



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** Agenda for Board Meeting of the Authority October 12, 2022

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**CEO's Report to the Board**

**Authority Matters**

**Community Development**

**Economic Transformation**

**Incentives**

**Bond Projects**

**Real Estate**

**Board Memoranda**

**Executive Session**

**Public Comment**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**September 14, 2022**

**MINUTES OF THE MEETING**

*The Meeting was held in-person and by teleconference call.*

Members of the Authority present in person: Chairman Kevin Quinn; Noreen Giblin, Executive Representative; Public Members: Charles Sarlo, Vice Chairman; Philip Alagia, Virginia Bauer, and Fred Dumont.

Members of the Authority present via conference call: Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; State Treasurer Elizabeth Muoio of the Department of Treasury; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Aisha Glover, Marcia Marley, Robert Shimko, First Alternate Public Member, and Rosemari Hicks, Second Alternate Public Member.

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

Members of the Authority absent: Commissioner Marlene Caride of the Department of Banking and Insurance; and Public Member Massiel Medina Ferrara.

Mr. Quinn called the meeting to order at 10:02 am.

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

**MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the July 13, 2022 meeting minutes. A motion was made to approve the minutes by Ms. Bauer, and seconded by Ms. Giblin, and was approved by ten (10) 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.

**AUTHORITY MATTERS**

**ITEM: Annual Organizational Meeting Memo**

**REQUEST:** To approve the election of officers, committee appointments, and adoption of the Calendar of Meetings through September 2023.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Mr. Dumont      **AYES: 10**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

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**ITEM: Contract Award for Auditing and Job Certification Review Consulting Services**

**REQUEST:** To approve the Authority to enter into a three-year contract with options to extend the contract for one year to perform auditing and job certification reviews for the Authority's incentives programs and delegate authority to the CEO to extend the contract.

**MOTION TO APPROVE:** Ms. Giblin      **SECOND:** Mr. Alagia      **AYES: 10**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

Ms. Hicks joined the meeting at this time.

**OFFSHORE WIND**

**ITEM: NJ Offshore Wind Workforce and Skills Development Grant Challenge**

**REQUEST:** To approve the creation of Offshore Wind Workforce and Skills Development Grant Challenge, a competitive grant program, to establish workforce and skills development programs to strengthen and diversify New Jersey's offshore wind workforce.

**MOTION TO APPROVE:** Mr. Dumont      **SECOND:** Ms. Bauer      **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

**INCENTIVES**

**Economic Transformation**

**ITEM: Technology Business Tax Certificate Transfer Program: 2022 Program Approvals**

**REQUEST:** To approve applicants for the Technology Business Tax Certificate Transfer (NOL) Program, which have been evaluated according to the criteria established by the legislation.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Mr. Dumont      **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

State Treasurer Muoio joined the meeting at this time.

Ms. Glover joined the meeting at this time.

**Film & Digital Media Tax Credit**

**ITEM: Film and Digital Media Tax Credit Program – Certification of Unused or Unredeemed Credits in SFY2022 and Increase to SFY2023**

**REQUEST:** To approve (1) The certification of unused or unredeemed legacy film tax credits for SFY2022 which will increase the legacy film tax credits available for SFY2023; (2) The certification of unused or unredeemed studio partner film tax credits for SFY2022 which will increase the studio partner film tax credits available for SFY2023; (3) The certification of unused or unredeemed film-lease partner film tax credits for SFY2022 which will increase the film-lease film tax credits available for SFY2023; (4) The reallocation of unused film-lease partner film tax credits, to legacy tax credits and; (5) The certification of unused or unredeemed digital media tax credit for SFY2022 which will increase the digital tax credits available for SFY2023.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Mr. Alagia      **AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

Ms. Glover abstained because Audible benefits from the Film and Digital Media Tax Credit Program.

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## Film Tax Credit Approvals

**Pacific 2.1 Entertainment Group, Inc** PROD-00303031  
**MAX AMOUNT OF TAX CREDITS:** \$22,821,846  
**MOTION TO APPROVE:** Ms. Giblin **SECOND:** Ms. Bauer **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

**Minim Productions, Inc.** PROD-00303184  
**MAX AMOUNT OF TAX CREDITS:** \$25,692,631  
**MOTION TO APPROVE:** Ms. Bauer **SECOND:** Mr. Alagia **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

**Atomic Punk Films LLC** PROD-00304037  
**MAX AMOUNT OF TAX CREDITS:** \$10,766,711  
**MOTION TO APPROVE:** Ms. Bauer **SECOND:** Mr. Alagia **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

## Rules

**ITEM: Approval of the submission of the Historic Property Reinvestment Program Rules, N.J.A.C. 19:31-26, et seq., to the Office of Administrative Law for Adoption REQUEST:** To approve the submission of the Historic Property Reinvestment Program Rules as final adopted rules for publication in the New Jersey Register.

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

## Grow NJ Modification

**ITEM: Adoreme, Inc., Grow New Jersey Assistance Program (“Grow NJ”) Modification – P44220**

**REQUEST:** To approve a modification to the Grow application to reduce the average salary and to affirm that the project has not otherwise materially changed to allow staff to complete its certification of project completion.

**MOTION TO APPROVE:** Mr. Dumont **SECOND:** Ms. Bauer **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**

## LOANS, GRANTS, GUARANTEES, INVESTMENTS

### Venture

**ITEM: Innovate Capital Growth Fund, L.P. (PROD-00302715)**

**REQUEST:** Approval is requested to make a limited partnership investment in Innovate Capital Growth Fund, L.P. for a commitment by the NJEDA of 2% of the total committed fund size. Funding for the investment will be made from the Economic Recovery Fund (ERF).

**MOTION TO APPROVE:** Ms. Marley **SECOND:** Ms. Bauer **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 11**

Ms. Hicks abstained on this vote.

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**State Small Business Credit Initiative (SSBCI)**

**ITEM: Angel Match Program**

**REQUEST:** To approve: (1) the creation of the Angel Match Program, a program to match angel investor's direct investment in early-stage, product-based technology companies ; (2) utilization of funds from NJ's allocation from U.S. Treasury's State Small Business Credit Initiative (SSBCI), contingent on final approval of the SSBCI application by U.S. Treasury and execution of an allocation agreement between U.S. Treasury and NJ Department of the Treasury; and (3) delegation of authority to the CEO to approve individual applications, impose additional requirements as may be required by SSBCI, consistent with the parameters of the program, and approve modification of terms for approved NJEDA funding;

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Ms. Giblin      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

**ITEM: SSBCI - Recovery Loan Loss Reserve**

**REQUEST:** To approve: (1) the creation of the Recovery Loan Loss Reserve Program, a program that will offer 50% guarantees to approved participants for their designation allocation; (2) utilization of SSBCI funding for this initiative once NJEDA receives approval; (3) delegation of authority to the CEO to approve individual applications and impose additional requirements as may be required by SSBCI, consistent with the parameters of the program.

**MOTION TO APPROVE:** Mr. Dumont      **SECOND:** Mr. Alagia      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 13**

**Micro Business Loan**

**ITEM: Main Street Recovery Finance Program - Micro Business Loan – Product Revision**

**REQUEST:** To approve a revision to the Main Street Recovery Finance Program - Micro Business Loan to remove the requirement for personal guarantees from all owners, and to clarify that the Authority's administration fee will be taken from the Main Street Recovery Fund.

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

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 14**

**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. Bauer      **SECOND:** Mr. Alagia      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 15**

**PROJECT:** West Orange Township

PROD. #00304872

**LOCATION:** West Orange Township, Essex County

**PROCEEDS FOR:** Remedial Action

**FINANCING:** \$3,330,360.00

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## REAL ESTATE

**ITEM: Fourth Amendment to Real Estate Advisory Consulting Services Contract Between Jones Lang LaSalle Americas, Inc. and the Authority**

**REQUEST:** To approve entering into the Fourth Amendment to Real Estate Advisory Consulting Services Contract with JLL.

**MOTION TO APPROVE:** Mr. Dumont    **SECOND:** Mr. Alagia    **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 16**

**ITEM: Recommendation for Award - 2022-RFP-IPM-124 Property and Facility Management Services**

**REQUEST:** To approve the recommendation for the contract award for property and facilities management services for a term of three years, with two, one-year extension options.

**MOTION TO APPROVE:** Ms. Bauer    **SECOND:** Mr. Alagia    **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 17**

Ms. Bauer left the meeting at this time.

**ITEM: Professional Services Contract Budget Increase, Langan Engineering and Environmental Services, Inc., State Office Building - Health Building Project, Trenton, NJ**

**REQUEST:** Approval of a change to the total contract budget for Langan Engineering and Environmental Services, Inc. for civil and environmental engineering services associated with the remediation of two USTs and associated Ground Water Light Non-Aqueous Phased Liquid remediation of the lot improvements component of the Health Building Project in Trenton.

**MOTION TO APPROVE:** Mr. Dumont    **SECOND:** Mr. Alagia    **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 18**

Ms. Dragon abstained because DEP oversees the permitting process.

## BOARD MEMORANDA

**FYI ONLY:**

- Credit Underwriting Projects Approved Under Delegated Authority, July and August, 2022
  - Economic Transformation Products – Delegated Authority Approvals, 2<sup>nd</sup> Quarter, 2022
  - Hazardous Discharge Site Remediation Fund (HDSRF) Applications Approved Under Delegated Authority, 2<sup>nd</sup> Quarter, 2022
  - Petroleum Underground Storage Tank Applications (PUST) Approved Under Delegated Authority, 2<sup>nd</sup> Quarter, 2022
  - Post-Closing Delegated Authority Bond Modification Approvals, 2<sup>nd</sup> Quarter, 2022
  - Post-Closing Delegated Authority Incentives Modifications, 2<sup>nd</sup> Quarter, 2022
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## PUBLIC COMMENT

Mr. Aaron Jones, Research Coordinator, SEIU 32BJ, spoke about concerns regarding labor practices at the American Dream Mall.

Mr. Jose Teran, resident of West New York, NJ, spoke about concerns regarding labor practices at the American Dream Mall.

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Dumont, the meeting was adjourned at 12:03 pm.

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:** October 12, 2022

**Re:** October 2022 Board Meeting – CEO Report

This month, New Jersey Economic Development Authority (NJEDA) staff held a robust presence at several major New Jersey events focused on growing the state's business and innovation communities. This included hosting the 2022 Governor's Conference on Housing and Economic Development in partnership with teams from the New Jersey Department of Community Affairs, the New Jersey Housing Mortgage Finance Agency, and the New Jersey Redevelopment Authority. Throughout the two-day event at Harrah's in Atlantic City, the NJEDA team led panel discussions, presented at information sessions, shared information on NJEDA programs, and networked with business leaders, developers, small business owners, and local government officials from across the state to increase awareness of NJEDA resources and programs.

Last week, the NJEDA was a sponsor of the Propelify Innovation Festival, held annually in Hoboken. Propelify presented an opportunity for our Economic Transformation and Public Affairs teams to showcase NJEDA resources for innovative companies in all stages of growth, including programs like the Angel Investor Tax Credit, Net Operating Loss Program, NJ Ignite, NJ Accelerate, and the recently launched New Jersey Innovation Evergreen Fund (NJIEF).

Due to greater than expected demand for NJIEF, last week the NJEDA announced an increase of tax credits available through the tax credit auction phase from \$30 to \$50 million. Corporations had until Friday, October 7<sup>th</sup>, to submit their completed applications. This increase serves as a testament to the competitiveness and strength of New Jersey's innovation economy. An initial review of the pipeline of applications indicates there are approximately 10 viable applications for tax credits totaling over \$64 million.

In addition to the exciting news around the NJIEF, this month the NJEDA announced that almost \$13 million had been awarded to over 500 small businesses through the Small Business Improvement Grant. Launched in February, the program awards small businesses up to \$50,000 to reimburse costs associated with making building improvements or purchasing new furniture, fixtures, and equipment. Created under the Economic Recovery Act of 2020 and funded with \$15 million from the Main Street Recovery Program, the Small Business Improvement Grant serves as a vital resource for businesses all over our state, especially those located in Opportunity Zones, as we continue the transition from pandemic to endemic.

This includes focusing on improving access to capital for the smallest of businesses. On October 6<sup>th</sup>, the NJEDA launched the application for the Main Street Micro Business Loan, which will provide loans of up to \$50,000 to businesses with 10 or fewer employees and annual revenues of up to \$1.5 million. Eligible for-profit and nonprofit businesses registered to do business in New Jersey, including home-based businesses, can apply for financing from the \$20 million in funds allocated from the Main Street Recovery Fund to cover future operating expenses only such as inventory, rent, payroll, equipment, or any other working capital expense to fund business operating expenses. As of yesterday morning, nearly 1,700 businesses had submitted applications, and there is a significant pipeline of additional applications in process.





Municipal governments and county governments, and/or redevelopment agencies working to improve food access and food security by leveraging distressed assets in New Jersey's Food Desert Communities now have an opportunity to apply for the Food Insecurity Planning Grant Program, which will competitively award grants ranging between \$75,000 to \$125,000. Applications are available on our website and will be accepted until November 25, 2022. The second of two Food Insecurity Planning Grant informational webinars will be held tomorrow, October 13, at 11:00 a.m. to help potential applicants prepare to apply for the program. Information on the session is available on [www.NJEDA.com/events](http://www.NJEDA.com/events).

As demonstrated by the work mentioned above, programs administered by the NJEDA continue to help advance Governor Phil Murphy's vision for a stronger, fairer New Jersey economy, and I am enormously appreciative of the work of our team, and for the steadfast commitment of this Board to the prosperity of the people of New Jersey.

A handwritten signature in black ink, appearing to read "Tim Sullivan", is positioned above a horizontal line. The signature is fluid and cursive.

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Tim Sullivan, CEO



## **MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** October 12, 2022  
**Subject:** Wind Institute for Innovation and Training Memorandum of Understanding (MOU) – New Jersey Economic Development Authority (NJEDA) and New Jersey Board of Public Utilities (NJBPU)

### **Summary:**

Members of the Board are requested to approve a Memorandum of Understanding (MOU) between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Board of Public Utilities (NJBPU). This MOU enables the NJBPU to provide \$10 million in funding to NJEDA to support the development and delivery of workforce training, education, research, and innovation programs that will empower New Jerseyans to participate in the offshore wind industry. This MOU is the third of its kind and will supplement the previously received \$11.5 million from the NJBPU Clean Energy Fund through the September 2020 and July 2021 MOUs between NJEDA and NJBPU for Offshore Wind Initiatives for a combined \$21.5 million in funding across the three MOUs

The full text of the MOU is included as Exhibit A of this memorandum.

### **Background:**

Governor Murphy established clear and aggressive clean energy goals, including generating 7.5 GW of electricity from offshore wind energy by 2035 as part of the State's plan to transition to 100 percent clean energy by 2050. To successfully reach these goals, New Jersey must invest in and coordinate workforce training, education, research, and innovation efforts. Through Executive Order 79, the Governor established the WIND Council, a cross-governmental effort that developed a plan for creating the Wind Institute for Innovation and Training (Wind Institute). Once established, the Wind Institute will coordinate and deploy resources for education, research, innovation, and workforce training related offshore wind in New Jersey.

With a combined \$11.5 million received from the NJBPU Clean Energy Fund through MOU's signed by NJEDA and NJBPU on September 9, 2020, and July 14, 2021, the NJEDA has made significant advancements and financial commitments in offshore wind workforce training and research. This includes funding key initiatives like:

- Conducting grant challenges like the Offshore Wind Safety Training Challenge that led to Atlantic Cape Community College being selected to create a Global Wind Organization Basic Sea and Survival facility and program, and the Offshore Wind Turbine Technician Training Challenge where Rowan College of South Jersey was selected to establish a suite of wind turbine technician training programs.

- Establishing MOUs with Rutgers University, NJ Institute of Technology, Rowan University, and Montclair State University to create the Wind Institute Fellowship and University Initiatives to Advance Offshore Wind.
- Establishing MOUs with Gloucester County Institute of Technology and Salem County Vocational Technical Schools to expand their welding and painting programs to help meet the needs of monopile fabrication and other component manufacturing for offshore wind.
- Hosting a series of offshore wind workforce and industry engagements and trainings for small businesses and stakeholders to engage the offshore wind supply chain.
- Commissioning a workforce gap analysis to identify the type and number of occupations required to meet the state's 7.5-gigawatt offshore wind goal. This study will inform future Wind Institute programming.
- Conducting a feasibility study to identify the need for an offshore wind research and testing facility in New Jersey.

### **MOU Description:**

The MOU will provide \$10 million in funding to support the NJEDA to develop and implement workforce development, education, research, and innovation solutions that will enable New Jerseyans to participate in the offshore wind industry. The funding will support:

- Continued development and execution of offshore wind workforce and education programs. Programs can include overseeing grant challenges, executing MOUs, or other means to establish offshore wind focused training and education initiatives. New programs will be informed by findings from the workforce study, as well as information gathered from key industry stakeholders. Potential areas of focus may include training for non-destructive testing, marine occupations, and manufacturing. Funding may also be allocated for general education campaigns on offshore wind and career pathways.
- The expansion of Wind Institute Fellowship and University Initiatives to support efforts that will increase industry-valued expertise at a greater number of NJ universities and/or with a larger number of students
- Development and execution of initiatives that spearhead research and innovation that unlocks market potential and/or specifically addresses challenges facing the NJ offshore wind industry. This may include, but will not be limited to, efforts to advance the establishment of an offshore wind research and testing facility in New Jersey.

The MOU has a term of five (5) years, but NJEDA staff intends to utilize the funding provided through the MOU as timely as possible.

The MOU includes requirements for the NJEDA staff to continue to regularly engage and provide the NJBPU staff with quarterly updates on the status of these programs and initiatives.

### **Recommendation:**

The Members of the Board are requested to approve the MOU between the NJEDA and the NJBPU, attached as Appendix A, that enables the NJBPU to provide \$10 million in funding to

NJEDA to establish programs to prepare New Jersey's workforce and further research and innovation in the offshore wind industry.

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

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Tim Sullivan, CEO

Prepared by: Jen Becker

Exhibit A: Memorandum of Understanding Between NJEDA and BPU for Offshore Wind Initiatives

**WIND INSTITUTE FOR INNOVATION AND TRAINING  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
AND THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between

**THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, with its principal office at 36 West State Street, Trenton, NJ 08625 (“NJEDA”); and

**THE NEW JERSEY BOARD OF PUBLIC UTILITIES**, with its principal office at 44 S. Clinton Ave., Trenton, New Jersey 08625 (“NJBPU”).

The NJEDA and the NJBPU are collectively referred to herein as the “Parties” with each individually referred to as a “Party.”

**WHEREAS**, the NJEDA is an independent State agency, in but not of the Department of Treasury, that serves as the State’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

**WHEREAS**, the NJBPU is the State agency with authority to provide general supervision, regulation, jurisdiction, and control over all public utilities in the State, including electric utilities and their rates and service. The law requires the NJBPU to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey; and through the NJBPU Division of Clean Energy (“DCE”), promotes energy efficiency programs and the development of clean, renewable sources of energy including solar, wind, geothermal, combined heat and power (“CHP”) and sustainable biomass. The goal of the DCE is to lower energy costs, reduce demand for electricity, emit fewer pollutants into the air and create jobs. Through its programs, the DCE offers education, outreach and financial incentives to residential, commercial businesses and industry, schools and governmental customers; and

**WHEREAS**, N.J.S.A. 52:14-1 et seq. authorizes State agencies to enter into agreements to provide assistance to each other; and

**WHEREAS**, Governor Murphy released the State’s 2019 Energy Master Plan on January 27, 2020 (the “2019 Energy Master Plan”), which set a goal of 100 percent clean energy by 2050 and outlined a strategy to expand the Clean Energy Innovation Economy in New Jersey through workforce training, investments in developing clean energy knowledge, and the growth of world-class research and development; and

**WHEREAS**, the 2019 Energy Master Plan identifies the offshore wind sector to be critical for accelerating the development of renewable energy and reinforces New Jersey’s

commitment to building 7,500 MW of offshore wind by 2035, as stated in the 2019 Executive Order No. 92; and

**WHEREAS**, Governor Murphy signed Executive Order No. 79 on August 16, 2019 to establish a Wind Innovation and New Development (“WIND”) Council to develop a plan to create the Wind Institute as a clearinghouse for education, research, innovation, and workforce training related to the development of offshore wind in this State and the Northeast region; and

**WHEREAS**, on April 22, 2020, the WIND Council released its report entitled Wind Council Report: Recommendations Issued Pursuant to Executive Order No. 79 (“Wind Council’s Report”), which recommends the creation of the Wind Institute for Innovation and Training (“Wind Institute”) to coordinate and galvanize cross-organizational workforce and innovation efforts to position New Jersey as a leader in offshore wind and articulates priorities to support this goal; and

**WHEREAS**, the NJEDA and NJBPU have a history of partnering with each other in the furtherance of offshore wind economic development; and

**WHEREAS**, the Parties agree that this MOU will advance implementation of the statewide 2019 Energy Master Plan by progressing the priorities outlined in the Wind Council’s Report; and

**WHEREAS**, on September 9, 2020, NJEDA and NJBPU executed an MOU (the “First MOU”) which enabled the NJBPU to provide \$4,500,000 in funding to NJEDA (the “Initial BPU Funds”) to enable NJEDA to undertake proposed programs (the “Proposed Programs”) as a precursor to the establishment of the Wind Institute that will enable New Jersey residents to participate in the offshore wind industry through the development of initiatives including: (i) the development of a Global Wind Organization (“GWO”) safety training program and a facility dedicated to such program in New Jersey; (ii) the development of a best-in-class wind turbine technician training program; (iii) the identification of pathways into the offshore wind industry for New Jersey students and workers; and (iv) the design and delivery of a workforce development seminar to provide local stakeholder groups with insight into the offshore wind industry’s workforce development needs and to empower these stakeholder groups to build relevant workforce solutions; and

**WHEREAS**, on July 14, 2021, the NJEDA and NJBPU executed a subsequent MOU (the “Second MOU”) which enabled the NJBPU to provide an additional \$7,000,000 in funding to the NJEDA (the “Subsequent BPU Funds”) to further develop Proposed Programs to enable New Jersey residents to participate in the offshore wind industry through: (i) the continued development and execution of workforce and education programs; (ii) the development and execution of programs that spearhead research and innovation that unlock market potential and/or specifically address challenges facing New Jersey’s offshore wind industry; (iii) administrative staffing costs to support the Wind Institute and to position the Wind Institute as a centralized information hub for offshore wind workforce development, education, research and innovation; and (iv) other costs for website development, events, marketing, etc.; and

**WHEREAS**, in anticipation of the creation of the Wind Institute, NJEDA and NJBPU are entering into this MOU to fund activities in support of offshore wind sector initiatives; and

**WHEREAS**, the NJBPU has agreed to provide the NJEDA with \$10 million (“New BPU Funds”) to support NJEDA’s efforts to develop and deliver programs that will empower New Jersey residents to participate in the offshore wind industry.

**NOW, THEREFORE**, it is agreed between NJEDA and NJBPU:

1. **DUTIES OF THE PARTIES:** To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a. NJBPU will provide to NJEDA the New BPU Funds within 15 days of the effective date of this MOU.
  - b. NJEDA will dedicate the New BPU Funds to support the continued development and execution of offshore wind workforce, education, research, and innovation programs as part of the development of the to-be-created Wind Institute. The New BPU Funds will be utilized for Proposed Programs related to, but not limited to, the following:
    - i. Expansion of Wind Institute Fellowship and University Initiatives to support efforts to increase industry-valued expertise at a greater number of New Jersey universities and/or with a larger number of students than the first cohort of 24 students at 4 universities funded under the Second MOU with Subsequent BPU Funds.
    - ii. Continued development and execution of offshore wind workforce and education programs. Programs can include overseeing grant challenges, executing Memoranda of Understandings, or other means to establish offshore wind-focused training and education initiatives. Potential areas of focus may include training for non-destructive testing, crane operations, maritime occupations, and manufacturing, as well as general education campaigns about offshore wind and career pathways.
    - iii. Development and execution of initiatives that spearhead research and innovation that unlock market potential and/or specifically address challenges facing New Jersey’s offshore wind industry. This may include, but not be limited to, efforts that advance the establishment of an offshore wind research and testing facility in New Jersey.
  - c. NJEDA has not proposed detailed parameters or specifications for any of the Proposed Programs and may allocate the New BPU Funds among the Proposed Programs. If NJEDA chooses to not pursue one or more of the Proposed Programs, NJEDA shall notify the NJBPU no later than 30 days after such determination and shall include such determination in the upcoming NJEDA Staff Report (defined in Attachment A herein). NJEDA

may propose amendments to this MOU regarding this modification to the original set of Proposed Programs. The NJBPU may also propose amendments to the Proposed Programs.

- d. NJEDA may, in its discretion, undertake the Proposed Programs with the assistance of consultants or contractors retained by NJEDA, and NJEDA shall notify NJBPU within 10 days of retaining a consultant or contractor.
  - e. NJEDA staff will provide a formal, verbal update to and seek input from NJBPU staff (each, an "Update," and collectively, the "Updates") as needed, but at least on a quarterly basis, regarding the status of NJEDA's work plan, development progress, and the drafting of Proposed Program documents. These documents include, but are not limited to, solicitations, request for qualifications/proposals, guidelines/specifications, working group scope, and seminar materials regarding the Proposed Programs. NJEDA shall timely provide these Updates separately from the quarterly updates described in Section 1.f. below. NJEDA shall provide the first Update to NJBPU staff within 90 days of this MOU's effective date as is first stated above and shall include financial estimates for uses of the New BPU Funds. For the avoidance of doubt, an "Update" shall not include additional check-in meetings that NJEDA and NJBPU may hold from time to time, at their discretion.
  - f. NJEDA will provide to NJBPU quarterly written NJEDA Staff Reports defined in Attachment A that shall include, but not be limited to, the progress of each of the Proposed Programs; Proposed Programs that are completed; any issues encountered and their resolution or proposed resolution; committed and paid expenditures to date; and plans for the next quarter.
2. **TERM:** This MOU shall become effective as of the date first set forth above. This MOU, unless terminated sooner as set forth in Section 8 herein, shall remain in effect until the earlier of (i) five (5) years from this MOU's effective date, or (ii) until the New BPU Funds are fully expended. The term of this MOU may be extended only by prior written agreement by the Parties.
  3. **SUBJECT TO THE AVAILABILITY OF FUNDING:** The New BPU Funds that NJBPU will provide under this MOU are subject to appropriations and the availability of funds. NJEDA hereby acknowledges that this may impact the originally contemplated amount of the New BPU Funds that NJBPU may provide to NJEDA under this MOU.
  4. **THIRD-PARTY BENEFICIARIES:** This MOU shall not create in any individual or entity the status of a third-party beneficiary, and nothing in this MOU shall be construed to create such status. The rights, duties, and obligations contained herein shall operate only between the Parties and shall inure solely to the benefit of the Parties. The provisions of this MOU are



intended only to assist the Parties in determining and performing the obligations set forth herein.

5. **ASSIGNMENT:** This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to the Wind Institute upon its establishment, but shall bind and inure to the benefit of the Parties hereto and their respective successors.
6. **DISPUTES:** If there are any disputes among the Parties concerning this MOU, the President of NJBPU and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
7. **AMENDMENT:** This MOU, including Attachment A and Attachment B (collectively, the "Attachments"), may be amended, supplemented, changed, modified, or altered only by mutual agreement of the Parties in a writing that shall be effective as of the date the Parties shall so stipulate. There shall be no limit to the number of times this MOU or each of the Attachments may be amended.
8. **TERMINATION:** Either Party may terminate this MOU upon 30 days' written notice to the other Party of such intention to terminate. Such termination request shall be permitted, with or without cause. In the event of termination, the Parties agree to conduct a final accounting within 60 days of the termination effective date. At the termination or expiration of the MOU, NJEDA will return any unexpended New BPU Funds remaining after all costs, direct or indirect, incurred by NJEDA under the terms of this MOU have been paid, or, alternatively, with written consent from NJBPU, rollover any uncommitted funds to future MOUs regarding the subject matter of this MOU.
9. **NOTICE:** All correspondence and notices to NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kelly Mooij  
Director, Division of Clean Energy  
New Jersey Board of Public Utilities  
44 S. Clinton Avenue, Trenton, NJ 08625  
[Kelly.Mooij@bpu.nj.gov](mailto:Kelly.Mooij@bpu.nj.gov)

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Jen Becker  
Managing Director, Wind Institute  
Development New Jersey Economic  
Development Authority  
36 West State Street, PO Box 990, Trenton, NJ 08625  
[jbecker@njeda.com](mailto:jbecker@njeda.com)

10. **ENTIRE AGREEMENT:** This MOU contains all the terms and conditions agreed upon by the Parties and supersedes all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter of this MOU. This MOU represents the entire agreement between the Parties; all negotiations, oral agreements, and understandings that occurred prior to the date of this MOU are merged and incorporated by reference herein.
  
11. **COUNTERPARTS:** This MOU may be signed in counterparts, each which, when so executed and delivered, shall be deemed original, but such counterparts shall together constitute one and the same instrument.

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**IN WITNESS WHEREOF**, the Parties have caused this MOU to be signed by their duly authorized representatives or designees as of the day, month, and year first written above.

STATE OF NEW JERSEY  
ECONOMIC DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Name: Tim Sullivan  
Title: Chief Executive Officer

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

By: \_\_\_\_\_  
Name: Joseph L. Fiordaliso  
Title: President

## **ATTACHMENT A**

This Attachment A is hereby incorporated into the Memorandum of Understanding with respect to the Wind Institute for Innovation and Training (“MOU”) between the New Jersey Board of Public Utilities (“NJBPU”) and the New Jersey Economic Development Authority (“NJEDA”) (collectively, the “Parties”), regarding the use and administration of the New BPU Funds as fully described in the MOU.

### **I. METHOD OF PAYMENT**

The full amount of the New BPU Funds will be transferred to the NJEDA within 15 days of the execution of this MOU.

### **II. FINANCIAL AND PERFORMANCE REPORTING AND MOU MONITORING**

#### **A. Performance Reports**

NJEDA staff who will provide oversight of the Proposed Projects shall provide a written report on the progress of the Proposed Projects (“NJEDA Staff Report”) at least quarterly to the NJBPU, beginning 90 days from the date of this MOU that shall include, but not be limited to, the progress of each of the Proposed Projects; Proposed Projects that are completed; any issues encountered and their resolution or proposed resolution; a financial expenditure report substantially in the form of Exhibit 1 hereto, utilizing the Excel form provided with this MOU and plans for the next quarter. NJEDA staff shall submit NJEDA Staff Reports until the quarter following the expiration or termination of this MOU.

#### **B. Meetings**

NA

#### **C. Monitoring Requirements**

NA

### **III. MODIFICATIONS TO THE AGREEMENT**

The MOU and any attachment thereto represent the entire Agreement between the Parties and may only be amended in accordance with Section 7 of the MOU.

