reserved for businesses located in a census tract that was eligible to be selected as New Jersey Opportunity Zone (i.e. a New Market Tax Credit census tract). There are 715 census tracks that were eligible to be Opportunity Zones in New Jersey. Setting aside a portion of available funding under the Small Business Lease Assistance Grant to support entities in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

To be eligible for the Improvement Grant, the small business must meet many of the same requirements as the Lease Grant. This includes meeting the definition of a small business, being in good standing with sister agencies, and providing a valid tax clearance certificate prior to the execution of a grant agreement. Small businesses must also certify, at the time of application, that they are not in default of any other program administered by the Authority or the State of New Jersey. Landlords are not eligible for the Small Business Improvement Grant, as the product is intended to directly support businesses operating from these facilities.

As stated before, the business must also commit to meeting the wage requirements and remaining in the facility. For grants of less than $25,000 the small business must commit to meeting these requirements for two years after the execution of a grant agreement. For grants of $25,000 or more, the small business must comply with these requirements for 4 years after the execution of a grant agreement. Businesses that do not comply with the wage or residency requirements, or default on their lease payments, must repay any grant funding received under this product to the Authority.

Grant funding under the Small Business Improvement Grant will reimburse the small businesses for 50 percent of costs associated with capital improvements as defined in the proposed new rules, with a maximum grant amount not to exceed $50,000. Home-based businesses are eligible for the Improvement Grant, but can only use the grant funding for the purchase and installation of furniture, fixtures and equipment. The grant can only be used to reimburse for capital improvements completed on or after March 9, 2020, but no more than 24 months prior to the date of application. Because this is a reimbursement, the applicant will be required to provide all documentation at the time of application demonstrating that the capital improvement costs have been completed. Acceptable documentation is expected to include invoices, statements, payments, or canceled checks. To be eligible, the capital improvement costs must be a minimum of $5,000, and the applicant is responsible for obtaining all applicable local approvals (i.e. zoning and building permits) as needed for the capital improvements. For applicants that are making capital improvements to leased space, the landlord's permission is required in order to make the capital improvements. As stated before in this memorandum, affirmative action requirements may apply to the contactor and green building standards may apply to the project, based on the specific details of the contractor and project.

Applicants under the Small Business Improvement Grant are limited to one application per Employer Identification Number (EIN). Applicants operating from multiple locations under a single EIN would be limited to one application under the sole EIN, but may pool project costs from multiple locations into a single product application. An applicant may apply for both a Small Business Lease Assistance Grant and a Small Business Improvement Grant.

Approval Process

In recognition of the volume of applications the Authority anticipates receiving under these products, and the limited discretion staff has in reviewing applications under the product parameters, the Members are requested to approve Delegation to Authority staff (Chief Community Development Officer, Managing Director – Community Development, or Director of Small Business Services) to approve individual applications to both the Small Business Lease Assistance Grant and the Small Business Improvement Grant, in accordance with the terms set forth in the attached program specifications.

The delegated authority requested for approval also includes the delegated authority to decline for any declinations based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Senior Vice President, Vice President, Managing Director, or the Director Legal Affairs.

Additional Pilot Products

In addition to the Small Business Lease Assistance and Small Business Improvement grants, the Authority intends to pilot additional products to be funded by the Main Street Recovery Finance Program. While the proposed new rules provide some clarity around these anticipated pilot programs, staff will bring specific proposals for those pilot programs to the Members for consideration at a later date.

These products are anticipated to include financing to support microbusiness lenders, who will use that funding to increase capacity under their existing loan products or establish new micro business lending products with attractive terms. Statute defines a “microbusiness” as a business with less than $1.5 million in annual gross revenue and 10 or less employees. Eligible microbusiness lenders would include Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), Zone Development Corporations in cities with a population of 100,000 or more, Community Development Corporations (CDCs), Economic Development Corporations (EDCs), and non-profit lenders with at least 10 years of lending experience to microbusinesses. Lenders will also receive a portion of the funding as technical assistance grants, to provide services to better position micro businesses to qualify for these loans. Technical support services are expected to include, but are not limited to credit repair services, assistance with writing business plans, assistance with preparing financial statements and projections, and other services.

Another product is anticipated to be an expansion of the Authority’s existing Micro Business Loan Program to provided directly to micro businesses from NJEDA. Financing will be low-cost, with attractive terms and rates.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the Main Street Recovery Finance Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 180 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedures Act rulemaking procedures.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority issued a news release advising the public that the draft Main Street Recovery Finance Program rules were available for review and of the opportunity to provide informal input.

The Authority staff convened three virtual public “Listening Sessions”, which provided an overview of the Main Street Recovery Finance Program draft rules and the opportunity for the public feedback, on:

- Monday, July 12th, 2021 at 5:00 p.m.
- Tuesday, July 13th, 2021 at 2:00 p.m.
- Thursday, July 15th, 2021 at 10:00 a.m.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (mainstreet@njeda.com) from July 7th through July 21st, 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, "review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse".

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rules and regulations for the Main Street Recovery Finance Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

In recognition of the fact that the products under the Main Street Recovery Finance Program are intended to support small businesses, many of which are already financially struggling and emerging from difficult economic conditions resulting from the COVID-19 pandemic, the Authority is requesting the Members' approval to utilize 3 percent of the Main Street Recovery Finance Program funding to cover the administrative costs the Authority will incur in administering this program. The Authority typically supports its administrative costs in the form of fees that are charged to the applicant at various stages of a grant review, approval and disbursement. With this approval, the Authority will be able to operate the program without having to charge the applicant many of the fees that would otherwise be charged. Under the proposed new rules, the only fee that an applicant will be responsible for under either the Small Business Lease Grant or the Small Business Improvement Grant is a flat $100 approval fee, that is only paid if the applicant meets all product eligibility, and would be due at the time of approval and prior to execution of a grant agreement.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Main Street Recovery Finance Program will meet the NJEDA's operational and strategic goals. Along with assessing the goals and outcome of the program, the Authority will also track demographic information related to the businesses applying for the Main Street Recovery Finance Program, including demographic information with respect to the company's leadership. This is part of the Authority's ongoing efforts to measure to what extent its programs and services are serving New Jersey's diverse residents, communities, and businesses. Other metrics are anticipated to focus on the Main Street Recovery Finance Program's outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the Main Street Recovery Finance Program. These KPIs are still under development.

Recommendation

The Members are requested to approve: (1) The attached special adopted new rules and concurrent proposed new rules for the new Main Street Recovery Finance Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; (2) The creation of the Main Street Recovery Finance Program, as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 82 through 88 of P.L. 2020, c. 156) and later amended by Sections 40 through 43 of P.L. 2021 c.160, to fund individual financial assistance products that share the common purpose of supporting the growth and success of small businesses in New Jersey (3) The utilization of $10 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Lease Assistance Grant – a grant product that will offset a portion of annual lease payments for small businesses leasing between 250-10,000 sq. ft. of new or additional space, with delegation to the Chief Executive Officer to increase funding to $20 million in the event that demand exceeds the $10 million in available funding; (4) The utilization of $15 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Improvement Grant – a grant product that will reimburse a small business for 50 percent of eligible project costs, with a maximum grant award not to exceed $50,000, associated with making building improvements or the purchase and/or installation of new furniture, fixtures and equipment, with delegation to the Chief Executive Officer to increase funding to $30 million in the event that demand exceeds the $15 million in available funding.(5) The utilization of up to $500,000 of Main Street Recovery Finance Program funding to be used by the Authority to cover administrative costs associated with administering both grant products, and approval to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer both grant products if needed; (6) Delegation to Authority staff (Chief Community Development Officer, Managing Director – Community Development, or Director of Small Business Services) to approve individual applications to either the Small Business Lease Assistance Grant Program or Small Business Improvement Grant Program in accordance with the terms set forth in this memo and rule proposal, and as further detailed in the attached program specifications. Because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements; (7) Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations; and (8) Delegation to the Chief Executive Officer to reallocate funding from the Small Business Lease Assistance Grant to the Small Business Improvement Grant, and vice versa, based on application demand.

Tim Sullivan
Chief Executive Officer

Prepared by**:** Christina Fuentes

Attachments:
Appendix A – Proposed New Rules – Main Street Recovery Finance Program
Appendix B – Small Business Lease Assistance Grant – Proposed Program Specifications
Appendix C – Small Business Improvement Grant – Proposed Program Specifications

D R A F T

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Main Street Recovery Finance Program

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-5

Specially Adopted and Concurrently Proposed New Rules Authorized: _____ __, 2021, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: _____ __, 2021, as R.2021 d.___.

Authority: P.L. 2020, c. 156.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2021-___.

Effective Date: August __, 2022 [Date Filed].

Expiration Date: February __, 2021 [180 Days from Effective Date].

Submit written comments by _________ __, 2021, to:

Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

In accordance with P.L. 2020, c. 156, the New Jersey Economic Development Authority ("NJEDA" or "Authority") has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the Main Street Recovery Finance Program Act, sections 82 through 88 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160.

The new rules became effective on _____ __, 2021, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 180 days from the date of filing, that is, until _____ __, 2021.

Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the 180-day expiration date from the date of filing.

The specially adopted and concurrently proposed new rules follows:

Summary

The Main Street Recovery Finance Program, established by sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, is an overarching program that will fund several individual grant, loan and loan guarantee products to be administered by the Authority. Collectively, the products developed under the Main Street Recovery Finance Program all share the common purpose of supporting the growth and success of small businesses in New Jersey.

The Main Street Recovery Finance Program, as outlined in the proposed new rules, establishes two grant products, which are the Small Business Improvement Grant and the Small Business Lease Grant, to assist eligible small businesses with making business facility improvements and lease payments. The Authority also intends to pilot additional products under the Program. This rule proposal contains general parameters for those products that will be initially piloted and subsequently will be incorporated into these rules in greater detail.

The Small Business Improvement Grant provides reimbursement for costs associated with making building improvements or purchasing new furniture, fixtures and equipment. Eligible entities may receive grant funding to reimburse 50 percent of project costs associated with interior or exterior building improvements or the purchase of new furniture fixtures, or equipment. In addition to meeting all other product eligibility criteria as outlined in the proposed new rules, entities receiving grant funding of less than $25,000 must commit to remaining in the facility for at least two years after the date of grant closing, and entities receiving grant funding of $25,000 or greater must commit to remaining in the facility for at least four years after the date of grant closing.

The Small Business Lease Grant provides grant funding to small businesses to offset a portion of the cost of lease payments. Eligible entities may receive grant funding for 20 percent of the annual lease payment, for two years of a minimum five-year lease term. In addition to meeting all other product eligibility criteria as outlined in the proposed new rules, entities receiving grant funding must commit to remaining in the facility for at least five years after the date of grant closing.

The two types of grants will support small business growth by making resources available to improve existing business facilities, fill space that is currently vacant, or keep existing space operational, helping to prevent future vacancies. This will catalyze more vibrant and active main street areas throughout New Jersey. Furthermore, with the support of products under the Main Street Recovery Finance Program, small businesses will have more growth

capital available and will create new jobs and maintain existing jobs necessary to support that business growth.

Within both the Small Business Improvement Grant and the Small Business Lease Grant, the Authority may set aside a portion of all available funding for businesses located in a census tract that was eligible to be selected as a New Jersey Opportunity Zone. This set-aside further reinforces the State's commitment to helping ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

In addition to the grant products established in the proposed new rules, the Authority intends to pilot additional products under the Program prior to incorporating those products in these rules, which will include additional loans and loan guarantees to be provided both directly to small businesses and microbusinesses, as well as to eligible community development finance institutions, minority depository institutions, and other eligible lenders (together the terms eligible community development finance institutions, minority depository institutions, and other eligible lenders will be referred to as "microbusiness lenders") to expand the small business lending capacity of these entities.

The following summarizes the contents of each section of the proposed new rules implementing the Main Street Recovery Finance Program:

N.J.A.C. 19:31-5.1 Applicability and scope – Addresses the statutory authority for the Main Street Recovery Finance Program and summarizes the scope and purpose of the program in providing grants and loans to eligible small businesses, microbusinesses and eligible lending entities in accordance with the Main Street Recovery Finance Program Act, sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-349 et al.), as amended by P.L. 2021, c. 160.

N.J.A.C. 19:31-5.2 Definitions – Defines certain terms used in this subchapter and incorporates terms defined in P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 pertaining to the program.

N.J.A.C. 19:31-5.3 Fund description and eligibility criteria – Outlines the parameters of the grant and loan products to be available to an eligible small business, microbusiness, and microbusiness lenders and the criteria for eligibility under the Fund.

N.J.A.C. 19:31-5.4 Application and Review – Establishes the information and procedures required for submitting an application to the Authority under the program, and outlines the Authority's review of applications, including confirmation with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the respective department, or, if compliance issues exist, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan. In addition, the section describes the process by which applications are reviewed and notification of the determination is made to the applicant. The process and notification provisions also will

apply to a loan program where the Authority will issue a commitment letter which specifies terms and conditions for the award of financial assistance.

N.J.A.C. 19:31-5.5 Grant and Loan Agreements – Requires that applicants execute a grant or loan agreement with the Authority to establish the terms and conditions and requirements for the award. For small business programs established pursuant to N.J.A.C. 19:31-5.3, the eligible small business shall enter into a grant agreement with the Authority. Where the Authority is issuing a loan to a microbusiness lender, the eligible lender shall execute a loan agreement with the Authority and the award of the financial assistance will be subject to conditions subsequent set forth in the agreement that must be met in order to retain the financial assistance. In any submission required by the Authority pursuant to this section, the applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided in the application is true.

N.J.A.C. 19:31-5.6 Fees – Notices that in administering the Fund, the Authority may apply fees to applicants as set forth in N.J.A.C. 19:30-6, except that no fees will be required for applications from small businesses for any grant products available under the program.

N.J.A.C. 19:31-5.7 Affirmative action and prevailing wage – Provides that, in addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, the Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and the prevailing wage requirements in paragraph (8) of subsection a. of section 71 of P.L. 2020, c. 156 will apply to projects undertaken in connection with financial assistance received under this program.

N.J.A.C. 19:31-5.8 Appeals – Outlines the requirements for an applicant to appeal an action of the Authority and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-5.9 Severability – States that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

Social Impact

The Main Street Recovery Finance Program encompasses several products that will support the growth of small and micro businesses in New Jersey. The proposed rules will have a positive social impact by providing financial support for small businesses to lease new or additional space and make business improvements to those spaces, enhancing the vibrancy of commercial corridors and supporting business attraction and retention in targeted areas. The proposed rules also reserve a portion of funding to support small and micro businesses located in New Jersey Opportunity Zones.

Economic Impact

Small businesses are critical to New Jersey's overall economic health, as businesses under 500 employees comprise approximately 98 percent of New Jersey businesses and are

responsible for more than 50 percent of employment. The proposed rules will support small businesses by providing financial support for these businesses to lease new or additional space, resulting in the establishment of new businesses in space that was previously vacant or underutilized, and they will foster the growth of existing businesses. Additionally, the Main Street Recovery Fund will provide funding for small and micro businesses to make business improvements, which will enhance the vibrancy of commercial corridors and generate more commercial activity in these areas.

Federal Standards Statement

A Federal standards analysis is not required because the proposed rules are not subject to any Federal requirements or standards.

Jobs Impact

The EDA anticipates that the proposed rules will spur an indeterminate amount of increased job creation through growth in New Jersey's small and micro businesses. The Main Street Recovery Finance Program encompasses several products that will support the growth of small and micro businesses in New Jersey. The Main Street Recovery Finance Program will make funding available to small and micro businesses to acquire new or additional space to establish or expand operations, which will result in the need for these businesses to hire employees to support this business establishment or growth. The Main Street Recovery Finance Program also makes funding available to small and micro businesses to make business improvements which may not only result in business growth that will need to be supported by job creation, but also job opportunities for contractors and other construction professionals to make the necessary business improvements.

Agriculture Industry Impact

The proposed rules, through access to funds that support building renovation and improvements and the purchase and installation of new equipment, may have a positive impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The proposed rules will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the products under the Main Street Recovery Finance Program. Generally, a small business would be required to comply with the EDA's standard, on-line application process.

The Authority recognizes that fees may impact a small business' ability to access these products. Therefore, for the Small Business Improvement Grant and the Small Business Lease Grant products, the Authority will not be collecting an application fee, but only an approval fee that will be collected at the time of approval. For loan products that may be piloted under the Main Street Recovery Finance Program, the proposed new rules allow for a fee which may be

non-refundable and collected at the time of application. For these loan products, however, the Authority may waive the fee, or collect the fee at the time of approval, or upon execution of a loan agreement, to ease the financial burden on small businesses. The Authority will consider factors such as the prevailing economic conditions, the size of the award, and the purpose of the product when considering whether or not to waive fees for these loan products.

Finally, the small business applying for any of the products under the Main Street Recovery Finance Program will be required to provide general information. These products are being designed so that small businesses may provide this information relating to its organization, employees, and proposed activity for which the funding will be used, which may include acquisition or leasing of new or additional space, or business improvement activity, without the necessity of hiring of professional services.

Housing Affordability Impact Analysis

The proposed rules will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State.

Smart Growth Development Impact Analysis

The proposed rules will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the specially adopted and concurrently proposed new rules follows:

SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM

19:31-5.1 Applicability and scope

(a) The New Jersey Economic Development Authority is promulgating these rules to establish criteria for products that provide grants to small businesses, loans and grants to microbusinesses, and loans and grants to eligible lending entities as part of the Main Street Recovery Finance Program, which utilizes the Main Street Recovery Fund, in accordance with the Main Street Recovery Finance Program Act, sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-349 et al.) as amended by P.L. 2021, c. 160.

19:31-5.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Main Street Recovery Finance Program Act, sections 68 through 81 of P.L. 2020, c. 156.

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Capital improvements" means:

1. Expenses that a business incurs for preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems or other environmental components.

2. Expenses that a business incurs for obtaining, and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the federal Internal Revenue Code (26 U.S.C. ss.168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property.

3. "Capital improvements" shall not include site acquisition; vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement; any capital improvement for which the business received any grant financial assistance from any State source; costs of a lease, including any capital lease; or any soft costs.

"Community development financial institution" means a financial institution certified by the U.S. Department of Treasury as a community development financial institution. (12 CFR 1805.201).

"Eligible microbusiness" means any microbusiness that satisfies the relevant eligibility criteria set forth in N.J.A.C. 19:31-5.3 for direct financial assistance from the Authority.

"Eligible small business" means any small business that satisfies the relevant eligibility criteria set forth in subsection b. of section 85 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-352) and N.J.A.C. 19:31-5.3.

"Full time employee" means:

1. A person:

i. who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.); or

ii. who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.); or

iii. who is a partner of a business who works for the partnership for at least 35 hours a week and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," (N.J.S.A. 54A:1-1 et seq.); or

iv. who is a resident of another State, and would be eligible under subsections i through iii above but whose income is not subject to the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.) due to a reciprocity agreement with the other State.

2. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for 1 above.

3. "Full-time employee" shall not include any person who works for the business as an independent contractor or on a consulting basis.

"Fund" means the Main Street Recovery Finance Fund established under the Main Street Recovery Finance Program pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Home-based business" means a business that does not have a separate entrance for commercial customers and that requires customers to enter the residential portion of the property in order to conduct business, provided that bed and breakfast establishments are not considered home-based businesses.

"Qualified opportunity zone" means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

"Microbusiness" means a business, including non-profit entities, that produces goods or provides services and has fewer than 10 full-time employees and annual gross revenue of less than $1,500,000 at the time of application for a loan or grant under the program. The business shall have a physical location in the State, provided the location cannot be residential unless the location is a home-based business.

"Microbusiness lenders" means community development financial institutions, minority depository institutions, or other eligible lenders.

"Minority depository institution" means any federally insured depository institution that is listed on the Federal Deposit Insurance Corporation's Minority Depository Institutions List, which is available on the Federal Deposit Insurance Corporation's website.

"Other Eligible Lender" means a zone development corporation as defined in section 3 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-62) that is located in a municipality with a population greater than 100,000. It also means other nonprofit lenders, such as an economic development corporation or community development corporation. To be an other eligible lender, the lender shall have a minimum of 10 years of experience in lending to microbusinesses.

"Product" means a sub-program established by the Authority under this program to provide a particular type of financial assistance to one or more categories of eligible entities.

"Program" means the Main Street Recovery Finance Program established pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Small business" means a business, including non-profit entities, engaged in the conduct of a trade or business in this State that qualifies as a "small business concern" within the meaning of the federal "Small Business Act," Pub. L. 85-536 (15 U.S.C. § 631 et seq.) for the purpose of the small business's eligibility assistance from the United States Small Business Administration. The Authority shall determine whether a business is a "small business" based solely on the applicant and shall not consider any affiliates or other businesses related to the applicant. The business shall have a physical location in the State, provided the location cannot be residential unless the location is a home-based business.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, freight and shipping delivery, early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

19:31-5.3 Product description and eligibility criteria

(a) The Board may establish grant products that shall make available grants to eligible small businesses, subject to availability of funds in the Fund. Eligibility shall be the following:

1. Eligible grant uses shall be capital improvements or operating expenses. The eligible capital improvement may be made by an entity that is wholly owned by the applicant;

2. Eligible capital improvements by a home-based businesses shall be the purchase and installation of new furniture and equipment but shall not include building renovations and improvements. For purposes of home-based businesses, allowable furniture and equipment must be used exclusively for the business and must not be attached to the building;

3. A small business shall be eligible to receive a grant if the small business demonstrates to the Authority at the time of application that:

i. The small business has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting a tax clearance certificate, as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and

ii. After execution of the grant agreement, the small business shall pay each full-time and part-time employee during the term of the grant not less than $15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips;

4. In addition to the requirements of (a)2 above, a small business shall be eligible to receive a grant for capital improvements only if the small business demonstrates to the Authority, at the time of application, that:

i. Any capital improvement in excess of $50,000 and undertaken with grant funds shall comply with standards established by the Authority, and published on the Authority's website, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

ii. Each worker employed to perform construction work in connection with a capital improvement undertaken with grant funds in excess of $50,000 shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.). This requirement shall extend through the term of the grant. For purposes of this provision, "worker" shall mean any person working on a capital improvement, whether employed by the small business or the small business's contractor or subcontractor; and

iii. The applicant leases or owns the facility at which capital improvement is made. If the applicant leases the facility, the applicant must have the right to make the capital improvements.

(b) The Board may establish grant and loan products that shall make available grant and loans to eligible microbusiness lenders, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible grant and loan uses shall be strengthening capital structures, leveraging additional debt capital, and increasing lending and investing in economically disadvantaged communities in New Jersey. Any lending and investing by the microbusiness lender using grant and loans from the Authority shall be limited to microbusinesses.

2. A microbusiness lender shall be eligible to receive a grant or loan if the microbusiness lender demonstrates to the Authority at the time of application that the microbusiness lender has a minimum of 10 years of experience in lending to microbusinesses.

3. Grants available to microbusiness lenders may include a grant for the purpose of providing technical assistance to microbusinesses applying for financial assistance to the microbusiness lender. The technical assistance grant may be awarded in conjunction with a loan to the microbusiness lender. To be eligible for loans that include such grants, the microbusiness lender must demonstrate to the Authority at the time of application that the microbusiness lender has the capacity to provide technical assistance.

(c) The Board may establish loan products that shall make available to eligible microbusinesses, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible loan uses shall include, but are not limited to, capital improvements, employee training, salaries for new positions, and day-to-day operating expenditures, including payroll, rent, utilities, insurance, and purchases of goods and services.

2. The Board may establish conditions where the loans provided to eligible microbusinesses may be forgiven at the Authority's discretion; and

3. Any other eligibility criteria consistent with the Act that the Authority determines accomplishes the purpose of the microbusiness loan product, which other eligibility shall be posted by the Authority on its website.

(d) The following apply to all products established under the Main Street Recovery Finance Program:

1. The following apply to the extent that the number of employees or full-time employees is a criteria for a business to qualify as a microbusiness or small business:

i. If the business employs employees through a professional employer organization, the professional employer organization must be registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c.260 (N.J.S.A. 34:8-67 et seq.).

ii. The business must satisfy the minimum number of employees or full-time employees on the date of application and the date three months before the application.

2. Businesses that are engaged in the following are not eligible for funding directly from the Authority or through grants and loans to eligible microbusiness lenders: the conduct or purveyance of "adult" (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; or any activity constituting a nuisance.

3. In its allocation of financial assistance, directly to businesses or through grants and loans to eligible microbusiness lenders, the Authority may consider the business's benefit to the community in which it is situated and the degree to which the business enhances and

economic development in communities that have been severely impacted by the COVID-19 pandemic when making awards under the program. The Authority may prioritize or make available a percentage of the funds under grant products to businesses in qualified opportunity zones.

4. To the extent permitted by law, and based on the recommendations of a disparity study to be conducted by the Authority evaluating the relative availability of capital and related banking resources for small businesses and microbusinesses that are women- and minority-owned, the Authority shall establish policies, practices, protocols and, if appropriate, minimum percentages of the Fund to be set aside for eligible small businesses and microbusinesses that are minority or women-owned.

5. For all loan products, the Authority shall establish the term and interest rate based on economic conditions prevailing in the market. The Authority shall post the term and interest rate on its website.

(e) Pursuant to (a) above, a small business improvement grant product is established that shall provide reimbursement grants of up to $50,000 to eligible small businesses in an amount equaling 50 percent of the eligible capital improvement.

1. Only one grant shall be awarded per applicant. An applicant shall apply for the grant in a single application for all capital improvement costs or for separate locations. No landlords shall be eligible under this product.

2. The eligible capital improvements must be at least $5,000.

3. No grant shall be approved for a capital improvement that commenced or was purchased prior to two years before the date of the application, but in no event prior to March 9, 2020.

4. After the date of closing of the grant, the applicant shall remain at the location two years for grant awards not exceeding $25,000 or four years for all other grant awards.

(f) Pursuant to (a) above, a small business lease grant product is established that shall provide grants to eligible small businesses that make lease decisions through new leases, lease amendments, and lease extensions. Grants shall be disbursed in two payments. The first disbursement shall be up to 20 percent of the annualized lease payment as of the date of closing of the grant, and the second disbursement shall be up to 20 percent of the annualized lease payment as of the first anniversary of the date of closing of the grant.

1. Only one grant shall be awarded per applicant for the same location. Only one location shall be included in one application. An applicant seeking a grant for more than one location shall submit an application for each location.

2. The applicant's landlord cannot have any ownership interest in the applicant.

3. The leased premises shall be used as office, commercial, or retail space.

4. Applicants who have or are seeking to expand, renew, or newly lease commercial space are eligible. No grant shall be approved for an expansion, renewal, or new lease with an effective date prior to one year before the date of the application, but in no event prior to March 9, 2020.

5. The new or additional space or the space that is being renewed must measure more than 250 square feet and be fully or partially located on the first floor.

6. Applicants shall remain at the leased premises for five years after the date of closing of the grant. Tenants may have a right to purchase after the five year period.

7. Applicants that are terminating an existing lease and obtaining a new lease must demonstrate that the new lease is at least 250 square feet larger than the prior space.

8. Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments.

9. The amount of the grant shall be based on the lower of the lease payments or market-rate pricing, as determined by the Authority, based upon comparable market rates. The Authority may obtain comparable market rates through a third party. In considering comparable market rates, the Authority shall consider the base rent and all other payments due from the tenant to the landlord.

10. A small business leasing more than 10,000 square feet shall receive a grant based on the lease for the first 10,000 square feet.

19:31-5.4 Application and Review

(a) A small business, microbusiness, or microbusiness lender seeking financing through a product established in the program shall submit an application, which shall be available on the Authority's website at www.njeda.com or by contacting the Authority.

(b) A completed application includes:

1. The name of the applicant;

2. The contact information of the applicant;

3. Except for loans to microbusiness lenders, the prospective future address of the applicant (if different);

4. The organizational type of the applicant;

5. The principal products and services and three-digit North American Industry Classification System number;

6. The New Jersey tax identification number;

7. The Federal tax identification number;

8. The most recent three Federal tax returns filed;

9. Except for loans to microbusiness lenders, the total number of full-time and part-time employees of the applicant in New Jersey at the time of application and three months prior to the submission of the application;

10. Except for loans to microbusiness lenders, the comprehensive list of the applicant's locations in New Jersey and the function performed at each location;

11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

12. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

13. For any grant product pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, WR 30, payroll reports or equivalent documentation for the quarter preceding submission of application;

14. For the small business improvement grant product, an application shall include:

i. Executed lease or recorded deed evidencing site control of the relevant property;

ii. Documentation evidencing proof of past or proposed eligible capital improvements; and

iii. If the property is leased, evidence that the landlord has granted the applicant the right to make the capital improvements;

15. For the small business lease grant product, an application shall include:

i. A copy of the lease for the relevant property, which must include square footage and rent; and

ii. For applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, documentation that the applicant is current on rent payments.

16. For microbusiness lenders, an application shall include:

i. A comprehensive description of the applicant's lending portfolio that demonstrates the applicant's lending experience with microbusinesses and capacity to lend to microbusinesses;

ii. A description of the applicant's experience working in communities and business segments underserved by the banking sector; and

iii. For products that include a grant to provide technical assistance to microbusinesses, a description of the applicant's capacity to provide the technical assistance;

17. A certification under the penalty of perjury from the applicant, or an authorized agent of the applicant, that the information provided in the application is true; and

18. Any other necessary and relevant information as determined by the Authority for any product or for a specific application.

(c) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date. If interest in a product so warrants, at the Authority's discretion and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review of a submitted application will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Provides adequate information for the subject application.

(d) Before the Authority may approve an eligible business's application:

1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the statutes, rules and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules and other enforceable standards of the respective department that apply to the eligible business; and

(B) Has no material violations of those statutes, rules or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority shall confirm that the applicant is in good standing on all financial assistance received from the Authority.

3. The Authority may contract with an independent third party to perform a background check on the eligible business.

(e) Upon completion of the review of an application pursuant to this subsection, the Authority shall determine whether or not to approve the application and the amount of assistance to be granted. The Authority shall notify the applicant of the determination. For a loan product, the Authority shall issue a commitment letter, and the award of the financial assistance will be subject to terms and conditions in the commitment letter.

19:31-5.5 Grant and Loan Agreements

(a) For loans, upon satisfaction of conditions in the commitment letter, as determined by the Authority, but before the disbursement of loan funds, the entity shall execute a loan agreement. For grants, following approval by the Authority, but before the disbursement of grant funds, the entity shall enter into a grant agreement with the Authority, provided that the terms of the grant approved to a microbusiness lender in conjunction with a loan shall be included in the loan agreement. All grant agreements and loan agreements shall include, but not be limited to, the following provisions:

1. The amount of the financial assistance and the frequency and dates of disbursements;

2. The term of the agreement;

3. A detailed description of the specific use for which the financial assistance was approved;

4. Representations that the entity is in substantial good standing or meets the agreement requirements described in N.J.A.C. 19:31-5.4(d)1;

5. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity made a material misrepresentation on its

application, which shall be in addition to any other remedies in the agreement and any criminal or civil penalties to which the entity and any corresponding officer may be subject;

6. A provision permitting an audit from time to time, as the Authority deems necessary, of all evidence, records, or any other evidence of the entity supporting the representations and certifications made as part of the application, the agreements, and any annual reports;

7. A requirement for the entity to indemnify the Authority in relation to the loan or grant agreement and the uses of the loan or grant funds and a requirement for insurance from the entity, as determined by the Authority based on the product and the amount and permitted use of the financial assistance;

8. Reporting requirements determined by the Authority to be necessary to verify that the financial assistance is used only for the approved use; and

9. Defaults and remedies.

(b) For small business grant products established pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, the grant agreement shall additionally include the following:

1. The location(s) of the applicant;

2. For the small business lease grant product, a requirement for the small business to remain at the same location for five years after the date of closing of the grant;

3. For the small business improvement grant product, a requirement for the small business to remain at the same location(s) after the date of closing of the grant for two years if the grant amount does not exceed $25,000 or four years for all other grant amounts;

4. A requirement that the small business pay each full-time or part-time employee employed by the small business not less than $15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips;

5. A requirement to submit annually for the term of the grant agreement, starting with the first anniversary of the closing of the grant agreement, the following:

i. WR 30, payroll reports or equivalent documentation for the preceding year;

ii. Certification and evidence documenting that the eligible small business is in the same location; and

iii. Any other items that the Authority shall determine as necessary;

6. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity failed to comply with the prevailing wage requirements in N.J.A.C. 19:31-5.3(a)4ii, the green building standards in N.J.A.C. 19:31-5.3(a)4i, the payment of employees in N.J.A.C. 19:31-5.3(a)3ii, and the provision of a tax clearance certificate in N.J.A.C. 19:31-5.3(a)3i.

7. A provision that the Authority shall recognize the amount of time the entity was in compliance with the agreement in calculating any repayment if the business ceases operations or moves to another location in the State.

(c) The following apply to financial assistance to microbusiness lenders:

1. A requirement that any lending and investing by the microbusiness lender using the grant or loan from the Authority shall be limited to microbusinesses;

2. Interest rate and repayment obligations;

3. If the Authority approved the loan for the microbusiness lender to invest or lend to microbusinesses, a requirement to submit annually, no later than 30 days after the end of the microbusiness lender's fiscal year, for the term of the grant agreement, a list of the loans the microbusiness lender has provided to microbusinesses using the loan. The list shall include outstanding loans, loans past due, reserves, loss experience and non-accrual loans. For each loan, the list shall set forth the loan amount approved and disbursed, the job creation or retention anticipated at the time of approval, the location(s) of business, any additional amount of private funding per project, whether the business is woman- or minority-owned, whether the business is certified by the State as a "minority business" or a "women's business," and, to the extent known, whether any owner of the microbusinesses is a woman, minority group member, veteran, or LBGTQA person.

(d) In any submission required by the Authority pursuant to this section, the applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided in the submission is true.

19:31-5.6 Fees

In administering the products established under this program, the Authority shall apply fees to applicants as set forth in N.J.A.C. 19:30-6, except:

1. No fee shall be required for applications from small businesses for any grant products; and

2. The Authority may waive any or all fees from microbusinesses for any product based on factors such as the prevailing economic conditions, the size of the award, and the purpose of the product.

19:31-5.7 Affirmative action and prevailing wage

(a) In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, for small business grant products, the Authority's prevailing wage requirements in P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-3.4.1 et seq., shall apply to the extent required pursuant to N.J.A.C. 19:31-5.3(a)4ii.

(b) In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, for all other products, the Authority's prevailing wage requirements in P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-3.4.1 et seq., shall apply to projects undertaken in connection with financial assistance received from the Fund.

(c) The Authority's affirmative action requirements in P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3.1 et seq. shall apply commencing with the effective date of this subchapter to projects undertaken in connection with financial assistance received under the Fund.

19:31-5.8 Appeals

(a) Any action by the Board shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal an action by the Authority by submitting in writing to the Authority, within 10 business days from the effective date of the Authority's action, an explanation as to how the applicant has met the product criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer, or other Authority staff designated under delegated authority, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the product criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature.

3. The Board, or the Chief Executive Officer or other Authority staff under delegated authority, shall issue a final decision on the appeal as follows:

i. If the Board is issuing the final decision, the Chief Executive Officer may include a recommendation to the written report of the hearing officer.

ii. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

iii. The Authority shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Authority shall issue a final decision on the appeal.

4. Final decisions rendered by the Authority shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-5.9 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

Small Business Lease Grant Program Specifications
August 2021

Funding Source	• $10 million Main Street Recovery Finance Program (NJ Economic Recovery Act), with delegation to CEO to increase funding to $20 million. • 40% of all funding ($4 million) will be set-aside for entities located in eligible NJ Opportunity Zone census tracts.
Program Expiration	This program will replace the NJEDA's existing Small Business Lease Grant Program. Applications will be accepted until funding is exhausted
Program Structure Purpose	The Small Business Lease Grant supports the growth and success of small businesses by providing grant funding to cover a portion of lease payments for businesses to lease new or additional space. These resources will help the establishment and growth of small businesses, while also helping to fill space that is currently vacant or preventing future vacancies. This program will help with creating more vibrant main street corridors throughout New Jersey.
Eligible Applicants	A limit of one Small Business Lease Grant award over the life of the program per business or EIN per location. A location is eligible for both a onetime Business Lease Grant and Business Improvement Grant award. Previous lease incentive recipients are not eligible but have the option to opt out of their existing grant agreement in order to pursue this grant. Requirements for eligibility: • Business must meet SBA definition of Small Business based on employee count and NAICS industry classification. • Business must provide a current tax clearance certificate prior to approval • Business must be in good standing with Department of Labor • Business must be in good standing with DEP • Business must certify at time of application that they are not in default of any other EDA or State assistance. • Lease must include: o 250 s.f. – 10,000 s.f. of market-rate office, commercial space, or retail space. A lease of more than 10,000 s.f. is eligible for a grant, but the program will only provide grant funding for the first 10,000 s.f. of space. o First-floor (street-level) space. Businesses leasing two floors - of which one floor is street level - would be eligible. o Minimum 5-year term. • Leases would have to be executed 12 months prior to application, and after March 9, 2020 to be eligible. • EDA determines lease is market-rate at time of application. • Applicants cannot terminate existing lease and enter into new lease for same square footage in order to pursue this grant. These applicants would be considered ineligible. • Grantees must occupy and operate in the leased space for the full year under which reimbursement is being requested. If they default on lease payments or leave the space, they are no longer eligible for the incentive and must repay any advanced funding they may have received by EDA. • Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments.

	• Applicants are eligible to receive a Small Business Lease Grant and Small Business Improvement Grant for the same location. • Applicants are limited to one application per location • Non-profits and commercial businesses are eligible
Grant Amount	Two grant awards of 20% of the annual lease payments on a minimum 5-year lease term:
Funding Disbursement	Grants will be disbursed as follows: • Upon closing or execution of grant agreement: 20% of annual lease payment is disbursed to the applicant • After 12 months of lease payments have been paid by the applicant: another 20% of annual lease payment is disbursed to the applicant, after confirmation of no monetary or other material lease agreement default, payroll certification, self-certification by the applicant the applicant is still in lease and current on payments, and receipt of a current NJ State Tax Clearance Certificate.
Exclusions and Additional Requirements	• Grantee must agree at time of application that going forward after executing grant agreement they are to provide annual filed WR-30, payroll information, or equivalent documentation to EDA for at least the 5-year term of the lease and grant agreement. This documentation must verify that grantee is paying wages to all employees of at least $15/hour or 120% of the minimum wage rate (whichever is higher) for the minimum of 5 years. Regularly tipped employees are required to be paid 120% of minimum wage. • High Tech and Business Incubator members in Not for Profit facilities would not be eligible for independent lease incentives (operators of incubators are eligible). • All leases will be analyzed for market-rate pricing by EDA based on comparable market rates provided by third party (i.e. CoStar). • Landlord cannot have an ownership interest in the applicant. • Businesses that are engaged in the following are not eligible for funding directly from the Authority or through grants and loans to eligible microbusiness lenders: the conduct or purveyance of "adult" (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; or any activity constituting a nuisance.
Application Process and Board Approval/ Delegated Authority	• Applications will be reviewed on a rolling basis if funds are available until all funds are committed. • EDA staff will be responsible for reviewing applications and approving projects for assistance under Delegated Authority. Delegated approvals can come from the Director of Small Business Services, Managing Director of Community Development and Small Business Services, and Chief Community Development Officer.
Fees:	• Approval Fee: $100 payable after EDA approval and prior to execution of grant agreement.

Small Business Improvement Grant Specifications
August 2021

Funding Source	• $15 million Main Street Recovery Finance Program (NJ Economic Recovery Act), with delegation to CEO to increase funding to $30 million. • 40% of all funding ($6 million) will be set-aside for businesses located in eligible NJ Opportunity Zone census tracts.
Program Expiration	Applications will be accepted until funding is exhausted.
Program Structure Purpose	The Small Business Improvement Grant supports the growth and success of New Jersey small businesses by reimbursing business owners for costs associated with making interior or exterior building improvements or purchasing and installing new furniture, fixtures, and equipment. The grant will reimburse a small business, as defined in statute, for 50% of eligible total project costs incurred after March 9, 2020 but no more than 2 years at time of application, with a total grant amount not to exceed $50,000.
Eligible Applicants / Costs	• Businesses may be reimbursed for capital improvements, or purchase and/or installation of new furniture, fixtures, and equipment. • Business must rent or own and operate from facility. • Business must meet SBA definition of Small Business based on NAICS industry classification. • Project cost must be at least $5,000, and incurred on or after March 9, 2020 and commenced no more 2 years prior to application • Home-based businesses may only receive reimbursement for new equipment purchase and/or installation. Home-based businesses are not eligible for reimbursement for renovation or improvement projects. • Non-profits and for-profit businesses are eligible to apply. • Business must provide a current tax clearance certificate prior to approval • Business must be in good standing with Department of Labor • Business must be in good standing with DEP • Business must certify at time of application that they are not in default of any other EDA or State assistance. • Applicants are eligible to receive a Small Business Lease Grant and Small Business Improvement Grant for the same location. • Applicants are limited to one application per EIN. Applicants operating from multiple locations under a single EIN would be limited to one application under the sole EIN, but may pool project costs from multiple locations into a single application.
Local Approvals	Applicant must obtain and is responsible for all applicable local approvals like zoning and building permits. If renting space, the tenant will need the landlords written approval on improvements to the location.
Grant Amount	• Up to 50% of total project costs, which may include interior or exterior renovations, or purchase of new FFE, equipment and installation. Grant can reimburse both renovations and equipment costs as part of a single project. • Grant amount not to exceed $50,000 per EIN. Only one award is allowed per EIN for the life of the program. Applicants are eligible to receive a Business Improvement and Lease Incentive per EIN. With a cap of 1 award per program for each EIN. • Minimum project cost of $5,000.
Funding Disbursement	Funding will be fully disbursed upon approval of an application and receipt of

Small Business Improvement Grant Specifications
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	documentation evidencing payment for project costs (i.e. paid invoices and/or canceled checks) associated with the building improvements and/ or equipment purchase and installation. Before any funding is disbursed, the applicant must certify that the project is complete.
Exclusions and Additional Requirements	• Green Buildings Standards will apply to projects over $50,000. • Affirmative action standards – currently applies to contractors with 4 or more employees. • Applicant must agree at time of application to opt into minimum wage requirements and to provide most recently filed WR-30, payroll information, or equivalent documentation to verify business owner is paying wages to all employees of at least $15/hour or 120% of the minimum wage rate (whichever is higher). Regularly tipped employees are not required to be paid $15/hour but must be paid at least 120% of the minimum wage rate. This would be required for the term of the grant agreement. • Applicant must remain in the location for at least two years for grants up to $25,000, or at least four years for all other grant award amounts. • Landlords are not eligible; grant is just for business owners. • Businesses that are engaged in the following are not eligible for funding directly from the Authority or through grants and loans to eligible microbusiness lenders: the conduct or purveyance of “adult” (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or “lost-our-lease” or “going-out-of-business” or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; or any activity constituting a nuisance.
Application Process and Board Approval/ Delegated Authority	• Applications will be reviewed on a rolling basis, based on the availability of funding, until all funds are fully committed. • EDA staff will be responsible for reviewing applications and approving projects for assistance under Delegated Authority. Delegated approvals can come from the Director of Small Business Services, Managing Director of Community Development and Small Business Services, and Chief Community Development Officer.
Fees:	• Approval Fee: $100, payable at the time of approval and prior to execution of grant agreement

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan

DATE: August 11, 2021

Subject: MOU with the Rutgers University for research grants

Request

The members are requested to approve a Memorandum of Understanding (MOU) with Rutgers University to facilitate research by Rutgers faculty and staff in conjunction with a leading Israeli university.

Background

In 1988, under Governor Kean, a Sister State Agreement was signed between the State of Israel and the State of New Jersey. The New Jersey-Israel Commission was subsequently established to implement the goals of the agreement and later legislation - to promote the development of trade, culture and educational exchanges; encourage the development of capital investment and joint business ventures; and foster a spirit of cooperation between the citizens of the State of Israel and the State of New Jersey.

In furtherance of this relationship, the Authority signed a Memorandum of Understanding with the Israel Innovation Authority in 2018 to strengthen economic ties and enhance bi-lateral partnerships among innovators in the State of New Jersey and the State of Israel.

Additionally, New Jersey institutions of higher education have collaborated Israel institutions, including

- a series of joint scientific symposia and research-based collaboration between in areas such as drug discovery and cyber security with leading experts at Rutgers and Tel Aviv Universities in 2020 and 2021.
- A conference on "Promoting Housing Affordability and Sustainable Rental Housing Markets: New Jersey and Israel Perspectives" hosted by The Rutgers Center for Real Estate and the Alrov Institute for Real Estate Research at the Coller School of

Management at Tel Aviv University in February 2021.
- A partnership between Ben-Gurion University of the Negev and the New Jersey Institute of Technology that will create a world-class Institute for Future Technologies in New Jersey. The institute will focus on joint PhD and Masters degrees for cyber security and environmental engineering and will be located in Newark and Jersey City. The announcement was attended by Governor Phil Murphy, President Joel Bloom (NJIT) and President Daniel Chamovitz.
- The Atlantic County Economic Alliance hosted Israel Aerospace Industries to conduct a series of demonstrations of COVID related technology products to be deployed in airports to reduce virus risk in the commercial aviation industry. Atlantic County was showcased as a potential area of expansion for US operations.

In addition, Israel continues to be a major New Jersey trading partner as reported by the New Jersey Israel Commission and NJ Business Action Center. Trade between the two rose 5% to $1.3 billion in 2020 despite a reduction nationwide.

In order to build upon the relationship of collaboration and research between New Jersey and Israel and to increase research in fields that align with the Governor's economic plan and innovation economy, the Authority wishes to enter into an agreement with Rutgers University. As a leading research institution, Rutgers makes available funds for its faculty and staff to conduct research ("internal grants"), which research may be undertaken in conjunction with faculty and staff from other research and higher education institutions.

Through this MOU, the Authority would contribute $50,000 to a Rutgers internal grants fund to which Rutgers will also contribute $50,000. While Rutgers will administer this fund consistent with its other internal grants funds, Rutgers would agree to condition the internal grants from this fund by its faculty and staff on the participation by faculty and staff from a leading Israeli university. The Israeli university selected would match the New Jersey fund with its own $100,000 contribution for use by the Israeli university faculty and staff. The research conducted pursuant to this MOU would be in certain targeted industries, initially pharmaceuticals, medtech, cleantech, nanotechnology and cybersecurity. Additionally, Rutgers would have to report to the Authority the use and results of the internal grant fund.

Recommendation

Members of the Board are asked to approve the Authority entering an MOU with the Rutgers University, attached in substantially final form pending Rutgers' review, to create an internal grant fund to support Rutgers research in partnership with an Israeli university.

Tim Sullivan

MEMORANDUM OF AGREEMENT BETWEEN

THE NJ ECONOMIC DEVELOPMENT AUTHORITY AND

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

This MEMORANDUM OF UNDERSTANDING ("MOU") effective this __ day of April, 2021 (the "Effective Date") is made by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("NJEDA" or the "Authority") AND RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY("Rutgers"). The NJEDA and Rutgers may sometimes hereinafter be collectively referred to as the "Parties" and individually as a "Party."

PREAMBLES

WHEREAS, the Authority is an independent State authority, in but not of the Department of Treasury, that serves as the primary economic development arm of the State, with the responsibility to implement the State's economic development plan through financing small and mid-sized businesses, administering tax incentives to retain and grow jobs, revitalizing communities through redevelopment initiatives, and supporting entrepreneurial development by providing access to capital, training and mentoring programs, making New Jersey a leader in innovation and targeted industries, attracting foreign investment; and

WHEREAS, Rutgers, The State University of New Jersey, is a leading research university with programs and staff across many industries targeted by the Authority; and

WHEREAS, the Authority and Rutgers have a history of partnering with each other in the furtherance of economic goals; and

WHEREAS, the State of New Jersey and the New Jersey-Israel Commission committed to fostering economic, scientific, educational and cultural ties with the State of Israel, one of New Jersey's most important trading partners; and

WHEREAS, attracting leading research institutions to expand into New Jersey for research, job creation, and furthering New Jersey's status as a leader of innovation remains a goal of the Authority; and

WHEREAS, as part of its activities, Rutgers dedicates funding for research activities by its researchers and staff ("internal grants"), which may be done in conjunction with researchers and staff from other higher education institutions; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter agreements to provide assistance to each other, including the assistance of an expert, and to agree as to the proper charge to be made for such services;

NOW THEREFORE, it is agreed between the Authority and Rutgers:

1. The Authority and Rutgers recognize that the mission of both the Authority and Rutgers includes innovation in the State of New Jersey and that for this mission to be achieved partnerships and collaboration between them is key.

2. The Authority and Rutgers will each contribute $50,000 to a research fund to be administered by Rutgers. Rutgers shall use this fund to provide internal grants with the condition that the Rutgers researchers and staff must conduct their research in conjunction with researcher(s) or staff from a leading university from the State of Israel with an aggregate funding from their university in the amount of at least $100,000.

3. The research conducted with the internal grant shall be in targeted industries agreed upon by Rutgers and the Authority. These industries shall include pharmaceuticals, medtech, cleantech, nanotechnology, and cyber security. Additional industries may be added to this MOU by written agreement of both parties.

4. Rutgers will be solely responsible for selecting the Rutgers researchers and staff receiving the internal grants from the research funds, for identifying and approving a partner university from the State of Israel, and for any oversight of the research.

5. Rutgers will report internal grant awards to the Authority within 60 days of awarding them and will provide biannual reports on the status of the internal grants. These reports will include the name and curriculum vitae of the researchers and staff and a general project description.

6. Rutgers will provide the Authority with a final report including the results or conclusions of the internal research projects. The final report will be provided to the Authority after the research funds are expended but no later than two years after the Effective Date.

7. The term of this MOU shall be for a period of two (2) years from the Effective Date unless extended by mutual agreement of the parties.

8. The contact party for the Authority is the Chief of Staff, Jorge Santos (jsantos@njeda.com). The contact party for Rutgers is Vincent Smeraglia, Executive Director, Rutgers University Office for Research.

9. This MOU is being entered into for the sole purpose of evidencing the mutual understanding and intention of the parties.

10. There are no third-party beneficiaries of this MOU.

11. Revisions and amendments to this agreement may be made at any time by mutual consent of both Parties. All such revisions and amendments must be in writing and signed by both Parties.

12. The Parties shall retain all the powers, obligations and immunities provided by law.

13. This MOU shall be construed in accordance with and governed by the laws of the State of New Jersey.

14. The Parties acknowledge that the successful completion of each Party's duties hereunder will require cooperation between the Parties. The Parties agree to work cooperatively to achieve the goals of this MOU.

15. The recitals appearing before Section 1 are made part of this MOU and are specifically incorporated herein by reference.

IN WITNESS WHEREOF, the Authority and Rutgers have caused this Memorandum of Understanding to be signed and dated as indicated below. The Parties agree to accept electronic signatures.

For the Economic Development Authority:

____
Tim Sullivan
Chief Executive Officer

____

DATE

For Rutgers, The State University of New Jersey:

____

____

DATE

PORT INFRASTRUCTURE

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Request for additional early works funding for the New Jersey Wind Port (NJWP) project

REQUEST

The Members of the Board are asked to approve $2.6 million in additional funding for early site works for the New Jersey Wind Port (NJWP) project. Funds will be used for critical path works including the removal, processing and crushing of subsurface concrete from the leased premises. Works are being contracted and overseen by PSEG Nuclear ("PSEG") on the Authority's behalf, consistent with the terms of the Letter of Intent (LOI) between the parties.

Per the terms of the LOI as amended and approved by the Board in April 2021, PSEG will be reimbursed for early works costs on a monthly invoicing basis. The Authority will, in-turn, draw on the $200 million in project funding included in the 2022 State Budget, as well as the $13.2 million commitment by the New Jersey Board of Public Utilities (NJBPU), to cover its early works costs.

DETAIL

Initial early site works approval

In April 2021, the Board approved an initial budget of $8.4 million for critical path early site works, with works to be contracted by PSEG on the Authority's behalf consistent with the terms of the parties' LOI. Undertaking early works under the LOI was driven by the schedule benefits relative to delaying works until a Lease was in place and a Construction Manager was mobilized.

While the Authority has now finalized the terms of a Lease with PSEG and has awarded a Construction Management (CM) contract to AECOM Tishman, early works contractors have been selected and works have commenced making a transfer to the Authority's CM impractical. Task assignment would also result in schedule delays with flow-on impacts for core construction.

Requested budget increase

The initial early works budget included certain higher-cost scopes of work including subsurface concrete removal, processing and site preparation, and Confined disposal facility (CDF) dewatering. Working with PSEG and the Authority's technical advisors, WSP USA, staff had estimated these higher-cost scopes of work at a combined $6 million. Following staff's approval of the scope and contracting method PSEG competitively bid out this work with the lowest of three bids received priced at $7.95 million, subsequently reduced to $7.91 million through a request for a Best and Final Offer (BAFO). The preferred vendor's bid exceeds staff's estimate by $1.91 million. This increase stems from additional information on concrete volumes and a change to processing and storage methods since the initial estimate in March. After applying $319,480 of contingency from the initial early works funding approval, the funding gap totals $1.59 million.[1]

The preferred vendor's price is based on unit price per cubic yard (CY) of concrete removed and an assumed quantity/volume. While this quantity is based on geotechnical analysis the precise quantity will remain unknown until work completes. Reflecting this, and in order to minimize approval-related schedule delays should volumes exceed bid price assumptions or other unanticipated costs arise, staff are requesting an additional $1 million in contingency funding. Contingency funds will be restricted to concrete excavation, environmental testing, dewatering, site preparation, permitting, design and associated technical studies. Staff request the right to allocate this contingency across eligible works as project needs require. Exhibit A provides a detailed breakdown of costs under the initial early works budget and increased budget.

As outlined in Figure 1 below, Board approval will increase early site works funding approvals to $10.99 million and total approvals under the PSEG LOI to $18 million. Staff do not anticipate additional funding requests for works governed under the LOI, with future funding requests for PSEG cost reimbursement, such as for the relocation of PSEG facilities from the leased premises or ongoing permitting support, to be governed under the terms of the Ground Lease.

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[1] The balance of the $1 million contingency from the initial early site works funding approval has been allocated by staff to other early site works, consistent with the terms of the LOI and April Board Memorandum.

Figure 1 – Project development costs incurred under the PSEG LOI

	$ M	**Status**
Initial LOI cap covering early stage project development	7.0	Majority of approved works have now completed. Several remaining works are expected to complete in coming months
Initial Early works funding approval	8.4	Works have commenced. All works are expected to complete in calendar 2021
Additional funding request	2.6	Pending approval
TOTAL BUDGET	**18.0**	

RECOMMENDATION

The Members of the Board are asked to approve $2.6 million in additional funding for early site works for the New Jersey Wind Port (NJWP) project. Funds will be used for critical path works including the removal, processing and crushing of subsurface concrete from the leased premises. Works are being contracted and overseen by PSEG Nuclear ("PSEG") on the Authority's behalf, consistent with the terms of the Letter of Intent (LOI) between the parties.