### **IV. SPECIAL CONDITIONS**

NA

### **V. MULTI-YEAR AGREEMENTS**

The term of the MOU shall be as stated in Section 2 of the MOU.

FORM OF  
FINANCIAL EXPENDITURE REPORT

**BOARD of PUBLIC UTILITIES  
MOU/MOA  
COMPARISON OF ACTUAL TO BUDGET EXPENDITURES**

Vendor Name: \_\_\_\_\_  
 Vendor ID #: \_\_\_\_\_  
 Reporting Period: \_\_\_\_\_

Budget Categories:	Approved Budget	Q1 Expenses	Q2 Expenses	Q3 Expenses	Q4 Expenses	Cumulative Expenditures	Unexpended Balance
<b>A. Personnel:</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Salaries						0.00	0.00
Fringe Benefits						0.00	0.00
<b>B. Consultants/Subcontractors:</b>						0.00	0.00
<b>C. Other Cost Categories:</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00
(specify)						0.00	0.00
						0.00	0.00
						0.00	0.00
						0.00	0.00
						0.00	0.00
						0.00	0.00
<b>Audit</b>						0.00	0.00
<b>Total Direct Cost</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Less Program Income</b>						0.00	0.00
<b>Total Direct Cost Funded by BPU</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Indirect Cost</b>						0.00	0.00
<b>Total Costs Funded by BPU</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00

**Fund Reconciliation:**  
 Cumulative expenditures to date: 0.00  
 Funds received from BPU to date: \_\_\_\_\_  
 Amount requested with this report: 0.00

**GRANTEE ONLY:**  
**Certification by Chief Financial Officer**  
 I certify the above expenditures for the period are accurate as stated and that all procurements for which payment is required have been made in accordance with the standards contained in this contract, and that each obligation for which an expenditure is listed arose during the work period.

Signature \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**BPU ONLY:**

Grant/Fiscal Manager Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date Received: \_\_\_\_\_  
 Date Payment Processed: \_\_\_\_\_  
 AO#: \_\_\_\_\_  
 A1#: \_\_\_\_\_

## ATTACHMENT B

This Attachment is hereby incorporated into the Memorandum of Understanding (“MOU”) between the New Jersey Board of Public Utilities (“NJBP”) and the New Jersey Economic Development Authority (“NJEDA”) (collectively, the “Parties”), regarding the use and administration of the New BPU Funds as fully described in the MOU.

### 1. **Term and Budget**

This MOU shall become effective as of the date first set forth above. This MOU, unless terminated sooner, as set forth in Section 8 (“TERMINATION”) herein, shall remain in effect until the earlier of (i) five (5) years from this MOU’s effective date, or (ii) until the Funds are fully expended. The term of this MOU may be extended only by prior written agreement by the Parties, in accordance with Section 2 (“TERM”) herein.

NJBP will provide the \$10,000,000 to NJEDA within 15 days of the effective date of this MOU.

### 2. **Reporting**

NJEDA shall provide reports regarding the New BPU Funds in accordance with the provisions of the MOU, including those of Attachment A.



## MEMORANDUM

**TO:** Members of the Authority

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

**DATE:** October 12, 2022

**SUBJECT:** Third Round Clean Energy Memorandum of Understandings (MOUs) - New Jersey Economic Development Authority (NJEDA) and New Jersey Board of Public Utilities (NJBPU) and the New Jersey Economic Development Authority (NJEDA) and New Jersey Commission on Science, Innovation and Technology (NJCSIT)

### SUMMARY

The Members are requested to approve two Memorandum of Understanding (MOUs):

- i. An MOU between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Board of Public Utilities (NJBPU) (“2022 BPU MOU”) to provide additional funding of \$3,600,000 for support of the Clean Tech Seed Grant Program, Clean Tech Research and Development (R&D) Voucher Program and launch a new Clean Tech Pilot Demonstration Program (“Clean Tech Programs”) and
- ii. An MOU between the NJEDA and the New Jersey Commission on Science Innovation and Technology (NJCSIT) (“Third NJCSIT MOU”) to allocate funding of \$3,420,000 to NJCSIT to deploy a third and expanded phase of the Clean Tech Programs.

### BACKGROUND ON THE EXISTING MOUs

In September 2020, the NJEDA Board approved an MOU with the NJBPU (the “2020 BPU MOU”) which enabled the NJBPU to provide one million two hundred and fifty thousand (\$1,250,000) dollars in funding to the NJEDA to support early-stage, New Jersey-based clean tech companies. Given the early-stage nature of this ecosystem building activity and alignment with the role of NJCSIT, NJEDA executed this program in conjunction with the NJCSIT. In June 2021, NJEDA and NJCSIT entered into an MOU (the “First NJCSIT MOU”) to allocate one million one hundred eighty-seven thousand five hundred (\$1,187,500) dollars of the funding to NJCSIT to support the development and operation of a Clean Tech Seed Grant Program and a Clean Tech R&D Voucher Program. A five percent (5%) balance of the one million two hundred and fifty thousand (\$1,250,000) dollars was retained by NJEDA to cover administrative, personnel, and overhead costs of running the programs pursuant to the terms of the 2020 BPU MOU.

In July 2021, the NJEDA Board approved an MOU with the NJBPU which enabled the NJBPU to provide two million five hundred thousand (\$2,500,000) dollars in funding to NJEDA to launch a second round of the Clean Tech Seed Grant Program and second expanded the Clean Tech R&D Voucher Program (the “2021 BPU MOU”). Additionally, in January 2022, the NJEDA and NJCSIT entered into an MOU,



which allocated two million three hundred seventy-five thousand (\$2,375,000) dollars of the NJBPU funding to NJCSIT to deploy these two programs (the “Second NJCSIT MOU”). A five percent (5%) balance of the two million five hundred thousand (\$2,500,000) dollars was retained by NJEDA to cover administrative, personnel, and overhead costs of running the programs pursuant to the 2021 BPU MOU.

## **SUMMARY OF CLEAN TECH PROGRAMS**

Utilizing the funding provided in the First NJCSIT MOU, NJCSIT launched a first round of the Clean Tech programs:

- i. **Clean Tech Seed Grant Program** provided grants of up to \$75,000 to support R&D projects that reduce or mitigate greenhouse emissions for early-stage, NJ-based clean tech companies
  - Round 1 Clean Tech Seed Grant Program awarded \$748,000 in funding to ten early-stage NJ based clean tech companies
- ii. **Clean Tech R&D Voucher program** subsidized the cost of access to participating New Jersey facilities and makerspaces, for New Jersey-based companies to access equipment, labs, and facilities for clean energy/clean technological research and development
  - Round 1 Clean Tech R&D Voucher Program awarded vouchers totaling \$108,162 to nine early-stage NJ based clean tech companies

Utilizing the funding provided in the Second NJCSIT MOU, NJCSIT launched a second round of the Clean Tech Seed Grant Program and a second round of the Clean Tech R&D Voucher Program with an expanded scope.

- i. **Round 2 Clean Tech Seed Grant Program**, has a budget of \$1,500,000 with 20 grants of up to \$75,000 anticipated to be awarded. Applications launched on January 24<sup>th</sup>, 2022 and closed on March 21<sup>st</sup>, 2022. The Program received 31 applications, which are currently being reviewed. Awards are targeted to be announced in August 2022
- ii. **Round 2 Clean Tech R&D Voucher Program**, has a budget of \$375,000 for voucher awards. Applications opened on May 2, 2022 and will be approved on a rolling basis. Eligible applicants can receive vouchers up to \$25,000.

## **PURPOSE OF MOU**

The 2022 BPU MOU and Third NJCSIT MOU will continue to provide funding to bolster NJEDA and NJCSIT’s work in supporting early-stage, New Jersey-based cleantech companies. The funds, including rolled over funds from the 2021 NJCSIT MOU will be utilized to support the Clean Tech Programs, that include, but are not limited to the following:

- Clean Tech Seed Grant programs, aimed at helping New Jersey based early-stage clean tech/clean energy companies accelerate development and innovation of clean technologies to transform new discoveries from research stage into commercially viable technologies, leading to industry and investor interest. *(estimated budget is \$2,500,000)*
- Clean Tech R&D Voucher Programs, intended to support early-stage clean tech/clean energy companies in NJ to access core facilities, equipment and makerspaces at any participating NJ university facilities or government labs for clean energy/clean technological research and development. *(estimated budget is \$508,464)*

- Launch a new Clean Tech Pilot Demonstration Program to support early-stage clean tech/clean energy companies in NJ to accelerate commercialization and deployment of innovative clean energy technologies, by providing funding for pilot demonstration projects to test and validate technological performance and de-risk the commercialization process. *(estimated budget is \$1,250,000)*

NJEDA will transfer funding in the amount of \$3,420,000 to NJCSIT to implement the Clean Tech Programs and provide input on the program design and administration which will be subject to the NJCSIT Board approval. Consistent with the prior MOUs, the Third NJCSIT MOU and 2022 BPU MOU provide for the NJEDA utilizing up to five percent (5%) of the \$3,600,000 to support the administrative, personnel, and overhead costs of running the programs jointly with NJCSIT. This will be a one-time cost utilizing the initial \$3,600,000 of funding and not an annual charge.

The estimated budgets above are indicative and not final. NJCSIT, in consultation with NJEDA and NJBPU, has the ability to re-allocate funding between the Clean Tech Programs based on anticipated Program demand. The BPU MOU includes requirements for NJEDA staff to engage and update the NJBPU staff quarterly to provide an update on the status of these programs and initiatives. The NJCSIT MOU includes requirements for NJCSIT staff to regularly engage and update NJEDA staff on the status of these programs and initiatives.

## **RECOMMENDATION**

The Members are requested to entering into two Memorandum of Understanding (MOUs):

- i. An MOU between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Board of Public Utilities (NJBPU) (“2022 BPU MOU”) to provide additional funding of \$3,600,000 for support of the Clean Tech Seed Grant Program, Clean Tech Research and Development (R&D) Voucher Program and launch a new Clean Tech Pilot Demonstration Program (“Clean Tech Programs”) and
- ii. An MOU between the NJEDA and the New Jersey Commission on Science Innovation and Technology (NJCSIT) (“Third NJCSIT MOU”) to allocate funding of \$3,420,000 to NJCSIT to deploy a third and expanded phase of the Clean Tech Programs.



---

Tim Sullivan, CEO

Prepared by: Alex Hydrean

Attachments:

- Exhibit A –Memorandum of Understanding between NJBPU and NJEDA
- Exhibit B –Memorandum of Understanding between NJEDA and NJCSIT

**CLEAN ENERGY AND CLEAN TECH INNOVATION  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between

**THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, with its principal office at 36 West State Street, Trenton, NJ 08625 (“NJEDA”); and

**THE NEW JERSEY BOARD OF PUBLIC UTILITIES**, with its principal office at 44 S. Clinton Ave., Trenton, New Jersey 08625 (“NJBPU”).

The NJEDA and the NJBPU are collectively referred to herein as the “Parties” with each individually referred to as a “Party.”

**WHEREAS**, the NJEDA is an independent State agency, in but not of the Department of Treasury, that serves as the State’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

**WHEREAS**, the NJBPU is the State agency with authority to provide general supervision, regulation, jurisdiction, and control over public utilities in the State, including electric utilities and their rates and service. The law requires the NJBPU to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey; and through the NJBPU Division of Clean Energy (“DCE”), promotes energy efficiency programs and the development of clean, renewable sources of energy including solar, wind, geothermal, combined heat and power (“CHP”) and sustainable biomass. The goal of the DCE is to lower energy costs, reduce demand for electricity, emit fewer pollutants into the air and create jobs. Through its programs, the DCE offers education, outreach and financial incentives to residential, commercial businesses and industry, schools and governmental customers; and

**WHEREAS**, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter into agreements to provide assistance to each other; and

**WHEREAS**, Governor Murphy released the state’s 2019 Energy Master Plan on January 27, 2020 (the “2019 Energy Master Plan”), which set a goal of 100 percent clean energy by 2050 and outlined a strategy to expand the Clean Energy Innovation Economy in New Jersey through workforce training, investments in developing clean energy knowledge, and the growth of world-class research and development; and

**WHEREAS**, the 2019 Energy Master Plan recognizes that supporting clean energy and clean tech innovation aligns with two of the Governor Murphy Administration’s top priorities of:

- i. Ensuring that New Jersey achieves 100% carbon free electricity and an 80% carbon footprint reduction by 2050, while simultaneously addressing long-standing environmental justice issues; and
- ii. Restoring New Jersey’s leadership as the most diverse and inclusive innovation ecosystem in the United States (“New Jersey’s Clean Energy and Clean Tech Ecosystem”); and

**WHEREAS**, the NJEDA and NJBPU have a history of partnering with each other in the furtherance of clean energy and clean tech innovation; and

**WHEREAS**, the Parties agree that this MOU will advance implementation of the statewide 2019 Energy Master Plan; and

**WHEREAS**, the NJEDA have existing Memoranda of Understanding related to entrepreneurial program development and execution with the New Jersey Commission on Science, Innovation, and Technology (“NJCSIT”), an independent commission, in but not of Treasury, that focus on supporting early stage entrepreneurship and innovation ecosystem building within the State; and

**WHEREAS**, on September 9, 2020, the NJEDA and NJBPU executed an MOU (the “2020 BPU MOU”) which enabled the NJBPU to provide \$1,250,000 in funding (the “2020 BPU Funds”) to the NJEDA to support early-stage, New Jersey-based clean tech companies wherein NJEDA, in partnership with NJCSIT, utilized these funds to launch two Clean Tech Programs: (i) a clean tech seed grant program (“Clean Tech Seed Grant Program”) and (ii) a clean tech R&D asset mapping and voucher program (“Clean Tech R&D Voucher Program”).

**WHEREAS**, on July 14, 2021, the NJEDA and NJBPU entered into an MOU (the “2021 BPU MOU”) which enabled the NJBPU to provide \$2,500,000 in funding (the “2021 BPU Funds”) to the NJEDA to support early-stage, New Jersey-based clean tech companies wherein NJEDA, in partnership with NJCSIT, utilized these funds to launch a second round of both the Clean Tech Seed Grant Program and the Clean Tech R&D Voucher Program.

**WHEREAS**, the NJBPU has agreed to provide the NJEDA with \$3,600,000 in Clean Energy funding (the “2022 BPU Funds”) to execute the third phase of the Clean Tech Seed Grant Program and the Clean Tech R&D Voucher Program, and to launch a new Clean Tech pilot demonstration program, focusing on supporting early-stage clean tech/clean energy companies in NJ to accelerate commercialization and deployment of innovative clean energy technologies, validate technological performance, and de-risk the commercialization process (“Clean Tech Pilot Demonstration Program” and collectively with the Clean Tech Seed Grant Program and the Clean Tech R&D Voucher Program, the “Clean Tech Programs”) that strengthen New Jersey’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

**WHEREAS**, the NJBPU has agreed to allow the NJEDA to carry over \$847,659<sup>1</sup> from the 2021 BPU MOU (“the Carryover BPU Funds”).

**NOW, THEREFORE**, it is agreed between NJEDA and NJBPU:

1. **DUTIES OF THE PARTIES:** To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a. NJBPU will provide to NJEDA funding in the amount of three million six hundred thousand (\$3,600,000.00) dollars, constituting the 2022 BPU Funds, within 15 days of the execution of this MOU.

<sup>1</sup> For the avoidance of doubt, this amount was determined as of August 1, 2022.

- b. NJEDA will utilize the Carryover BPU Funds and the 2022 BPU Funds (collectively, the “Funds”) in conjunction with NJCSIT to support the growth and development of New Jersey’s Clean Energy and Clean Tech Ecosystem. The Funds will be utilized for Clean Tech Programs related to, but not limited to the following:
  - i. Clean Tech Seed Grant Programs to help New Jersey- based early-stage clean tech/clean energy companies accelerate development and innovation of clean technologies to transform new discoveries from the research stage into commercially viable technologies, leading to industry and investor interest.
  - ii. Clean Tech R&D Voucher Programs to help early-stage clean tech/clean energy companies in NJ to access core facilities, equipment, and makerspaces at participating NJ university/college or federal laboratory or other facility for clean energy/clean technological research and development.
  - iii. Launch a new Clean Tech Pilot Demonstration Program to support early-stage clean tech/clean energy companies in NJ to accelerate commercialization and deployment of innovative clean energy technologies, by providing funding for pilot demonstration projects to test and validate technological performance and de-risk the commercialization process.
- c. NJEDA has not proposed detailed parameters or specifications for all of the Clean Tech Programs and may allocate the Funds among the Clean Tech Programs, with the exception of the Administration Fee as detailed in Section 3 below. If NJEDA chooses to not pursue one or more of the Clean Tech Programs, NJEDA shall notify the NJBPU no later than 30 days after such determination and shall include such determination in the upcoming NJEDA Staff Report (defined in Attachment A herein). NJEDA may propose amendments to this MOU regarding this modification to the original set of Clean Tech Programs. The NJBPU may also propose amendments to the Clean Tech Programs.
- d. NJEDA may, in its discretion, undertake the Clean Tech Programs with the assistance of consultants or contractors retained by NJEDA, and NJEDA shall notify NJBPU within 10 days of retaining a consultant or contractor.
- e. NJEDA staff will provide a formal, verbal update to and seek input from NJBPU staff (each, an “Update,” and collectively, the “Updates”) as needed, but at least on a quarterly basis, regarding the status of NJEDA’s work plan, development progress, and the drafting of Clean Tech Program documents. These documents include, but are not limited to, solicitations, request for qualifications/proposals, guidelines/specifications, working group scope, and seminar materials regarding the Clean Tech Programs. NJEDA shall timely provide these Updates separately from the quarterly updates described in Section 1f herein. NJEDA shall provide the first Update to NJBPU staff within 90 days of this MOU’s effective date and shall include financial estimates for uses of the New BPU Funds. For the avoidance of doubt, an “Update” shall not include additional check-in meetings that NJEDA and NJBPU may hold from time to time, at their discretion.
- f. NJEDA will provide quarterly written NJEDA Staff Reports defined in Attachment A that shall include, but not be limited to, the progress of each of the Clean Tech Programs; Clean Tech Programs that are completed; any issues encountered and their resolution or

proposed resolution; committed and paid expenditures to date; and plans for the next quarter.

2. **TERM:** This MOU shall become effective as of the date first set forth above. This MOU, unless terminated sooner as set forth in Section 9 herein, shall remain in effect until the earlier of (i) five (5) years from this MOU's effective date, or (ii) until the Funds are fully expended. The term of this MOU may be extended only by prior written agreement by the Parties.
3. **ADMINISTRATION FEE:** NJEDA may utilize up to 5% of the Funds to support the administrative, personnel, and overhead costs of running the programs. This will be a one-time cost utilizing the Funds and not an ongoing obligation.
4. **SUBJECT TO THE AVAILABILITY OF FUNDING:** The Funds that NJBPU will provide under this MOU are subject to appropriations and the availability of funds. NJEDA hereby acknowledges that this may impact the originally contemplated amount of the Funds that NJBPU may provide to NJEDA under this MOU.
5. **THIRD-PARTY BENEFICIARIES:** This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status. The rights, duties, and obligations contained herein shall operate only between the Parties and shall inure solely to the benefit of the Parties. The provisions of this MOU are intended only to assist the Parties in determining and performing the obligations set forth herein.
6. **ASSIGNMENT:** This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to NJCSIT, but shall bind and inure to the benefit of the Parties hereto and their respective successors.
7. **DISPUTES:** If there are any disputes among the Parties concerning this MOU, the President of NJBPU and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
8. **AMENDMENT:** This MOU, including Attachment A and Attachment B (collectively, the "Attachments") may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in a writing that shall be effective as of the date the Parties shall so stipulate. There shall be no limit to the number of times this MOU or each of the Attachments may be amended.
9. **TERMINATION:** Either Party may terminate this MOU upon 30 days' written notice to the other Party of such intention to terminate. Such termination request shall be permitted, with or without cause. In the event of termination, the Parties agree to conduct a final accounting within 60 days of the termination effective date. At the termination or expiration of the MOU, NJEDA will return any unused Funds remaining after all costs, direct or indirect, incurred by NJEDA under the terms of this MOU have been paid, or, alternatively, with written consent from NJBPU, rollover any uncommitted funds to future MOUs regarding the subject matter of this MOU.
10. **NOTICE:** All correspondence and notices to NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kelly Mooij  
Director, Division of Clean Energy  
New Jersey Board of Public Utilities  
44 S. Clinton Avenue, Trenton, NJ 08625  
[Kelly.Mooij@bpu.nj.gov](mailto:Kelly.Mooij@bpu.nj.gov)

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kathleen Coviello  
Chief Economic Transformation Officer  
New Jersey Economic Development Authority  
36 West State Street, PO Box 990, Trenton, NJ 08625  
[kcoviello@njeda.com](mailto:kcoviello@njeda.com)

11. **ENTIRE AGREEMENT:** This MOU contains all the terms and conditions agreed upon by the Parties and supersedes all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter of this MOU. This MOU represents the entire agreement between the Parties; all negotiations, oral agreements, and understandings that occurred prior to the date of this MOU are merged and incorporated by reference herein.
12. **COUNTERPARTS:** This MOU may be signed in counterparts, each which, when so executed and delivered, shall be deemed original, but such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the Parties have caused this MOU to be signed by their duly authorized representatives or designees as of the day, month, and year first written above.

STATE OF NEW JERSEY  
ECONOMIC DEVELOPMENT AUTHORITY

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

By: \_\_\_\_\_  
Name: Tim Sullivan  
Title: Chief Executive Officer

\_\_\_\_\_  
Name: Joseph L. Fiordaliso  
Title: President



## **ATTACHMENT A**

This Attachment A is hereby incorporated into the Memorandum of Understanding with respect to the Clean Energy and Clean Tech Innovation (“MOU”) between the New Jersey Board of Public Utilities (“NJBPU”) and the New Jersey Economic Development Authority (“NJEDA”) (collectively, the “Parties”), regarding the use and administration of the New BPU Funds as fully described in the MOU.

### **I. METHOD OF PAYMENT**

The full amount of the New BPU Funds will be transferred to the NJEDA within 15 days of the execution of this MOU.

### **II. FINANCIAL AND PERFORMANCE REPORTING AND MOU MONITORING**

#### **A. Performance Reports**

NJEDA staff who will provide oversight of the Clean Tech Projects shall provide a written report on the progress of the Clean Tech Projects (“NJEDA Staff Report”) at least quarterly to the NJBPU, beginning 90 days from the date of this MOU that shall include, but not be limited to, the progress of each of the Clean Tech Projects; Clean Tech Projects that are completed; any issues encountered and their resolution or proposed resolution; a financial expenditure report substantially in the form of Exhibit 1 hereto, utilizing the Excel form provided with this MOU ; and plans for the next quarter. NJEDA staff shall submit NJEDA Staff Reports until the quarter following the expiration or termination of this MOU.

#### **B. Meetings**

NA

#### **C. Monitoring Requirements**

NA

### **III. MODIFICATIONS TO THE AGREEMENT**

The MOU and any attachment thereto represent the entire Agreement between the Parties and may only be amended in accordance with Section 8 of the MOU.

### **IV. SPECIAL CONDITIONS**

NA

### **V. MULTI-YEAR AGREEMENTS**

The term of the MOU shall be as stated in Section 2 of the MOU.

**Exhibit 1**

**FORM OF**  
**FINANCIAL EXPENDITURE REPORT**

## **ATTACHMENT B**

This Attachment is hereby incorporated into the Memorandum of Understanding (“MOU”) between the New Jersey Board of Public Utilities (“NJBPU”) and the New Jersey Economic Development Authority (“NJEDA”) (collectively, the “Parties”), regarding the use and administration of the New BPU Funds as fully described in the MOU.

### **1. Term and Budget**

This MOU shall become effective as of the date first set forth above. This MOU, unless terminated sooner, as set forth in Section 9 (“TERMINATION”) herein, shall remain in effect until the earlier of (i) five (5) years from this MOU’s effective date, or (ii) until the Funds are fully expended. The term of this MOU may be extended only by prior written agreement by the Parties in accordance with Section 2 (“TERM”) herein.

NJBPU will provide the \$3,600,000 to NJEDA within 15 days of the execution of this MOU.

### **2. Reporting**

NJEDA shall provide reports regarding the Funds in accordance with the provisions of the MOU, including those of Attachment A.

Exhibit B

CLEAN ENERGY AND CLEAN TECH INNOVATION  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND  
THE NEW JERSEY COMMISSION ON SCIENCE, INNOVATION AND TECHNOLOGY

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this \_\_\_\_\_ day of \_\_\_\_ 2022 by and between the New Jersey Economic Development Authority (“NJEDA”) and the New Jersey Commission on Science, Innovation, and Technology (“NJCSIT”). The NJEDA and the NJCSIT are collectively referred to herein as the “Parties.”

WHEREAS, the NJEDA is an independent state agency, in but not of the Department of Treasury (“Treasury”), that serves as the state’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

WHEREAS, P.L. 2018, c.91 re-established NJCSIT as an independent commission, in but not of Treasury, charging NJCSIT with responsibility for the development and oversight of policies and programs for science, innovation, and technology in New Jersey, among other duties and authorities; and

WHEREAS, Governor Murphy released the State’s 2019 Energy Master Plan on January 27, 2020, which set a goal of 100 percent clean energy by 2050 and outlined a strategy to expand the Clean Energy Innovation Economy in New Jersey through workforce training, investments in developing clean energy knowledge, and the growth of world-class research and development; and

WHEREAS, the 2019 Energy Master Plan recognizes that supporting clean energy and clean tech innovation aligns with two of the Administration’s top priorities of:

- i. Ensuring that New Jersey achieves 100% carbon free electricity and an 80% carbon footprint reduction by 2050, while simultaneously addressing long-standing environmental justice issues; and
- ii. Restoring New Jersey’s leadership as the most diverse and inclusive innovation ecosystem in the United States (“New Jersey’s Clean Energy and Clean Tech Ecosystem”); and

WHEREAS, on September 9<sup>th</sup>, 2020, the NJEDA and New Jersey Board of Public Utilities (NJBPU) entered into a Memorandum of Understanding (“2020 BPU MOU”) in which NJBPU provided one million two hundred fifty thousand (\$1,250,000) dollars (“2020 BPU Funds”) in funding to the NJEDA to support early-stage, New Jersey-based clean tech companies; and

WHEREAS, on June 21<sup>st</sup> 2021, the NJEDA and NJCSIT entered into a Memorandum of Understanding in which NJEDA provided \$1,187,500 of 2020 BPU Funds to NJCSIT to support early-stage, New Jersey-based clean tech companies (“First NJCSIT MOU”), consistent with the 2020 BPU MOU; and

WHEREAS, NJCSIT, in partnership with NJEDA, established two pilot programs with the 2020 BPU Funds: (1) Clean Tech Seed Grant Program and (2) Clean Tech R&D Voucher Program; and

WHEREAS, on July 14<sup>th</sup>, 2021, the NJEDA and NJBPU entered into a Memorandum of Understanding (“2021 BPU MOU”) in which NJBPU provided two million five hundred thousand (\$2,500,000) dollars

in funding (“2021 BPU Funds”) to NJEDA to execute the second phase of the Clean Tech Seed Grant Program and expand the scope of the Clean Tech R&D Voucher Program (Clean Tech Programs)

WHEREAS, on January 3<sup>rd</sup>, 2022, the NJEDA and NJCSIT entered into a Memorandum of Understanding (“Second NJCSIT MOU”) in which NJEDA provided \$2,375,000 of 2021 BPU Funds to CSIT to execute the second phase of the Clean Tech Seed Grant Program and expand the scope of the Clean Tech R&D Voucher Program (Clean Tech Programs); and

WHEREAS, NJCSIT, in partnership with NJEDA, utilized the 2021 BPU Funds to launch a second round of both the Clean Tech Seed Grant Program and Clean Tech R&D Voucher Program; and

WHEREAS, the NJPBU and the NJEDA entered into a Memorandum of Understanding on \_\_\_\_ (“2022 BPU MOU”) wherein NJPBU allowed NJEDA to carry over \$847,659 from the 2021 BPU Funds (“Carryover BPU Funds”) and provided the NJEDA with \$3,600,000 in funding (“2022 BPU Funds”) to execute programs that strengthen the State’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

WHEREAS, the NJEDA and CSIT have previously entered into several Memorandums of Understanding where NJEDA agrees to provide certain administrative services and general support of entrepreneurial program development and execution; and

WHEREAS, NJEDA has the technical expertise and capacity to support the NJCSIT’s activities and the NJEDA will provide office staff, office space, and support services to assist NJCSIT in carrying out the responsibilities identified in P.L. 2018, c.91 pursuant to the several executed MOUs; and

WHEREAS, the NJEDA now desires to provide \$3,420,000 of 2022 BPU Funds to NJCSIT to execute a third phase of the Clean Tech Seed Grant Program, Clean Tech R&D Voucher Program and launch a new Clean Tech Pilot Demonstration Program (“Clean Tech Programs”) that strengthen the State’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

NOW, THEREFORE, it is agreed between NJEDA and NJCSIT:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a. NJEDA will transfer \$3,420,000 from the 2022 BPU Funds to NJCSIT to accomplish the goals of the 2022 BPU MOU (“2022 NJCSIT Funds”).
  - b. NJEDA shall retain \$180,000, consistent with the 2022 BPU MOU, to be used for administrative, personnel and overhead costs. Additionally, NJEDA may separately bill NJCSIT for staff who are made available to NJCSIT on direct program support for the Clean Tech Programs, consistent other MOUs between NJEDA and NJCSIT.
  - c. NJCSIT will use the 2022 NJCSIT Funds and Carryover BPU Funds already provided to NJCSIT (collectively the “Funds”) in a manner consistent with the 2022 BPU MOU to support the growth and development of New Jersey’s Clean Energy and Clean Tech Ecosystem. The Funds will be utilized for Clean Tech Program activities that include but are not limited to the following:
    - i. Clean Tech Seed Grant Programs to help New Jersey- based early-stage clean tech/clean energy companies accelerate development and innovation of clean

technologies to transform new discoveries from research stage into commercially viable technologies, leading to industry and investor interest.

- ii. Clean Tech R&D Voucher Programs to help early-stage clean tech/clean energy companies in NJ to access core facilities, equipment and makerspaces at participating NJ universities/colleges or federal laboratories/facilities for clean energy/clean technological research and development.
  - iii. Launch a new Clean Tech Pilot Demonstration Program to support early-stage clean tech/clean energy companies in NJ to accelerate commercialization and deployment of innovative clean energy technologies, by providing funding for pilot demonstration projects to test and validate technological performance and de-risk the commercialization process.
- d. NJCSIT has not proposed detailed parameters or specifications for all of the Clean Tech Programs and may reallocate the Funds among the programs. If NJCSIT chooses to not pursue one or more of the Clean Tech Programs, NJCSIT shall notify the NJEDA and NJBPU no later than 30 days after such determination and shall include such determination in the upcoming NJEDA Staff Report (defined in the 2022 BPU MOU), and NJCSIT may propose amendments to the 2022 BPU MOU regarding this modification to the original set of Clean Tech Programs. The NJBPU may also propose amendments to the Clean Tech Program
  - e. NJCSIT may undertake the Clean Tech Programs with the assistance of consultants or contractors retained by NJCSIT, and NJCSIT shall notify NJEDA and NJBPU within 10 days of retaining a consultant or contractor.
  - f. NJCSIT staff will provide a formal update to and seek input from NJEDA and NJBPU staff (each, an "Update," and collectively, the "Updates") as needed, but at least on a quarterly basis, regarding the status of NJCSIT's work plan, development progress, and the drafting of Clean Tech Program documents. These documents include, but are not limited to, solicitations, request for qualifications/proposals, guidelines/specifications, working group scope, and seminar materials regarding the Clean Tech Programs. NJCSIT shall timely provide these Updates separately from the quarterly updates described in Section 1f of the 2022 BPU MOU. NJCSIT shall provide the first Update to NJEDA and NJBPU staff within 90 days of the 2022 BPU MOU's effective date and shall include financial estimates for uses of the Funds. For the avoidance of doubt, an "Update" shall not include additional check-in meetings that NJCSIT, NJEDA, and NJBPU may hold from time to time, at their discretion.
  - g. NJCSIT will provide to NJEDA and NJBPU quarterly updates on the use of funds defined in Attachment A of the 2022 BPU MOU that shall include, but not be limited to, the progress of each of the Clean Tech Programs that are completed; any issues encountered and their resolution or proposed resolution; committed and paid expenditures to date; and plans for the next quarter.
  - h. NJCSIT with written consent from NJEDA and NJBPU can rollover any uncommitted Funds to future Clean Tech and Clean Energy Programs or other programs that support clean technology goals.
2. **TERM:** This MOU shall become effective on the date it is fully executed by both Parties. This MOU, unless terminated sooner as set forth in Paragraph 7, shall remain in effect for five (5) years from the execution of this MOU.
  3. **SUBJECT TO THE AVAILABILITY OF FUNDING:** The funding that NJEDA will provide under this MOU is subject to appropriations and the availability of funds from NJBPU.

4. **THIRD-PARTY BENEFICIARIES:** This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
5. **DISPUTE:** If there are any disputes among the Parties concerning this MOU, the Chair of NJCSIT and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
6. **AMENDMENT:** This MOU represents the entire and integrated agreement between the Parties. This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing.
7. **TERMINATION:** Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date and to return any unused 2022 NJBPU Funds to NJEDA.
8. **NOTICE:** All correspondence and notices to NJCSIT regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Judith Sheft Executive Director  
New Jersey Commission on Science, Innovation and Technology  
36 West State Street, PO Box 990, Trenton, NJ 08625

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kathleen Coviello  
Chief Economic Transformation Officer  
New Jersey Economic Development Authority  
36 West State Street, PO Box 990, Trenton, NJ 08625

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

IN WITNESS WHEREOF, the Parties have caused this MOU to be signed by their duly authorized representatives or designees to be hereunto affixed the day, month, and year first written above.

For the Economic Development Authority:  
Technology:

For the Commission on Science, Innovation and

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Tim Sullivan

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Judith Sheft

Chief Executive Officer

Executive Director

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DATE

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DATE





## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** Use of Coronavirus State and Local fiscal Recovery Funds Appropriation and Creation of the Activation, Revitalization, and Transformation (ART) Program.

Request:

The Members are asked to approve:

- I. Grant authority to the New Jersey Economic Development Authority (NJEDA) Chief Executive Officer (CEO) to enter into a Memorandum of Understanding (MOU) with the New Jersey Department of Community Affairs (DCA) whereby the NJEDA CEO will accept \$5,000,000 in funds from the American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and agree to comply with federal requirements for the use of those funds;
- II. Utilize SLFRF funding provided to NJEDA by the New Jersey DCA to establish the ART Program, a one-time grant opportunity that will assist economic recovery in urban areas with mass transit that have faced economic harms from the reduction of commuters due to the COVID-19 pandemic. The ART Program will address these harms through two approaches: 1) The Real Estate Rehabilitation and Development product supports the new construction or the rehabilitation of vacant, underutilized, blighted and/or historic structures throughout the two cities identified and 2) The Public Space Activation product that supports the development of permanent place-based infrastructure associated with traditional downtowns, social-zones, outdoor dining, and place-based public spaces; and
- III. Approve the MOU with the New Jersey Casino Reinvestment Development Authority (CRDA) whereby the NJEDA will accept \$5,000,000 in funds from the Coronavirus SLFRF and agree to comply with federal requirements for the use of SLFRF funds to expand the ART Program to Atlantic City.
- IV. Grant the NJEDA CEO delegated authority to interchange funding percentage on each product based on the demand of each product but maintaining the overall funding for each location.

## Background:

The American Rescue Plan, which was signed into law by President Joe Biden on March 11, 2021, is a \$1.9 trillion economic stimulus bill designed to rebuild and restart the American economy in the wake of the Coronavirus (COVID-19) public health emergency by investing in families, communities, and small businesses. Through the Coronavirus State and Local Fiscal Recovery Funds (SLFRF), the ARP delivers \$350 billion to state, local, and tribal governments to support their response to, and recovery from COVID-19.

Utilizing the funding provided through the SLFRF program, Governor Murphy recommended a \$10 million allocation for programs to reactivate and revitalize commercial corridors in the wake of COVID-19. Outlined in Governor Murphy's Fiscal Year 2023 Budget in Brief and approved by the New Jersey Joint Budget Oversight Committee (JBOC) last November, the New Jersey Economic Development Authority (NJEDA) and the Casino Reinvestment Development Authority (CRDA) have been appropriated \$5 million of SLFRF funds for creative placemaking and catalytic development in urban areas with mass transit that have faced economic harms from the reduction of commuters due to the COVID-19 pandemic. Through these initiatives, NJEDA and CRDA aim to ensure long-term growth and opportunity for municipalities impacted by COVID-19.

As the New Jersey economy continues to rebound in the wake of COVID-19, catalytic investment into commuter hub cities is essential for jumpstarting local economies and promoting strong, resilient, and equitable economic recoveries. Governor Murphy's Fiscal Year 2023 Budget furthers the Administration's efforts to build a stronger and fairer New Jersey economy by making new, impactful, and strategic investments in commuter hub cities with commercial corridors.

Commercial corridors play a vital role in both urban and rural geographies, serving as economic engines for communities by providing jobs that keep money circulating in the local economy, offer goods and services for residents, and power entrepreneurship as well as wealth building. Prior to the COVID-19 pandemic, economic shifts adversely impacted commercial corridors – resulting in uneven growth and high vacancy rates, especially in corridors located in low-income communities. The pandemic further amplified these economic hardships, as many of the businesses hit hardest by the pandemic were also the ones that populate and contribute to the dynamism of commercial corridors, with Black- and Brown-owned businesses proving to be exceptionally vulnerable. This, combined with the mass transition to remote work has resulted in decreased capacity, foot-traffic, and revenue across economically vital commercial corridors.<sup>1</sup>

To mitigate the economic impact of the COVID-19 pandemic, and to support the development and recovery of New Jersey's commercial corridor, the NJEDA's Activation, Revitalization, and Transformation (ART) Program will invest in the infrastructure, capacity building, and resources necessary to help select New Jersey municipalities recover from the pandemic and thrive for years to come.

While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery. Utilizing funding provided from the ARP SLFRF, the ART program aims to provide financial support to municipalities that were disproportionately impacted by the COVID-19 pandemic, specifically urban areas who experienced revenue losses and economic harms due to decreased

commuter foot-traffic.<sup>2</sup> By providing funding to support catalytic real estate development and placemaking initiatives that increase foot-traffic, the ART program funding will help mitigate the harms caused in municipalities that were disproportionately impacted by the COVID-19 pandemic by increasing local spend and promoting economic stability in vital commercial corridors.

Program Details:

The Activation, Revitalization, and Transformation Program (“ART Program”) is a competitive grant program that will proactively deploy \$10 million in ARP SLFRF funding to address the impacts of COVID-19. As outlined by the language in Governor Murphy’s Fiscal Year 2023 Budget in Brief<sup>3</sup> and approved by the New Jersey Joint Budget Oversight Committee, five million dollars has been appropriated to the Casino Reinvestment Development Authority for projects in Atlantic City. The remaining five million dollars has been appropriated to NJEDA to support projects that mitigate the economic impact of

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<sup>1</sup> Bruce Katz, [Regenerating Commercial Corridors: A Proposal for States](#)

<sup>2</sup> SLFRF Final Rule (Page 12 and 16)

<sup>3</sup> [Governor Murphy Fiscal Year 2023 Budget in Brief](#)

COVID-19 in commuter hub cities. After the transition to a remote workforce in March of 2020, economic support for catalytic developments that increase and retain commuter foot-traffic is essential to support municipalities most impacted by workforce losses due to remote work. To maximize the impact of the other \$5 million funding, that funding will be dedicated to one single municipality selected due to the impact of COVID-19 public health emergency on the commuter base, that is, the municipality with the largest total difference between the residential population and the total daytime population. The municipality that meets this criterion is the City of Newark; as per the data collected in 2015 - 2019 U.S. Census American Community Survey and as analyzed by the New Jersey Department of Community Affairs. The analysis states that Newark has a total daytime population of 401,712; residential population of 281,054 with a daytime population increase of 120,658. This data shows the largest total daytime population increase of all New Jersey municipalities. This pilot program will have two products that can support these two cities through the new construction or the rehabilitation of vacant, underutilized, blighted and/or historic structures and the development of place-based infrastructure associated with traditional downtowns, social- zones, outdoor dining, and place-based public spaces.

The goal of the ART program is to partner with local entities to proactively address the negative economic impacts of the pandemic by investing in projects that create the environment necessary to attract and retain residents and talent, enable business creation and attractions, enhance downtown vitality, and help local governments avoid future budget crises.

Administered by the NJEDA, the ART program provides a total funding source of \$10 million SLFRF funding from two separate funding sources. This funding will support two products: one for Real Estate Rehabilitation and Development and one for Public Space Activation. Of the total funding (\$10 million) up to \$7 million is planned to support real estate development financing in the form of grants for real estate rehabilitation, new construction, and development costs associated to each project. This will be evenly split between the two eligible cities identified. This would allow for up to \$3.5 million awards for projects in Newark and \$3.5 million in awards for projects in Atlantic City. The remaining balance of \$3 million in grant funding will support public space activation initiatives again awards will be split evenly between to the two cities. So, this product can support up to \$1.5 million in awards to applicant in Newark and \$1.5 million in awards to applicants in Atlantic City.

#### Eligible Program Activities:

Under the ART Program's Real Estate Rehabilitation and Development grant product, up to seventy percent (70%) of total program funding (approximately \$3.5 M in each municipality) will support project-specific hard and soft costs that revitalize commercial corridors and incentivize catalytic development. These projects can include: the renovation or restoration of vacant buildings or square feet of vacant space within a partially occupied building, new construction of at least 10,000 square feet on an existing vacant lot, and costs associated with property acquisition. Mixed-use construction projects are eligible for funding under the ART program, however, demolition of a structure to create a vacant lot for future development is ineligible for ART program funding. Additionally, completely residential real estate development projects are ineligible for ART program funding.

Under the ART Program's Public Space Activation product, thirty percent (30%) of total program funding (approximately \$1.5 million in each municipality) can support the creation of public space activation initiatives, such as placemaking projects, public art installations, arts-based placemaking projects, signage, and streetscape improvements. Funding can also be utilized for support for small businesses through master leases in commercial corridors, and well as the purchase of parkettes, heaters, tents, and other equipment necessary for activation of outdoor

spaces to be used by the community or small businesses. Funding can also be granted to support the activation of public spaces through events, and operational costs for arts organizations to execute public space activation programs. Additionally, funding can be utilized for master leases and subleases in mixed-use and commercial properties for programmatic use, such as, incubator space, small business support, and events. As a requirement of receiving ART funding, all applicants that receive grant money for the creation of programs will be required to submit quarterly reports to demonstrate backend compliance to NJEDA.

Additionally, no more than \$5 million in funding will be utilized to support projects in Atlantic City, and no more than \$5 million in funding will be utilized to support projects in Newark. Delegated authority for funding will only be utilized to support demand between products (Real Estate and Public Space Activation) in Newark and Atlantic City, not between municipalities.

#### Eligible Applicants:

For the ART Program's Real Estate Rehabilitation and Development product, eligible applicants are: Non-profit economic development or redevelopment agencies that can demonstrate capacity to complete a development or redevelopment project or have experience with a project of a similar scope, Commercial property owner(s) that can demonstrate capacity to complete a development and redevelopment project or have experience with a project of a similar scope, Private or non-profit developers that can demonstrate capacity to complete a development and redevelopment project, or have experience with a project of a similar scope. Project must be a commercial or mixed-use.

No government instrumentalities may apply.

For ART's Public Space Activation product, eligible applicants are nonprofit organizations with a 501c (3) or 501c (19) status and that are created to support and revitalize communities.

Per federal program guidelines, all ART funds must be obligated by December 31, 2024, and must be expended by December 31, 2026, therefore project readiness is part of the ART program and all other funding sources must be secured. Entities are eligible to apply for one or both programs. Municipalities and government entities are not eligible to apply for either.

All applicants must certify at time of application of their existing project costs and their financial need.

In order for projects to be eligible for ART Program funding, all proposals must demonstrate how the proposed expenditure will mitigate the impact of COVID-19 in either Newark or Atlantic City. As part of the application, each project will be required to submit a narrative explicitly stating the harm that the proposed project will address, and how this expenditure will increase the economic resiliency and vitality of the commercial corridor as we transition from pandemic to endemic.

Commercial corridor will be all locations in the City of Atlantic City and The City Of Newark within one and one-half mile radius of an active New Jersey rail transit station.

#### Project Considerations:

Competitive projects for both the Real Estate Rehabilitation and Development product and the Public Space Activation product will clearly address the impacts of the COVID-19 public health emergency by responding to the following considerations:

- COVID Impact: Applicants must address how the proposal is responsive to the negative public health and/or economic impacts of the COVID-19 pandemic and complies with all the SLFRF requirements.
- Locations: Projects must be located in Atlantic City or Newark. All projects must support commercial corridors and be located in urban areas with mass transit.
- Capacity: The applicant must have experience implementing a project of a similar scope.
- Long-term impacts: Competitive applicants must articulate via the application process how the proposal will have a positive long-term impact in the community. This may include certain factors like renovating a facility to support small businesses, including how it will enable growth in population and tax revenue.
- Financial Viability: Must demonstrate long-term financial viability of the project and a time period for project completion through the submission of a pro forma.
- Local impact considerations: A project must demonstrate how it supports the goals and visions stated (if available) in either a local master plan, downtown or neighborhood plan, capital improvements plan and/or economic development strategy, along with the readiness of infrastructure.
- U.S. Treasury reporting: Ability to provide the U.S. Department of the Treasury with relevant reporting for all project expenditures exceeding \$1 million, specifically, all proposals must provide a narrative on how the project will address the impacts of COVID-19 in either Atlantic City or Newark, and why this capital expenditure is the most appropriate to address the economic harms caused by COVID.

Scoring:

Applications will be reviewed and scored by staff of the Authority formed as a scoring committee. The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices, and boards to advise scoring decisions. Grants will be scored on a scale of 0-100 points, with award recommendations limited to applications that meet or exceed the minimum score requirement of 65 points. Applications will be evaluated and scored on each of the criteria below.

**Real Estate Rehabilitation and Development – Total of 100 Points**

Criteria #1 Project Qualification: Scoring, 19 points are possible, and less than 17 points will be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review.

1. Does the proposed project mitigate a negative COVID-19 impact in either Atlantic City or Newark? (Yes or No. 5 points will be awarded to projects that answer “Yes” and address a negative impact of COVID-19 and 0 points will be awarded to projects that answer “No”. Applicants must answer “Yes” to move forward with scoring).
2. Provide a project narrative on how this proposed project addresses the negative impacts of COVID-19 on the local community (Atlantic City and Newark) and how this proposal best addresses the needs of the community. (1 to 12 points awarded).

3. Project is located in an Opportunity Zone Eligible Census Tract (2 points if located in an Opportunity Zone Eligible Census Tract and 0 if not).

Criteria #2 Background Information – Scoring, 5 points possible.

4. Describe the current status of the subject property. Describe the proposed project and end use. This should include, but not be limited to, the total grant amount being requested, funding sources, demonstration of gap and project total cost. Project information must include the following: total acreage of property, number of buildings, square footage, number of floors, historic designation (state, local, national), and condition of the property (vacant, dilapidated, etc.). (5 points if the applicant provides information on proposed project, end use, funding sources, financing gap, information on property acreage, improvements, designations, and condition; 3 points for missing one element related to information on property acreage, improvements, designations, and condition; 0 points if missing information on proposed project, end use, funding sources, financing gap)

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible.

5. Demonstrated Site Control or Property Ownership i.e. Deed or Lease (5 Points if the applicant has demonstrated site control, lease, executed agreement of sale, or property ownership, 3 points if the applicant can explain how they will obtain site control or property access, 0 if otherwise).
6. State the status of local approvals project. (4 points for any necessary local zoning and site plan approvals, 2 points for complete local approvals of zoning or site plan, 0 points if neither.)
7. Describe all of the project's financing as it currently stands, including equity if applicable. (15 points for debt financing and equity fully committed [provides a commitment letter to demonstrate secured funding], 0 points if financing sources are unclear.)
8. Provide information on infrastructure readiness, including any public infrastructure or utility needs associated with the site and describes plan for addressing those needs. (3 points for a plan in place to provide infrastructure upgrades aligned with project schedule, zero points if the project site is significantly lacking in public infrastructure.)
9. Describe current engagement with architects or engineers. (3 points if engaged in A&E and provided renderings & floor plans, 2 points if either floor plans or renderings are provided but not both, 0 points otherwise).
10. Explain current engagement with a general contractor. (3 points if a contractor has been engaged and cost estimates dated within 3 months from engaged contractor are provided, 2 points if any estimates from contractors or architects/engineers are provided to support costs, 0 points otherwise.)

11. Please explain the project schedule and how the projects will be completed by December 31, 2026. (3 points for a well-articulated and realistic schedule, 2 points if the schedule is missing steps, zero points if incomplete).
12. Explain the development team’s level of similar project-specific experience, including resume of project manager(s), any previous projects that have been undertaken and the status of those projects. (5 points for experience represented on the team related to 3 similar projects, 3 points for two projects, 2 points for one project, disqualified if capacity is unclear.)
13. Explain how this proposal will have a catalytic, long-term impact on the community. Please address how this project will contribute to the dynamism of the neighborhood through events, small business support, and increased foot traffic. (12 points possible. 4 pts for adding to the success of the neighborhood through hosting monthly community events, 2 pts for participating in monthly community events outside of hosting, 3 pts for adding to the success of nearby businesses, 3 pts for detailed plans for engagement with local community groups, organizations, and small businesses to increase local foot traffic).
14. Describe how your project contributes to the community’s vision and priorities that addresses COVID response and community resilience. (14 points for a well-articulated and realistic response that demonstrates project connection to the community vision, 7 points if the project can demonstrate minor connection, zero points if project proposal cannot demonstrate connection).
15. Articulate why the project will not be successful without this grant. (6 points for clearly articulated financial need, zero points otherwise.)
16. Describe any other forms of tax credit equity or leverageable grants that the project has received (3 points for other funding sources, zero points otherwise.)

In the event of a tie, NJEDA would weigh the following questions as a tiebreaker: Questions 1 and 2 from “Project Qualifications” and Question 7 from “Project Readiness and Programmatic Considerations”.

**Public Space Activation – Total of 100 Points**

Criteria #1 Project Qualification: Scoring, 19 points are possible, and less than 17 points will be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review.

1. Does the proposed project mitigate a negative COVID-19 impact in either Atlantic City or Newark? (Yes or No. 5 points will be awarded to projects that answer “Yes” and address a negative impact of COVID-19 and 0 points will be awarded to projects that answer “No”. Applicants must answer “Yes” to move forward with scoring).
2. Provide a project narrative on how this proposed project addresses the negative impacts of COVID-19 on the local community (Atlantic City and Newark) and how this proposal best addresses the needs of the community? (1 to 12 points awarded).



3. Project is located in an Opportunity Zone Eligible Census Tract (2 points if located in an Opportunity Zone Eligible Census Tract and 0 if not).

Criteria #2 Background Information – Scoring, 5 points are possible.

4. Describe the proposed project. Provide a map with your application that identifies project types and total expenses. This analysis should include, but not be limited to, the total grant amount seeking and total cost of proposed capital expenditure. (5 points if all elements are present, 3 points missing one element, 0 points missing more than 1 element)

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible.

5. Describe the status of the project, including cost estimates (4 Points for final plans and cost estimates, 2 points for preliminary plans and estimates, 0 if otherwise).
6. Describe site use and access. Does the entity have the current ability to use, or obtain permission to use, the site for the purposes described in the project (3 Points if the applicant has demonstrated site use and access, 0 if otherwise.)
7. Provide and describe how the project will benefit nearby businesses (5 Points if the applicant has demonstrated benefit to nearby businesses, 3 if there is partial benefit, 0 if otherwise.)
8. Please explain the project schedule and how the projects will be completed before December 31 of 2026, as funds need to be expended by that date. (4 points for a well-articulated schedule that identifies dates and where financing commitments align.) Explain the applicant's project team's level of similar project-specific experience, including any previous projects requiring construction monitoring and federal reporting that have been undertaken and the status of those projects. (6 points for two projects completed, 4 points for one project completed and no relevant examples will result in automatic disqualification.)
9. Identify and provide evidence for other sources of funds for this project, including the type and. (8 pts: applicant is utilizing other state funds 5 pts: non-state funds secured but only source of funds is applicant 5 pts: at least 1 source other than applicant but lacks evidence that all non-ART funds are secured else 0 pts)
10. Describe how the use of public space in the area has changed during the pandemic and how this project will have a positive long-term impact on the community. Address how the project will grow the tax base, activate vacant or underutilized space, and contribute to the resiliency of the community. (15 points possible – 5 pts if activating vacant or underutilized space, 5 pts if the project will contribute to the success of businesses located within 1/2 mile, and 5 pts if the project includes innovative low-impact or green construction practices.)

11. Describe how your project contributes to the community's vision and priorities that addresses COVID response and community resilience. (15 points for a well-articulated and realistic response that demonstrates project connection to the community vision, 6 points if the project can demonstrate minor connection, zero points if project proposal cannot demonstrate connection)
12. Describe how this project will be maintained long-term. Identify maintenance plan, funding, the organization that will be responsible, and elaborate on any other anticipated tasks associated with the maintenance of the final product. (8 points for a maintenance budget with seasonal maintenance tasks and source of funding for maintenance identified, zero points otherwise.)
13. Describe how this public space will be programmed for use by businesses, for recreation, and accessibility for all. Identify how accessibility will be incorporated throughout the entire project. (8 points for a plan that includes public space activation for individuals of all abilities. 5 points for a plan that includes partially programable space, and zero points for plans that do not account for all levels of accessibility.)

In the event of a tie, NJEDA would weigh the following questions as a tiebreaker: Questions 1 and 3 from "Project Qualifications" and Question 7 from "Project Readiness and Programmatic Considerations".

#### Proposed Program Funding:

The ART Program will be funded through the American Rescue Plan (Pub.L. 117-2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) funding approved by the New Jersey Joint Budget Oversight Committee (JBOC) in November 2021 and included in the enacted 2022-23 Fiscal Year Budget. As CRDA is transferring its \$5 million to EDA, staff requests approval from the Board for the attached MOU with CRDA, which CRDA staff has reviewed and anticipates presenting to the CRDA Board on October 18, 2022. Due to ART's appropriation through the JBOC process, a 2.5% administrative fee will come off of the \$5 million provided to NJEDA by CRDA, resulting in a total programmatic funding pool of \$4,875,000.

Under federal guidelines, all ART Program funding must be obligated by December 31, 2024, and must be expended by December 31, 2026. Additionally, as required by SLFRF, all applicants will be reviewed for duplication of benefits.

The minimum award request for both the Real Estate Rehabilitation and Development product and the Public Space Activation product is \$250,000. The maximum award for the Real Estate Rehabilitation product is \$3,500,000 and the maximum award for the Public Space product is \$1,500,000.

#### Board Approval:

The ART Program will be a competitive grant program with applications due by a set deadline.

The Authority will perform a review of applications after the closing of the application period. Applicants will be given five business days to cure any deficiencies. If at the end of the five-day period, the applications are still incomplete, they will be notified the application will not be advancing to be scored and will be withdrawn as incomplete.

At the sole discretion of the Authority, staff may ask for clarification of the information included on the application including but not limited to responses, documentation, and attachments.

Check for good standing will be completed with the Department of Labor and Department of Environmental Protection. Only applicants in good standing may proceed to Board approval. Applicants must also provide a valid Tax Clearance certificate from Division of Taxation, NJ Department of Treasury. Applicants will also need to successfully complete a Federal SAMS review.

Applications will be evaluated and scored on a competitive basis. Applications that meet the minimum score requirement of 65 out of the eligible 100 points will be eligible for ART Program funding. Applications will be recommended to the Board for award approval starting with this highest scored application until all available ART Program funding is awarded.

Applications will be accepted during a 60 business day window publicized in the Notice of Funding Available. Delegated authority is requested to allow the Chief Executive Officer to draw down the funding of \$5,000,000 from ARP SLFRF for the ART program from the New Jersey DCA.

The ART Program awards will proceed to Board for all approvals and for declinations for discretionary reasons. Any applicant unable to provide a full application will not proceed to scoring. As a pilot program, decision based on non-discretionary reasons are subject to the existing delegated authority. Accordingly, CEO will delegate to the appropriate staff on all appeal decisions for non- discretionary reasons.

Proposed Budget Allocation:

Supported through American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and outlined in Governor Murphy's Fiscal Year 2023 Budget in Brief (BIB) the ART program allocates \$5 million in funding for projects in Atlantic City and \$5 million in funding for projects in Newark.

Of that funding, up to 70% may be used on construction projects in each selected municipality based on applications received, and the remaining funding will be used for marketing and placemaking initiatives in each selected municipality.

Based on application volume, NJEDA staff is requesting delegated authority for the NJEDA CEO to adjust these percentages to move excess funding from the Public Space Activation product to the Real Estate Development and Rehabilitation product, and excess funding from the Real Estate Development and Rehabilitation product to the Public Space Activation product.

## Disbursements:

NJEDA staff will make up a scoring committee to score each complete application for each product. Staff will recommend to the Board for approval applicants in order of scoring that can be fully funded based on the applicant's Funding Request Certification and staff's review.

If the next ranked applicant (that scored above the minimum score) cannot be fully funded, NJEDA staff will notify that applicant of the available amount that can be awarded. The applicant will have 15 business days from the date of the notice to accept the amount of the grant and to provide proof of an additional funding to ensure the project can still be completed by using a letter of intent, commitment letter, bank statements, or any other means. If the applicant decides not to accept the amount available or does not identify additional funding to complete the project, the application will be incomplete and deemed withdrawn by NJEDA. The application may also be denied if the additional funding does not meet the product requirement for such funding. If no award is given to that applicant, NJEDA will proceed with the same process to the next highest scored application (above the minimum score). Throughout this process, the applicant will not be allowed to change its project, as that would impact scoring.

NJEDA will disburse grants only to the Applicant. The Applicant shall be responsible for assuring the compliance of any strategic partners and/or subcontractors with all terms and conditions of this application - and assumes the sole and absolute responsibility for any payments due to any municipal, county, or strategic partners.

However, due requirements established by the United States Treasury Department SLFRF Final Rule, NJEDA must receive a minimum of 3 applications that must be received in order to start the process towards application evaluation, scoring, and approval. All successful Applicants must follow a uniform disbursement. schedule. Applicants are required to submit progress reports in order to receive grant disbursements. At a minimum, the progress reports must include:

- Summary of funds expended to date
- Narrative detailing milestones achieved and overall progress toward completion of final plan
- Proof of prevailing wage/Affirmative Action compliance

Under the Real Estate Rehabilitation and Development program, applicants will receive one disbursement of 50% of the total award amount upon 50% of project completion as demonstrated through their AIA document. Second disbursement will occur when the applicant can provide a Certificate of Occupancy and proof of completion.

Under the Public Space Activation Program, the Applicant will receive the full grant amount upon execution of grant agreement, and then will be required to submit quarterly reporting until project completion. NJEDA will provide the applicant with the report, and they will complete the required documentation indicating proper use of funds.

Appeals:

Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which must be at least 3 days but no longer than 10 days). Chief Legal & Strategic Affairs Officer or designee will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a recommended decision, which must be approved, and a Final Administration Decision issued by the Board or, if under delegated authority, by the CEO or their designee

Fees:

Under guidelines established by the American Rescue Plan SLFRF Final Rules, NJEDA administrative fees are capped at a maximum of 2.5%.

Additionally, the NJEDA will charge an application fee of \$1,000 to all entities applying for funding through the Real Estate Rehabilitation and Development program, and \$1,000 to all entities applying for funding through the Public Space Activation program.

Not-for-profit entities can apply for fee waivers for undue hardships. Fee waivers for Undue hardship can be demonstrated through the nonprofit's most recent 990 form if Revenue Less Expenses (line 19) is less than or equal to \$500,000 and Net Assets/Fund Balances (line 22) is less than or equal to \$1,000,000.

Recommendation:

The Members are requested to approve:

- I. Grant authority to the New Jersey Economic Development Authority (NJEDA) Chief Executive Officer (CEO) to enter into a Memorandum of Understanding (MOU) with the New Jersey Department of Community Affairs (DCA) whereby the NJEDA CEO will accept \$5,000,000 in funds from the American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and agree to comply with federal requirements for the use of those funds;
- II. Utilize SLFRF funding provided to NJEDA by the New Jersey DCA to establish the ART Program, a one-time grant opportunity that will assist economic recovery in urban areas with mass transit that have faced economic harms from the reduction of commuters due to the COVID-19 pandemic. The ART Program will address these harms through two approaches: 1) The Real Estate Rehabilitation and Development product supports the new construction or the rehabilitation of vacant, underutilized, blighted and/or historic structures throughout the two cities identified and 2) The Public Space Activation product that supports the development of permanent place-based infrastructure associated with traditional downtowns, social-zones, outdoor dining, and place-based public spaces; and

- III. Approve the MOU with the New Jersey Casino Reinvestment Development Authority (CRDA) whereby the NJEDA will accept \$5,000,000 in funds from the Coronavirus SLFRF and agree to comply with federal requirements for the use of SLFRF funds to expand the ART Program to Atlantic City.
- IV. Grant the NJEDA CEO delegated authority to interchange funding percentage on each product based on the demand of each product but maintaining the overall funding for each location.