Per the terms of the LOI as amended and approved by the Board in April 2021, PSEG will be reimbursed for early works costs on a monthly invoicing basis. The Authority will, in-turn, draw on the $200 million in project funding included in the 2022 State Budget, as well as the $13.2 million commitment by the New Jersey Board of Public Utilities (NJBPU), to cover its early works costs.

Tim Sullivan, CEO

Exhibit A – Early works under the LOI

	Initial early works budget	**Revised budget**	**Change/ variance**
Permitting support for PSEG facility relocation	$151,300	No change	-
Permitting support for beneficial reuse	$250,000	No change	-
Environmental monitoring	$25,000	No change	-
Concrete removal & CDF dewatering	$6,000,000	$7,913,830	$1,913,830
Settlement analysis	$142,500	No change	-
Outsourced safety planning and works coordination	$25,000	$80,520	$55,520
PSEG internal/project management costs	$700,000	No change	-
Permitting fees and charges	$100,000	No change	-
Review of Port design to ensure compliance with nuclear regulations (including 50.59 DCP)	The need for this work was identified after the April Board approval. This work is necessary to ensure the Port design conforms with nuclear regulatory requirements.	$170,000	$170,000
A study to assess the capacity of PSEG's sewer treatment plant to service the Port	This work was intended to be covered under the Lease. Owing to delays in Lease execution this work needed to commence under the LOI early works.	$94,000	$94,000
Concrete testing ahead of concrete removal and processing	The precise scope of testing had not been completed by the time of the April Board, and terms had not been agreed between parties. The testing scope is now known and terms agreed.	$61,000	$61,000
Stormwater system design for relocated facilities – required for permitting application	This work was intended to be covered under the Lease. Owing to delays in Lease execution this work needed to commence under the LOI early works.	$200,000	$200,000
Permitting support for Parcel G	This work was intended to be covered under the Lease. Owing to delays in Lease execution this work needed to commence under the LOI early works.	$100,000	$100,000
Contingency	*$1,000,000*	*$1,000,000*	*N/a*
TOTAL	**$8,393,800**	**$10,988,150**	**$2,594,350**

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Request to Approve a Long-term Ground Lease with NDEV LLC
Lower Alloways Creek, Salem County - New Jersey Wind Port

REQUEST

The Members of the Board are asked to approve the Authority entering into a Ground Lease (the "Lease") with NDEV LLC ("NDEV") (an affiliate of PSEG Nuclear ("PSEG")), for the purpose of building and operating the New Jersey Wind Port (NJWP). The Lease:

- Is for a 28-year initial term and 78-year maximum term;
- Covers seven parcels totaling approximately 122 acres (see Exhibit F);
- Sets out a timeframe for the phased drawing down of parcels between 2021 and 2024; and
- Restricts use of the property to developing, constructing, and operating a Wind Port.

Members are also asked to approve:

- Payment of the Authority's total rent and easement obligations under the Lease for the initial 28-year lease term (total rent is estimated at $89 million (nominal) based on an average of $3.1 million in annual rent), noting that sub rent revenues anticipated to commence in mid-2024 will be used to defray rent obligations. Staff estimate the rent obligation through 2024 to be approximately $7.4 million (nominal). Staff anticipate reimbursement of the Authority's costs incurred through 2024 via a future bond issuance;
- Up to $10 million in initial funding for cost reimbursement to NDEV for existing facility relocation, permitting support and design-related approvals;
- Up to $250,000 for title insurance for the leased premises; and
- A request for delegated authority for the Chief Executive Officer to authorize parcel drawdown provided that conditions precedent stipulated in the Lease are satisfied or are determined to no longer materially impact the development and operations of the NJWP.

All PSEG facility relocation, permitting and design review-related costs will be capitalized into the development of the project, for which the Authority will draw on the $200 million in State funding confirmed for the project in the Fiscal 2022 State Budget, as well as the $13.2 million in project funding committed by the New Jersey Board of Public Utilities (NJBPU).

The Lease also commits the Authority, on or before the closing of any project bond financing, to establish and maintain a Rent Reserve Fund set at seven (7) times' the current Lease year's rent obligation. This level will be set to one (1) times' the current rent should the Authority be a party to a sublease with the State that includes a State rental commitment equal to the Authority's rent obligation to NDEV. In either case, up to the point the Port is occupied, the Fund will be capitalized into a bond issuance, with the Authority drawing on sub rent thereafter to maintain the Fund balance. Any fund balance at the end of the Lease term will revert to the Authority.

DETAIL

1 Overview

The New Jersey Wind Port (NJWP) is a transformative, hub-style marshalling port that will serve offshore wind projects in New Jersey and up and down the East Coast; being free of vertical restrictions and having easy access to more than 50 percent of the available East coast offshore wind lease areas. The Port is intended to support marshalling activities but, longer term, has the potential for additional expansion to include co-located offshore wind manufacturing activities.

The Authority entered into a non-binding LOI with PSEG in October 2019 for the purpose of analyzing the suitability of a PSEG-owned site in Salem County as an offshore wind port. Following that assessment, which found the site to be the most technically viable and economically beneficial of the sites then under consideration, the Authority entered into a binding LOI with PSEG in March 2020 to begin early-stage project development, such as geotechnical studies, permitting, and initial design. The LOI was subsequently extended, with the latest amendment (approved at the April 2021 Board) extending the EDA and PSEG's cooperation period to December 31, 2021, which will allow for the completion of critical path early site works.

This cooperation with PSEG through the LOI has enabled the project to progress on schedule while EDA and PSEG negotiated a long-term Ground Lease. This negotiation is now complete with the Lease enclosed at Exhibit G. As with any long-term property lease or acquisition, prior to Lease execution, Staff intend to secure a title insurance policy at an estimated cost of up to $250,000.

Due to the amount of Lease payments, as statutorily required, the Lease was reviewed and approved as to State contracting and procurement laws by the Office of the State Comptroller. The following sections detail the Authority's key obligations under the Lease.

2 Lease term

The Lease is for an initial term of 28 years with the option to extend for five (5) additional successive ten (10) year periods. This period was set to align with a potential bond financing. While the Lease takes effect from its execution, the 28-year Lease term only commences upon the drawing down of the first parcel (i.e upon the date when any parcel becomes part of the leased premises). This phased drawdown approach was negotiated by Staff as a means of risk mitigation, with parcels only becoming leased premises if certain conditions precedent are met, and as a means to reduce costs prior to a parcel being ready for development.

3 Due diligence period

Upon Lease execution the Authority will have 180 days to conduct due diligence on all parcels. During this period the Authority may elect to terminate the Lease for any or all parcels, provided a parcel has not been drawn down as leased premises; in which case only the parcels that have not been drawn down can be terminated. This period may be extended if certain Landlord obligations relating to environmental assessment and utility infrastructure feasibility are not met.

Members should note that in order to complete construction of the initial phase of the Port project by the end of 2023, a timeline that will preserve the option of supporting the first wave of offshore wind projects, staff intend to draw down parcels A and G1 prior to the end of the 180-day due diligence period. In order to manage risks on these parcels, Phase one environmental assessments have been completed with targeted subsurface testing also undertaken on Parcel A.

4 Phased drawdown & tiered rent structure

The Lease provides for individual parcels to become leased premises over time, recognizing differences in site readiness, permitting timeframes, need to relocate existing facilities and parcel-specific conditions precedent. The timing of drawdown is pre-agreed in the Lease, as outlined in Figure 1 below. The Authority is able to delay drawdown by up to three months or to bring forward a drawdown date if conditions precedent are met or waived by EDA and NDEV. Parcel drawdown dates are also contingent on other factors which may delay drawdown including:

- Regulatory approvals;
- Availability of funding or financing;
- EDA and NDEV (or PSEG) having a dredge placement agreement in place;
- EDA and NDEV (and PSEG) having easement agreements in place;
- Demolition of existing facilities from the leased premises; and
- Completion of any remediation (if required by law).

These various requirements serve to protect the Authority by ensuring that development on a given parcel or parcels is technically and financially viable prior to obligating public funds through parcel drawdown. At the same time, they provide NDEV with assurance that when the Authority draws down a parcel it has the capacity to complete development and begin paying full base Rent.

Figure 1 – Parcel drawdown schedule

Parcel	Proposed future use	Approximate acreage	Planned Commencement (i.e "Drawdown") Date
A	Marshalling	31.7	10/1/21
G-1	Manufacturing	15.6	10/1/21
G-2	Manufacturing	11.8	4/3/23
D	Common port facilities	4.5	4/3/23
E	Confined disposal facility (CDF)	28.3	9/1/23
G-3	Manufacturing	5.2	1/2/24
C	Manufacturing	24.5	3/5/24

Reflecting the phased drawdown, the Lease sets out a tiered rent structure, with the level of rent increasing in-line with a given parcel's stage of development; as outlined in Figure 2 below. In the Lease, rent refers to payment owed before a parcel is drawn down and leased (essentially, monthly payments for NDEV to hold the property for the Authority) as well as regular rent once the property is leased. Exhibit A details drawdown and anticipated construction completion dates.

Figure 2 – Rent payment type

Period	Detail	Rent level
Contingency period	Applies from the end of the due diligence period (i.e 181 days after lease execution) to the point a parcel is drawn down (i.e becomes leased premises).	25 percent of Base Rent + Additional rent[1]
Construction period	Applies from the point a parcel is drawn down to the earlier of the Authority's anticipated construction completion date or the point a parcel reaches completion and operations commence.	50 percent of Base Rent + Additional rent
Operational period	Applies from the point of construction completion and operations commencement.	100 percent of Base Rent + Additional rent
CDF use period	Applies to Parcel C only from the point the Authority commences using that parcel as a CDF until such time the Authority stops using it as a CDF and commences construction after which Construction period rent applies.	75 percent of Base Rent + + Additional rent[2]

5 Rent and other financial obligations

The Authority's financial obligations under the Lease comprise:

- Fixed Base Rent;
- Variable Base Rent;

[1] With the exception of real estate taxes, Additional Rent is anticipated to remain low until Parcel A achieves construction completion and becomes operational – reflecting the fact that insurance and security costs which account for the bulk of Additional Rent costs will scale in-line with improvements and activity at the Port

[2] The higher rent proportion reflects the inherent value to the Authority of an operational CDF given the project's significant dredge placement needs. This represents a significant saving relative to the cost if the Authority were to place dredge at an alternative site on a commercial unit price basis.

- Additional Rent;
- NDEV facility relocation cost reimbursement; and
- NDEV cost reimbursement for permitting and Port design-related reviews.

Each of these obligations is outlined in further detail below.

Fixed Base Rent

In May of 2020 the Authority commissioned Sterling DiSanto & Associates (SDA) to undertake an appraisal of property adjacent to PSEG's Hope Creek and Salem nuclear power plants. The appraisal determined the "as is" market value (i.e current physical condition, use, and zoning) and implied market rent (i.e probable rent achievable in a competitive and open market); drawing on comparable land sales and assuming a five (5) percent rate of return (ROR). The Fixed Base Rent agreed with PSEG reflects SDA's appraised value but applies a seven (7) percent RoR. This rate was set on the basis of extensive negotiations with PSEG over a period of twelve (12) months.

Fixed Base Rent will increase by CPI subject to a 2.5 percent (2.5%) annual increase cap. Staff estimate Fixed Base Rent will average $490,000 a year over the initial 28-year term, totaling $14.2 million (nominal); noting that actual costs may differ depending on CPI as well as parcel drawdown and completion dates. A detailed indicative rent schedule is included at Exhibit B.

Variable Base Rent

In addition to Fixed Base Rent, the Authority is obligated to pay NDEV a Variable Base Rent set at 0.5 percent of the rent that the Authority secures from its subtenants, subject to a $350,000 annual cap.

While variable rent is not conventional for a ground lease, NDEV's unique rights arising out of possible impacts to the adjacent Hope Creek and Salem nuclear power plants that impact the Port's development timing, such as the relocation of existing facilities, as well as ongoing oversight of design and operations, create a need for incentive alignment. To this end, a Variable Rent ensures NDEV is jointly incentivized to complete facility relocation sooner and to grow Port revenues. This incentive was also agreed to in the context of broader rent negotiations, with staff's commitment to a variable rent allowing NDEV to agree to a lower fixed rent.

Additional Rent

As a "net" lease the Authority is obligated to reimburse NDEV for all security, real estate taxes, nuclear insurance and (proportional) road maintenance costs pertaining to the leased premises. NDEV estimate these costs at $2.6 million a year on average over the 28-year term, totaling $74 million (nominal). The Authority intends to passthrough a majority share to future sub tenants.

Additional rent reflects the leased premises' proximity to the Hope Creek and Salem nuclear power plants, with the bulk of cost comprising nuclear-related security and nuclear insurance costs.

Rent Reserve Fund

If the Authority proceeds with lease-leaseback bond financing, the Authority will sublease the Wind Port property to and from the State. For the sublease to the State to remain effective, the leasehold interest from NDEV to the Authority cannot be terminated. A default and termination of the Ground Lease would extinguish the lease to the State and in-turn the payment mechanism for the bonds. NDEV agreed to forego termination of the Ground Lease while lease-leaseback bonds are outstanding in exchange for a Rent Reserve Fund. Accordingly, except as described further below, the Lease commits the Authority to establishing and maintaining a Rent Reserve Fund set at seven (7) times' the current lease year's rent obligation – comprising Fixed Base Rent and Additional Rent. The Fund must be established on or before the closing of any bond financing.

The Fund balance will be reduced to one (1) times' the current rent if a sublease that is in effect with the State includes as part of the State's rent to the Authority an amount equal to the Authority's obligation to NDEV. Exhibit C provides an estimate of the Rent Reserve Fund balance under both scenarios. In either scenario, up to the point the Port is occupied, the Fund will be capitalized into a bond issuance, with the Authority drawing on sub rent thereafter to maintain the Fund balance. Any fund balance at the end of the lease term will revert to the Authority.

Under the Lease, NDEV has the right to use the Rent Reserve Fund following the occurrence of an event of default by the Authority to cover any outstanding rent, costs it incurs in curing an event of default, as well as other reasonable costs incurred owing to an event of default, such as losses.

Facility Relocation

The Lease commits the Authority to cover all costs incurred by NDEV in relocating facilities from the leased premises that are required to continue operating their nuclear generating facilities. Facilities are listed in Exhibit D. This obligation extends to the cost "to restore the functionality of such facility without any enhancement or betterment other than as may be required by Law", plus the costs associated with demolition, future feasibility studies, design, engineering, project management, surveying and permitting. Costs will be reimbursed on a monthly invoicing basis.

All facility relocation and demolition will be managed by NDEV either directly or through its subcontractors. The Lease outlines a robust governance process, summarized in Figure 3 below, for the Authority's review and approval of relocation costs, with a tiered level of oversight reflective of cost. In reviewing costs submitted for reimbursement Staff will be supported by the Authority's technical advisors, WSP USA.

Figure 3 – PSEG facility relocation cost reimbursement governance process

Cost of work (known or expected)	Requirements for the Authority's review and approval

<$0.3M	- NDEV to provide the Authority with a Purchase Order (PO) detailing:
	  - Scope of work
	  - Committed schedule
	  - Justification for vendor selection

>$0.3M	- NDEV to provide the Authority with a Purchase Order (PO) detailing:
	  - Scope of work
	  - Committed schedule
	  - Justification for vendor selection
	- NDEV to provide the Authority with procurement documentation for its review and approval – the Authority's review is limited to ensuring that the scope does not exceed functional equivalency
	- NDEV required to solicit bids from three (3) or more firms[3]

PSEG estimate that facility relocation and demolition costs will total between $20 million and $30 million, with costs to be incurred over an approximately three-year construction period. Rather than agree a cap now when cost estimates are uncertain, Staff intend to return to the Board for a total facility relocation budget once facility-related design work is sufficiently progressed and NDEV has competitive prices for major construction works.

However, recognizing that facility relocation is on the critical path to developing the leased premises staff are seeking Board approval for $10 million in initial funding. Funding will be used to cover relocation planning, permitting and design as well as certain limited construction works, and will enable works to progress to a point where total costs can be determined.

NDEV cost reimbursement for permitting and Port design-related reviews

The Lease allocates responsibilities for permitting, with NDEV retaining responsibility for securing all construction-related regulatory permits. Responsibility allocation was extensively negotiated with PSEG. The Authority is obligated to reimburse NDEV for any costs incurred in securing permits for the Port project including for facility relocation, with costs to be managed through the PO governance process outlined above and paid on a monthly invoicing basis.

In light of the Port's proximity to the Hope Creek and Salem nuclear power plants, the Lease sets out a detailed process for the review of Port infrastructure, building designs and operating plans. The Authority is obligated to reimburse PSEG Nuclear (through NDEV) for any costs it incurs in reviewing the Authority's designs or those of future subtenants. As with permitting-related costs, costs will be managed through the PO governance process and paid on a monthly invoicing basis.

Summary of funding sources

[3] For works costing >$0.3 million but <$1 million the requirement to seek a minimum of three bids is at the Authority's discretion, based on the cost and complexity of the works. The Authority also has discretion to waive the three bid requirement for professional services contracts valued at > $1 million where a vendor has been pre-qualified by NDEV through a competitive process.

Figure 4 summarizes sources and uses for the Authority's financial obligations under the Lease.

Figure 4 – Financial obligations under the Lease (sources and uses)

Obligation	Cost (estimate)	Funding source	Notes
Fixed Base Rent	$14.2 million over 28-years (nominal) - $0.75 million through 2024.	The Authority will use its own resources until sub rents commence – anticipated to occur in mid-2024. Staff anticipates reimbursement of Authority costs (through 2024) through capitalizing rent into a future bond issuance. Staff is currently working through possible terms of an issuance and associated Lease-Leaseback.	The Authority expects to issue financing for the Port via a Lease-Leaseback financing structure between the Authority and the State. It is anticipated that a sublease with the State will include, as part of the State rental commitment to the Authority, an amount equal to the Authority's rent obligation to NDEV.
Additional Rent	$74.4 million over 28-years (nominal) - $6.75 million through 2024.		
Variable Base Rent	Cost to be determined – but capped at $9.8M (nominal) over 28-years.	Drawn from sub rent.	This obligation will only take effect when the Authority starts receiving sub rent. Per the terms of the Lease, Variable Rent will be payable on an annual basis in arrears.
PSEG facility relocation costs (paid through NDEV)	Cost currently unknown. PSEG estimate a total cost of between $20 million to $30 million.	Costs will be capitalized into the development of the project, for which the Authority will draw on the $200 million in project funding in the Fiscal Year 2022 State Budget, as well as the $13.2 million in project funding committed by the New Jersey Board of Public Utilities (NJBPU).	Staff are working on the tranching of funding.
NDEV cost reimbursement for permitting and design-related reviews	Cost currently unknown.		
Rent Reserve Fund	Fund balance estimated to reach either $4 million (nominal) or $29 million (nominal) over 28-years, depending on obligation.	Capitalized into a bond issuance, with the Authority drawing on sub rent thereafter to maintain the Fund balance. If no bonds are issued this obligation does not apply. Staff are working through possible terms of the Lease-Leaseback.	It is anticipated that a sublease with the State will include, as part of the State rental commitment to the Authority, an amount equal to the Authority's rent obligation to NDEV. Actual Fund levels will depend on the level of additional costs.

6 Environmental obligations

The Authority's environmental obligations under the Lease vis-à-vis those of NDEV were extensively negotiated and reflect the unique characteristics of the site and project, as well as the Landlord's desire for ongoing control over environmental matters on its property. Staff reviewed these provisions with environmental counsel in order to minimize risks for the Authority.

NDEV has accepted responsibility for pre-existing site conditions and associated remediation obligations and costs, to the extent required by law if the property were not occupied by the Authority. Should contamination be discovered that could, but for the development of a Port, not be legally required to be remediated, the Authority will be liable for remediation costs incurred in remediating the site in order to develop the Port.

The Lease commits EDA and NDEV to cooperating on remediation and coordinating remediation activities in consideration of regulatory timeframes and the Authority's construction schedule and proposed use of the property. With NDEV's approval, the Authority may also conduct, on NDEV's behalf, remediation activities pursuant to a landlord remediation responsibility. Staff sought this ability as a means to minimize interface issues and potentially accelerate construction.

Phase one environmental assessments have been completed on all parcels with the exception of parcels D and E, with the Lease requiring that Phase two assessments into several areas of concern be provided to the Authority by NDEV within 90 days of Lease execution. NDEV must also provide the Authority with a Preliminary Remedial Action Assessment for each Parcel for which PSEG has agreed to conduct a Phase 2 Site Assessment and Site Investigation Report.

7 Nuclear safety compliance & Regulatory orders

In light of the Port's proximity to the Hope Creek and Salem nuclear power plants, nuclear safety and security is a core focus of the Lease, which sets out a number of mechanisms for ensuring that the Port's design and ongoing operations conform to Nuclear Regulatory Commission (NRC) and PSEG Nuclear policies. In particular, the Lease sets out the following mechanisms:

- PSEG Nuclear has extensive review and approval rights over the Authority's design and construction plans and future subtenant operating plans. This includes reviewing the Authority's designs for each parcel and facility at key design milestones
- PSEG Nuclear has extensive rights of entry at all times for the purpose of safeguarding nuclear property or protecting health and safety in the event of a nuclear incident
- Permitted uses of the property are strictly defined to ensure safety
- Mandatory training for all persons working at or regularly visiting the Port
- Strict volume limits for chemicals and combustible fuels upon the leased premises

In addition, PSEG Nuclear may, if required by a nuclear or other regulatory order, impose an improvement (e.g., installation of equipment or other encumbrance) on the leased premises and/or may recapture leased premises. This is a necessary requirement under PSEG's Nuclear's operating license until such time that the nuclear plant is fully decommissioned. With the support of outside

counsel specializing in nuclear regulation the Authority has closely assessed these risks and, while risks are very remote, has negotiated a number of safeguards for itself and future subtenants. In particular, should there be an impact to the leased premises further to a nuclear regulatory action:

- The Authority's rent will be decreased to reflect the impact to the value of the leased premises, as determined by an independent appraiser;
- NDEV and PSEG Nuclear are jointly and severally obligated to pay for and indemnify the Authority for documented out-of-pocket costs, including:
    - actual damages payable by the Authority to its subtenants, subject to certain negotiated caps;
    - all reasonable costs to demolish, reconstruct, replace or relocate the Port elsewhere on site;
    - all reasonable construction costs; and
    - reasonable costs to compensate the Authority for interruptions to its operations.
- NDEV and PSEG Nuclear are jointly and severally obligated to compensate for any loss of the use of the affected property, in an amount equal to the Fair Market Value (FMV) of such affected property, as determined by an appraiser using the income-based approach.

8 Affirmative action & Labor compliance

Under the terms of the Lease, NDEV and its contractors are required to comply with applicable prevailing wage, affirmative action and anti-discrimination laws and standards, including agreeing to make good faith efforts to meet county employment goals established in accordance with N.J.A.C. l7:27-5.2.

9 Conditions to drawing down parcels

Below are the critical conditions (deliverables or activities) that must be met to draw down parcels. Generally, if the conditions are not met, the Authority has a right to delay drawdown and/or terminate the Lease for any or all parcels. As is typical, such termination will be effective only as to parcels not yet drawn down. However, due to the long lead time of certain feasibility studies and critical need to resolve the LS Power easement (described below), terminating based on those conditions also allows the Authority to terminate the leasehold interest of parcels previously drawn down. Based on the current development schedule, parcels A and G1 are expected to be drawn down as early as October 1, 2021. This schedule aims to allow marshalling activities at the Port in time for the first major wind project approved by NJBPU. Accordingly, a Notice of Sublease was previously issued for Parcel A for 2024 through 2026.

Easement Agreement – Due to the need to have a Lease in place sooner in order for the Authority to commence due diligence, the Lease provides that easement agreements will be finalized and executed after Lease execution. More specifically, the Lease commits NDEV (and PSEG) and the Authority to executing an easement agreement to enable use of and to provide access to the leased premises and proximate property, including permanent road access easements, temporary road access easements and construction area easements. Requisite long-term access easements have

been identified and are attached to the Lease (see Exhibit E), however negotiations on key terms for such easements remains ongoing. PSEG and the Authority are also negotiating the exact location and terms of use for temporary construction support areas. The Lease requires that EDA and NDEV finalize and execute an easement agreement no less than thirty (30) days prior to the planned drawdown date for parcels A and G1, which is currently scheduled for October 1, 2021; with a delay in its execution delaying drawdown. Staff will return to the Board for approval of the agreement and are targeting the September Board.

A second agreement will be needed for utility easements. These easements are yet to be identified pending the conclusion of a feasibility study by Atlantic City Electric (ACE) as well as a sewer study by PSEG Nuclear. The ACE feasibility study must be completed and must demonstrate the feasibility of adequate connections to support the Port, or the Authority can terminate the Lease, including as to Parcels A and G1. The sewer study is targeted for completion prior to drawdown of parcels A and G1, with a draft report already provided to the Authority. Assuming the studies show feasible connections for electricity and sewer, the Lease requires that EDA and NDEV finalize and execute the utility easement agreements prior to drawdown of any subsequent parcels, the first of which (Parcel G2) is currently scheduled to drawdown in April 2023. While the Authority will be unable to terminate the Lease for Parcels already drawn down if the utility easement agreements are not in place, the risk of not having such an easement agreement when the studies have demonstrated feasibility is very slim and the exposure is relatively minimal (estimated at $5.8M in rent over 28 years plus real estate taxes).

Dredge placement agreement – As part of the Port's development the Authority proposes to place dredge material into a circa 109-acre CDF that is subject of a land exchange between the U.S. Army Corp. of Engineers (USCAE) and PSEG Nuclear. In order to do so, EDA and NDEV (or PSEG Nuclear) will need to execute a dredge placement agreement. Dredging is due to commence in Quarter 2 2022. Staff will return to the Board for approval of this agreement. If an agreement is not in place by the time the Authority draws down parcels it will be unable to terminate the lease for those parcels on the basis of not having a dredge placement agreement in place. In that event, the Authority would have to identify a different location to place dredge material.

LS Power easement agreement amendment – LS Power, a power development, investment and operating company, owns a 230 kV substation and transmission line which runs adjacent to Parcel A. Besides the easement immediately under and around the power lines LS Power has two ongoing construction-related easements, which are used on a short-term basis for line repair and replacement, that overlap certain leased premises and the proposed location of berths and roads. PSEG and the Authority's technical teams, with the support of WSP USA and M&N (engineer-of-record), are working with LS Power on potential technical solutions, including the resizing or relocation of the easements, as well as potential design adjustments to Parcel A to minimize interface risks during port operations. Once a technical solution is agreed, LS Power's easement agreement with PSEG Nuclear will need to be amended and such amendment be recorded.

In order to safeguard the Authority's interests until such time that a solution is agreed and documented, the Lease requires that the issue be resolved to the Authority's satisfaction within 60 days of Lease execution; with resolution included as a condition precedent to parcel drawdown. If the issue is not resolved via an amendment to the current easement within this time period, EDA and NDEV agree to negotiate in good faith for a further 60 days to amend the Lease as needed

(subject to later approval by the Members) to address impacts on the leased premises, including, but not limited to, possible extensions to the due diligence period and parcel commencement dates, or to agree to an additional extension to continue negotiating. If the LS Power easement is not amended in a way that works for the Port within the allowed time, EDA can terminate the Lease.

Settlement study – A study is required into potential soil impacts from Port and uplands construction on PSEG Nuclear's adjacent property, building foundations and subsurface cabling. This study, which is being managed by PSEG Nuclear, must be completed within ninety (90) days of lease execution, with a delay beyond 180 days causing an extension of the Due Diligence period. If, based on the study, the Authority reasonably expects an adverse project impact, it may terminate the Lease, including for parcels already drawn down.

RECOMMENDATION

The Members of the Board are asked to approve the Authority entering into a Lease with NDEV for the purpose of building and operating the NJWP. The Lease:

- Is for a 28-year initial term and 78-year maximum term;
- Covers seven parcels totaling approximately 122 acres (see Exhibit F);
- Sets out a timeframe for the phased drawing down of parcels between 2021 and 2024; and
- Restricts use of the property to developing, constructing, and operating a Wind Port.

Members are also asked to approve:

- Payment of the Authority's total rent and easement obligations under the Lease for the initial 28-year lease term;
- Up to $10 million in initial funding for cost reimbursement to NDEV for existing facility relocation, permitting support and design-related approvals;
- Up to $250,000 for title insurance for the leased premises; and
- A request for delegated authority for the Chief Executive Officer to authorize parcel drawdown provided that conditions precedent stipulated in the Lease are satisfied or are determined to no longer materially impact the development and operations of the NJWP.

Tim Sullivan, CEO

Exhibit A – Parcel drawdown schedule

Parcel	Planned Commencement Date	Anticipated Construction Completion Date
Parcel A	10/1/21	940 days after the Planned Commencement Date
Parcel C	3/5/24[4]	514 days after the Planned Commencement Date
Parcel D	4/3/23	361 days after the Planned Commencement Date
Parcel E	9/1/23	334 days after the Planned Commencement Date
Parcel G-1	10/1/21	940 days after the Planned Commencement Date
Parcel G-2	4/3/23	638 days after the Planned Commencement Date
Parcel G-3	1/2/24	545 days after the Planned Commencement Date

[4] The Authority anticipates use of Parcel C as a CDF prior to drawing it down for core construction.

Exhibit B – Estimated rent schedule

While Fixed Base Rent per acre is fixed (by parcel) the timing of when a parcel changes rent tier (e.g. changes from contingency period (25% of Base Rent) to construction period (50%), or from construction period to operations period (100%)) is subject to change due to factors impacting development timing. Longer-term rent estimates are also subject to variance in CPI. The below does not include Variable Base Rent. Additional Rent estimates were provided by PSEG.

(YOE$)	PSEG Base Rent	Additional Rent	Total
PV[5]	8,155	43,819	**51,974**
Total Nominal	14,217	74,450	**88,667**
2021	21	786	**808**
2022	176	1,786	**1,962**
2023	213	1,969	**2,182**
2024	301	2,134	**2,436**
2025	406	2,182	**2,588**
2026	445	2,214	**2,659**
2027	451	2,249	**2,700**
2028	457	2,285	**2,743**
2029	465	2,324	**2,788**
2030	472	2,364	**2,836**
2031	480	2,406	**2,886**
2032	488	2,450	**2,938**
2033	497	2,495	**2,992**
2034	506	2,543	**3,049**
2035	516	2,592	**3,108**
2036	526	2,643	**3,170**
2037	537	2,696	**3,233**
2038	548	2,751	**3,299**
2039	559	2,808	**3,367**
2040	571	2,867	**3,438**
2041	584	2,928	**3,511**
2042	596	2,990	**3,587**
2043	610	3,055	**3,665**
2044	624	3,122	**3,745**
2045	638	3,190	**3,828**
2046	653	3,261	**3,914**
2047	668	3,334	**4,002**
2048	684	3,410	**4,093**
2049	525	2,615	**3,140**

[5] All costs are escalating at CPI and discount rate is assumed to be 3.5%

Exhibit C – Indicative Rent Reserve Fund capitalization

Figure 1 – Reserve Fund balance assuming 7-year look forward (estimate)

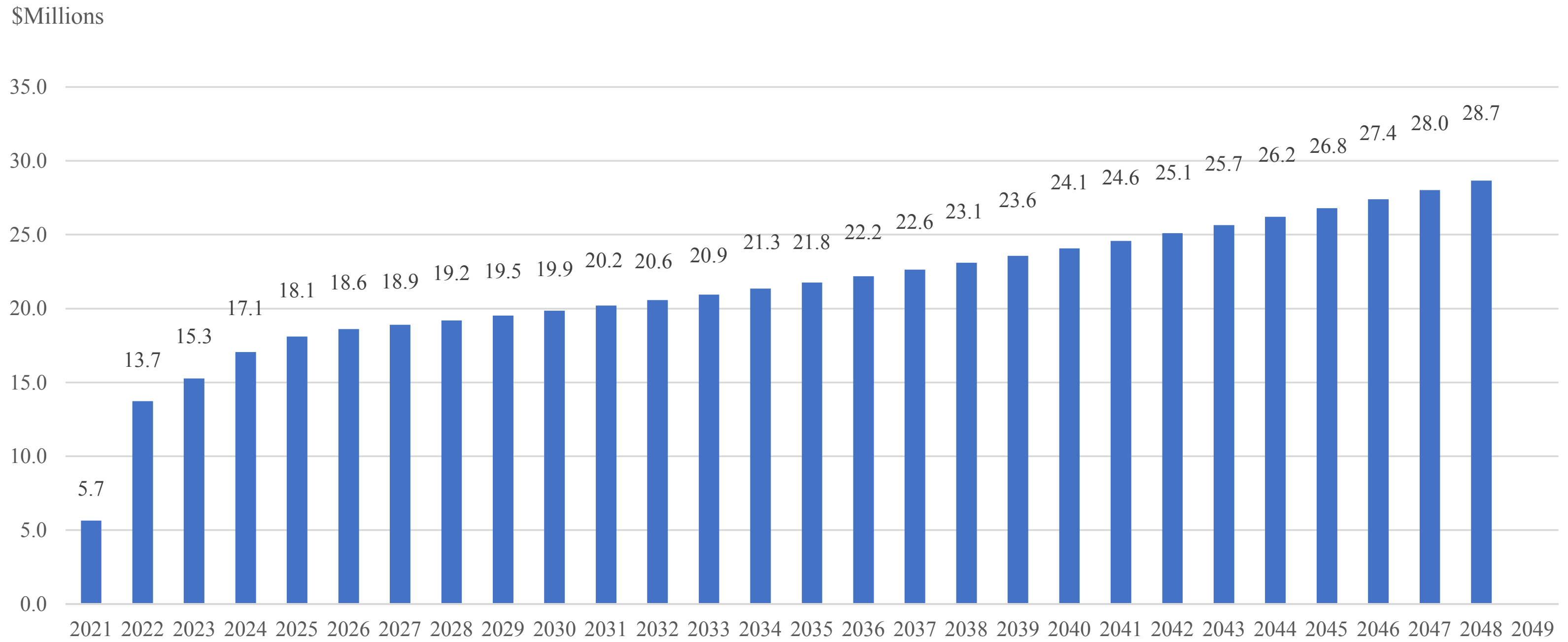


Figure 2 – Reserve Fund balance assuming 1-year look forward (estimate)

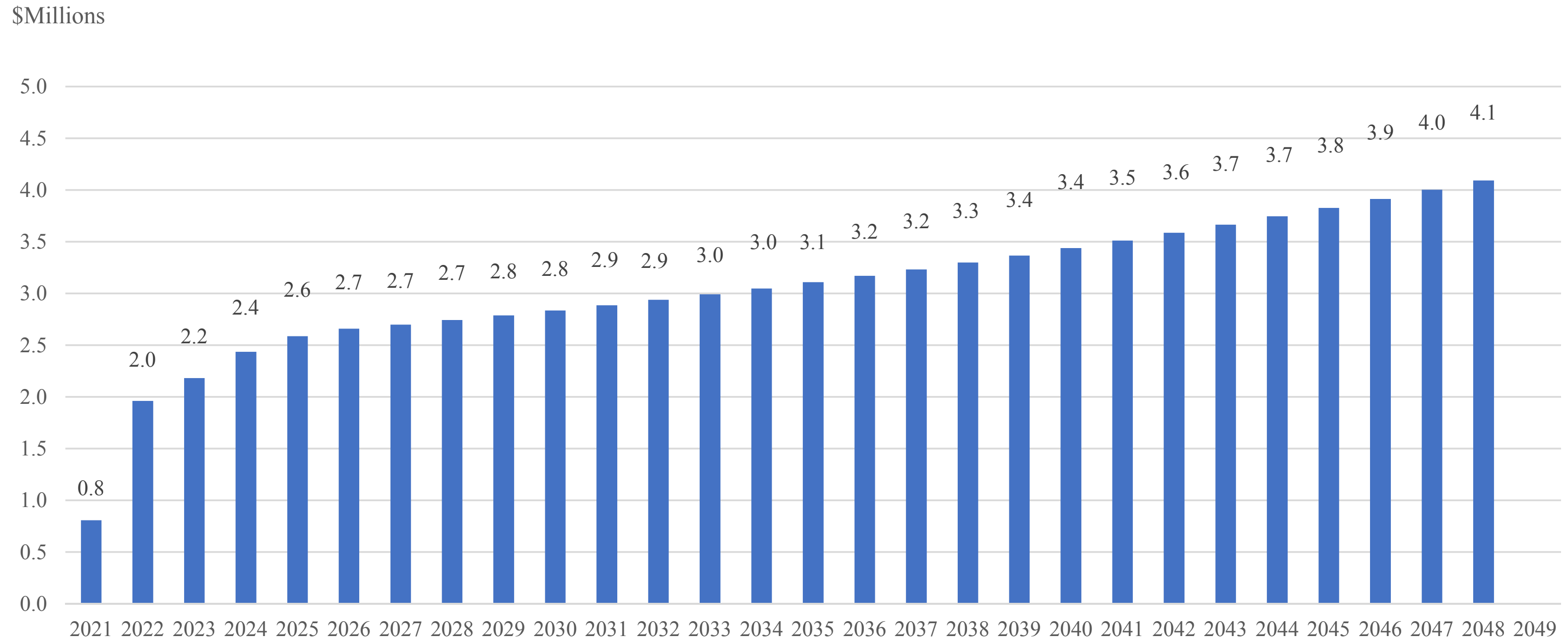


Exhibit D – PSEG Nuclear facility relocation schedule

Parcel	Relocated Nuclear Plant Facility	Planned completion of new facilities	Demolition completion for replaced facilities
A	None	N/a	N/a
C	Nuclear CDF Rifle Range & Security Training Center	7/1/24[1] 1/15/23	7/1/24 3/1/23
D	None	N/a	N/a
E	None	N/a	N/a
G-1	SAFER Staging Area Hazardous Materials Warehouse	11/15/21 9/1/22[2]	12/1/21 9/13/22
G-2	None	N/a	N/a
G-3	Combo Shop	11/28/23	12/15/23

1/ This date has the potential to be brought forward to 1/2/24 if certain conditions are met

Exhibit E – Long-term access easements

Easement terms including pricing remain subject to ongoing negotiations with NDEV.

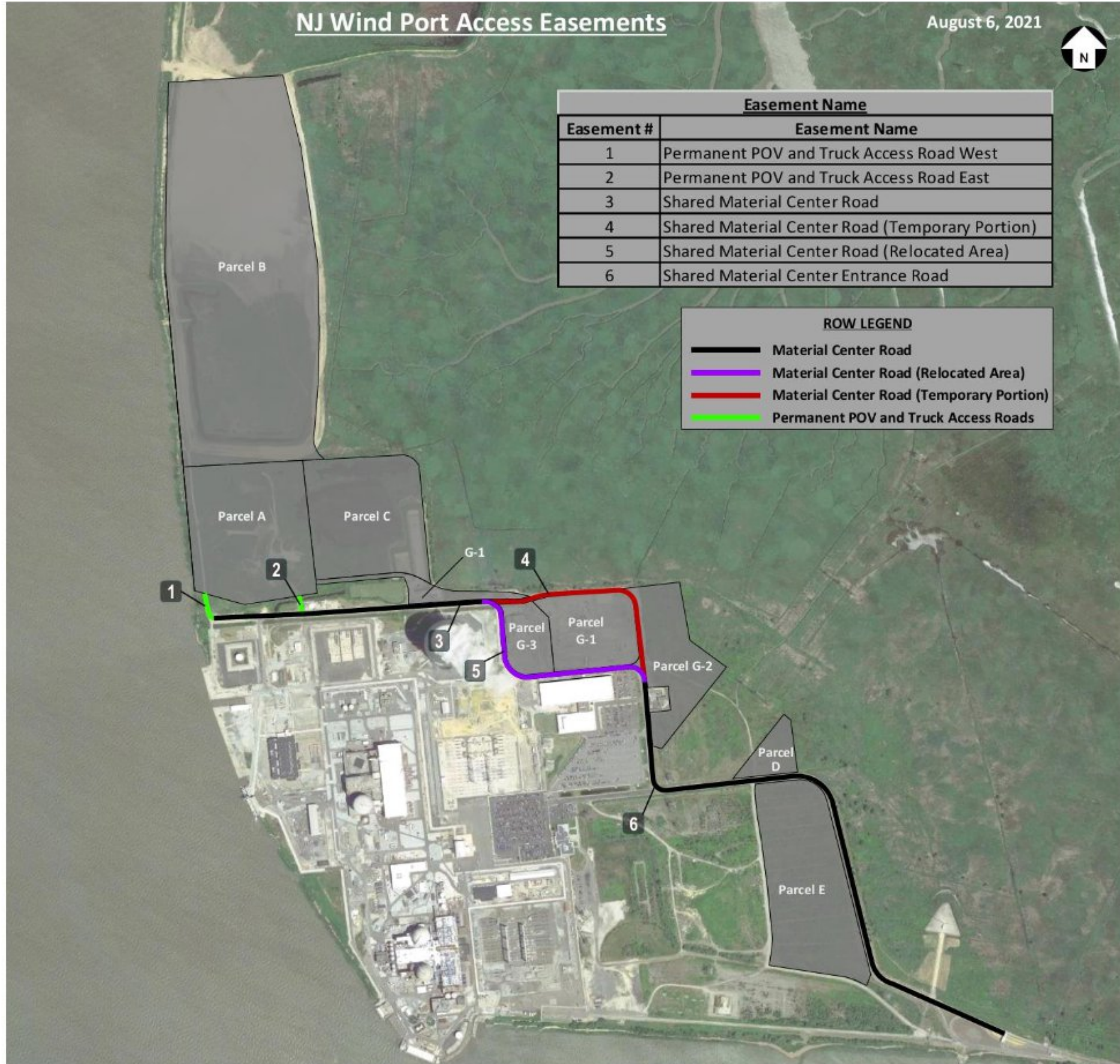
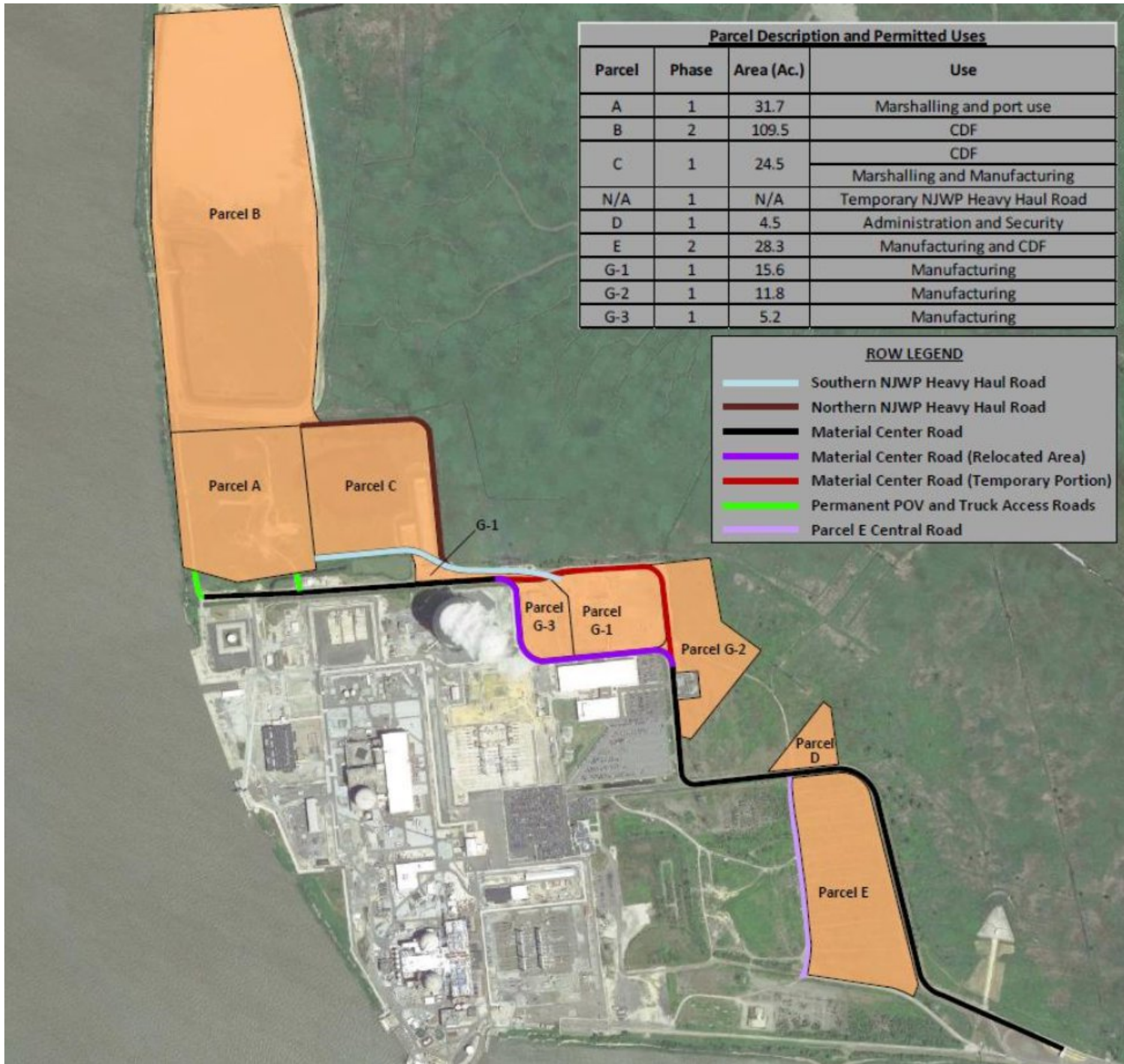


Exhibit F – Concept development plan



Parcel Description and Permitted Uses

Parcel	Phase	Area (Ac.)	Use
A	1	31.7	Marshalling and port use
B	2	109.5	CDF
C	1	24.5	CDF Marshalling and Manufacturing
N/A	1	N/A	Temporary NJWP Heavy Haul Road
D	1	4.5	Administration and Security
E	2	28.3	Manufacturing and CDF
G-1	1	15.6	Manufacturing
G-2	1	11.8	Manufacturing
G-3	1	5.2	Manufacturing

Exhibit G – Ground Lease

Please refer to link provided by EDA's Governance team

[Final Draft
August __, 2021]

GROUND LEASE AGREEMENT

AMONG

NDEV LLC

AND

THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

FOR LAND LOCATED AT

**LOWER ALLOWAYS CREEK, SALEM COUNTY, NEW JERSEY,
BLOCK 26, PORTIONS OF LOTS 2 and 5**

[______________ ___, 2021]

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THIS **GROUND LEASE AGREEMENT** (this "Lease") made and entered into this ______ day of _______, by and among **NDEV LLC**, a New Jersey limited liability company, having its principal office at 80 Park Plaza, Newark, New Jersey 07102 (together with its permitted successors and assigns, "Landlord") and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic organized and existing under the laws of the State of New Jersey having its principal offices located at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625 (the "NJEDA" and together with its permitted successors and assigns, "Tenant").

RECITALS

WHEREAS, Executive Order 8 (Murphy) committed the State to immediately pursue an initial 1,100 MW of offshore wind power and a total of 3,500 MW of offshore wind power by 2030; and Executive Order 92 (Murphy), increased this power procurement target to 7,500 MW by 2035;

WHEREAS, the offshore wind industry was identified as a priority sector in the Governor's economic development plan dated October 1, 2018, entitled: "The State of Innovation: Building a Stronger and Fairer New Jersey";

WHEREAS, NJEDA believes that the recent awards of offshore wind projects across the U.S. East Coast has created an unprecedented opportunity to source parts and materials from the United States instead of Europe and several states are in competition to become major supply chain hubs;

WHEREAS, NJEDA believes that development of a local offshore wind supply chain is critical to realizing the full economic benefits of this new industry and development of port infrastructure, especially a marshalling and installation port, is critical to anchoring major offshore wind supply chain investments within the State;

WHEREAS, NJEDA has broad powers to undertake redevelopment to achieve its mission of creating jobs and promoting economic development, N.J.S.A. 34: lB-5(i) et seq, including but not limited to owning and leasing property and providing financial assistance, including incentives, to private parties;

WHEREAS, Tenant and the State are interested in developing a local offshore wind supply chain and port infrastructure to support the State's offshore wind industry;

WHEREAS, Landlord and PSEG Nuclear are fully-owned Affiliates of PSEG;

WHEREAS, Landlord is or will be the owner of the Parcels located in Lower Alloways Creek Township, New Jersey;

WHEREAS, PSEG Nuclear is the licensed operator of the Nuclear Power Plant adjacent to the Parcels;

WHEREAS, Tenant is interested in leasing the Parcels from Landlord and developing the New Jersey Wind Port, as further set forth herein;

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Leased Premises in accordance with the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the parties as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landlord and Tenant, intending to be legally bound, hereby agree as follows:

ARTICLE I – DEFINITIONS

Unless the context shall otherwise require, capitalized terms used in this Lease shall have the meanings assigned to them as contained in this Article I, and the terms defined in this Article I and such meanings are equally applicable to both singular and plural forms of the term defined.

"50.59 Review" means any review or evaluation completed, or required to be completed, by Landlord pursuant to 10 CFR 50.59 with respect to the Parcels, 10 CFR 72.48 or any other change reviews or evaluation required by NRC Regulations.

"Acceptable Guarantor" means a parent or other Affiliate entity of a Qualified Assignee that has (i) a credit rating of at least "BBB-" by S&P and "Baa3" by Moody's, if such entity is rated by both such ratings agencies, or (ii) a credit rating of at least "BBB-" by S&P or "Baa3" by Moody's (as applicable), if such entity is rated by only one of S&P or Moody's.

"Acceptable Letter of Credit Issuer" means either (i) a commercial bank or financial institution (that is not an Affiliate of Tenant or such proposed assignee) organized under the laws of the United States or a political subdivision thereof or (ii) a U.S. branch office of a foreign bank, which, in the case of either clause (i) or clause (ii), has (A) (1) a credit rating of at least "A-" by S&P, "A-" by Fitch and "A3" by Moody's, if such entity is rated by each such ratings agencies, (2) if such entity is rated by only two of the three ratings agencies, a credit rating from two of the three ratings agencies of at least "A-" by S&P, if such entity is rated by S&P, "A-" by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody's, or (3) a credit rating of at least "A-" by S&P or "A3" by Moody's, or "A-" by Fitch if such entity is rated by only one ratings agency, and (B) shareholder equity (determined in accordance with GAAP) of at least ten billion dollars.

"Acceptable Security" means security in the form of (i) an irrevocable standby letter of credit, substantially in the form of Exhibit J (Form of Letter of Credit) issued by an Acceptable Letter of Credit Issuer, or (ii) a Guaranty issued by an Acceptable Guarantor, in each case, in the amount contemplated in Section 10.1(a) hereof.

"Access Easement Agreement" shall have the meaning set forth in Section 11.2(a) hereof.

"Account Bank" has the meaning set out in Section 27.9(a)(i) hereof.

"ADA" shall have the meaning set forth in Section 29.5(a) hereof.

"Additional Rent" means all sums that this Lease requires Tenant to pay Landlord or a third party, whether or not expressly called Additional Rent, except Base Rent, Construction Period Rent, Contingency Period Rent, CDF Period Payments and Variable Rent.

"Additional Rent Budget" shall have the meaning set forth in Section 5.3(a) hereof.

"Additional Rent Reconciliation Amount" shall have the meaning set forth in Section 5.3(c) hereof.

"Adverse Project Impact" means (a) any material adverse impact reasonably expected to occur to Tenant's development and construction of the NJWP or any Parcel in accordance with the Conceptual Development Plan and Schedule A (Parcel Information), including, without limitation, any delay to any Anticipated Construction Completion Date, or, solely with respect to Tenant's rights under Article II, a material adverse impact to its development and construction budget as of the Effective Date; (b) any material adverse impact on Tenant or Subtenant's use or possession of all or any material portion of the Leased Premises or any Parcel or its respective construction or operation activities thereon consistent with the terms of this Lease; or (c) any material adverse risk that the Leased Premises or any Parcel will become Uneconomic.

"Affected Property" means any Leased Premises and property subject to the Easement Agreements with respect to which there occurs a Nuclear Regulatory Recapture, together with any remaining Leased Premises or any Parcel (and any Improvements thereon) which is rendered Uneconomic by such Nuclear Regulatory Recapture. Affected Property shall not include property subject to the Easement Agreements where Landlord provides Tenant with commercially reasonable alternative access.

"Affiliate" of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. "Affiliated" shall have the correlative meaning.

"Aggregate Cap" shall have the meaning set forth in Section 6.1(d) hereof.

"AKRF" means the environmental consulting and engineering firm, AKRF, Inc.

"Alterations" shall have the meaning set forth in Section 14.6.1 hereof.

"Amendment Period" shall have the meaning set forth in Section **Error! Reference source not found.**2.1.5.

"Annual Variable Rent Cap" means the annual cap on the Variable Rent payable by Tenant to Landlord for each Lease Year in accordance with the terms set forth in Section 4.5 hereof, which shall be equal to $350,000.

"Anticipated Construction Completion Date" means, with respect to each Parcel, the date set forth opposite such Parcel on Schedule A (Parcel Information) in the column titled "Anticipated Construction Completion Date", as such date may be extended following the occurrence of a Landlord Delay or Force Majeure, by the number of days of delay to Tenant's Construction caused by such Landlord Delay or Force Majeure.

"Applicable Insurance Policy" means any insurance policy covering the Leased Premises or the Improvements, or any part thereof, (i) obtained by Tenant, pursuant to this Lease or otherwise, or (ii) obtained by Landlord (a) that has been provided to Tenant prior to the Effective Date (being the American Nuclear Insurers and Nuclear Electric Insurance Limited nuclear insurance policies); and (b) any renewal of an insurance policy obtained by Landlord and provided to Tenant pursuant to (a) above.

"Appraiser" means a New Jersey licensed Certified General Appraiser having an Appraisal Institute MAI and/or SRPA designation, with at least twenty (20) years of experience in appraising commercial and industrial real estate in New Jersey.

"Approvals" means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the zoning, rezoning (to the extent this Lease allows), subdivision, utilities, use, occupancy, maintenance, or operation of the Leased Premises.

"Approved Plans" shall have the meaning set forth in Section 14.1.2 hereof, as may be modified in accordance with Section 14.2.5 hereof.

"ASTM" means the American Society of Testing and Materials Standards.

"Bankruptcy Law" means Title 7 or 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

"Bankruptcy Sale" means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any Bankruptcy Proceeding affecting the owner of such property.

"Base Rent" means, with respect to each Parcel, the net annual base rent amount set forth on Schedule B (Base Rent) opposite such Parcel, which is payable by Tenant to Landlord for such Parcel for each Lease Year in accordance with the terms set forth in Section 4.3 hereof.

"Bonds" shall have the meaning set forth in Section 27.8 hereof.

"Business Day" means any day that is not a Saturday, a Sunday or a State or federal public holiday on which State-chartered banks are not open to conduct regular banking business.

"Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any portion of the Leased Premises (including any or all Improvements), including, without limitation, any Nuclear Incident, whether or not insured or insurable.

"Casualty Termination" means, with respect to all or any portion of the Leased Premises or all or any part of a Parcel, a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination.

"CDF" means a confined disposal facility, regulated by the USACE and the New Jersey Department of Environmental Protection.

"CDF Parcel" means that portion of Parcel C that, as of the Effective Date, is used as a CDF.