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Tim Sullivan, CEO

Prepared by: Emma Corrado, John Costello, and Christina Fuentes

Attachments:

Exhibit A – Project Specifications

Exhibit B – Scoring Specifications

## Exhibit A – ART Program Project Specifications

<p>Purpose and Objective</p>	<p>The Activation, Revitalization, and Transformation Program (“ART Program”) is a grant program that will proactively deploy \$10 million in American Rescue Plan funding (\$5 million allocated to CRDA for use in Atlantic City and \$5 million allocated to NJEDA for use in Newark) to address the impacts of COVID-19 in New Jersey communities through the new construction or the rehabilitation of vacant, underutilized, blighted and/or historic structures and the development of permanent place-based infrastructure associated with traditional downtowns, social-zones, outdoor dining, and place-based public spaces. The ART Program is funded through the American Rescue Plan (Pub.L. 117-2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF), was recommended for appropriation in Governor Murphy’s Fiscal Year 2023 Budget in Brief and completed the Joint Budget Oversight Committee process in November of 2021.</p> <p>To mitigate the economic impact of the COVID-19 pandemic, and to support the development and recovery of New Jersey’s commercial corridor, the ART Program will invest in the infrastructure, capacity building, and resources necessary to help select New Jersey municipalities recover from the pandemic and thrive for years to come. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery. Utilizing funding provided from SLFRF, the ART program aims to provide financial support to municipalities that were disproportionately impacted by the COVID-19 pandemic, specifically urban areas who experienced revenue losses and economic harms due to decreased commuter foot-traffic. By providing funding to support catalytic real estate development and placemaking initiatives that increase foot- traffic, the ART program funding will help mitigate the harms caused in municipalities that were disproportionality impacted by the COVID-19 pandemic by increasing local spend and promoting economic stability in vital commercial corridors.</p> <p>Administered by the New Jersey Economic Development Authority (NJEDA), the ART tool provides up to \$7 million to support real estate development in the form of grants for real estate rehabilitation, new construction, and development costs associated to each project, and up to \$3 million in grant funding that can support public space place-based infrastructure per project. The goal of this program is to partner with local entities to proactively address the negative economic impacts of the pandemic by investing in projects that create the environment necessary to attract and retain residents and talent, enable business creation and attractions, enhance downtown vitality, and help local governments avoid budget crises.</p> <p>Businesses or nonprofits are eligible to apply for one or both programs. Municipalities and government entities are ineligible to apply for this funding.</p>
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Programs	Real Estate Rehabilitation & Development	Public Space Activation
Eligible Applicants	<ul style="list-style-type: none"> <li>• Private or non-profit developers that can demonstrate capacity to complete a development and redevelopment project, or have experience with a project of a similar scope.</li> <li>• Non-profit economic development or redevelopment agencies that can</li> </ul>	<ul style="list-style-type: none"> <li>• Nonprofit organizations with a 501c(3) or 501c(19) status including but not limited to: <ul style="list-style-type: none"> <li>○ Economic Development Corporations.</li> <li>○ Community Development Corporations.</li> </ul> </li> </ul>
	<p>demonstrate capacity to complete a development or redevelopment project or have experience with a project of a similar scope.</p> <ul style="list-style-type: none"> <li>• Commercial property owner(s) that can demonstrate capacity to complete a development and redevelopment project or have experience with a project of a similar scope.</li> </ul>	<ul style="list-style-type: none"> <li>○ Nonprofit economic development or redevelopment agencies.</li> <li>○ Business Improvement Districts and City Improvement Districts.</li> <li>○ Arts Organizations</li> </ul>
Eligible Project Activities	<p>Up to \$7M of total funding is expected support project-specific hard and soft costs that revitalize commercial corridors and incentivize catalytic development.</p> <p>In order to be eligible for ART funding, all capital construction projects must have a total cost of less than \$10M.</p> <p>These projects can include:</p> <ol style="list-style-type: none"> <li>1. Renovation or restoration of vacant buildings, or square feet of vacant space within a partially occupied building.</li> <li>2. New construction of at least 10,000 square feet on an existing vacant lot.</li> <li>3. Acquisition costs.</li> <li>4. Eligible projects can include mixed- used construction.</li> </ol> <p>Ineligible activities include:</p> <ol style="list-style-type: none"> <li>1. Demolition of a structure to create a vacant lot for future development.</li> <li>2. Projects that are 100% residential construction.</li> </ol>	<p>Up to \$3M of funding is expected to support the creation of public space activation initiatives, such as:</p> <ol style="list-style-type: none"> <li>1. Placemaking projects, public art installations, signage, and streetscape improvements.</li> <li>2. Activation of public spaces through events.</li> <li>3. Operating costs for arts organizations.</li> <li>4. Master/subleases for programmatic use (including incubator space, small business support, and events) in mixed use and commercial properties only.</li> </ol> <p>All applicants that receive grant funding for the creation of programs will be required to submit quarterly reports to demonstrate backend compliance.</p>



<p style="text-align: center;">Eligible Project Locations</p>	<ul style="list-style-type: none"> <li>• New Jersey municipality that prior to the COVID-19 pandemic had a daytime population with the largest total difference between the residential population and the total daytime population. The city that meets this definition at this time is the City of Newark.</li> <li>• Atlantic City-Atlantic City projects in commercial corridor is defined as a project located in the boundaries of the City of Atlantic City that is within 1 ½ (1.5) miles radius of an active NJ Transit rail station,</li> <li>• Newark-Newark projects in a commercial corridor is defined as a project located in the boundaries of the City of Newark that is within 1½ (1.5) miles radius of an active NJ Transit rail station</li> </ul>
<p style="text-align: center;">Project Considerations</p>	<p>Project submissions will clearly address the following considerations</p> <ul style="list-style-type: none"> <li>• <u>COVID Impact</u>: Applicants must address how the proposal is responsive to the negative public health and/or economic impacts of the COVID-19 pandemic and complies with all the ARPA program requirements.</li> <li>• <u>Locations</u>: Projects must be located in Atlantic City, or Newark. All projects must support commercial corridors and be located in urban areas with mass transit.</li> <li>• <u>Capacity</u>: The applicant must have experience implementing a project of a similar scope.</li> <li>• <u>Long-term impacts</u>: Competitive applicants must articulate via the application process how the proposal will have a positive long-term impact in the community. This may include certain factors like renovating a facility to support small businesses, including how it will enable growth in population and tax revenue.</li> <li>• <u>Financial Viability</u>: Must demonstrate long-term financial viability of the project and a time period for project completion through the submission of a pro forma.</li> <li>• <u>Local impact considerations</u>: A project must demonstrate how it supports the goals and visions stated (if available) in either a local master plan, downtown or neighborhood plan, capital improvements plan and/or economic development strategy, along with the readiness of infrastructure.</li> <li>• <u>U.S. Treasury reporting</u>: Ability to provide the U.S. Department of the Treasury with relevant reporting for all project expenditures exceeding \$1 million, specifically, all proposals must provide a narrative on how the project will address the impacts of COVID-19 in either Atlantic City or Newark, and why this capital expenditure is the most appropriate to address the economic harms caused by COVID.</li> </ul>

<p>Application Process and Board Approval / Delegated Authority</p>	<p>The ART Program will be a competitive grant program with applications due by a set deadline.</p> <p>The Authority will perform a review of applications after the closing of the application period. Applicants will be given five business days to cure any deficiencies. If at the end of the five-day period, the applications are still incomplete, they will be notified the application will not be advancing to be scored and will be withdrawn. At the sole discretion of the Authority, staff may ask for clarification of the information included on the application including but not limited to responses, documentation, and attachments.</p> <p>Applications will be evaluated and scored on a competitive basis. Applications that meet the minimum score requirement of 65 out of the eligible 100 points will be eligible for ART Program funding.</p> <p>Applications will be recommended to the Board for award approval starting with this highest scored application until all available ART Program funding is awarded. NJEDA staff will make up a scoring committee to score each complete application for each product. Staff will recommend to the Board for approval applicants in order of scoring that can be fully funded based on the applicant's Funding Request Certification and staff's review.</p>
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	<p>Applications will be accepted during a 60-business day window publicized in the Notice of Funding Availability. Delegated authority is requested to allow the Chief Executive Officer to draw down the funding of \$5,000,000 from ARP SLFRF for the ART program from the New Jersey DCA, and to draw down the funding of \$5,000,000 from ARP SLFRF for the ART program from CDRA.</p> <p>The ART Program awards will proceed to board for all approvals and for declinations for discretionary reasons. As a pilot program, decision based on non-discretionary reasons are subject to the existing delegated authority. CEO will delegate to the appropriate staff on all appeal decisions for non-discretionary reasons.</p>
<p>Scoring</p>	<p>Applications will be reviewed and scored by staff of the Authority formed as a scoring committee. The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices, and boards to advise scoring decisions. Grants will be scored on a scale of 0-100 points, with award recommendations limited to applications that meet or exceed the minimum score requirement of 65 points. Applications will be evaluated and scored on each of the criteria found in Exhibit B.</p>

<p>Proposed Program Funding</p>	<p>The ART Program will be funded through the American Rescue Plan (Pub.L. 117-2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and was approved by the New Jersey Joint Budget Oversight Committee (JBOC) in November 2021 and included in the enacted 2022-23 Fiscal Year Budget.</p> <p>Under federal guidelines, all ART Program funding must be obligated by December 31, 2024, and must be expended by December 31, 2026.</p> <p>The ART program allocates \$5 million in funding for projects in Atlantic City and \$5 million in funding for projects in Newark that support commercial corridors.</p> <p>The minimum award request for the Real Estate Rehabilitation and Development Program is \$250,000 and the Public Space Activation Program is \$100,000.</p> <p>The maximum award for the Real Estate Rehabilitation program is \$3,500,000 and the maximum award for the Public Space program is \$1,500,000.</p>
<p>Proposed Funding Allocation for the Programs</p>	<p>Based off application volume, the NJEDA CEO has approval to adjust funding to move excess funding from Public Space Activation program to Real Estate Development and Rehabilitation program, and excess funding from the Real Estate Development and Rehabilitation Program to the Public Space Activation program while maintaining \$5 million overall to both Atlantic City and the City of Newark.</p>
<p>Funding Disbursement</p>	<p>NJEDA will disburse grants only to the Applicant. The Applicant shall be responsible for assuring the compliance of any strategic partners and/or subcontractors with all terms and conditions of this application - and assumes the sole and absolute responsibility for any payments due to any municipal, county, or strategic partners.</p> <p>Grant award recommendations will be made based on the highest scored applications received after the competitive application window closes. Awards will be recommended in order until the funding pool is fully utilized.</p> <p>Staff will recommend to the Board for approval applicants in order of scoring that can be fully funded based on the applicant's Funding Request Certification and staff's review.</p>

If an applicant (that scored above the minimum score) cannot be fully funded due to insufficient program funds remaining to make their full award, NJEDA staff will notify that applicant of the available amount that can be awarded. The applicant will have 15 business days from the date of the notice to accept the amount of the grant and to provide proof of an additional funding to ensure the project can still be completed by using a letter of intent, commitment letter, bank statements, or any other means. If the applicant decides not to accept the amount available or does not identify additional funding to complete the project, the application will be incomplete and deemed withdrawn by NJEDA. The application may also be denied if the additional funding does not meet the product requirement for such funding. If no award is given to that applicant, NJEDA will proceed with the same process to the next highest scored application (above the minimum score). Throughout this process, the applicant will not be allowed to change its project, as that would impact scoring.

However, due requirements established by the United States Treasury Department SLFRF Final Rule, NJEDA must receive a minimum of 3 applications in order to start the process towards application evaluation, scoring, and approval.

All successful Applicants must follow a uniform disbursement schedule. Applicants are required to submit progress reports in order to receive grant disbursements. At a minimum, the progress reports must include:

- Summary of funds expended to date, and
- Narrative detailing milestones achieved and overall progress toward completion of final plan.
- Proof of prevailing wage/Affirmative Action compliance.

Real Estate Rehabilitation & Development	Public Space Activation
Applicants will receive one disbursement of 50% of the total award amount at 50% of project completion as demonstrated through their AIA document. Second disbursement will occur when the applicant can provide a Certificate of Occupancy and proof of completion.	The Applicant will receive the full grant amount upon execution of grant agreement, and then will be required to submit quarterly reporting until project completion. NJEDA will provide the applicant with the report, and they will complete the required documentation indicating proper use of funds.

Appeals	<p>Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (Chief Legal &amp; Strategic Affairs Officer or designee will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a recommended decision, which must be approved, and a Final Administration Decision issued by the Board or, if under delegated authority, by the CEO or their designee.</p>
Fees	<p>Under guidelines established by the American Rescue Plan SLFRF Final Rules, fees are limited to the following:</p> <ul style="list-style-type: none"> <li>• An administrative fee to NJEDA at a max of 2.5% in addition to the two funding sources identified to be used for projects.</li> <li>• Both the Real Estate Rehabilitation and Development Program and the Public Space Activation program will require an application fee of \$1,000.</li> </ul>
	<ul style="list-style-type: none"> <li>• Not-for-profit entities can apply for fee waivers for undue hardships. Fee waivers for Undue hardship can be demonstrated through the nonprofit's most recent 990 form if Revenue Less Expenses (line 19) is less than or equal to \$500,000 and Net Assets/Fund Balances (line 22) is less than or equal to \$1,000,000.</li> </ul>

## **Exhibit B – ART Program Project Scoring Specifications**

### Real Estate Rehabilitation and Development – Total of 100 Points

Criteria #1 Project Qualification: Scoring, 19 points are possible, and less than 17 points will be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review.

1. Does the proposed project mitigate a negative COVID-19 impact in either Atlantic City or Newark? (Yes or No. 5 points will be awarded to projects that answer “Yes” and address a negative impact of COVID-19 and 0 points will be awarded to projects that answer “No”. Applicants must answer “Yes” to move forward with scoring).
2. Provide a project narrative on how this proposed project addresses the negative impacts of COVID-19 on the local community (Atlantic City and Newark) and how this proposal best addresses the needs of the community. (1 to 12 points awarded).
3. Project is located in an Opportunity Zone Eligible Census Tract (2 points if located in an Opportunity Zone Eligible Census Tract and 0 if not).

Criteria #2 Background Information – Scoring, 5 points possible.

4. Describe the current status of the subject property. Describe the proposed project and end use. This should include, but not be limited to, the total grant amount being requested, funding sources, demonstration of gap and project total cost. Project information must include the following: total acreage of property, number of buildings, square footage, number of floors, historic designation (state, local, national), and condition of the property (vacant, dilapidated, etc.). ( 5 points if the applicant provides information on proposed project, end use, funding sources, financing gap, information on property acreage, improvements, designations, and condition; 3 points for missing one element related to information on property acreage, improvements, designations, and condition; 0 points if missing information on proposed project, end use, funding sources, financing gap)

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible.

5. Demonstrated Site Control or Property Ownership i.e. Deed or Lease (5 Points if the applicant has demonstrated site control, lease, executed agreement of sale, or property ownership, 3 points if the applicant can explain how they will obtain site control or property access, 0 if otherwise).
6. State the status of local approvals project. (4 points for any necessary local zoning and site plan approvals, 2 points for complete local approvals of zoning or site plan, 0 points if neither.)

7. Describe all of the project's financing as it currently stands, including equity if applicable. (15 points for debt financing and equity fully committed [provides a commitment letter to demonstrate secured funding], , 0 points if financing sources are unclear.)
8. Provide information on infrastructure readiness, including any public infrastructure or utility needs associated with the site and describes plan for addressing those needs. (3 points for a plan in place to provide infrastructure upgrades aligned with project schedule, zero points if the project site is significantly lacking in public infrastructure.)
9. Describe current engagement with architects or engineers. (3 points if engaged in A&E and provided renderings & floor plans, 2 points if either floor plans or renderings are provided but not both, 0 points otherwise).
10. Explain current engagement with a general contractor. (3 points if a contractor has been engaged and cost estimates dated within 3 months from engaged contractor are provided, 2 points if any estimates from contractors or architects/engineers are provided to support costs, 0 points otherwise.)
11. Please explain the project schedule and how the projects will be completed by December 31, 2026. (3 points for a well-articulated and realistic schedule, 2 points if the schedule is missing steps, zero points if incomplete).
12. Explain the development team's level of similar project-specific experience, including resume of project manager(s), any previous projects that have been undertaken and the status of those projects. (5 points for experience represented on the team related to 3 similar projects, 3 points for two projects, 2 points for one project, disqualified if capacity is unclear.)
13. Explain how this proposal will have a catalytic, long-term impact on the community. Please address how this project will contribute to the dynamism of the neighborhood through events, small business support, and increased foot traffic. (12 points possible. 4 pts for adding to the success of the neighborhood through hosting monthly community events, 2 pts for participating in monthly community events outside of hosting, 3 pts for adding to the success of nearby businesses, 3 pts for detailed plans for engagement with local community groups, organizations, and small businesses to increase local foot traffic).
14. Describe how your project contributes to the community's vision and priorities that addresses COVID response and community resilience. (14 points for a well-articulated and realistic response that demonstrates project connection to the community vision, 7 points if the project can demonstrate minor connection, zero points if project proposal cannot demonstrate connection).
15. Articulate why the project will not be successful without this grant. (6 points for clearly articulated financial need, zero points otherwise.)

16. Describe any other forms of tax credit equity or leverageable grants that the project has received (3 points for other funding sources, zero points otherwise.)

In the event of a tie, NJEDA would weigh the following questions as a tiebreaker: Questions 1 and 2 from “Project Qualifications” and Question 7 from “Project Readiness and Programmatic Considerations”.

### **Public Space Activation – Total of 100 Points**

Criteria #1 Project Qualification: Scoring, 19 points are possible, and less than 17 points will be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review.

1. Does the proposed project mitigate a negative COVID-19 impact in either Atlantic City or Newark? (Yes or No. 5 points will be awarded to projects that answer “Yes” and address a negative impact of COVID-19 and 0 points will be awarded to projects that answer “No”. Applicants must answer “Yes” to move forward with scoring).
2. Provide a project narrative on how this proposed project addresses the negative impacts of COVID-19 on the local community (Atlantic City and Newark) and how this proposal best addresses the needs of the community? (1 to 12 points awarded).
3. Project is located in an Opportunity Zone Eligible Census Tract (2 points if located in an Opportunity Zone Eligible Census Tract and 0 if not).

Criteria #2 Background Information – Scoring, 5 points are possible.

4. Describe the proposed project. Provide a map with your application that identifies project types and total expenses. This analysis should include, but not be limited to, the total grant amount seeking and total cost of proposed capital expenditure. (5 points if all elements are present, 3 points missing one element, 0 points missing more than 1 element)

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible.

5. Describe the status of the project, including cost estimates (4 Points for final plans and cost estimates, 2 points for preliminary plans and estimates, 0 if otherwise).
6. Describe site use and access. Does the entity have the current ability to use, or obtain permission to use, the site for the purposes described in the project (3 Points if the applicant has demonstrated site use and access, 0 if otherwise.)



7. Provide and describe how the project will benefit nearby businesses (5 Points if the applicant has demonstrated benefit to nearby businesses, 3 if there is partial benefit, 0 if otherwise.)
8. Please explain the project schedule and how the projects will be completed before December 31 of 2026, as funds need to be expended by that date. (4 points for a well-articulated schedule that identifies dates and where financing commitments align.)
9. Explain the applicant's project team's level of similar project-specific experience, including any previous projects requiring construction monitoring and federal reporting that have been undertaken and the status of those projects. (6 points for two projects completed, 4 points for one project completed and no relevant examples will result in automatic disqualification.)
10. Identify and provide evidence for other sources of funds for this project, including the type and. (8 pts: applicant is utilizing other state funds 5 pts: non-state funds secured but only source of funds is applicant 5 pts: at least 1 source other than applicant but lacks evidence that all non-ART funds are secured else 0 pts)
11. Describe how the use of public space in the area has changed during the pandemic and how this project will have a positive long-term impact on the community. Address how the project will grow the tax base, activate vacant or underutilized space, and contribute to the resiliency of the community. (15 points possible – 5 pts if activating vacant or underutilized space, 5 pts if the project will contribute to the success of businesses located within 1/2 mile, and 5 pts if the project includes innovative low-impact or green construction practices.)
12. Describe how your project contributes to the community's vision and priorities that addresses COVID response and community resilience. (15 points for a well-articulated and realistic response that demonstrates project connection to the community vision, 6 points if the project can demonstrate minor connection, zero points if project proposal cannot demonstrate connection)
13. Describe how this project will be maintained long-term. Identify maintenance plan, funding, the organization that will be responsible, and elaborate on any other anticipated tasks associated with the maintenance of the final product. (8 points for a maintenance budget with seasonal maintenance tasks and source of funding for maintenance identified, zero points otherwise.)

14. Describe how this public space will be programmed for use by businesses, for recreation, and accessibility for all. Identify how accessibility will be incorporated throughout the entire project. (8 points for a plan that includes public space activation for individuals of all abilities. 5 points for a plan that includes partially programable space, and zero points for plans that do not account for all levels of accessibility.)

In the event of a tie, NJEDA would weigh the following questions as a tiebreaker: Questions 1 and 3 from “Project Qualifications” and Question 7 from “Project Readiness and Programmatic Considerations”.

**INTER-AGENCY AGREEMENT BETWEEN  
THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY  
AND  
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**THIS INTER-AGENCY AGREEMENT** (hereinafter “Agreement”) dated this \_\_\_ day of October, 2022 is hereby made by and between the New Jersey Casino Reinvestment Development Authority (the “CRDA”) and the New Jersey Economic Development Authority (“NJEDA”). The CRDA and the NJEDA may hereinafter collectively be referred to as the Parties and individually as a Party.

**DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following meanings:

1. “New Jersey Casino Reinvestment Development Authority” is a public body, corporate and politic, in, but not of, the Department of Treasury of the State of New Jersey pursuant to N.J.S.A. 5:12-153 et seq.
2. “New Jersey Economic Development Authority is a public body, corporate and politic, in, but not of, the Department of Treasury of the State of New Jersey pursuant to N.J.S.A. 34:1B-1 et seq.
3. “CRDA Funds” means any Coronavirus State Fiscal Recovery Fund monies transferred or paid by CRDA to NJEDA pursuant to this Agreement.

**WITNESSETH:**

**WHEREAS**, on March 13, 2020, the President of the United States declared a National State of Emergency; and

**WHEREAS**, on March 11, 2021, the President signed the “American Rescue Plan Act of 2021” P.L. 117-2 (the “ARP Act”) into law; and

**WHEREAS**, as part of the ARP Act, Congress at subtitle M of the ARP Act, amended Title VI of the Social Security Act (42 U.S.C. 801 et seq.) by adding Sections 802 and 803 to create the “Coronavirus State Fiscal Recovery Fund” (“CSFRF”); and

**WHEREAS**, CSFRF monies (“CSFRF Funds”) are to be used, generally: (a) to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (b) to respond to workers performing essential work during the COVID public health emergency by providing premium pay to eligible workers of the State who are performing such essential work, or by providing grants to eligible workers who perform essential work; (c) for the provision of government services to the extent of the reduction in revenue of the State due to the COVID-19 public health emergency relative to revenues collected in the most recent

full fiscal year of the State prior to the emergency; or (d) to make necessary investments in water, sewer, or broadband infrastructure; and

**WHEREAS**, the State of New Jersey received \$6,244,537,955.50 in CSFRF Funds under the ARP Act which must be used in conformance with the requirements of the ARP Act; and

**WHEREAS**, pursuant to the Fiscal Year 2022 Appropriations Act, L. 2021, c. 133 (“Appropriations Act”), \$200,000,000 (two hundred million) of CSFRF Funds were appropriated subject to allocation as determined by the Executive Director of the Governor’s Disaster Recovery Office and the approval of the Director of the Division of Budget, with approval or notice provided to the Joint Budget Oversight Committee (“JBOC”) depending on the amount of the allocation; and

**WHEREAS**, pursuant to the Appropriations Act, on November 24, 2021, the Office of Management and Budget (“OMB”) sought approval for various allocations of CSFRF Funds, including \$10 million for the Commuter Hub COVID-Impacted Redevelopment Program (“Commuter HUB Program”) needed to assist retail and pedestrian activity in urban areas with mass transit that have faced economic harms from the reduction in commuters due to the pandemic with funds to be split between the CRDA and the NJEDA for two targeted initiatives; and

**WHEREAS**, OMB stated in its request for JBOC approval that U.S. Treasury’s CSFRF rules allow for a broad range of uses to respond to the public health emergency or its negative economic impacts, including assistance to nonprofits or aid to impacted industries such as tourism, travel, and hospitality and that the Commuter Hub Program is eligible under the CSFRF Interim Final Rule at 31 C.F.R. 35.6 (b)(9); and

**WHEREAS**, on November 30, 2021, the JBOC approved the allocation of \$10 million from New Jersey’s share of federal assistance from the CSFRF for the Commuter Hub Program; and

**WHEREAS**, pursuant to N.J.S.A. 5:12-161(o) CRDA is authorized to “enter into any and all agreements or contracts with any governmental unit or person, execute any instruments, and do and perform any acts or things necessary, convenient or desirable for the purposes of the Casino Reinvestment Development Authority to carry out any power expressly given in this act”; and

**WHEREAS**, in 1976, the New Jersey Constitution was amended to legalize casino gambling in Atlantic City and the purpose of the amendment, according to the amendment’s sponsor in the State Assembly, was “to provide a first-class, viable resort economy with natural resources that Atlantic City has always had.” Statement of Asm. Steven P. Perskie, Public Hearing before the Assembly State Government and Federal and Interstate Relations Committee on ACR-126, April 14, 1976 at 2; and

**WHEREAS**, from time-to-time, CRDA’s statutory mandate has been amended to encourage CRDA to invest in projects throughout the State of New Jersey but was amended in 2011 to focus CRDA’s investment of its assets and revenues into the Atlantic City Tourism District; and

**WHEREAS**, \$5,000,000.00 (five million dollars) has been allocated to the CRDA from the CSFRF and will be available and allocated to the Commuter HUB Program; and

**WHEREAS**, the CRDA recognizes that the NJEDA serves as the State’s principal agency for driving economic growth and is therefore uniquely qualified to administer the funding allocated

to support the Commuter HUB Program; and

**WHEREAS**, the NJEDA is willing to accept CRDA funds in the amount of \$5 million to administer a program to support Atlantic City projects on behalf of the CRDA; and

**WHEREAS**, the NJEDA will add the \$5 million of CRDA Funds to the \$5 million NJEDA received to administer the Commuter HUB Program; and

**WHEREAS**, the CRDA agrees that the Commuter HUB Program will be based upon specifications designed by NJEDA including eligibility and other criteria that may be approved by NJEDA's Board, and amended by the NJEDA Board; and

**WHEREAS**, CRDA's Board has authorized NJEDA to design a Commuter HUB Program (See Exhibit A, ART Program Specification) subject to NJEDA's Board's approval and directed CRDA's Executive Director to execute an Agreement on behalf of CRDA to provide funds for NJEDA to administer the Commute HUB program; and

**WHEREAS**, NJEDA's Board has approved the receipt of contributions to the Commuter HUB Program and has authorized NJEDA's Chief Executive Officer to take actions to effectuate such contributions; and

**WHEREAS**, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter into agreements to provide assistance to each other.

**NOW, THEREFORE**, the CRDA and the NJEDA agree as follows:

1. **Incorporation of Definitions and Recitals**

The above definitions and recitals are incorporated herein by reference and are made part hereof as if fully set forth at length herein.

2. **Payment by CRDA to NJEDA**

Upon the execution of this Agreement and receipt of CSFRF funds, CRDA shall cause five-million-dollars (\$5,000,000.00) to be paid from CRDA's ("CRDA Funds") to NJEDA to be used consistent with the terms of this Agreement.

3. **Administration of CRDA Funds by NJEDA**

NJEDA shall award and administer grants to eligible applicants in Atlantic City that fit the eligibility criteria designed by NJEDA in the NJEDA Board memo and products specifications that are approved by NJEDA's Board. NJEDA may use CRDA Funds for administrative costs associated with program management of the Commuter HUB Program as permitted by the Appropriations Act and CSFRF. NJEDA shall return any unused portion of the grant funds within a reasonable period of time.

4. **Reporting Requirements**

Ongoing federal reporting requirements will be administered by NJEDA with DCA and with the awardee. NJEDA shall have the sole discretion to determine eligibility and/or criteria for grants awarded pursuant to this Agreement. CRDA shall have no reporting requirements associated with the Commuter HUB Program.

5. **Cooperation**

The NJEDA and the CRDA recognize and agree that the citizens of the State of New Jersey face unprecedented hardship a result the COVID-19 pandemic; that this Agreement fulfills the public purposes of both entities, particularly related to CSFRF Funds; and further agree to take all steps necessary, practical or desirable to effectuate the purpose and intent of this Agreement, including the execution of any necessary documents or instruments in furtherance of this Agreement.

6. **Term**

The Parties agree that NJEDA will process all Grant Program applications at its discretion, or until the Grant Program or the CRDA Funds have been used for their intended purpose. The Grant Program application developed by NJEDA will be provided to CRDA prior to program launch by NJEDA. NJEDA will provide copies of all applications for CRDA Funds received after the close of the 60 day competitive window and deemed complete to NJEDA. NJEDA will score complete applications for CRDA Funds and make recommendations to the NJEDA Board based on scoring specifications (See Exhibit B, ART Program Project Scoring Specifications). This Agreement will terminate after the earlier of (i) the date when NJEDA processes all Grant Program applications filed or (ii) the date all CRDA Funds have been used. Should NJEDA terminate the Grant Program prior to the use of all CRDA Funds, NJEDA will return the unused amount of CRDA Funds to CRDA.

7. **Notice**

Any notice which either Party is permitted or required to give or make under any provision of this Agreement shall be in writing and shall be given or, shall be given by certified mailing the same, postage prepaid, return receipt requested, to the Parties at the address specified herein, or at such other places as may be designated by the parties from time to time. Any such notice, demand or request shall be deemed given or made on the day after delivery by hand and, if mailed, on the third (3<sup>rd</sup>) business day after the date so mailed:

For CRDA

Monica de los Rios, Esq.  
General Counsel  
Casino Reinvestment Development Authority  
15 Pennsylvania Avenue  
Atlantic City, New Jersey  
Electronic Mail: [mdelosrios@njcrda.com](mailto:mdelosrios@njcrda.com)

For NJEDA

Tim Sullivan  
Chief Executive Officer  
New Jersey Economic Development Authority  
36 West State Street  
P.O. Box 990  
Trenton, NJ 08625-0990  
Electronic Mail: [tsullivan@njeda.com](mailto:tsullivan@njeda.com)

8. **Independent Entities, No Third Parties Beneficiaries**

The CRDA and NJEDA are independent governmental entities. The Parties agree that each entity shall be liable for its own conduct and any claims against it without indemnification from the other. There are no third-party beneficiaries to this Inter-Agency Agreement.