"CDF Period" means, with respect to the CDF Parcel, the period commencing on the CDF Period Commencement Date and ending on the earliest to occur of (i) the Commencement Date for Parcel C; or (ii) the date Tenant terminates this Lease with respect to Parcel C in accordance with the terms hereof.

"CDF Period Commencement Date" shall have the meaning set forth in Section 2.4 (b) hereof.

"CDF Period Payment" shall have the meaning set forth in Section 4.1(b) hereof.

"Combo Shop" means the multi-purpose facility located on Parcel G-3, as of the Effective Date.

"Commencement Date" means, with respect to each Parcel that has not been terminated in accordance with the terms hereof, the earliest date, on or after the Planned Commencement Date for such Parcel, on which (a) all conditions in Sections 2.5.1 and 2.5.2 have been satisfied or waived by Tenant or Landlord, as applicable; and (b) Landlord has made such Parcel available to Tenant to take possession.

"Conceptual Development Plan" means Tenant's conceptual plan for development of a Port (including identification and use of the different Parcels and location of the permanent road access easements) attached hereto as Exhibit N (Conceptual Development Plan).

"Condemnation" means, with respect to all or any portion of the Leased Premises or all or any portion of the Parcels (as applicable): (a) any permanent taking of (or of the right to use or occupy) all or any portion of such Leased Premises or Parcel(s) (as applicable) by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government Entity not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any portion of the Leased Premises or all any portion of the Parcels (as applicable) but creating a right to compensation.

"Condemnation Award" means any award(s) paid or payable (whether or not in a separate award) to either Party, or the holder of any Leasehold Mortgage or Fee Mortgage after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (3) any interest on such award; and (4) any other sums payable

on account of such Condemnation, including for any prepayment premium under any approved Mortgage.

"Condemnation Effective Date" means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of all or any part of the Leased Premises or all or any part of the Parcels (as applicable) subject to the Condemnation.

"Condemnation Termination" means a termination of this Lease with respect to all or any portion of the Leased Premises or all or any part of the Parcels because of a Substantial Condemnation, when and as this Lease expressly allows such a termination.

"Confidential Information" shall have the meaning set forth in Section 34.1 hereof.

"Construction" means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work, including any laydown or site preparation work, including work affecting any Improvements (i.e., new construction on the Leased Premises).

"Construction Completion Date" means, with respect to each Parcel, the date of substantial completion of the Construction of Tenant's Work, such that the Construction is complete except for minor punchlist finishing items.

"Construction Period" means, with respect to each Parcel, the date commencing on the Commencement Date with respect to such Parcel and continuing until the Construction Completion Date relating to such Parcel.

"Construction Period Rent" shall have the meaning set forth in Section 4.2 hereof.

"Contemporaneous Reliance Letter" has the meaning set forth in the definition of Environmental Reports.

"Contingency Period" means, with respect to each Parcel, the period commencing upon the end of the Due Diligence Period and ending on the earlier to occur of (i) the date on which Tenant's obligation to pay Construction Period Rent commences, or (ii) the date Tenant terminates this Lease with respect to such Parcel as provided herein; provided that, with respect to Parcel C, the Contingency Period shall exclude the CDF Period, if applicable.

"Contingency Period Rent" shall have the meaning set forth in Section 4.1 hereof.

"Control" (including the terms "controlled," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"CPI" means the United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for Urban Wage Earners and Clerical Workers (CPI-W) published for Consumer Price Index, Philadelphia-Camden-Wilmington, with a base of 1982 -84 = 100. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable

substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

"CPI Adjustment Factor" means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI at the commencement of the relevant measuring period found by dividing the CPI, on each such January 1 by the CPI for the January 1st of the previous year.

"Critical Thresholds" means the thresholds as to the use and storage on the Leased Premises of specified chemicals and hazardous materials set forth on Schedule F (Critical Chemicals and Substances Thresholds).

"Decommissioning" means PSEG Nuclear has determined to permanently cease nuclear power operations at the Nuclear Power Plant and (i) it has sent a letter to the NRC stating such intent along with the date of cessation; (ii) it has sent a letter to the NRC stating that the nuclear fuel has been permanently removed from the reactor vessel at the Nuclear Power Plant; (iii) all required radiological surveys have been completed and reviewed by the NRC and such surveys and any other required analysis indicate that the site boundary for the Nuclear Power Plant may be revised to exclude the Fee Estate or any Parcel that is the subject of Section 10.3(a)(iii); and (iv) the NRC approves a change to the license issued by the NRC and held by PSEG Nuclear relating to the Nuclear Power Plant to permit the change in site boundary described in clause (iii) above.

"Default Rate" means the lesser of five percent (5%) per annum or the maximum lawful rate of interest.

"Demolition" or "Demolish" means, with respect to each Parcel, removing all Relocated Nuclear Plant Facilities located on such Parcel, and removing all underground infrastructure associated with such structures, such as floor slabs, foundations, piles and pile caps, electrical duct banks, stormwater piping, water piping and sewer piping and the proper disposal of such facilities and infrastructure in accordance with applicable Law.

"Discharge" shall have the meaning set forth in N.J.A.C. 7:26B-1.4.

"Disclosure Statement" means disclosure statements in the form of Exhibit H (Form of Disclosure Statement – debarment/Disqualification Questionnaire), as may be updated from time to time.

"Dispute" shall have the meaning set forth in Section 34.12(a) hereof.

"Due Diligence Period" means the period commencing on the Effective Date, and ending at 5:00 p.m. on the date that is one hundred eighty (180) days after the Effective Date.

"Due Diligence Work" shall have the meaning set forth in Section 11.1(b) hereof.

"Early Site Works" shall have the meaning given to that term in the Letter of Intent.

"Easement Agreements" means the Access Easement Agreement and the Utility Easement Agreement.

"Effective Date" shall mean the date on which the Parties have executed and delivered this Lease.

"Engineering Control" shall have the meaning set forth in N.J.A.C. 7:26C – 1.3.

"Environmental Conditions" means any and all Hazardous Materials in any media at the Property.

"Environmental Reports" means (i) with respect to Parcels A and C, the Phase 1 Environmental Assessment and Preliminary Assessment Report for Parcel A and C (Confined Disposal Facility) prepared for PSEG Power LLC by AKRF, dated December 2020, together with the reliance letter issued by AKRF in favor of Tenant attached hereto as Exhibit P (Reliance Letter) (the "Reliance Letter "); (ii) the Phase 1 Investigation and the Preliminary Assessment Report for Parcel B (Confined Disposal Facility 3) prepared for PSEG Power LLC by AKRF, dated February 2021, together with the Reliance Letter; (iii) with respect to Parcel C, the Phase 1 Environmental Assessment and Preliminary Assessment Report for Parcel C (Rifle Range and Security Training Center) prepared for PSEG Power LLC by AKRF, dated December 2020, together with the Reliance Letter; (iv) with respect to Parcel G-2 (Chiller Facility and Undeveloped Area), the Phase 1 Environmental Assessment and Preliminary Assessment Report for Parcel G-2 (Chiller Facility and Undeveloped Area) prepared for PSEG Power LLC by AKRF, dated December 2020, together with a Reliance Letter; (v) with respect to Parcel G-3 and part of Parcel G-1 (The Combo Shop, Hazardous Waste Accumulation Pad, and Gravel Laydown Area), the Phase 1 Environmental Assessment and Preliminary Assessment Report prepared for PSEG Power LLC by AKRF, dated December 2020, together with the Reliance Letter; (vi) each separate Phase 2 Site Assessment and Site Investigation Report issued for any of the Parcels (including, but not limited to for Parcel C (Rifle Range and Security Training Center) and Parcel G-3 (The Combo Shop)) to be prepared for PSEG Power LLC by AKRF, together with the Reliance Letter; and (vii) each Preliminary Remedial Action Assessment issued for any of the Parcels (including, but not limited to for Parcel C (Rifle Range and Security Training Center) and Parcel G-3 (The Combo Shop)) to be prepared for PSEG Power LLC or another Affiliate of Landlord by AKRF, together with the Reliance Letter.

"Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any Government Entity regulating or relating to health, safety, or environmental conditions on, under, or about the Property or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq.; the Toxic Substances Control Act of 1976 ("TSCA"), 15 U.S.C. 2601 et seq.; ISRA; SRRA; and any other federal, state, county or local law, statute, rule, standard, regulation or ordinance currently in effect or subsequently enacted, promulgated or adopted which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation, release or threatened release into the environment of Hazardous Materials.

"Equity Interest" means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in a Person.

"Estoppel Certificate" means the estoppel certificates referred to in Section 33.1 hereof.

"Excluded Obligations" means the following obligations to the extent (if any) contained in this Lease or any New Lease: (a) any obligations whose breach would constitute a Tenant-Specific Default; (b) any obligations that have been fully performed or no longer apply; and (c) any covenant to perform any Construction.

"Expiration Date" means midnight on the date that is twenty-eighty (28) years after the first Commencement Date to occur with respect to any Parcel (unless extended or sooner terminated as hereinafter provided).

"Fee Estate" means Landlord's fee estate in the Leased Premises, including Landlord's reversionary interest in the Leased Premises after the Expiration Date.

"Fee Mortgage" means any Mortgage: (a) that encumbers all or part of the Fee Estate; and (b) with respect to which an SNDA has been fully executed.

"Force Majeure" shall have the meaning set forth in Section 35.9 hereof.

"Foreclosure Event" means any transfer of title to any estate through any: (a) judicial or nonjudicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or remedies under any Mortgage; or (e) transfer by operation of, or through, any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding and any Bankruptcy Sale), in each case ((a) through (e)) whether the transferee is a Mortgagee, a party claiming through a Mortgagee, or a third party.

"Full Reserve Amount" means the amount equal to the sum of (i) seven times (7 x) the then current Lease Year's Base Rent, and (ii) seven times (7 x) the then current Lease Year's Additional Rent Budget.

"Future Encumbrances" means any new or additional restrictive covenants and encumbrances that affect the Leased Premises after the Effective Date, including amendments to the Permitted Exceptions, which are not inconsistent with the rights, obligations and protections of Landlord and Tenant in this Lease and to which Tenant consents (which consent shall not be unreasonably withheld, conditioned or delayed).

"GAAP" means generally accepted accounting principles consistently applied, as in effect from time to time.

"Good Faith" means observance of reasonable commercial standards of fair dealing in a given trade or business.

"Government Entity" means each and every governmental or quasi-governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Parcels, the Leased Premises and the Property (or any activity or obligation this Lease allows or requires), including the United States government, state and county governments and their subdivisions and municipalities, and all other applicable governmental

agencies, authorities, and subdivisions thereof. "Government Entity" shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, or similar body having or claiming jurisdiction over the Leased Premises or any activities on or at the Leased Premises. "Government Entity" does not include NJEDA acting in its capacity as a party to this Agreement.

"Guarantor" shall have the meaning set forth in Section 34.10 hereof.

"Guaranty" shall have the meaning set forth in Section 34.10 hereof.

"Hazardous Materials" means any substance, material, waste, pollutant, or contaminant (a) listed or defined as hazardous or toxic under any Environmental Requirements, asbestos, gasoline, diesel fuel, petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, (or mixtures of natural gas and such synthetic gas), per- and polyfluoroalkyl substances, polychlorinated biphenyls; (b) the presence of which requires investigation or Remediation under any Environmental Requirement; (c) the presence of which on the Property causes or threatens to cause a nuisance on the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of any person on, about or adjacent to the Property; and (d) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any Government Entity.

"Hazardous Materials Notice" shall have the meaning set forth in Section 8.5(b) hereof.

"Hazardous Materials Warehouse" means the 975 square foot storage building and approximately 4,000 square foot outdoor storage area where Hazardous Materials are stored prior to disposal located, which is located north of Parcel G-1, as of the Effective Date.

"Improvements" means the NJWP, the Port Equipment, Tenant's Work, and all other improvements to the Leased Premises made by Tenant, or on behalf of Tenant, in accordance with the terms of this Lease.

"Indemnify" means where this Lease states that either party shall "Indemnify" any Person from, against, or for a particular matter, that such party shall indemnify such Person and defend and hold such Person harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including reasonable attorneys' fees, interest and penalties) that such Person suffers or incurs: (a) from, as a result of, or on account of such particular matter; or (b) in enforcing the indemnity. The Indemnifying Party's counsel shall be subject to the indemnified Person's approval, not to be unreasonably withheld. Any counsel satisfactory to the Indemnifying Party's insurance carrier shall be automatically deemed satisfactory.

"Indemnifying Party" means a Party that agrees to Indemnify any other Person.

"Initial Term" shall have the meaning set forth in Section 3.1 hereof.

"Institutional Control" shall have the meaning set forth in N.J.A.C. 7:26C-1.3.

"Institutional Lender" means: (1) a bank (state, federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (state or federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), infrastructure investment organization, federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500 company, real estate mortgage investment conduit, or securitization trust; (2) any issuer of collateralized mortgage obligations or any similar investment entity (provided that either (a) at least certain interests in such issuer or other entity are publicly traded or (b) such entity was or is sponsored by an entity that otherwise constitutes an Institutional Lender or has a trustee that is, or is an Affiliate of, any entity that otherwise constitutes an Institutional Lender), or any Person acting for the benefit of or on behalf of such an issuer; (3) any Person actively engaged in commercial real estate financing or infrastructure financing and having total assets (on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee's acquisition of its Leasehold Mortgage by assignment, but excluding the value of any Leasehold Mortgage encumbering this Lease) of at least $100,000,000; (4) intentionally omitted; or (5) any of the foregoing when acting as trustee, agent, or administrative agent for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders. The fact that a particular Person (or any Affiliate of such Person) is a partner, member, or other investor of the then Tenant shall not preclude such Person from being an Institutional Lender and a Leasehold Mortgagee provided that: (x) such entity has, in fact, made or acquired a bona fide loan to Tenant secured by a Leasehold Mortgage; (y) such entity otherwise qualifies as an Institutional Lender; and (z) at the time such entity becomes a Leasehold Mortgagee, no Tenant Event of Default exists under this Lease, unless simultaneously cured.

"Insubstantial Casualty" means any Casualty other than a Substantial Casualty.

"Insubstantial Condemnation" means any Condemnation other than a Substantial Condemnation.

"ISRA" means Industrial Site Recovery Act - N.J.S.A. 13:1K-6 et. seq., as amended, and any and all related regulations, as well as any other statute and regulations that may replace ISRA and such related regulations in whole or part.

"ISFSI Pad" means the independent spent fuel storage installation pad that exists on the Property as of the Effective Date.

"Iterative Submission" has the meaning set forth in Section 14.1.2 hereof.

"Land" means the Leased Premises excluding the Improvements.

"Landlord" has the meaning set forth on the first page hereof.

"Landlord Default" means any event or circumstance that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute a Landlord Event of Default.

"Landlord Delay" means, without limitation, but subject to Force Majeure and Tenant Delays: (i) any failure by Landlord to submit plans or other deliverables when due by the terms of this Lease, (ii) any failure or delay by Landlord in supplying information or giving authorizations or approvals, (iii) any delays resulting from changes made by Landlord to the plans for any Tenant's Work or Alterations, or other work to be undertaken by Landlord, except as specifically set forth herein, (iv) any delays resulting from the performance of any work by or on behalf of Landlord, including Landlord's Work, (v) any delays resulting from non-compliance with Landlord's obligations required by this Lease (including all exhibits attached hereto) or (vi) as otherwise specifically set forth herein.

"Landlord Event of Default" shall have the meaning set forth in Section 28.1 hereof.

"Landlord Liability Insurance" shall have the meaning set forth in Section 15.2 hereof.

"Landlord Liability Insurance Proceeds" means net proceeds from the Landlord Liability Insurance when and as received by Landlord, Tenant, or any Mortgagee.

"Landlord Party" means Landlord's employees, agents, parents, Affiliates, subcontractors, subtenants or suppliers.

"Landlord Remediation Responsibility" means remedial investigation and remedial actions to the extent required by Laws if the Parcels were not occupied or to be occupied by Tenant (or any Subtenant), to be conducted at Landlord's cost and expense, relating to: (a) Pre-Existing Environmental Conditions; or (b) a new Discharge after the Effective Date not the result of actions or inactions by Tenant (or any Subtenant), their contractors, invitees, quests, or employees ("Tenant Parties"). "Landlord Remediation Responsibility" can, at Landlord's sole discretion, include the use of Engineering Controls and Institutional Controls provided such controls do not preclude or unreasonably interfere with the Tenant Parties' Permitted Uses.

"Landlord's Commencement Conditions" shall have the meaning set forth in Section 2.5.2 hereof.

"Landlord's Offer" shall have the meaning set forth in Section 10.4 hereof.

"Landlord's Review Parameters" shall have the meaning set forth in Section 14.1.2 hereof.

"Landlord's Work" shall have the meaning set forth in Section 14.3.1 hereof.

"Landlord-Title Objections" shall have the meaning set forth in Section 2.5.1(i) hereof.

"Large Sized PO Package" shall have the meaning set forth in Section 14.4.2(a)(iii) hereof.

"Laws" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government Entity affecting the Parcels, the Leased Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting the Parcels, the Leased Premises, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Effective Date or passed,

enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Lease Lease-Back Transaction" shall have the meaning set forth in Section 25.1 hereof.

"Lease Related Documents" means this Lease, the Memorandum of Lease, the Easement Agreements, and any dredging agreement or other agreement entered into in connection with any of the foregoing agreements.

"Lease Year" means: (a) the twelve calendar months starting on the first day of the first full calendar month after the occurrence of the first Commencement Date (unless the Commencement Date falls on the first day of a calendar month, in which case the twelve month period will start on the same day); and (b) every subsequent period of twelve (12) calendar months during the Term.

"Leased Premises" means, as of any date, all of those Parcels leased to Tenant by Landlord pursuant to this Lease as of such date, together with (a) the Improvements, as and when constructed on such Parcels, and all Alterations; (b) all air rights and air space above such Parcels; and (c) all of Landlord's right, title and interest, if any, in and to all rights, privileges and easements appurtenant to such Parcels, subject to Permitted Exceptions and the terms and conditions hereof.

"Leasehold Estate" means Tenant's leasehold estate, and all of Tenant's rights, privileges, and options under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

"Leasehold Mortgage" means any Mortgage: (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which (recorded or unrecorded) is promptly after execution delivered to Landlord, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee's name and Notice address; and (c) that is held by a Leasehold Mortgagee that is an Institutional Lender, subject to the jurisdiction of the courts of the State and not immune from suit; provided that a Leasehold Mortgage shall not include a mortgage or other encumbrance given solely with the intention of implementing a foreclosure to avoid the assignment restrictions contained in Article X hereof.

"Leasehold Mortgagee" means an Institutional Lender holding a Leasehold Mortgage. Any participant or partial assignee holding any direct or indirect interest in a Leasehold Mortgage shall not be deemed a Leasehold Mortgagee or affect Landlord in any way.

"Leasehold Mortgagee's Cure Rights" means all rights of Leasehold Mortgagee(s) under this Lease to effectuate any Leasehold Mortgagee's cure.

"Leasehold Mortgagee's Representative" means, from time to time, any agent, assignee, designee, nominee, or representative designated (including any such designation made after the fact with retroactive effect) by a Leasehold Mortgagee, but only if: (a) such Person is an Affiliate, full-time employee, legal counsel, or bona fide loan servicer, custodian, contractor, consultant, or collateral agent of such Leasehold Mortgagee, or is another Leasehold Mortgagee; and (b)

Landlord has received (or retroactively receives) Notice of the name and Notice address of such Person and of such Person's status as a Leasehold Mortgagee's Representative.

"Legal Cost" means the reasonable documented out-of-pocket cost incurred by either Party associated with legal fees or expenditures in connection with any litigation between the Parties, or claim made by either Party against the other, arising from this Lease, or Landlord's enforcement of this Lease upon a Tenant Default, or Tenant's enforcement of this Lease upon a Landlord Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Leased Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other Party to this Lease.

"Lender Requirements" means any reasonable requirements of the State or any commercially reasonable requirements of any Institutional Lender that must be satisfied to obtain any funding or financing for the construction, operation and maintenance of the Improvements or the acquisition of Tenant's interest in the Lease.

"Letter of Intent" means that certain Letter of Intent between PSEG Nuclear and NJEDA, dated April 16, 2020, as amended by (i) the First Amendment to the Letter of Intent, dated June 23, 2020 and effective as of June 30, 2020; (ii) the Second Amendment to the Letter of Intent, dated August 18, 2020; (iii) the Third Amendment to the Letter of Intent, dated September 25, 2020; (iv) the Fourth Amendment to the Letter of Intent, dated November 30, 2020; (v) the Fifth Amendment to the Letter of Intent, dated January 26, 2021; (vi) the Sixth Amendment to the Letter of Intent, dated March 29, 2021; and (vii) the Seventh Amendment to the Letter of Intent, dated April 30, 2021, as may be further updated from time to time, and as attached hereto as Exhibit R.

"Licensed Site Remediation Professional" or "LSRP" shall have the meaning set forth in N.J.S.A. 58:10C-1 et seq. See N.J.A.C. 7:26C-1.3.

"Loss Proceeds" means (a) Condemnation Award(s); (b) Tenant Property Insurance Proceeds; and/or (c) Landlord Liability Insurance Proceeds.

"LS Power Easement" shall mean the easement attached as Exhibit S.

"LS Power Easement Amendment Documents" shall have the meaning set forth in Section **Error! Reference source not found.**2.1.5.

"LS Power Lease Amendments" shall have the meaning set forth in Section 2.1.5.

"Major Construction" means any Construction (i) of Alterations whose costs of materials, construction and labor exceeds $15,000,000.00 (subject to an adjustment every five (5) years equal to the CPI Adjustment Factor), as estimated by a licensed architect; or (ii) that would significantly adversely affect the Relocated Nuclear Plant Facilities or the Nuclear Power Plant.

"Material Nuclear Regulatory Improvement" means a Nuclear Regulatory Improvement that has an Adverse Project Impact.

"Material Nuclear Regulatory Recapture" means any Nuclear Regulatory Recapture that (a) would have an Adverse Project Impact or render any portion of the Leased Premises Uneconomic or (b) any Nuclear Regulatory Improvement that renders any portion of a Parcel Uneconomic.

"Mediator" means any person selected as a mediator of a dispute pursuant to Section 34.12 hereof.

"Medium Sized PO Package" shall have the meaning set forth in Section 29.2 hereof.

"Memorandum of Lease" means the memorandum of lease to be recorded in the appropriate land records in the form of Exhibit F (Form of Memorandum of Lease).

"Moffatt & Nichol" means Moffatt & Nichol, Inc., a California corporation with offices at 529 5th Avenue #14, New York, New York 10017.

"Mortgage" means any mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such mortgages are consolidated or restated as a single lien, then all such mortgages so consolidated or restated shall constitute a single Mortgage. A Mortgage may be either a Fee Mortgage or a Leasehold Mortgage or both. A participation interest in a Mortgage (or partial assignment of the secured loan) does not itself constitute a Mortgage.

"Mortgagee" means a holder of any Mortgage and its successors and assigns.

"Mortgagee Protections" means, for any Leasehold Mortgagee, all rights, protections, and privileges of such Leasehold Mortgagee under this Lease, including: (1) any right to receive Notices and/or to cure Tenant Events of Default, including any Leasehold Mortgagee's Cure Rights; (2) all provisions in a New Lease; and (3) all other rights, remedies, protections, privileges, and powers of such Leasehold Mortgagee and anyone claiming through or under such Leasehold Mortgagee, including a New Tenant and any Post-Foreclosure Tenant.

"NDA-Eligible Sublease" shall have the meaning set forth in Section 25.2(b) hereof.

"Net Worth" means the sum of the following for an entity and its subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP in the United States):

(a) The amount of capital stock that is: (i) already contributed or (ii) committed but unfunded, provided that such commitment is supported by an irrevocable letter of credit; plus

(b) the amount of surplus and retained earnings (or, in the case of a surplus or retained earnings deficit, minus the amount of such deficit).

"New Jersey Wind Port" or "NJWP" means the Port envisioned in the Conceptual Development Plan, designed and constructed in accordance with the terms of this Lease.

"New Lease" means a new lease of the Leased Premises for the remainder of the unexpired Term of this Lease (taking into account any Renewal Options already exercised) (as if Landlord has not exercised any termination rights hereunder) and in the same form as this Lease, except as this Lease otherwise expressly states. Any New Lease shall include all rights, Preemptive Rights, and privileges of Tenant under this Lease, including any Renewal Options not yet exercised, but shall not include any Excluded Obligations. Any New Lease or a memorandum thereof shall be in recordable form, and shall include all Mortgagee Protections for the benefit of New Tenant's Leasehold Mortgagee(s).

"New Lease Option Period" means the period commencing upon the occurrence of a New Lease Option Period Trigger Event and ending on the date that is forty-five (45) days after the date on which Landlord Notifies all Leasehold Mortgagee(s) of such New Lease Option Period Trigger Event. The New Lease Option Period shall be tolled and extended: (x) during any Bankruptcy Proceeding affecting Landlord; and (y) for Force Majeure.

"New Lease Option Period Trigger Event" shall have the meaning set forth in Section 20.1 hereof.

"New Tenant" means the Leasehold Mortgagee that requests (or obtains) a New Lease, or its Leasehold Mortgagee's Representative, or such other Tenant under a New Lease as such Leasehold Mortgagee shall determine (but excluding Tenant originally named in this Lease and its Affiliates), all as such Leasehold Mortgagee designates by Notice to Landlord. Any New Tenant shall have all the same rights and obligations as Tenant under this Lease, subject to the definition of a New Lease.

"NJEDA Debarment Regulations" means the regulations set forth in N.J.A.C. 19:30-2.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Non-Binding Mediation" means mediation proceedings in accordance with Section 34.12 hereof.

"Non-Disturbance and Attornment Agreement" shall have the meaning set forth in Section 25.1 hereof.

"Nonrecourse Clause" shall mean, collectively, those clauses in Article XXXII.

"Non-Residential Standards" shall have the meaning set forth in Section 8.2(e) hereof.

"Notice" means any written approval, consent, demand, designation, election, notice, or request that any party gives the other regarding this Lease. Notices shall be delivered, and shall become effective, only in accordance with the Section of this Lease entitled "Notices".

"Notifying Party" shall have the meaning set forth in Section 8.5(b) hereof.

"NRC Regulations" means the rules and regulations promulgated pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and other regulatory authority of the Nuclear Regulatory Commission and set forth in 10 CFR Chapter 1.

"Nuclear CDF" means the CDF located on Parcel C as of the Effective Date hereof.

"Nuclear Facility License Amendment" means an amendment or change to the license issued by the NRC and held by PSEG Nuclear relating to the Nuclear Power Plant.

"Nuclear Incident" shall have the meaning ascribed in Section 11.q of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2014(q).

"Nuclear Power Plant" means the Salem Nuclear Power Plant and Hope Creek Nuclear Generating Station, as shown on Exhibit N (Conceptual Development Plan).

"Nuclear Regulatory Commission" or "NRC" means the U.S. Nuclear Regulatory Commission.

"Nuclear Regulatory Impact" means any adverse impact on the design, maintenance, construction or operation of the NJWP, including the activities of Tenant or any Subtenant consistent with the terms of this Lease, the use of all or any portion of the Leased Premises or any Parcel, or Tenant's rights and benefits under any Lease Related Document.

"Nuclear Regulatory Improvement" means any temporary or permanent alteration to, encumbrance on, or other change to the design or construction or Permitted Uses of any portion of the Leased Premises undertaken to comply with a Nuclear Regulatory Order.

"Nuclear Regulatory Liability" has the meaning set forth in Section 6.1(d) hereof.

"Nuclear Regulatory Order" means any order, rule, regulation, action, or other requirement or directive issued after the Effective Date by the NRC or any other federal or state regulatory agency having authority over the Nuclear Power Plant, or a successor agency.

"Nuclear Regulatory Recapture" means any permanent repossession, recapture or loss of use of any portion of the Leased Premises undertaken to comply with a Nuclear Regulatory Order.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"OFAC List" shall have the meaning set forth in Section 26.1.5 hereof.

"Other Title Objections" shall have the meaning set forth in Section 2.5.1(i) hereof.

"Parcel" means each of Parcel A, Parcel C, Parcel D, Parcel E, Parcel G-1, Parcel G-2 and Parcel G-3, whether before or after becoming part of the Leased Premises (as the context may require), and "Parcels" means all or some of them, as the context requires, located within the Property.

"Parcel Cap" shall have the meaning set forth in Section 6.1(d) hereof.

"Parcel A" means the parcel marked as "Parcel A" on Exhibit A (Parcels Legal Description) containing approximately thirty-two (32) acres.

"Parcel B" means the parcel described on Exhibit C (Parcel B Description), containing approximately one hundred ten (110) acres.

"Parcel C" means the parcel marked as "Parcel C" on Exhibit A (Parcels Legal Description) containing approximately twenty-five (25) acres.

"Parcel D" means the parcel marked as "Parcel D" on Exhibit A (Parcels Legal Description) containing approximately five(5) acres.

"Parcel E" means the parcel marked as "Parcel E" on Exhibit A (Parcels Legal Description) containing approximately twenty-eight (28) acres.

"Parcel G" means, collectively, Parcel G-1, Parcel G-2 and Parcel G-3.

"Parcel G-1" means the parcel marked as "Parcel G-1" on Exhibit A (Parcels Legal Description) containing approximately sixteen (16) acres.

"Parcel G-2" means the parcel marked as "Parcel G-2" on Exhibit A (Parcels Legal Description) containing approximately twelve (12) acres.

"Parcel G-3" means the parcel marked as "Parcel G-3" on Exhibit A (Parcels Legal Description) containing approximately five (5) acres.

"Partial Reserve Amount" means the amount equal to the sum of (i) the then current Lease Year's Base Rent, and (ii) the then current Lease Year's Additional Rent Budget.

"Parties" shall mean the Tenant and the Landlord.

"Paulsboro Port Complex" means the Paulsboro Marine Terminal located on the Delaware River, in Paulsboro, New Jersey, which is owned by the South Jersey Port Corporation (SJPC).

"Permitted Exceptions" shall have the meaning set forth in Section 2.3 hereof.

"Permitted Transfer" shall have the meaning set forth in Section 10.1(a) hereto.

"Permitted Use" shall have the meaning set forth in Section 13.1(a) hereof.

"Person" means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or Government Entity or any agency or political subdivision thereof or any other form of entity.

"Phase 1" means the completion of design and the construction of the following (as contemplated as of the Effective Date): (a) an approach channel between the main Delaware River

Channel and a wharf site (approximately 1 mile); (b) a turning basin and two berth pockets; (c) offshore wind marshalling and assembly facilities on Parcel A, including a heavy lift wharf and high-load upland areas; (d) offshore wind manufacturing on Parcel G (but which may be utilized as additional storage or staging area for Parcel A in the short-term); (e) an area that can be used for additional marshalling laydown and storage or offshore wind manufacturing on Parcel C; (f) a shared port services area on Parcel D; (g) offshore wind manufacturing area and/or a CDF on Parcel E; and (h) certain roads indicated on Schedule D (Access Easements) .

"Phase 1 Environmental Assessment and Preliminary Assessment Report" means the report generated following the conduct of the Phase 1 Investigation and prepared consistent with all applicable ASTM standards for phase 1 environmental assessment reports as well as applicable NJDEP standards for Preliminary Assessment reports.

"Phase 1 Investigation" means environmental site assessment that is consistent with all applicable ASTM standards and that assesses the likelihood that a site is contaminated as well as the conduct of a Preliminary Assessment.

"Phase 2" means the expected design and construction of the following (as contemplated as of the Effective Date): (a) an expanded turning basin and additional berth pockets adjacent to Parcel B; (b) offshore wind marshalling and assembly facilities, as well as manufacturing facilities, on Parcel B, which may include a heavy lift wharf and high-load upland areas; and (c) heavy-haul road connections.

"Phase 2 Site Assessment and Site Investigation Report" means the report generated following the conduct of the Phase 2 Investigation and prepared consistent with all applicable ASTM standards for phase 2 environmental assessment reports as well as applicable NJDEP standards for Site Investigation reports.

"Phase 2 Investigation" means a further investigation of potential areas of concern is indicated or recommended in the Phase 1 Investigation or the Preliminary Assessment involving sampling which is a further environmental site assessment that assesses whether contamination is in fact present at a site, including the conduct and completion of a Site Investigation.

"Phases" means Phase 1 and Phase 2.

"Planned Commencement Date" means, with respect to each Parcel, the date set forth opposite such Parcel on Schedule A (Parcel Information) in the column titled "Planned Commencement Date", as such date may be revised in accordance with Section 2.4(c) or extended in accordance with Section 2.5.

"Port" means a port or port terminal whose operations are focused on development of, or supply chain for, offshore wind projects, including, but not limited to, manufacturing, marshaling, staging or transportation activities for offshore wind projects.

"Port Equipment" means all fixtures incorporated in the Leased Premises owned by Tenant and used, useful, or necessary to operate the NJWP as such (including, but not limited to, storm water collection system, water quality system, fire protection systems, fire pump and hydrants,

high mast lights, perimeter fencing, dewatering system, heavy-lift wharf, cranes, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes).

"Post-Foreclosure Tenant" means: (1) any assignee, purchaser, or transferee of the Leasehold Estate through a Foreclosure Event, including Leasehold Mortgagee or its Leasehold Mortgagee's Representative; and (2) the first assignee of the Leasehold Mortgagee or its Leasehold Mortgagee's Representative, if such Leasehold Mortgagee or Leasehold Mortgagee's Representative acquires Tenant's leasehold interest in the Leased Premises through a Foreclosure Event.

"Potential Delay Notice" shall have the meaning set forth in Section 8.4(e) hereof.

"Preemptive Right" means the following rights of Tenant under this Lease, to the extent this Lease provides for them: (1) any Renewal Option; (2) Tenant's Right of First Offer; (3) any option to terminate or cancel this Lease, in whole or in part; and (4) any other discretionary right or privilege of Tenant similar to any of the foregoing.

"Pre-Existing Environmental Conditions" means any and all: (i) Environmental Conditions prior to the Effective Date as set forth in any of the Environmental Reports; (ii) Environmental Conditions acknowledged as being present at the Property prior to the Effective Date by Landlord; or (iii) Environmental Conditions as established by a preponderance of the evidence standard as present before the Effective Date. In the event of a disagreement between Landlord and Tenant as to whether an Environmental Condition is a Pre-Existing Environmental Condition, the dispute shall be determined pursuant to Section 34.12.

"Preliminary Assessment" means an assessment to identify any potentially contaminated areas of concern on a site that may require further investigation pursuant to N.J.S.A. 7:26E-3.1 and 3.2 as well as any and all technical guidance documents issued by the NJDEP.

"Preliminary Remedial Action Assessment" means a report prepared during the Due Diligence Period by Landlord's LSRP providing a conceptual work plan, preliminary budget and estimated schedule for the implementation of Remediation that is identified as a Landlord Remediation Responsibility.

"Premises Control" means, for any Leasehold Mortgagee, any of the following: (1) possession of the Leased Premises by a receiver, trustee, or similar officer appointed in a judicial proceeding commenced by such Leasehold Mortgagee; (2) possession as mortgagee-in-possession pursuant to an affirmative written election to become a mortgagee-in-possession or entry into a New Lease; or (3) acquisition of the Leasehold Estate by a Post-Foreclosure Tenant through a Foreclosure Event initiated by such Leasehold Mortgagee.

"Price-Anderson Act" means Section 170 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2210, known as the Price-Anderson Nuclear Industries Indemnity Act, codified at 42 U.S. Code Chapter 23, as amended.

"Prime Rate" means the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

"Prohibited Uses" shall have the meaning set forth in Section 13.1(a) hereof.

"Project" means Phase 1 and Phase 2.

"Property" means Block 26, Lots 1 through 5, on the Tax Map of Lower Alloways Creek Township.

"Proposed Cap" shall have the meaning set forth in Section 14.4.3(b) hereof.

"Prospective Entities" shall have the meaning set forth in Section 11.1(a) hereof.

"PSEG" means Public Services Enterprise Group, Inc. a New Jersey corporation with its principal office at 80 Park Plaza, Newark, NJ 07102.

"PSEG Nuclear" means PSEG Nuclear LLC, a New Jersey limited liability company with its principal office at 80 Park Plaza, Newark, NJ 07102.

"PSEG Project Costs" shall have the meaning given to that term in the Letter of Intent..

"PSEG-Retained Land" means as of any date, Property owned by PSEG Nuclear that is not part of the Leased Premises.

"Qualified Assignee" shall have the meaning set forth in Section 10.1(a) hereof.

"Real Estate Tax Payment Period" shall have the meaning set forth in Section 5.2(a) hereof.

"Real Estate Taxes" means all general and special real estate taxes (including taxes on, sales taxes, use taxes, and the like), payments in lieu of taxes, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Leased Premises, or the sidewalks or streets in front of or adjoining the Leased Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Leased Premises, or any, Improvements or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof. "Real Estate Taxes" shall not, however, include any of the following, unless same are imposed in lieu of or as a substitute for the whole or any part of Real Estate Taxes as defined above: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax, or license fee of Landlord; and (b) interest, penalties, and other charges for late payment of Real Estate Taxes, unless such late payment is caused by Tenant's failure to timely pay Real Estate Taxes to Landlord as required herein. If at any time

during the Term the method of taxation prevailing at the Commencement Date of the Parcels shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Leased Premises and imposed upon Landlord, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable if the Leased Premises were the only property of Landlord subject to such Real Estate Taxes.

"Reletting Expenses" shall have the meaning set forth in Section 27.5 hereof.

"Reliance Letter" has the meaning set forth in the definition of Environmental Reports.

"Relocated Nuclear Plant Facilities" means the Combo Shop, Rifle Range and Security Training Center, SAFER Staging Area, Hazardous Materials Warehouse, and Nuclear CDF all in existence on the Parcels as of the Effective Date and identified on Schedule A (Parcel Information) and all related structures.

"Relocated Nuclear Plant Facility Cap" shall have the meaning set forth in Section 14.4 hereof.

"Relocation Work" shall have the meaning set forth in Section 14.4.1 hereof.

"Relocation Procurement Documents" means procurement documents prepared by Landlord that include (i) the scope of works, (ii) a target date for completion of the works, which aligns with Schedule L (Construction Schedule) and (iii) the fee structure for the contract being procured (such as a fixed price or time and materials basis).

"Relocation Reimbursements" shall have the meaning set forth in Section 14.4 hereof.

"Remaining Exceptions" means: (1) all title and other matters affecting the Parcels set forth in Schedule H (Permitted Exceptions); (2) applicable zoning and building ordinances and land use regulations; and (3) any Future Encumbrances.

"Remaining Nuclear Equipment" means existing equipment serving the Nuclear Power Plant, such as security cameras, air monitors and gamma detection systems, that are located on the Parcels and will remain on the Parcels after the Effective Date, and which are hereafter Constructed on the Parcels (subject to the terms of this Lease), all of which equipment and the locations thereof on the Parcels are set forth on Schedule C (Remaining Nuclear Equipment).

"Remaining Relocation Work" shall have the meaning set forth in Section 14.4.3 hereof.

"Remedial Action Permit" or "RAP" shall have the meaning set forth in N.J.A.C. 7:26C-7.4 – 7.13.

"Remedial Action Workplan" or "RAW" shall have the meaning set forth in N.J.A.C. 7:26E-1.

"Remediate", "Remediated" or "Remediation" means actions to be taken under Environmental Requirements including investigation, monitoring, removal, remediation, containment, corrective action, response action, restoration work, mitigation, treatment, monitored natural attenuation, decontamination or cleanup, and maintenance of Hazardous Materials, pollutants or contamination.

"Renewal Option" shall have the meaning set forth in Section 3.2(a) hereof.

"Renewal Term" shall have the meaning set forth in Section 3.2(a) hereof.

"Rent" means Base Rent, Construction Period Rent, Contingency Period Rent, CDF Period Payments, Variable Rent and Additional Rent.

"Requesting Party" means any party that requests the performance of an obligation by any other party under this Lease.

"Reserve Account" has the meaning set out in Section 27.9(a)(i) hereof.

"Reserve Amount" means (a) the Full Reserve Amount if Landlord does not elect to accept the State Rent Obligation in accordance with Section 27.9(g) hereof, or (ii) the Partial Reserve Amount if Landlord elects to accept the State Rent Obligation in accordance with Section 27.9(g) hereof.

"Responding Party" shall have the meaning set forth in Section 8.5(b) hereof.

"Response Action Outcome" or "RAO" shall have the meaning set forth in N.J.A.C. 7:26C-1.3.

"Restoration" or "Restore" or words of similar import, means, after a Casualty or Condemnation, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before such Casualty or Condemnation, subject to compliance with Section 14.6, and subject to any changes in Law that would limit the foregoing.

"Retrofit Modification" shall have the meaning set forth in Section 14.1.2 hereof.

"Rifle Range and Security Training Center" means the security force firing range and training facility located on Parcel C as of the Effective Date.

"Right of First Offer Property" shall have the meaning set forth in Section 10.4 hereof.

"SAFER Staging Area" means approximately 3 acres of space used as an emergency equipment marshalling site, located on Parcel G-1 as of the Effective Date.

"Settlement Study" means the ground settlement study required under the review titled "Artificial Island Wind Port Facility (Rev 0)" carried out by Landlord's Affiliate pursuant to 10 CFR 50.59 and/or 10 CFR 72.48 with respect to Tenant's Work and Permitted Use on Parcel A.

"Site Investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards pursuant to N.J.A.C. 7:26E-3.3 through 3.14. A Site Investigation shall be developed based upon the information collected pursuant to the Preliminary Assessment.

"Site Visit" shall mean the conduct by Tenant of a site visit on any of the Parcels with a Prospective Entity.

"SNDA" means a subordination, recognition, nondisturbance, and attornment agreement, in recordable form as provided by Tenant, modified as necessary in Tenant's or any Leasehold Mortgagee's reasonable judgment to reflect the Parties and the nature and circumstances of the estates that such SNDA affects.

"Standard PO Requirements" shall have the meaning set forth in Section 29.2 hereof.

"State" means the State of New Jersey.

"State Employee" shall have the meaning set forth in Section 29.2 hereof.

"State Entity" means any agency, authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State of New Jersey government, any political subdivision of the State of New Jersey, and any organization related to any of the foregoing. For the avoidance of doubt, "State Entity" includes NJEDA.

"State Rent Obligation" means the situation where NJEDA is a party to a sublease that is in effect with the State that includes as part of the State rental obligation to NJEDA an amount equal to NJEDA's obligation to pay Rent under this Lease.

"Sublease" means, for the Leased Premises, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement) allowing any Person to occupy, use or possess; (c) sub-sublease or any further level of subletting; or (d) any amendment or modification, or assignment of (a) through (c) entered into by Tenant, subject to the terms and conditions of this Lease.

"Submission" has the meaning set forth in Section 14.1.2 hereof.

"Subrent" means rents and other amounts becoming due and payable to Tenant, as sublandlord by any Subtenant.

"Substantial Casualty" means a Casualty that: (a) renders thirty-five percent (35%) or more of the Leased Premises or any Parcel (as applicable) not capable of being used or occupied; (b) occurs less than five (5) years before the end of the Term and renders twenty-five percent (25%) or more of the Leased Premises not capable of being used or occupied or twenty percent (20%) or more of any Parcel not capable of being used or occupied; (c) requires Restoration whose cost Tenant reasonably estimates in writing would exceed $50,000,000; (d) pursuant to Law, prevents the Leased Premises from being Restored to substantially the same bulk, and for substantially the

same use(s), as before the occurrence of the Casualty; (e) requires Remediation whose cost Tenant reasonably estimates would exceed $10,000,000; (f) pursuant to Law, is expected to prevent the Leased Premises from being Remediated to substantially the condition that existed prior to the occurrence of the Casualty within one hundred eighty (180) days after the occurrence of the Casualty; or (g) renders a material portion of any Parcel or any part of the Leased Premises Uneconomic.

"Substantial Condemnation" means any Condemnation that (a) prior to the Commencement Date of a Parcel, takes the entire Leased Premises or the entirety of any Parcel; or (b) takes less than the entire Leased Premises or less than the entirety of any Parcel and in Tenant's commercially reasonable determination renders the remaining Leased Premises or remaining portion of the Parcel Uneconomic.

"Subtenant" means any Person entitled to occupy, use, or possess any portion of the Leased Premises under a Sublease.

"Surviving Obligations" shall have the meaning set forth in Section 34.6 hereof.

"Tenant" shall have the meaning set forth in the first paragraph of this Lease.

"Tenant Agent" shall have the meaning set forth in Section 11.1(a) hereof.

"Tenant Contractor" means any Person with whom Tenant has entered into any contract or agreement to perform any part of any obligation or Construction of Improvements by or on behalf of Tenant and in connection with the Phases or a portion of a Phase, or provide any materials, equipment or supplies for the Phases or a portion of a Phase, on behalf of Tenant, and any other Person with whom any Tenant Contractor has further subcontracted any part of such work, at all tiers.

"Tenant Default" means any event or circumstance that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute a Tenant Event of Default.

"Tenant Delay" means, without limitation, but subject to Force Majeure and Landlord Delay: (i) any failure by Tenant to submit plans or other deliverables when due by the terms of this Lease, (ii) any failure or delay by Tenant in supplying information or giving authorizations or approvals, (iii) any delays resulting from changes made by Tenant to the plans for any Tenant's Work or Alterations, or other work to be undertaken by Landlord, except as specifically set forth herein, (iv) any delays resulting from the performance of any work by or on behalf of Tenant, including Tenant's Work, or (v) any delays resulting from non-compliance with Tenant's obligations required by this Lease (including all exhibits attached hereto), or (vi) as otherwise specifically set forth herein.

"Tenant Event of Default" shall have the meaning set forth in Section 27.1 hereof.

"Tenant Monetary Default" means any failure by Tenant to: (1) pay, when and as this Lease requires, any Rent, including Additional Rent, whether to Landlord or to a third party, subject in all applicable cases to Tenant's right of contest; (2) pay as they become due any insurance

premiums that this Lease requires Tenant to pay; or (3) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose.

"Tenant Monetary Event of Default" means any Tenant Monetary Default, after expiration of all applicable cure periods.

"Tenant Nonmonetary Default" means the occurrence of any of the following, except a Tenant Monetary Default: (1) any material breach by Tenant of its obligations under this Lease; (2) Tenant's failure to comply with any material restriction or prohibition in this Lease; or (3) any other event or circumstance that, with passage of time or giving of notice, or both, or neither, would constitute a Tenant Event of Default.

"Tenant Party" means Tenant's employees, agents, parents, Affiliates, subcontractors, subtenants or suppliers.

"Tenant Property Insurance" shall have the meaning set forth in Section 15.1.1(c) hereof.

"Tenant Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Tenant Property Insurance, when and as received by Landlord, Tenant, or any Mortgagee, excluding proceeds of Tenant's business interruption insurance in excess of Rent.

"Tenant Regulatory Lead" means the individual designated by Tenant to review and approve all applications for Approvals, together with related correspondence and supporting documentation, prior to submission to any Government Entity by Landlord and PSEG Nuclear.

"Tenant Remediation Responsibility" means remedial investigation and remedial actions, to be conducted at Tenant's cost and expense, required by Laws to the extend resulting from: (a) a new Discharge after the Effective Date as the result of actions or inactions by Tenant (or any Subtenant), their contractors, invitees, quests, or employees; or (b) any investigation and Remediation, including any additional Engineering Controls or Institutional Controls, required that would not otherwise be required but for occupancy by Tenant (or any Subtenant).

"Tenant's Collateralized Equipment" shall have the meaning set forth in Section 22.4 hereof.

"Tenant's Commencement Conditions" shall have the meaning set forth in Section 2.5.1 hereof.

"Tenant's Lender" shall have the meaning set forth in Section 22.4 hereof.

"Tenant-Specific Default" means any Tenant Nonmonetary Default that: (a) is not reasonably susceptible of cure by a Leasehold Mortgagee, such as (to the extent, if any, that it actually constitutes a Tenant Default under this Lease) any Tenant Default resulting from a Bankruptcy Proceeding affecting any Person; a Transfer in violation of Article X hereof; a prohibited change in Tenant's management; Tenant's failure to deliver required financial information within Tenant's (but not Leasehold Mortgagee's) control; failure to remove or retain

any particular officer, employee, or director of Tenant; Tenant's failure to comply with nondisclosure and non-compete covenants between Landlord and Tenant, or obligations regarding real property of Landlord or Tenant other than the Parcels or Leased Premises; (b) by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates; or (c) consists of Tenant's failure to satisfy or discharge any lien, charge, or encumbrance that: (1) attaches to the Leasehold Estate but not the Fee Estate; or (2) is junior to the Leasehold Mortgage.

"Tenant's Personal Property" means Tenant's inventory, trade fixtures and business equipment (not constituting part of the Improvements), furniture, equipment or other personal property located upon the Leased Premises.

"Tenant's Right of First Offer" shall have the meaning set forth in Section 10.4 hereof.

"Tenant's Work" shall have the meaning set forth in Section 14.3.1 hereof.

"Term" means the Initial Term, as extended from time to time by Tenant's valid exercise of Renewal Option(s) to include one or more Renewal Term(s).

"Termination Notice" shall have the meaning set forth in Section 18.1.2(b) hereof.

"Transfer" shall have the meaning set forth in Section 10.1(b) hereof.

"Uneconomic" means, with respect to any Parcel or Leased Premises, that the Leased Premises or a particular Parcel or any substantial part of the Leased Premises or such Parcel, in Tenant's reasonable business judgment: (1) cannot be used for the intended Permitted Use contained in the Approved Plans; or (2) is subject to material impairment of (a) the use of any Parcel or Improvements for the intended Permitted Use contained in the Approved Plans, (b) any access to and from any public roadway, or (c) any access to service(s) necessary or appropriate for the operation of the NJWP, and Landlord is unable to provide any commercially reasonable alternate access or services.

"USACE" means the United States Army Corps of Engineers.

"Utility Easement Agreement" shall have the meaning set forth in Section 11.2(b) hereof.

"Variable Rent" shall have the meaning set forth in Section 4.5 hereof.

"Water Quality Permit" means the permit existing as of the Effective Date issued by the NJDEP and held by PSEG Nuclear providing access to a potable water source at the Property.

"Wind Port Activities" means any activities related to planning or permitting for a Port, procurement of Tenant contractors or other contractors to carry out work (including, design, construction, operation or maintenance) with respect to a Port, procurement of subtenants, leasing, design, developing, operating, maintaining, or any other activities conducted in connection with, or for the purpose of furthering, the Leased Premises' status as a Wind Port.

ARTICLE II – AGREEMENT TO LEASE AND LEASED PREMISES

2.1 Agreement to Lease. As of the Effective Date, Landlord agrees to demise and lease the Parcels to Tenant, and Tenant hereby agrees to take and rent from Landlord the Parcels for the Term, subject to the terms of this Lease. Such agreement to lease shall be subject to the following:

2.1.1 Settlement Study. Within ninety (90) days after the Effective Date (as such deadline may be extended by Tenant in its reasonable discretion), Landlord shall have completed the Settlement Study to evaluate (x) whether the surcharging of Parcel A (and other Parcels) has an adverse effect on the cooling tower blowdown line, the cooling tower or the ISFSI Pad, and (y) whether the effects of groundwater displacement or soil compression undermine any nearby structures or foundation, and delivered to Tenant a copy of the completed Settlement Study. If Landlord fails to submit to Tenant the Settlement Study within the time period specified above for any reason other than Tenant Delays or Force Majeure, the Due Diligence Period shall, at Tenant's option in its reasonable discretion, be extended by the same number of days that Landlord is delayed in supplying such information. If based on the Settlement Study, Tenant reasonably expects there may be an Adverse Project Impact, Tenant may terminate this Lease in its entirety or with respect to one or more Parcels, by providing Notice to Landlord within sixty (60) days after Tenant's receipt of the completed Settlement Study. If the Settlement Study indicates that (x) and/or (y) above are likely to occur and Tenant does not terminate as hereinabove provided in this Section 2.1.1, then Tenant shall eliminate or address such Adverse Project Impacts in its Project design plans in accordance with the iterative process provided in Section 14.1.

2.1.2 Environmental Contingency. Unless otherwise waived by Tenant in writing as to any Parcel, Tenant shall have received from Landlord the Environmental Reports within ninety (90) days after the Effective Date (as such deadline may be extended by Tenant in its reasonable discretion). If Landlord fails to submit to Tenant the Environmental Reports within the time period specified above for any reason other than Tenant Delays or Force Majeure, the Due Diligence Period shall, at Tenant's option in its reasonable discretion, be extended by the same number of days that Landlord is delayed in supplying such information. If Tenant determines, in its sole discretion, that the Environmental Report(s) relating to any Parcel may reasonably be expected to cause an Adverse Project Impact, Tenant may terminate this Lease with respect to one or more Parcels with respect to which the Commencement Date has not occurred, by providing Notice to Landlord within sixty (60) days after Tenant's receipt of such Environmental Report(s).

2.1.3 Power Contingency. Tenant shall have received, at least five (5) days prior to the expiration of the Due Diligence Period, a feasibility study from Atlantic City Electric with respect to designing and constructing all necessary transmission facilities required to provide power to the NJWP (including the cost estimate and schedule) in form and substance satisfactory to Tenant. Tenant may terminate this Lease, in its entirety or with respect to any Parcel (including Parcel A and Parcel G-1 even if the Commencement Date for Parcel A or Parcel G-1 has occurred), provided Tenant has applied for such feasibility study within ninety (90) days after the Effective Date and has diligently pursued obtaining same, by providing Notice to Landlord within the Due Diligence Period in the event that (x) Atlantic City Electric fails to deliver such feasibility study at least five (5) days prior to the expiration of the Due Diligence Period, or (y) based on such feasibility study, Tenant reasonably expects there may be an Adverse Project Impact.

2.1.4 Water and Sewer Contingency. Landlord shall provide a PSEG Nuclear waste demand feasibility study prepared by Sargent & Lundy from Landlord at least five (5) days prior to the expiration of the Due Diligence Period (or on such later date acceptable to Tenant in its reasonable discretion) in form and substance satisfactory to Tenant. If Landlord fails to deliver to Tenant such waste demand feasibility study at least five (5) days prior to the expiration of the Due Diligence Period for any reason other than Tenant Delays or Force Majeure, the Due Diligence Period shall, at Tenant's option in its reasonable discretion, be extended by the same number of days that Landlord is delayed in supplying such information. If, based on such waste demand feasibility study, Tenant reasonably expects there may be an Adverse Project Impact, taking into account that the existing sewer capacity for the Nuclear Power Plant as of the Effective Date does not meet the volume of anticipated NJWP users at all times, including any time when the Nuclear Power Plant has increased personnel and invitees present during shutdowns (as further contemplated in Section 5.4), Tenant may terminate this Lease, in its entirety or with respect to any Parcel with respect to which the Commencement Date has not occurred, by providing Notice to Landlord within sixty (60) days after Tenant's receipt of such waste demand feasibility study.

2.1.5 LS Power Easement. Within sixty (60) days after the Effective Date (as such deadline may be extended by Tenant in its reasonable discretion) Landlord shall provide to Tenant executed documentation between PSEG Nuclear or Landlord and LS Power that amends the LS Power Easement so that the LS Power Easement, as amended, shall not impede Tenant's plans to develop, construct, operate and maintain the NJWP in manner reasonably satisfactory to Tenant (such documentation, the "LS Power Easement Amendment Documents"). The Planned Commencement Dates for Parcel A and Parcel G-1 shall be extended on a day-for-day basis for each day after October 1, 2021 until the LS Power Easement Amendment Documents are executed. If the LS Power Easement Amendment Documents are not executed within the time period specified in the first sentence of this Section 2.1.5 for any reason, (x) the Parties shall negotiate in Good Faith for sixty (60) days (as such period may be extended by mutual agreement of the Parties) (the "Amendment Period") to amend the Lease as needed to address the impacts of modifications to the Conceptual Development Plan resulting from the failure of PSEG Nuclear or Landlord to enter into LS Power Easement Amendment Documents, including, but not limited to, possible extensions to the Due Diligence Period and the Planned Commencement Dates for the Parcels (any such amendments, the "LS Power Lease Amendments"); and (y) the Planned Commencement Date for Parcel A and Parcel G-1 shall, at Tenant's option in its reasonable discretion, be extended by the same number of days that the Parties are delayed in agreeing to the LS Power Lease Amendments. If the LS Power Lease Amendments are not agreed to by the Parties at least five (5) days prior to the end the Amendment Period, Tenant may terminate this Lease with respect to any Parcels for which the Commencement Date has not occurred by providing Notice to Landlord during the Amendment Period.

Notwithstanding the foregoing, (x) Tenant's ability to exercise the termination rights set out in Sections 2.1.1 – 2.1.4 above, shall, in the case of a termination of the Lease in its entirety, be contingent upon there being no Tenant Event of Default and Tenant paying to Landlord all then-outstanding PSEG Project Costs; and (y) Tenant's ability to exercise the termination rights set out in Section 2.1.5 above, shall, in the case of a termination of the Lease in its entirety, be contingent upon Tenant paying to Landlord all then-outstanding PSEG Project Costs. Any termination pursuant to this Section 2.1 shall be effective thirty (30) days after delivery of the applicable

termination Notice. Except for the Surviving Obligations, Tenant will have no liability as a result of Landlord's termination of this Lease in its entirety or with respect to any Parcel pursuant to this Section 2.1.

2.2 Delivery of Possession; Covenant of Quiet Enjoyment.

2.2.1 Delivery of Possession. Upon the Commencement Date of each Parcel, Landlord shall deliver to Tenant exclusive possession, use, and occupancy of such Parcel free of all encumbrances, tenancies, and parties in possession, except and subject to (i) the Permitted Exceptions; and (ii) the rights and reservations of Landlord under this Lease, and such Parcel shall become part of the Leased Premises.

2.2.2 Covenant of Quiet Enjoyment. Landlord covenants for the Term that Tenant, upon paying Rent and upon keeping, timely observing, and performing the terms, covenants, and conditions of this Lease to be kept, observed, and performed by Tenant, shall and may quietly and peaceable hold, occupy, use and enjoy the Leased Premises during the Term without ejection or interference by or from Landlord or any other Person claiming by, through, or under Landlord (other than Persons claiming by, through, or under Tenant), subject only to (i) rights of permitted Subtenants, (ii) the Permitted Exceptions, (iii) Laws, and (iv) the terms and conditions of this Lease.

2.2.3 Operational Rights; Revenue. Subject to the terms and provisions of this Lease, Tenant shall have full and exclusive control of the management and operation of the Leased Premises. Without limiting the generality of the foregoing, but subject to the terms of this Lease, Tenant shall own all revenues of any source generated by or from the Leased Premises or the operation or management thereof, including all Subrent, and all other revenues of any type whatsoever.

2.2.4 Concessions. Subject to the terms and conditions of this Lease, Tenant shall have the exclusive right to select and to establish the contractual terms for any and all concessionaires in connection with the NJWP. Tenant shall have the exclusive right to market, sell, and retain all concessions and other revenue from the NJWP.

2.3 Tenant's Due Diligence Period.

2.3.1 Tenant shall, during the Due Diligence Period, have the right to access all or any portion of such Parcel to make such inquiries and investigations as it desires, at its sole cost and expense, subject to the terms and conditions set forth in this Article II and Section 11.1. Such studies and investigations, at Tenant's election, may include such additional feasibility studies as Tenant deems necessary and a review of title to such Parcel(s) to determine if same is good and marketable, and free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for Permitted Exceptions. As used herein, "Permitted Exceptions" means: (1) all title and other matters affecting the Parcels set forth in Schedule H (Permitted Exceptions); (2) any title exceptions (including Subleases) caused by Tenant's acts or omissions, consented to or requested by Tenant as herein specifically set forth, or resulting from a Tenant Default; (3) any agreement, application, certificate, document, or submission made by Tenant or

at Tenant's request; (4) applicable zoning and building ordinances and land use regulations; (5) any state of facts an accurate survey or a physical inspection of the Parcels would disclose; and (6) any Future Encumbrances. As a result of its inquiries and investigations regarding each Parcel during the Due Diligence Period, Tenant, in its sole discretion, may elect to terminate this Lease as to such respective Parcel(s) by providing Notice to Landlord on or prior to the earlier of (i) expiration of the Due Diligence Period, or (ii) the Planned Commencement Date of such Parcels.

2.3.2 Tenant acknowledges that its environmental due diligence of the Parcels is limited to review of the Environmental Reports, which Landlord has undertaken on behalf of Tenant, and that Tenant has no rights to undertake any intrusive environmental testing or investigations of the Parcels. Tenant shall not engage an LSRP in connection with its due diligence activities, except as follows: (i) to support Tenant's review of the Environmental Reports, (ii) to provide other general advice on any environmental issues relating to the Project, and (iii) to advise on any Remediation that becomes a Tenant Remediation Responsibility.

2.3.3 From the last day of the Due Diligence Period to the Commencement Date of the relevant Parcel, Landlord shall maintain and keep in good repair and state of maintenance each Parcel, and neither Landlord nor any Landlord Party shall make any material alterations to such Parcel or cause any material change to the condition of such Parcel (including as a result of any Nuclear Incident), except where this Lease is sooner terminated with respect to a Parcel in accordance with the terms hereof.

2.4 Miscellaneous Provisions with respect to Parcels.

(a) Commencement Date. Upon the Commencement Date of each Parcel: (i) the Leased Premises shall include such Parcel; (ii) such Parcel shall be subject to the terms and conditions of this Lease; and (iii) the term of this Lease as to such Parcel(s) shall be the same as the Term.

(b) CDF Parcel. At any time prior to the Commencement Date for Parcel C, Tenant may utilize the CDF Parcel as a CDF by delivering to Landlord a Notice of Tenant's intent to use the CDF Parcel as a CDF (a "CDF Commencement Notice"), specifying the actual date on which Tenant shall begin to use the CDF Parcel as a CDF (the "CDF Period Commencement Date"), not less than thirty (30) days prior to such CDF Period Commencement Date. If Tenant terminates this Lease with respect to Parcel C in accordance with the terms hereof after Tenant has used the CDF Parcel as a CDF, Tenant shall restore Parcel C to substantially the same or better condition than it was in as of the CDF Period Commencement Date (subject to ordinary wear and tear) by the date falling one hundred and eighty (180) days after the effective date of such termination, which obligation shall survive the Expiration Date.

(c) Revisions to Planned Commencement Date. At least sixty (60) days prior to the Planned Commencement Date of a Parcel, Tenant may submit to Landlord a Notice: (i) on one occasion only per Parcel, extending the Planned Commencement Date for any Parcel by an aggregate period of up to ninety (90) days, at Tenant's sole discretion; (ii) requesting Landlord's approval of an

extension of the Planned Commencement Date for any Parcel by an aggregate period exceeding ninety (90) days, which approval shall be at Landlord's sole discretion; or (iii) requesting Landlord's approval of an acceleration of the Planned Commencement Date for any Parcel, which approval shall be at Landlord's sole discretion.

2.5 Conditions Precedent to Commencement Date For Each Parcel.

2.5.1 Tenant's Commencement Conditions. The occurrence of the Commencement Date with respect to each Parcel (other than a Parcel with respect to which this Lease has been terminated in accordance with the terms hereof) shall be contingent on the satisfaction (or waiver by Tenant as hereafter provided) of the following conditions:

(a) **Financing Contingency**. Except with respect to Parcel A and Parcel G-1, Tenant shall secure funding or financing for completion of the Construction of Improvements to be performed on the relevant Parcel and to pay all costs and expenses associated therewith, upon terms acceptable to Tenant in its sole discretion. Tenant shall provide quarterly updates to Landlord with respect to the status of the financing plan for the Project and any funding or financing that has been secured.

(b) **Land Acquisition Contingency**. Landlord shall have fee title to each Parcel as of the Planned Commencement Date for such Parcel.

(c) **USACE Permissions**. With respect to Parcel A and Parcel G-1, Landlord has obtained all USACE permissions required for Tenant to carry out the hydraulic dredging placement required as part of the Construction of Phase 1, including the 401(c) license. Tenant acknowledges that the 217B license for Parcel A and Parcel G-1 has been obtained as of the date hereof.

(d) **Compliance with Representations and Warranties**. All representations and warranties of Landlord set forth in this Lease shall be true and correct at and as of each Commencement Date in all material respects.

(e) **Intentionally Omitted**.

(f) **Approvals**. All Approvals required to be obtained by Landlord and Tenant pursuant to Section 14.2 and Schedule G (Permitting Matrix) shall have been obtained.

(g) **Dredge Placement Agreement**. With respect to Parcel A and Parcel G-1 if Tenant does not have fee title to Parcel B, Landlord and Tenant shall have executed a dredge placement agreement permitting Tenant to deposit dredge spoils into Parcel B, in form and substance reasonably acceptable to both Parties.

(h) **Easements Contingency**. With respect to Parcel A and Parcel G-1, (i) Landlord and Tenant shall have entered into the Access Easement Agreement

and (ii) Tenant shall have entered into agreements, in form and substance satisfactory to Tenant, with the relevant Affiliates of Landlord in order to provide Tenant with reasonable use and access of construction areas so that Tenant can develop and construct the NJWP in accordance with the Conceptual Development Plan. With respect to Parcel C, Parcel D, Parcel E, Parcel G-2 and Parcel G-3, Landlord and Tenant shall have entered into the Easement Agreements.

(i) **Title**.

(i) At least thirty (30) days prior to the Planned Commencement Date for each Parcel, Tenant may obtain a supplement or update to its title commitment previously obtained during the Due Diligence Period, and if such update indicates any new defects in title, excluding the lien for taxes and assessments not due and payable and Permitted Exceptions, Tenant shall have the right to raise objections to such items within ten (10) days after receipt of such supplement or update ("Title Objections").

(ii) With respect to Title Objections that arise by an act of Landlord and that is not otherwise a Future Encumbrance ("Landlord-Title Objections"), Landlord shall remove the Landlord-Title Objections prior to the applicable Planned Commencement Date for the affected Parcel.

(iii) With respect to Title Objections that are not Landlord-Title Objections ("Other Title Objections"), Landlord shall provide Notice to Tenant in writing within ten (10) days after Landlord's receipt of Tenant's Title Objections whether or not Landlord will attempt to remove the Other Title Objections prior to the Planned Commencement Date for the affected Parcel. If Landlord notifies Tenant that it will not or cannot remove the Other Title Objections (nothing contained herein shall obligate Landlord to remove any title objections), then the Other Title Objections shall become Permitted Exceptions, unless Tenant notifies Landlord of its election to terminate this Lease as to such affected Parcel only, within ten (10) Business Days after Tenant's receipt of such Notice from Landlord. If Landlord elects to attempt to remove the Other Title Objections, then the Planned Commencement Date shall be extended until such time as Landlord is able to remove such Other Title Objections; provided, however, if Landlord has been unable to remove the Other Title Objections by within sixty (60) days after the Planned Commencement Date for such Parcel, then either Party shall have the right to terminate this Lease as to such affected Parcel only upon ten (10) Business Days' prior written notice to the other Party, and the Parties shall have no further obligations hereunder except the Surviving Obligations. In no event shall Landlord be liable to Tenant for damages if Landlord is unable or unwilling to cure any Other Title Objections, any right to claim such damages being expressly waived by Tenant.

(j) **Demolition**. The Demolition of the Relocated Nuclear Plant Facilities located within the Parcel shall have been completed pursuant to Section 14.4 hereof.

(k) **No Landlord Event of Default**. There shall exist no Landlord Event of Default, as of each respective Commencement Date.

(l) **Intentionally Omitted**.

(m) **Parcel Condition**. Landlord shall have complied with the obligations provided in Section 2.3.3.

(n) **Remediation**. Landlord shall have completed all Remediation that is a Landlord Remediation Responsibility and that is necessary for Tenant to occupy the relevant Parcel and engage in the Permitted Uses.

If any of the foregoing conditions ("Tenant's Commencement Conditions") that are required to be satisfied with respect to each Parcel is not satisfied or waived by Tenant (other than the condition set forth in Section 2.5.1(b), which cannot be waived) on or before the Planned Commencement Date, then the Planned Commencement Date of such Parcel shall be extended (unless such delay is attributable to a Tenant Delay or Force Majeure) until the date all of such conditions are satisfied or waived by Tenant (to the extent waivable as hereinabove provided). Notwithstanding anything in this Lease to the contrary if (x) Tenant determines that after the Parties' use of diligent efforts for a period of two-hundred and seventy (270) days (as the same may be reasonably extended by the Parties acting in Good Faith) there is no commercially reasonable prospect of satisfying the Tenant's Commencement Conditions by the date falling one (1) year after the Planned Commencement Date for the respective Parcel(s) at issue, Tenant may terminate this Lease as to such affected Parcel(s) upon sixty (60) days' prior Notice to Landlord, which Notice shall be delivered within thirty (30) days after the end of the foregoing 270-day period (as may be extended as aforesaid);or (y) the Tenant's Commencement Conditions have not been satisfied or waived by the date falling three (3) years after the Planned Commencement Date for the respective Parcel(s) at issue, either Party may terminate this Lease as to such Parcel(s) upon sixty (60) days' prior notice to the other Party, and in each case, such Parcel(s) shall no longer be subject to this Lease, except for Surviving Obligations related to such Parcel(s); provided, however, that such terminating Party shall have used its commercially reasonable, diligent efforts to satisfy any Tenant's Commencement Conditions that were such Party's responsibility to obtain, and provided further that there is no continuing Tenant Event of Default or Landlord Event of Default (as applicable) by such Party at the time of its election to terminate.

2.5.2 Landlord's Commencement Conditions. The occurrence of the Commencement Date with respect to each Parcel (other than a Parcel with respect to which this Lease has been terminated in accordance with the terms hereof) shall be contingent on the satisfaction (or waiver by Landlord as hereafter provided) the following conditions:

(a) **Land Acquisition Contingency**. Landlord shall have fee title to each Parcel as of the Planned Commencement Date for such Parcel.**Compliance with Representations and Warranties**. All representations and warranties of Tenant set forth in this Lease shall be true and correct at and as of each Commencement Date in all material respects.

(c) **Intentionally Omitted**.**Approvals**. All Approvals required to be obtained by Landlord and Tenant pursuant to Section 14.2 and Schedule G (Permitting Matrix) shall have been obtained. **Dredge Placement Agreement**. With respect to Parcel A and Parcel G-1 if Tenant does not have fee title to Parcel B, Landlord and Tenant shall have executed a dredge placement agreement permitting Tenant to deposit dredge spoils into Parcel B, in form and substance reasonably acceptable to both Parties.**Easements Contingency**. With respect to Parcel A and Parcel G-1, (i) Landlord and Tenant shall have entered into the Access Easement Agreement and (ii) Tenant shall have entered into agreements, in form and substance satisfactory to Tenant, with the relevant Affiliates of Landlord in order to provide Tenant with reasonable use and access of construction areas so that Tenant can develop and construct the NJWP in accordance with the Conceptual Development Plan. With respect to Parcel C, Parcel D, Parcel E, Parcel G-2 and Parcel G-3, Landlord and Tenant shall have entered into the Easement Agreements.

(g) **Relocated Nuclear Plant Facilities**. Relocation of the Relocated Nuclear Plant Facilities located within the Parcel shall have been completed pursuant to Section 14.4 hereof.**No Tenant Event of Default**. There shall exist no Tenant Event of Default hereunder as of each respective Commencement Date.**No Outstanding PSEG Project Costs**. There shall be no outstanding PSEG Project Costs then due and owing to Landlord.

If any of the foregoing conditions ("Landlord's Commencement Conditions") that are required to be satisfied with respect to each Parcel is not satisfied or waived by Landlord (other than the condition set forth in Section 2.5.2(a), which cannot be waived) on or before the Planned Commencement Date, then the Planned Commencement Date of such Parcel shall be extended (unless such delay is attributable to a Tenant Delay or Force Majeure) until the date all of such conditions are satisfied or waived by Landlord (to the extent waivable as hereinabove provided). Notwithstanding anything in this Lease to the contrary, if (x) Tenant determines that after the Parties' use of diligent efforts for a period of at least two-hundred and seventy (270) days (as the same may be reasonably extended by the Parties acting in Good Faith) there is no commercially reasonable prospect of satisfying the Landlord's Commencement Conditions by the date falling one (1) year after the Planned Commencement Date for the respective Parcel(s) at issue, Tenant may terminate this Lease as to such affected Parcel(s) upon sixty (60) days' prior Notice to Landlord, which Notice shall be delivered within thirty (30) days after the end of the foregoing 270-day period (as may be extended as aforesaid); or (y) the Landlord's Commencement Conditions have not been satisfied or waived by Landlord by the date falling three (3) years after the Planned Commencement Date for the respective Parcel(s) at issue, either Party may terminate this Lease as to such Parcel(s) upon sixty (60) days' prior notice to the other Party. If Landlord receives a final, non-appealable denial of an Approval which is to be obtained by Landlord, either Landlord or Tenant may terminate this Lease as to such affected Parcel(s) within thirty (30) days after Landlord's receipt of such denial, or in the case of Tenant, within thirty (30) days after Tenant's receipt of Landlord's notice of such denial. Where a Party exercises a right of termination pursuant to this paragraph, in each case, such Parcel(s) shall no longer be subject to this Lease, except for Surviving Obligations related to such Parcel(s); provided, however, that such

terminating Party shall have used its commercially reasonable, diligent efforts to satisfy any Landlord's Commencement Conditions that were such Party's responsibility to obtain, and provided further that there is no continuing Tenant Event of Default or Landlord Event of Default (as applicable) by such Party at the time of its election to terminate.

2.6 **As-Is Condition**. Subject to the provisions of this Article II, Tenant has undertaken, and during the Due Diligence Period(s) for the Parcels will undertake and complete, such investigations of the Parcels as Tenant deems necessary or desirable to satisfy itself as to the condition of the Parcels and will rely solely upon same and not upon any information provided by or on behalf of Landlord or Landlord's agents or employees with respect thereto, except as otherwise expressly provided herein. Tenant acknowledges and agrees, subject to this Article II, and except as expressly contemplated in this Lease, that the Leased Premises are being leased "AS IS, WITH ALL FAULTS, KNOWN OR UNKNOWN", without representation or warranty of any kind except as expressly set forth herein, and in their present condition.

ARTICLE III – LEASE TERM

3.1 **Initial Term**. The initial term of this Lease (the "Initial Term") shall: (a) commence on the first Commencement Date to occur with respect to any Parcel; and (b) shall expire on the Expiration Date. If the foregoing Commencement Date is not the first day of a calendar month, the period from such Commencement Date to the first day of the next calendar month shall be included in the first month for purposes of determining the Term.

3.2 **Renewal Term**.

(a) During the Term, Tenant shall have the right and option (each such right and option, a "Renewal Option") to extend and renew the Term with respect to all or any of the Parcels (but not as to just a portion of a Parcel, unless a portion of a Parcel is then currently the only part of the Leased Premises with respect to such Parcel) constituting the Leased Premises, for five (5) additional successive ten (10) year periods (each, a "Renewal Term"), by providing Notice of the exercise thereof to Landlord not later than three hundred and sixty-five (365) days before the expiration of the then-existing Term. Tenant may, but need not, simultaneously exercise two (2) or more successive Renewal Options. Upon Tenant's timely exercise of the forgoing option(s), the Term shall be extended on the same terms and conditions provided in this Lease, except as follows:

(i) Base Rent payable during each Renewal Term shall be as set forth in Schedule B (Base Rent); and

(ii) Landlord shall lease to Tenant the Leased Premises in their then-current condition.

(b) Tenant's rights under this Section 3.2 shall not apply, at Landlord's option, if (i) there is a continuing Tenant Event of Default or this Lease or Tenant's right to possession of any of the Leased Premises is terminated; (ii) Tenant assigns its interest in this Lease or sublets any portion of the Leased Premises contrary to any provision of this Lease; or (iii) Tenant fails to timely exercise its Renewal Option(s) under this Section 3.2, time being of the essence with respect

to Tenant's exercise thereof. After Tenant's exercise of the last Renewal Option, Tenant shall have no further right to renew or extend the Term.

(c) In the event of the exercise of a Renewal Option with respect to fewer than all of the Parcels then constituting the Leased Premises, Rent shall be proportionately adjusted, effective as of the date Tenant delivers possession of such Parcel(s) to Landlord in the condition required hereunder. In addition, if Tenant elects not to exercise a Renewal Option as to any Parcel, Tenant and Landlord shall coordinate in Good Faith to (i) provide access to Landlord through the remaining Leased Premises to such Parcels in accordance with Section 11.3; and (ii) grant Tenant the necessary easements so that Tenant can access any portion of the Leased Premises that is not readily accessible by Tenant through the remaining Leased Premises.

ARTICLE IV – RENT

4.1 Contingency Period Rent.

(a) Except as set forth in Section 4.1(b) hereof, during the Contingency Period for each Parcel, Tenant shall pay Landlord in lawful money of the United States of America, without notice, demand, counterclaim, offset, deduction, defense, or abatement, an annual amount equal to thirty percent (30%) of the Base Rent payable for such Parcel (the "Contingency Period Rent"). The Contingency Period Rent for each Parcel shall be payable in equal quarterly installments equal to one quarter (1/4) of the Contingency Period Rent and shall be due and payable in advance on the first Business Day of each calendar quarter, without notice or demand, appropriately prorated for any portion of any quarter occurring at the beginning of the Contingency Period and any portion of any quarter occurring at the end of the Contingency Period for such Parcel.

(b) Notwithstanding Section 4.1(a) hereof, during the CDF Period (if applicable), Tenant shall pay Landlord in lawful money of the United States of America, without notice, demand, counterclaim, offset, deduction, defense, or abatement, an annual amount equal to seventy-five percent (75%) of the Base Rent payable for Parcel C (the "CDF Period Payment"). The CDF Period Payment shall be payable in equal quarterly installments equal to one quarter (1/4) of the CDF Period Payment and shall be due and payable in advance on the first Business Day of the calendar quarter in the CDF Period, and thereafter in advance on the first Business Day of each calendar quarter without notice or demand, appropriately prorated for any portion of any quarter occurring at the beginning of the CDF Period and any portion of any quarter occurring at the end of the CDF Period. Notwithstanding anything in this Lease to the contrary, during the CDF Period, the CDF Period Payment shall be the only payment due and payable by Tenant with respect to the CDF Parcel and no Contingency Period Rent or Construction Period Rent shall be due and payable.

4.2 Construction Period Rent. Commencing on the earlier of the Planned Commencement Date or the Commencement Date for each Parcel and continuing thereafter until the date that Tenant's payment of Base Rent commences with respect to such Parcel but in any event excluding the CDF Period, if applicable (for the purposes of this Section 4.2, the "applicable period"), Tenant shall pay Landlord in lawful money of the United States of America, without notice, demand, counterclaim, offset, deduction, defense, or abatement, an annual amount equal to

fifty percent (50%) of Base Rent payable for such Parcel (the "Construction Period Rent"). The Construction Period Rent for each Parcel shall be payable in equal quarterly installments equal to one quarter (1/4) of the Construction Period Rent and shall be due and payable in advance on the first Business Day of each calendar quarter in the applicable period without notice or demand, appropriately prorated for any portion of any quarter occurring at the beginning of the applicable period and any portion of any quarter occurring at the end of the applicable period for such Parcel.

4.3 Base Rent. Commencing on the date immediately after the earlier to occur of (i) the Construction Completion Date with respect to each Parcel, or (ii) the Anticipated Construction Completion Date with respect to each Parcel, and continuing thereafter for the remainder of the Term, Tenant shall pay Landlord in lawful money of the United States of America, without notice, demand, counterclaim, offset, deduction, defense, or abatement, the annual Base Rent for such Parcel. Base Rent shall be payable in equal quarterly installments equal to one quarter (1/4) of the Base Rent and shall be due and payable in advance on the first Business Day of each calendar quarter, without notice or demand.

4.4 Delinquent Payment; Late Charges. All past due payments required of Tenant hereunder shall bear interest from the date due until paid at the lesser of five percent (5%) per annum or the maximum lawful rate of interest. In no event, however, shall the charges permitted under this Section 4.4 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Laws, exceed the maximum lawful commercial rate of interest. Landlord and Tenant agree that the late charge above represents a fair and reasonable estimate of the costs Landlord will incur by reason of Tenant's delinquent payment.

4.5 Variable Rent. For each Lease Year during which the Leased Premises or any part thereof are subject to a Sublease, Tenant shall pay Landlord in lawful money of the United States of America, without notice, demand, counterclaim, offset, deduction, defense, or abatement, an annual amount equal to one half of a percent (0.5%) of the base or minimum rent component (for the avoidance of doubt, excluding any portion of the Additional Rent charged by Tenant to Subtenants on a proportionate share basis) of the Subrent paid by all Subtenants to Tenant during such Lease Year (the "Variable Rent"), up to the Annual Variable Rent Cap. The Variable Rent shall be payable on an annual basis and shall be due and payable in arrears on the fifteenth (15th) Business Day of the subsequent Lease Year.

ARTICLE V – ADDITIONAL RENT AND PAYMENTS BY TENANT; REAL ESTATE TAXES/INSURANCE

5.1 Landlord's Net Return. This Lease shall constitute an absolutely "net" lease. The Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Leased Premises, except as this Lease expressly provides. All costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable for the Term in accordance with the provisions hereof (whether or not the same shall become payable during the Term or thereafter) shall be paid by Tenant, except as otherwise expressly provided herein. Tenant shall pay and discharge (subject to Tenant's right of contest as this Lease expressly provides), before failure to pay creates a material risk of forfeiture or penalty, all items of expense arising from the Leased Premises or from the leasing, operation, management,

maintenance, repair, use, or occupancy of, or Construction affecting, the Leased Premises. Notwithstanding anything to the contrary in this Lease, none of the following items shall be included as Additional Rent hereunder: (a) any costs arising from or under any instrument or agreement affecting the Leased Premises (but not a Permitted Exception) and to which Landlord is a party and Tenant is not a party; (b) any insurance premiums, utilities, operating expenses, or other costs or liabilities related to the Leased Premises that accrued before the Commencement Date; (c) any sums payable by Landlord under this Lease or for which Landlord is responsible under this Lease or expressly excluded from the definition of Real Estate Taxes; (d) any nuclear insurance or other insurance required to be maintained by Landlord or PSEG Nuclear as a result of the Nuclear Power Plant, the Remaining Nuclear Equipment and/or any Nuclear Regulatory Improvements except as related to any activities permitted to be conducted by Landlord or PSEG Nuclear on the Leased Premises pursuant to the terms of this Lease; (e) any costs that are incurred by Landlord or PSEG Nuclear as a result of the operation of the Nuclear Power Plant, including, without limitation, security patrol except to the extent solely related to the Leased Premises; (f) all costs and expenses related to the Remaining Nuclear Equipment, the Relocated Nuclear Plant Facilities (except as this Lease expressly provides otherwise) and/or any Nuclear Regulatory Improvements; and (g) all other costs or expenses that, by their nature, are personal to Landlord or Landlord's ownership of the Fee Estate.

5.2 Real Estate Taxes.

(a) Tenant shall pay directly to Landlord, as Additional Rent, all Real Estate Taxes payable and accrued with respect to any Parcel during the Contingency Period and CDF Period for such Parcel as well as, if applicable, the period between the Commencement Date and the end of the Term with respect to such Parcel (with respect to a Parcel, the "Real Estate Tax Payment Period"), before failure to pay creates a material risk to Landlord of forfeiture or penalty or subjects Landlord to payment of interest thereon, subject however to Tenant's right of contest as this Lease expressly provides. Subject to timely receipt of payment thereof from Tenant, Landlord shall directly timely pay all Real Estate Taxes to the taxing authority. If interest and penalties are assessed by the taxing authority for late payment of any Real Estate Taxes, Tenant shall also pay same as Additional Rent, unless such late payment resulted from Landlord's failure to timely remit payment for Real Estate Taxes which Tenant had timely paid to Landlord, or if Landlord failed to promptly forward Tenant a copy of any applicable bill that Landlord receives, in which case Landlord shall pay such interest and penalties. Landlord shall within a reasonable time after Notice from Tenant give Tenant reasonable proof that Landlord has paid Real Estate Taxes. To the extent permitted by Law, Tenant may pay to Landlord as Additional Rent the Real Estate Taxes in installments as they become due and payable during the Term.

(b) If Tenant shall, in Good Faith, desire to contest the validity or amount of any Real Estate Taxes with respect to the Leased Premises or a Parcel on which Tenant is paying an Contingency Period Rent or CDF Period Payment or Construction Rent or Base Rent, Tenant shall be permitted to do so and, unless required otherwise by Law, shall be permitted to defer payment of such tax or charge, the validity or amount of which Tenant is so contesting, until final

determination of the contest, upon giving to Landlord Notice thereof prior to the commencement of any such contest, which Notice shall be given at least ten (10) Business Days prior to any payment delinquency. If Tenant loses a tax contest, Tenant shall be required to immediately pay all taxes and charges resulting from such loss. Tenant shall be entitled to all refunds associated with Tenant's successful prosecution of any such proceeding or otherwise relating to the Real Estate Tax Payment Period for the Parcels, provided that all refunds related to periods of time other than the Real Estate Tax Payment Period for such Parcels that are the subject of such contest shall belong to Landlord. If required by Law, Landlord shall join in any proceeding initiated by Tenant under this subsection; provided, however, that Tenant shall be responsible for payment of any costs and expenses associated with such proceedings incurred by Landlord. In no event shall Tenant have any right to contest any Real Estate Taxes or otherwise take any position in any contest, that could adversely impact the balance of the Property.

5.3 Payment of Additional Rent.

(a) No later than ninety (90) calendar days prior to the start of each Lease Year, except for the first Lease Year in which case no later than ten (10) days after commencement of the Lease Year, Landlord shall provide Tenant a preliminary budget (stated on a quarterly basis) of projected Additional Rent payable by Tenant to Landlord for that Lease Year. Tenant shall review the preliminary budget, discuss revisions with Landlord, if any, and jointly agree on a budget for that Lease Year, based on the Additional Rent of the prior Lease Year and any reasonably anticipated increase or decreases, or in accordance with standard industry practice ("Additional Rent Budget").

(b) Additional Rent as agreed in the Additional Rent Budget shall be due and payable in equal quarterly installments equal to one quarter (1/4) of the amount budgeted in the Additional Rent Budget and shall be payable in advance, without notice or demand.

(c) Within thirty (30) calendar days of the conclusion of each Lease Year, Landlord shall provide Tenant an itemized list of costs and expenses reimbursable as Additional Rent, with evidence that such costs were actually incurred by Landlord in that Lease Year. Tenant and Landlord shall discuss and agree the final amount of Additional Rent payable for the preceding Lease Year and calculate the difference between the actual Additional Rent amount and Additional Rent Budget amount ("Additional Rent Reconciliation Amount"). Tenant shall remit payment of any Additional Rent Reconciliation Amount within thirty (30) calendar days of calculation thereof. If Tenant overpaid Additional Rent for that Lease Year, then Tenant may reduce its next Rent payment by the Additional Rent Reconciliation Amount.

5.4 Utilities. Except as provided below, Landlord shall have no responsibility for providing Tenant with fuel, gas, light, power, water, sewage, garbage disposal, telephone, or other utilities or paying or reimbursing Tenant for any charges or expenses of installation, maintenance,

use, and service in connection with the foregoing for the Leased Premises during the Term. Tenant shall be responsible for all utility connections, service and associated hook-up, connection, tap and any other fees for all utility connections and services that it procures for the Leased Premises. Tenant shall, at its sole cost and expense, procure any necessary permits, licenses or proper authorizations required for the installation and maintenance of such utilities. Landlord agrees to reasonably cooperate with Tenant or its authorized Subtenant, at no cost to Landlord, in connection with utility accommodations and adjustments and interconnection to existing utilities on the PSEG-Retained Land. Provided Landlord or its Affiliate continues to own and operate the Nuclear Power Plant, Landlord will (i) permit Tenant to access potable water pursuant to the Water Quality Permit, and (ii) provide sewer capacity from the Nuclear Power Plant's sewer facility to the boundary of the Leased Premises for up to 1500 employees, subject to the findings of the waste demand feasibility study contemplated in Section 2.1.4, at Tenant's sole cost and expense. If the NJWP requires sewer capacity in excess of the foregoing, the enlargement of interconnections and any other work related thereto, such work shall be undertaken by Tenant at its sole cost and expense. For purposes of this Section 5.4, "sewer capacity" shall not include the disposal of processed water from end user Subtenants. Landlord shall not be responsible for any interruption in any utility services, including access to water, serving the NJWP, except to the extent caused by the gross negligence or willful misconduct of Landlord or a Landlord Party.

ARTICLE VI – REGULATORY IMPROVEMENTS AND REGULATORY RECAPTURE

6.1 Nuclear Regulatory Improvement.

(a) If PSEG Nuclear is required to comply with any Nuclear Regulatory Order that could reasonably be expected to have a Nuclear Regulatory Impact, Landlord shall provide Notice thereof to Tenant within thirty (30) days after the later of: (x) the issuance of such Nuclear Regulatory Order; or (y) PSEG Nuclear's receipt of such Nuclear Regulatory Order, together with a detailed description of its requirements and a copy of such Nuclear Regulatory Order, which copy may be redacted to comply with NRC Regulations. As soon as reasonably practical thereafter, Landlord shall deliver a Notice to Tenant, which Notice shall be accompanied by a certificate of authorized officers of PSEG Nuclear attaching (i) (A) a description of the Nuclear Regulatory Improvements and/or the Nuclear Regulatory Recapture selected by PSEG Nuclear to comply with such Nuclear Regulatory Order, (B) the basis upon which the selected Nuclear Regulatory Improvements and/or Nuclear Regulatory Recapture constitute the best alternative to avoid or minimize any adverse impact contemplated in Section 6.1(c); and (C) to the extent that compliance with such Nuclear Regulatory Order impacts access to the Leased Premises, the easements proposed to be granted to Tenant to confirm and continue its ingress and egress to and through the Leased Premises, and (ii) all supporting documentation, including a proposed timeline for the implementation of the Nuclear Regulatory Improvements and/or Nuclear Regulatory Recapture. Within ninety (90) days following the receipt of the foregoing Notice, Landlord and Tenant shall meet to discuss implementation of the proposal set forth in such Notice.

(b) Unless compliance with a Nuclear Regulatory Order is required due to the gross negligence or willful misconduct of Tenant or a Tenant Party, (i) Landlord shall be responsible for all costs and expenses associated with complying with a Nuclear Regulatory Order and (ii) Landlord and PSEG Nuclear shall be jointly and severally liable for all reasonable, documented

out-of-pocket cost and expenses incurred by Tenant to review any proposal contained in a Notice delivered pursuant to Section 6.1(a). Unless specifically required by a Nuclear Regulatory Order, Landlord shall not use or recapture pursuant to a Nuclear Regulatory Recapture any portion of Parcel A for the purposes of complying with any Nuclear Regulatory Order.

(c) To the extent that compliance with such Nuclear Regulatory Order impacts Tenant's access to the Leased Premises, or the easements granted pursuant to the Easement Agreements, the Parties shall cooperate in Good Faith to provide alternative access to Tenant on reasonably equivalent terms. Landlord and PSEG Nuclear agree to act in Good Faith to minimize any adverse impacts to the NJWP in connection with PSEG Nuclear's compliance with any Nuclear Regulatory Order. Without limiting the generality of the foregoing sentence, PSEG Nuclear and Landlord agree to use commercially reasonable efforts to request an exemption or other relief from the Nuclear Regulatory Order, including by appeal of the Nuclear Regulatory Order, in accordance with NRC Regulations and applicable procedures, as determined to be appropriate in their reasonable discretion.

(d) Rent will be decreased to reflect the impact to the value of the Leased Premises or portion thereof as determined by an Appraiser selected, procured and paid for in accordance with Section 6.1(i) below (a) resulting from a Nuclear Regulatory Improvement, for so long as such improvement shall exist, and (b) resulting from a Nuclear Regulatory Recapture (other than a Material Nuclear Regulatory Recapture) from the date of such Nuclear Regulatory Recapture until the end of the Term. In addition, PSEG Nuclear, Tenant and Landlord acknowledge that, despite efforts to minimize the impact of a Nuclear Regulatory Order as contemplated hereunder, the Tenant may nevertheless suffer losses, costs, liabilities and impairment (including a change in access or use) as a result of Landlord's and PSEG Nuclear's exercise of its rights under this Section 6.1. Accordingly, Landlord and PSEG Nuclear shall be jointly and severally obligated to pay for and indemnify Tenant for the following documented out-of-pocket costs and expenses suffered by Tenant directly arising from any Material Nuclear Regulatory Improvement or Material Nuclear Regulatory Recapture: (i) actual damages payable by Tenant to Subtenants not to exceed sixty million dollars ($60,000,000) per Parcel (the "Parcel Cap") and ninety million dollars ($90,000,000) in the aggregate for all Parcels (the "Aggregate Cap") paid in accordance with Section 6.1(e), (ii) all reasonable costs to demolish, reconstruct, replace or relocate the NJWP facilities from the Affected Property, as necessary, to other portions of the Leased Premises, (iii) all reasonable increased and additional Construction costs actually incurred by Tenant, or (iv) reasonable costs to compensate Tenant for interruptions to the operations of the Project relating to the design and implementation of the Nuclear Regulatory Improvements (or with respect to a Nuclear Regulatory Recapture, as applicable) (collectively "Nuclear Regulatory Liability").

(e) Tenant shall invoice Landlord monthly for actual damages incurred by all Subtenants as a result of a Material Nuclear Regulatory Improvement or a Material Nuclear Regulatory Recapture that are submitted to Tenant for reimbursement (including providing Landlord with copies of invoices received from any such Subtenant's relevant contractors and service providers). Landlord shall pay to Tenant such invoiced amounts, subject to the Parcel Cap and Aggregate Cap, as applicable, within sixty (60) days after receipt of the applicable invoices and supporting documentation as contemplated in the prior sentence. In the event that a Subtenant expects to incur damages as a result of a Material Nuclear Regulatory Improvement or a Material Nuclear Regulatory Recapture that exceed the Parcel Cap and/or Aggregate Cap, as applicable,

prior to such an event occurring, Landlord agrees to negotiate in Good Faith an incremental price to provide coverage, either itself or through a third party, necessary to increase the Parcel Cap and/or the Aggregate Cap in order to adequately address such potential excess damage.

(f) If there is a dispute regarding whether a cost has been incurred or the amount thereof by a Subtenant in connection with a Material Nuclear Regulatory Improvement or Material Nuclear Regulatory Recapture, Tenant and Landlord shall attempt to resolve such dispute in Good Faith, but if such dispute cannot be resolved within thirty (30) days following Tenant's submission of an invoice in accordance with Section 6.1(e), Tenant and Landlord shall submit such dispute to Non-Binding Mediation under Section 34.12 and such dispute shall be resolved in accordance with Section 34.12.

(g) Upon any Nuclear Regulatory Recapture, this Lease shall cease as to the Affected Property on the date set forth in Landlord's Notice to Terminate, Tenant shall vacate the Affected Property as required hereunder on or before such date, and Tenant shall pay to Landlord all Rent accrued through the effective date of the Nuclear Regulatory Recapture relating to such Affected Property.

(h) In the event of a Material Nuclear Regulatory Recapture, in addition to Tenant's remedies under Sections 6.1(b) and 6.1(d) (but without double counting), PSEG Nuclear and Landlord are hereby jointly and severally obligated to compensate Tenant for the loss of the use of the Affected Property, in an amount equal to the fair market value of such Affected Property, as determined by an Appraiser selected, procured and paid for in accordance with Section 6.1(i) below, using the income approach as provided for by the Uniform Standards of Professional Appraisal Practice.

(i) In the event that an Appraiser is required pursuant to this Article VI, such Appraiser shall be (x) an independent, nationally recognized firm and (y) selected by mutual agreement of Tenant and Landlord within thirty (30) days after the Nuclear Regulatory Improvement or Nuclear Regulatory Recapture, as applicable. Landlord shall bear all costs associated with such Appraiser and any appraisal conducted pursuant to this Article VI.

ARTICLE VII – NON-COMPETE

7.1 **Non-Competition Area**. Subject to Section 7.2, from the Effective Date and until and including the last day of the Initial Term, Landlord acknowledges and agrees that the following shall constitute a Landlord Event of Default: PSEG or any of its Affiliates shall hold any ownership or other investment interest in, or issue any indebtedness in respect of, any business that is involved in the development, construction or operation of a Port, in the geographical area from the Maryland coast to the Southern coast of Long Island, New York. This Article VII shall cease to apply in the event that after the Construction Completion Date for the Parcels, Tenant ceases in its entirety all Wind Port Activities on the Leased Premises for a period of twelve (12) months (such months not needing to run consecutively) in any two (2) consecutive year period, excluding closures resulting from Force Majeure and provided that Tenant will not be deemed to have ceased Wind Port Activities during any reasonable period between the expiry or termination of a Sublease and the commencement of a subsequent Sublease.

7.2 Non-Competition Exceptions. Notwithstanding the foregoing, the provisions of Section 7.1 hereof shall not prohibit PSEG or any of its Affiliates from (i) having an interest in any entity that owns or develops a Port that demonstrably primarily supports offshore wind projects in which PSEG or any of its Affiliates hold (or have agreed to hold, in connection with a bid submission) an ownership interest, including, for the avoidance of doubt in relation to the Paulsboro Port Complex; (ii) owning, investing in, operating and/or developing any offshore wind project (excluding any Port) themselves or in partnership with a third party; (iii) owning, investing in, operating and/or developing any facilities or projects used solely to support the operations and maintenance of offshore wind projects (i.e. onshore boat facility and maintenance building used to store parts for repairs of boats); or (iv) owning, investing in or issuing indebtedness in respect of a Port that supports an offshore wind project awarded to PSEG or an entity in which PSEG holds (or has agreed to hold, in connection with a bid submission) an equity ownership interest, solely to the extent (A) such activity is responsive to a requirement or recommendation included in an offshore wind solicitation issued by a Government Entity other than the State of New Jersey, and (B) the Port demonstrably primarily supports such offshore wind project. Neither Landlord nor any of its Affiliates shall utilize any information obtained in the development of the NJWP (other than information contained in the 'Hope Creek Site Feasibility Study' published by Moffatt & Nichol on April 25, 2019) to inform or assist in any activity contemplated in this Section 7.2.

7.3 Landlord Covenant Regarding Use of Property. Notwithstanding anything to the contrary contained herein, Landlord acknowledges and agrees that it shall be a Landlord Event of Default if Landlord leases, licenses or otherwise permits an Affiliate or any third party to use of any of the Property for Wind Port Activities, without Tenant's prior written consent, which Tenant may grant or withhold in its sole discretion.

7.4 Specific Performance. PSEG Nuclear and Landlord acknowledge and agree that irreparable damage would occur in the event that any of provisions of this Article VII were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Tenant shall be entitled to an injunction or injunctions to prevent breaches of this Article VII and to enforce specifically the terms and provisions hereof in any court having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

ARTICLE VIII – ENVIRONMENTAL

8.1 Pre-Existing Environmental Conditions Disclosure.

Except as set forth in the Environmental Reports, to Landlord's actual knowledge: (a) there are no environmental reports or studies relating to any of the Parcels in Landlord's possession or control; and (b) Landlord has provided Tenant with copies of all notices within its possession and control (i) from governmental entities in connection with former, current or potential Environmental Conditions in, at, under or on any of the Parcels; or (ii) from governmental entities relating to former, current or threatened administrative or judicial proceedings in connection with Environmental Conditions in, at, under or on any of the Parcels.

8.2 Remediation by Landlord

(a) Landlord acknowledges that it shall be responsible for, and shall comply with any and all obligations pursuant to Environmental Requirements applicable to a Landlord Remediation Responsibility to the extent required if the Parcels were not occupied or to be occupied by Tenant or any Subtenant. Landlord's conduct of a Landlord Remediation Responsibility shall be subject to the following requirements. Any remedial action that falls within a Landlord Remediation Responsibility shall be conducted in coordination with Tenant and any impacted Subtenants to minimize impact on Construction and use and occupancy by Tenant or the Subtenants, as permitted under the terms of this Lease.

(b) Subject to Section 8.2(a) and Section 8.4, the timing of Remediation and selection of remedial measure that falls within a Landlord Remediation Responsibility shall be within Landlord's reasonable discretion.

(c) Movement or modification of any monitoring wells installed by Landlord to accommodate operations by Tenant or Subtenants shall be at no expense to Landlord.

(d) All Remediation that falls within a Landlord Remediation Responsibility shall be conducted under the direction and control of an LSRP.

(e) Tenant acknowledges that Remediation by Landlord may be limited to achieve compliance with applicable non-residential soil remediation standards, as set forth at N.J.A.C. 7:26D or similar standards or criteria based as if the Property was not occupied or used by the Tenant Parties ("Non-Residential Standards").

(f) Should any RAO associated with Remediation that falls within a Landlord Remediation Responsibility be withdrawn or invalidated under any circumstance other than by fault of any of the Tenant Parties, Landlord shall undertake such additional Remediation as required.

(g) Landlord shall retain an LSRP and continue to comply with any Remedial Action Permit that falls within a Landlord Remediation Responsibility.

(h) When entering the Leased Premises to conduct any Landlord Remediation Responsibility, Landlord shall comply with Section 11.3.

8.3 Remediation by Tenant.

Tenant acknowledges that it shall be responsible for, and shall comply with any and all obligations pursuant to Environmental Requirements applicable to a Tenant Remediation Responsibility. Tenant's conduct of a Tenant Remediation Responsibility shall be subject to the following requirements:

(a) To the extent Engineering Controls are required to accommodate occupancy by Tenant (or any Subtenant), such Engineering Controls shall be subject to Landlord's reasonable approval.

(b) Neither Tenant nor any Subtenant shall employ any Engineering Controls or Institutional Controls that would preclude the use of the Premises for any non-residential use. In

no event shall Tenant or any Subtenant be required to Remediate to standards greater or more stringent than the applicable Non-Residential Standards.

(c) To the extent an Engineering Control is needed to allow for the occupancy of Tenant, then any Remedial Action Permit associated with such Engineering Control shall be the responsibility of Tenant.

(d) Any Remedial Action Permit for groundwater associated with Remediation for which Tenant (or any Subtenant) is responsible shall be the responsibility of Tenant and such Subtenant responsible for such Remediation.

(e) Tenant shall not be responsible for any Remedial Action Permit relating to Remediation for which Landlord is responsible if said Remedial Action Permit does not require any modification or revision to address Remediation which is a Tenant Remediation Responsibility even if Tenant's (or Subtenant's) Remediation is relying on such Remedial Action Permit. In the event of any such modification or revision made to address Remediation that is a Tenant Remediation Responsibility, Landlord and Tenant shall consult and cooperate with each other in regard to the allocation of related costs and responsibilities.

(f) Remediation that falls within a Tenant Remediation Responsibility shall be conducted under the direction and control of an LSRP approved by Landlord, which approval shall not be unreasonably conditioned, delayed or withheld, and diligently completed until the issuance of a RAO.

(g) Remediation that falls within a Tenant Remediation Responsibility shall be conducted in compliance with Law and in a manner reasonably acceptable to Landlord without interference with operations at the Property.

(h) Tenant shall retain an LSRP approved by Landlord, which approval shall not be unreasonably conditioned, delayed or withheld, and continue to comply with any Remedial Action Permit that falls within a Tenant Remediation Responsibility.

(i) Should any RAO associated with Remediation that falls within a Tenant Remediation Responsibility be withdrawn or invalidated under any circumstance other than by fault of Landlord, Tenant and any Subtenant to which such RAO is issued shall undertake such additional Remediation as required.

(j) Tenant shall be responsible for maintaining the pollution liability insurance coverage requirements set forth in Section 15.1.1(e).

8.4 Coordination of Remediation.

Landlord and Tenant agree to coordinate Remediation activities conducted by either Party in accordance with the following terms:

(a) Landlord shall provide copies of communications with any governmental entity associated with any Remediation conducted by Landlord to Tenant and such Subtenants as directed by Tenant.

(b) Except for any communications made in connection with Tenant's governance, decision-making processes and funding, Tenant shall provide Landlord with copies of all communications with any Governmental Entity associated with any Remediation conducted by Tenant or any Subtenant.

(c) The Parties shall promptly respond to all other reasonable requests for information regarding any Remediation conducted by the other Party.

(d) The Parties shall cooperate with each other regarding Remediation and coordinate Remediation activities in consideration of the regulatory and mandatory timeframes pursuant to Environmental Requirements as well as Tenant's and Subtenant's Construction and construction schedule and the use and operation of the Property by Tenant and Subtenants. For purposes of Tenant's Construction or use and occupancy of the Parcels, Landlord, at Landlord's sole discretion, may permit Tenant or a Subtenant to conduct, on behalf of Landlord, Remediation activities pursuant to a Landlord Remediation Responsibility. Tenant or Subtenant's conduct of such Remediation activities on behalf of Landlord shall be at Landlord's sole cost and expense and shall not limit or amend Landlord's obligations for such Landlord Remediation Responsibility pursuant to the terms of this Lease.

(e) If Tenant believes that any Remediation being conducted by Landlord is likely to interfere with the operations or construction activities of Tenant or a Subtenant, Tenant shall provide written notice to Landlord with specific detail of the timing of said operations or construction activities ("Potential Delay Notice"). Landlord shall respond to such Potential Delay Notice within fifteen (15) days detailing the approach to minimize such interference. If Tenant identifies a commercially reasonable alternative approach that minimizes such interference to a greater degree, Landlord will implement that alternative approach.

8.5 Hazardous Materials Notice.

(a) Within ninety (90) days after the commencement of the Due Diligence Period, Landlord shall provide Tenant with a Preliminary Remedial Action Assessment for each Parcel for which Landlord has agreed to conduct a Phase 2 Site Assessment and Site Investigation Report. The Preliminary Remedial Action Assessment format may differ from the applicable regulatory requirements for a Remedial Action Workplan but shall address Landlord Remediation Responsibilities consistent with applicable Law.

(b) If, during the Term, either Landlord or Tenant (each a "Notifying Party") reasonably believes that any Hazardous Materials are located in, under, on or about the Parcels in violation of any Environmental Requirement (other than those which the Party providing Notice is responsible for pursuant to this Article VIII and those actually known to Tenant prior to the execution of this Lease), then such Party shall promptly give the other Party (the "Responding Party") notice thereof which such notice shall indicate that it is the Notifying Party's belief that the Responding Party is responsible therefore (the "Hazardous Materials Notice"). The Responding Party receiving such Notice, at its sole cost, shall diligently conduct its own investigation, and shall commence to investigate such Hazardous Materials to the extent that such Hazardous Materials are a Landlord Remediation Responsibility or Tenant Remediation Responsibility (as applicable, based on the identity of the Responding Party) within fifteen (15) days after the

Hazardous Materials Notice or earlier as required by Environmental Requirements and thereafter and pursuant to Section 8.4 diligently prosecute (to the extent that such Hazardous Materials are a Landlord Remediation Responsibility or Tenant Remediation Responsibility, as applicable) such investigatory and remedial activities as may be required by Environmental Requirements to completion and issuance of an RAO.

8.6 Materials Disposal.

(a) By Landlord. In the event that Landlord's activities at the Parcels to investigate and/or Remediate a Landlord Remediation Responsibility result in the removal of soil, groundwater, surface water or other material for off-site disposal, Landlord shall be responsible for any and all sampling, transportation and disposal of such material and shall be designated as the "generator" as defined by Environmental Requirements. Landlord's obligation pursuant to this Section is limited to only material that is required to be removed by Landlord pursuant to a Landlord Remediation Responsibility.

(b) By Tenant. Tenant (or any Subtenant) shall be responsible for any and all sampling, transportation and disposal costs and obligations for any waste material generated as a result of Tenant's (or Subtenant's) Construction or use and occupancy of the Leased Premises and shall be identified as the "generator" on all labels, shipping papers, manifests and records required for the management and disposal of such material in compliance with applicable Environmental Requirements. To the extent Tenant (or any Subtenant) removes and/or disposes of any materials from the Leased Premises related to a Tenant Remediation Responsibility, Tenant (or Subtenant) shall be identified as the "generator" as defined by Environmental Requirements and shall be responsible for any and all sampling, transportation and disposal of such material in compliance with applicable Environmental Requirements. If Landlord agrees, in Landlord's sole discretion, to permit Tenant or any Subtenant to remove and/or dispose of any materials from the Leased Premises that are a Landlord Remediation Responsibility for purposes of its Construction or use and occupancy of the Premises, Landlord shall approve the disposal location and Landlord shall be identified as the "generator" and Tenant shall be responsible for only those sampling, transportation and disposal costs and obligations that exceed Landlord's expected costs for sampling, transportation and disposal. For purposes of clarity and except as set forth above, Landlord shall not be responsible for costs and requirements for sampling, transportation and disposal and shall not be the "generator" of any materials removed or disposed of by Tenant or any Subtenant that are Pre-Existing Environmental Conditions that are not otherwise a Landlord Remediation Responsibility.

8.7 Sampling of Environmental Media by Tenant. Sampling of environmental media by Tenant or Subtenant for purposes other than that which is required to comply with Environmental Requirements applicable to Tenant's (or Subtenant's) Construction and operations, a Tenant Remediation Responsibility or a Tenant material disposal obligation pursuant to Section 8.6 shall require notice to and approval of Landlord.

8.8 Importation of Fill Materials by Tenant or Subtenants. No materials to fill, grade or elevate the ground level of the Leased Premises shall be imported to the Leased Premises by or on behalf of Tenant or any Subtenant except: (a) in compliance with applicable law; and (b) approved by Landlord, which such approval shall not be unreasonably conditioned, delayed,

or withheld. Prior to importing any such materials, Landlord shall be provided with such documentation as Landlord reasonably requires to confirm that the importation of such material would be in compliance with all applicable Law, provided that any approval by Landlord shall not negate Tenant and Subtenant's obligations hereunder.

8.9 <u>Tenant and Subtenant Operations</u>. Tenant shall, and shall cause any Subtenant, to operate its business and conduct any Construction at the Leased Premises in compliance with all Environmental Requirements, including the terms and conditions of any and all Approvals applicable to Tenant's Construction and operations. Tenant shall be entitled to complete any Remediation, as may be required by applicable Environmental Requirements and obtain an RAO after the expiration or earlier termination of the Lease providing it has been proceeding in good faith and reasonably expeditiously. To the extent that the absence of an RAO after the expiration or earlier termination of the Lease precludes the use of any portion of the Leased Premises by Landlord or any other party, Tenant will remain responsible for all rental payments (including payments for real estate taxes and insurance) for the prorated lease payments for the portion of the Leased Premises so impacted.