9. **Amendments**

This Agreement shall not be amended except by mutual consent of all Parties hereto in a signed writing transmitted to all Parties pursuant to the Notice provisions set forth herein.

10. **Counterparts/Facsimile Signatures**

This Agreement may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute the same instrument, and such execution may be evidenced by signatures delivered by facsimile, email, or other electronic transmission or by electronic signatures. The Parties will accept delivery of an executed copy of this Agreement by facsimile, email, or other electronic means.

13. **Entire Agreement**

This Agreement constitutes the entire understanding between the Parties hereto, represents the final written expression of the Parties with respect to the subject matter hereof, and may not be amended, altered or modified except by a writing signed by each of the Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**CASINO REINVESTMENT  
DEVELOPMENT AUTHORITY**

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

Sean Patwell  
CRDA Executive Director

**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Tim Sullivan  
NJEDA Chief Executive Officer

**Attachments:**

Exhibit A – ART Program Project Specifications  
Exhibit B – ART Program Project Scoring Specifications

**Exhibit A – ART Program Project Specifications**



<p>Purpose and Objective</p>	<p>The Activation, Revitalization, and Transformation Program (“ART Program”) is a grant program that will proactively deploy \$10 million in American Rescue Plan funding (\$5 million allocated to CRDA for use in Atlantic City and \$5 million allocated to NJEDA for use in Newark) to address the impacts of COVID-19 in New Jersey communities through the new construction or the rehabilitation of vacant, underutilized, blighted and/or historic structures and the development of permanent place-based infrastructure associated with traditional downtowns, social-zones, outdoor dining, and place-based public spaces. The ART Program is funded through the American Rescue Plan (Pub.L. 117-2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF), was recommended for appropriation in Governor Murphy’s Fiscal Year 2023 Budget in Brief and completed the Joint Budget Oversight Committee process in November of 2021. Due to NJEDA’s collection of a 2.5% administrative fee included in the initial grant award allocated by the JBOC process, the total available funding pool for the ART program is \$9,750,000, with a funding availability of \$4,875,000 for each Atlantic City and Newark</p> <p>To mitigate the economic impact of the COVID-19 pandemic, and to support the development and recovery of New Jersey’s commercial corridor, the ART Program will invest in the infrastructure, capacity building, and resources necessary to help select New Jersey municipalities recover from the pandemic and thrive for years to come. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery. Utilizing funding provided from SLFRF, the ART program aims to provide financial support to municipalities that were disproportionately impacted by the COVID-19 pandemic, specifically urban areas who experienced revenue losses and economic harms due to decreased commuter foot-traffic. By providing funding to support catalytic real estate development and placemaking initiatives that increase foot-traffic, the ART program funding will help mitigate the harms caused in municipalities that were disproportionality impacted by the COVID-19 pandemic by increasing local spend and promoting economic stability in vital commercial corridors.</p> <p>Administered by the New Jersey Economic Development Authority (NJEDA), the ART tool provides up to \$6,825,000 to support real estate development in the form of grants for real estate rehabilitation, new construction, and development costs associated to each project, and up to \$2,925,000 in grant funding that can support public space place-based infrastructure per project. The goal of this program is to partner with local entities to proactively address the negative economic impacts of the pandemic by investing in projects that create the environment necessary to attract and retain residents and talent, enable business creation and attractions, enhance downtown vitality, and help local governments avoid budget crises.</p> <p>Businesses or nonprofits are eligible to apply for one or both programs. Municipalities and government entities are ineligible to apply for this funding.</p>	
<p>Programs</p>	<p>Real Estate Rehabilitation &amp; Development</p>	<p>Public Space Activation</p>
<p>Eligible Applicants</p>	<ul style="list-style-type: none"> <li>Private or non-profit developers that can demonstrate capacity to complete a development and redevelopment</li> </ul>	<ul style="list-style-type: none"> <li>Nonprofit organizations with a 501c (3) or 501c (19) status including but not limited to:</li> </ul>

	<p>project, or have experience with a project of a similar scope.</p> <ul style="list-style-type: none"> <li>• Non-profit economic development or redevelopment agencies that can demonstrate capacity to complete a development or redevelopment project or have experience with a project of a similar scope.</li> <li>• Commercial property owner(s) that can demonstrate capacity to complete a development and redevelopment project or have experience with a project of a similar scope.</li> </ul>	<ul style="list-style-type: none"> <li>○ Economic Development Corporations.</li> <li>○ Community Development Corporations.</li> <li>○ Nonprofit economic development or redevelopment agencies.</li> <li>○ Business Improvement Districts and City Improvement Districts.</li> <li>○ Arts Organizations</li> </ul>
<p style="text-align: center;">Eligible Project Activities</p>	<p>Up to \$6,825,000 of total funding is expected support project-specific hard and soft costs that revitalize commercial corridors and incentivize catalytic development.</p> <p>In order to be eligible for ART funding, all capital construction projects must have a total cost of less than \$10M.</p> <p>These projects can include:</p> <ol style="list-style-type: none"> <li>1. Renovation or restoration of vacant buildings, or square feet of vacant space within a partially occupied building.</li> <li>2. New construction of at least 10,000 square feet on an existing vacant lot.</li> <li>3. Acquisition costs.</li> <li>4. Eligible projects can include mixed-used construction.</li> </ol> <p>Ineligible activities include:</p> <ol style="list-style-type: none"> <li>1. Demolition of a structure to create a vacant lot for future development.</li> <li>2. Projects that are 100% residential construction.</li> </ol>	<p>Up to \$3,412,500 of funding is expected to support the creation of public space activation initiatives, such as:</p> <ol style="list-style-type: none"> <li>1. Placemaking projects, public art installations, signage, and streetscape improvements.</li> <li>2. Activation of public spaces through events.</li> <li>3. Operating costs for arts organizations.</li> <li>4. Master/subleases for programmatic use (including incubator space, small business support, and events) in mixed use and commercial properties only.</li> </ol> <p>All applicants that receive grant funding for the creation of programs will be required to submit quarterly reports to demonstrate backend compliance.</p>

<p>Eligible Project Locations</p>	<ul style="list-style-type: none"> <li>• New Jersey municipality that prior to the COVID-19 pandemic had a daytime population with the largest total difference between the residential population and the total daytime population. The city that meets this definition at this time is the City of Newark.</li> <li>• Atlantic City-Atlantic City projects in commercial corridor is defined as a project located in the boundaries of the City of Atlantic City that is within 1 ½ (1.5) miles radius of an active NJ Transit rail station,</li> <li>• Newark-Newark projects in a commercial corridor is defined as a project located in the boundaries of the City of Newark that is within 1½ (1.5) miles radius of an active NJ Transit rail station</li> </ul>
<p>Project Considerations</p>	<p>Project submissions will clearly address the following considerations</p> <ul style="list-style-type: none"> <li>• <u>COVID Impact</u>: Applicants must address how the proposal is responsive to the negative public health and/or economic impacts of the COVID-19 pandemic and complies with all the ARPA program requirements.</li> <li>• <u>Locations</u>: Projects must be located in Atlantic City, or Newark. All projects must support commercial corridors and be located in urban areas with mass transit.</li> <li>• <u>Capacity</u>: The applicant must have experience implementing a project of a similar scope.</li> <li>• <u>Long-term impacts</u>: Competitive applicants must articulate via the application process how the proposal will have a positive long-term impact in the community. This may include certain factors like renovating a facility to support small businesses, including how it will enable growth in population and tax revenue.</li> <li>• <u>Financial Viability</u>: Must demonstrate long-term financial viability of the project and a time period for project completion through the submission of a pro forma.</li> <li>• <u>Local impact considerations</u>: A project must demonstrate how it supports the goals and visions stated (if available) in either a local master plan, downtown or neighborhood plan, capital improvements plan and/or economic development strategy, along with the readiness of infrastructure.</li> <li>• <u>U.S. Treasury reporting</u>: Ability to provide the U.S. Department of the Treasury with relevant reporting for all project expenditures exceeding \$1 million, specifically, all proposals must provide a narrative on how the project will address the impacts of COVID-19 in either Atlantic City or Newark, and why this capital expenditure is the most appropriate to address the economic harms caused by COVID.</li> </ul>
<p>Application Process and Board Approval / Delegated Authority</p>	<p>The ART Program will be a competitive grant program with applications due by a set deadline.</p> <p>The Authority will perform a review of applications after the closing of the application period. Applicants will be given five business days to cure any deficiencies. If at the end of the five-day period, the applications are still incomplete, they will be notified the application will not be advancing to be scored and will be withdrawn. At the sole discretion of the Authority, staff may ask for clarification of the information included on the application including but not limited to responses, documentation, and attachments.</p> <p>Applications will be evaluated and scored on a competitive basis. Applications that meet the minimum score requirement of 65 out of the eligible 100 points will be eligible for ART Program funding.</p>

	<p>Applications will be recommended to the Board for award approval starting with this highest scored application until all available ART Program funding is awarded. NJEDA staff will make up a scoring committee to score each complete application for each product. Staff will recommend to the Board for approval applicants in order of scoring that can be fully funded based on the applicant's Funding Request Certification and staff's review.</p> <p>Applications will be accepted during a 60-business day window publicized in the Notice of Funding Available. Delegated authority is requested to allow the Chief Executive Officer to draw down the funding of \$5,000,000 from ARP SLFRF for the ART program from the New Jersey DCA, and to draw down the funding of \$5,000,000 from ARP SLFRF for the ART program from CDRA.</p> <p>The ART Program awards will proceed to board for all approvals and for declinations for discretionary reasons. As a pilot program, decision based on non-discretionary reasons are subject to the existing delegated authority. CEO will delegate to the appropriate staff on all appeal decisions for non-discretionary reasons.</p>
Scoring	<p>Applications will be reviewed and scored by staff of the Authority formed as a scoring committee. The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices, and boards to advise scoring decisions. Grants will be scored on a scale of 0-100 points, with award recommendations limited to applications that meet or exceed the minimum score requirement of 65 points. Applications will be evaluated and scored on each of the criteria found in Exhibit B.</p>
Proposed Program Funding	<p>The ART Program will be funded through the American Rescue Plan (Pub.L. 117-2) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and was approved by the New Jersey Joint Budget Oversight Committee (JBOC) in November 2021 and included in the enacted 2022-23 Fiscal Year Budget.</p> <p>Under federal guidelines, all ART Program funding must be obligated by December 31, 2024, and must be expended by December 31, 2026.</p> <p>The ART program allocates \$4,875,000 in funding for projects in Atlantic City and \$4,875,000 in funding for projects in Newark that support commercial corridors.</p> <p>The minimum award request for the Real Estate Rehabilitation and Development Program is \$250,000 and the Public Space Activation Program is \$100,000.</p> <p>The maximum award for the Real Estate Rehabilitation program is \$3,412,500 and the maximum award for the Public Space program is \$1,462,500.</p>
Proposed Funding Allocation for the Programs	<p>Based off application volume, the NJEDA CEO has approval to adjust funding to move excess funding from Public Space Activation program to Real Estate Development and Rehabilitation program, and excess funding from the Real Estate Development and Rehabilitation Program to the Public Space Activation program while maintaining \$5 million overall to both Atlantic City and the City of Newark.</p>

Funding Disbursement	<p>NJEDA will disburse grants only to the Applicant. The Applicant shall be responsible for assuring the compliance of any strategic partners and/or subcontractors with all terms and conditions of this application - and assumes the sole and absolute responsibility for any payments due to any municipal, county, or strategic partners.</p> <p>Grant award recommendations will be made based on the highest scored applications received after the competitive application window closes. Awards will be recommended in order until the funding pool is fully utilized.</p> <p>Staff will recommend to the Board for approval applicants in order of scoring that can be fully funded based on the applicant's Funding Request Certification and staff's review.</p> <p>If an applicant (that scored above the minimum score) cannot be fully funded due to insufficient program funds remaining to make their full award, NJEDA staff will notify that applicant of the available amount that can be awarded. The applicant will have 15 business days from the date of the notice to accept the amount of the grant and to provide proof of an additional funding to ensure the project can still be completed by using a letter of intent, commitment letter, bank statements, or any other means. If the applicant decides not to accept the amount available or does not identify additional funding to complete the project, the application will be incomplete and deemed withdrawn by NJEDA. The application may also be denied if the additional funding does not meet the product requirement for such funding. If no award is given to that applicant, NJEDA will proceed with the same process to the next highest scored application (above the minimum score). Throughout this process, the applicant will not be allowed to change its project, as that would impact scoring.</p> <p>However, due requirements established by the United States Treasury Department SLFRF Final Rule, NJEDA must receive a minimum of 3 applications in order to start the process towards application evaluation, scoring, and approval.</p> <p>All successful Applicants must follow a uniform disbursement schedule. Applicants are required to submit progress reports in order to receive grant disbursements. At a minimum, the progress reports must include:</p> <ul style="list-style-type: none"> <li>• Summary of funds expended to date, and</li> <li>• Narrative detailing milestones achieved and overall progress toward completion of final plan.</li> <li>• Proof of prevailing wage/Affirmative Action compliance.</li> </ul>	
	Real Estate Rehabilitation & Development	Public Space Activation
	Applicants will receive one disbursement of 50% of the total award amount at 50% of project completion as demonstrated through their AIA document. Second disbursement will occur when the applicant can provide a Certificate of Occupancy and proof of completion.	The Applicant will receive the full grant amount upon execution of grant agreement, and then will be required to submit quarterly reporting until project completion. NJEDA will provide the applicant with the report, and they will complete the required documentation indicating proper use of funds.
Appeals	Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (Chief Legal & Strategic Affairs Officer or designee will designate Hearing Officers who will review the applications, the appeals, and	

	any other relevant documents or information. The Hearing Officer will prepare a recommended decision, which must be approved, and a Final Administration Decision issued by the Board or, if under delegated authority, by the CEO or their designee. .
Fees	<p>Under guidelines established by the American Rescue Plan SLFRF Final Rules, fees are limited to the following:</p> <ul style="list-style-type: none"> <li>• An administrative fee to NJEDA at a max of 2.5% in addition to the two funding sources identified to be used for projects.</li> <li>• Both the Real Estate Rehabilitation and Development Program and the Public Space Activation program will require an application fee of \$1,000.</li> <li>• Not-for-profit entities can apply for fee waivers for undue hardships. Fee waivers for Undue hardship can be demonstrated through the nonprofit's most recent 990 form if Revenue Less Expenses (line 19) is less than or equal to \$500,000 and Net Assets/Fund Balances (line 22) is less than or equal to \$1,000,000.</li> </ul>

## Exhibit B – ART Program Project Scoring Specifications

### Real Estate Rehabilitation and Development – Total of 100 Points

Criteria #1 Project Qualification: Scoring, 19 points are possible, and less than 17 points will be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review.

1. Does the proposed project mitigate a negative COVID-19 impact in either Atlantic City or Newark? (Yes or No. 5 points will be awarded to projects that answer “Yes” and address a negative impact of COVID-19 and 0 points will be awarded to projects that answer “No”. Applicants must answer “Yes” to move forward with scoring).
2. Provide a project narrative on how this proposed project addresses the negative impacts of COVID-19 on the local community (Atlantic City and Newark) and how this proposal best addresses the needs of the community. (1 to 12 points awarded).
3. Project is located in an Opportunity Zone Eligible Census Tract (2 points if located in an Opportunity Zone Eligible Census Tract and 0 if not).

Criteria #2 Background Information – Scoring, 5 points possible. \_

4. Describe the current status of the subject property. Describe the proposed project and end use. This should include, but not be limited to, the total grant amount being requested, funding sources, demonstration of gap and project total cost. Project information must include the following: total acreage of property, number of buildings, square footage, number of floors, historic designation (state, local, national), and condition of the property (vacant, dilapidated, etc.). ( 5 points if the applicant provides information on proposed project, end use, funding sources, financing gap, information on property acreage, improvements, designations, and condition; 3 points for missing one element related to information on property acreage, improvements, designations, and condition; 0 points if missing information on proposed project, end use, funding sources, financing gap)

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible.\_

5. Demonstrated Site Control or Property Ownership i.e. Deed or Lease (5 Points if the applicant has demonstrated site control, lease, executed agreement of sale, or property ownership, 3 points if the applicant can explain how they will obtain site control or property access, 0 if otherwise).
6. State the status of local approvals project. (4 points for any necessary local zoning and site plan approvals, 2 points for complete local approvals of zoning or site plan, 0 points if neither.)
7. Describe all of the project’s financing as it currently stands, including equity if applicable. (15 points for debt financing and equity fully committed [provides a commitment letter to demonstrate secured funding], 0 points if financing sources are unclear.)
8. Provide information on infrastructure readiness, including any public infrastructure or utility needs associated with the site and describes plan for addressing those needs. (3 points for a plan in place to provide infrastructure upgrades aligned with project schedule, zero points if the project site is significantly lacking in public infrastructure.)
9. Describe current engagement with architects or engineers. (3 points if engaged in A&E and provided renderings & floor plans, 2 points if either floor plans or renderings are provided but not both, 0 points otherwise).

10. Explain current engagement with a general contractor. (3 points if a contractor has been engaged and cost estimates dated within 3 months from engaged contractor are provided, 2 points if any estimates from contractors or architects/engineers are provided to support costs, 0 points otherwise.)
11. Please explain the project schedule and how the projects will be completed by December 31, 2026. (3 points for a well-articulated and realistic schedule, 2 points if the schedule is missing steps, zero points if incomplete).
12. Explain the development team's level of similar project-specific experience, including resume of project manager(s), any previous projects that have been undertaken and the status of those projects. (5 points for experience represented on the team related to 3 similar projects, 3 points for two projects, 2 points for one project, disqualified if capacity is unclear.)
13. Explain how this proposal will have a catalytic, long-term impact on the community. Please address how this project will contribute to the dynamism of the neighborhood through events, small business support, and increased foot traffic. (12 points possible. 4 pts for adding to the success of the neighborhood through hosting monthly community events, 2 pts for participating in monthly community events outside of hosting, 3 pts for adding to the success of nearby businesses, 3 pts for detailed plans for engagement with local community groups, organizations, and small businesses to increase local foot traffic).
14. Describe how your project contributes to the community's vision and priorities that addresses COVID response and community resilience. (14 points for a well-articulated and realistic response that demonstrates project connection to the community vision, 7 points if the project can demonstrate minor connection, zero points if project proposal cannot demonstrate connection).
15. Articulate why the project will not be successful without this grant. (6 points for clearly articulated financial need, zero points otherwise.)
16. Describe any other forms of tax credit equity or leverageable grants that the project has received (3 points for other funding sources, zero points otherwise.)

In the event of a tie, NJEDA would weigh the following questions as a tiebreaker: Questions 1 and 2 from "Project Qualifications" and Question 7 from "Project Readiness and Programmatic Considerations".



Criteria #1 Project Qualification: Scoring, 19 points are possible, and less than 17 points will be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review.

1. Does the proposed project mitigate a negative COVID-19 impact in either Atlantic City or Newark? (Yes or No. 5 points will be awarded to projects that answer “Yes” and address a negative impact of COVID-19 and 0 points will be awarded to projects that answer “No”. Applicants must answer “Yes” to move forward with scoring).
2. Provide a project narrative on how this proposed project addresses the negative impacts of COVID-19 on the local community (Atlantic City and Newark) and how this proposal best addresses the needs of the community? (1 to 12 points awarded).
3. Project is located in an Opportunity Zone Eligible Census Tract (2 points if located in an Opportunity Zone Eligible Census Tract and 0 if not).

Criteria #2 Background Information – Scoring, 5 points are possible.

4. Describe the proposed project. Provide a map with your application that identifies project types and total expenses. This analysis should include, but not be limited to, the total grant amount seeking and total cost of proposed capital expenditure. (5 points if all elements are present, 3 points missing one element, 0 points missing more than 1 element)

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible.

5. Describe the status of the project, including cost estimates (4 Points for final plans and cost estimates, 2 points for preliminary plans and estimates, 0 if otherwise).
6. Describe site use and access. Does the entity have the current ability to use, or obtain permission to use, the site for the purposes described in the project (3 Points if the applicant has demonstrated site use and access, 0 if otherwise.)
7. Provide and describe how the project will benefit nearby businesses (5 Points if the applicant has demonstrated benefit to nearby businesses, 3 if there is partial benefit, 0 if otherwise.)
8. Please explain the project schedule and how the projects will be completed before December 31 of 2026, as funds need to be expended by that date. (4 points for a well-articulated schedule that identifies dates and where financing commitments align.)
9. Explain the applicant’s project team’s level of similar project-specific experience, including any previous projects requiring construction monitoring and federal reporting that have been undertaken and the status of those projects. (6 points for two projects completed, 4 points for one project completed and no relevant examples will result in automatic disqualification.)
10. Identify and provide evidence for other sources of funds for this project, including the type and. (8 pts: applicant is utilizing other state funds 5 pts: non-state funds secured but only source of funds is applicant 5 pts: at least 1 source other than applicant but lacks evidence that all non-ART funds are secured else 0 pts)
11. Describe how the use of public space in the area has changed during the pandemic and how this project will have a positive long-term impact on the community. Address how the project will grow the tax

base, activate vacant or underutilized space, and contribute to the resiliency of the community. (15 points possible – 5 pts if activating vacant or underutilized space, 5 pts if the project will contribute to the success of businesses located within 1/2 mile, and 5 pts if the project includes innovative low-impact or green construction practices.)

12. Describe how your project contributes to the community's vision and priorities that addresses COVID response and community resilience. (15 points for a well-articulated and realistic response that demonstrates project connection to the community vision, 6 points if the project can demonstrate minor connection, zero points if project proposal cannot demonstrate connection)
13. Describe how this project will be maintained long-term. Identify maintenance plan, funding, the organization that will be responsible, and elaborate on any other anticipated tasks associated with the maintenance of the final product. (8 points for a maintenance budget with seasonal maintenance tasks and source of funding for maintenance identified, zero points otherwise.)
14. Describe how this public space will be programmed for use by businesses, for recreation, and accessibility for all. Identify how accessibility will be incorporated throughout the entire project. (8 points for a plan that includes public space activation for individuals of all abilities. 5 points for a plan that includes partially programable space, and zero points for plans that do not account for all levels of accessibility.)

In the event of a tie, NJEDA would weigh the following questions as a tiebreaker: Questions 1 and 3 from "Project Qualifications" and Question 7 from "P



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** NJ MVP, New Jersey Manufacturers Voucher Program.

### Request:

The Members are asked to approve:

1. The creation of the NJ MVP, New Jersey Manufacturing Voucher Program, a pilot program that will provide New Jersey Manufacturers a grant to access equipment they need to become more efficient, productive, and profitable.
2. The utilization of \$20,000,000 from the Fiscal Year 2023 (FY2023) Appropriations Act (“Act”) to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program. The utilization of \$1,000,000 of the \$20,000,000 funding is to be used by the Authority to cover administrative costs that are needed to administer the NJ MVP, New Jersey Manufacturing Voucher Program.
3. Delegation of authority to the Chief Executive Officer to approve certain individual applications for the NJ MVP, New Jersey Manufacturing Voucher Program, within the parameters set forth in this memo and the attached program specifications.

### Background:

On June 30, 2022, Governor Murphy signed the Fiscal Year 2023 (FY2023) Appropriations Act (“Act”) into law. The Act allocates significant State funding for numerous strategic economic development investments to support key industries, advance the innovation economy, continue to bolster recovery, and spur statewide growth. These strategic investments include, but are not limited to, **\$35 million for a Manufacturing Industry Initiative** to grow and strengthen the State’s manufacturing sector, including programs to spur capital investment, increase the adoption of new technology, attract new suppliers to the state, and expand workforce development and training opportunities. NJ MVP, New Jersey Manufacturing Voucher Program is utilizing \$20 million from that bucket to stimulate private sector investments to modernize New Jersey’s manufacturing industry. To help keep pace with state-of-the art product development and manufacturing technology, the New Jersey Manufacturing Voucher Program provides New Jersey manufacturers with a grant to access equipment they need to become more efficient, productive, and profitable.

## **Program Details:**

NJ MVP – New Jersey Manufacturers Voucher Program will provide equipment grants sized at 30% – 50% of the cost of the eligible equipment (including installation) up to a maximum award amount of \$250,000. The program will target the State’s manufacturers within targeted industries that will purchase equipment that integrate advanced or innovative technologies, processes, and materials to improve the manufacturing of products. The program will also offer bonuses focused on certified woman, minority, veteran owned businesses (WMVB), opportunity zones, purchasing manufacturing equipment in New Jersey as well as bonuses for companies that has a collective bargaining agreement in place. NJ MVP is also committed to supporting small businesses by awarding manufacturers with under 100 Full Time Equivalents employees (FTE) higher award percentages. In addition, applications will be accepted on a rolling basis and remain open until all funds are committed.

### *Eligibility:*

The NJ MVP pilot program will provide funding for New Jersey Manufacturers who meet a set of eligibility criteria.

To be eligible:

- Applicant company must be in a targeted industry (list and definitions are included in Appendix B)
- Company must obtain a Tax Clearance Certificate
- Equipment must be located and installed at a New Jersey location
- Must provide Purchase Quote, Order Proforma, and / or Equipment Listing.
  - Projects where a contract has been signed, a Purchase Order placed, or a deposit made in advance of submitting an MVP application WILL NOT be considered for funding)
- For profit and not-for-profit companies are eligible but home-based businesses are ineligible
- New and/or used equipment is eligible.
- Equipment must be used in the manufacturing process. See Appendix A (Program Specs) below.
- Total aggregated project cost (equipment + installation) must be at least \$25,000.00
- All contracts (including manufactures/supplier agreements) that are \$2,000 or more and requires installation of equipment is subject to Prevailing Wage Law.

In addition to the eligibility parameters already stated above, the applicant must also be in substantial good standing with the New Jersey Department of Labor and Workforce Development (LWD) and NJ Department of Environmental Protection (DEP) at the time of approval to be eligible for NJ MVP – New Jersey Manufacturers Voucher Program. A current tax clearance will need to be provided prior to closing / grant agreement to demonstrate the applicant is properly registered to do business in New Jersey and in substantial good standing with the NJ Division of Taxation.

### *Targeted Industries:*

The Board on July 14th, 2021, approved 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 (ERA). The ERA provides a consistent definition of “Targeted Industry” for various programs and authorizes the Authority to amend the list from time to time. As part of the approval of the Emerge Program on May 12, 2021, the Board approved a policy with definitions for each of the Targeted Industries included in the statute, including providing examples of what activities and sub-sectors were included and excluded from each industry definition. Those definitions are attached to this memorandum.

These definitions are applicable as the appropriated monies for NJ MVP – New Jersey Manufacturers Voucher Program will be deposited into Economic Recovery Fund (ERF), as explained further below.

*Diversity, Equity, and Inclusion:*

As a commitment and in support of the Authority’s Diversity, Equity, and Inclusion efforts, the NJ MVP – New Jersey Manufacturers Voucher Program supports projects that are in distressed areas and under-represented ownership groups. In particular, the NJ MVP will award bonuses to those applicants for each of the following areas:

**Stackable 5% Bonuses Available for each of the following**

- Opportunity Zone Eligible Census Tract (equipment located)
- Certified Woman, Minority, and Veteran Owned Businesses (WMVB)
- At least one Collective Bargaining Agreement in place

**Stackable 10% Bonuses Available for the following**

- Purchase equipment from a New Jersey Manufacturer. (Equipment must be manufactured and/or assembled in NJ)

*Eligible Funding Uses:*

Funding can only be used for the purchase and installation of (new and/or used) equipment used in the manufacturing process. The equipment must be located and installed at a New Jersey location. Eligible capital assets shall include any form of manufacturing equipment, technologically advanced equipment or production/operating systems, including but not limited to robotics, additive manufacturing, hardware or software for digital twinning, advanced sensor or control systems, IIoT (interconnected sensors, instruments, and other devices networked together with computers' industrial applications) systems and related security. In addition, for profit and not-for-profit companies are eligible but **home-based businesses are not eligible**. The acquisition of eligible equipment as it relates to NJ MVP must be executed at arm’s length.

*Application Process:*

Applications will be received on a rolling basis and the application period will remain open until all funds are committed. Applicants will have 14 Days after their application is reviewed to provide missing or incomplete documents.

**Delegated Authority:**

Delegation of authority to the Chief Executive Officer to approve individual applications for the NJ MVP for applicants that fit the specific examples outlined in the approved targeted industry definitions, including examples in Advance Manufacturing. Any other applicant that staff considers eligible must go to the Board for approval.

As a pilot program, decisions based on non-discretionary reasons are subject to the existing delegated authority. Accordingly, CEO will delegate to the appropriate staff on all decisions and appeal decisions for non-discretionary reasons.

**Program Funding**

Per the Appropriations Act for Fiscal Year 2023 (FY2023) (“Act”), the EDA will receive \$35,000,000 in funding for the use of New Jersey Manufacturing Industry Initiative, of which \$20,000,000 will be used for New Jersey Manufacturer Voucher Program (NJ MVP) and deposited into the Economic Recovery Fund. \$1,000,000 will be used to cover administrative costs of this program. The assignment of the funds to the Economic Recovery Fund will allow the Authority to authorize a grant as listed under N.J.S.A § 34:1B-7.13(a)(12), which provides ERF Funds can be utilized “to provide grants or competition prizes to funds initiative based activities which stimulate growth in targeted industries as defined by the authority’s board or supports increasing diversity and inclusion within the State’s entrepreneurial economy. The NJMVP, as a grant program stimulating growth in Advanced Manufacturing, or manufacturing activities in any of the other seven targeted industries, is an eligible use of ERF funding.

**Fees:**

As listed in N.J.A.C. § 19:30-6.1, a non-refundable fee of \$1,000 shall accompany every application.

**Recapture Provision:**

If, in any tax period within the first 3 years of executed grant agreement, the company decides to leave the state, the authority will impose a scaled recapture of the award based on the scale below:

Moves out of State within	Recapture Percentage of the Face Value
1 year of executed grant agreement	100%
2 years of executed grant agreement	60%
3 years of executed grant agreement	30%

**Recommendation:**

The Members are requested to approve:

- (1) the creation of the NJ MVP – New Jersey Manufacturers Voucher Program, a pilot program to that will provide New Jersey Manufacturers a grant to access equipment they need to become more efficient, productive, and profitable.
- (2) The utilization of \$20,000,000 from the Fiscal Year 2023 (FY2023) Appropriations Act (“Act”) to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program. The utilization of \$1,000,000 of the \$20,000,000 funding is to be used by the Authority to cover administrative costs that are needed to administer the NJ MVP, New Jersey Manufacturing Voucher Program.