8.10 <u>ISRA</u>.

(a) <u>Trigger by Tenant or Subtenant</u>. In the event that Tenant or any Subtenant triggers ISRA in regard to any of the Leased Premises, including but not limited to any action that constitutes "change in ownership", "closing operations", or "transferring ownership or operations" as those terms are defined in ISRA, Tenant shall be responsible for all filings, investigation and Remediation required to comply with ISRA, at Tenant's sole cost and expense, provided that Landlord shall remain responsible for conducting such Remediation as falls within a Landlord Remediation Responsibility.

(b) <u>Trigger by Landlord</u>. In the event that Landlord triggers ISRA in regard to any of the Leased Premises, including but not limited to any action that constitutes "change in ownership", "closing operations", or "transferring ownership or operations" as those terms are defined in ISRA, Landlord shall be responsible for all filings, investigation and Remediation required to comply with ISRA, at Landlord's sole cost and expense, provided that Tenant (and the respective Subtenant) shall remain responsible for conducting such Remediation as falls within a Tenant Remediation Responsibility.

(c) <u>Cooperation</u>. The Parties shall cooperate and shall promptly provide all information reasonably requested regarding or in furtherance of ISRA compliance to the extent available and shall sign any certification or affidavit submitted regarding or in furtherance of ISRA compliance which is true, accurate and complete.

8.11 <u>Inspection by Landlord</u>. Subject to Section 11.3, Landlord shall have the right, but not the obligation, to conduct inspections of the Leased Premises, including testing of media. Tenant shall have the right accompany the Landlord and obtain split samples. Should such investigation reveal a failure of Tenant to comply with Environmental Requirements, other applicable law or the provisions of this Lease, Tenant shall reimburse Landlord for the reasonable costs of such inspection and cause such actions needed to be promptly completed to address such non-compliance.

8.12 Indemnification.

(a) Landlord Indemnification. Landlord shall remain responsible for and shall indemnify, defend and hold Tenant and Subtenants harmless from and against any and all losses, claims, demands, actions, suits, fines, penalties, liabilities, damages, including natural resource damages, costs and expenses (including investigation, Remediation, removal, repair, corrective action, or cleanup) to the extent resulting from Landlord's breach of the requirements under this Article VIII. Landlord's indemnity in this Section shall not be deemed to apply to any Tenant Remediation Responsibility, provided that Landlord does not materially exacerbate any condition for which Tenant is responsible (in which event Landlord shall have responsibility for all costs and expenses attributable to such exacerbation.)

(b) Tenant Indemnification. Subject to Section 29.6, Tenant shall remain responsible for and shall indemnify, defend and hold Landlord harmless from and against any and all losses, claims, demands, actions, suits, fines, penalties, liabilities, damages, including natural resource damages, costs and expenses (including investigation, Remediation, removal, repair, corrective action, or cleanup) to the extent resulting from breach of the requirements under this Article VIII by Tenant. Tenant's indemnity in this Section 8.11(b) shall not be deemed to apply to any Landlord Remediation Responsibility, provided that Tenant does not materially exacerbate any existing Environmental Condition (in which event Tenant shall have responsibility for all costs and expenses attributable to such exacerbation). The written consent of Landlord to the presence, use or storage of Hazardous Materials in, on, under or about any portion of the Leased Premises shall not excuse Tenant from its obligations of indemnification pursuant hereto.

8.13 Vapor Mitigation.

If required by applicable Environmental Requirements, Tenant shall install a passive vapor intrusion mitigation system that can be converted to an active system beneath each building that it shall install on the Leased Premises.

8.14 Dispute Resolution. If a dispute shall arise in regard to any of the matters addressed in this Article VIII, the Landlord and Tenant shall attempt to resolve any such dispute in Good Faith but if such dispute cannot be resolved within ten (10) Business Days of written notification of such dispute submitted by Landlord or Tenant to the other party, such dispute shall be submitted to Non-Binding Mediation pursuant to Section 34.12 and such dispute shall be resolved in accordance with Section 34.12.

ARTICLE IX – NUCLEAR LIABILITY

9.1 Nuclear Liability Insurance. PSEG Nuclear represents and warrants to Tenant that: (a) PSEG Nuclear is the licensed operator of the Nuclear Power Plant adjacent to the Leased Premises; and (b) in no case shall Tenant be or be deemed to be an operator of, or a licensee for, the Nuclear Power Plant. PSEG Nuclear agrees to maintain, for the benefit of the Leased Premises, the nuclear insurance coverages set forth in Schedule N (Nuclear Insurance) attached hereto, subject to the terms and conditions of such Schedule, the cost of which shall be paid by Tenant as Additional Rent as further set forth in Schedule N (Nuclear Insurance).

9.2 Nuclear Indemnity.

(a) PSEG Nuclear and Landlord hereby acknowledge and agree that neither Tenant nor any Tenant Party shall be liable for any injury or damage resulting from a Nuclear Incident involving the Nuclear Power Plant.

(b) Each of PSEG Nuclear and Landlord hereby agrees to Indemnify or cause to be Indemnified Tenant and each Tenant Party, and their respective employees and agents, in respect of any Nuclear Incident.

(c) In the event any claim is made or action is brought against the Party Indemnified above, arising out of the matters referred to in Sections 9.2(a) and (b) above, such Party shall promptly Notify the other.

ARTICLE X – TRANSFERS; TENANT RIGHT OF FIRST OFFER

10.1 Assignments by Tenant.

(a) For so long as this Lease continues in full force and effect, Tenant shall have the right to directly assign or transfer its rights and obligations under this Lease in whole without Landlord's consent, on thirty (30) days' prior Notice to Landlord, which Notice shall include the business name of the transferee, financial statements for the transferee (or its parent company if its financial statements are consolidated with those of a parent company) for the most recent two (2) fiscal years for which such statements are available, and the effective date of the intended transaction to: (a) any State Entity; or (b) any Qualified Assignee (each such transaction, a "Permitted Transfer"). A "Qualified Assignee" means any third party that (a) is not a party suspended or debarred from doing business with Tenant or the State in accordance with the NJEDA Debarment Regulations; (b) does not have any pending litigation involving PSEG Nuclear, Landlord or any of their respective Affiliates; (c) either (1) has a tangible Net Worth (exclusive of good will and computed in accordance with GAAP) immediately prior to and after the Permitted Transfer of at least $500 million, (2) has a credit rating of at least "BBB-" by S&P and "Baa3" by Moody's, if such entity is rated by both such ratings agencies, or a credit rating of at least "BBB-" by S&P or "Baa3" by Moody's (as applicable), if such entity is rated by only one of S&P or Moody's, or (3) provides Landlord with Acceptable Security in the amount of ten times (10 x) the then current Lease Year's Rent for the Leased Premises as security for the performance of its Lease obligations as a condition to the effectiveness of the Permitted Transfer; (d) provides a statement to Landlord that the projected NJWP gross revenues for the remaining Term, as certified by an independent qualified accountant, are at least five hundred percent (500%) of the projected Rent for the remaining Term; (e) will use and occupy the Leased Premises for the Permitted Use; (f) demonstrates to Landlord's reasonable satisfaction that its obligations under this Lease have priority over all payments under any financing documents to which it is bound and all distributions to equity absent a foreclosure thereunder; and (g) demonstrates to Landlord's reasonable satisfaction that (i) it or any one of

its direct or indirect equity members or any of their respective Affiliates or (ii) any Person that has entered into a contract with Tenant for the performance of day-to-day operations at the NJWP, has at least five (5) years' experience in owning and operating projects similar in scope and use as the NJWP; provided, however, that no such Permitted Transfer shall be permitted hereunder to the extent that a Tenant Event of Default shall have occurred and be continuing at the time of such Permitted Transfer or such Permitted Transfer would result in a Tenant Event of Default. Notwithstanding the foregoing, if Tenant is a State Entity, there shall be no Tenant Event of Default if another State Entity assumes all of the obligations of Tenant under this Lease in writing, and either (x) the transfer is required by applicable Law or (y) all other defaults are cured within sixty (60) days of the occurrence of such default. Any Person relying on clause (g)(ii) to satisfy the definition of "Qualified Assignee" covenants and agrees to maintain such contractual arrangement, or a substitute contractual arrangement reasonably approved by Landlord, in effect and enforceable against both parties thereto for the duration of the Term. All Permitted Transfers pursuant to this Section 10.1(a) shall operate to release Tenant from any and all liabilities under this Lease arising after the effective date thereof as contemplated in Section 10.1(c) .

(b) Except as otherwise expressly set forth in this Lease, Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in its sole discretion, assign, encumber this Lease or any estate or interest herein or transfer its rights and obligations under this Lease in whole or in part, whether directly or by operation of Law (any such transaction, a "Transfer"). Tenant shall give Landlord thirty (30) days' prior Notice of any proposed Transfer, which notice shall include the business name of the transferee, financial statements for the transferee (or its parent company if its financial statements are consolidated with those of a parent company) for the most recent two (2) fiscal years for which such statements are available and the effective date of the intended Transfer, and such information as may be reasonably requested by Landlord.

Upon a Transfer pursuant to this Section 10.1(b), Landlord may in its sole discretion, elect to release Tenant from any and all liabilities under this Lease arising after the effective date of such Transfer, failing which Tenant and any guarantor of this Lease shall continue to be jointly and severally liable together with such transferee.

Unless the equity of Tenant shall be listed on a nationally recognized public security exchange, if the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Tenant (including any successor or assignee of Tenant which is a corporation), or of the Equity Interest of Tenant hereunder, or of the interest of any member of a limited liability company, joint venture, syndicate or other group which may collectively constitute Tenant hereunder, shall result in changing the Control of Tenant or such other corporation or such partnership, limited liability company, joint venture, syndicate or other group, such sale, assignment, transfer or other disposition shall be deemed a Transfer.

(c) Any Permitted Transfer or Transfer to which Landlord consents pursuant to Section 10.1(b) shall not be effective unless and until assignee assumes

in writing all of Tenant's obligations under and interests in the Lease arising on and after the effective date of such Transfer and Landlord shall have received an executed counterpart of such assignment in a form reasonably acceptable to Landlord. For the avoidance of doubt, any Permitted Transfer or Transfer pursuant to this Article X shall not relieve Tenant of its obligations under the Lease arising prior to the effective date of such Permitted Transfer or Transfer.

10.2 Intentionally Omitted.

10.3 Landlord’s and PSEG Nuclear's Right to Convey.

(a) Landlord (or the holder of any direct or indirect Equity Interest in Landlord) shall only sell, transfer or assign the Fee Estate or any Parcel or any estate or interest therein in compliance with and as permitted by this Section 10.3. Landlord (or the holder of any direct or indirect Equity Interest in Landlord) may sell, transfer or assign the Fee Estate or any Parcel (or such Equity Interest) from time to time:

(i) to any Affiliate of Landlord; provided that Landlord promptly provides Notice to Tenant of such transaction as soon as reasonably practicable; or

(ii) to a third party as part of a transfer, sale, assignment or other disposition of all or substantially all assets of, or Equity Interest in, a parent level Affiliate of Landlord, provided that the portion of the consideration paid for such transaction attributable to the Fee Estate and any Parcel is minimal as compared to the consideration paid for the remainder of the assets transferred in such transaction. Landlord shall promptly Notify Tenant of such transaction as soon as practicably reasonable; or

(iii) to a third party other than in a transaction set forth in clause (ii) above, provided that (A) a Decommissioning has occurred; (B) the transferor has first complied with Tenant's Right of First Offer (in accordance with Section 10.4 below); (C) such transaction does not otherwise violate the terms of this Lease, including this Section 10.310.3; (D) Tenant determines, such determination not to be unreasonably withheld, that assignee has sufficient creditworthiness to satisfy the Landlord's obligations under the Lease and to the extent they are transferred, any obligations of any other PSEG Nuclear Affiliates under this Lease; and (E) Landlord promptly notifies Tenant of such proposed transfer no later than sixty (60) days prior to the consummation of any conveyance, assignment, or other transaction with or to any third party.

(b) In the event of a transaction pursuant to Sections 10.3(a)(ii) or 10.3(a)(iii) Landlord shall submit to the Tenant along with its Notice (i) if Tenant is a State Entity, a Disclosure Statement completed by the third party assignee for review by Tenant in accordance with Section 10.3(c); and (ii) such information as may be reasonably requested by Tenant to confirm and evidence the creditworthiness of such third party assignee to satisfy the Landlord's obligations under this Lease.

(c) In the event that PSEG Nuclear (or a holder of any direct or indirect Equity Interest in PSEG Nuclear) desires to sell, transfer or assign PSEG Nuclear's rights and/or obligations under this Lease to a third party directly or as part of a transfer, sale or assignment or other disposition of the assets of, or Equity Interest in, PSEG Nuclear or a parent level Affiliate of PSEG Nuclear, Landlord shall promptly provide to Tenant Notice of such transaction as soon as practicably reasonable, and, if Tenant is a State Entity, a Disclosure Statement completed by the third party assignee for review by Tenant in accordance with Section 10.3(c).

(d) Where Tenant is a State Entity, following receipt by Tenant of the Disclosure Statement from the third party required pursuant to Section 10.3(b) or Section 10.3(c) hereof, Tenant shall confirm whether such third party or the principals thereof, is a party suspended or debarred from doing business with Tenant or the State, solely by reference to information maintained by the State regarding suspended or debarred Persons. If such third party is suspended or disbarred, Tenant shall notify Landlord. Until such third party is no longer suspended or disbarred as aforesaid, and Landlord has provided to Tenant the Disclosure Statement as required by this Section 10.3(c), Landlord or PSEG Nuclear (as applicable) shall not consummate the conveyance, assignment, or other proposed transaction.

(e) Any sale, transfer or assignment to which Tenant consents or which is otherwise permitted by this Section 10.3, shall not be effective unless and until the transferee assumes in writing all of Landlord's or PSEG Nuclear's obligations (as applicable) under and interests in the Lease arising on and after the effective date of such transaction, and Tenant shall have received an executed counterpart of such assignment in a form reasonably acceptable to Tenant.

10.4 Tenant's Right of First Offer. If Landlord desires to transfer the Fee Estate or any Parcel in whole or in part pursuant to Section 10.3(a)(iii) above (the "Right of First Offer Property") then, provided that (a) this Lease has not terminated or expired; (b) there is not then continuing a Tenant Event of Default; (c) Tenant is a State Entity; and (d) the Leased Premises continue to be used and operated for the Permitted Use, Landlord shall first offer (the "Landlord's Offer") to transfer the Right of First Offer Property to Tenant ("Tenant's Right of First Offer") before offering it to any other Person.

10.4.1 Certain Exempt Transactions. Tenant's Right of Offer shall not apply to: (a) the grant of a Fee Mortgage or other real property security interest which encumbers all or part of the Fee Estate as part of a bona fide, financing arrangement undertaken by Landlord or any of its Affiliates; (b) any transfer by (or in lieu of) exercise of remedies under such Fee Mortgage; (c) any subsequent transfer(s) by anyone whose title in the Fee Estate derives directly or indirectly from any transfer in clause "b"; and (d) any transfer set forth in Sections 10.3(a)(i) or 10.3(a)(ii) above.

10.4.2 Landlord's Offer. Landlord's Offer shall be in writing and shall set forth the terms on which Landlord proposes to transfer the Right of First Offer Property. Such terms shall: (a) require either payment in cash at closing or deferred

payments secured, if at all, only by a standard printed form Fee Mortgage; (b) not require the acquisition of any portion of the PSEG-Retained Land; and (c) require conveyance of title. Tenant's acceptance of Landlord's Offer shall not limit any of Tenant's obligations under this Lease (including Tenant's obligations to continue to pay Rent with respect to the Right of First Offer Property) unless and until the transfer of the Right of First Offer Property to Tenant has actually closed.

10.4.3 Sale to Third Party. Within forty five (45) days of receipt of Landlord's Offer ("Deliberation Period"), Tenant shall notify Landlord in writing of its recommendation to its executive board in connection with Tenant's exercise of Tenant's Right of First Offer. If Tenant's recommendation is to not exercise Tenant's Right of First Offer, Landlord may proceed with the transfer of the Right of First Offer Property as hereafter provided. If Tenant's initial recommendation to its executive board is to proceed with Tenant's Right of First Offer, Tenant shall use reasonable efforts to procure that the executive board votes on such matter at its next meeting immediately following the end of the Deliberation Period. If Tenant Notifies Landlord that Tenant does not desire to purchase the Right of First Offer Property on the terms of Landlord's Offer, or if Tenant fails to accept Landlord's Offer within one hundred (100) days after Tenant's receipt thereof, then Landlord may transfer the Right of First Offer Property to any other Person, provided that such transfer complies with the limitations that apply to "Landlord's Offer" in Section 10.4.2. If, however, Landlord desires to transfer the Right of First Offer Property for a price at least ten percent (10%) less than the price in Landlord's Offer, or on terms that in any other way are materially more favorable to such Person than those in Landlord's Offer to Tenant, then Landlord shall deliver a new Landlord's Offer to Tenant that reflects such terms, and the procedures described above for Tenant's review of Landlord's Offer shall again apply.

10.5 Release of Landlord. Upon any transfer of the Fee Estate in accordance with the terms of this Lease, Landlord shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord as to such transferred property from and after such transfer, provided that Landlord delivers and turns over to the transferee all funds that this Lease requires or allows Landlord (or anyone acting for Landlord) to hold, and in which Tenant has an interest as specifically set forth herein, after which any amount due and payable to Tenant shall be paid to Tenant by such transferee. It is the intent of this Section 10.5 that, except as otherwise expressly set forth in this Lease, the provisions of this Lease shall be binding upon Landlord, and its successors and assigns only in respect of their respective successive periods of ownership of the Fee Estate. For the avoidance of doubt, any sale, transfer or assignment pursuant to Section 10.3 shall not relieve Landlord of its obligations under the Lease arising prior to the effective date of such transaction.

10.6 Development Rights. Without Tenant's prior written consent, which Tenant may withhold for any reason or no reason, Landlord shall not enter into any so-called "zoning lot merger" or any other agreement or instrument that combines the Parcels with any other real property for purposes of any Law regarding bulk, development rights, use, zoning, or any similar matter, or by which any development rights under any such Law are transferred to or from any other real property.

ARTICLE XI – RIGHT OF ENTRY

11.1 Tenant's Right of Entry for Due Diligence.

(a) During the Due Diligence Period with respect to each Parcel, but subject to Law, NRC Regulations and the terms and conditions of this Lease, Tenant may request access to such particular Parcels, and such portions of the Property as reasonably necessary for itself, and its consultants, agents and advisers (the "Tenant Agents") during regular business hours upon at least three (3) days' prior Notice to Landlord, which Notice shall indicate: (i) the need for such access (including details regarding the proposed activities of Tenant and Tenant Agents, and where they expect to be on the Parcels during such access); (ii) the time period needed for such access; and (iii) the names and contact information of each such Tenant Agent requiring access. Tenant or Tenant Agents, at Landlord's reasonable request, must be accompanied by Landlord's representative during any such access to the Property. Tenant may bring prospective financial institutions, Subtenants, assignees, or advisers of each (collectively, the "Prospective Entities") (accompanied by Tenant) onto each Parcel during the Due Diligence Period solely for the purposes of Site Visits, upon at least three (3) days' prior Notice to Landlord, which Notice shall contain the information required above. Tenant may provide any documents provided by Landlord to Tenant, including the Environment Reports, that are necessary and desirable to any Tenant Agent or any Prospective Entity in connection with such entity's due diligence of the Project, provided such entity has executed a joinder to a non-disclosure agreement entered into between Tenant and Landlord.

(b) For purposes of this Section 11.1, "access" to any Parcel during the Due Diligence Period, shall be limited to: (A) performance by Tenant and/or Tenant Agents of: (i) inspections and assessments; (ii) geotechnical investigations, approved by Landlord on a case by case basis, in accordance with Landlord's internal guidelines and protocols, such approval not to be unreasonably withheld or delayed; (iii) in the event that the results of a Phase 2 Investigation require Remediation, to inspect such Remediation, provided that in no event shall Tenant or any Tenant Agent hire an LSRP to undertake such inspection of the Remediation (subject to the provisions of Section 2.3.2); (iv) land surveys, title investigations and utility investigations; and (v) appraisals; (collectively, the "Due Diligence Work"); and (B) Site Visits, all of which access shall be subject to the terms and conditions set forth in this Section 11.1. In no event shall the granting of access by Landlord to the Parcels pursuant to this Section 11.1 be deemed to grant Tenant, Tenant Agents, and Prospective Entities the right to undertake any intrusive environmental investigations.

(c) Subject to Section 29.6, each of Tenant, Tenant Agents and Prospective Entities shall release and shall Indemnify Landlord and each Landlord Party in connection with the Due Diligence Work and Site Visits, as well as against any fees, costs, charges or expenses which Landlord and/or each Landlord Party incurs in the defense of any such claim, suit or similar such demand made or filed

by any third party against such indemnitees to the extent same arises out of or relates to the Due Diligence Work and Site Visits; provided, however, the foregoing indemnity shall not apply to the gross negligence or willful misconduct of the respective indemnitee.

(d) Tenant, and, to the extent not covered by insurance obtained by Tenant as contemplated below, Tenant Agents or Prospective Entities performing Due Diligence Work or conducting a Site Visit shall provide and maintain, and Tenant shall require any of its contractors and/or subcontractors performing any Due Diligence Work to obtain and maintain, in effect during the term of their access pursuant to this Section 11.1 minimum insurance coverage with carriers satisfactory (A-/VII or better in the Best's Key Rating Insurance Guide) to Landlord as follows:

(i) Workers' Compensation Insurance with statutory limits, as required by the State, and employer's liability insurance with limits of not less than One Million ($1,000,000) Dollars per occurrence;

(ii) Commercial General Liability Insurance providing premises liability, bodily injury, property damage, blanket contractual liability, products/completed operations, independent contractors, broad form property damage and coverage for explosion, collapse and underground hazards (XCU) with a limit of liability of not less than One Million ($1,000,000) Dollars per occurrence and per project or location aggregate. The completed operations coverage shall remain in place for not less than three (3) years from the date the Due Diligence Work is completed, if applicable;

(iii) Automobile Liability Insurance for owned, non-owned and hired automobiles with a combined single limit of not less than One Million ($1,000,000) Dollars per accident;

(iv) Excess or Umbrella Liability Insurance with a limit of not less than Three Million ($3,000,000) Dollars per occurrence and project or per location aggregate. These limits apply in excess of employer's liability, commercial general liability and automobile liability coverage mentioned above; and

(v) If this right of entry involves or includes Tenant or Tenant Agents handling, transporting, disposing or performing work or operations with hazardous substances, contaminants, waste, toxic materials or any potential pollutants, Pollution Liability Insurance with a limit of not less than Three Million ($3,000,000) Dollars per occurrence.

All coverage noted above, with the exception of workers' compensation, shall name Landlord and its Affiliates as additional insureds and provide that this coverage is primary to any other insurance carried by Landlord or its Affiliates, and without right of contribution from insurance carried by any Tenant, Tenant Agents or Prospective Entities; shall contain standard cross-liability provisions; and shall provide for a waiver of all rights

of subrogation which Tenant Agents', Prospective Entities' and/or Tenant's insurance carrier might exercise against Landlord. Prior to access to the Property, Tenant shall deliver certificates of insurance to Landlord evidencing that this coverage is in effect.

(e) Except for the Environmental Reports, nothing herein shall require Landlord to provide any reports or materials of any kind, nor any draft or internal reports, memoranda or assessments intended for internal purposes, confidential materials and materials protected by attorney-client privilege or other privilege. Furthermore, Tenant shall not report any findings, conclusions, results or any other information derived from Tenant's inquiries and investigations to any third party without Landlord's prior written consent, except that Tenant may share such information with (i) other State Entities and public officials as needed in connection with Tenant's governance, decision-making processes and funding; and (ii) any third party as required by Law, provided that Tenant delivers concurrent Notice to Landlord of any disclosure pursuant to this (ii).

(f) Tenant shall be responsible to repair promptly any damage to a Parcel caused by any access pursuant to Section 11.1, and shall restore such damaged portion of the Parcel to substantially the same condition as existed immediately prior to such actions, investigations or inspections, at Tenant's sole cost and expense, which obligation shall survive termination of this Lease; provided, however, if such Parcel becomes part of the Leased Premises, such restoration shall not be required. No access pursuant to Section 11.1 shall subject a Parcel to any contractor's lien.

11.2 Easements.

(a) On or before the date that is thirty (30) days prior to the Planned Commencement Date for Parcel A, Landlord and Tenant shall finalize and execute an easement agreement to provide non-exclusive use and access to and from the NJWP and other portions of the Property for the benefit of both Parties, including permanent road access easements to Tenant as shown on Schedule D (Access Easements) attached hereto (the "Access Easement Agreement").

(b) Landlord and Tenant shall finalize and execute an easement agreement to provide the utility easements to Tenant (the "Utility Easement Agreement").

11.3 Landlord's Right of Entry to Parcels. Subject to Section 11.4, prior to a Parcel becoming a part of the Leased Premises, Landlord and PSEG Nuclear shall each have the unfettered right to access the Parcels at any time. Following the Commencement Date of a Parcel, Landlord and PSEG Nuclear shall have the right of access, for each of them and their respective authorized representatives, to the Leased Premises and any portion thereof, without charges or fees, at all reasonable times during the Term, for, and subject to, the following:

(a) To exclude or remove personnel and property therefrom where reasonably necessary or desirable to protect the public health and safety in the event of a Nuclear Incident;

(b) To take such reasonable measures as Landlord or PSEG Nuclear deem advisable for the security of the Property, including the NJWP, and its occupants; evacuating the Property for cause or suspected cause in connection with an emergency; and temporarily denying access to the Property in order to preserve life or property during an emergency;

(c) To conduct security and emergency planning drills and exercises as necessary to comply with NRC Regulations; provided however, that Landlord will utilize commercially reasonable efforts to provide prior Notice to Tenant promptly following scheduling of such drills or exercises;

(d) Upon not less than forty-eight (48) hours' prior Notice, for the purposes of complying with any NRC Regulations or with any Laws related to the Property, except, in either event, in the case of an emergency where Notice shall be provided as soon as reasonably practicable;

(e) Upon not less than forty-eight (48) hours' prior Notice, to confirm that activities and operations at the NJWP are not inconsistent with the terms of this Lease such that there would be a violation of the NRC Regulations or any licenses issued by the NRC for the Nuclear Power Plant;

(f) Upon not less than forty-eight (48) hours' prior Notice, to determine compliance by Tenant with the terms of this Lease for reasons other than as provided in Section 11.3(e), provided such access shall be limited to up to four (4) times in any rolling twelve (12) month period, unless Landlord has cause to believe that Tenant is in breach of the terms of this Lease, in which case such limitation shall not apply;

(g) Upon not less than forty-eight (48) hours' prior Notice, for the purposes of repair and maintenance of any portion of the Property for which Landlord may be responsible or elects to undertake pursuant to the terms of this Lease, or to access or install any Remaining Nuclear Equipment located or to be located within the Leased Premises; except, in either event, in the case of an emergency where Notice shall be provided as soon as reasonably practicable;

(h) Upon not less than three (3) days' prior Notice, to show the Leased Premises to prospective purchasers and lenders; and, upon not less than forty-eight (48) hours' prior notice during the last twelve (12) months of the Term (or earlier if Tenant has notified Landlord in writing that it does not desire to extend the Term), to show the Leased Premises to prospective tenants; and

(i) Upon Tenant's valid exercise of a right to terminate this Lease as to a Parcel or a portion of the Leased Premises, as herein specifically set forth, and

upon not less than forty-eight (48) hours' prior Notice, for access to and from such real property as reasonably determined by the Parties acting in Good Faith.

Notwithstanding anything herein to the contrary, in exercising the foregoing rights of entry under this Section 11.3, Landlord shall and shall have its authorized representatives use commercially reasonable efforts to minimize interference with the use and operation of the Leased Premises as permitted under the terms of this Lease.

11.4 Landlord's Right of Entry to CDF on CDF Parcel. Prior to the CDF Period Commencement Date, Landlord and PSEG Nuclear shall each have the unfettered right to access Parcel C. Following the occurrence of the CDF Period Commencement Date, Landlord and PSEG Nuclear shall have the right of access, for each of them and their respective authorized representatives, to the CDF Parcel, without charges or fees:

(a) at all reasonable times during the CDF Period, to the extent set forth in Sections 11.3(a) to (i); and

(b) at all reasonable times during the period commencing on the CDF Period Commencement Date and ending on the earlier of (i) the date on which a CDF on Parcel E is operational; or (ii) the date on which the Parties agree a mutually acceptable alternative arrangement for placement of Landlord's and PSEG Nuclear's desilting materials, for the sole purpose of utilizing the CDF or carrying out routine maintenance on the CDF.

ARTICLE XII – REPAIRS AND MAINTENANCE

12.1 Tenant's Obligation. Except as may otherwise be expressly set forth herein or in the Easement Agreements, Tenant shall promptly make, or cause to be made, all necessary maintenance, repairs, changes and replacements, foreseen and unforeseen, ordinary and extraordinary, to the Leased Premises and Improvements in order to maintain the Leased Premises and Improvements in good working order and repair in accordance and in compliance with all Laws. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Leased Premises or Improvements, unless expressly set forth herein.

12.2 Landlord's Obligation. Landlord shall at all times maintain any improvements or facilities constructed by Landlord exclusively for the benefit of Landlord and its Affiliates within the Leased Premises, including any Remaining Nuclear Equipment, in accordance with good industry practices.

ARTICLE XIII – USE

13.1 Permitted Uses.

(a) Subject to Permitted Exceptions, NRC Regulations and the terms and conditions of this Lease, including, but not limited to Section 35.10, Tenant shall have the right at all times to use the Leased Premises and Improvements for the purpose of (i) developing, constructing and operating a Port; (ii) carrying on

all usual, customary and reasonable uses and activities associated with the development, construction and operation of a Port, including, but not limited to, manufacturing, marshaling, staging , transportation activities within a Port and to other markets, testing and/or other ancillary services in connection with a Port; (iii) carrying on other customary port operations and ancillary activities and services that support operation of a Port; and (v) providing the educational programs required pursuant to Section13.2, all in accordance with the Approved Plans for the respective Parcels and any 50.59 Review carried out with respect to a Parcel (collectively, the "Permitted Use"); provided however, that in no event shall the following be permitted on the Leased Premises (collectively, "Prohibited Uses"): (a) a nuclear power plant, or residential, healthcare or childcare uses, (b) any change in manufacturing, testing, operating and maintenance activities that deviate from the Approved Plans for such Parcel, which, in Landlord's reasonable judgment, warrants the need for a 50.59 Review; (c) any activity involving materials set forth in Schedule F (Critical Chemicals and Substances Thresholds) in excess of those set forth in such Schedule; or (d) any unlawful purpose. Any changes described in (b) in the prior sentence and any deviations from Schedule F (Critical Chemicals and Substances Thresholds) shall be evaluated by Landlord, upon one hundred eighty (180) days' prior Notice from Tenant, at Tenant's expense. The analytical method to be used for such evaluations shall be as determined by the NRC Regulations. Notwithstanding the foregoing, following PSEG Nuclear's certification to the NRC pursuant to 10 CFR 50.82(a)(1)(ii) that the last operating unit at the Nuclear Power Plant has been permanently defueled, Landlord and Tenant agree to negotiate in Good Faith to amend the Prohibited Uses, particularly in relation to the need for a 50.59 Review and the Critical Thresholds, in light of the changed circumstances at the Nuclear Power Plant resulting from such permanent defueling.

(b) The Leased Premises shall not be used by Tenant for any use or purpose other than a Permitted Use without Landlord's prior written approval, which may be withheld in Landlord's reasonable discretion, and shall in any event be subject to Prohibited Uses. Notice of any requested use by Tenant pursuant to this Section 10.3(b) shall be provided to Landlord at least 180 days prior to such anticipated use.

(c) Except as herein specifically set forth, and subject to the Permitted Exceptions, Tenant shall have exclusive control, possession, occupancy, use, and management of the Leased Premises. Provided, and subject to Law, Prohibited Uses and Permitted Exceptions, Tenant and Subtenants shall have the exclusive right to install signage on or at the Leased Premises, and, subject to the terms of the Easement Agreements, the right to install professionally made signage within the easements located on Schedule D (Access Easements). Tenant may enter into, terminate or modify any contract for the management or operation of the Leased Premises or provision of services to the Leased Premises.

(d) No use shall be made or permitted to be made of the Leased Premises or the Improvements, that will cause a cancellation of any Applicable

Insurance Policy. Tenant shall, at its sole cost, comply with all requirements of any insurance organization or company necessary for the maintenance of the Applicable Insurance Policies, as herein provided.

(e) The Parties shall cooperate in Good Faith to put in place the necessary protocols and procedures required to comply with the results of any 50.59 Review. The Parties agree to act in Good Faith to minimize any adverse impacts to the NJWP in connection with structuring and implementing such protocols and procedures

13.2 Training. In order to comply with NRC training requirements and American Nuclear Insurer's (or successor nuclear insurer's) training requirements, including course training involving nuclear radiation and nuclear emergency response and access controls requirements and safety practices, Landlord (or its Affiliate) shall provide mandatory on-going, regular and periodic training of any person regularly present within the Property without a Landlord representative being present, including Tenant, any Tenant Party, Subtenants, contractors, subcontractors, operators and employees of the NJWP. In lieu of in-person training by Landlord (or its Affiliate), Landlord may provide Tenant with a computer-based training program, which shall be administered by Tenant. In such event, Tenant shall maintain records of such training sessions, including the names of attendees, date of training and course name, and shall provide such records promptly to Landlord upon Landlord's request. As of the Effective Date, the training programs needed to comply with Nuclear Regulatory Commission and American Nuclear Insurer (or successor nuclear insurer) training requirements (either in-person or via computer) are provided on Schedule K (Training Programs). Landlord (or its Affiliate), at its sole discretion, shall determine the content of any training program that would customarily be required by the Nuclear Regulatory Commission or American Nuclear Insurer (or successor nuclear insurer); shall prepare any materials related thereto; and for in-person training only, shall provide staff to conduct such training, all at Tenant's sole cost and expense. Landlord shall use commercially reasonable efforts to minimize (i) the costs and expenses associated with any training programs, and (ii) such program's interference with Tenant's use and normal operation of the Leased Premises.

13.3 PSEG Guidelines. Tenant shall comply with Schedule M (PSEG Guidelines) during the Term.

ARTICLE XIV – DEVELOPMENT OF PROJECT AND OTHER IMPROVEMENTS

14.1 Conceptual Development Plan/Design Plans.

14.1.1 Conceptual Development Plan. Landlord and Tenant have cooperated on the completion of the Conceptual Development Plan attached hereto as Exhibit N (Conceptual Development Plan). Tenant's design and Construction of the NJWP shall be reviewed and agreed to by the Parties in accordance with Sections 14.1.2 and 14.6.

14.1.2 Design Plans. (a) During Tenant's design process for each Parcel, Tenant shall submit to Landlord proposed detailed specifications, working drawings (including proposed construction methods) and, to the extent known, information on anticipated

manufacturing, testing, operating and maintenance activities to be performed in connection with each Parcel for each of the following major design milestones:

(i) completion of 30% of the design development with respect to each Parcel;

(ii) completion of 60% of the design development with respect to each Parcel;

(iii) completion of 90% of the design development with respect to each Parcel; and

(iv) completion of 100% of the design development with respect to each Parcel

(each such submission shall be referred to as an "Iterative Submission"). Landlord shall have a period of thirty (30) Business Days (or fifteen (15) Business Days with respect to the 100% Iterative Submission) following the later of (i) receipt of an Iterative Submission; and (ii) Tenant's approval of its purchase order for Landlord's review of such Iterative Submission to review and approve or disapprove in writing such Iterative Submission, with any such disapproval to state in reasonable detail the reasons for such disapproval; provided, however, (x) with respect to any 30%, 60% and 90% Iterative Submission, Landlord shall endeavor to Notify Tenant of any material aspect that Landlord anticipates may require a modification to any such Iterative Submission as soon as practicable, provided that Landlord's final comments may be reserved until the end of the foregoing thirty (30) or fifteen (15) Business Day period, as applicable; and (y) if, and so long as Landlord is diligently reviewing such Iterative Submission and is unable to complete its review within the foregoing period of time, Landlord's review period shall be extended, in consultation with Tenant, as reasonably required for Landlord to complete its review of the Iterative Submission. Failure to respond in a timely manner, absent a Force Majeure or Tenant Delay, shall constitute a Landlord Delay. To the extent that Tenant:

(i) does not include information regarding anticipated manufacturing, testing, operating and maintenance activities in Iterative Submissions; or

(ii) requires a design modification following the 100% Iterative Submission,

Tenant shall submit a supplement submission to such submissions with such information or modification (as applicable) once available (a "Subsequent Submission"). Landlord shall have a period of thirty (30) Business Days following receipt of a Subsequent Submission to review and approve or disapprove in writing such submission, with any such disapproval to state in reasonable detail the reasons for such disapproval, and if, and so long as Landlord is diligently reviewing such Subsequent Submission and is unable to complete its review within the foregoing thirty (30) Business Day period, Landlord's review period shall be extended, in consultation with Tenant, as reasonably required for Landlord to complete its review of the Subsequent Submission. Each Subsequent Submission shall be considered an "Iterative Submission" for the purposes of the remainder of this Article XIV.

(b) Notwithstanding anything in this Lease to the contrary, Landlord's rights to review and approve or disapprove an Iterative Submission shall be limited to aspects of an Iterative Submission that (i) would trigger the need for a 50.59 Review; (ii) involve materials anticipated to be used at the NJWP that exceed the Critical Thresholds; (iii) may reasonably be

expected to cause a significant adverse effect on the operations and/or maintenance of the Nuclear Power Plant; or (iv) would otherwise significantly adversely impact the Nuclear Power Plant, the Relocated Nuclear Plant Facilities, or the PSEG-Retained Land, in each case under items (i) through (iv) of this subsection (b) as determined in Landlord's reasonable discretion ("Landlord's Review Parameters"). Notwithstanding the foregoing, following PSEG Nuclear's certification to the NRC pursuant to 10 CFR 50.82(a)(1)(ii) that the last operating unit at the Nuclear Power Plant has been permanently defueled, Landlord and Tenant agree to negotiate in Good Faith to amend the Landlord Review Parameters, particularly in relation to the need for a 50.59 Review and the Critical Thresholds, in light of the changed circumstances at the Nuclear Power Plant resulting from such permanent defueling.

(c) If Landlord disapproves of an Iterative Submission within the scope permitted hereunder, Landlord's Notice of disapproval shall be accompanied by a written detailed description of any changes necessary to satisfy Landlord's concerns, and Tenant shall modify and return such Iterative Submission to Landlord for review within twenty (20) Business Days after Tenant's receipt of Landlord's request; provided, however, if Tenant is diligently modifying such Iterative Submission and is unable to complete its modification within the foregoing period of time, Tenant's modification period shall be extended as reasonably required for Tenant to complete its modification of the Iterative Submission. This process shall continue until an Iterative Submission is approved in writing by both Parties; provided, however, that the period which Landlord has to review a modified Iterative Submission that Landlord previously disapproved and the period which Tenant has to make subsequent modifications to an Iterative Submission that Tenant has previously modified and provided to Landlord shall be limited to twenty (20) Business Days in both instances. The approved 100% Iterative Submission (as updated by any approved Subsequent Submission) for each Parcel shall be referred to as the "Approved Plans" for such Parcel and shall be submitted for the Approvals for each such Parcel.

(d) If, in Landlord's review of an Iterative Submission, Landlord determines and provides Notice to Tenant in writing that an aspect of a previously approved Iterative Submission requires a modification in order to comply with the components of Landlord's Review Parameters solely as a result of new information provided by Tenant or a change in such subsequent Iterative Submission, which in each case was not known by Landlord at the time it approved the previous Iterative Submission, then Tenant shall make such modification (a "Retrofit Modification").

(e) In no event shall Tenant's compliance with and/or effectuation of any changes or modifications requested by Landlord in connection with Landlord's review of an Iterative Submission pursuant to Section 14.1 constitute a Tenant Default.

(f) Except with respect to the Relocated Nuclear Plant Facilities, Landlord has no obligation to design or otherwise provide engineering services for any aspect of the NJWP.

(g) Tenant agrees to schedule and participate in monthly meetings with Landlord during the Tenant's design process and also during the Construction Period with respect to each Parcel, and the Parties shall cooperate in Good Faith to keep each other apprised of the status of Landlord's Work and Tenant's Work and development of the Project. The agenda for such meetings shall, at a minimum, cover the following topics: (i) safety report related to any

accidents involving personal injury or damage to property during Construction (ii) Iterative Submissions and Retrofit Modifications (if applicable), as they relate to the Landlord Review Parameters; (iii) Critical Thresholds; (iv) proposed NJWP activities; (v) status of Approvals; (vi) status of environmental and engineering activities related to the general progress of design and Construction; (vii) status of Construction Schedule (Schedule L) and Permitting Matrix (Schedule G); and (viii) updates related to the relocation of Relocated Nuclear Plant Facilities and related Demolition described in Section 14.4(a).

14.1.3 50.59 Review. After Landlord's receipt from Tenant of the 60% Iterative Submission(s) for a Parcel, Landlord shall complete a 50.59 Review for such Parcel (other than Parcel A, for which a 50.59 Review has been completed as of the Effective Date), to determine whether prior NRC approval is required to make design changes to the Property resulting from Tenant's development of the NJWP as contemplated herein and/or the performance of the Parties' obligations under this Lease. Landlord shall revise the 50.59 Review on or before the date that is six (6) weeks following Landlord's receipt of the 100% Iterative Submission(s) for a Parcel in order to reflect the 100% Iterative Submission.

If any 50.59 Review concludes that a Nuclear Facility License Amendment is required, Landlord shall promptly (and in any event within three (3) Business Days of such determination) provide Tenant with Notice thereof. Within ten (10) days of Landlord's delivery of such Notice to Tenant, Tenant and Landlord will meet to determine if the Tenant design should be revised or if a Nuclear Facility License Amendment request should be prepared. This decision should consider cost, complexity, uncertainty, regulatory implications, and potential schedule impact of making such request. Tenant shall by Notice to Landlord: (i) request to have Landlord proceed with preparing a Nuclear Facility License Amendment; or (ii) modify such Iterative Submission(s) so that no Nuclear Facility License Amendment shall be required, and Tenant shall reimburse Landlord on demand, as Additional Rent hereunder, any costs associated with such request by Tenant. If Tenant requests to have Landlord proceed with preparing a Nuclear Facility License Amendment, the final decision to pursue a Nuclear Facility License Amendment shall be solely at Landlord's discretion.

14.2 Permitting for Construction of the NJWP. In connection with the Construction of the NJWP in accordance with the Approved Plans, Landlord and Tenant agree as follows:

14.2.1 Landlord Responsibility for Permits Landlord shall use commercially reasonable efforts to seek and obtain the Approvals identified in Schedule G (Permitting Matrix) to be obtained by Landlord for each Parcel by the Planned Commencement Date for such Parcel. Tenant and the Tenant Regulatory Lead shall cooperate with Landlord in connection with obtaining the Approvals Landlord is responsible for to the extent required by Schedule G (Permitting Matrix), which schedule sets forth the level of responsibility and participation of each Party in obtaining Approvals. With respect to any conditions related to Approvals that are to be obtained by Landlord, the Parties shall consult in Good Faith to determine (i) the Party that is best positioned to satisfy such conditions; and (ii) the approach for completing such conditions. Tenant shall be responsible for all costs and expenses incurred by either Party in satisfying any conditions of such Approvals. Landlord shall invoice Tenant on a monthly basis for all costs incurred in connection with seeking and obtaining such Approvals and provide Tenant with copies of the invoices received from contractors assisting with such activities, itemized internal costs, and

invoices for other related fees and costs to be reimbursed. Tenant shall pay such invoiced amounts within thirty (30) days after receipt of the applicable invoice and supporting documentation as contemplated in the prior sentence. Landlord makes no representations or warranty as to its ability to obtain such Approvals.

14.2.2 Tenant Responsibility for Permits. Tenant shall apply for and shall thereafter use commercially reasonable efforts to proceed with due diligence to obtain all other Approvals for a Parcel not being obtained by Landlord as set forth in Schedule G (Permitting Matrix) by the Planned Commencement Date for such Parcel. Tenant makes no representations or warranty as to its ability to obtain such Approvals. Landlord shall cooperate with Tenant and the Tenant Regulatory Lead in connection with obtaining the Approvals Tenant is responsible for to the extent required by Schedule G (Permitting Matrix), at Tenant's sole cost and expense. If, pursuant to Schedule G (Permitting Matrix), Tenant must consult with Landlord prior to submission of any applications for Approvals that Tenant is responsible to obtain, Tenant shall submit same to Landlord for its review and comment at least twenty (20) days prior to Tenant's submission of any such applications. To the extent Landlord has review rights, Landlord shall provide detailed comments to such applications within ten (10) days (or such longer period as agreed to by the Parties) after its receipt thereof from Tenant, failure of which shall be deemed a Landlord Delay hereunder; provided, however, that the final decision-making authority regarding Approvals to be obtained by Tenant shall rest with Tenant to the extent set forth in Schedule G (Permitting Matrix). Tenant shall keep Landlord informed of the status of Approvals that are Tenant's responsibility to obtain, to the extent required by Schedule G (Permitting Matrix).

14.2.4 Copies of Approvals. Landlord and Tenant shall promptly deliver to the other true and complete copies of all Approvals obtained by such Party.

14.2.5 Modifications to Approved Plans due to Approvals. The Parties acknowledge that a Governmental Entity may require modifications to the Approved Plans for a Parcel in order for such Governmental Entity to grant an Approval. Tenant shall make all such required modifications to the Approved Plans for a Parcel and provide copies of the Approved Plans, as modified, to Landlord prior to submission to the Governmental Entity. While Landlord shall have the same opportunity to review and approve such modified Approved Plans as set forth in Section 14.1 above regarding Iterative Submissions, Landlord shall use commercially reasonable efforts to expedite its review to enable Tenant to meet any time periods imposed by the Governmental Entity requesting such modifications.

14.2.6 Introductions. Landlord shall provide initial introductions to Tenant with the counterparties to easements impacting the development and operation of the NJWP and the Parcels as reasonably requested by Tenant at no cost to Landlord.

14.2.7 Limited Liability. Except as specifically set forth in this Article XIV, Landlord and its Affiliates shall have no liability to Tenant for claims of any kind, whether based upon contract, tort (including negligence), warranty, strict liability, or otherwise, for any losses, damages, costs, or expenses of any kind whatsoever arising out of, relating to, resulting from, or in connection with the performance or breach by Landlord or its Affiliates of this Article XIV. All cooperation or other activities performed by Landlord or its Affiliates hereunder are done on an

"as is where is" basis without representation or warranty of any kind (including any implied warranties). This Section 14.2.7 shall survive termination or expiration of this Lease.

14.3 Development of the NJWP.

14.3.1 Tenant's Work. Except for Demolition of the Relocated Nuclear Plant Facilities ("Landlord's Work"), Tenant shall undertake the Construction of the NJWP with respect to each Parcel ("Tenant's Work") at Tenant's sole and exclusive risk and cost in accordance with the Approved Plans and the Approvals. Tenant shall not commence Construction of Tenant's Work on a Parcel prior to the Commencement Date for such Parcel, and Tenant shall provide Landlord with at least thirty (30) days' prior Notice of such commencement of Construction. Tenant agrees that all Tenant's Work will be undertaken in a good and workmanlike manner and in compliance with all applicable Laws, Permitted Exceptions, Approvals, the Approved Plans and the requirements of any Applicable Insurance Policy. Tenant shall complete Tenant's Work with reasonable diligence and shall pay for all Construction labor, supplies and materials when and as required. Upon completion of Tenant's Work, Tenant, at Tenant's expense, shall obtain certificates of final approval of such work required by any Governmental Entity (i.e. a Certificate of Occupancy) and shall furnish Landlord with copies of all such certificates obtained, together with "as-built" plans and specifications for completed aspects of Tenant's Work to the extent "as-built" plans are in existence for any such completed aspect of Tenant's Work. Tenant shall give Landlord at least fifteen (15) days' prior Notice of the actual Construction Completion Date for each Parcel; provided, however, that Tenant's obligation to pay the Base Rent to Landlord commences as provided in Section 4.3.

14.3.2 Project Directors. Each Party shall appoint a project director to have responsibility for the day-to-day implementation of Tenant's Work and, if applicable, demolition of the Relocated Nuclear Plant Facilities. Initially, the project director for Tenant shall be Dennis Feeney; and the project director for Landlord shall be _____________. Each Party shall have the right to remove and replace its project director at its sole discretion, but until receipt of Notice of such election by the other Party, the other Party may continue to rely on the direction given and actions taken by the previously-named project director.

14.4 Relocation of Relocated Nuclear Plant Facilities.

14.4.1 Landlord shall, or shall cause PSEG Nuclear to, design replacement facilities for each of the Relocated Nuclear Plant Facilities, obtain all Approvals necessary for the same, construct such replacement facilities within the PSEG-Retained Lands and Demolish each of the Relocated Nuclear Plant Facilities (the "Relocation Work") in accordance with the construction schedule attached hereto as Schedule L (Construction Schedule), all subject to reimbursement from Tenant as hereafter set forth. Landlord shall provide Tenant with updates at the monthly meetings on the status of meeting the milestones delineated on Schedule L (Construction Schedule), including, but not limited to (i) obtaining the necessary Approvals, (ii) the design work, (iii) the construction work to be undertaken by Landlord or its Affiliate in connection with constructing such replacement facilities, (iv) anticipated Demolition of the Relocated Nuclear Plant Facilities, and (v) the budget for all of the foregoing. Failure of Landlord to complete the Demolition in accordance with Schedule L (Construction Schedule), subject to Force Majeure and any Tenant Delays, shall constitute a Landlord Delay, and Tenant shall have

the right to meet with Landlord to discuss Landlord's plan to remedy such failure and meet the ensuing milestones. In lieu of a Landlord Delay and upon receiving Landlord's consent (in Landlord's sole judgment), Tenant may elect to perform such Demolition pursuant to standards and methods approved by Landlord, provided and conditioned upon the completion of construction of replacements for such Relocated Nuclear Plant Facility within the PSEG-Retained Land.

14.4.2 For each Relocated Nuclear Plant Facility, Tenant shall pay to PSEG or Landlord the cost to restore the functionality of such facility without any enhancement or betterment (other than as may be required by Law, and, in the case of the fire department annex associated with the Combo Shop, includes the cost of installation of a concrete pad under such facilities) plus the costs associated with Demolition, future feasibility studies (conducted up to completion of such relocation and demolition), design, engineering, project management, surveying and permitting related to such relocation and Demolition ("Relocation Reimbursements") in accordance with this Section 14.4.2, as applicable.

(a) Prior to the Parties agreeing on the Relocated Nuclear Plant Facility Cap in accordance with Section 14.4.3, Landlord shall submit to Tenant for approval purchase orders for external and itemized internal costs incurred pursuant to Section 14.4.1 in accordance with this Section 14.4.314.4.2.

(i) With respect to submission of a purchase order relating to a works package that is reasonably anticipated to cost less than $300,000, Landlord shall provide to Tenant the following in addition to the purchase order:

(A) the scope and schedule of the work to be covered by such purchase order;

(B) an amount which caps the costs to be incurred under such purchase order; and

(C) reasonable evidence demonstrating why the vendor was selected and how such vendor provides value as compared to other possible vendors ((A)-(C), collectively, the "Standard PO Requirements").

Within fifteen (15) Business Days of Tenant's receipt of the purchase order and Standard PO Requirements, Tenant shall review, and, in its reasonable discretion, approve and sign or disapprove the purchase order; provided that Tenant's failure to respond in such fifteen (15) Business Day period shall not be deemed Tenant's approval of such purchase order, and so long as Tenant is diligently reviewing such purchase order and is unable to complete its review within the foregoing period of time, Tenant's review period shall be extended, in consultation with Landlord, as reasonably required for Tenant to complete its review of the purchase order. Failure to respond in a timely manner, absent a Force Majeure or Landlord Delay, shall constitute a Tenant Delay.

(ii) With respect to submission of a purchase order relating to a works package that is reasonably anticipated to cost more than $300,000 but less than $1,000,000 (a "Medium Sized PO Package"), Landlord shall inform Tenant of the scope and

schedule of such works package and Tenant shall determine, in its sole discretion, if it shall require Landlord to:

(A) solicit bids from at least three (3) qualified and reputable service providers for the Medium Sized PO Package; and

(B) provide Tenant with copies of the Relocation Procurement Documents to be issued in connection with such Medium Sized PO Package for Tenant's approval (which, if required, shall be reviewed by Tenant in accordance with Section 14.4.2(a)(iv) below).

Upon Landlord obtaining a purchase order covering a Medium Sized PO Package after satisfying the requirements in (A) and (B) directly above (as applicable), Landlord shall provide to Tenant the purchase order accompanied by the Standard PO Requirements. Within fifteen (15) Business Days of Tenant's receipt of the purchase order and Standard PO Requirements, Tenant shall review, and, in its reasonable discretion, approve and sign or disapprove the purchase order; provided that Tenant's failure to respond in such fifteen (15) Business Day period shall not be deemed Tenant's approval of such purchase order, and so long as Tenant is diligently reviewing such purchase order and is unable to complete its review within the foregoing period of time, Tenant’s review period shall be extended, in consultation with Landlord, as reasonably required for Tenant to complete its review of the purchase order. Failure to respond in a timely manner, absent a Force Majeure or Landlord Delay, shall constitute a Tenant Delay.

(iii) With respect to submission of a purchase order relating to a works package that is reasonably anticipated to cost more than $1,000,000 (a "Large Sized PO Package"):

(A) subject to (B) below, Landlord shall solicit bids from at least three (3) qualified and reputable service providers for the Large Sized PO Package and provide Tenant with copies of the Relocation Procurement Documents to be issued in connection with such Large Sized PO Package for Tenant's approval (which shall be reviewed by Tenant in accordance with Section 14.4.2(a)(iv) below); or

(B) if such Large Sized PO Package is for professional services (including for field implementation, planning, scheduling and engineering) and Landlord proposes using a vendor that it or its Affiliate has already pre-qualified through a competitive process, Tenant may, in its sole discretion, approve the use of such vendor and not require Landlord to run a procurement for such Large Sized PO Package.

Upon Landlord obtaining a purchase order covering a Large Sized PO Package after satisfying the requirements in (A) and (B) directly above, as applicable, Landlord shall provide to Tenant the purchase order accompanied by the Standard PO Requirements. Within fifteen (15) Business Days of Tenant's receipt of the purchase order and Standard PO Requirements, Tenant shall review, and, in its reasonable discretion, approve and sign or disapprove the purchase order; provided that Tenant's failure to respond in such fifteen (15) Business Day period shall not be deemed Tenant's approval of such purchase order, and so long as Tenant is diligently reviewing such purchase order and is unable to complete its review within the foregoing period of time, Tenant’s review period shall be extended,

in consultation with Landlord, as reasonably required for Tenant to complete its review of the purchase order. Failure to respond in a timely manner, absent a Force Majeure or Landlord Delay, shall constitute a Tenant Delay.

(iv) With respect to any Relocation Procurement Documents required to be submitted to Tenant pursuant to this Section 14.4.2(a), Tenant shall have the input contemplated in this Section 14.4.2(a)(iv).

(A) Prior to commencing a procurement for a Medium Sized PO Package or Large Sized PO Package (as applicable), Landlord shall prepare Relocation Procurement Documents, and Landlord shall provide the same to Tenant.

(B) Tenant shall have a period of fifteen (15) Business Days following receipt of such Relocation Procurement Documents (or longer, as agreed to by the Parties) to review and approve such Relocation Procurement Documents, which approval shall not be unreasonably withheld, provided, however that Tenant's review and approval right is limited to determining whether or not the relocation or installation of nuclear plant facilities restore the functionality of such facility without any enhancement or betterment. Tenant's failure to respond in such fifteen (15) Business Day period (or longer, as agreed to by the Parties) shall not be deemed Tenant's approval of such Relocation Procurement Documents. If Tenant does not approve such Relocation Procurement Documents, representatives of Tenant and Landlord shall meet promptly to undertake Good Faith negotiations to agree on such Relocation Procurement Documents.

(b) With respect to any Relocation Reimbursements owed to Landlord pursuant to an approved PO, Landlord shall invoice Tenant monthly as the foregoing relocation work progresses (including providing Tenant with copies of the invoices received from Landlord's relevant contractors and service providers). Tenant shall pay to Landlord such invoiced amounts, subject to the cap included with the Standard PO Requirements, within thirty (30) days after receipt of the applicable invoice and supporting documentation as contemplated in the prior sentence as Additional Rent hereunder.

(c) After the Parties agree on the Relocated Nuclear Plant Facility Cap in accordance with Section 14.4.3, Landlord shall invoice Tenant monthly as the foregoing relocation work progresses (including providing Tenant with copies of the invoices received from Landlord's relevant contractors and service providers). Tenant shall pay to Landlord such invoiced amounts, subject to the Relocated Nuclear Plant Facility Cap, within thirty (30) days after receipt of the applicable invoice and supporting documentation as contemplated in the prior sentence. All costs incurred by Landlord after the Parties agree on the Relocated Nuclear Plant Facility Cap that exceed the Relocated Nuclear Plant Facility Cap shall be reviewed by Tenant on an individual basis (with Landlord providing Tenant with any information that Tenant reasonably requests in relation to such costs), and Tenant shall only be obligated to reimburse Landlord for such additional costs to the extent that such costs are the result of a Force Majeure or Tenant Delay.

(d) If there is a dispute regarding whether a cost has been incurred or the amount thereof in connection with a Relocated Nuclear Plant Facility, Tenant and Landlord shall attempt to resolve such dispute, in Good Faith, but if such dispute cannot be resolved within thirty (30) days following Landlord's submission of an invoice for such work to Tenant, Tenant and Landlord shall submit such dispute to Non-Binding Mediation under Section 34.12 and such dispute shall be resolved in accordance with Section 34.12.

14.4.3 Once the Parties agree that Landlord has reached a sufficient degree of certainty with respect to the design and plan for the remaining Relocation Work that has not been accounted for by a purchase order (the "Remaining Relocation Work"), the Parties shall cooperate in Good Faith to set the Relocated Nuclear Plant Facility Cap for the Remaining Relocation Work in accordance with this Section 14.4.3.

(a) For each component of the Remaining Relocation Work, the Parties shall undergo the same process (based on anticipated cost of each component) as is required in connection with purchase orders under Section 14.4.2(a)(i) through Section 14.4.2(a)(iv), including Landlord providing the same materials (excluding the purchase orders) and Tenant having the same review and discretion rights (including the ability to require solicitations and review Relocation Procurement Documents), except that rather than approving a purchase order, Tenant will approve an individual cost cap for each component.

(b) After Tenant has approved an individual cost cap for all components pursuant to Section 14.4.3(a), Landlord shall provide to Tenant a proposed amount which caps the aggregate costs to be incurred by Landlord in connection with the Remaining Work and includes identifiable and reasonable contingencies for each component (the "Proposed Cap").

(c) Within thirty (30) Business Days of Tenant's receipt of the Landlord's Proposed Cap, Tenant shall review, and, in its reasonable discretion, approve or disapprove the Proposed Cap; provided that Tenant's failure to respond in such thirty (30) Business Day period shall not be deemed Tenant's approval of such Proposed Cap. If Tenant does not approve such Proposed Cap, representatives of Tenant and Landlord shall meet promptly to undertake Good Faith negotiations to agree on such Proposed Cap. The Proposed Cap approved by Tenant shall be the "Relocated Nuclear Plant Facility Cap".

14.5 Intentionally Omitted.

14.6 Alterations; Major Construction.

14.6.1 Tenant agrees that all alterations, additions, changes or improvements performed by Tenant at the Leased Premises with respect to a Parcel after the Construction Completion Date of such Parcel ("Alterations") will: (a) be undertaken in a good and workmanlike manner and in compliance with all applicable Laws, Permitted Exceptions, Approvals, the Approved Plans and the requirements of any Applicable Insurance Policy; and (b) be undertaken

only after all required Approvals required for the relevant stage of Construction have been obtained by Tenant, at its own cost and expense, and copies thereof have been delivered to Landlord.

14.6.2 This Section 14.6.2 shall only apply to a Parcel after such Parcel has reached its Construction Completion Date. Before Tenant starts any Major Construction on such completed Parcel, Tenant shall provide, for Landlord's review and approval, detailed plans and specifications (including layout, architectural, mechanical and structural drawings) of any proposed Major Construction in connection therewith using the same iterative review process and response times provided in Section 14.1.2. Such Landlord's consent shall not be unreasonably withheld and shall be limited to Landlord's Review Parameters. The reasonable cost and expense of Landlord's review of such plans and specifications shall be paid by Tenant to Landlord within thirty (30) days after demand, as Additional Rent. Tenant shall require payment and performance bonds from any Tenant Contractor performing Major Construction and Tenant shall provide Landlord with copies of all such payment and performance bonds that Tenant receives. To the extent that Tenant commences any Major Construction, Tenant shall complete such Major Construction with reasonable diligence and shall pay for all Construction, labor, supplies and materials when and as required pursuant to the related Tenant Contractor contracts. All Improvements that Tenant constructs on the Parcels shall become part of the Leased Premises. For the avoidance of doubt, Landlord and Tenant acknowledge and agree that this Section 14.6 shall not be in derogation of any use rights afforded Tenant hereunder, including pursuant to Section 13.1 hereof.

14.6.3 Upon completion of any Major Construction, Tenant, at Tenant's expense, shall obtain certificates of final approval of such work required by any Government Entity (i.e. a Certificate of Occupancy) and shall furnish Landlord with copies thereof, together with "as-built" plans and specifications for such work.

14.6.4 Tenant's Work and any Major Construction shall be subject to inspection at in accordance with Article XI.

14.6.5 Tenant shall not make any Alterations or perform Tenant's Work or any other work to or on the Leased Premises unless prior to the commencement of such work Tenant has obtained the relevant insurances required pursuant to Article XV.

14.7 Landlord's Joinder in Applications. Landlord agrees, with reasonable promptness after receipt of Notice therefore from Tenant, to execute, acknowledge and deliver any documents necessary to be signed by Landlord so that Tenant may obtain Approvals and easements or rights-of-way for utilities or similar facilities over and across the Leased Premises, which may be useful or necessary in the proper economic and orderly development of the Improvements; provided that to the extent any of the foregoing have not otherwise been approved as part of the iterative review process otherwise provided in this Article XIV, such document does not have a material adverse effect on the Nuclear Power Plant or the PSEG-Retained Land, or materially increase Landlord's obligations under this Lease, and that same shall be in form and content otherwise acceptable to Landlord.

14.8 Landlord Cooperation and Non-Opposition. Landlord shall reasonably cooperate, at no cost to Landlord, with Tenant's application for Approvals consistent with this

Lease. Such cooperation, however, shall not be construed as Landlord acting as or operating as an agent, partner, employee or contractor for Tenant. Landlord's status shall be that of an independent property owner, and neither Tenant nor any Tenant Party shall, for any reason or purpose, hold themselves out as or be deemed to be a subcontractor, agent, partner, or employee of Landlord or PSEG, or any Affiliate of either, and this Lease shall not create any joint venture or partnership relationship between Landlord and PSEG, or any of their respective Affiliates, on one side, and Tenant on the other.

14.9 No Liens.

14.9.1 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Leased Premises or any part thereof, Tenant shall, subject to Section 14.9.3, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, the same shall constitute a Tenant Event of Default, notwithstanding Landlord's election to cure. In addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at a rate equal to three hundred basis points above the Prime Rate per annum for the respective dates of Landlord's making of the payment or incurring of the reasonable cost and expense shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

14.9.2 Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of such services or the furnishing of any materials that would give rise to the filing of any lien against the Leased Premises or any part thereof.

14.9.3 Tenant shall not be responsible for discharging any mechanic's, laborer's, materialman's or other lien or encumbrance filed against the Leased Premises or any part thereof to the extent that such lien results from any act or omission of Landlord or any of its Affiliates, unless such lien relates to labor or materials that have been contracted for by Landlord or its Affiliate at the request of or for the benefit of Tenant.

14.10 Landlord Delay.

Any Landlord Delays specified in this Article XIV shall result in a day-for-day abatement of Base Rent, which abatement shall commence on the date immediately following the Construction Completion Date, but shall not constitute a Landlord Default hereunder.

ARTICLE XV – INSURANCE/INDEMNIFICATION

15.1 Tenant to Insure.

15.1.1 Tenant shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent) with carriers acceptable to Landlord:

(a) Commercial General Liability insurance (occurrence-based form) providing coverage against claims for bodily injury, contractual liability, personal injury, death, or property damage occurring upon, in, or about the Leased Premises or as required under the Easement Agreements, providing coverage of $1,000,000 for any one occurrence and $2,000,000 in the aggregate, or such commercially reasonable amounts and coverage as Landlord shall require;

(b) Workers' Compensation Insurance with statutory limits, as required by the State, and employer's liability insurance with limits of not less than $1,000,000 per occurrence;

(c) Property insurance providing coverage for the Leased Premises and the Improvements (to the extent such Improvements are customarily insured under a property insurance policy) against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties (except flood, earthquake or war risk) from time to time during the Term, in an amount equal to eighty percent (80%) of the replacement value (without deduction for depreciation) of the Improvements and in any event sufficient to avoid co-insurance, with "ordinance or law" coverage. Such insurance may contain a deductible clause not exceeding $100,000 ("Tenant Property Insurance");

(d) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles, with a combined single limit of not less than $1,000,000;

(e) Pollution/Environmental Liability insurance with a limit of not less than ten million dollars ($10,000,000) for each occurrence or, in lieu of such insurance, Tenant shall have delivered Acceptable Security to Landlord or deposited funds in trust for Landlord as beneficiary in the amount of ten million dollars ($10,000,000);

(f) Umbrella/Excess Liability insurance with a limit of not less than ten million dollars ($10,000,000) for each occurrence. This limit applies in excess of the coverages set forth in (a) to (d) above, which are to be scheduled as underlying

insurance. On every five (5) year anniversary of the date on which Tenant initially obtained the insurance coverage contemplated in this Section 15.1.1(g), the Parties shall meet to review such coverage, taking into consideration Tenant's history of claims and/or then-current market conditions, and shall mutually agree whether any adjustment to the limit is required; and

(g) prior to Tenant commencing any Alterations or performing Tenant's Work or any other work to or on the Leased Premises, builders' risk (if applicable to the work being performed), commercial general liability and workmen's compensation insurance to cover every contractor to be employed.

15.1.2 The insurance coverage to be provided by Tenant under this Lease shall: (i) be primary and non-contributory (or, with respect to the excess/umbrella policy, non-contributory) with respect to any and all other insurance or self-insurance maintained by Landlord, and shall not seek contribution from any and all other insurance or self-insurance maintained by Landlord; (ii) contain standard cross-liability provisions where applicable; and (iii) provide for a waiver of all rights of subrogation against Landlord by Tenant and its insurers. Tenant's insurance coverage shall not include any of the following: (i) except with respect to the coverage set forth in (e) above, any claims-made insurance policies; or (ii) any self-insured retention or deductible amount greater than two hundred fifty thousand dollars ($250,000) unless approved in writing by Landlord. The insurance coverage provided under this Lease shall not contain any restrictions or limitations that are inconsistent with Landlord's rights under Article XI or the Permitted Uses. Without limiting any other requirement set forth in this Article XV, Tenant's insurance coverage required by this Lease, including Commercial General Liability insurance, shall not exclude coverage for bodily injury, property damage, personal injury, or advertising injury to: (i) a present, former, future, or prospective partner, officer, director, stockholder, or employee of any insured or additional insured; or (ii) any business enterprise in which any insured or additional insured owns an interest, is a partner, or Affiliate of any insured.

15.1.3 All of Tenant's insurance policies required by this Lease, with the exception of Worker's Compensation, shall name Landlord and its Affiliates (including their respective officers, directors, managers, agents, servants, representatives, employees, shareholders, successors, and assigns) as additional insured providing insurance coverage to Landlord and its Affiliates for all claims that may be asserted against Landlord or its Affiliates, including claims involving or that may involve any negligent conduct (excluding any sole negligence) by Landlord or its Affiliates (or their respective officers, directors, managers, agents, servants, representatives, employees, shareholders, successors, and assigns). Tenant is solely responsible for obtaining from its insurer(s) the appropriate policy terms, by endorsement or otherwise, that include Landlord and its Affiliates as additional insured as required by this Lease.

15.1.4 Prior to the Commencement Date of any Parcel, and annually upon the expiration of the required insurance policies, Tenant shall deliver to Landlord insurance certificates evidencing the foregoing insurance policies. Tenant shall provide

Notice to Landlord if the coverage afforded under the policies are canceled, allowed to expire, or available limits are reduced. Landlord or its agent may inspect any or all Tenant's policies of insurance at any time.

15.2 Landlord Insurance. Landlord shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent) with carriers acceptable to Tenant:

15.2.1 Commercial General Liability insurance (occurrence-based form) providing coverage against claims for bodily injury, contractual liability, personal injury, death, or property damage occurring upon, in, or about the Leased Premises, providing coverage in the form of: (i) broad form comprehensive general liability with a minimum $10,000,000 each occurrence and $10,000,000 aggregate limit for property damage and bodily injury; and (ii) statutory worker's compensation limits and at least $1,000,000 employer's liability limits with a carrier licensed to do business in the State ("Landlord Liability Insurance"); and

15.2.2 Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles, with a combined single limit of not less than $1,000,000.

15.2.3 Landlord Liability Insurance shall name Tenant and its officers and employees as additional insureds. The coverage provided by the policy set forth in clause (a) shall be at least as broad as that provided by the standard, basic, unamended and unendorsed Comprehensive General Liability policy occurrence coverage form in use in the State, which shall not be circumscribed by any endorsement limiting the breadth of coverage. Such liability insurance shall contain endorsements for cross-liability and for assumed contractual liability for liabilities assumed by Landlord under this Lease. Notwithstanding anything contained herein, Landlord shall have the right to self-insure for any or all of the risks set forth in this Section 15.2, provided that Landlord delivers prior Notice thereof to Tenant.

15.3 Nature of Insurance Program.

(a) All insurance policies this Lease requires shall be issued by carriers that: (i) have a policyholders' rating of "A-VII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published); and (ii) are lawfully doing business in the State. Landlord or Tenant may provide any insurance through a combination of primary and umbrella/excess liability policies, provided that (A) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Leased Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (B) such policy otherwise complies with this Lease.

(b) Landlord shall provide Tenant with current certificates of insurance for all coverages and renewals of the insurance policies Landlord is required to

obtain and maintain, which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days' Notice to the insureds and Tenant. Landlord shall provide such certificates to Tenant on an annual basis; due upon the anniversary date of this Lease. If any policy contains a deductible, Landlord shall be responsible for payment of the deductible without reimbursement by Tenant.

ARTICLE XVI – CASUALTY

16.1 Destruction and Damage. (a) If a Casualty occurs during the Term, then Tenant shall promptly give Notice of such Casualty to Landlord. If a Substantial Casualty occurs prior to the Commencement Date of any Parcel, then Landlord shall promptly give Notice of such Substantial Casualty to Tenant. If an Insubstantial Casualty occurs during the Term, Tenant shall be entitled to receive and retain all Tenant Property Insurance Proceeds and shall apply same toward Restoration, which shall be promptly undertaken by Tenant and completed with reasonable diligence taking into account Force Majeure and the time required by Tenant to: (i) effect an insurance settlement; (ii) procure the Tenant Property Insurance Proceeds from the insurer; and (iii) procure a contractor(s) to perform the Restoration. After Restoration has been completed and paid from the Tenant Property Insurance Proceeds paid to Tenant, any remaining Tenant Property Insurance Proceeds shall be retained by Tenant.

(b) If a Substantial Casualty occurs during the Term and Tenant does not terminate this Lease as provided in Section 16.1(c) below, then Tenant may elect in its sole discretion not to Restore all or any portion of the Leased Premises, but Tenant shall, at its own cost and expense, demolish and remove all damaged surface improvements and Tenant's obligations under this Lease shall continue unchanged for the remainder of the Term.

(c) If a Substantial Casualty occurs during the Term which is caused by the gross negligence or willful misconduct of Landlord or any Landlord Party, or if there is a Nuclear Incident that results in a Substantial Casualty, then Tenant, by Notice to Landlord given within one hundred eighty (180) days after the occurrence of such Substantial Casualty, may elect a Casualty Termination with respect to the portions of the Leased Premises directly affected, and any portion of the remaining Leased Premises, effective not less than ten (10) days after such Notice. If a Substantial Casualty under this Section 16.1(c) occurs, Tenant shall not be obligated to demolish or remove any damaged surface improvements.

(d) If a Casualty Termination is exercised for less than all of the Leased Premises, then the Construction Period Rent or Base Rent (as applicable) for such remaining portions of the Leased Premises shall be adjusted for each Parcel to an amount equal to (A) (x) the remaining portion of such Parcel remaining as part of the Leased Premises after the Casualty Termination divided by (y) the total area of such Parcel prior to the Casualty Termination, multiplied by (B) the then-current Construction Period Rent or Base Rent (as applicable) for such Parcel.

16.2 Use of Insurance Proceeds. Tenant shall have the sole right and authority to adjust any insurance claim relating to Tenant Property Insurance Proceeds. Any Restoration shall be undertaken in accordance with Section 14.6 hereof.

ARTICLE XVII – CONDEMNATION

17.1 Participation in Proceedings. If there shall be a Condemnation of all or any part of the Leased Premises, Landlord and Tenant shall have the right to jointly participate in any such Condemnation proceedings, for the purpose of protecting their interests hereunder and pursuing and enforcing their respective rights to any Condemnation Award in accordance with the terms of this Lease. Each Party so participating shall pay its own costs and expenses associated therewith.

17.2 Complete Condemnation. If at any time there shall be a Condemnation of all of the Parcels (prior to the Commencement Dates thereof) or all of the Leased Premises (after the Commencement Dates thereof), this Lease shall terminate and expire on the Condemnation Effective Date as if such date were the date originally set forth herein for the expiration of the Term, and all Rent hereunder shall be apportioned and paid to the Condemnation Effective Date and Tenant thereafter shall have no further obligations under the Lease except for any Surviving Obligations.

17.3 Substantial Condemnation. (a) If a Substantial Condemnation occurs with respect to a Parcel prior to such Parcel's Planned Commencement Date, Tenant shall no longer have a right to lease such Parcel, this Lease shall terminate and expire on the Condemnation Effective Date as to such Parcel, and all Rent hereunder for such Parcel shall be apportioned and paid up to the Condemnation Effective Date.

(b) If a Substantial Condemnation affecting any portion of the Leased Premises or a Parcel that is part of the Leased Premises occurs during the Term, then Tenant may by Notice to Landlord elect a Condemnation Termination with respect to such portion of the Leased Premises or a Parcel, to be effective as of the Condemnation Effective Date. In such event, this Lease shall terminate and expire on the Condemnation Effective Date as to such portion of the Leased Premises or a Parcel as if such date were the date originally set forth herein for the expiration of the Term, and all Rent hereunder for such portion of the Leased Premises or a Parcel shall be apportioned and paid up to the Condemnation Effective Date and Tenant thereafter shall have no further obligations under the Lease except for any Surviving Obligations.

(c) Landlord shall keep Tenant informed on a regular and routine basis of the status of the Condemnation proceedings and provide Tenant with copies of all pleadings, reports, and correspondence in connection with the Condemnation proceeding. The Parties shall mutually, in Good Faith, agree to an Appraiser for the purposes of valuing the value of the Land and the value of the Improvements. Neither Party shall settle or compromise any Condemnation Award involving the valuation of the Improvements without the consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. The Parties agree that the Condemnation Award shall be distributed amongst the Parties as follows: (A) if the Condemnation occurs prior to the Commencement Date of the affected Parcel(s), the entire Condemnation Award shall be paid to Landlord; or (B) if the Condemnation occurs after the Commencement Date of the affected Leased Premises, the Condemnation Award will be distributed (i) to Landlord, such portion of the Condemnation Award equal to the value of the Land, as determined by the Court; and (ii), to Tenant, such portion of the Condemnation Award equal to the value of the Improvements as determined by the Court. In the event that the Condemnation Award is made in a lump sum and does not distinguish between the value of the Land and the value of the

Improvements, the Condemnation Award shall be allocated between the Land and the Improvements based upon the proportionate value of the Land and the Improvements as set forth in the appraisal prepared by the same Appraiser.

17.4 Effects on Rent. If only a portion of a Parcel or portion of the Leased Premises (as applicable) is the subject of Tenant's Condemnation Termination, or there is otherwise an Insubstantial Condemnation, then all applicable Rent (except Additional Rent) for such remaining portions of the Leased Premises or Parcels (as applicable), shall be adjusted as of the Condemnation Effective Date in the same manner as set forth in Section 16.1(d) hereof.

17.5 Restoration. If only a portion of a Parcel or portion of the Leased Premises (as applicable) is the subject of Tenant's Condemnation Termination, or there is otherwise an Insubstantial Condemnation, Tenant may elect in its sole discretion not to Restore the Leased Premises or Parcel(s) (or any portion thereof) that remain subject to the Lease, to the extent any Improvements were altered or damaged by such Condemnation, but Tenant shall, at its own cost and expense, demolish and remove all damaged surface improvements from the Leased Premises or Parcel(s) remaining.

ARTICLE XVIII – LEASEHOLD MORTGAGES

18.1 Tenant's Rights. Notwithstanding anything in this Lease to the contrary, Tenant shall have the absolute and unconditional right, without Landlord's consent, at any time and from time to time during the Term, to: (1) execute and deliver one or more Leasehold Mortgage(s) to a Leasehold Mortgagee; and (2) assign this Lease and Tenant's rights and obligations hereunder, and the Leasehold Estate to a Leasehold Mortgagee, as collateral security, all upon terms and conditions acceptable to Tenant in its sole discretion, but subject to the provisions of this Article XVIII. Landlord shall not be required to join in, or "subordinate" the Fee Estate to, any Leasehold Mortgage. There shall be no limit on the amount or nature of any obligation secured by a Leasehold Mortgage; the purpose for which the proceeds of any such financing may be applied; the nature or character of any Leasehold Mortgagee, provided it qualifies as an Institutional Lender; the subsequent assignment, transfer, or hypothecation of any Leasehold Mortgage; the creation of participation or syndication interests in or to any Leasehold Mortgage; or any Leasehold Mortgagee's exercise of any rights or remedies against Tenant under any Leasehold Mortgage.

18.2 Effect of Leasehold Mortgage/Mortgagee Protections

18.2.1 Effect of Leasehold Mortgage. Tenant's making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Lease, be deemed to be an assignee, transferee, or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee to assume or otherwise be obligated to perform any of Tenant's obligations under this Lease. However, any New Tenant or Post-Foreclosure Tenant shall be deemed to be an assignee or transferee within the meaning of this Section 18.2.1, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, or New Lease. Any Leasehold Mortgage shall solely attach to the Leasehold Estate; and shall not encumber the Fee

Estate or the PSEG-Retained Land, or any interest in either. Any Foreclosure Event under a Leasehold Mortgage shall not extinguish, terminate, or otherwise adversely affect the Fee Estate or PSEG-Retained Land, any Fee Mortgage, or the rights or remedies of any Mortgagee of the Fee Mortgage as against Landlord or the Fee Estate or PSEG-Retained Land. All Leasehold Mortgages shall be subject and subordinate to the rights of Landlord hereunder.

18.2.2 Mortgagee Protections

(a) Default and Event of Default Notices. Upon giving Tenant any Notice of a Tenant Default or Tenant Event of Default under this Lease, Landlord shall at the same time give a copy of such Notice to every Leasehold Mortgagee. Leasehold Mortgagee shall have the cure period afforded to Tenant hereunder, plus thirty (30) days to remedy, or cause to be remedied, any Tenant Default(s) that are the subject matter of such Notice, and which period shall commence upon the later to occur of (x) the giving of such Notice to Tenant or (y) the giving of such Notice to Leasehold Mortgagee. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant.

(b) Termination Notices. Notwithstanding anything in this Lease to the contrary but subject to Section 27.8, if any Tenant Event of Default shall occur that entitles Landlord to terminate this Lease and the letting hereunder, Landlord shall not have the right to effectuate such termination unless, following the expiration of any applicable cure periods, Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate this Lease (the "Termination Notice") at least thirty (30) days in advance of the proposed effective date of such termination if it relates to a Tenant Monetary Event of Default, and at least sixty (60) days in advance of the proposed effective date for all other Tenant Events of Default. Landlord agrees to defer its termination if, within such applicable thirty (30) or sixty (60) day period (as applicable), any Leasehold Mortgagee shall:

(1) notify Landlord of such Leasehold Mortgagee's desire to cure the Tenant Defaults set forth in Landlord's Termination Notice;

(2) pay or cause to be paid to Landlord all Tenant Monetary Defaults set forth in the Termination Notice; and

(3) cure, or in Good Faith, with reasonable diligence and continuity, commence to cure all Tenant Nonmonetary Defaults set forth in the Termination Notice, subject to the limitations set forth in Section 18.9. For the purposes of this Section 18.1, if the curing of any Tenant Nonmonetary Default as specified in the Termination Notice requires the Leasehold Mortgagee to obtain possession of the Leased Premises and the Improvements, then the Leasehold Mortgagee shall be deemed to have commenced in Good Faith to comply with the obligation of Tenant which is in default with reasonable diligence and continuity, if it shall commence and prosecute with due diligence proceedings to obtain such possession, whether through a Foreclosure Event, an application for the appointment of a receiver, or otherwise and, having obtained such possession, shall then undertake to comply with such obligation with due diligence.

(c) Notices from Landlord to a Leasehold Mortgagee. Notices from Landlord to a Leasehold Mortgagee shall be mailed to the address furnished to Landlord pursuant to Section 18.418.3 below, and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated in or pursuant to the provisions of Article XXXI hereof. Such Notices shall be given in the manner described in Article XXXI and shall be governed by the provisions of that Article.

18.3 Landlord's Acknowledgment of Leasehold Mortgagee. If Tenant shall provide Landlord with Notice of the name and address of the Leasehold Mortgagee, together with a true copy of such holder's recorded Leasehold Mortgage and reasonable proof of such Mortgagee's qualification as a Leasehold Mortgagee hereunder, then and in that event Landlord agrees that, following receipt of such Notice by Landlord, the provisions of this Article XVIII shall apply in respect to such Leasehold Mortgagee. Landlord shall, upon written request, promptly acknowledge receipt of the name and address of any Leasehold Mortgagee (or prospective Leasehold Mortgagee) and confirm to such party that such party is or would be, upon closing of its financing or its acquisition of an existing Leasehold Mortgage, a Leasehold Mortgagee (in compliance with the definition of such entitled to all Mortgagee Protections), provided that Landlord receives reasonable proof to support that conclusion. Such acknowledgment shall, if requested, be in recordable form, and Tenant may record it at Tenant's cost. If a Leasehold Mortgagee assigns its Leasehold Mortgage or changes its address, then Landlord shall not be bound by the assignment or change unless and until the affected Leasehold Mortgagee(s) has/have given Landlord Notice of the name and address of the new holder of the Leasehold Mortgage.

18.4 Future Modifications. If any Leasehold Mortgagee reasonably requires any modification of this Lease or of any SNDA or other Lease Related Document, then Landlord shall, at Tenant's request and at Tenant's sole cost and expense, promptly execute and deliver to Tenant such instruments in recordable form as such Leasehold Mortgagee shall reasonably require, provided that any such modification does not modify Rent, the Term, or any security required under this Lease, and does not otherwise, in Landlord's sole judgement, adversely affect Landlord's rights, increase the obligations of Landlord or the holder of any Fee Mortgage, or decrease Tenant's obligations under this Lease.

18.5 Further Assurances. Upon reasonable request by Tenant in connection with Tenant's granting of a Leasehold Mortgage or other financing contemplated by this Lease, at Tenant's sole cost and expense, Landlord shall within fifteen (15) Business Days after request deliver to Tenant such documents and agreements in Landlord's possession and control as may be reasonably required to (i) further effectuate the intentions of the Parties as set forth in this Article XVIII; (ii) comply with any Lender Requirements; and (iii) comply with any disclosure requirements in connection with any capital markets issuance (in each case addressed to such addressee(s) as Tenant may designate, and each such addressee may rely on any such document or agreement). All documents this paragraph requires shall be in such form as reasonably agreed to by Landlord and Tenant.

18.6 Effect on Landlord. Any Leasehold Mortgage shall not affect, limit, or restrict Landlord's rights and remedies under this Lease except as this Lease expressly states. If a Leasehold Mortgage purports to encumber or attach to the Fee Estate or the PSEG-Retained Lands, then such Leasehold Mortgage shall be null, void, and of no force or effect as it affects the Fee

Estate or PSEG-Retained Lands ab initio. If this Lease terminates and the New Lease Option Period has expired without any Leasehold Mortgagee timely requesting a New Lease, then Leasehold Mortgagee(s) shall lose all Mortgagee Protections. Nothing in any Leasehold Mortgage binds Landlord or imposes any obligations or liability on Landlord.

18.7 No Liability. Any Leasehold Mortgagee's exercise of any rights hereunder shall not mean that such Leasehold Mortgagee: (a) is a Mortgagee in possession unless it elects in writing to become one; (b) has Premises Control or any other form of possession of the Leased Premises for any purpose; or (c) incurred any liability to Landlord or Tenant, except as expressly herein provided.

18.8 Foreclosure. Notwithstanding anything to the contrary in this Lease: (a) if Tenant defaults as mortgagor under a Leasehold Mortgage, this shall not constitute a Tenant Event of Default except to the extent that Tenant's acts or omissions, in and of themselves, constitute a Tenant Event of Default under the express terms of this Lease; and (b) any Foreclosure Event under any Leasehold Mortgage, or any Leasehold Mortgagee's exercise of any other rights or remedies (against the Leasehold Estate but not the Fee Estate) under any Leasehold Mortgage, including recordation of a notice of pendency and/or appointment of a receiver, shall not require Landlord's consent, violate this Lease, constitute a default by Tenant hereunder (except to the extent that such Foreclosure Event otherwise results in a default by Tenant hereunder, including pursuant to Section 27.1.4), limit Landlord's obligations under this Lease, or entitle Landlord to exercise any rights or remedies under this Lease. The foregoing shall not limit Landlord's rights and remedies, subject to the provisions of this Article XVIII hereof, if any event(s) constituting a Tenant Default hereunder occur(s).

18.9 Recognition; Certain Obligations. If any Post-Foreclosure Tenant acquires this Lease and the Leasehold Estate through a Foreclosure Event, or any New Tenant obtains a New Lease, then, Landlord shall recognize New Tenant as Tenant under a New Lease, or such Post-Foreclosure Tenant as Tenant under this Lease, provided and conditioned upon such Post-Foreclosure Tenant delivering to Landlord an executed and acknowledged instrument, in recordable form, by which such Party assumes all obligations under this Lease. Such instrument of assumption shall be delivered promptly upon consummation of the Foreclosure Event.

18.10 Limitation of Liability. Nothing herein contained shall require any Leasehold Mortgagee or its designee, including any New Tenant, as a condition to its exercise of its rights under this Article, or any Post-Foreclosure Tenant, to cure any Tenant-Specific Defaults. The foregoing shall not limit Landlord's rights and remedies against any former Tenant. No Leasehold Mortgagee, Leasehold Mortgagee's Representative, New Tenant, or Post-Foreclosure Tenant shall have any personal liability under this Lease (or a New Lease), even if such Person exercises any cure rights set forth herein, except (a) during any period when such Person is Tenant under this Lease (or New Tenant under a New Lease), or otherwise has Premises Control; or (b) to the extent that such Person assumes in writing any of Tenant's obligations under this Lease or agrees in writing to cure any Tenant Defaults hereunder (and any such liability under this clause "b" shall be limited in accordance with its terms). The liability of Leasehold Mortgagee's Representative, New Tenant or Post-Foreclosure Tenant (as applicable) shall in no event: (x) extend beyond such Person's interest in this Lease or a New Lease, the Leased Premises and Improvements; (y) intentionally omitted; or (z) extend to the default of the terms hereof of any prior Tenant except to

the extent that Landlord gave Leasehold Mortgagee Notice of such default before such Leasehold Mortgagee, Leasehold Mortgagee's Representative, New Tenant, or Post-Foreclosure Tenant (as applicable) acquired its interest in the Leased Premises.

18.11 **Subordination**. Notwithstanding anything contained in any Leasehold Mortgage or in this Article XVIII or Article XX to the contrary, but subject to Article XXII, it is understood and agreed that the rights of a Leasehold Mortgagee shall be subject and subordinate to this Lease; provided, however, that the rights granted to the Leasehold Mortgagee shall remain in effect notwithstanding the subordination. The terms, covenants, conditions and provisions of this Lease shall govern as between Landlord, Tenant and any Leasehold Mortgagee, and in the event of any inconsistency between the terms, covenants, conditions and provisions of this Lease and the terms, covenants, conditions and provisions of a Leasehold Mortgage, the terms, covenants, conditions, and provisions of this Lease shall control. Notwithstanding any provisions of any Leasehold Mortgage to the contrary, Tenant for all purposes shall be deemed to be the Tenant hereunder unless and until a Leasehold Mortgagee or its designee, shall have acquired Tenant's interest herein or a New Lease has been executed pursuant to Article XX, as the case may be. Any Leasehold Mortgage granted hereunder shall make reference to the provisions of this Lease and shall provide that the Leasehold Mortgage and the rights of the Leasehold Mortgagee thereunder are and shall be in all respects subject to all provisions of this Lease.

ARTICLE XIX – INTENTIONALLY OMITTED

ARTICLE XX – NEW LEASE

20.1 **New Lease**. In the event of the termination of this Lease for any reason (including because of any Tenant Event of Default or Leasehold Mortgagee's failing to timely exercise its Leasehold Mortgagee's Cure Rights) or the Lease is rejected or disaffirmed in a Bankruptcy Proceeding, but excluding any termination right exercised prior to the Commencement Date of a Parcel or because of a Casualty, Condemnation or a Nuclear Regulatory Recapture as provided herein (each a "New Lease Option Period Trigger Event"), then (in addition to any other or previous Notice that this Lease requires Landlord to give to a Leasehold Mortgagee) Landlord shall, within ten (10) Business Days of such event, Notify all Leasehold Mortgagees of such termination. Such Notice shall describe the basis upon which this Lease was terminated and describe all uncured Tenant Events of Default in reasonable detail, including the amount(s) of any Tenant Monetary Default(s). Upon a Leasehold Mortgagee's request given within the New Lease Option Period, Landlord shall enter into a New Lease with such Leasehold Mortgagee or its designee provided that: (a) New Tenant pays Landlord at the time of execution and delivery of such New Lease all sums then due under this Lease as if this Lease had not terminated, including curing all Tenant Monetary Defaults; (b) New Tenant agrees to cure with reasonable diligence all then-uncured Tenant Nonmonetary Defaults (except Tenant-Specific Defaults), within a reasonable period, as determined by Landlord in Good Faith, after execution and delivery of the New Lease; and (c) New Tenant pays Landlord's costs and expenses as set forth in Section 20.5. In no event shall any Leasehold Mortgagee or New Tenant be required to cure any Tenant-Specific Default as a condition to obtaining any New Lease. Landlord shall allow credit for all sums previously paid by Tenant or Leasehold Mortgagee collected from any Subtenant . If Leasehold Mortgagee requests a New Lease, such New Lease shall be entered into within thirty (30) Business Days after Landlord's receipt of such request from Leasehold Mortgagee. If more than one

Leasehold Mortgagee shall request a New Lease pursuant to this Article XX, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage or other security interest is prior in lien, or with the designee of such Leasehold Mortgagee . Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a loan insurance policy or title certificate issued by a responsible title insurance company doing business within the State of New Jersey as the basis for determining the appropriate Leasehold Mortgagee which is entitled to such New Lease.

20.2 Documentation and Priority. Any New Lease, any memorandum of a New Lease, the Leasehold Estate under any New Lease, and New Tenant's estate in any Improvements shall be subject to no prior right, lien, encumbrance, or other interest in the Fee Estate except as this paragraph permits. The immediately preceding sentence shall be self-executing. Promptly after reasonable request, Landlord shall, at New Tenant's expense, execute and deliver such documents (including a new Memorandum of Lease, tax returns, and affidavits) as New Tenant shall reasonably request to enable New Tenant to obtain title insurance for the New Lease (including ownership of the improvements demised under the New Lease). Any New Lease and New Tenant's Leasehold Estate, and Landlord's obligation to deliver possession, under any New Lease shall be subject and subordinate to: (a) the rights of all Persons in possession, except to the extent resulting from Landlord's violations of this Lease and (b) Permitted Exceptions.

20.3 Transfer of Certain Items. Upon the execution and delivery of the New Lease, Landlord shall assign and convey without recourse to New Tenant Landlord's entire right, title, and interest in and to all: (a) moneys (including Loss Proceeds), if any, then held by, or payable to, Landlord that Tenant (or Leasehold Mortgagee) would have been entitled to receive but for Tenant's Event of Default and Landlord's termination of this Lease, subject to Landlord's right to set-off against such sums any Rent due to Landlord from Tenant; (b) leases (including any leases that were formerly Subleases arising from the terminated Lease, except to the extent that they expired or were terminated in compliance with this Lease) affecting any portion of the Leased Premises (which leases, upon such assignment by Landlord to New Tenant, shall become Subleases arising from the Leasehold Estate under the New Lease); (c) security deposits of Subtenants; and (d) improvements, to the extent of the former Tenant's former interest in such improvements under the terminated Lease, except in each case ((a) through (d)) to the extent New Tenant directs otherwise in writing.

20.4 Preservation of Former Subleases. Following the termination of this Lease and the Leasehold Estate created hereby, and until the right of a Leasehold Mortgagee to obtain a New Lease pursuant to this Article XX has expired without being exercised, Landlord shall not terminate any Sublease, except as specifically set forth in such Sublease, without the prior written consent of such Leasehold Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.

20.5 Landlord's Costs and Expenses. If a Leasehold Mortgagee requires Landlord to enter into a New Lease, then at the time of execution and delivery of the New Lease (and as a condition to Landlord's delivery of the New Lease) such Leasehold Mortgagee shall pay all reasonable expenses, including transfer taxes and reasonable attorneys' fees, incurred or payable by Landlord in connection with any Tenant Default and termination of this Lease, recovery of possession of the Leased Premises, and preparation, execution, and delivery of the New Lease,

any memorandum of the New Lease requested by New Tenant, and any other documents that New Tenant reasonably requests to enable New Tenant to obtain title insurance for the New Lease.

ARTICLE XXI – FEE MORTGAGES

21.1 Additional Fee Mortgages. This Lease shall be subject and subordinate to any future Fee Mortgage, provided and conditioned upon Landlord delivering to Tenant an SNDA in a form reasonably satisfactory to Tenant from the Fee Mortgagee of such Fee Mortgage. Landlord shall deliver a copy of any recorded Fee Mortgage to Tenant promptly upon its receipt.

21.2 Fee Mortgage Foreclosure. Upon a Foreclosure Event under a Fee Mortgage, this Lease shall continue in full force and effect. Tenant shall attorn to the successor holder of the Fee Estate as successor Landlord, provided that such successor holder has assumed in writing all obligations of Landlord under this Lease. Such attornment shall in no way diminish or impair Tenant's rights and remedies against Landlord (all of which Tenant may continue to assert against the successor Landlord), or require Tenant to waive any Landlord Default.

ARTICLE XXII – INTERACTION OF MULTIPLE ESTATES

22.1 Fee and Leasehold Mortgages. Notwithstanding anything to the contrary in any Mortgage, the relative priorities, rights, and interactions of Fee Mortgages and Leasehold Mortgages shall be governed by this Article XXII, irrespective of the terms of the Mortgage (unless otherwise mutually agreed to by the Parties), including as follows:

22.1.1 *For Fee Mortgages*. Any Fee Mortgage shall attach solely to the Fee Estate.

22.1.2 *For Leasehold Mortgages*. Any Leasehold Mortgage attaches solely to the Leasehold Estate. A Leasehold Mortgage does not encumber the Fee Estate, or any interest in the Fee Estate, including Landlord's or any Fee Mortgagee's interest in the Fee Estate, or any reversionary interest. Any Foreclosure Event under a Leasehold Mortgage shall not extinguish, terminate, or otherwise adversely affect the Fee Estate (subject to this Lease), any Fee Mortgage, or the rights or remedies of any Fee Mortgagee as against Landlord or the Fee Estate.

22.1.3 *For All Mortgages*. Any Mortgage is subject to all terms and conditions of this Lease. Upon any Foreclosure Event under any Mortgage, the resulting owner of the Fee Estate or Leasehold Estate (as applicable) shall have no rights as Landlord or as Post-Foreclosure Tenant (or otherwise) under this Lease unless and until such owner has executed, acknowledged and delivered to the other Party to this Lease an instrument, in recordable form, by which such owner assumes all obligations under this Lease, subject to the terms of this Lease, including the Nonrecourse Clause. Such instrument of assumption shall be delivered (a) promptly upon consummation of the Foreclosure Event; and (b) in any event before taking possession of the Leased Premises or exercising any rights under the Lease.

22.2 <u>Priorities of Multiple Leasehold Mortgages</u>. If more than one Leasehold Mortgagee desires to exercise any Mortgagee Protection, Landlord shall only be obligated to recognize the Leasehold Mortgagee that desires to exercise such Mortgagee Protection and whose Leasehold Mortgage is prior in lien to any other Leasehold Mortgagee making the same request. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy or title certificate issued by a responsible title insurance company doing business within the State as the basis for determining the appropriate Leasehold Mortgagee which is entitled to exercise such Mortgagee Protection.

22.3 <u>No Merger.</u> Without the written consent of Landlord, Tenant, and holders of any Leasehold Mortgage or Fee Mortgage, the Fee Estate and the Leasehold Estate shall at all times remain distinct and separate estates. They shall not merge, notwithstanding any acquisition by any means of both the Fee Estate and the Leasehold Estate by Landlord, Tenant, any Post-Foreclosure Tenant, a New Tenant, any Mortgagee, or a third party.

22.4 <u>Landlord's Lien Waiver.</u> Landlord hereby (a) agrees that Tenant may pledge its rights in Tenant's inventory, furniture, equipment or other personal property in the Leased Premises, so long as such items do not become part of the realty by reason of the fact that same are affixed thereto (collectively, "<u>Tenant's Collateralized Equipment</u>") to the rights of a bank, lending institution or equipment lessor ("<u>Tenant's Lender</u>") that is granting Tenant a loan or credit secured or collateralized by a pledge or an assignment of Tenant's Collateralized Equipment, and (b) waives any right it may have to assert a lien on Tenant's Collateralized Equipment. In connection therewith, Landlord agrees to execute a lien subordination agreement with respect to Tenant's Collateralized Equipment for the benefit of Tenant's Lender, using a form that is reasonably acceptable to Landlord and Tenant's Lender. Any such lien subordination agreement shall (1) provide that in the event the Leased Premises are abandoned or Landlord recovers possession thereof by any means, Tenant's Lender shall remove Tenant's Collateralized Equipment from the Leased Premises within fifteen (15) days after written notice from Landlord, and shall repair any damage to the Property caused by such removal and, at Landlord's option, restore the Leased Premises or Property (as applicable) to the condition existing immediately prior to the installation thereof, and (2) contain an exhibit which specifically enumerates Tenant's Collateralized Equipment. Any reasonable documented out-of-pocket expenses, including legal fees, incurred by Landlord in connection with the negotiation and/or execution of any such agreement shall be borne by Tenant.

ARTICLE XXIII – LIABILITY OF LANDLORD AND TENANT

(a) During the Term, Tenant is and shall be in exclusive control and possession of the Leased Premises. Except as otherwise contemplated in this Lease or this Article XXIII, Landlord shall not be liable for any injury or damage to any property of Tenant or any other Person occurring on or about the Leased Premises. Nothing in this Lease shall be construed to exculpate, relieve, or indemnify Landlord from or against any liability of Landlord: (a) arising from Landlord's willful misconduct or gross negligence; or (b) arising under Article VI.

(b) The term "Landlord" as used in this Lease, as far as the covenants and agreements of Landlord in this Lease are concerned, shall be construed to mean only the holder or holders of Landlord's interest in this Lease at the time in question. In any event, and notwithstanding any

other provision of this Lease set forth herein, no officer, director, agent, partner, affiliate, trustee, beneficiary, or employee of Landlord shall be liable in an individual or personal capacity for the performance or nonperformance of any agreement, covenant, or obligation of Landlord contained in this Lease. Except as expressly set forth herein, Tenant shall look to the interest of Landlord from time to time in the Leased Premises as the sole asset for payment and satisfaction of all liabilities of Landlord under this Lease.

(c) Notwithstanding any other provision of this Lease set forth herein, no officer, director, agent, partner, affiliate, trustee, beneficiary, or employee (or, if Tenant is a State Entity, any other State Entity) of Tenant shall be liable in an individual or personal capacity for the performance or nonperformance of any agreement, covenant, or obligation of Tenant contained in this Lease.

ARTICLE XXIV – INTENTIONALLY OMITTED

ARTICLE XXV – SUBLEASES AND NON-DISTURBANCE OF SUBTENANTS

25.1 Tenant's Right. Tenant may enter into or modify any Sublease, terminate any Sublease or evict any Subtenant, and grant any consent under or take any other action with respect to any Sublease, all without Landlord's consent; provided, however, that any Sublease will not be effective until Tenant has provided a Notice to Landlord with respect to such Sublease that shall include a copy of the executed Sublease that is not inconsistent with the terms of this Lease. Except as expressly set forth in a recordable recognition, non-disturbance, and attornment agreement entered into between Landlord and a Subtenant, in a customary form that is reasonably acceptable to Subtenant, Tenant and Landlord ("Non-Disturbance and Attornment Agreement") under an NDA-Eligible Sublease, no Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. All Subleases shall expire no later than one hour before the Expiration Date. Any Tenant Default that occurs or is continuing under this Lease resulting from any action or inaction on behalf of any Subtenant shall not relieve Tenant of Tenant's obligation to cure such Tenant Default. Tenant shall take all commercially reasonable steps to prevent any such Tenant Default. Notwithstanding anything to the contrary in this Article XXV, Landlord acknowledges that Tenant intends to Sublease the Leased Premises to the State whereupon the State intends to lease the same back to Tenant ("Lease Lease-Back Transaction"). The Parties acknowledge and agree that the Lease Lease-Back Transaction will not be subject to the terms of this Article XXV.

25.2 NDA-Eligible Subleases.

(a) Subject to this Section 25.2, Landlord shall, within thirty (30) days after Notice from Tenant at any time or from time to time enter into a Non-Disturbance and Attornment Agreement with any Subtenant of an NDA-Eligible Sublease.

(b) Landlord's obligation to enter into a Non-Disturbance and Attornment Agreement is subject to the following: (i) the Sublease is entered into by Tenant and such Subtenant in Good Faith and, such Sublease is on market terms, in Landlord's commercially reasonable judgement, or, if a State Entity is

the Tenant, was subject to a public procurement process; (ii) Subtenant shall use and occupy its premises for the Permitted Uses; (iii) Tenant gives Landlord a copy of such Sublease, which Sublease shall contain all applicable provisions required by and otherwise comply with applicable provisions of this Lease; (iv) no Tenant Event of Default shall then have occurred and be continuing; (v) either (A) the Subtenant (or its guarantor) has a Net Worth which exceeds two times (2x) the annual Subrent in effect as of the execution date of the Sublease, payable under such Sublease commencing after the expiration of any applicable Subrent abatement or "free rent" period under the Sublease, or (B) Subtenant has provided credit support in an amount equal to three times (3x) the monthly Subrent in effect as of the execution date of the Sublease, which credit support shall be assigned to Landlord upon termination of the Lease; or (C) the Subtenant (and/or its guarantor) has a credit rating of at least "BBB-" by S&P or "Baa3" by Moody's, if such entity is rated by the ratings agencies, or a credit rating of at least "BBB-" by S&P or "Baa3" by Moody's, if such entity is rated by only one ratings agency; and (vi) such Sublease: (A) grants no rights to such Subtenant greater than those set forth in this Lease, (B) imposes no lesser obligations (on a proportionate basis in case of monetary obligations) upon such Subtenant than Tenant's obligations set forth in this Lease, excepting the Sublandlord Obligations (hereafter defined); (C) obligates such Subtenant to pay base or minimum rent in an amount not less than a proportionate share of the Rent payable under this Lease (which proportionate share shall be based upon the square footage or acreage of the premises sublet by such Subtenant as compared with the total square footage or acreage of the applicable Parcel(s)); and (D) to the extent that Tenant is obligated by the provisions of this Lease to pay same, obligates such Subtenant to pay recurring quarterly charges of Additional Rent with respect to the premises covered by the Sublease on a proportionate share basis as described above (items (i) through (vi) collectively an "NDA-Eligible Sublease"). As used herein, "Sublandlord Obligations" shall mean any the following obligations that may be required to be undertaken by Tenant as sublandlord under the Sublease: (i) operation and maintenance of a wharf and other shared Port infrastructure, including heavy-haul roads, electricity substation and parking areas, (ii) channel dredging, and (iii) provision of cranes and equipment; provided however that Landlord shall not in any event be obligated to provide such Sublandlord Obligations to Subtenant unless and until Tenant has assigned to Landlord all port operator contracts then in effect, which affect the premises demised under the NDA-Eligible Sublease.

25.3 Subleases Generally.

25.3.1 All Subleases by Tenant hereunder, including any NDA-Eligible Subleases, shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and each Subtenant by entering into a Sublease is deemed to have agreed that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, either terminate the Sublease (except for NDA-Eligible Subleases) or take over all of the right, obligations, title and interest of Tenant, as sublandlord, under such Sublease, in which case such Subtenant

shall, at Landlord's option, attorn to Landlord; provided, however, that Landlord shall not be: (1) liable for any previous act or omission of Tenant under such Sublease; (2) subject to any counterclaim, offset or defense that such Subtenant might have against Tenant; (3) bound by any previous modification of such Sublease (except to the extent that Notice of the modification was previously given to Landlord, together with evidence that the Subtenant under such Sublease continued to be an NDA-Eligible Subtenant on the date of such modification) or by any rent or additional rent or advance rent which such Subtenant might have paid for more than the current month to Tenant, and all such rent shall remain due and owing, notwithstanding such advance payment; (4) bound by any security or advance rental deposit made by such Subtenant which is not received by Landlord and with respect to which such Subtenant shall look solely to Tenant for refund or reimbursement; or (5) obligated to perform any Construction in the subleased space or to prepare it for occupancy, and in connection with such attornment, the Subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such assumption and attornment. Notwithstanding the foregoing, the Parties acknowledge and agree that nothing in this Section 25.3 limits Subtenant's right to terminate its Sublease in accordance with its terms.

25.3.2 If a Tenant Event of Default has occurred and is continuing while the Leased Premises or any part thereof are subject to a Sublease or license, then Landlord, in addition to its other remedies, may collect directly from any Subtenant all Subrent, and apply such Subrent against Rent hereunder, subject to the provisions of this Section 25.3.2. In such event, Landlord shall send a Subrent Payment Notice to each Subtenant. Tenant authorizes its Subtenants to make payments of Subrents directly to Landlord upon receipt of a Subrent Payment Notice. All Subrents paid to Tenant by a Subtenant after a Tenant Event of Default shall be received by Tenant in trust for Landlord and shall be promptly forwarded to Landlord without offset or reduction of any kind. If Landlord collects any Subrent, Landlord may apply such rents only against the following, in any order of preference as Landlord determines in its sole discretion: (a) for the payment of any Rent hereunder; (b) for the payment of any costs and expenses Landlord incurs in curing the relevant Tenant Event of Default, including any court costs and attorneys' fees; or (c) any other amounts due and payable by Tenant to Landlord under the terms of this Lease. So long as there are no Tenant Monetary Defaults, if after reimbursement to Landlord of any then-outstanding Rent as aforesaid, there remains any unused portion of the Subrent and Tenant is using diligent efforts to cure any outstanding Tenant Events of Default, Landlord shall deposit such excess Subrent into an account to be held and controlled by a federally insured commercial bank located in the State of New Jersey to be agreed to between the Parties acting in Good Faith. Within five (5) days of establishing the foregoing account, Landlord shall provide to Tenant the details of the account, including the name, address and contact information for the Account Bank and the account number. Landlord shall have a first priority security interest in the account, which shall be perfected through an account control agreement that shall incorporate the terms of this Section 25.3.2 and shall otherwise be acceptable to Landlord in its sole discretion. Tenant shall not assign, pledge or encumber or grant a security interest in any portion of the account. Within ninety (90) days after all Tenant

Events of Default have been cured and no longer continuing, and provided no subsequent Tenant Events of Default have occurred, Tenant will be entitled to withdraw the balance of the funds deposited pursuant to this Section .

ARTICLE XXVI – REPRESENTATIONS AND WARRANTIES

26.1 Landlord's Representations. Landlord represents and warrants (and to the extent specifically set forth in this Section 26.1, PSEG Nuclear) to Tenant that the following facts and conditions exist and are true as of the Effective Date and shall be true on each Commencement Date:

26.1.1 Due Authorization and Execution. Each of Landlord and PSEG Nuclear has full right, title, authority, and capacity to execute and perform all Lease Related Documents to which Landlord and PSEG Nuclear is a party; the execution and delivery of the Lease Related Documents have been duly authorized by all requisite actions of Landlord and PSEG Nuclear; such Lease Related Documents constitute valid, binding, and enforceable obligations of Landlord and PSEG Nuclear (subject to Bankruptcy Laws and the exercise of judicial discretion); and, to Landlord's and PSEG Nuclear's knowledge, neither the execution of such Lease Related Documents nor the consummation of the transactions contemplated thereby violates any agreement (including Landlord's or PSEG Nuclear's organizational documents), contract, or other restriction to which Landlord or PSEG Nuclear is a party or is bound.

26.1.2 No Litigation. There is no pending or, to Landlord's knowledge, threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord or the Property that would, if adversely determined, materially adversely affect Landlord, the Property, any of the Lease Related Documents or the Leasehold Estate.