(3) Delegation of authority to the Chief Executive Officer to approve certain individual applications for the NJ MVP, New Jersey Manufacturing Voucher Program, in accordance with the parameters set forth in this memo and the attached program specifications.



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Tim Sullivan, CEO

Prepared by: Ivan Mendez

Attachments:

Appendix A - Proposed Product Specifications: NJ MVP, New Jersey Manufacturing Voucher Program  
Appendix B – Targeted Industries

**APPENDIX A:**

<b>Proposed Program Specifications October 12, 2022</b>	
<b>Funding Source</b>	\$20,000,000 from the Fiscal Year 2023 (FY2023) Appropriations Act (“Act”) to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program, of which \$1 million is for administrative costs.
<b>Program Purpose</b>	NJ MVP will provide New Jersey Manufacturers a grant to access equipment they need to become more efficient, productive, and profitable.
<b>Eligible Applicants</b>	Companies located in New Jersey with a NJ Tax Clearance Certificate.
<b>Eligible Uses</b>	Applicant company must be in a targeted industry  Eligible equipment must be used in the manufacturing process. Eligible capital assets shall include any form of manufacturing equipment, technologically advanced equipment or production/operating systems, including but not limited to robotics, additive manufacturing, hardware or software for digital twinning, advanced sensor or control systems, IIoT (interconnected sensors, instruments, and other devices networked together with computers' industrial applications) systems and related security
<b>Grant Amounts</b>	30% - 50% of eligible project cost with a minimum of \$7,500 and capped at \$250,000.
<b>Fees</b>	As listed in N.J.A.C. § 19:30-6.1, a non-refundable fee of \$1,000 shall accompany every application.



## APPENDIX B

### “TARGETED INDUSTRIES” DEFINITIONS

The proposed definition of “Targeted industry” is the following:

“Targeted industry” means any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models. A project shall be considered to be in a targeted industry if the activity undertaken by the full-time employees will be in a targeted industry, or if the business is in a targeted industry. An eligible business shall be considered to be in a targeted industry, if the project is for full-time employees of a division or subsidiary that falls within the definition of a targeted industry. A division or affiliate of an eligible business that is in a targeted industry shall be considered to be in a targeted industry, even if the project is for full-time employees that do not work directly in the targeted industry. The Authority may consider whether a business fits into another innovative industry that disrupts current technologies or business models, by assessing factors such as, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.

The Authority developed definitions and policy interpretations for each of the listed industries within the definition of “Targeted industry” as included in the Emerge program regulations and statute.

**Advanced transportation and logistics industry** includes, but is not limited to, the research, development, commercialization, and implementation of technology and innovative methodologies to move goods, services, and people, including by rail, road, air, sea, cable, space and the processing, storage, supply chain management, handling and packaging of goods and services.

**Advanced transportation** includes, but is not limited to, the areas of infrastructure, vehicles, and operations. Examples of advanced transportation technologies may include advanced transportation, sensor development, electrification of vehicles and infrastructure, new transport vehicle development, smart infrastructure and smart cities technologies.

**Advanced logistics** includes, but is not limited to, the research, development, commercialization, and implementation of innovative planning, storage, supply chain management, handling, and packaging of goods and services.

Examples of advanced logistics technologies may include real-time dynamic tracking or pricing, automated processing and handling, the use of blockchain and artificial intelligence, and the use of advanced telecommunication technologies in logistics.

Excluded from this industry are conventional warehousing and distribution facilities, operations and conventional transportation businesses, such as trucking.

**Advanced manufacturing industry** includes, but is not limited to, activities that integrate advanced or innovative technologies, processes and materials to improve the manufacturing of products. Such activities include research, development, commercialization, and implementation of new manufacturing methods and processes that utilize technology or other innovative methodologies including both physical equipment and software supporting advanced production.

Examples of advanced manufacturing technologies include additive manufacturing technologies, computer-aided manufacturing, utilization of advanced sensors and robotics to improve production, development of advanced materials to support production, and digital twin development and utilization. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are conventional manufacturing firms that do not sufficiently develop or utilize technologies such as those listed above.

**Aviation industry** includes, but is not limited to, commercial businesses that are directly involved with air transportation, which utilizes an aircraft, such as airplanes, helicopters and drones.

The aviation industry also includes aircraft manufacturing, aviation component manufacturing, aviation research, air safety, involvement with military aviation and the design, production or use of drones. The aviation industry also includes research, development, and commercialization of aviation-specific software, processes, guidance systems, technologies, and other industry-specific innovative methodologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are the operations of regularly scheduled commercial or private flights.

**Autonomous vehicle research or development industry** includes, but is not limited to, the research, development and implementation of technologies that support the advancement of vehicles that operate independently, increasingly without human involvement, and the related infrastructure for such vehicles.

Examples of autonomous vehicle and infrastructure technologies include sensors, radars, cameras, actuators, complex algorithms, machine learning systems, and software processors that support autonomous vehicle operations and maintenance. Excluded from this industry are research, development, and implementation of technologies that do not advance towards fully automated vehicular operations or the related infrastructure.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

**Zero-emission vehicle research or development industry** includes, but is not limited to, the research, development and implementation of technologies that advance the production of electric and other zero emission vehicles that reduce greenhouse gas emissions or improve air quality and the related infrastructure. This industry also includes firms that are undertaking specific projects to implement these technologies.

Examples of zero-emission vehicle technologies include plug-in-hybrid electric vehicles, battery-powered electric vehicles, hydrogen fuel cell-powered vehicles, vehicle charging infrastructure, electricity grid infrastructure improvements, and software to support these technologies.

Excluded from this industry are research, development, and implementation of technologies that do not reduce greenhouse gas emissions or improve air quality.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

**Clean energy industry** includes, but is not limited to, the research, development, commercialization, manufacturing of products and services, and implementation of technologies that support renewable energy generation and distributed energy resources, grid modernization, energy efficiency and zero-carbon building development, and transport system electrification.

Examples of clean energy technologies include solar power, onshore and offshore wind, electric battery storage, fuel-cell-based storage, carbon capture technologies, non-combustion waste-to-energy technologies, wave energy, water use minimization technologies, carbon-reducing materials, nuclear energy, heat pumps and geothermal, run of river hydroelectric, and other innovative recycling technologies and processes. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are distribution or transmission utilities, conventional landfill operations, combustion-based waste-to-energy projects, and natural gas projects.

**Life sciences industry** includes, but is not limited to, the research, development, commercialization, manufacturing, and implementation of innovative treatments, diagnostic tools, healthcare related software, medical devices, services, and equipment that supports the study, protection and improvement of plant, animal and human life.

Examples of life science industry practices include specialization in biomedicine, biochemistry, pharmaceuticals, biophysics, neuroscience, cell biology, biotechnology, medical devices, nutraceuticals, health-technology, botany and advanced agricultural development, cosmeceuticals, and life systems technologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Exclusions from this industry include direct provision of health care services in hospitals, outpatient facilities, dentist offices, nursing homes, or within a home setting.

**Hemp processing industry** refers to activities in compliance with the federal Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) and any applicable regulations regarding hemp processing promulgated by the New Jersey Department of Agriculture, United States Department of Agriculture, or the United States Food and Drug Administration, including but not limited to, the research, development, commercialization, processing and manufacturing of commercial and industrial hemp products derived from hemp seeds, oil, fibers and shives for commercial use, including in the automotive, construction, food and beverage, personal care, and textile industries.

The term also includes research and development activities that advance hemp processing equipment and technologies for production, testing, and manufacturing operations, provided that such activities comply with the above-referenced laws and regulations. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

The hemp processing industry excludes hemp grown for personal use or with a tetrahydrocannabinol (THC) concentration of 0.3% or greater.

**Information technology industry** includes, but is not limited to, the research, development, and commercialization of advanced software products and information technology services.

Information technology industry includes specialization in application and software development, advanced data analytics, artificial intelligence, blockchain related development, eSports, cybersecurity, cloud computing, provision of web services or servers, telecommunications, mobile communications services, provision of software as a service and other computing technologies.

Information technology industry does not include retail IT service providers, software implementation services that utilize customized product implementations, third party technology implementation to utilizes off-the-shelf solutions, website design services, social media or marketing services, and businesses from other industries that generally utilize technology to support their business operations.

**High technology industry** includes, but is not limited to, the research, development, commercialization, and manufacturing of technology hardware, technology processes, electronics, and technology-based components.

High technology industry also includes specialization in microelectronics, telecommunications, electronics equipment and components, advanced computing hardware, data storage hardware, advanced optical products and equipment, advanced sensor and instrumentation development, digital imaging, electromagnetics, mobile communication devices and infrastructure, semiconductors and semiconductor equipment.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

**Finance and insurance industry** includes, but is not limited to, the research, development, commercialization and management of financial and risk-management solutions, products and services for individuals, businesses and government agencies, including insurance lines, investment banking, depository and lending, and investment management services.

The finance and insurance industry may include technology driven financial innovations generally referred to as fintech, research and development activities that advance finance and insurance industry practices, including executing financial transactions. The finance and insurance industry may also include wagering platforms and related products and services, cryptocurrencies and related products and services, and regional or global headquarters of finance and insurance operations.

Excluded from this industry are retail banks, insurance, or wagering operations, real estate or leasing companies, and short-term or “payday” lenders operations.

**Professional services industry** includes global headquarters, regional headquarters, or major service hubs (such as innovation centers or centers of excellence) of knowledge-economy based businesses, from which customers or operations across multiple states or countries are served.

Examples of knowledge-economy based businesses considered providing professional services include firms that specialize in consulting, accounting, advertising, law, marketing, architecture, design, and engineering firms.

Exclusions from this industry include local branch offices of professional services providers, real estate agents, travel agencies, local contractors or architects, trades-based services, financial planners, doctors, dentists, and other offices or business units where a material amount of the professionals require business licenses to operate in the State.

**Film and digital media industry** includes, but is not limited to, the production and management of media communications, processes and technologies for theatrical motion pictures, television and cable broadcast, streaming services, web-based platforms. Digital media may include spoken word production and media software including video games. Research and development activities that advance media production, management and technology are also included.

Exclusions are productions intended for local broadcast and local performance venues, and companies and businesses that provide indirect sources of support to the production industry such as food services (including craft services and catering) and vehicle rentals used solely for transportation purposes.

**Non-retail Food and Beverages industry** includes, but is not limited to, the growing, processing, packaging, preservation and distribution of raw agricultural goods into consumer food products, including fresh prepared foods, packaged foods, and alcoholic and nonalcoholic beverages, aquaculture and fisheries.

The industry includes the regional or global headquarters for food-based businesses, breweries, wineries and major wholesale food distribution facilities. Research and development activities that advance food innovation technologies, commercialization, production, food distribution models and manufacturing operations are also included in the non-retail food and beverage industry.

Excluded from this industry include distribution businesses serving retail food customers, including grocery stores, farmers markets, community supported agriculture organizations, bodegas, or convenience stores, and establishments that serve food and beverages, including restaurants, cafeterias, cafés, fast-food, pubs, delis, and catering businesses.



## MEMORANDUM

To: Members of the Authority

From: Tim Sullivan, Chief Executive Officer

Date: October 12, 2022

Subject: Modification to Hurdle Rate Model

### **Request**

The purpose of this memo is to modify the Hurdle Rate Model used by Authority staff to determine the maximum Internal Rate of Return for projects seeking assistance under the former Economic Redevelopment and Growth Grant (ERG) program. The modifications will involve adding functionality in the form of multipliers to accommodate applications under the Historic Property Reinvestment and Brownfields Redevelopment Programs.

### **Background and Description**

On November 15, 2012, the Members of the EDA Board approved the Authority's use of a new Hurdle Rate Model. Subsequently, on December 11, 2012, the Members approved a modification to the model that (1) added Cape May as an anchor city and (2) upgraded the functionality of the model such that a project specific rate of return may be calculated for projects in Atlantic City. Both the original board approval and modification are attached to this memo for reference and additional background.

The model was primarily used to determine the maximum Internal Rate of Return (IRR) for projects seeking assistance under the former ERG program. The model calculates a maximum return based on key characteristics which include the project's zip code, industry class, and the degree to which its location is in an area exhibiting an economic disadvantage. In respect to zip code, cities where there are an adequate number of comparable projects across all zip codes, the base of the hurdle rate is calculated as the average. The model in its calculation of the average rate also normalizes the historical rates of returns to the prevailing economy.

In cities where there is an inadequate number of comparables across all zip codes, an interpolation method is employed. The interpolation method utilizes a group of 14 anchor cities in NJ which have an adequate number of comparables to calculate an average return and exhibit in various degrees certain measures of economic disadvantage. The anchor cities in this group are Newark, Paterson, Camden, Asbury Park, Trenton, Millville, Paramus, Morristown, Summit, Princeton, Wall, Cherry Hill, Galloway, and Cape May. The average IRR for a project in a certain zip code is calculated by interpolating the IRRs of the three closest anchor cities weighted by distance. This weighted rate serves as the base of the hurdle rate.

The comparables as stated above represent the rate of return of all projects within each NJ zip code over a period of approximately 40 years. JLL obtained the information from Real Capital Analytics, Inc. Real Capital Analytics, Inc., is a global research and consulting firm with offices in New York City, San Jose and London. Started in 2000, the firm's research is focused exclusively on the investment market for commercial real estate. A data table containing the return information is built into the model and updated semi-annually to ensure the hurdle rates calculated reflect the prevailing commercial real estate market conditions.

The data from Real Capital Analytics, Inc., does not contain a statistically significant number of returns specific to Historic Property Reinvestment and Brownfields Redevelopment projects. To bridge this gap, JLL proposes the use of multipliers. The logic behind multipliers is that they will adjust the base rate returns calculated by the model to be relevant to a historic preservation or brownfield redevelopment project.

The calculation of the multiplier begins with the model taking the average of comparable returns an investor could realize for taking risk that is similar to investing that same capital into a brownfield redevelopment or historic preservation project. As stated earlier, since Real Capital Analytics, Inc., does not contain a statistically significant number of returns specific to historic property and brownfields redevelopment projects, baskets of alternative investments that carry similar risk profiles were used as benchmarks.

Brownfield redevelopment projects are high risk, high return investments. It is possible for the developer to obtain a higher than market return or realize a total loss on investment. It is common in this type of investment that the land to be redeveloped is purchased entirely with developer equity as banks traditionally will not lend against contaminated property. Additional equity may be needed to clean the site particularly if the amount of remediation turns out to be more than originally anticipated. The developer may incur additional costs due to delays in obtaining state and federal approvals or opposition from local governments or citizens who live in proximity of the redevelopment. All of these circumstances can significantly offset or eliminate whatever profit the developer expected to realize as a result of this investment. Alternatively, a developer may see an above market return from brownfield redevelopment reflecting a sometimes minimal price to acquire the property and the schedule and scope of remediation meeting or beating expectations.

Since a statistically significant number of brownfield redevelopment project returns to incorporate into the model does not exist, JLL decided to use the market return of two types of high risk publicly traded instruments that have similar risk/reward profiles as brownfield development and a third return that is a combination of known publicly available returns of private developers and interviews with a few private developers.

The first two returns represent high-risk investment instruments of public equities (high risk publicly traded common stock) and public commercial real estate equity (primarily retail and hotel/resort REITs). These high-risk investment instruments were used as certain high-risk strategies used with these instruments may result in the investor losing his/her entire investment or require additional capital to potentially realize a positive future return. This is similar to the risk characteristics of brownfield development. The third return represents private/brownfield commercial real estate equity (publicly available private returns and data points from JLL interviews with private developers). In this case, the returns are 25%, 20%, and 15% respectively. These rates will be updated semi-annually to ensure the assumption remains current to prevailing market conditions.

Historic preservation projects are likely to have lower than the traditional returns realized in ordinary commercial real estate projects. This is predominately due to higher than normal soft costs and site prep costs to ensure compliance with local preservation regulations, the uncertain level of time required to complete predevelopment work (because of the unpredictable approval timing of various federal and state and local governing bodies), and labor expense during construction being possibly 30%+ higher than normal commercial real estate construction costs due to specialized trades, and prevailing wage requirements of various preservation incentive programs. Finally, the ongoing net operating income is often diminished because preservation requirements can preclude the use of energy efficiency measures such as modern windows, doors, and solar panels.

Similar to brownfields, JLL's research of available third part data sources did not locate a statistically significant number of project-specific returns to incorporate into the model. As a result, three alternative investment instruments of similar risk/reward are used to construct a benchmark. These consist of high-risk public commercial real estate equity (primarily retail and hotel/resort REITs), private/historic preservation commercial real estate equity (publicly available private real estate return data and JLL interviews with private developers), and a proxy for higher risk commercial real estate debt (effective yields for non-investment grade debt as tracked

by the St Louis Federal Reserve Bank). These instruments were used to represent the generally lower return expectations for historic preservation projects as well as the moderately higher risk associated with the same. In this case, the returns are 15.4%, 8.5%, and 8% respectively. These rates will be updated semi-annually to ensure the assumption remains current to prevailing market conditions.

To arrive at the multiplier, the above alternative return average for either program is divided by a fourth return that JLL considers to be a normal return for taking average equity market risk. The proxy for this diversified return is the 10-year historical Dow Jones Industrial Average. This value is equal to roughly 12%.

In these examples, the resulting multipliers for the Brownfield Redevelopment and Historic Preservation programs are 1.7x (computed as 20.0% divided by 12%) and .88x (computed as 10.63% divided by 12%) respectively. In the case of historic preservation, as the implied multiplier is less than 1.00x, it effectively functions as a discount.

The multiplier will be applied to the base hurdle rate generated by the EDA's existing model for each application under the Brownfield and Historic Preservation programs to determine the hurdle rate applicable for that project.

All of the return metrics in the model will be updated on a semi-annually basis to ensure the multipliers remain current with prevailing market conditions.

### **Recommendation**

It is recommended that the hurdle rate model be modified to add functionality in the form of multipliers to accommodate applications under the Historic Property Reinvestment and Brownfields Redevelopment Programs. It is also requested that if future multipliers are the appropriate method to update the model to accommodate new programs, EDA staff may proceed with those modifications without seeking Board action.



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Tim Sullivan, CEO

Prepared by: David A. Lawyer





NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Lizura, President and Chief Operating Officer

**DATE:** November 15, 2012

**SUBJECT:** Project Rate of Return Methodology

### Request

The purpose of this memo is to explain and request approval of a new financial model by which the maximum Internal Rate of Return will be determined for projects seeking assistance under the Economic Redevelopment and Growth Grant (“ERG”) program.

### Background and Description

Currently, staff is guided in its financial review of a project financing gap (as required by statute) by utilizing a market range for IRR defined as between 15% to 20%. This range is provided by EDA’s consultant Jones Lang LaSalle (“JLL”) as representing the average IRR of all real estate projects across all asset classes in New Jersey. Staff proposes amending the use of this static range for the entire State and to utilize specific hurdle rates that reflect three factors; (1) zip code, (2) industry class, and (3) areas within the State exhibiting an economic disadvantage.

#### Zip Code: Average Method

The new IRR model developed by JLL, with the assistance of staff, has built into its functionality the rate of return of all projects within each NJ zip code. JLL obtained the information from Real Capital Analytics, Inc. Real Capital Analytics, Inc., is a global research and consulting firm with offices in New York City, San Jose and London. Started in 2000, the firm’s research is focused exclusively on the investment market for commercial real estate. The data table will be updated quarterly to ensure the hurdle rates calculated reflect the prevailing commercial real estate market conditions. In cities where there are an adequate number of comparable projects across all zip codes, the base of the hurdle rate is calculated as the average.

The model in its calculation of the average rate also normalizes the historical rates of returns to the prevailing economy. For instance, the current hurdle rate for a retail project in Trenton is 13.49%. This city (includes all zip codes) has adequate comparables so the rate is a simple average calculation. The comparables used in the calculation date back to the year 2005. Note that between 2005 and 2007, the economy was strong but deteriorated upon the onset of the great recession beginning September, 2008. The returns during those periods vary considerably due to the instability of the US economy and as a

result impair the validity of the hurdle rate in respect to what an investor would require in the current economic environment. In this example, we will assume the hurdle rate uses several returns from 2008. To address the hurdle rate validity issue, the model first calculates the average statewide return of all projects in 2011 and compares it to the average statewide return of all projects in 2008. We will further assume in our example that such averages equal 14% and 15% in 2011 and 2008 respectively and the deviation is 100 basis points. The 100 basis point deviation is then subtracted from each 2008 Trenton comparable. Note that if the average return in 2011 was greater than the average return of 2008, then the 100 basis point deviation would be added to each 2008 Trenton comparable.

The model completes the same adjustment process for each year in which comparables exist (i.e., for comparables in 2009, the averages of 2011 and 2009 are taken and the deviation is added or subtracted from the 2009 comparables).

### Zip Code: Interpolation Method

In cities where there is an inadequate number of comparables across all zip codes, an interpolation method is employed. To explain further, in a perfect world the new IRR model would have access to an adequate number of comparables across all zip codes in each city to calculate an average return. This level of information, however, is not available for all cities. This is particularly true in areas that historically have been subject to nominal development. In other cases, the information is simply unavailable. To mitigate this deficiency, JLL (with city input suggested by EDA) created a group of 13 anchor cities in NJ which have an adequate number of comparables to calculate an average return and exhibit in various degrees up to three predefined measures of economic disadvantage. The anchor cities in this group are Newark, Paterson, Camden, Asbury Park, Trenton, Millville, Paramus, Morristown, Summit, Princeton, Wall, Cherry Hill, and Galloway. These cities were also selected as they geographically represent the northern, central, and southern part of the State and include urban to suburban attributes. The average IRR for a project in a certain zip code is calculated by interpolating the IRRs of the three closest anchor cities weighted by distance. This weighted rate serves as the base of the hurdle rate.

The model does not normalize the historical rates of returns to the prevailing economy in the interpolation method because a sufficient number of comparables from recent years are obtained by extending the calculation to look beyond a single city.

The base rate calculated under either the average or interpolation method will vary depending on the industry class of the project. The base rate will then be adjusted upward by the degree to which the project area has an economic disadvantage.

### Industry Class

The purpose of the ERG program in general is to induce capital investment in areas which exhibit economic disadvantage and as a result have been underserved in respect to economic development. The industries targeted under the program are office, retail, industrial, hospitality/entertainment, and residential. In addition to zip code, the comparables used by the model are organized by the industry classes targeted by the Authority. This is important as the base rate for a certain project must reflect the return for the industry class the project represents. For instance, a retail project in Trenton requires a higher rate of return than an office project in Trenton. This deviation primarily reflects the fact that

Trenton in general is a challenging market in which to attract and sustain retail business. The base rate produced by the model will reflect that difference.

### Economic Disadvantage

Economic disadvantage for the purposes of calculating a target IRR will be measured as those areas exhibiting the following characteristics: (1) below NJ median household income, (2) below NJ median personal income, and (3) below NJ median housing price. An illustration of how these three factors plot out within the State of NJ is provided as Attachment A.

Locations marked with a triangle denote that the area exhibits all three characteristics of being economically disadvantaged and as such is likely an area underserved by economic development. Locations marked with a square, circle, or star denote areas that exhibit at least two, one, and zero characteristics respectively. Star locations will receive a zero adjustment to the base rate as these areas do not have characteristics of being economically disadvantaged. As shown, the vast majority of triangles are centered in the southern and northeastern part of the State.

For each economic disadvantage factor a project location exhibits, an upward adjustment is added to the base rate. This implies that a developer's IRR will require a risk premium reflecting the economic disadvantage of the area.

The total risk premium used in the model is the spread between investment and non-investment grade debt. The spread, which currently totals 250 basis points, is divided evenly between the underserved indicators.

In other words, for each economic disadvantage factor that is demonstrated an upward adjustment of 83.33 basis points is added to the base rate. This risk premium can be obtained from any mutual fund bond portfolio data, commonly available to the public. JLL will update this spread for the Authority quarterly to ensure the model captures the prevailing market conditions. Since there is no quantitative source of information to specifically calculate what an additional risk premium would be for a project in an economically disadvantaged area, JLL has determined that the spread between investment and non-investment grade debt is the best alternative.

### **Case Scenario One: Office Project in Camden using Interpolation Method**

A developer has a project involving the construction of a professional office building in Camden, NJ. The zip code of the project location is 08101. To determine the hurdle rate, the EDA underwriter inputs the zip code (08101) and property type (office) into the model and a total hurdle rate of 15.29% is calculated.

This rate is comprised of two components. The first component is the base rate of 12.79%. This rate is an interpolation of average IRRs from the three closest anchor cities weighted by their distance from the project zip code. In this case, the anchor cities are Camden (85% of the base), Millville (2% of the base), and Cherry Hill (12% of the base).

The second part of the total hurdle rate is an adjustment of 250 basis points which represents an adjustment based on the zip code's economic disadvantage. This Camden zip code exhibits all three economic disadvantage factors and as such receives an upward adjustment of 250 basis points. This final

rate will be the hurdle rate to which office development projects in Camden seeking an ERG from the Authority will be measured.

Any project in which the return exceeds 15.29% will have the award adjusted downward to bring the return in line with the hurdle rate. The information used to compute the hurdle rate is embedded into the model as a raw data table. Note that if the industry class of the above Camden project were changed to retail, the total hurdle rate increases to 15.7%. This rate is comprised of a base rate totaling 13.20% (uses the same anchor cities as discussed earlier) and a 250 basis points upward adjustment reflecting the economic disadvantage factors.

### **Case Scenario Two: Retail Project in Cherry Hill using Average Method**

A developer has a project involving the construction of a shopping mall in Cherry Hill, NJ. The zip code of the project location is 08003. To determine the hurdle rate, the EDA underwriter inputs the zip code (08003) and property type (retail) into the model and a total hurdle rate of 12.45% is calculated. The Cherry Hill zip code of 08003 does not demonstrate any economic disadvantage factors. As such, no adjustments are required and the base rate of 12.45% is also the final hurdle rate.

In Cherry Hill, there is an adequate number of retail comparables. As a result, the base of the hurdle rate is calculated as the average. This final rate will be the hurdle rate to which retail development projects in the Cherry Hill zip code of 08003 seeking an ERG from the Authority will be measured.

### **Model Feasibility**

A feasibility test was conducted to observe how the IRR of ten projects previously benchmarked to the statewide range (15%-20%) compares to the single hurdle rate. The IRR of the ten projects (with the ERG award) ranged from approximately 2% to 15% and as such complied the 15% to 20% range currently in use. The test resulted in two projects that if considered for approval using the hurdle rate methodology would require the ERG award to be reduced to a point where the adjusted IRR is equal to the hurdle rate. This reflects the fact that these two projects have IRRs (with the ERG award) that exceed the new hurdle rate. This observation validates the use of a return model tailored to the type of project and its location as opposed to a state/industry wide range.

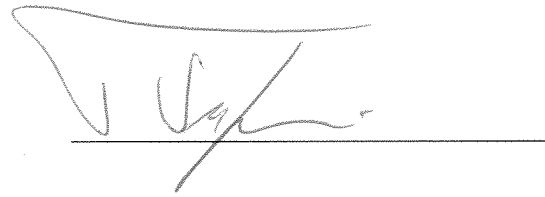
There may be instances where the rate of return model does not address a large, unique, and/or complex destination project. For these projects, it is requested that the EDA obtain the services of an outside consultant who will determine a project specific rate of return.

### **Recommendation**

The new rate of return model as developed by JLL takes a tailored versus broad brush approach in determining a reasonable IRR benchmark. This benchmark in turn will protect the Authority from over enriching projects under the ERG program.

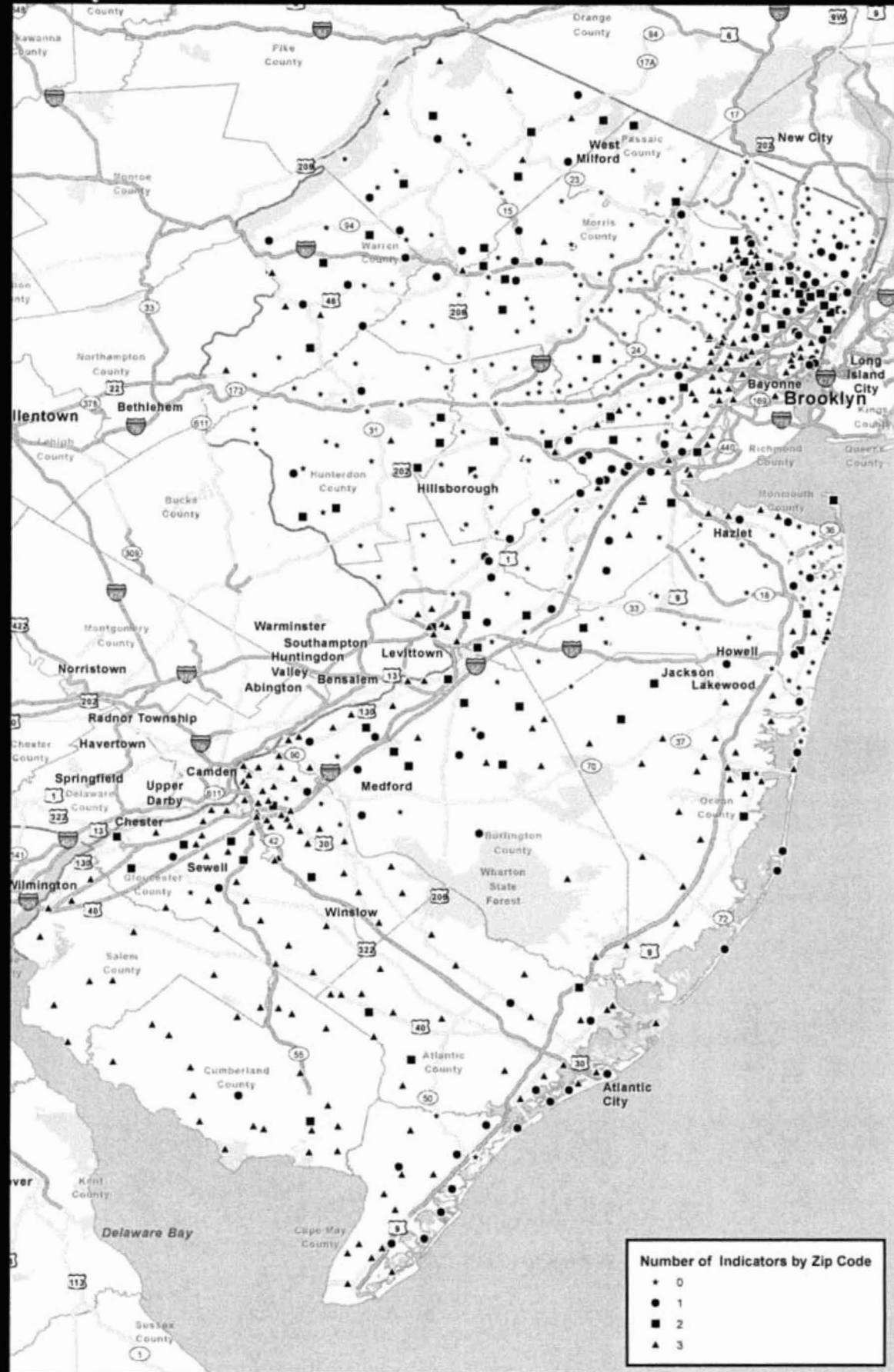
Based on our research and findings, we recommend the use of the JLL rate of return model in the analysis of projects seeking financial assistance under the ERG program.