26.1.3 No Pending Condemnation. There is no pending and Landlord has not received any Notice of any threatened, Condemnation affecting any portion of the Property, or any pending public improvements in, about, outside, or appurtenant to the Property. There is no existing, and Landlord has not received any Notice of any pending or proposed, added or special assessments relating to any of the Property.

26.1.4 Existing Agreements. There are no existing agreements in effect for management, development or operation of any Parcel or provisions of services to any Parcel.

26.1.5 OFAC Compliance. Neither Landlord, nor PSEG Nuclear is a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3). Each of Landlord and PSEG Nuclear are not listed, nor owned or controlled by, or are acting for or on behalf of any person or entity on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, or any other list of persons or entities with whom Landlord or PSEG Nuclear are restricted from doing business with ("OFAC List").

26.1.6 Applicable Law/Approvals. Except as herein specifically set forth, to Landlord's and PSEG Nuclear's knowledge, no Approval of NRC or any other Government Entity is required to be obtained by Landlord or PSEG Nuclear in connection with the consummation of the transactions contemplated in any Lease Related Document to which each is a party. To Landlord's and PSEG Nuclear's knowledge, the execution and performance by each of them of their respective rights and obligations under the Lease Related Documents does not violate any Law.

26.1.7 No Other Tenants; No Other Rights. Except for this Lease and the Permitted Exceptions, Landlord has not entered into any other lease or agreement relating to the letting, license, use or occupancy of the Leased Premises or any Parcel.

26.1.8 Nuclear Regulatory Order. Neither Landlord nor PSEG Nuclear has received a Nuclear Regulatory Order which may require any Nuclear Regulatory Improvements on the Parcels.

26.1.9 Bankruptcy. Neither Landlord nor PSEG Nuclear is insolvent or the subject of any Bankruptcy Proceeding.

26.1.10 Organization. Each of PSEG Nuclear and Landlord is a limited liability company, duly organized, validly existing and in good standing under the laws of the State.

26.1.11 No Broker. No person or selling agency has been employed or retained by Landlord to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee or otherwise. Landlord shall Indemnify Tenant against any breach of such representation and any claims by any broker.

26.2 Tenant's Representations. Tenant represents and warrants to Landlord that the following facts and conditions exist and are true as of the Effective Date and shall be true on each Commencement Date:

26.2.1 Due Authorization and Execution. Tenant has full right, title, authority, and capacity to execute and perform all Lease Related Documents to which Tenant is a party; the execution and delivery of such documents have been duly authorized by all requisite actions of Tenant; such Lease Related Documents constitute valid, binding, and enforceable obligations of Tenant; and neither the execution of such Lease Related Documents nor the consummation of the transactions contemplated thereby violates any agreement (including Tenant's organizational documents), contract, or other restriction to which Tenant is a party or is bound.

26.2.2 No Litigation. There is no pending or, to Tenant's knowledge, threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Tenant, any constituent entity or individual of Tenant that would, if adversely determined, materially adversely affect Tenant, any Lease Related Document

(including this Lease) or Tenant's ability to develop and operate the Leased Premises as permitted by Article XIII and Article XIV hereof.

26.2.3 OFAC Compliance. Tenant is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3). Notwithstanding anything to the contrary herein, Tenant shall not permit the Leased Premises or any portion thereof to be used, occupied or operated by or for the benefit of any person or entity that is on the OFAC List. Tenant shall provide documentary and other evidence of Tenant's identity and ownership as may be reasonably requested by Landlord at any time to enable Landlord to verify Tenant's identity or to comply with any Laws.

26.2.4 Intentionally Omitted.

26.2.5 Bankruptcy. Tenant is not insolvent or the subject of any Bankruptcy Proceeding.

26.2.6 Organization. NJEDA is a body corporate and politic organized and validly existing under the laws of the State.

26.2.7 No Broker. No person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee or otherwise. Subject to Section 29.6, Tenant shall Indemnify Landlord against any breach of such representation and any claims by any broker.

ARTICLE XXVII – TENANT EVENTS OF DEFAULT

27.1 Tenant Events of Default. A "Tenant Event of Default" means the occurrence of any one or more of the following:

27.1.1 Tenant Monetary Default. Any failure by Tenant to pay, when and as this Lease requires, any Rent whether to Landlord or to a third party as provided in this Lease, and such failure shall have continued unremedied for a period of ten (10) days after Tenant's receipt of Notice from Landlord.

27.1.2 Insurance Default. Tenant fails to observe or perform its obligations to maintain (or cause to be maintained) insurance in the amounts and on the terms set forth in Article XV and such failure shall have continued unremedied for a period of ten (10) days after Tenant's receipt of Notice from Landlord.

27.1.3 Bankruptcy or Insolvency. Tenant (i) admits in writing that it is unable to pay its debts as they become due; (ii) becomes subject to any Bankruptcy Proceeding, except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement; or (iii) a custodian, receiver or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's or any guarantor's assets or Tenant's interest in this Lease, unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated, discharged or stayed within

sixty (60) days). Notwithstanding the foregoing, if Tenant is a State Entity, there shall be no Tenant Event of Default under this Section 27.1.3 if, within sixty (60) days of the occurrence of such default, another State Entity (a) assumes all of the obligations of Tenant under this Lease in accordance with applicable law and (b) cures any other existing Tenant Events of Default.

27.1.4 Cross Acceleration. Tenant defaults under any bond, debenture, note, mortgage, indenture or other instrument under which there may be issued or by which there may be secured or evidenced any indebtedness of Tenant exceeding an aggregate principal amount of $5,000,000.00, whether such indebtedness now exists or shall hereafter be created, and which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled.

27.1.5 Judgments. One or more final, non-appealable judgments or decrees shall be entered against Tenant (other than a Tenant that is a State Entity) involving in the aggregate a liability (not paid or fully covered by insurance (taking into account any deductibles)) of $1,000,000.00 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof.

27.1.6 Use Violation. Tenant permits the Leased Premises or the Improvements, or any part thereof, to be used for a purpose other than the Permitted Use, or in breach of the provisions of this Lease, and fails to discontinue or cause to be discontinued such use within sixty (60) days after Tenant's receipt of Notice thereof from Landlord describing such Default in reasonable detail, or in the case of a Default that cannot with due diligence be reasonably cured within said sixty (60) day period, if Tenant shall fail to duly commence such cure within said sixty (60) day period and to thereafter diligently prosecute to completion the curing of such Tenant Default within a reasonable time after the date of the giving of said Notice to Tenant.

27.1.7 Transfer Violation. Tenant Transfers the Leased Premises or the Improvements, or any part thereof, or Transfers this Lease other than as permitted by Article X hereof.

27.1.8 All other Tenant Defaults. Except as provided for in Sections 27.1.1 through 27.1.7, if Tenant breaches any covenant of this Lease or otherwise fails to perform its obligations hereunder or under any other Lease Related Document, and Tenant does not cure such Tenant Default within sixty (60) days after Tenant's receipt of Notice thereof from Landlord describing such Tenant Default in reasonable detail, or in the case of a Tenant Default that cannot with due diligence be reasonably cured within the applicable cure period, if Tenant shall fail to duly commence such cure within said sixty (60) day period and to thereafter diligently prosecute to completion the curing of such Tenant Default within a reasonable time after the date of the giving of said Notice to Tenant.

27.2 Cure Period for State Entities. Notwithstanding anything to the contrary in Section 27.1, if Tenant is a State Entity, upon Tenant's receipt of a Notice from Landlord that a Tenant Event of Default has occurred, Tenant shall have a period of ninety (90) days to cure such Tenant Event of Default.

27.3 Remedies and Certain Cure Rights. Subject to this Article XXVII and Article XVIII, upon the occurrence of a Tenant Event of Default, and at any time thereafter so long as the same shall be continuing, Landlord may exercise one or more of the following remedies, in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease, as Landlord in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable Law then in effect:

27.3.1 Termination of Tenant's Rights. Subject to the restrictions on termination of this Lease set forth in Section 27.8, Landlord may terminate Tenant's right to possess the Leased Premises by Notice to Tenant, in which case this Lease and the Term shall terminate, such date of termination shall be deemed the Expiration Date hereunder, and Tenant shall surrender possession to Landlord on such Expiration Date as required hereunder, but Tenant shall remain liable for any Surviving Obligations.

27.3.2 Taking Possession. Landlord may re-enter and take possession of the Leased Premises with process of Law, including summary dispossess proceedings, and remove Tenant, with or without having terminated this Lease (any such termination, however, being subject to Section 27.8). Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any right to service of notice of intention to re-enter provided in any Law and any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by warrant of any court. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from any liability under this Lease. Landlord shall be under no liability by reason of any such re-entry, repossession or removal. No such re-entry, repossession or removal shall be construed as an election by Landlord to terminate this Lease unless a notice of such termination is given to Tenant pursuant to this Section 27.3. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

27.3.3 Right to Cure Insurance Default. In the case of a Tenant Event of Default pursuant to Section 27.1.2, Landlord may (but shall be under no obligation to) immediately cure the same. Tenant shall reimburse Landlord all sums so paid by Landlord, together with interest thereon at the Default Rate from the date of Landlord's making such payment, which shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand, and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease.

27.3.4 Landlord's Right to Cure. Upon the occurrence and during the continuance of a Tenant Event of Default, Landlord (either itself or by engaging others) may (but shall be under no obligation to) cure the same and may temporarily but without

dispossessing Tenant enter upon the Leased Premises solely to the extent necessary for that purpose and take all such action thereon as may be necessary to effect such cure. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord to cure such Tenant Event of Default together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, all of which shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand, and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease.

27.3.5 Intentionally Omitted.

27.3.6 No Waiver. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Tenant Default or breach by Tenant hereunder, and no acceptance of full or partial Rent during continuance of any such Tenant Default, shall waive any such Tenant Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Tenant Default, shall be modified except by a written instrument executed by Landlord. No waiver of any Tenant Default shall modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Tenant Default of such covenant, agreement, term or condition of this Lease.

27.4 Damages. (a) In the event of any expiration or termination of the term of this Lease or re-entry or repossession of the Leased Premises or removal of persons or property therefrom by reason of the occurrence of a Tenant Event of Default, Tenant shall pay to Landlord all Rent and other sums required to be paid by Tenant, in each case together with interest thereon at the Default Rate from the due date thereof to and including the date of such expiration, termination, re-entry, repossession or removal. Thereafter, Tenant shall, until the end of what would have been the Term (excluding any unexercised renewals) of this Lease in the absence of such expiration, termination, re-entry, repossession or removal and whether or not the Leased Premises have been relet, be liable to Landlord for, and shall pay to Landlord, as liquidated and agreed current damages: (i) all Rent and other sums which would be payable under this Lease by Tenant in the absence of any such expiration, termination, re-entry, repossession or removal, less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant as hereafter provided, after deducting from such proceeds all Reletting Expenses. Tenant shall pay such liquidated and agreed current damages on the dates on which Rent would be payable under this Lease in the absence of such expiration, termination, re-entry, repossession or removal, and Landlord shall be entitled to recover the same from Tenant on each such date.

(b) Notwithstanding anything to the contrary herein contained, at any time or from time to time after a re-entry, repossession or removal, whether or not the term of this Lease shall have been terminated, as provided above, Landlord shall use commercially reasonable efforts to relet the Leased Premises for the account of Tenant, in the name of Landlord or otherwise, without notice to Tenant, for the whole of the unexpired period of the Term, or longer, or from time to time for shorter periods, for any rental then obtainable on an arm's length basis, giving such concessions of rent and making such special repairs, alterations, decorations and paintings for any new tenant

as Landlord may in its sole and absolute discretion deem advisable. Landlord may collect any rents payable by reason of such reletting. Landlord shall not be liable for any failure to relet the Leased Premises or for any failure to collect any rent due upon any such reletting Tenant shall have no right to any Rent obtained from such reletting.

(c) At any time after any expiration or termination of the term of this Lease or re-entry or repossession of the Leased Premises or removal of persons or property thereon by reason of the occurrence of a Tenant Event of Default as aforesaid, whether or not Landlord shall have collected any liquidated and agreed current damages pursuant to Section 27.4(a) above, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant Event of Default and in lieu of all liquidated and agreed current damages beyond the date of such demand (it being agreed that it would be impracticable or extremely difficult to fix the actual damages), an amount equal to the excess, if any, of (i) the aggregate of all Rent and other sums which would be payable under this Lease, in each case from the date of such demand for what would be the then-unexpired term of this Lease in the absence of such expiration, termination, re-entry, repossession or removal, less (ii) the projected rental value of the Leased Premises for the same period as certified by an independent nationally recognized appraiser reasonably agreed by Landlord and Tenant (whose fees shall be paid by Tenant), both discounted to present value at a rate equal to the then rate on U.S. Treasury obligations of comparable maturity to the Term. If any Law shall limit the amount of liquidated final damages to less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such Law.

(d) Landlord may also recover from Tenant damages Landlord incurs by reason of a Tenant Event of Default, for the reasonable costs of: (i) recovering possession; (ii) reimbursement of Landlord's costs, including reasonable attorney fees; and (iii) Reletting Expenses. Landlord may recover such damages at any time after a Tenant Event of Default, including after expiration of the Term. Notwithstanding any Law to the contrary, (i) Landlord need not commence separate actions to enforce Tenant's obligations for each month's rent not paid, or each month's accrual of damages for Tenant Event of Default, but may bring and prosecute a single combined action or actions for all such rent and damages; and (ii) Landlord may not recover any consequential damages for a Tenant Event of Default except as set forth in Article Article VIII and Article XXX hereof.

27.5 Reletting Expenses. Proceeds of any reletting shall be applied as aforesaid except that the following cost and expense shall be deducted therefrom (collectively, "Reletting Expenses"):

27.5.1 Landlord's Costs. All reasonable costs and expenses of terminating this Lease, re-entering, repossessing, and repairing the Leased Premises, including, but not limited to, reasonable attorneys' fees and expenses (including fees and expenses of appellate proceedings).

27.5.2 Preparation for Reletting. All reasonable costs and expenses incurred in reletting the Leased Premises, including brokerage commissions, reasonable attorneys' fees and expenses, and reasonable costs of construction to prepare the Leased

Premises for reletting and the value of any free rent or other concessions provided to a tenant in connection with reletting.

27.5.3 Costs of Maintenance and Operation. To the extent that Landlord shall maintain and operate the Leased Premises prior to reletting, all reasonable cost and expense of doing so.

27.6 Remedies Cumulative. Each right and remedy of Landlord, subject to the restrictions contained in Section 27.8, as expressly provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease and the exercise, or beginning of the exercise, by Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

27.7 No Double Recovery. In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord's damages.

27.8 Limitation of Landlord's Right to Terminate Lease. NJEDA intends to issue bonds in order to finance the Project ("Bonds"). Notwithstanding any other provisions contained in this Lease to the contrary, and for so long as (i) any Bonds remain outstanding; and (ii) the NJEDA is the named Tenant hereunder, Landlord shall not take any action, including repossession, dispossession of Tenant or reletting of any portion of the Leased Premises, that would constitute a termination or otherwise exercise its right to terminate this Lease or the Leasehold Estate.

27.9 Reserve Account.

(a) Establishment and Security.

(i) On or before the date of closing of any Bonds financing, Tenant shall establish, and then fund as hereafter provided, a reserve account in the name of Tenant as hereafter provided (the "Reserve Account") to be held and controlled by a federally insured commercial bank located in the State of New Jersey (the "Account Bank") to be agreed to between the Parties acting in Good Faith. The Reserve Account shall be maintained for so long as any Bonds remain outstanding.

(ii) Within the earlier of: (x) five (5) days of establishing the Reserve Account, or (y) the date of closing of any Bonds financing, Tenant shall provide to Landlord the details of the Reserve Account, including the name, address and contact information for the Account Bank and the account number. The effectiveness of Section 27.8 above shall be conditioned upon Landlord receiving the foregoing information from Tenant.

(iii) Tenant shall grant to Landlord a first priority security interest in the Reserve Account, which shall be perfected through an account control agreement that shall incorporate the terms of this Section 27.8 and shall otherwise be in form acceptable to Landlord in its sole discretion ("Account Control Agreement"), and executed and

delivered by Tenant to Landlord no later than ten (10) Business Days after the Reserve Account is established. The effectiveness of Section 27.8 above shall be conditioned upon Landlord receiving the executed Account Control Agreement from Tenant.

(b) Tenant shall not assign, pledge or encumber or grant a security interest in any portion of the Reserve Account.

(c) Funding. On or before the date of closing of any Bonds financing, Tenant shall deposit into the Reserve Account an amount equal to the Reserve Amount for the applicable Lease Year. Thereafter, and within ten (10) days after the Additional Rent Budget for each succeeding Lease Year is established, Tenant shall deposit such additional amounts as may be required to maintain the required Reserve Amount in the Reserve Account.

(d) Interest income. Any interest income earned on the Reserve Account shall accrue within such account and contribute towards the Reserve Account balance.

(e) Withdrawal from the Reserve Account. Landlord will be entitled to immediately withdraw funds from the Reserve Account, in such amounts and at such times as needed, following a Tenant Event of Default: (a) for the payment of any Rent or any other sum as to which there is a Tenant Event of Default; (b) for the payment of any amount Landlord may spend or become obligated to spend by reason of a Tenant Event of Default; or (c) as compensation to Landlord for any losses incurred by reason of a Tenant Event of Default. If any portion of the Reserve Amount is so used or applied, then within seven (7) Business Days after Landlord's notice to Tenant of such use or application, Tenant shall replenish the Reserve Account to the then-required Reserve Amount, and Tenant's failure to do so shall constitute an Event of Default under this Lease and a waiver of Landlord’s restrictions set forth in Section 27.8 above. In no event shall the Reserve Amount be considered an advance payment of Rent, and in no event shall Tenant be entitled to use the Reserve Amount for the payment of Rent. Nothing herein shall be construed to limit the amount of damages recoverable by Landlord, it being specifically agreed that the Reserve Amount shall not be deemed liquidated damages for a Tenant Event of Default, nor shall the existence of the Reserve Account limit Landlord’s other remedies for a Tenant Event of Default as otherwise herein provided.

(f) Close Out Procedure. Within ten (10) days after the earlier of: (A) the first date on which no Bonds are outstanding, or (B) the date Tenant has vacated and surrendered the Leased Premises in the condition required hereunder following the Expiration Date, Tenant shall deliver Notice to Landlord thereof, providing a final accounting of what remains in the Reserve Account and requesting that the remaining balance of the Reserve Account be refunded to Tenant. Within thirty (30) days after receipt of such Notice, Landlord shall provide Tenant with Notice of any amounts due Landlord under Subsection (e) above, and after payment thereof to Landlord, any remaining balance in the Reserve Account may be released to Tenant.

(g) State Rent Obligation. NJEDA shall provide Notice to Landlord upon the State Rent Obligation becoming effective, which Notice shall be accompanied with a copy of the relevant executed sublease evidencing such State Rent Obligation. Notwithstanding Section 27.9(c), NJEDA shall only be obligated to fund and maintain the Reserve Account pursuant to this

Section 27.9 in an amount equal to the Partial Reserve Amount if Landlord makes a one-time election to accept the State Rent Obligation in lieu of Tenant maintaining the Reserve Account at the Full Reserve Amount.

ARTICLE XXVIII – LANDLORD EVENTS OF DEFAULT

28.1 Landlord Event of Default. A "Landlord Event of Default" means the occurrence of any one or more of the following:

28.1.1 Landlord Monetary Default. Any failure by Landlord to perform its monetary obligations, when and as this Lease requires, whether the amount is owing to the Tenant or to a third party provided for in this Lease, subject in all applicable cases to Landlord's right of contest as specifically set forth herein, and such failure shall have continued unremedied for a period of ten (10) days after Landlord's receipt of Notice from Tenant.

28.1.2 Insurance Default. Landlord fails to observe or perform its obligations to maintain (or cause to be maintained) insurance in the amounts and on the terms set forth in Article XV and such failure shall have continued unremedied for a period of ten (10) days after Landlord's receipt of Notice from Tenant.

28.1.3 Intentionally Omitted.

28.1.4 Transfer Violation. Landlord sells, transfers or assigns the Fee Estate or any Parcel, or any part thereof, other than as permitted by Article X hereof.

28.1.5 Non-Compete Violation. Landlord breaches or violates the undertakings and covenants set forth in Article VII.

28.1.6 Conflict of Interest Violation. A breach or violation contemplated in Section 29.2(f) (Conflict of Interest and Brokers' Fees) hereof.

28.1.7 Campaign Contribution Violation. A breach or violation contemplated in Section 29.3(c) (Campaign Contributions and Expenditures) hereof

28.1.8 Affirmative Action or Anti-Discrimination Violation. A breach or violation contemplated in Section 29.4(f) (Compliance with Affirmative Action and Anti-Discrimination Laws) hereof.

28.1.9 All other Landlord Defaults. Except as provided for in Sections 28.1.1 through 28.1.8, if Landlord breaches any covenant of this Lease or otherwise fails to perform its obligations hereunder or under any other Lease Related Document, and Landlord does not cure such Landlord Default within sixty (60) days after Landlord's receipt of Notice thereof from Tenant describing such Landlord Default in reasonable detail, or in the case of a Landlord Default that cannot with due diligence be reasonably cured within said sixty (60) day period, if Landlord shall fail to duly commence such cure within said sixty (60) day period and to thereafter diligently prosecute the curing of such Landlord Default with due diligence.

28.2 **Remedies Upon Landlord Event of Default**. Except as hereafter set forth, if a Landlord Event of Default occurs, then Tenant shall have the right, at its option, to such remedies as may be available to Tenant at law or in equity or under any other terms of this Lease, all of which are cumulative (so exercise of one remedy shall not preclude exercise of another remedy). Tenant may not recover any consequential or punitive damages for a Landlord Event of Default, except, for the avoidance of doubt, any damages or payment obligations expressly set forth in Article VI (Regulatory Improvements and Regulatory Recapture).

ARTICLE XXIX – STATE ENTITY-SPECIFIC PROVISIONS

Notwithstanding any provisions contained herein to the contrary, the following State-specific provisions shall apply to this Lease, only for so long as Tenant hereunder is a State Entity. In the event of any conflict, ambiguity or inconsistency between the provisions of this Article XXIX and the provisions of any other Section of this Lease, the terms of this Article XXIX shall prevail, but only for so long as Tenant is a State Entity.

29.1 **Certificate as to Taxes**. Landlord shall pay all Real Estate Taxes paid as Additional Rent by Tenant on a timely basis. If Landlord pays Real Estate Taxes directly to the taxing authority, Landlord agrees to provide to Tenant, on an annual basis, a certificate certifying that payments are current for the Real Estate Taxes in accordance with the provisions of the Tax Sale Law, N.J.S.A. 54:5-1 et seq.

29.2 **Conflict of Interest and Brokers' Fees.**

(a) Landlord hereby agrees to abide by the prohibitions contained in this Section 29.2 on activities between Landlord and any State officer or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13(b) and (e) ("State Employee"). Any violation of these prohibitions shall render Landlord liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (1976), Executive Order No. 189 (1988), and any Tenant debarment rules, as amended and supplemented.

(b) Landlord hereby warrants that it has not paid and shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State Employee with which Landlord transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such State Employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such State Employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

(c) Landlord hereby warrants that the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State Employee from any State vendor or from Landlord shall be reported in writing forthwith by Landlord to the Attorney General and the State Ethics Commission.

(d) Landlord hereby warrants that it shall not undertake directly or indirectly any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, expressed or implied, or sell any interest in Landlord to, any State Employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any Person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Landlord hereby warrants that any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State Employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(e) Landlord hereby warrants that it shall not influence, or attempt to influence or cause to be influenced, any State Employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said State Employee.

(f) The Parties hereby agree that, in the event of a breach or violation of the warranties contained in this Section 29.2 or Section 26.1.11, Tenant shall have the right to declare a Landlord Event of Default under this Lease and terminate this Lease without liability to Landlord.

29.3 <u>Campaign Contributions and Expenditures</u>.

(a) For purposes of this Section 29.3, the following terms are defined as follows:

(i) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act," L. 1973, c. 83 (N.J.S.A.19:44A-1 et seq.), and regulations set forth at N.J.A.C. 19:25-10: 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.

(ii) "Business Entity" means:

(A) A for-profit entity as follows:

(I) in the case of a corporation: the corporation, any officer of the corporation, and any Person or business entity that owns or controls 10% or more of the stock of corporation;

(II) in the case of a general partnership: the partnership and any partner;

(III) in the case of a limited partnership: the limited partnership and any partner;

(IV) in the case of a professional corporation: the professional corporation, any shareholder or officer;

(V) in the case of a limited liability company: the limited liability company and any member;

(VI) in the case of a limited liability partnership: the limited liability partnership and any partner;

(VII) in the case of a sole proprietorship: the proprietor; and

(VIII) 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;

(B) Any subsidiary directly or indirectly controlled by the business entity;

(C) Any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

(D) With respect to an individual who is included within the definition of Business Entity, such individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this 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 one of the actions constituting a breach listed in section 9 of L. 2005, c. 51 (N.J.S.A.19:44A-20.21) .

(iii) "Chapter 51" means Public Law 2005, chapter 51 (N.J.S.A. 19:44A- 20.13 through 19:44A-20.25 and N.J.S.A. 19:44A-20.7 and 19:44A-20.8) which codified "Executive Order 134", signed by former New Jersey Governor James E. McGreevey on September 22, 2004 as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

(b) The terms, restrictions, requirements and prohibitions set forth in Chapter 51 are incorporated into this Lease by reference as material terms of this Lease with the same force and effect as if Chapter 51 were stated herein its entirety. Compliance with Chapter 51 by Landlord shall be a material term of this Lease.

(c) In addition to any other Landlord Event of Default specified in this Lease, Tenant shall have the right, but not the obligation, to declare a Landlord Event of Default under this Lease if: (i) Landlord makes or solicits a Contribution in violation of Chapter 51; (ii) Landlord knowingly conceals or misrepresents a Contribution given or received; (iii) Landlord makes or solicits Contributions

through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Landlord 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 parley committee; (v) Landlord 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 Landlord directly, would violate the restrictions of Chapter 51; (vi) Landlord funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Landlord engages in any exchange of Contributions to circumvent the intent of Chapter 51; (viii) Landlord directly or indirectly through or by any other person or means, does any act which would violate the restrictions of Chapter 51; or (ix) any material misrepresentation exists in any Certification and Disclosure required by Chapter 51 which was delivered by Landlord to Tenant in connection with this Lease.

(d) Landlord hereby acknowledges and agrees that pursuant to Chapter 51, Landlord shall have a continuing obligation to report to the Office of the State Treasurer, Chapter 51 Review Unit of any Contributions Landlord makes during the Term of this Lease. If after the Effective Date, any Contribution is made by Landlord and the Treasurer of the State determines such Contribution to be a conflict of interest in violation of Chapter 51, Tenant shall have the right to declare a Landlord Event of Default under this Lease.

29.4 Compliance with Affirmative Action and Anti-Discrimination Laws.

(a) The Parties to this Lease do hereby agree that the provisions of N.J.A.C. 17:27, as amended and supplemented, prohibiting discrimination in employment or public contracts, are hereby incorporated into and made a part of this Lease and are binding upon them.

(b) Landlord agrees to comply and to require its contractors and subcontractors to comply with the following: (i) compliance with the laws and executive orders prohibiting discrimination, including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and their state law counterparts; (ii) abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a) (for construction contractors, 41 CFR §60-4.3(a)); (iii) not discriminate against qualified individuals based on their status as protected veterans or individuals with disabilities and does not discriminate against individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or any other characteristic protected by law; (iv) take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability and (v) comply with the provisions of 29 CFR Part 471, Appendix A to subpart a, as applicable. Such compliance with this paragraph shall include, but not be limited to the following: employment,

upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(c) Pursuant to N.J.A.C. 17:27-3.5 and 3.7, Exhibit T is incorporated herein regarding the provision of any goods and services (including professional services) to Tenant by Landlord or its contractors and subcontractors, and pursuant to N.J.A.C. 17:27-3.6 and 3.8, Exhibit U is incorporated herein regarding construction by Landlord or its contractors or subcontractors for Tenant.

(d) Landlord or its contractors and subcontractors, where applicable, shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of this provision and applicable law.

(e) In the event of a breach or violation of the warranties contained in this Section 29.4 by Landlord, Tenant shall have the right to declare a Landlord Event of Default and terminate this Lease without liability to Landlord.

(f) In the event of a breach or violation of the warranties contained in this Section 29.4 by Landlord's contractors or subcontractors, Landlord agrees to provide proof that the violation has been abated to the satisfaction of the agency enforcing said violation. In the event Landlord fails to provide said proof of the abatement of the violation within thirty (30) days of Notice of said violation, Tenant shall have the right to declare a Landlord Event of Default and terminate this Lease without liability to Landlord.

29.5 Equal Opportunity for Individuals with Disabilities.

(a) Landlord and Tenant do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto (hereinafter referred to collectively as the "ADA"), are incorporated into and made a part of this Lease.

(b) To the extent Landlord provides any aid, benefit, or service on behalf of Tenant pursuant to this Lease, Landlord agrees that the performance shall be in strict compliance with the ADA beginning on the Effective Date.

(c) It is expressly agreed and understood that any approval by Tenant of the services provided by Landlord pursuant to this Lease (if any) shall not relieve Landlord of the obligation to comply with the ADA and to defend, Indemnify, protect, and save harmless Tenant pursuant to this Section 29.5.

29.6 No Indemnification. It is expressly agreed and understood that, notwithstanding anything to the contrary in this Lease, as long as Tenant is a State Entity, Tenant assumes no

obligation to Indemnify or save harmless Landlord, its agents, servants, employees and subcontractors for any claim which may arise out of Tenant's performance of this Lease or otherwise hereunder. Moreover, Landlord expressly understands and agrees that this Section 29.6 shall not limit Landlord's obligation under this Lease, shall not be construed to relieve Landlord from any liability, and shall not preclude Tenant from taking any other actions available to it under this Lease or at Law.

29.7 Prevailing Wages and Affirmative Action Requirements. In performing any Construction on the Leased Premises, including, but not limited to, Construction of any Nuclear Regulatory Improvements in accordance with Article VI hereof, and any Construction paid in whole or in part by Tenant, Landlord shall comply, and cause its contractors to comply, with all applicable prevailing wage requirements (including, but not limited to, N.J.S.A. 34:11-56.25 et seq., N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-4.1 et seq., and N.J.S.A. 34:11-56.48) and affirmative action requirements (including, but not limited to, N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3.1 et seq.). To the extent that Landlord is performing Construction subject to this Section 29.7, Landlord must obtain from Tenant any additional language that Landlord is required to include in its contracts and subcontracts. Further, to the extent that Landlord is performing Construction subject to this Section 29.7, Landlord, and any contractors or subcontractors the Landlord may employ, will comply with the provisions of the Public Works Contractor Registration Act ("PWCRA"), N.J.S.A. 34:11-56.48 et seq., where applicable, including, but not limited to, the requirement that all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for "public work" as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development.

29.8 Tort Claims and Contractual Liability Acts. Notwithstanding anything contrary to the provisions within this Lease, including, but not limited to, Section 27.4(d), any and all claims made or to be made against Tenant based in tort law for damages 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. Notwithstanding any provision in this Lease to the contrary, Landlord agrees that any and all claims made or to be made against Tenant based in contract law for damages 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.

29.9 No Obligation by State. THIS LEASE IS NOT AN OBLIGATION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF NOR SHALL THE STATE OR ANY POLITICAL SUBDIVISION THEREOF BE LIABLE FOR ANY OF THE OBLIGATIONS UNDER THIS LEASE. NOTHING CONTAINED IN THIS LEASE SHALL BE DEEMED TO PLEDGE THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

29.10 Retention of Records.

(a) This Lease is subject to N.J.A.C. 17:44-2.2. Accordingly, Landlord shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Furthermore, relevant records of private vendors or other persons

entering into contracts with Tenant are subject to audit or review by the Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d).

(b) The State reserves the right to audit the records of Landlord in connection with all matters related to this Agreement. Landlord agrees to maintain records in accordance with generally accepted accounting principles, for period of not less than five (5) years after receipt of final payment.

29.11 Open Public Records Act. Landlord acknowledges that Tenant is subject to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et. seq.), New Jersey common law regarding disclosure of records, and may be subject to the New Jersey Open Public Meetings Act (N.J.S.A. 10:4-6 et. seq.). Landlord further acknowledges that the New Jersey Open Public Records Act sets forth strict time frames for responding to requests for public records and penalties for failure to comply. In the event that Tenant is requested or required by the New Jersey Open Public Records Act, the common law right of access, oral questions administered under oath in a court or investigative proceeding, interrogatories, depositions, subpoena or other judicial or investigative process to disclose records supplied by Landlord to Tenant or its representatives, Tenant shall provide to Landlord prompt notice of such requests so that Landlord may seek a protective order or other appropriate relief from such request or requirement to disclose the records from Landlord. The New Jersey Open Public Meetings Act requires that certain decisions be presented to and discussed by a public board at an open, public meeting. Landlord understands and agrees that notwithstanding any provision hereof to the contrary, it shall not be a violation of this Lease and Tenant shall have no liability to Landlord for: (i) in the absence of a timely protective order or other relief, releasing documents under the New Jersey Open Public Records Act or the common law, if Tenant determines, in its best judgment, that such documents are required to be released thereunder, or (ii) presenting and discussing the terms of this Lease or any other documentation or information of Landlord at an open public meeting.

ARTICLE XXX – SURRENDER OF POSSESSION; HOLDING OVER

30.1 Surrender of Possession.

(a) Tenant shall, on or before the Expiration Date of this Lease, peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of any Subleases and any other lettings and occupancies, free and clear of all liens and encumbrances other than the Remaining Exceptions and those, if any, created by Landlord or any of its Affiliates, and in a clean condition subject to reasonable wear and tear. Upon the Expiration Date, Tenant shall surrender the Leased Premises to Landlord and shall deliver a recordable termination of the Memorandum of Lease. At the time of surrender, but subject to the terms of Article XIV hereof, any Improvements (including Alterations) on the Leased Premises shall automatically become property of Landlord, without any compensation paid to Tenant and without the execution of any further instrument, free and clear of all liens and encumbrances other than the Remaining Exceptions, unless Landlord, as stated in writing at the time of any approval of any Major Construction elects to have an Alteration removed or demolished by Tenant, in which event, the same shall be removed from the Leased Premises by Tenant

prior to the termination of this Lease, at Tenant's expense. Tenant shall immediately repair any damage to the Property caused by its requested removal of any Alterations. Tenant shall, on demand, execute any reasonable further assurances of title to the Improvements (or any part thereof) as Landlord may reasonably request.

(b) On or before the Expiration Date, Tenant may remove or cause to be removed any Tenant's Personal Property and/or any Subtenant's and/or occupant's personal property from the Leased Premises; provided, however, that with respect to the removal of Tenant's Personal Property, at such time, there exists no Tenant Event of Default under this Lease; and provided, further, that such removal will not cause any material damage to the Improvements or necessitate other than minor changes in or repairs to the Improvements. Any Tenant's Personal Property or any Subtenant's or occupant's personal property which shall remain in or on the Leased Premises after the Expiration Date or the removal of such Tenant, Subtenant or occupant from the Leased Premises, may, at the option of Landlord and without notice, be deemed to have been abandoned by Tenant or such Subtenant or occupant and may either be retained by Landlord as its property or be disposed of by Landlord, without accountability, in such manner as Landlord may see fit, or if Landlord shall give written Notice to Tenant to such effect, such property shall be removed by Tenant, at Tenant's cost and expense. Provided that Landlord provides Tenant with any necessary access to the Property, Tenant shall immediately repair any damage to the Property caused by its removal of any of Tenant's Personal Property which remains the property of Tenant.

30.2 Holding Over. If the Leased Premises are not surrendered in accordance with Section 30.1, Tenant shall be a tenant from month to month, subject to all of the provisions, conditions and obligations of this Lease, except that Tenant shall pay Landlord 200% of the Base Rent per month (or partial month) as was payable for the last month of the Term as Base Rent, plus Additional Rent. Subject to Section 29.6, Tenant shall indemnify and hold Landlord harmless against loss and liability (including attorney's fees) resulting from the delay by Tenant in so surrendering the Leased Premises including, without limitation, any claims made by any succeeding occupant founded on such delay.

ARTICLE XXXI – NOTICES

All Notices shall be in writing and addressed to Landlord, PSEG Nuclear and Tenant (and their designated copy recipients) as set forth in Schedule I (Notice Addresses). Notices shall be delivered by Federal Express or other overnight (one-night) courier service to the addresses set forth in Schedule I (Notice Addresses), in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Notwithstanding the foregoing, Notices for the regular payment of Rent under this Lease (as opposed to late payments, for example) may be sent by first class mail, in which case they shall be deemed delivered three (3) Business Days after deposit in the United States mail, provided that no postal strike (or other event likely to disrupt postal service) is then in effect. Any party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may

request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

ARTICLE XXXII – NONRECOURSE

(a) Notwithstanding anything to the contrary in this Lease, but subject to subsection (b) below, the liability of each of Landlord, Tenant (including any New Tenant) or PSEG Nuclear, and each of their Affiliates, under this Lease for damages or otherwise, shall be enforceable against, and shall not extend beyond each such Party's interest in the Leased Premises and Improvements (including any Loss Proceeds). Subject to subsection (b) below, no property or assets whatsoever, except Landlord's, Tenant's or PSEG Nuclear's (as applicable) respective interest in the Leased Premises and Improvements (including the Loss Proceeds), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) against such applicable party arising under or in connection with this Lease.

(b) Nothing in this Article XXXII shall limit or affect, or be construed to limit or affect, the obligations or liabilities of Tenant, Landlord or PSEG Nuclear: (i) arising under Article VI (Regulatory Improvements and Regulatory Recapture), Section 10.4 (Tenant's Right of First Offer) or Article IX (Nuclear Liability); or (ii) arising pursuant to Law for such Party's fraudulent actions, knowing misrepresentations or willful misconduct, except that in no event shall Landlord be liable to Tenant for consequential or punitive damages, except, for the avoidance of doubt, any damages or payment obligations expressly set forth in Article VI (Regulatory Improvements and Regulatory Recapture).

ARTICLE XXXIII – ADDITIONAL DELIVERIES; THIRD PARTIES

33.1 Estoppel Certificates. Up to twice a year, either Landlord or Tenant may require the other Party to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) an estoppel certificate certifying to such matters including, but not limited to, (a) that the Lease is in full force and effect and identifying any modifications; (b) the date upon which Tenant began paying Rent and the date to which Rent has been paid; (c)that there has been no Landlord Default or Tenant Default, or if there is a default, the nature thereof in reasonable detail; (d) that Tenant has accepted possession of the Leased Premises; (e) that there is no prepayment of Rent more than thirty (30) days in advance; (f) that, to such Parties' knowledge, there are no actions, whether voluntary or otherwise, pending against such Party under Bankruptcy Law; and (g) such other matters as may be reasonably required by such Party. Such certifying Party shall sign, acknowledge, and return such Estoppel Certificate within fifteen (15) Business Days after receipt of the request from the Requesting Party. In addition to the foregoing, Landlord agrees to provide, upon reasonable request of Tenant, an Estoppel Certificate for the benefit of any Leasehold Mortgagee, within fifteen (15) Business Days after receipt of Tenant's request, confirming (a) all Tenant Defaults then claimed by Landlord and the scope, status, and remaining duration of Leasehold Mortgagee's cure rights for each such Tenant Default, and (b) all Leasehold Mortgages of which Landlord has received Notice

33.2 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the Parties' intent in entering into this Lease.

33.3 Memorandum of Lease. Upon request by any party to this Lease, the parties shall promptly execute, acknowledge, and deliver duplicate originals of the Memorandum of Lease. Any Party may record such Memorandum of Lease. Any fees imposed upon such recording shall be paid by Tenant. If the Parties amend this Lease, then the Parties shall have the same rights and obligations regarding a memorandum of such amendment as they do for the Memorandum of Lease. Tenant may at any time by Notice to Landlord elect to require the Memorandum of Lease to be terminated.

ARTICLE XXXIV – MISCELLANEOUS

34.1 Confidentiality. Landlord shall not disclose any aspect of Tenant's financial statements, financing for the NJWP, or development of the NJWP that Tenant designates to Landlord as confidential, and Tenant shall not disclose any terms and conditions of this Lease, nor, to the extent Landlord designates same to Tenant as confidential, any information related to the Nuclear Power Plant or the Property (the "Confidential Information"). No Party shall use or disclose Confidential Information received from any other Party to this Lease or distribute or disseminate any such Confidential Information to anyone, without consent from such other Party (which consent may be withheld in such other Party's sole discretion); except that, unless the disclosing Party obtains injunctive relief to the contrary: (A) Landlord may disclose Tenant's Confidential Information (i) to the holder of any Fee Mortgage, a prospective buyer of the Fee Estate or any rating agency that agrees to maintain the confidentiality of such information; (ii) to its lawyers, accountants, and other business advisors and any Affiliates of Landlord to the extent necessary in connection with this Lease; (iii) information which was or hereafter becomes known to Landlord by other means on a non-confidential basis; (iv) information which has come into the public domain; (v) in connection with litigation between the parties hereto; (vi) if required by court order; (vii) to the USACE to the extent necessary or advisable, in connection with the acquisition of Parcel B by Tenant; (viii) as required in connection with obtaining the Approvals for the NJWP; (ix) to any Government Entity pursuant to, and to the extent required by, any subpoena or judicial process; and (B) Tenant may disclose Landlord's Confidential Information: (i) to the holder of any Leasehold Mortgage, a potential purchaser or any rating agency that agrees to maintain the confidentiality of such information; (ii) in connection with in any litigation between the parties hereto; (iii) to its lawyers, accountants, and other business advisors to the extent necessary in connection with this Lease; (iv) information which was or hereafter becomes known to Tenant by other means on a non-confidential basis; (v) information which has come into the public domain; (vi) if required by court order; (vii) to the USACE to the extent necessary or advisable, in connection with the acquisition of fee title to Parcel B by Tenant; (viii) as required in connection with obtaining the Approvals for the NJWP; (ix) to any Government Entity pursuant to, and to the extent required by, any subpoena or judicial process; and (x) as otherwise provided hereunder. The consent by Landlord or Tenant, as the case may be, to any disclosures shall not be deemed to be a waiver on the part of such Party of any prohibition against any future disclosure.

34.2 Intentionally Omitted.

34.3 Port Neutrality. Landlord and Tenant agree that the NJWP is intended to be an open-access and neutral asset and that all decisions regarding the allocation of the NJWP, including marshalling of offshore wind projects or offshore wind component manufacturing, shall be completed by Tenant at its discretion, and its sole cost and expense.

34.4 Marketing and Publicity. The Parties shall use reasonable efforts to support reasonable marketing and publicity of the NJWP, wharf and production facilities, all at Tenant's cost and expense. Tenant shall not engage in any publicity matter using the name, trade name, trademark, trade symbol or logo of Landlord or any of its Affiliates.

34.5 No Waiver by Silence. Failure of any party to this Lease to complain of any act or omission on the part of any other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by a party to this Lease at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

34.6 Survival. The rights and obligations of the Parties under Article VI through Article IX, Section 11.1(c), Section 14.2.7, Article XVIII through Article XX, Sections 28.2, 29.2, 29.5 and Section 29.10,Article XXX, Article XXXII, any obligations to pay amounts under this Lease and all other rights and obligations which by their inherent character should survive the expiration of the Term or the termination of this Lease ("Surviving Obligations") shall survive any such expiration or termination.

34.7 Intentionally Omitted.

34.8 Modification. Any amendment or modification of this Lease must be in writing signed by Landlord, Tenant and, to the extent PSEG Nuclear's obligations and rights are affected, PSEG Nuclear.

34.9 Successors and Assigns. This Lease shall bind and benefit Landlord, PSEG Nuclear, and Tenant, and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Except as expressly set forth herein, nothing in this Lease confers on any Person any right to insist upon, or to enforce against Landlord, PSEG Nuclear or Tenant, the performance or observance by any party of its obligations under this Lease.

34.10 Guaranty. While any guarantee from a guarantor or guarantors ("Guarantor"), which shall be in the form of Exhibit Q (Form of Guaranty Agreement) attached hereto ("Guaranty"), is outstanding or when a Guaranty is entered into to replace another form of Acceptable Security, Tenant shall deliver to Landlord: (i) within sixty (60) days after the end of the second quarter of each of Guarantor's fiscal years, a copy of the unaudited balance sheets of Guarantor at the end of each such period and the related unaudited statements of income, changes in equity and cash flows for each such period, prepared in a manner and containing information consistent with Guarantor's current practices; and (ii) within one hundred twenty (120) days after the end of each of Guarantor's fiscal years, a copy of the audited balance sheets of Guarantor at the end of each such fiscal year, and the related audited statements of income, changes in equity and cash flows for such fiscal year, including, in each case, the notes thereto, in each case prepared in accordance with GAAP in the United States (or the equivalent jurisdiction of Guarantor).

34.11 **Waiver of Jury Trial**. LANDLORD, PSEG NUCLEAR AND TENANT EACH IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH ANY MATTER BETWEEN TENANT, LANDLORD AND/OR PSEG NUCLEAR ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE AND/OR ENFORCEMENT OF THIS LEASE.

34.12 **Non-Binding Mediation**.

(a) Non-Binding Mediation is intended to assist Landlord and Tenant in the resolution of disputes under Article VIII or Section 14.4 (any such dispute, a "Dispute"). Within ten (10) Business Days of submission of a Dispute to Non-Binding Mediation, Landlord and Tenant shall select a Mediator by mutual agreement or, if agreement cannot be reached within such time period, the Landlord and Tenant shall promptly request a list of five (5) names of mediators from the American Arbitration Association and select a Mediator from such list by mutual agreement within five (5) Business Days of receipt. Any Mediator selected by Landlord and Tenant shall: (i) be an appropriately experienced and qualified professional; (ii) have no current or ongoing relationship with any Party; (iii) agree to provide a decision within ten (10) Business Days of the submission to the Mediator of the written statement of the Landlord and Tenant's respective positions; and (iv) where a State Entity is the Tenant at the time the Dispute is submitted to Non-Binding Mediation, be required to execute procurement and compliance forms and enter into a procurement agreement with the relevant State Entity, in each case in a form acceptable to the such State Entity in its sole discretion.

(b) Unless otherwise agreed by Landlord and Tenant, the Non-Binding Mediation shall be conducted in accordance with rules and procedures reasonably determined by the Mediator which such rules and procedures shall require that Landlord and Tenant submit to the Mediator, within ten (10) Business Days of the selection of the Mediator, their respective positions, in writing and that the Mediator shall render a decision within ten (10) Business Days of the submission of the written positions of the Landlord and Tenant.

(c) Landlord and Tenant shall each be responsible for: (i) their own costs to participate in the Non-Binding Mediation, including the costs for experts, attendees, graphics or otherwise; and (ii) an equal share of the costs: (x) for the services of the Mediator; and (y) of any administrative services used for the Non-Binding Meditation, such as conference facilities

(d) No Mediator will have the authority to render a binding decision as to any Dispute or to impose a settlement upon Landlord and Tenant. Landlord and Tenant may reach a separate agreement in Non-Binding Mediation that will be final and binding on Landlord and Tenant, subject to any necessary approvals.

(e) For the avoidance of doubt:

(i) the use of Non-Binding Mediation by Landlord and Tenant shall not be construed, in whole or in part, as a waiver, release or modification of any provisions of or requirements under the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et

seq. (hereinafter "the Contractual Liability Act"), including but not limited to N.J.S.A. 59:13-5, pursuant to Section 29.8;

(ii) neither the use of Non-Binding Mediation, nor anything in this Section 34.12, shall be construed as or constitute a waiver by Landlord and Tenant of any claim or defense otherwise available in any subsequent legal action, including any defense that any claim or part of a claim fails to comply with the notice provisions of the Contractual Liability Act; and

(iii) Non-Binding Mediation shall not be a prerequisite to the commencement of legal action by either Landlord or Tenant.

ARTICLE XXXV – INTERPRETATION, EXECUTION AND APPLICATION OF LEASE

35.1 Captions. The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

35.2 Counterparts. This Lease may be executed in counterparts, each of which when so executed shall be an original, and all of such counterparts shall together constitute but one and the same instrument.

35.3 Delivery of Drafts. No party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind no party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

35.4 Entire Agreement. Except with respect to the Early Site Works as provided in the Letter of Intent, this Lease contains all terms, covenants, and conditions about the Leased Premises and other matters set forth herein. The parties have no other understandings or agreements, oral or written, about the Leased Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Leased Premises.

35.5 Governing Law. This Lease and all documents and actions relating thereto, their interpretation and performance, the relationship among the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws. The courts of the State shall have exclusive jurisdiction and the exclusive venue shall be the Superior Court of Mercer County, New Jersey.

35.6 Partial Invalidity. If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

35.7 Principles of Interpretation.

(a) The parties acknowledge and agree that this Lease has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Lease with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Lease. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Lease, this Lease will not be interpreted or construed against the party preparing it simply as a consequence of their preparing it.

(b) In this Lease, (i) unless otherwise stated, a reference to any agreement, instrument or other document is to such agreement, instrument or other document as amended or supplemented from time to time; (ii) a reference to this Lease or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments or other documents attached to or otherwise expressly incorporated in this Lease or any such other agreement (as applicable); (iii) a reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form or appendix in or attached to this Lease, unless expressly provided otherwise; (iv) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; (v) a term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease; (vi) the words "include" and "including" shall be construed to be followed by the words: "without limitation."; (vii) each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: NJWP; Port Equipment; Fee Estate; Improvements; Property; Parcel; Leasehold Estate; Leased Premises; and any other similar collective noun.

35.8 Intentionally Omitted.

35.9 Force Majeure. In the event Landlord or Tenant is prevented or delayed in the performance of any obligation required or cure allowed under this Lease due to delays caused by fire, catastrophe, terror attacks, strikes or labor trouble, civil commotion, epidemic, pandemic, acts of God, governmental prohibitions or regulation, inability or difficulty in obtaining materials, or other causes beyond the performing party's reasonable control (the "Force Majeure"), the performing Party shall, within ten (10) days of the event causing such delay, provide Notice to the other Party of the event causing the delay and the anticipated period of delay, and the period of such delay shall be added to the time for performance thereof. The performing Party shall have no liability by reason of such permitted delays. In the event the performing Party fails to provide Notice to the other Party of the Force Majeure delay within such ten (10) day period, the performing Party shall not be excused from the timely performance of such obligation regardless of the cause. The provisions of this Section 35.9 shall not apply to or in any manner extend or defer the time for any obligations that can be performed by the payment of monies required of the performing Party hereunder, nor Tenant's obligation to vacate and surrender the Leased Premises on the Expiration Date.

35.10 <u>Compliance with Laws</u>. Without derogating Tenant's rights under this Lease, including Article Article VI, throughout the Term, Tenant, at its sole cost and expense, shall promptly comply with all present and future Laws, which may be applicable to the Leased Premises or to the use or manner of use of the Leased Premises.

(REMAINDER INTENTIONALLY BLANK)
(SIGNATURES CONTAINED ON THE FOLLOWING PAGES)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the _____ day of __________________ 2020.

LANDLORD:

NDEV LLC

BY: ______________________________________
NAME:
TITLE:

TENANT:

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

BY: _____________________________________
NAME:
TITLE:

The undersigned executes this Lease solely for the purpose of agreeing to and accepting its obligations pursuant to Section 5.4, Article VI, Article IX, Section 10.3, Article XXVI and Article XXXIV hereunder:

PSEG NUCLEAR LLC, a New Jersey limited liability company

BY: ______________________________________
NAME:
TITLE:

Attachments:

EXHIBITS

Exhibit A – Parcels Legal Description

Exhibit B – Intentionally Omitted

Exhibit C – Parcel B Description

Exhibit D – Intentionally Omitted

Exhibit E – Intentionally Omitted

Exhibit F – Form of Memorandum of Lease

Exhibit G – Intentionally Omitted

Exhibit H – Form of Disclosure Statement - Debarment/Disqualification Questionnaire

Exhibit I – Intentionally Omitted

Exhibit J – Form of Letter of Credit

Exhibit K – Intentionally Omitted

Exhibit L – Intentionally Omitted

Exhibit M – Intentionally Omitted

Exhibit N – Conceptual Development Plan

Exhibit O – Intentionally Omitted

Exhibit P – Reliance Letter

Exhibit Q – Form of Guaranty Agreement

Exhibit R – Letter of Intent

Exhibit S – LS Power Easement

Exhibit T – Mandatory Equal Employment Opportunity/Affirmative Action Language for Goods and Services

Exhibit U - Mandatory Equal Employment Opportunity/Affirmative Action Language for Construction

SCHEDULES

Schedule A – Parcel Information

Schedule B – Base Rent

Schedule C – Remaining Nuclear Equipment

Schedule D – Access Easements

Schedule E – Intentionally Omitted

Schedule F – Critical Chemicals and Substances Thresholds

Schedule G – Permitting Matrix

Schedule H – Permitted Exceptions

Schedule I – Notice Addresses

Schedule J – Intentionally Omitted

Schedule K – Training Programs

Schedule L – Construction Schedule

Schedule M – PSEG Guidelines

Schedule N – Nuclear Insurance

AUG 11 2021

Attachments

Resolution of the New Jersey Economic Development Authority Regarding Approval of the Wind Port Lease – PSEG Ground Lease

WHEREAS, the Members of the New Jersey Economic Development Authority have been presented with and considered a Memorandum and attachment, in the forms attached hereto; and

WHEREAS, the Memorandum and attachment requested the Members to adopt a resolution authorizing certain actions by the New Jersey Economic Development Authority, as outlined and explained in said Memorandum.

NOW, THEREFORE, BE IT RESOLVED by the Members of the New Jersey Economic Development Authority as follows:

1. The actions set forth in the Memorandum and attachment, attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.

2. The Memorandum and attachment, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.

3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: August 11, 2021

EXHIBIT 4

DRAFT

LOANS/GRANTS/GUARANTEES

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: August 11, 2021

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

The following supplemental commercial project has been approved by the Department of Environmental Protection to perform tank removal and site remediation activities. The scope of work is described on the attached project summary:

PUST Grant:

Commercial

Product 258517 James Thoma

Total UST Funding – August 2021 **$111,596.58**

Tim Sullivan

Prepared by: Kathy Junghans

36 West State Street | PO Box 990 | Trenton, NJ 08625-0990 | 609-858-6700 | customercare@njeda.com | www.njeda.com

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Underground Storage Tank - Commercial

APPLICANT: James Thoma PROD-00258517

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 200 Hoboken Road East Rutherford Borough Bergen County

APPLICANT BACKGROUND:

Between September 1998 and July 2017, James Thoma, owner of the project site, which is an auto service station, received an initial grant in the amount of $147,440 under P10283 and supplemental grants in the amount of $94,740 under P11064, $30,507 under P39530, $59,084 under P41060 and $116,002 under P44183 to remove the underground storage tanks (USTs) and perform the required remediation. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities at the project site.

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

OTHER NJEDA SERVICES:

$147,440, P10283; $94,740, P11064; $30,507, P39530; $59,084, P41060; $116,002, P44183

APPROVAL REQUEST:

The applicant is requesting aggregate supplemental grant funding in the amount of $111,596.58 to perform the approved scope of work at the project site. Total grant funding including this approval is $559,369.58. The project site is located in a metropolitan planning area and is eligible to receive up to $1 million in grant funding.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT: $111,596.58

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

UST Project: Remediation	$111,596.58
EDA Administrative Cost	$500.00
TOTAL COSTS:	**$112,096.58**

DATE: 7/8/2021

REAL ESTATE

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: August 11, 2021

Subject: Camden Office Lease – One Port Center

Summary
To accommodate current and future needs for Authority staff in South Jersey, I request the Members approve: (1) a five-year lease for Camden office space with the Delaware River Port Authority ("Landlord" or "DRPA") for 3,618 sf located on the 4h floor of One Port Center (the "Leased Premises" or "4th Floor Suite"); and (2) expending up to $312,000 for furniture, fixtures and equipment, tenant improvements, and other similar costs related to the occupancy of the Leased Premises.

Background
Since October 2016, the Authority has leased 1,186 sf of Class A office space at One Port Center in Camden. That lease will expire on September 30, 2021. The current 6th floor suite includes workstations for six employees and includes a conference room that can accommodate eight meeting participants (the "6th Floor Suite"). Our current rent for the space is $26/sf gross plus tenant electric. We have had a good relationship with the Landlord, DRPA, which is a bi-state government entity.

Over the last 16 months, the Authority's programmatic mandate has increased significantly. First, the Authority has led the launch and operations for the majority of the state's small and micro business COVID-19 relief programs, including more than $750 million of new programmatic appropriations. Second, the passage of the Economic Recovery Act of 2020 has created or amended 15+ economic development programs. The NJEDA has also been asked to support new sister organizations such as the Commission on Science, Innovation, and Technology and the forthcoming Governor's Wind Institute.

In addition, the Authority is looking to increase its overall strategic presence in South Jersey, similar to the successful approach taken in North Jersey with the Newark Office. Expanded office facilities will allow NJEDA to access a larger pool of recruiting talent and support more community engagement and business meetings in the region.

These programmatic expansions and strategic objectives, combined with COVID-19-related return-to-office employee spacing considerations, have meant that the Authority has outgrown the six-workstation 6th Floor Suite. Over 50 NJEDA employees reside south of Bordentown, creating significant demand for additional employee workstations in Camden. Replacing our expiring lease with a new, five-year lease for the 3,618 sf 4th Floor Suite will provide seating for approximately 27 employees and increase our conferencing capacity in Camden by a factor of four.

The 4th Floor Suite was built out by the Landlord for a former tenant to a specification equivalent to the Authority's standard in our Newark satellite offices and requires minimal improvements for NJEDA use. Consequently, the 4th Floor Suite would be available for immediate occupancy in

October 2021. At no additional cost, the Landlord will include 20 workstations left by the prior tenant, paint the space and clean/repair the existing carpeting. The rent will also include off-street parking for NJEDA employees assigned to the Camden Office and shared use of the building's conference facilities, in which the Authority can host internal, community engagement, and business meetings.

The first-year lease rate of $27 sf gross plus electric at $3.28 sf for the new 4th Floor Suite is comparable with asking rents for other Class A and B buildings in downtown Camden. The estimated cost of the 4th Floor Suite over the five-year term is summarized in the table immediately below:

Proposed Lease - One Port Center, Camden - 4th Floor

Starting Month	Ending Month	Lease Annual Period	Lease Year	Base Rent $SF	Est. Electric $SF	Total $SF Due	RSF	Est. Annual Total (rounded to $)
10/1/2021	10/31/2021	0.09	1st	$0.00	$3.28	$3.28	3,618	$1,009
11/1/2021	9/30/2022	0.91	1st	$27.00	$3.28	$30.28	3,618	$100,131
10/1/2022	9/30/2023	1.00	2nd	$27.50	$3.28	$30.78	3,618	$111,251
10/1/2023	9/30/2024	1.00	3rd	$28.00	$3.28	$31.28	3,618	$113,284
10/1/2024	9/30/2025	1.00	4th	$28.50	$3.28	$31.78	3,618	$114,865
10/1/2025	9/30/2026	1.00	5th	$29.00	$3.28	$32.28	3,618	$116,672
	TOTAL YEARS	**5.00**					**TOTAL**	**$557,212**

The first year's cost for the 4th Floor Suite includes one month of free rent inside the five-year lease term, and the Landlord will be responsible for compensating the Authority's broker, Jones Lang LaSalle, for its real estate commission. The lease will provide the Authority the option to extend the lease at fair market value for one additional five-year term.

Staff estimates the need to expend approximately $312,000 for furniture, fixtures and equipment, tenant improvements, and other costs related to the occupancy of the Leased Premises. These costs include furniture for the five hard-walled offices, seating for the workstations and conference rooms and audio-visual equipment.

The final terms of the Lease will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

Recommendation

In summary, I request the Members approve: (1) execution of a lease with the Delaware River Port Authority for a 3,618 sf suite on the 4th floor of One Port Center in downtown Camden commencing as of October 1, 2021; and (2) expending up to $312,000 for furniture, fixtures and equipment, tenant improvements, and other costs related to the occupancy of the Leased Premises.

Tim Sullivan
Chief Executive Officer

Prepared by: Juan Burgos and David E. Nuse

BOARD MEMORANDA – FYI ONLY

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: August 11, 2021

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

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

Micro Business Loan Program:

1) Cavany Foods LLC (PROD-00228419 & 00288785) is located in Jersey City, Hudson County. Established in 2019, the Company serves healthy, organic, gourmet meals ranging from continental to American cuisine including vegetarian, vegan and gluten free options. They also offer catering services for private events as well as customized meal plans. The NJEDA approved a $22,500 working capital loan and a $2,500 forgivable loan. Proceeds will be used to purchase new equipment. Currently, the Company has one employee.

2) CellVio Biomedical LLC (PROD-00224416 & 00288730), located in Raritan Borough, Somerset County, is a biotechnology company committed to the development of innovative products in inflammation and oncological diseases the bring life-improving medical treatments to patients. The NJEDA approved a $45,000 working capital loan and a $5,000 forgivable loan. Proceeds will be used to purchase equipment. The Company currently has two employees.

3) Cleanscape Commercial Cleaning Corp. (PROD-00228240 & 00288660) is located in Ridgefield Park Village, Bergen County. The Company was established in 2008 as a residential and commercial construction and renovation services provider as well as general contracting and maintenance services. The NJEDA approved a $45,000 working capital loan and a $5,000 forgivable loan. Currently, the Company has ten employees.

4) Daud M Panah MDPC Corporation (PROD-00228466 & 00288728), located in Atlantic City, Atlantic County, was formed in 2007 as a psychiatry office offering counseling, addiction management and other mental health services. The NJEDA approved a $45,000 working capital loan and a $5,000 forgivable loan. Loan proceeds will be used to supplement payroll and rental costs. The Company currently has two employees.

5) Erssee Auto Sales LLC (PROD-00224318 & 00288771), located in Stratford Borough, Camden County, was formed in 2017 to sell pre-owned vehicles in South Jersey and surrounding areas. The NJEDA approved an $18,270 working capital loan and a $2,030 forgivable loan. Proceeds will be used to supplement payroll and lease payments. Currently, the Company has one employee.

6) Fresh Bowl LLC DBA Fresh Salad Bowl (PROD-00228178 & 00288672), located in Eatontown Borough, Monmouth County, was established in 2019 as a Fresh Bowl location offering freshly made fruit and salad bowls. The NJEDA approved a $22,500 working capital loan and a $2,500 forgivable loan. Proceeds will be utilized to cover operating costs such as payroll, rent and utilities. The Company currently has three employees.

7) Kepwel Spring Water Co Inc. (PROD-00228304 & 00288712), located in Ocean Township, Monmouth County, was established in 1972 as a spring water bottler that delivers five-gallon bottles to homes and offices within Monmouth and Ocean Counties. The NJEDA approved a $45,000 working capital loan and a $5,000 forgivable loan. Proceeds will be used to cover payroll costs. Currently, the Company has five employees.

8) M&R Management GP, LLC DBA Play It Again Sports (PROD-00224513 & 00288673), located in Deptford Township, Gloucester County, was formed in 2013 as a neighborhood sporting goods store offering new and used sports and fitness equipment. The NJEDA approved a $45,000 working capital loan and a $5,000 forgivable loan. Proceeds will supplement existing cash from operations to cover payroll, inventory, and rent. The Company currently has three employees.

9) NJY Vista LLC (PROD-00224432 & 00288715), located in Fort Lee Borough, Bergen County, was established in 2015 as a commercial real estate business. The NJEDA approved a $22,500 working capital loan and a $5,000 forgivable loan. Proceeds will be used to cover mortgage and tax payments. Currently, the Company has two employees.

10) Puregreen Health Inc. (Prod-00224501 & 00284723), located in Linden City, Union County, specializes in the development, creation, and production of progressive chemical cleaning and cosmetic products such as hand sanitizers, toilet cleaners, disinfectants, cleaning soaps, carpet cleaners, and sunscreen. The NJEDA approved a $21,600 working capital loan and a $2,400 forgivable loan. Proceeds will be used to supplement working capital costs such as inventory, payroll, rent, and equipment purchase. The Company currently has one employee.

11) Quality Parts Connection, LLC (PROD-00228437 & 00288675), located in Hackensack City, Bergen County, was established in 2015 as a wholesaler of used and salvaged auto parts. The NJEDA approved a $22,500 working capital loan and a $2,500 forgivable loan. Proceeds will be used to supplement equipment and rental costs. Currently, the Company has one employee.

12) Shree Sai Market Inc. (PROD-00228430 & 00288795), located in Perth Amboy City, Middlesex County, was established in 2008 as a convenience store. The NJEDA approved a $21,600 working capital loan and a $2,400 forgivable loan. Proceeds will be used to supplement rental costs. Currently, the Company has one employee.

13) Steam Works Studio LLC (PROD-00224402 & 00288755), located in Princeton Borough, Mercer County, was established in 2014 as an academy that focuses on sparking creativity and bolstering a deep interest in Science, Math and Arts in children and young adults through hands-on practical learning. The NJEDA approved a $22,500 working capital loan and a $2,500 forgivable loan. Proceeds will be used to cover payroll expenses. The Company currently has five employees.

14) Weinstein & Weinstein, P.C. (PROD-00224315 & 00288739) is located in Leonia Borough, Bergen County. The Company was established in 1997 as a CPA/accounting firm, offering services in write-up work and bookkeeping for clients, preparing tax returns for individuals and corporations, in addition to performing audits of not-for-profits businesses. The NJEDA approved a $22,500 working capital loan and a $2,500 forgivable loan. Proceeds will be used to cover payroll expenses. The Company currently has four employees.

Tim Sullivan, CEO

Prepared by: G. Robins

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Economic Growth Products – Delegated Authority Approvals for Q2 2021
For Informational Purposes Only

Angel Investor Tax Credit Program (ATC)

On January 31, 2013, the New Jersey Angel Investor Tax Credit Act was signed into law with initial Regulations approved by the Members of the Board in June 2013. The New Jersey Angel Investor Tax Credit Program (ATC) establishes credits against corporate business tax or New Jersey gross income tax. When the program was originally approved, the amount of the tax credit was 10%. In 2019, Governor Murphy approved an increase to the amount of the tax credit from a 10% to 20% with a 5% bonus for either investing in NJ certified women or minority owned businesses or if the business is located in an Opportunity Zone or New Markets Tax Credit census tract. This increase is effective for all investments made on or after January 1, 2020. Initially, $25M in tax credits could be approved annually under the ATC program. With the approval of the Economic Recovery Act on Jan 7, 2021, this cap increased to $35M annually. Updated Regulations were approved by the Members of the Board in July 2021.

Angel Investor Tax Credit Program – Q2 2021 Review

In the second quarter of 2021, Staff approved one hundred and eighty-five Angel Tax Credit applications for a total of $7,193,274.00 in tax credits. This represented $43,470,399.00 in private investments into 19 unique technology, clean tech and life science companies. In a year over year comparison, Staff approved 158 more applications (Q2 2020: 27; Q2 2021: 185) for an increase in over $6 million in tax credits (Q2 2020: $1,050,126; Q2 2021: $7,193,274) representing an increase in total company investment of over $33 million (Q2 2020: $10,176,120; Q2 2021: $43,470,399) in 7 more NJ eligible businesses (Q2 2020: 12; Q2 2021: 19).

For the second quarter 2021 approvals, the Technology sector represented 42% of applications while Clean Tech was 11% and Life Science companies were 47% of the overall total. There were approvals for 4 new companies participating in the program this quarter: Jetsy Corp, MEMX LLC, Paragon Flavors, and Ricovr Healthcare. Of note, investors in five companies received an additional 5% bonus to their tax credit due to the company being headquartered in a qualifying location or being certified as a women or minority owned business entity: Agilis Chemicals, Inc.(OZ), Anax Holdings LLC(OZ), Bark Biome LLC(Woman Owned), POM Partners Inc.(OZ), Vaneltix Pharma Inc.(OZ).

Angel Tax Credit 2nd Qtr 2021 Approval Results

Sector	Investment Amount	Applications	# of Companies in Each Sector	% of Total Investments	% of Total Applications
Technology	$16,700,427	25	8	38%	14%
Life Sciences	$26,444,972	158	9	61%	85%
Clean Tech	$325,000	2	2	1%	1%
Total	**$43,470,399**	**185**	**19**		

The following nineteen companies were participants for the 2nd quarter of 2021:

- Acuitive Technologies, Inc.: Based in Allendale, NJ. Acuitive Technologies is pursuing the development of novel biomaterial technologies to improve the repair and regeneration of musculoskeletal tissue.

- Agilis Chemicals, Inc.: Based in Newark, NJ. Agilis Chemicals offers a cloud-based Commerce Platform-as-a-Service to chemical producers and distributors, which consolidates supply chain fragmentation and brings efficiency to the chemical procurement process. (Opportunity zone bonus)

- Anax Holdings LLC: Based in Morris, NJ. Anax Holdings LLC commercializes the Anax Power Turbo Expander (ATE) - a Carbon Footprint reduction technology, which generates non-carbon emitting electricity for industrial users without combustion using natural gas. (Opportunity zone bonus)

- Angel Medical Systems, Inc.: Based in Eatontown, NJ. Angel Medical is a medical device company that has developed the first ever implantable, patient alerting systems for the early detection and prevention of heart attacks.

- Aspargo Laboratories, Inc.: Based in Englewood Cliffs, NJ. Aspargo Labs Inc. is a life science corporation that commercializes a therapeutic approach to addressing a clinical need for drugs that treat erectile dysfunction (ED).

- Bark Biome LLC – Fetch Enterprise LLC: Based in Princeton, NJ. Bark Biome is a vertically integrated, individualized pet health-technology life sciences platform that also markets, manufactures, and sells personalized canine supplements. (Minority and/or Women Business Enterprise bonus)

- Covellus LLC: Based in Belmar, NJ. Covellus is a Medical Device Technology company that is developing a unique Modular Catheter System technology, which is a new paradigm to construct and use medical device catheters. Covellus has used the Modular Catheter System technology to develop medical device products to be used in peripheral vascular percutaneous transluminal angioplasty (PTA) procedures.

- Crescenta Biosciences Inc.: Based in Union, NJ. Crescenta Biosciences Inc. is a small molecule drug discovery company focused on developing novel therapeutic approaches for the treatment of metabolic diseases.

- D3UC LLC: Based in Rutherford, NJ. D3UC LLC provides a white label, cloud-based phone, and unified communications (UC) whole product solution exclusively for Managed Service Providers (MSPs) who sell technology services to Small and Medium Businesses (SMBs).

- Deliveright Logistics: Based in Bayonne, NJ. Deliveright Logistics, Inc. provides patented technology called Grasshopper, which bridges the gap between the E-Commerce segment of Heavy Goods retailers and companies that specialize in delivering these products. Grasshopper, a cloud-based proprietary platform, provides transparency and increased efficiency in pricing, delivery route optimization, tracking and visibility along the logistics chain.

- Elucida Oncology, Inc.: Based in Bound Brook, NJ. Elucida Oncology is a biotechnology company focused on clinical research, development and subsequent commercialization of life-changing products based on the Target or ClearTM technology of the novel, ultra-small nanoparticle delivery platform.

- Eos Energy Storage, LLC: Based in Edison, NJ. Eos Energy Storage develops novel, low-cost energy storage solutions for the electric utility and transportation industries. Eos' mission is to produce cost effective energy storage solutions that are projected to be not only less expensive than other battery technologies, but less expensive than the most economical alternatives used today to provide the same services.

- Evergreen Theragnostics, Inc.: Based in Chatham, NJ. Evergreen Theragnostics, Inc. is a leading Contract Development and Manufacturing Organization (CDMO) servicing the radiopharmaceutical industry in developing early stage molecules.

- Jetsy Corp. (New Company to ATC): Based in Lake Hiawatha, NJ. Jetsy Corp. is developing a travel technology platform that combines artificial intelligence (AI) with user generated content to create geospatially enabled exploration of travel videos.

- MEMX LLC (New Company to ATC): Based in Jersey City, NJ. MEMX's innovative platform promises to disrupt the conventional stock exchange business model by improving the quality of electronic financial markets through modern technology and by offering features that will benefit both retail and institutional investors.

- Paragon Flavors, Inc. (New Company to ATC): Based in Princeton, NJ. Paragon Pure is inventing replacements for synthetic materials in the food, supplement, and cosmetic industries by developing natural alternatives that are healthier for the population and the environment.

- POM Partners, Inc.: Based in Newark, NJ. POM Partners, Inc. provides an emergency communications portal solution for the higher education, healthcare and enterprise industries. (Opportunity zone bonus)

- Ricovr Healthcare, Inc (New Company to ATC).: Based in Princeton, NJ. Ricovr Healthcare is working on a biosensor technology to manufacture and commercialize oral point-of-care medical devices for use in diverse markets.

- Vaneltix Pharma Inc. fka Urigen: Based in Bound Brook, NJ. Vaneltix Pharma Inc. fka Urigen Pharmaceuticals is a New Jersey based biopharmaceutical company that is developing treatments for Urological disorders. (Opportunity zone bonus)

Since program inception in 2013 through second quarter 2021, the Authority has approved 1,856 applications for investments totaling more than $659 million invested in 106 New Jersey based technology businesses.

Please find a detailed list of all ATC applications that were approved under delegated authority during the second quarter of 2021 on Exhibit A.

NJ Ignite Program

NJ Ignite offers grants to support the rent of early stage technology and life science companies located in an NJ Ignite approved collaborative workspace. Grants vary in amount and the start-up must commit to work for a specified time at the collaborative space under established agreements in which

the workspace will partner to forego an element of the rent to support the business. As of June 30th, 2021, there were **22** approved collaborative spaces in New Jersey, some of which have multiple locations.

NJ Ignite Program – Q2 2021 Review

As of January 7, 2021, the Governor signed into law the Economic Recovery Act of 2020 (ERA) which results in the creation of the NJ Ignite Statutory Program. To ensure continuous NJ Ignite program operations, specific changes were approved by the Board on May 12, 2021 so that the NJ Ignite Pilot Program conforms to the NJ Ignite Legislative Program as outlined in the ERA. These updates included moving the annual reporting deadline to the calendar year end from one year anniversary date, increasing the maximum benefit from $15,000 to $25,000, expanding the eligible industries to align with current NJEDA targeted industries, extending the earliest formation date from application date to 7 years, and adding stackable bonuses for M/WBEs, foreign companies, opportunity zones and university affiliated workspaces. Updated Regulations for the NJ Ignite Legislative Program created by the ERA are anticipated to be presented to the Board in Late 2021.

Staff conducted update calls with 11 approved collaborative workspaces. These check ins are ongoing with the goal to connect with all approved workspace managers by end of the third quarter 2021. All the 11 approved collaborative workspaces shared that activity is picking up. They are slowly regaining tenants as the State continues its efforts to reduce restrictions, reopen spaces, and return to normal. Of the 11, 3 sites are planning for an increase in occupancy compared to pre-pandemic levels. Regarding updates from the ERA, 10 out of the 11 workspace managers stated they are optimistic the recent board approvals will help them grow, particularly noting the expansion of eligible industries, the increase in grant size, and the raising of maximum age of business. There was 1 workspace which indicated financial concerns and considering withdrawing from the Program.

There were no new Workspace Approvals in the second quarter. However, staff approved **4** new Tenant applications and **2** NJ Ignite disbursements.

Tenant Approvals

Tenant Name	Workspace Name	EDA Grant	Number of Employees
MARCo Technologies LLC	VentureLink (NJIT)	$1,800.00	1
Delphine Diagnostics	EcoComplex	$1,323.00	2
Princeton Nuenergy	EcoComplex	$15,000.00	2
Farm To Flame Inc.	Kearney Point	$11,400.00	2
Total		**$29,523.00**	**7**

Disbursements

Tenant Name	Workspace Name	EDA Grant	Number of Employees
Delphine Diagnostics	EcoComplex	$1,323.00	2
Princeton Nuenergy	EcoComplex	$15,000.00	2

Finally, as of June 11, 2021, the management of CoLab (fka Bellworks) no longer wish to participate in the NJ Ignite program. The workspace has been removed from the program. No new tenant applications will be accepted for this location.

NJ Entrepreneur Support Program (NJESP)
Covid Relief Program

On March 26, 2020, the NJEDA Board approved the NJ Startup Entrepreneur Support Program (NJESP) to support New Jersey entrepreneurial businesses with limited funding navigate COVID-19 related cashflow constraints by providing financial support to their existing investors. Through NJESP, investors in NJ entrepreneurial businesses (operating in Innovation Economy sectors) could receive a guarantee (up to 80%, not to exceed $200,000 per company) for new, qualified bridge loans/convertible notes into NJ entrepreneurial business. The guarantee matures in 1 year having an expiration date 1 year from the underlying note's issue date. The total program budget was $5 million.

Applications for the program opened on April 22, 2020. No applications were accepted after February 12, 2021. A total 97 applications were submitted, from which, 47 applications were approved by the Authority staff under delegated authority. The guarantee amount in total was of $2.036 million for $2.545 million of promissory note investment. This represents investments in 13 unique businesses with a total 85 full-time NJ employees. Additionally, 28 applications were withdrawn, and 22 applications were declined.

Investors in 2 companies (POM Partners, Inc. and Ricovr Healthcare, Inc.) converted their promissory notes into equity prior to the second quarter of 2021. The Authority has received warrants in each company for the equity conversion as specified by the NJESP.

In second quarter of 2021, note guarantees for 8 companies reached their maturity of 1 year. The investor of the guaranteed note has 90 days from the maturity date to redeem the guarantee if certain financial conditions were met by the company within this 1-year term. As of the end of the second

quarter, Staff has not received any notice of redemption from the investors or companies. The remaining 3 companies with active guarantees expire in the third quarter of 2021.

NJ Accelerate Program

On February 11th, 2020, the NJEDA Board approved the pilot program NJ Accelerate. The total program budget is $2.5 million. Through NJ Accelerate, the NJEDA seeks to provide early-stage businesses access to best-in-class Accelerator programs, enabling the tools and support to grow their businesses in the Garden State. The program provides up to $250,000 of direct loan funding and up to 6 months of free rent to Approved Accelerator Graduates located in New Jersey. Graduates certified as woman or minority owned can receive an additional 5% bonus to the direct loan amount as well as 1 addition month of rent. Approved Accelerators may also receive sponsorship of up to $100,000 to produce events in NJ to encourage their on-the-ground engagement in the State. Also, a sponsorship bonus of 5% is available for Approved Accelerators demonstrating meaningful written policies and practices for attracting and promoting companies owned by women and minority persons.

NJ Accelerate – Q2 2021 Review

The Authority began accepting applications to become an approved accelerator during Q4, 2020. On November 12th, 2020, Morgan Stanley Multicultural Innovation Lab became the first approved accelerator. In the second quarter 2021, the Authority approved Cleantech Open Northeast on April 13th, 2021 becoming the second approved accelerator, followed by VentureWell's Aspire program which was approved on May 14th, 2021.

Approved Accelerators:

Accelerator Name	Accelerator Location
Morgan Stanley Multicultural Innovation Lab	New York City, NY
Cleantech Open Northeast	Boston, MA
VentureWell's Aspire Program	Hadley, MA

Morgan Stanley Multicultural Innovation Lab was created in 2017 to drive positive economic outcomes for multicultural and women-led companies in the post-seed to Series B funding rounds by providing content, visibility, technical support, and connectivity with important stakeholders who can accelerate the growth of participants' businesses. The accelerator is built around tailored support and expertise entrepreneurs receive from a dedicated Morgan Stanley team. To date, 32 tech or tech-enabled companies have participated in the Lab, with many going on to successful acquisitions and

additional funding rounds.

Cleantech Open Northeast is part of Cleantech Open, a cleantech accelerator managed by the Boston-based Northeast Clean Energy Council (NECEC) as the on-the-ground affiliate. Cleantech Open finds, funds, and fosters entrepreneurs with big ideas that address urgent energy, environmental, and economic challenges. Cleantech Open provides the infrastructure, expertise and strategic relationships that turn ideas into successful global cleantech companies. In 15 years, Cleantech Open Northeast has supported 414 startups and the 68% active alumni companies employ approximately 3,300 people, have generated over $279 million in revenue and raised over $653 million in funds.

VentureWell is a Massachusetts-based nonprofit that supports early-stage science- and technology-based inventors. Its E-Team Grant Program supports early-stage innovators (science- and engineering-based student teams) from across the nation with early funding and targeted training to commercialize their high-impact innovations. During ASPIRE, VentureWell's third and final phase of the E-Team Grant Program, startup companies participate in an intensive program that prepares them for the investments and partnerships necessary to launch their ventures. Since its inception in 2015, 117 startups have participated in ASPIRE and have raised over $190 million in follow-on funding since participating in the program. The E-Team Grant program overall, with its three stages, has supported 652 teams that have raised a total of $645 million.

New Jersey Zero-emission Incentive Program

In January 2021, the Members of the Board approved a $15,750,000 pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program, funded from New Jersey Economic Development Authority's (NJEDA) allocation of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds. Launched in April 2021, the NJ ZIP pilot established a first-come, first-served voucher-style program to reduce the upfront cost to purchase zero-emission vehicles for eligible applicants, with a focus on the adoption and use of zero-emission medium-duty vehicles in the greater Newark and greater Camden areas. The Members of the Board also approved delegated authority to approve and decline applicants to the program, as well as, after assessment of program progress, expansion of the pilot by up to an additional $10,000,000.

The primary goals of this pilot program are to:

- Accelerate the adoption and use of medium duty zero-emission vehicles within New Jersey;
- Reduce emissions within the pilot communities, greater Newark and greater Camden; and
- Allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption.

Based on the results of the pilot program (e.g., program uptake, efficacy, and continued market need), and assuming continued availability of RGGI funds allocated to this program, a longer-term program with expanded eligibility may be proposed after the pilot funds are fully reserved.

New Jersey Zero-emission Incentive Program – Q2 2021 Review

NJ ZIP is administered in sequential steps. First, a zero-emission vehicle vendor must submit an application to become an approved vendor. Once approved, a vehicle purchaser may submit an application to receive an NJ ZIP voucher to purchase a qualified vehicle from their selected approved vendor. This voucher that may be redeemed for a specific dollar amount after completion of the total vehicle purchase. The value of the voucher ranges from $25,000 to $100,000 per vehicle depending on the vehicle's weight class. Additional bonus amounts can be added to the voucher if certain conditions are met by the purchaser, such as by being a small or micro-business, or by the vendor, such as by manufacturing 25% or more of the vehicle in NJ. For the purposes of this Program, a small business is defined as having 25 or fewer full-time employees in total or less than $5M in annual revenue.

In the second quarter of 2021, thirteen (13) zero-emission vehicle vendors were approved to participate in NJ ZIP. Subsequently, twenty-one (21) purchaser applications were submitted to the Program in Q2 2021. Of these, six (6) purchaser applications have since been approved for a total of $2,511,000 across 25 vouchers. These 6 purchasers' 25 vouchers support the addition of 25 zero-emission medium-duty vehicles on New Jersey roads once the vouchers are redeemed, supplied by 4 different vendors. Two thirds of the approved purchaser applicants are small businesses (receiving a 25% funding bonus), with one applicant additionally a minority- and woman-owned business (receiving an additional $8,000 bonus per vehicle); all applicants will operate and/or register their vehicles within the greater Camden (1 purchaser) or greater Newark areas (5 purchasers). No approved vouchers have been redeemed as of the end of the second quarter. The remaining fifteen (15) applications received in the second quarter are currently under review by Staff. The program has received continuous application flow from the eligible communities, in addition to repeated interest for expansion to more parts of the state and for longer-term funding.

NJ ZIP Q2 2021 Results

Purchaser Applicant	Vendor	Purchaser Location	SBE	MBE	WBE	# of vehicles	Total Voucher $
Performance Fleet Maintenance LLC	Sea Electric	Greater Newark	Yes			14	$1,487,500
Peerless Beverage Co.	Sea Electric	Greater Newark	No			2	$170,000
Hamlett Management LLC	Sea Electric	Greater Newark	Yes	Yes	Yes	2	$191,000
S Aly Corp	Xos, Inc.	Greater Camden	No			5	$500,000
Rutherford Swim Association Inc	United Ford	Greater Newark	Yes			1	$68,750
Marcelli Formaggi LLC	GreenPower Motor Company, Inc.	Greater Newark	Yes			1	$93,750
						25	**$2,511,000**

Tim Sullivan, CEO

Angel Investor Tax Credit Prepared by:
Syed Sohaib

NJ Ignite Prepared by:
Jerrel Burney

NJ Entrepreneur Support Program Prepared by:
Clark Smith

NJ Accelerate Prepared by:
Monica Valenzuela

New Jersey Zero-emission Incentive Program Prepared by:
Victoria Carey

Memo Prepared by:
Clark Smith

EXHIBIT A

Q2 2021 Delegated ATC Delegated Approvals

Investor	Employees in NJ	Company	Investment	Proposed Tax Credit
Wayne Sarkis Berberian		Acuitive Technologies, Inc.	$300,000	$60,000
Wayne Sarkis Berberian		Acuitive Technologies, Inc.	$100,000	$20,000
Eric Carrara		Acuitive Technologies, Inc.	$100,000	$20,000
Alex I Khowaylo		Acuitive Technologies, Inc.	$150,000	$30,000
Bernard Alan Thomas & Nancy Marie Thomas Trust		Acuitive Technologies, Inc.	$250,000	$25,000
Alex I Khowaylo		Acuitive Technologies, Inc.	$100,000	$20,000
6	**NJ:19 Total: 19**	**Acuitive Technologies, Inc.**	**$1,000,000**	**$175,000**
HEXAGON INTERNATIONAL FZE		Agilis Chemicals Inc.	$50,000	$12,500
1	**NJ:5 Total:5**	**Agilis Chemicals Inc.**	**$50,000**	**$12,500**
Christopher J and Mary Patricia Christie		Anax Holdings LLC	$250,000	$62,500
1	**NJ:2 Total:2**	**Anax Holdings LLC**	**$250,000**	**$62,500**
Whitman Family Partnership, Ltd		Angel Medical Systems, Inc.	$50,000	$10,000
Andrew Taylor		Angel Medical Systems, Inc.	$5,000	$1,000
Lauren M LLC		Angel Medical Systems, Inc.	$25,000	$5,000
David M Stern Family 2011 Trust		Angel Medical Systems, Inc.	$50,000	$10,000
4	**NJ:22 Total:26**	**Angel Medical Systems, Inc.**	**$130,000**	**$26,000**
Catherine Hoyt and Jaime Marques		Aspargo Laboratories, Inc.	$50,000	$10,000
Andrew Azer		Aspargo Laboratories, Inc.	$15,000	$3,000
Jessica Sapirstein		Aspargo Laboratories, Inc.	$10,000	$2,000
Mark Lyngholm		Aspargo Laboratories, Inc.	$10,000	$2,000
Atul N. Balwally		Aspargo Laboratories, Inc.	$100,000	$20,000
Fred W. Schoenhut		Aspargo Laboratories, Inc.	$100,000	$20,000
John Kelly Reyher		Aspargo Laboratories, Inc.	$10,000	$2,000
John Inzilla Jr.		Aspargo Laboratories, Inc.	$50,000	$10,000
Vishvesh Mehta		Aspargo Laboratories, Inc.	$10,000	$2,000
Michael Sullivan IRA		Aspargo Laboratories, Inc.	$30,000	$6,000
Stephen Michael Blish		Aspargo Laboratories, Inc.	$10,000	$2,000
Frieda S Rosenberg		Aspargo Laboratories, Inc.	$20,000	$4,000
12	**NJ:1 Total:1**	**Aspargo Laboratories, Inc.**	**$415,000**	**$83,000**
Alex Rudkovsky		Bark Biome LLC	$25,000	$6,250
1	**NJ:2 Total:2**	**Bark Biome LLC**	**$25,000**	**$6,250**
Jeremy Madigan		COVELLUS LLC	$10,000	$2,000
1	**NJ:1 Total:1**	**COVELLUS LLC**	**$10,000**	**$2,000**
AKOYAT A.S.		Crescenta Biosciences Inc.	$1,000,000	$200,000
1	**NJ:2 Total:2**	**Crescenta Biosciences Inc.**	**$1,000,000**	**$200,000**

ME Tech Investors LLC		D3UC LLC	$25,000	$2,500
Robert M Berman		D3UC LLC	$25,000	$2,500
2	**NJ:4 Total:4**	**D3UC LLC**	**$50,000**	**$5,000**
Bill Davaris		Deliveright Logistics, Inc.	$50,000	$5,000
Andrew Merians Ladden		Deliveright Logistics, Inc.	$50,000	$5,000
2	**NJ:37 Total:48**	**Deliveright Logistics, Inc.**	**$100,000**	**$10,000**
Stephen Arthur Geoffrey Cutler		Elucida Oncology, Inc.	$200,000	$40,000
Stanley M. Marks		Elucida Oncology, Inc.	$37,500	$7,500
Karen and Alan Dawes		Elucida Oncology, Inc.	$25,000	$5,000
Joseph Ingino		Elucida Oncology, Inc.	$50,000	$10,000
Peter D Brundage		Elucida Oncology, Inc.	$189,000	$37,800
Stephen Maxwell Trauber and Leticia Fernandez Trauber		Elucida Oncology, Inc.	$250,000	$50,000
James A. Kluge		Elucida Oncology, Inc.	$25,000	$5,000
Michael Chlopak Donna Chlopak JT TEN		Elucida Oncology, Inc.	$50,000	$10,000
Mark Reutlinger Analee Reutlinger Comm Prop		Elucida Oncology, Inc.	$50,000	$10,000
The Peter Mueller 2006 Revocable Trust		Elucida Oncology, Inc.	$300,000	$60,000
Anthony Daulerio		Elucida Oncology, Inc.	$25,000	$5,000
SJM Revocable Trust		Elucida Oncology, Inc.	$250,000	$50,000
John Crisan		Elucida Oncology, Inc.	$25,000	$5,000
Paul D Ehrman		Elucida Oncology, Inc.	$75,000	$15,000
TRUETZEL REVOCABLE TRUST		Elucida Oncology, Inc.	$76,000	$15,200
Bradford David Duea Cristi Shae Duea		Elucida Oncology, Inc.	$50,001	$10,000
Martin 2012 Family Trust		Elucida Oncology, Inc.	$250,000	$50,000
Neil Wasserman		Elucida Oncology, Inc.	$37,500	$7,500
Taylor W. Lawrence Family Trust		Elucida Oncology, Inc.	$250,000	$50,000
Robin Rothstein & Jeffrey Rothstein-Comm Prop WROS		Elucida Oncology, Inc.	$25,000	$5,000
Herzing Irrevocable Descendants Trust		Elucida Oncology, Inc.	$114,000	$22,800
Kurtis Scott Krentz		Elucida Oncology, Inc.	$50,000	$10,000
Karen and Alan Dawes		Elucida Oncology, Inc.	$47,250	$9,450
Richard Joseph Shea Tracey Shea Joint Tenant		Elucida Oncology, Inc.	$37,500	$7,500
Joyson Joseph Karakunnel		Elucida Oncology, Inc.	$100,000	$20,000
Sundeep Dev		Elucida Oncology, Inc.	$50,000	$10,000
Joel Yanowitz & Amy B. Metzenbaum 2003 Rev Trust		Elucida Oncology, Inc.	$50,000	$10,000
McEwan-Lane Family Trust		Elucida Oncology, Inc.	$250,000	$50,000
The Mayer Family Trust		Elucida Oncology, Inc.	$250,000	$50,000
Jack C Holland Revocable Trust, dated the 14th day of February, 1979		Elucida Oncology, Inc.	$33,000	$6,600
Michael L Meyer Living Trust		Elucida Oncology, Inc.	$47,250	$9,450
David Schneider		Elucida Oncology, Inc.	$86,000	$17,200
David E. I. Pyott Revocable Living Trust		Elucida Oncology, Inc.	$250,000	$50,000
Harvey Lang		Elucida Oncology, Inc.	$12,500	$2,500
Watercrest Partners L.P.		Elucida Oncology, Inc.	$25,000	$5,000

Shield Street Capital LLC		Elucida Oncology, Inc.	$100,000	$20,000
Varney J. Hintlian		Elucida Oncology, Inc.	$75,001	$15,000
Matthew Jason Wallach		Elucida Oncology, Inc.	$126,000	$25,200
Charles A Lieppe Revocable Trust dtd 11/29/99		Elucida Oncology, Inc.	$150,000	$30,000
Peter John Vincent		Elucida Oncology, Inc.	$50,000	$10,000
Girls Night Out LLC		Elucida Oncology, Inc.	$1,000,000	$200,000
Charles Joseph Keefe		Elucida Oncology, Inc.	$49,400	$9,880
Blobel Family 2003 Trust UAD 11/13/03		Elucida Oncology, Inc.	$49,990	$9,998
Larry C Hopfenspirger Revoc Tr UA Dated 4-13-12		Elucida Oncology, Inc.	$100,000	$20,000
Raymond Debbane		Elucida Oncology, Inc.	$1,000,000	$200,000
Kimberley Promise Morgan		Elucida Oncology, Inc.	$76,000	$15,200
Richard Pilnik		Elucida Oncology, Inc.	$120,000	$24,000
Douglas A Neugold		Elucida Oncology, Inc.	$50,000	$10,000
David Y Norton		Elucida Oncology, Inc.	$100,000	$20,000
Stewart William McCallum Trisha Ann McCallum		Elucida Oncology, Inc.	$50,000	$10,000
The Shahriyar Baradaran Revocable Trust, U/A/D 10/7/13		Elucida Oncology, Inc.	$100,000	$20,000
Mark H. Coleman		Elucida Oncology, Inc.	$100,000	$20,000
Michael L Meyer Living Trust		Elucida Oncology, Inc.	$25,000	$5,000
Gary D. Elliston		Elucida Oncology, Inc.	$100,320	$20,064
Monte D Anglin & Janet S. Anglin		Elucida Oncology, Inc.	$25,080	$5,016
Kyle Ryan Schneider		Elucida Oncology, Inc.	$200,000	$40,000
The Charles S Faber Revocable Trust		Elucida Oncology, Inc.	$50,000	$10,000
Robert Baldwin Wetzel		Elucida Oncology, Inc.	$25,000	$5,000
Vahan Janjigian & Noone Janjigian		Elucida Oncology, Inc.	$23,625	$4,725
Evan Michael Schwartz		Elucida Oncology, Inc.	$50,000	$10,000
Watercrest Partners L.P.		Elucida Oncology, Inc.	$50,000	$10,000
The Bahr Family Limited Partnership		Elucida Oncology, Inc.	$41,800	$8,360
The Kenneth M. Sutin, MD. Revocable Trust UAD 01/21/12		Elucida Oncology, Inc.	$49,999	$10,000
63	**NJ:9 Total:12**	**Elucida Oncology, Inc.**	**$7,579,716**	**$1,515,943**
Steve Hannan		Eos Energy Storage	$75,000	$7,500
1	**NJ:57 Total:57**	**Eos Energy Storage**	**$75,000**	**$7,500**
Paolo Spingardi		Evergreen Theragnostics, Inc.	$49,975	$9,995
Be Zmora		Evergreen Theragnostics, Inc.	$49,997	$9,999
Massimo Armanini		Evergreen Theragnostics, Inc.	$50,000	$10,000
Cecilia Valmarana		Evergreen Theragnostics, Inc.	$50,000	$10,000
Mordechai Weisman		Evergreen Theragnostics, Inc.	$200,600	$40,120
Matthias Obermayer		Evergreen Theragnostics, Inc.	$85,000	$17,000
ProfequYcapital 87 Srl		Evergreen Theragnostics, Inc.	$305,968	$61,194
Gaudenzio Roveda		Evergreen Theragnostics, Inc.	$679,975	$135,995
Sinmera Middle East and Asia FZ, LLC		Evergreen Theragnostics, Inc.	$714,000	$142,800
Jason & Hijin Angela Park		Evergreen Theragnostics, Inc.	$68,000	$13,600

Marco Toledo		Evergreen Theragnostics, Inc.	$442,000	$88,400
Brasuro Consulting AG Switzerland		Evergreen Theragnostics, Inc.	$299,999	$60,000
Gerard Ber		Evergreen Theragnostics, Inc.	$499,997	$99,999
Marta Szczycinska		Evergreen Theragnostics, Inc.	$249,999	$50,000
Amir Zmora		Evergreen Theragnostics, Inc.	$49,997	$9,999
Nikolai Zabila		Evergreen Theragnostics, Inc.	$49,990	$9,998
Carlo Germano Ravina		Evergreen Theragnostics, Inc.	$50,000	$10,000
Lori Weisman		Evergreen Theragnostics, Inc.	$110,000	$22,000
NovaCapital Srl		Evergreen Theragnostics, Inc.	$799,960	$159,992
SOLVA SRL		Evergreen Theragnostics, Inc.	$255,000	$51,000
Asi Veshler		Evergreen Theragnostics, Inc.	$99,970	$19,994
Luca Spingardi		Evergreen Theragnostics, Inc.	$49,955	$9,991
Enrico Toledo		Evergreen Theragnostics, Inc.	$391,000	$78,200
Serge K Lyashchenko		Evergreen Theragnostics, Inc.	$49,999	$10,000
Giulia Spingardi		Evergreen Theragnostics, Inc.	$49,997	$9,999
Nabil Ibrahim Nazer		Evergreen Theragnostics, Inc.	$74,765	$14,953
WASFI BASEL ABUGHAZALEH		Evergreen Theragnostics, Inc.	$74,765	$14,953
Stefan Herget & Charikleia Georgia Gavriil		Evergreen Theragnostics, Inc.	$49,997	$9,999
Guy Blair		Evergreen Theragnostics, Inc.	$49,970	$9,994
Francesco Boari		Evergreen Theragnostics, Inc.	$340,000	$68,000
Pietro Garibaldi		Evergreen Theragnostics, Inc.	$57,800	$11,560
Simona Nicoletta Spriano		Evergreen Theragnostics, Inc.	$214,200	$42,840
Boaz Yakov Gershon		Evergreen Theragnostics, Inc.	$749,999	$150,000
Lillian Gigi		Evergreen Theragnostics, Inc.	$499,997	$99,999
Lior Nagar		Evergreen Theragnostics, Inc.	$199,940	$39,988
PER IL FUTURO DELLA FAMIGLIA DI LUCA SS		Evergreen Theragnostics, Inc.	$442,000	$88,400
Sam Frackowiak & Aneta Frackowiak		Evergreen Theragnostics, Inc.	$50,000	$10,000
Michael Reitermann		Evergreen Theragnostics, Inc.	$170,000	$34,000
Ofer Amar		Evergreen Theragnostics, Inc.	$999,998	$200,000
Prigagi SA		Evergreen Theragnostics, Inc.	$78,200	$15,640
Antony Michael Czura		Evergreen Theragnostics, Inc.	$500,000	$100,000
Giorgio Boggero		Evergreen Theragnostics, Inc.	$50,000	$10,000
MAC 2020 srl		Evergreen Theragnostics, Inc.	$499,999	$100,000
Marie Hélène Polo		Evergreen Theragnostics, Inc.	$159,952	$31,990
Roman Durel Hall		Evergreen Theragnostics, Inc.	$204,000	$40,800
MAX Srl		Evergreen Theragnostics, Inc.	$99,962	$19,992
Simon Fiduciaria S.p.A.		Evergreen Theragnostics, Inc.	$944,999	$189,000
Ariel Sacerdoti		Evergreen Theragnostics, Inc.	$102,000	$20,400
Guido Sabatella		Evergreen Theragnostics, Inc.	$50,000	$10,000
Kudidi Holdings, Ltd.		Evergreen Theragnostics, Inc.	$204,000	$40,800
Benjamin Michael Masterson		Evergreen Theragnostics, Inc.	$49,999	$10,000
ALIEN 5778 SRL		Evergreen Theragnostics, Inc.	$100,000	$20,000
Mitul Shah		Evergreen Theragnostics, Inc.	$49,997	$9,999
Navig S.A.S. di Giorgio Zaffaroni		Evergreen Theragnostics, Inc.	$408,000	$81,600
Jose Antonio Sanchez		Evergreen Theragnostics, Inc.	$64,540	$12,908
Ferdinando Trisoglio		Evergreen Theragnostics, Inc.	$49,997	$9,999
Giuseppe Trisoglio		Evergreen Theragnostics, Inc.	$99,970	$19,994
Alexandra Nagar		Evergreen Theragnostics, Inc.	$400,000	$80,000
Lenn Participations Sarl		Evergreen Theragnostics, Inc.	$119,980	$23,996

Eli Shalom		Evergreen Theragnostics, Inc.	$49,967	$9,993
Carlo Spingardi		Evergreen Theragnostics, Inc.	$49,997	$9,999
Duccio Regoli		Evergreen Theragnostics, Inc.	$49,930	$9,986
HNF S.p.A.		Evergreen Theragnostics, Inc.	$599,998	$120,000
Societe de Development et d'Expansion d'Enterprise		Evergreen Theragnostics, Inc.	$1,359,960	$271,992
64	**NJ:4 Total:4**	**Evergreen Theragnostics, Inc.**	**$16,020,256**	**$3,204,049**
Masters of the Void Organization, LLC		Jetsy Corp	$333,000	$33,300
1	**NJ:2 Total:2**	**Jetsy Corp**	**$333,000**	**$33,300**
Flow Traders U.S. Holding, LLC		MEMX Holdings, LLC	$3,000,000	$500,000
Goldman Sachs PSI Global Holdings, LLC		MEMX Holdings, LLC	$10,000,000	$500,000
2	**NJ:41 Total:41**	**MEMX Holdings, LLC**	**$13,000,000**	**$1,000,000**
Christopher Mark Gregson		Paragon Flavors, Inc.	$20,000	$4,000
1	**NJ:2 Total:2**	**Paragon Flavors, Inc.**	**$20,000**	**$4,000**
Randolph L. Dudas		POM Partners, Inc.	$10,000	$2,500
Michael Davydov		POM Partners, Inc.	$19,996	$4,999
Joseph Richards		POM Partners, Inc.	$50,000	$12,500
First United Partners		POM Partners, Inc.	$454,996	$113,749
John Edward Alexander		POM Partners, Inc.	$100,000	$25,000
Michael J Reilly		POM Partners, Inc.	$310,000	$77,500
Joseph Wofchuck Revocable Trust 06/05/06		POM Partners, Inc.	$199,998	$50,000
UpVentures Capital, LLC		POM Partners, Inc.	$229,996	$57,499
Cayuga Venture Fund V, LP		POM Partners, Inc.	$1,614,945	$403,736
Silver Park Holdings, LLC		POM Partners, Inc.	$50,000	$12,500
Kevin G Lynch Revocable Trust		POM Partners, Inc.	$25,000	$6,250
GWF Management, LLC		POM Partners, Inc.	$74,996	$18,749
Brandon Groux		POM Partners, Inc.	$20,000	$5,000
13	**NJ:6 Total:6**	**POM Partners, Inc.**	**$3,159,927**	**$789,982**
Brett Felmey		Ricovr Healthcare Inc.	$25,000	$2,500
Andiappan Bala		Ricovr Healthcare Inc.	$12,500	$2,500
Ajey Mehta		Ricovr Healthcare Inc.	$25,000	$5,000
Rahul Agarwal		Ricovr Healthcare Inc.	$25,000	$5,000
4	**NJ:2 Total:2**	**Ricovr Healthcare Inc.**	**$87,500**	**$15,000**
Thomas S. Cerasaro		Vaneltix Pharma Inc	$50,000	$12,500
Mollie Leoni		Vaneltix Pharma Inc	$10,000	$2,500
Howard C Peterson 2000 Trust		Vaneltix Pharma Inc	$50,000	$12,500
Adam Hurst		Vaneltix Pharma Inc	$20,000	$5,000
Peter Maltin		Vaneltix Pharma Inc	$35,000	$8,750
5	**NJ:2 Total:2**	**Vaneltix Pharma Inc**	**$165,000**	**$41,250**
185	**NJ:220 Total:238**		**$43,470,399.10**	**$7,193,274.00**

MEMORANDUM

TO: Members of the Authority

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

DATE: August 11, 2021

SUBJECT: Incentives Modifications – 2nd Quarter 2021

(For Informational Purposes Only)

Since 2001, and most recently in June 2014, the Members have approved delegations to staff for post-closing incentive modifications that are administrative and do not materially change the original approvals of these grants.

Attached is a list of the Incentive Modifications that were approved in the 1st quarter ending June 30, 2021.

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Prepared by: F. Saturne

ACTIONS APPROVED UNDER DELEGATED AUTHORITY

FIRST QUARTER ENDING June 30, 2021

Business Employment Incentive Grant Program

Applicant	Modification Action	Approved Award
Unimac Graphics, LLC and Phillip Holtzer & Associates, LLC	Consent to Remove Philip Holzer & Associates, LLC from grant agreement effective January 1, 2011, the date all employees were transferred to Unimac Graphics, LLC	$1,694,756
TI Parsippany Inc.,	Consent to the amendment of TI Parsippany Inc.'s April 4, 2006 BEIP Agreement: 1. Change in location from 260 Cherry Hill Road, Parsippany, New Jersey to 6 Upper Pond Road, Parsippany, New Jersey effective April 2014. 2. Name change from Time/Warner Retail Sales & Marketing Inc. to Time Inc. Retail effective June 2014; and then to TI Inc. Retail effective November 2018. 3. Name change from Time Distribution Services Inc. to TI Distribution Services Inc. effective November 2018. 4. Remove TI Parsippany Inc. and TI Shared Services Inc. effective January 2020.	$3,288,372

GROW NEW JERSEY ASSISTANCE PROGRAM

Applicant	Modification Action	Approved Award
Carts Mobile Food Equipment Corp	Consent to approve the 1st six-month extension of the certification deadline from April 10, 2021 to October 10, 2021.	$3,740,000
Feldware, Inc.	Consent to approve the 1st six-month extension of the certification deadline from April 10, 2021 to October 10, 2021.	$2,475,000
Integra Lifesciences Corporation	Consent to approve the 1st six-month extension of the certification deadline from August 10, 2021 to October 10, 2021.	$17,808,320
Integra Lifesciences Corporation	Consent to approve the 2nd six-month extension of the certification deadline from October 10, 2021 to April 10, 2022.	$17,808,320
LBU, Inc.	Consent to the addition of ADP TotalSource FL XIX, Inc. as a Professional Employer Organization ("PEO") to the GROW NJ Agreement.	$8,400,000
Tech Mahindra Americas, Inc.	Consent to approve the 1st six-month extension of the certification deadline from April 10, 2021 October 10, 2021.	$1,998,000

Teva Pharmaceuticals USA, Inc.	Consent to approve the 1st six-month extension of the certification deadline from June 12, 2021 December 12, 2021.	$39,998,730
Tumi, Inc.	Consent to approve the 1st six-month extension of the certification deadline from April 12, 2021 October 12, 2021.	$2,887,500

SALEM/UEZ ENERGY SALES TAX EXEMPTION RENEWALS

Applicant	Extend to date	Location	#/% Employees	Benefit
Anheuser Busch, LLC	May 25, 2022	Newark, NJ	254/80%	$435,765
Corning Pharmaceutical	April 29, 2022	Vineland, NJ	255/92%	$608,026
Mexichem Specialty Resins	August 7, 2021	Pedrickton, NJ	80/80%	$452,806
Siegfried USA, LLC	March 23, 2022	Pennsville, NJ	157/80%	$140,625

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Post Closing Credit Delegated Authority Approvals for 2Q Quarter 2021
For Informational Purposes Only

The following post-closing actions were approved under delegated authority during the second quarter of 2021:

Name	EDA Credit Exposure	Action
Northeast Precast, LLC (Superior Ventures Limited Liability Company)	$ 1,663,336 SLP	Consent to TD Bank's release of mortgage and assignment of rents and leases on real estate at 92 Reese Road in Millville, which was taken as collateral on the SLP loan to Northeast Precast.
Bradco Management, LLC (Oakland Spine & Rehabilitation Center)	$ 353,946 SLP	Extend the loan maturity by ten years to May 1, 2031 to allow the loan to amortize over the remaining ten years with call options and rate resets every five years.
1013 Bergenline, LLC (Espinosa Beef and Provisions Inc)	$ 190,514 DIR	Extend the loan maturity by 15 years to January 1, 2036 to allow the loan to amortize with an interest rate of 4% withcall options and rate resets every five years.

COVID-19 Moratoria

The following loan products were approved for an additional six-month principal and interest moratorium to provide cash flow relief from the disruption caused by COVID-19. It should be noted that Members approved an original three-month principal and interest moratorium for all direct and premier lender participation loans with options for additional extensions at the March 26, 2020 Special Board Meeting.

Name	EDA Credit Exposure
Gateway Marina, Inc	$ 630,555 SBL
Hayden Production Services, Inc	$ 79,326 SBL

Loans Written off with Recourse	

As required by generally accepted accounting principles, loans that are nonperforming, offer limited likelihood of future recovery and have been fully reserved are to be written off. Special Loan Management conducts a quarterly portfolio review, and with concurrence from management, recommend loans to be written off with recourse pursuant to delegated authority. EDA retains legal rights against the borrower and/or guarantors and pursue collections of these loans through litigation.

Name	**Credit Exposure**	**Description**
Stesor Enterprises, Inc.	$ 14,557 SBL	EDA has not received any payments on this loan since March 2020. The loan is secured by a lien on business assets.

Tim Sullivan, CEO

Prepared by: Jennifer Bongiorno and Mansi Naik

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Bond Modifications – 2nd Quarter 2021

(For Informational Purposes Only)

The following Post-Closing Bond action was approved under delegated authority in the 2nd quarter ending June 30, 2021:

Stand Alone and Refunding Bonds - (EDA has no Credit Exposure)

Applicant	Modification Action	Bond Amount
MSC Facilities LLC	Consent to change in bondholder representative and to update intercreditor agreement.	$34,433,634
Uncommon CP Properties I, LLC	Consent to change in bondholder representative and to update intercreditor agreement.	$47,500,000
The Atlantic City Sewerage Co.	Consent to provide substitute provisions for a Benchmark transition in the event of a possible future termination of LIBOR.	$8,000,000
The Pennington School	Consent to reduce the interest rate of the Bond to 2.50% until April 1, 2034, and thereafter 2.75% until maturity.	$5,775,000

Tim Sullivan, CEO

Prepared by: K. Hall