Furthermore, it is recommended that in the event the EDA in its sole discretion determines that the rate of return model does not accommodate a large complex destination type project, an outside consultant firm is hired to determine a project specific return.

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

Prepared by: David A. Lawyer

# Density Model





NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## MEMORANDUM

**TO:** Members of the Authority  
**FROM:** Tim Lizura, President and Chief Operating Officer  
**DATE:** December 11, 2012  
**SUBJECT:** Modification to Hurdle Rate Model

### Request

The purpose of this memo is to modify the Hurdle Rate Model used by Authority staff to determine the maximum Internal Rate of Return for projects seeking assistance under the Economic Redevelopment and Growth Grant (“ERG”) program. The modifications will involve (1) adding Cape May as an anchor city and (2) upgrading the functionality of the model such that a project specific rate of return may be calculated for projects in Atlantic City.

### Background and Description

On November 15, 2012, the Members of the EDA Board approved the Authority’s use of a new Hurdle Rate Model. The model is used to determine the maximum Internal Rate of Return for projects seeking assistance under the ERG program. The model calculates a maximum return based on key characteristics which include the project’s zip code, industry class, and the degree to which its location is in an area exhibiting an economic disadvantage. In respect to zip code, cities where there are an adequate number of comparable projects across all zip codes, the base of the hurdle rate is calculated as the average. The model in its calculation of the average rate also normalizes the historical rates of returns to the prevailing economy.

In cities where there is an inadequate number of comparables across all zip codes, an interpolation method is employed. The interpolation method utilizes a group of 13 anchor cities in NJ which have an adequate number of comparables to calculate an average return and exhibit in various degrees certain measures of economic disadvantage. The anchor cities in this group are Newark, Paterson, Camden, Asbury Park, Trenton, Millville, Paramus, Morristown, Summit, Princeton, Wall, Cherry Hill, and Galloway. The average IRR for a project in a certain zip code is calculated by interpolating the IRRs of the three closest anchor cities weighted by distance. This weighted rate serves as the base of the hurdle rate.

At the November 2012 board meeting, it was asked why Atlantic City is not one of the anchor cities. This topic was subsequently discussed with the Authority’s consultant Jones Lang LaSalle (“JLL”). JLL determined that Atlantic City is not an anchor city because its historical returns over the last decade or so have varied widely such that they do not provide a valid comparison with the surrounding cities. For instance, many projects in Atlantic City have been casino based or large and unique requiring a rate of

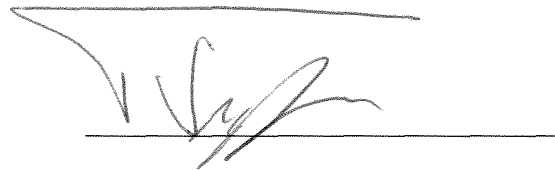
return well above the typical returns required in surrounding cities. Equally as valid, many projects in Atlantic City have been partially financed using grants or low interest rate loans from the Casino Reinvestment Development Authority or other state/municipal sponsored programs. These type of capital sources with very favorable terms have a reducing effect on the rates of returns required by developers and again are much lower than what can be found for projects in surrounding cities and even the same city (reflecting the fact that numerous projects in Atlantic City may not have such favorable financing and have a higher return). As such, JLL feels it is best to exclude Atlantic City from the hurdle rate model as an anchor city. This is because the statistical significance of an interpolated return using Atlantic City data would be impaired.

Despite the decision to exclude Atlantic City as an anchor city, Authority staff asked JLL alternatively if Cape May would provide greater relevancy as an anchor city in the southern New Jersey region. JLL has represented that Cape May would benefit the model as an anchor city as it's a place that impacts the surrounding areas reflecting its long term status as a tourist destination. Future additions or subtractions of anchor cities will be made by Authority staff and communicated to the board.

Finally, the EDA will upgrade the Hurdle Rate Model such that a project specific rate of return may be calculated for projects in Atlantic City. The historical Atlantic City returns incorporated into the model may need to be adjusted to accommodate differences between subsidized versus non-subsidized projects and normalized for the period known as the Great Recession.

### **Recommendation**

It is recommended that the Hurdle Rate Model be modified to add Cape May as an anchor city and upgraded such that a project specific rate of return may be calculated for projects in Atlantic City. All other aspects of the Hurdle Rate Model as described in the November 15, 2012 board memo will remain the same.

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

Prepared by: David A. Lawyer





## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** Jersey City Loew's QALICB, LLC (Applicant)  
Jersey City Economic Development Corporation (Co-Applicant)  
Loews Jersey Theater Rehabilitation Project  
Historic Property Reinvestment Program Application  
Recommendation of Award

### **SUMMARY**

The Members are requested to approve a proposed Historic Property Reinvestment tax credit award to Jersey City Loew's QALICB, LLC (the "Applicant") and Jersey City Economic Development Corporation (the "Co-Applicant") for the Loews Jersey Theater Rehabilitation Project (the "Project"). The tax credit award is 45% of actual eligible costs with a maximum tax credit amount \$42,272,559.90. The final award amount will be based on the Project's actual eligible costs.

This award is contingent on the final adoption and publication of the Historic Property Reinvestment tax credit regulations. These regulations were approved by the Members on September 14, 2022 and are scheduled to be published as final in the New Jersey Register on November 7, 2022.

The recommended tax credit award is also subject to conditions subsequent to receive and maintain the award, including submission of certifications and evidence that the Applicant has met, and will continue to meet, the eligibility criteria. Staff is authorized to reduce the award amount to match the actual certified cost of rehabilitation (eligible costs) at the conclusion of each approved Project phase.

### **ABOUT THE HISTORIC PROPERTY REINVESTMENT PROGRAM**

The Historic Property Reinvestment Program (HPRP) is a tax credit program designed to work in conjunction with the Federal Historic Tax Credit Program to encourage and bolster smart growth investments focused on the rehabilitation of existing identified historic structures throughout New Jersey. The HPRP focuses on historic preservation as a component of community development, encouraging long-term private investment in the State while preserving properties that are of historic significance.

The HPRP is a competitive program, under which projects must apply within a defined application window, with all applications to be considered following the closure of the application period. The Authority has established scoring criteria for the evaluation of proposed rehabilitation projects. To receive a tax credit award, a business entity's application must receive a minimum score of 50 out of 100 maximum total score. Additionally, if on any given year the program is oversubscribed, then applications will be ranked based on score and awards will be based on ranking.

To be awarded tax credits under the HPRP, the applicant must be in good standing with the NJ Department of Labor and Workforce Development, NJ Department of Treasury, and the NJ Department of Environmental Protection (as determined by each Department). The HPRP rules also require that the rehabilitation project pay prevailing wages for construction work during the duration of the project and to building service workers for a period of 10 years following project completion for single phase project, or 10 years following the completion of the first phase for multiphase rehabilitation projects.

Projects under the HPRP are subject to an annual program cap of \$50 million for a total of \$300 million for a period of six years. Annual unused amounts may be included in the amounts available for approval in the subsequent year.

Following approval of the Program rules in February 2022, the Authority announced two (2) application windows for calendar year 2022: a transformative projects window from March 24<sup>th</sup> to June 7<sup>th</sup>, and a regular projects window from June 15<sup>th</sup> to August 15<sup>th</sup>. During the transformative projects application window we received one (1) application, which is the subject of this Memorandum. We also received four (4) applications as part of the regular projects window; those applications are currently under review and any award recommendation will be brought in for approval to the Board at a later time.

## **PROJECT INFORMATION**

### **Applicant**

Jersey City Loew's QALICB, LLC

At financial close, the Applicant will have a wholly owned subsidiary of the Co-Applicant as a minority member, DAE Development 1 LLC as a minority and managing member, and the investor as a majority member. The Applicant will establish site control through a long-term lease from the City, and will enter into a development agreement, sublease, and operating agreement with DAE Development 1 LLC.

### **Co-Applicant**

Jersey City Economic Development Corporation (JCEDC)

The Co-Applicant is a New Jersey nonprofit corporation and a charitable organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Co-Applicant incorporated in 1980 to facilitate community and economic development in Jersey City, New Jersey, including to promote, encourage and assist the industrial, business and artistic communities, to create greater employment opportunities and to broaden the tax base.

A Participation Agreement between the Applicant and Co-Applicant submitted as part of the application shows that JCEDC will act as liaison between the Applicant and the City (property owner) and/or the Jersey City Redevelopment Agency. Additionally, the Agreement outlines other Co-Applicant responsibilities including: assistance in the preparation of documents and reporting for the project and the formation of a subsidiary corporation (JCEDC Loew's LLC, a New Jersey limited liability company) to serve as a minority member of the Applicant. The creation of the subsidiary will allow for direct oversight of the project development and operations as a member in the Project entity, with the right to consent to certain major decisions undertaken by Business Entity in connection with the rehabilitation or operations of the Theater. Additionally, financial support from the City or the Jersey City Redevelopment Agency, including any City financing, will be contributed to the project by the Co-Applicant as equity instead of debt, which will alleviate the financial burden of the Project incurring long-term debt which could result in the Project not being commercially viable or creating a potential tax-exempt property concern. Additionally, in the Participation Agreement, the Co-Applicant commits to promoting and marketing the theater to expand the number of customers and to provide additional information to customers. The Participation Agreement specifically identifies the co-applicant's social media platforms and multi-media campaigns that will include highlights of Jersey City's artist community and award-winning food establishments, which the customers can patronize, as well as co-applicant's intent to produce a documentary of the construction and development of the theater.

**Project Location**

54 Journal Square Plaza, Jersey City, NJ 07306

**Project Name**

Loews Jersey Theater Rehabilitation Project

**Project Description**

The proposed Loew's Theatre Rehabilitation Project involves a complete historic rehabilitation of the existing historic theatre for use as a live performance, movie theatre, and entertainment venue. The newly rehabilitated theater will be a state-of-the-art, 21st century event space that will enhance the cultural, artistic, and community vibrancy of the Journal Square district which is anticipated to further economic development in the neighborhood. Upon completion, the theatre is anticipated to host around 150 events a year, in addition to several community programming events. Although applicants for the HPRP are not required to maintain certain employment levels, it is estimated that the project will create 117 permanent jobs and 640 temporary jobs during construction.

The project includes the building's exterior, all public spaces, stage and support spaces, and modifications and upgrades to the mechanical, electrical, and plumbing systems. In addition, a new three-bay loading dock will be added at the rear of the theater, and a café is to be added along the south alley. Significant finishes at the interior and exterior will be rehabilitated or replicated where damaged beyond repair. All work is being reviewed by the Jersey City Historic Preservation Commission, the New Jersey Historic Preservation Office, and the National Park Service, and will follow the Secretary of the Interior's Standards for Rehabilitation of Historic Structures.

**Transformative Project Requirements**

In addition to general eligibility requirements under the Program, a project that applies as a transformative project is required to meet additional historic designation and geographic requirements, and must demonstrate that it will generate substantial increases in State revenues through the creation of increased business activity within the surrounding area.

*Historic Designation Requirement* – In order to meet the Program's definition of transformative property, a property must be individually listed in the New Jersey Register or Historic Places and must have received a Determination of Eligibility (DOE) from the Keeper of the National Register of Historic Places prior to the enactment of the Act on January 7<sup>th</sup>, 2021. The Loew's Jersey Theatre was individually listed in the New Jersey Register of Historic Places on August 15<sup>th</sup>, 1985, and received a DOE from the Keeper on October 17<sup>th</sup>, 1985.

*Geographic Requirement* – All transformative properties must be located within a one-half mile radius of the center point of a transit village, as designated by the NJDOT and within a city of the first class, OR located within a government-restricted municipality. The Loews Jersey Theater Rehabilitation Project is located in a city of the first class (Jersey City), and within a one-half mile radius of the center point of the Journal Square/Jersey City Transit Village, as designated by NJDOT.

*Increase in State Revenue* – A Fiscal Impact Analysis submitted by the Applicant shows that the construction of the Project is estimated to contribute \$4.0 million in one-time tax impacts for the State of New Jersey. The report further shows that at full build-out, Project operations are estimated to generate \$1.5 million in State tax revenue each year, and visitor spending estimated to generate \$3.4 million in annual tax revenue for the State of New Jersey.

**Previously Awarded Incentives**

The NJEDA has not previously provided incentives for this site or any other project submitted by the applicant (Jersey City Loew's QALICB, LLC).

**Selected Rehabilitation Period and Project Schedule**

The selected rehabilitation period is the period starting on the date the rehabilitation agreement is executed during which, or parts of which, a rehabilitation is occurring. At application the applicant must select either a 24-month or a 60-month selected rehabilitation period based on whether the project will be completed as a single phase or in distinct phases set forth in the project's plans and specifications, respectively. The selected rehabilitation period ends at the earlier of either 24 or 60 months, respectively, or the issuance of the final temporary certificate of occupancy or equivalent.

Documentation submitted as part of the HPRP application for the Loew’s Theatre Rehabilitation Project indicate that the Project will be conducted in two distinct phases. Therefore, Applicant will have a selected rehabilitation period of up to sixty (60) months to complete the Project. Specifically, the schedule submitted with the application shows a Project duration of six hundred seventy-three (673) workdays. Based on this schedule, if the Rehabilitation Agreement were executed in first quarter of 2023, the phase 1 projected completion date would be during the fourth quarter of 2023, and projected Project completion date would be in the fourth quarter of 2025.

**EVALUATION OF APPLICATON**

**Scoring Criteria**

All applications submitted under the program are reviewed and scored based on preestablished scoring criteria. The criteria focus on five (5) main themes: Historic Significance, Imminent Threat to Historic Resource, Project Concept and Team, Status of Site Control, and Impact on the Surrounding Neighborhood. These criteria have been used to set a required minimum score for reviewed rehabilitation projects and to allocate tax credits in circumstances where the requests for tax credits exceed the annual maximum cap established by the statute. To receive a tax credit award, a business entity’s application must receive a minimum score of 50 out of 100. The minimum score ensures that proposed rehabilitation projects receiving tax credits are consistent with the objectives, goals and principles of the HPRP, even in instances where the program is undersubscribed.

The Loews Jersey Theater Rehabilitation Project application was reviewed and scored by a committee comprised of a multidisciplinary team of professionals with experience in the fields of historic preservation, construction, and project management. The five (5) members of the committee included NJEDA staff, as well as professional staff from DEP’s Historic Preservation Office, and DCA’s NJ Historic Trust. Once individual score sheets from all selection committee members were received, the scores were averaged. The Applicant received a score of 66.3 of out of a possible 100, therefore surpassing the required minimum score of 50.

**Underwriting Review**

Underwriting concludes that the Applicant has adequate and bona fide sources of funding to cover all project costs and there is a reasonable expectation these sources of funding will be available to complete the project. The Applicant has also illustrated the wherewithal to meet the minimum 20% equity contribution requirement of the program.

<b>Uses</b>	<b>Total Amount</b>
Construction & Site	\$ 85,090,155
Financing & Soft Costs	\$ 11,256,938
Contingency	\$ 10,785,404
Developer Fee	\$ 3,663,994
<b>Total</b>	<b>\$110,796,491</b>

<b>Sources of Financing</b>	<b>Amount</b>
Construction/Bridge Loan: Up to \$53.6 million. \$44.2 million represents the projected amount needed to complete the capital stack.	\$ 44,247,262
Public Space Funds (Hudson County Open Space Trust Fund grant)	\$ 500,000
New Markets Tax Credits	\$ 3,888,300
JCRA Lease Revenue Bonds	\$ 9,405,778
<b>Equity:</b>	
JCRA/City Contribution	\$ 7,500,000
Operator Contribution	\$ 7,500,000
City Contribution	\$ 33,000,000
Federal Historic Tax Credits	\$ 4,755,151
<b>Total</b>	<b>\$110,796,491</b>

Goldman Sachs has provided a term sheet for a proposed construction loan up to \$53.6 million. The loan will be repaid from the proceeds derived from the sale of the EDA’s Historic Property Reinvestment Program Tax Credits and a portion of the Federal Historic Tax Credits. Note that the loan is sized based on the bank’s assessment of credit risk mitigated by all sources of repayment including tax credit sales proceeds, support from guarantors, required collateral, construction guarantees, fees, and other customary lending conditions.

Additionally, the Applicant has demonstrated a financing gap. EDA staff has reviewed the application to determine if there is a shortfall in the project development economics pertaining to the return on the investment for the Applicant and its ability to attract the required investment for this project. Staff analyzed the pro forma and projections of the project and compared the returns with and without the EDA’s incentive over 11.5 years (approximately 1.5 years to complete project and 10 years of cash flow).

Without EDA Incentive	With EDA Incentive
Equity IRR N/A	Equity IRR -15.81%

The IRR on this project with the EDA’s incentive is projected to be negative reflecting the fact that the City’s intent in contributing funds for use as equity is not to generate a positive financial return. The primary purpose of this project is to convert an underutilized asset owned by the City into a facility that benefits its residents. In addition, the IRR without the EDA incentive is shown as “not applicable” as the credits when received will be sold to an investor all at once and 100% of the proceeds will be used to repay the Goldman construction/bridge loan. This fact is more representative of a project funding gap meaning if not for the credits, the applicant would not have access to Goldman’s loan (or any other lender financing contingent upon the credits) to partially finance the construction costs and the project would not have proceeded. Nonetheless, staff’s review of the Applicant’s pro forma shows that the activity of the theater will generate enough income to cover all operating expenses, including rent to be paid to the City.

**With the benefit of the EDA’s incentive, the Equity IRR is (15.81%) which is below the Hurdle Rate Model provided by EDA’s contracted consultant Jones Lang LaSalle which indicates a maximum IRR of 11.34% for a Historic Preservation project located in Jersey City.**

Finally, our review of the third-party independent feasibility analysis was satisfactory. That feasibility study concluded that the projected cash flow, sources of income, and underlying assumptions were reasonable.

### **Other Reviews**

In addition to the review of scoring criteria items and underwriting review of financial documents, NJEDA staff conducted a number of additional reviews to confirm eligibility and compliance with program requirements. These reviews included:

*Application Completeness Review* – The Authority conducted this review to confirm that all required documentation, acknowledgements, and certifications were submitted. The Applicant was required to acknowledge their understanding of program requirements with regards to prevailing wage and affirmative action.

*Sister Agency Review* – The Authority conducted a review to confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, that the Applicant and Co-Applicant are in substantial good standing with the statutes, rules, and other enforceable standards of the respective department.

*Legal Review* – The Authority conducted a review of all relevant legal matters associated with the Applicant and Co-Applicant in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2.

*Project Costs* – The Authority conducted a detailed review of project cost breakdowns that included total Project costs, total and eligible soft costs, and eligible Project costs (eligible construction costs + eligible soft costs). Additionally, the Authority reviewed the Project’s estimated costs per phase, including soft costs. The review verified that all costs seemed appropriate and that only eligible costs are used to calculate the maximum tax credit amount for the project.

*Proposed Project Schedule* – The Authority reviewed the submitted proposed project schedule and confirmed that work proposed could reasonably be completed within the 60-month selected rehabilitation period for the project. The review also concluded that the proposed project schedule for each phase was reasonable.

## **AWARD CALCULATION**

The Historic Property Rehabilitation program awards are calculated based on a percentage of the cost of rehabilitation (eligible costs), with actual percentages dependent on the type of property (e.g., whether it is a qualified property or a transformative property), and on location of the project. Most eligible projects can receive tax credits worth up to 40% of eligible costs with a project cap of \$4 million for qualified properties. Eligible projects located within a qualified incentive tract or in government-restricted municipalities can receive tax credits worth up to 45% of eligible project costs with a project cap of \$8 million for qualified properties. Transformative projects can receive tax credits worth up to 45% of eligible project costs with a project cap of \$50 million.

Under the program, eligible costs are defined as the consideration given, valued in money, whether given in money or otherwise, for the materials and services which constitute the rehabilitation. It includes such parts of a building as walls, partitions, floors, and ceilings, as well as any permanent coverings therefor such as paneling or tiling; windows and doors; all components (whether in, on, or adjacent to the building) of a central air conditioning or heating system; plumbing and plumbing fixtures; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators, including all components thereof; sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building. However, eligible costs do not include any costs associated with an increase in total building volume.

The Loews Jersey Theater Rehabilitation Project meets the program's requirements for a transformative project, therefore award calculation is based on 45% of the project's eligible costs as defined by the program rules. When the Applicant successfully completes a phase of this Project, the Authority will issue a certificate of compliance allowing the Applicant or Co-Applicant to use a designated portion of the tax credit during the accounting or privilege period in which the phase is completed. A phase will be considered complete when the Applicant receives a temporary certificate of occupancy for the phase, or upon any other event evidencing phase completion that is set forth in the rehabilitation agreement. The amount allowed in each certificate of compliance cannot exceed the maximum amount approved by the Board for that phase.

With an understanding of the numerous unknowns inherent with rehabilitation work in historic structures, the program application process allows for an applicant's estimate for eligible construction costs to include a construction contingency. All cost estimates submitted, including construction contingency, are thoroughly reviewed and validated by the Authority staff as part of the application review process.

While the construction contingency associated with eligible construction costs is added to the overall eligible costs for the purpose of calculating maximum tax credit awards, this "eligible cost contingency" will only be utilized for final tax credit award calculations when a modification request meeting all applicable requirements pursuant to N.J.A.C. 19:31-26.7 has been reviewed and approved by the Authority prior to any modification of work. Unless otherwise specified and justified by the Applicant, the eligible cost contingency will be prorated between project phases for projects.

The Applicant for the Loews Jersey Theater Rehabilitation Project submitted a request and justification for a small modification to the prorated division of the eligible cost contingency to account for the level of testing and investigation that has already been conducted to support Phase 1 work, and a higher level of potential unforeseen conditions to be encountered during the much larger and more complex Phase 2. NJEDA staff has reviewed the Applicant's request and finds it to be appropriate and reasonable. Costs shown in the "Award Breakdown by Phase" table below therefore represent the Applicant's requested contingency allocation.

A summary of the award calculations for the project is included in the tables below. Ineligible construction costs consist of costs associated with any project site work, furniture or any improvement not permanently attached to the interior or exterior of the structure, as well as all costs associated with an increase in total building volume]. Ineligible soft costs consist of early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs.

<b>Award Calculation Summary</b>	
Total Construction Costs	\$85,090,155.00
Total Soft Costs	\$14,920,932.00
Site Acquisition Costs	\$0.00
Other Costs	\$10,785,404.00
<b>Total Cost of Rehabilitation</b>	<b>\$110,796,491.00</b>
Total Eligible Construction Costs	\$72,994,265.00
Eligible Soft Costs	\$11,900,435.00
Construction Contingency	\$9,044,322.00
Cost of Rehabilitation (Eligible Costs)	<b>\$ 93,939,022.00</b>
Transformative Project Rate of 45%	<b>\$42,272,559.90</b>
Adjustment for Maximum Project Cap	<b>-\$0.00</b>
<b>Tax Credit Amount (Not to Exceed)</b>	<b>\$42,272,559.90</b>

<b>Award Breakdown by Phase</b>				
	<b>Eligible Construction Costs</b>	<b>Construction Contingency for Phase*</b>	<b>Eligible Soft Cost</b>	<b>Tax Credit Award (NTE)</b>
Phase 1	\$816,312.00	\$40,815.61	\$133,085.36	\$445,595.83
Phase 2	\$72,177,953.00	\$9,003,506.40	\$11,767,349.64	\$ 41,826,964.07
<b>Tax Credit Amount (Not to Exceed)</b>				<b>\$42,272,559.90</b>

\* The construction contingency can be calculated into a tax credit award only if a modification request meeting all applicable requirements has been reviewed and approved by the Authority prior to any modification of work.

### **APPLICABLE DEADLINES**

Jersey City Loew's QALICB, LLC shall have 12 months after the date of Board approval to satisfy all requirements outlined in the Approval Letter and to enter into a Rehabilitation Agreement with the NJEDA. The selected rehabilitation period for the project will commence upon execution of the agreement.

Applicant shall have up to five years from the execution of the Rehabilitation Agreement to complete rehabilitation work on the project. Unless the Applicant is granted a time extension by the NJEDA, satisfactory evidence of phase completion and satisfaction of program eligibility requirements relevant to each phase shall be submitted by the Applicant no later than 12 months following completion of each phase identified in the Rehabilitation Agreement.

### **CONDITIONS OF APPROVAL**

Staff recommend that the award include the following conditions of approval:

1. Copy of site plan approval from permitting entity authorizing the development of the Project, and a copy of all required planning and zoning approvals and permits, and any other required permits;
2. Copy of executed financing commitments for the Project. If the terms of the financial commitments are materially different from the projected terms provided in the application, the Authority may re-evaluate the project financing gap and reduce the size of the tax credit award accordingly.

3. Documentation evidencing that Applicant or Co-Applicant has control of the site of the Transformative Property. Because the Applicant is a tenant, a copy of the executed lease (or, if a sub-lessee, then a copy of the sublease and lease) must be provided, and the term of the lease (including renewal options) must extend continuously through the end of the compliance period.
4. An executed Participation Agreement between Applicant and Co-Applicant with a term that extends until the end of the compliance period.
5. A certification that no construction will commence at the Property prior to execution of the Rehabilitation Agreement unless it meets an exception contained in NJAC 19:31-26.3(a)(4).

**PROGRAM ANNUAL CAP AMOUNT**

The HPRP is capped at \$50 Million per year with the option to roll-over unused funding in any given year to the following year. The first round of funding for the program (\$50 Million) became available on July 1<sup>st</sup>, 2021, as part of the 2022 State Fiscal Year. Available program funding breakdown, including recommended award covered in this memorandum, is as follows:

<b>HPRP – Program Funding Breakdown</b>			
	<b>Funding Added</b>	<b>Funding Committed</b>	<b>Remaining Balance</b>
Funding – Fiscal Year 2022	\$50,000,000.00		\$50,000,000.00
2022 – Transformative Projects Application Window		\$42,272,559.90	\$7,727,440.10
Funding – Fiscal Year 2023	\$50,000,000.00		\$57,727,440.10
2022 – Regular Projects Application Window ( <i>Applications Under Review</i> )			
	<b>Remaining Program Balance:</b>		<b>\$57,727,440.10</b>

**REQUEST**

The Members are requested to approve a proposed Historic Property Reinvestment tax credit award to Jersey City Loew’s QALICB, LLC for the Loews Jersey Theater Rehabilitation Project. The tax credit award is 45% of actual eligible costs with a maximum tax credit amount \$42,272,559.90, with the final award amount based on the Project’s actual eligible costs.

This award is contingent on the final adoption and publication of the Historic Property Reinvestment tax credit regulations. The recommended tax credit award is also subject to conditions subsequent to receive and maintain the award. Staff is authorized to reduce the award amount to match the actual certified cost of rehabilitation (eligible costs) at the conclusion of each approved Project phase.




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Tim Sullivan, CEO

Attachments:

Appendix 1: Project Summary

Appendix 2: Confidential Memorandum of Analysis



## Appendix 1: Project Summary

### General Project Information

Project Name	Loews Jersey Theater Rehabilitation Project
Business Entity (Applicant)	Jersey City Loew's QALICB, LLC
Co-Applicant	Jersey City Economic Development Corporation
Historic Name	Loew's Jersey Theatre/Loews Theatre
Type of Project	Transformative
Residential/Commercial	Commercial
Selected Rehabilitation Period	60 Months
Number of Phases	2

### Project Costs & Award

Total Project Cost	\$110,796,491.00
Eligible Costs	\$93,939,022.00
%	45%
Applicable Maximum Award Cap	\$50,000,000.00
Maximum Approved Tax Credit Award	\$42,272,559.90

### Project Location & Current Condition

County	Hudson
Municipality	Jersey City
Special Location Consideration	City of the 1st Class and within 1/2 Mile of DOT Transit Village
Current Occupancy Condition	Non-Vacant

### Jobs

Projected Temporary Jobs	640
Projected Permanent Jobs	117

### Historic Designations

- National Historic Landmark
- National Register of Historic Places
- New Jersey Register of Historic Places
- New Jersey Pinelands Commission Designation
- Certified Local Government Designation

### Neighborhood Impact & Support

- Proposed use will meet a currently unmet need
- Project has local community support

### Application Review & Scoring

Number of Applications Received in Round	1
Application Ranking	1
Selection Committee Final Average Score	66.3



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** Proposed New Rules for the  
Brownfields Redevelopment Incentive Program (Sections 9 through 19 of P.L. 2020 c.  
156)

### Request

The Members are asked to approve:

1. The attached special adopted new rules and concurrent proposed new rules for the new Brownfields Redevelopment Incentive Program (Appendix A) 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. Delegation of authority to the CEO and/or his/her subdelegates in accordance with the Authority's Delegation Policy to:
  - to establish a date/s for the availability of the application and the date/s by when applications must be submitted on an annual basis;
  - to add the Brownfields Redevelopment Incentive Program to existing delegated authority for certain minor administrative changes and for extensions to conditions of approval; and
  - to approve up to four six-month extensions to the dates by when a progress report or an annual report is due, when the redevelopment project must be completed, and when the documents evidencing completion of remediation and the redevelopment project must be submitted.

3. The creation of the Brownfields Redevelopment Incentive Program, as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 9 through 19 of P.L. 2020, c. 156 and later amended by Sections 5 through 10 of P.L. 2021 c.160), to incentivize developers of redevelopment projects located on brownfield sites for remediation costs by providing tax credits in an amount based on a percentage of the project's eligible costs, subject to final adopted rules.

### **New Jersey Economic Recovery Act**

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c.156 (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; and
- Additional tax credits for film and digital media.

On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 amending P.L. 2020, c.156 and further improving the programs established under the ERA.

The program being presented for the Members' approval in this memorandum is the Brownfields Redevelopment Incentive Program – one of the 15+ programs under the ERA. The Brownfields Redevelopment Incentive Program (BRIP) is a tax credit program to encourage investment in remediating brownfields throughout New Jersey in order to prepare these sites for redevelopment and community development.

This memorandum provides a summary about the BRIP including program limits, eligibility criteria, specific program requirements, application process, and general details about the program. 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 BRIP focuses on remediating brownfields as a component of community development, encouraging long-term private investment into the State while cleaning up properties that are former or current

commercial or industrial sites that are currently vacant or underutilized and on which there has been, or there is suspected to have been a discharge of a contaminant or on which there is contaminated building material. The amount of tax credits a redevelopment project receives is a percentage of the project's eligible remediation costs, subject to a statutory cap determined by the location of the property. The overview provided here highlights key aspects of the program. Additional program details are included in the sections below, and full program details are contained in the draft rules (attached), scoring document (attached), reasonable and appropriate return on investment (attached), and the statute.

To be eligible for the BRIP, a project must meet various eligibility criteria at the time of application. For example, the applicant must:

- Demonstrate and certify that the project site is a brownfield site.
- Provide a letter of support from the governing body
- Demonstrate at time of application that without the tax credit, the redevelopment project is not economically feasible.
- Prove that a project financing gap exists, and the tax credit award being considered for the project is equal to or less than the project financing gap.
- Certify that the applicant is not in any way responsible or liable for the contamination and is not a corporate successor to the discharger.
- Not have commenced any remediation, unless the full extent of contamination could not reasonably have been known prior to commencing remediation. (Assessment and investigation prior to application are allowed.)
- Contribute equity that equals at least 20 percent of the total cost of remediation, or if located in a government-restricted municipality or qualified incentive tract, the equity shall be at least 10 percent of the total cost of remediation.
- Provide estimates for remediation costs that are reasonable and appropriate. Remediation costs will be reviewed by the New Jersey Department of Environmental Protection (DEP) prior to EDA board approval.

Projects under the BRIP are subject to an annual program cap of \$50 million, for a total of \$300 million for a period of six years. Annual unused amounts may be included in the amounts available for approval in the subsequent year.

The BRIP is a competitive program, under which developers must apply within a defined application window, with all applications to be considered following the closure of the application period. The Authority, on an annual basis, will establish a date for the availability of the application and a date by when applications must be submitted. Awards are scored on a competitive basis.

The BRIP awards are calculated based on a percentage of the remediation costs (eligible costs). Most eligible projects can receive tax credits worth up to 50% of eligible costs up to a project cap of \$4 million. Eligible projects located within a Qualified Incentive Tract or in Government-Restricted Municipalities can receive tax credits worth up to 60% of eligible project costs up to a project cap of \$8 million.

In addition to meeting the program eligibility, the developer 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 developer may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The eligible developer must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, the developer will be required to provide, prior to execution of a redevelopment agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The BRIP rules also require that the redevelopment project pay prevailing wages for construction work (which includes remediation work) for the duration of the project, as well as pay prevailing wages for building service workers for until 10 years following the completion of the redevelopment project.

**Some of the areas described above are outlined in greater detail further in this board memorandum and in the attached rule proposal.**

### **Eligibility Criteria**

The following highlights key requirements for the BRIP. Full eligibility details are contained in the draft proposed rules in section N.J.A.C. 19:31-27.3, based on P.L. 2020, c.156, Sections 9 through 19 as amended by Sections 5 through 10 of P.L. 2021 c.160. To be eligible, a project must meet the definition of a redevelopment project and meet various eligibility criteria at application, which the Board ascertains when the project is presented to the Board, at the completion of remediation, when the developer must submit certifications evidencing satisfaction of the completion of remediation to DEP and to the Authority, and at project completion (if the project includes post-remediation redevelopment), when the developer must submit certifications evidencing satisfaction of BRIP requirements and conditions to EDA.

### **Redevelopment Project**

Redevelopment project means a specific construction project or improvement undertaken, pursuant to the terms of a redevelopment agreement, by a developer within an area of land whereon a brownfield site is located. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved. Redevelopment projects shall include a project that consists solely or primarily of remediation costs.

### **Brownfields**

Brownfield site means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is contaminated building material. The BRIP definition includes contaminated building material so demolition, asbestos, and contaminated paint and wood will also be eligible for this program.

### Eligible Activities

Eligible remediation costs include soil and groundwater investigation, site remediation, hazardous materials assessment and survey, hazardous materials or waste disposal, infrastructure remedial activities (fences, warning signs, site control, and drainage control), and building and structural issues for demolition, asbestos removal, PCB removal, contaminated wood, or contaminated paint removal. In addition, DEP site remediation program fees and DEP permit fees are eligible. Environmental assessment and investigation costs incurred up to 24 months prior to the application date are the only eligible pre-application costs for this program.

Ineligible costs include acquisition of the brownfield property, financing of the property, legal fees, incentive consultant fees, Authority fees and penalty or violation fees.

Only remediation costs are eligible for the tax credits for the BRIP. Subsequent redevelopment project costs, such as vertical construction costs that are not associated with remediation, are not considered eligible costs.

### Economic Feasibility

The developer must demonstrate at time of application that without the tax credit, the redevelopment project is not economically feasible. Financial information on the redevelopment project, must include, but is not limited to, any Federal, State, or local financial assistance for the project, proposed terms of financing, purchase contract agreement for the brownfield site, projected reasonable and appropriate return on investment, and any other documentation needed to demonstrate status of economic feasibility.

### Project Financing Gap (including the Reasonable and Appropriate Rate of Return)

Given that the BRIP is intended to incentivize redevelopment projects that would not be possible without the BRIP tax credits, the statute requires that a project must demonstrate the existence of a project financing gap in order to be eligible for tax credits under this Brownfields Redevelopment Incentive Program.

This means that the project must demonstrate that there is part of the total remediation cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total remediation cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources; provided, however, that for a redevelopment project located in a Government-Restricted municipality or Qualified Incentive tract, the developer contributed capital shall not be less than 10 percent of the total remediation cost.

The project financing gap analysis shall include, but not be limited to, an evaluation of the total cost of remediation, amount of capital sufficient to complete the remediation, and reasonable and appropriate return on investment.

The reasonable rate of return will be evaluated utilizing the Authority's current hurdle rate model, as it may be updated from time to time (Appendix B).

If within four years of completion of the redevelopment project, a developer sells, leases, or subleases the brownfield site then the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the project's final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the developer to pay up to 20 percent of the amount of the excess, and such funds shall be deposited in the State General Fund.

### Project Equity

Equity means developer contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and tax credits. Equity shall not include State grants or tax credits.

### Minimum Environmental and Sustainability Standards

Minimum environmental and sustainability standards mean standards established by the Authority 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, regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction.

Staff is developing Minimum Environmental and Sustainability Standards (such as Demolition Recycling/Soil Reuse/Building) for this program. Developers will prepare a plan on how to implement the minimum environmental sustainability standards for their redevelopment project.

### Project Scoring

The Authority has established scoring criteria for the evaluation of proposed redevelopment projects. These criteria will be used to set a minimum acceptable score for reviewed redevelopment projects and to allocate tax credits in circumstances where the requests for tax credits exceeds the annual maximum cap established by the statute.

As required by the statute, applicants must be reviewed through a competitive application process. Based on the statute imposed annual cap for the BRIP, as well as data reviewed from other states with brownfield tax credits programs, staff anticipate that there is a possibility for the program to be oversubscribed. If the volume of BRIP tax credit award requests is less than currently anticipated, resulting in the program to be undersubscribed for any particular year, a minimum score approach to assess whether a proposed redevelopment project is consistent with the objectives, goals, and principles of the BRIP will be utilized.

As this tax credit is issued at the time of completion of the remediation and a developer is not required to

include construction as part of the redevelopment project, no post-remediation redevelopment – whether included as part of the redevelopment project or a vision for the subsequent redevelopment project --will not be included in scoring a project, although site location designations and land use will be a factor.

Because the BRIP statute states that the following factors may be considered, the scoring matrix will evaluate a project's:

- Economic feasibility
- Benefit to the community
- Job creation and economic development
- Reduction of environmental or public health stressors in an overburdened community
- If the board of directors (or partners or members, as applicable) is diverse and representative of the community.

Please refer to Appendix C for the “Brownfields Redevelopment Incentive Program Scoring Criteria” for the specific proposed criteria the Authority will consider in its scoring evaluation of proposed redevelopment projects.

Definitions for “diverse” and “representative of the community” are included in the rules and are specific to this program. The program will consider diversity of the owners and board of directors (or partners or members if no board of directors exist). To receive full points for this category, the applicant will need to include identity self-certification forms, information on the percentage of ownership held by each diverse owner, and an explanation on how the current board members (or partners or members) are representative of the community. NJEDA’s Diversity Equity and Inclusion (DEI) Department, will evaluate and score applications for this category.

### **Post-Approval Process**

After the Board has voted to approve a redevelopment project, the developer must sign an approval letter and subsequently a redevelopment agreement with the terms and conditions to receive the tax credit.

The developer shall not start any remediation or clean up at the site other than the activities disclosed at the time of approval except for work required due to an immediate environmental concern or other emergency that requires the developer to undertake remediation activities.

Upon completion of remediation, the developer must submit satisfactory evidence of the completion of the redevelopment project and satisfaction of the program eligibility requirements. The redevelopment project must demonstrate compliance with eligibility criteria including affirmative action, prevailing wage and certification of completion from the DEP. The developer must also provide the following evidence: (1) certification by the licensed site remediation professional of record for all site remediation work and an appropriate licensed or certified professional that other remedial work is complete, (2) applicant has not defaulted (3) current tax clearance certificate, (4) complied with the terms of the redevelopment agreement, and (5) complied with minimum environmental standards. If the redevelopment project includes redevelopment after remediation (for example, if the redevelopment project includes construction financed together with the remediation), the developer must also submit satisfactory evidence of the completion of the redevelopment project.



There are several scenarios where a tax credit award may be recaptured.

The Authority will recapture and/or the developer will forfeit the tax credit award if the developer has made a material misrepresentation, fails to submit reports on time (without extenuating circumstances or extensions), fails to meet building services and construction prevailing wage requirements, fails to meet sister agency review, and fails to meet other requirements as detailed in the proposed new rules.

In the event of recapture, the Authority shall pursue recapture from the developer, and not from the purchaser or assignee of the tax credit transfer certificate.

### **Rulemaking Process**

The ERA authorizes the Authority to promulgate special adoption rules for the Brownfields Redevelopment Incentive Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 360 days. Additionally, staff requests approval for concurrent publication of the proposed rules, which will include a 60-day public comment process pursuant to the Administrative Procedure Act's 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 information on the Brownfields Redevelopment Incentive Program was available for review and of the opportunity to provide informal input.

The Authority staff convened two virtual public "Listening Sessions", which provided an overview of the Brownfields Redevelopment Incentive Program and the opportunity for the public feedback, on:

- Wednesday, September 7<sup>th</sup>, 2022, at 2:00 p.m.
- Thursday, September 8<sup>th</sup>, 2022, at 1:00 p.m.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website ([www.njeda.com/economicrecoveryact](http://www.njeda.com/economicrecoveryact)) or through the newly established email account ([BFTaxCredit@njeda.com](mailto:BFTaxCredit@njeda.com)) through September 15<sup>th</sup>, 2022.

### **Chief Compliance Officer Certification of Draft Rule Proposal**

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer (CEO) 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."

Jignasa Desai-McCleary has been designated the CCO. In that capacity, Ms. Desai-McCleary has reviewed

the proposed rules and regulations for the Brownfields Redevelopment Incentive 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**

The fee structure as outlined below is also included in the proposed new rules. Prior to establishing the proposed fee structure for this program, Authority staff conducted an internal review to estimate the likely administrative costs to the Authority to administer the Brownfields Redevelopment Incentive Program. This review considered areas cross- organizationally where the Brownfields Redevelopment Incentive Program may require staff time, and the estimated percentage of staff time that would be required.

Fees are determined on a tiered basis based on a project’s total cost of remediation as a reasonable proxy for the complexity of a project and, therefore, the administrative expense and staff time required to evaluate the application. The two tiers are those projects with total cost of remediation \$5 million and under, and those with total cost of remediation over \$5 million.

The proposed rules specify the following tiered fees for the Program:

Fee Type	<u>Project Size</u> Up to \$5MM	<u>Project Size</u> > \$5 MM
Application Fee	\$2,000	\$7,000
Approval Fee	\$5,000	\$15,000
Tax Credit Issuance Fee	\$5,000	\$15,000
Transfer/Pledge/Assignment Fee (initial request)	\$5,000	\$7,500
Transfer Fee/Pledge/Assignment (additional request)	\$2,500	\$2,500
Minor Modifications and Extensions that do not require Board approval	\$2,500	\$5,000
Major Modifications and Extensions which require Board Approval	\$5,000	\$10,000
Extensions that do not require Board approval	\$2,500	\$5,000
Extensions that do require Board approval	\$7,500	\$15,000

## **Extensions**

Because brownfield remediations have a greater risk of schedule delays due to the inherent uncertainties that impact timing and because the statute does not impose a specific deadline on the completion of the redevelopment project, staff is requesting delegated authority for the CEO to approve up to four six-month extensions, consistent with the Authority's Delegation Policy, to various deadlines. Under this delegated authority, the CEO, and/or his subdelegates may approve up to four six-month extensions for the progress reports and annual reports, for the completion of the redevelopment project, and for submission of documents evidencing the completion of remediation and (for projects that include post-remediation redevelopment) the redevelopment project. Additional extension requests will be presented to the Board.

Additionally, staff is requesting the addition of this program to the existing incentive delegated authority for certain minor administrative changes and for extensions to conditions of approval.

## **Reports on Implementation of Program**

On or before December 31, 2022, and every two years thereafter, a State college or university shall prepare a report on the implementation of BRIP which will include program data regarding the effectiveness of the tax credit awards in promoting the redevelopment of the brownfield properties. The report will include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each redevelopment project to the factors set forth in sections 12 and 13 of P.L. 2020, c. 156, the return on investment for incentives awarded, the redevelopment projects and subsequent redevelopment project impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. This report will be submitted to the Authority, Governor, and Legislature. The Authority will prepare a written response to the report which will be submitted to the Governor and Legislature.

## **Recommendation**

The Members are asked to approve:

1. The attached special adopted new rules and concurrent proposed new rules for the new Brownfields Redevelopment Incentive 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. Delegation of authority to the CEO and/or his/her subdelegates in accordance with the Authority's Delegation Policy to:
  - to establish a date/s for the availability of the application and the date/s by when applications must be submitted on an annual basis;
  - to add the Brownfields Redevelopment Incentive Program to existing delegated authority for certain minor administrative changes and for extensions to conditions

- of approval; and
  - to approve up to four six-month extensions to the dates by when a progress report or an annual report is due, when the redevelopment project must be completed, and when the documents evidencing completion of remediation and the redevelopment project must be submitted.
3. The creation of the Brownfields Redevelopment Incentive Program, as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 9 through 19 of P.L. 2020, c. 156 and later amended by Sections 5 through 10 of P.L. 2021 c.160), to incentivize developers of redevelopment projects located on brownfield sites for remediation costs by providing tax credits in an amount based on a percentage of the project's eligible costs, subject to final adopted rules.



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Tim Sullivan, CEO

Prepared by: Elizabeth Limbrick

Attachments:

Appendix A – Proposed New Rules – Brownfields Redevelopment Incentive  
Appendix B – Reasonable and Appropriate Return on Investment  
Appendix C – Brownfields Redevelopment Incentive Scoring Criteria

**OTHER AGENCIES**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Authority Assistance Programs**

**Brownfields Redevelopment Incentive Program**

**Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 19:31-27**

Filed: \_\_\_\_\_

Authority: P.L. 2020, c. 156; P.L. 2021, c. 160.

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

Concurrent Proposal Number: PRN 2022-\_\_\_\_.

Effective Date:

Expiration Date:

Submit written comments by \_\_\_\_\_, 202\_, to:

Alyson Jones, Director of Legislative and Regulatory Affairs  
New Jersey Economic Development Authority  
PO Box 990  
Trenton, NJ 08625-0990  
[ajones@njeda.com](mailto:ajones@njeda.com)

**Summary**

As set forth at proposed N.J.A.C. 19:31-27.1, the Brownfields Redevelopment Incentive Program (“Program”) is established as a program under the jurisdiction of the New Jersey Economic Development Authority (“Authority or EDA”). The purpose of the Program is to provide tax credits to developers of redevelopment projects located on brownfield sites for a percentage of remediation costs. The total value of tax credits approved by the Authority shall not exceed the limitations set forth in section 98 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

The Program focuses on remediating brownfields as a component of community development, encouraging long-term private investment into the State while cleaning up properties that are former or current commercial or industrial sites that are vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is contaminated building material. The amount of tax credits a

## Appendix A

redevelopment project receives is a percentage of the project's eligible costs, subject to a statutory cap determined by the location of the property.

To be eligible for the Program, a project must meet various eligibility criteria at the time of application, including:

- Demonstrate and certify that the project site is a brownfield;
- Provide a letter of support from the governing body;
- Demonstrate at time of application that without the tax credit, the redevelopment project is not economically feasible;
- Prove that a project financing gap exists and the tax credit award being considered for the project is equal to or less than the project financing gap;
- Certify that the applicant is not in any way responsible for the contamination and is not a corporate successor to the discharger;
- Not have commenced any remediation, unless the full extent of contamination could not reasonably have been known prior to commencing remediation;
- Contribute equity that equals at least 20 percent of the remediation costs or, if located in a government-restricted municipality or qualified incentive tract, at least 10 percent of the remediation costs;
- Provide estimates for remediation costs that are reasonable and appropriate as determined by the New Jersey Department of Environmental Protection ("Department" or "DEP").

In addition to meeting the program eligibility, the developer must be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Division of Taxation within the Department of Treasury or have a practical corrective action plan.

This is a competitive program, under which projects must apply within a defined application window, with all applications to be considered following the closure of the application period. The Authority, on an annual basis, will establish a date for the availability of the application and a date by when applications must be submitted. The Program awards will be calculated based on a percentage of the cost of remediation.

The Program rules also require that the redevelopment project pay prevailing wage for the duration of the project, as well as for building services for a period of 10 years following the completion of the redevelopment project.

The following paragraphs summarize the contents of each section of the new rules implementing the Brownfields Redevelopment Incentive Program:

N.J.A.C. 19:31-27.2 sets forth the definitions used throughout the Program rules.

N.J.A.C. 19:31-27.3 sets forth the eligibility criteria for participation in the Program, including how the Authority shall review the proposed total cost of remediation, evaluate, and validate the project financing gap estimated by each developer applying for a tax credit award;

## Appendix A

and that the Authority shall not approve a developer or enter into a redevelopment agreement with a developer unless the developer demonstrates to the satisfaction of DEP that neither the developer nor any affiliate discharged a hazardous substance at the brownfield site, is in any way responsible for the hazardous substance, is a corporate successor to the discharger, or to any person in any way responsible for the hazardous substance, or to anyone liable for cleanup and removal costs. Further, a redevelopment project that received a reimbursement pursuant to the Hazardous Discharge Site Remediation Program, sections 34 through 39 of P.L.1997, c.278 (N.J.S.A. 58:10B-26 through -31), shall not be eligible to apply for a tax credit under the program.

N.J.A.C. 19:31-27.4 sets forth the Program application requirements.

N.J.A.C. 19:31-27.5 sets forth the fees for the Program.

N.J.A.C. 19:31-27.6 sets forth the process for reviewing applications, allocating tax credits to eligible projects, the Board approval process, and collaboration with the Department.

N.J.A.C. 19:31-27.7 sets forth the tax credit award amounts and limits. If the Authority approves less than the total amount of tax credits authorized pursuant to this section in a fiscal year, the remaining amount plus any amounts remaining from previous fiscal years shall be added to the limit of subsequent fiscal years. The Authority shall award tax credits to redevelopment projects until either the available tax credits are exhausted or all redevelopment projects that are eligible receive a tax credit, whichever occurs first.

N.J.A.C. 19:31-27.8 sets forth the contents and requirements of the approval letter issued to awardees of the program. The Board shall determine whether or not to approve the application. If approved, the Board shall determine the maximum amount of the tax credit award and the maximum percentage of remediation costs that will be used to calculate the tax credit award.

N.J.A.C. 19:31-27.9 sets forth the contents and requirements of the redevelopment agreement. With limited exceptions, neither the developer nor any affiliate shall start any remediation or clean up at the site other than the activities disclosed and approved at the time of approval except for work required due to an order or other written requirement from an official with jurisdiction over the site or the redevelopment project to correct an immediate environmental concern or a health, safety, or other hazard that requires the developer or an affiliate to undertake remediation.

N.J.A.C. 19:31-27.10 sets forth the process and requirements related to redevelopment project modifications and extensions. Modifications and extensions shall not increase the amount of the tax credits awarded.

N.J.A.C. 19:31-27.11 sets forth the reporting requirements of the Program including progress reports and annual reports.

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N.J.A.C. 19:31-27.12 sets forth the requirements for a developer to obtain a certification of completion of remediation from the Department and compliance with the Program to the Authority in order to apply the tax credit awarded against the developer's tax liability for the privilege period.

N.J.A.C. 19:31-27.13 sets forth the requirements for application for tax credit transfer certificate and assignment of a tax credit transfer certificate.

N.J.A.C. 19:31-27.14 sets forth the affirmative action and prevailing wage requirements of the Program.

N.J.A.C. 19:31-27.15 sets forth the process and basis for any reduction, forfeiture, and recapture of tax credits under the program.

N.J.A.C. 19:31-27.16 sets forth the appeal process for the Program.

N.J.A.C. 19:31-27.17 sets forth the requirement for reports on implementation the of Program.

N.J.A.C. 19:31-27.18 sets forth the severability of any section, subsection, provision, clause or portion of the Program rules if adjudged to be unconstitutional or invalid by a court of competent jurisdiction.

### **Social Impact**

The remediation and redevelopment of contaminated sites in communities is a critical component of smart development that provide multiple social benefits, including cleaning up the environment, which protects human health, removing blight, eliminating health and safety hazards, and alleviating concerns from residents. This remediations leads to redevelopment that fosters safer, stronger, and more vibrant communities.

### **Economic Impact**

The Brownfields program will help transform underutilized and contaminated sites into environmentally sound, productive properties. Eligible projects may receive tax credits worth up to 50 percent of eligible costs up to a project cap of \$4 million. Eligible projects located within a Qualified Incentive Tract or in Government-Restricted Municipalities can receive tax credits worth up to 60 percent of eligible project costs up to a project cap of \$8 million. There is an annual program cap of \$50 million for a total of \$300 million for a period of six years. This is particularly important in the redevelopment of areas including New Jersey's most distressed communities, and is vital to achieving a stronger, fairer, greener, and more equitable New Jersey.

### **Federal Standards Statement**

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



### **Jobs Impact**

The EDA anticipates that the new rules will incentivize an indeterminate amount of increased job creation throughout New Jersey immediately and continuing both in remediation and the subsequent and future use of remediated brownfield sites.

### **Agriculture Industry Impact**

The proposed new rules will have minimal impact on the agriculture industry in New Jersey. The impacts to the agricultural industry would be concentrated on former agriculture land that will be remediated and land may be redeveloped for agriculture uses. Additionally, remediating land so that it can be repurposed for other uses will take development pressure off of farmland.

### **Regulatory Flexibility Statement**

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small business, such as consulting companies, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, any costs will be minimal and offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for EDA to more fully cover the costs of the program.

### **Housing Affordability Impact Analysis**

The proposed new rules will have indirect effects on the affordability of housing in New Jersey and may evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. Remediating land so that it can be repurposed for other uses, such as housing, will increase the availability and affordability of housing throughout the State, with a larger impact in urban areas.

### **Smart Growth Development Impact Analysis**

The proposed new rules may have a positive smart growth impact and may increase the number of housing units and may result in a 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. The proposed new rules will continue to prioritize applications for sites that are owned by a municipality in a brownfield development area; and sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act, and have added additional factors for prioritization that are consistent with Smart Growth principles.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed new 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 proposed new rules follows:

## **SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM**

### **19:31-27.1 Applicability and scope**

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (“Authority”) to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the Brownfields Redevelopment Incentive Program Act (“Act”), sections 9 through 19 of P.L. 2020, c. 156, as amended by sections 5 through 10 of P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287). The Act creates the Brownfields Redevelopment Incentive Program under the jurisdiction of the New Jersey Economic Development Authority. The purpose of the program is to provide tax credits to developers of redevelopment projects located on brownfield sites for a percentage of remediation costs. The total value of tax credits approved by the Authority shall not exceed the limitations set forth in section 98 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

### **19:31-.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 “New Jersey Brownfields Redevelopment Incentive Program Act” sections 9 through 19 of P.L. 2020, c. 156, as amended by sections 9 through 19 of P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through -287).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to the Internal Revenue Code of 1986 (26 U.S.C. § 414(c)).

“Authority” means the New Jersey Economic Development Authority established by N.J.S.A. 34:1B-4.

“Authorized agent of the developer” means the chief executive officer or equivalent officer for North American operations of the developer.

“Board” means the Board of the New Jersey Economic Development Authority, established pursuant to N.J.S.A. 34:1B-4.

“Brownfield site” means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant, or on which there is contaminated building material.

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“Building services” means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

“Contaminated building material” means components of a structure where abatement or removal of asbestos, or remediation of materials containing hazardous substances defined pursuant to section 3 of P.L. 1976, 12 c.141 (N.J.S.A. 58:10-23.11b), is required by applicable Federal, State, or local rules or regulations.

“Contamination” or “contaminant” means any discharged hazardous substance as defined pursuant to section 3 of P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L. 1976, c. 99 (N.J.S.A. 13:1E-38), pollutant as defined pursuant to section 3 of P.L. 1977, c. 74 (N.J.S.A. 58:10A-3), or contaminated building material.

“Department” means the New Jersey Department of Environmental Protection.

“Developer” or “applicant” means any person that enters or proposes to enter into a redevelopment agreement with the Authority pursuant to the provisions of N.J.A.C. 19:31-27.9 and section 13 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-281), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

“Director” means the Director of the Division of Taxation in the New Jersey Department of the Treasury.

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Diverse” means being a historically underserved or underrepresented identity within the following categories: race, ethnicity, gender, sexual orientation, disability status, educational attainment, veteran status, nation of origin, and language use.

“Equity” means developer contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the site of the redevelopment project, and any other investment by the developer in the project as deemed acceptable by the Authority. Property value shall be the lesser of either: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and tax credits. Equity shall not include State grants or tax credits.

“Government-restricted municipality” means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban

aid municipality in the 2019 State fiscal year, and that on January 7, 2021, the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the “Municipal Stabilization and Recovery Act,” P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires for the duration of the agreement that: any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

“Licensed or certified professional” means an individual who is licensed or certified in remediation or other activities that are not under the jurisdiction of the “Site Remediation Reform Act,” sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), including but not limited to: contaminated building material abatement or removal; hazardous materials or waste disposal; building and structural remedial activities or other infrastructure remedial activities. Such individuals may include but are not limited to: a New Jersey licensed professional engineer, an Asbestos Hazard Emergency Response Act (AHERA) Inspector, a New Jersey certified lead inspector, an industrial hygienist, or other appropriately qualified and licensed or certified professional.

“Licensed site remediation professional” or “LSRP” means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-7) or the Department pursuant to section 12 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-12).

“Minimum environmental and sustainability standards” means standards established by the Authority 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. The Authority shall publish these standards on its website.

“Program” means the Brownfields Redevelopment Incentive Program established by section 11 of P.L. 2020, c. 156, as amended by sections 5 through 10 of P.L. 2021, c. 160 (N.J.S.A. 34:1B-277).

“Project financing gap” means the part of the total cost of remediation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total cost of remediation, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer contributed capital shall not be less than ten percent of the total cost of remediation.

“Qualified incentive tract” means either a population census tract having a poverty rate of 20 percent or more or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Reasonable and appropriate return on investment” means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits.

“Redevelopment agreement” means an agreement between the Authority and a developer in accordance with N.J.A.C. 19:31-27.9 under which the developer agrees to perform any work or undertaking necessary for a redevelopment project, comprising of the remediation of a brownfield site, which is the site of the redevelopment project, and may involve the clearance, development or redevelopment, construction, reconstruction, or rehabilitation of any structure or improvement of commercial, industrial, or public structures or improvements within an area of land whereon a brownfield site is located.

“Redevelopment project” means a specific construction project or improvement undertaken, pursuant to the terms of a redevelopment agreement, by a developer within an area of land whereon a brownfield site is located. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved. Redevelopment projects shall include improvements that are solely or primarily remediation related to the remediation of the site of the redevelopment project.

“Remediation” or “remediate” means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including as

necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, as those terms are defined in section 23 of P.L. 1993, c. 139 (N.J.S.A. 58:10B-1); hazardous materials abatement; hazardous materials or waste disposal; building and structural remedial activities, including but not limited to demolition, asbestos abatement, polychlorinated biphenyl removal, contaminated wood or paint removal, or other infrastructure remedial activities. However, "remediation" or "remediate" shall not include the payment of compensation for damage to or loss of natural resources.

“Remediation costs” means all reasonable costs by the developer and any affiliate that are associated with the remediation of a contaminated site or other brownfield site except: cost of acquisition of the site at which the redevelopment project will be conducted, any costs incurred in financing the remediation, legal fees, incentive consultant fees, and Authority fees. Remediation costs may include required Department site remediation program fees and other Department permit fees. Remediation costs shall not include payment for penalties or violations. Remediation costs shall not include costs prior to application except that remediation costs shall include costs for studies and surveys including but not limited to preliminary environmental assessments, environmental site investigations, and workplans incurred within the 24 months prior to date of application.

“Representative of the community” means being a heterogenous group that includes individuals sharing diverse identities with those found within the diverse population of a defined community no larger than the municipality(s) in which the redevelopment project is located.

“Response Action Outcome” or “RAO” has the meaning as defined by the Department in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

“Site of the redevelopment project” means the brownfield site at which the redevelopment project is located.

“Total cost of remediation” means any and all costs incurred for and in connection with the redevelopment project by the developer and any affiliate until submission of the documents necessary for the issuance of certification of completion of remediation by the Department or upon such other event evidencing project completion as set forth in the redevelopment agreement. These costs may also include fees incurred for financing, penalties, and violations of the redevelopment project.

### **19:31-27.3 Eligibility criteria**

(a) The developer of a redevelopment project shall be eligible to receive a tax credit award only if the developer demonstrates to the Authority at the time of application that:

1. The redevelopment project is located on a brownfield site;
2. Without the tax credit award, the redevelopment project is not economically feasible;
3. A project financing gap exists and the tax credit award being considered for the project is equal to or less than the project financing gap;

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### 4. The developer, including all affiliates:

i. Has not commenced any remediation activity at the site of the redevelopment project prior to submitting an application and will not commence any such remediation activity prior to execution of the redevelopment agreement, other than preliminary environmental assessments and environmental site investigations. The developer shall demonstrate and certify, under penalty of perjury, to the Authority that: it intends to remediate and redevelop the site immediately upon approval of the tax credit, satisfy all of the conditions in the approval letter, and execute a redevelopment agreement pursuant to N.J.A.C. 19:31-27.9; or

ii. Could not have reasonably known the full extent of the site contamination prior to commencing the remediation, if the developer or an affiliate has commenced remediation or clean up at the site for which the developer is applying for a tax credit. The developer shall demonstrate and certify, under penalty of perjury, to the Authority that the developer, including all affiliates, cannot reasonably finish the remediation and commence a construction project absent the tax credit;

5. The developer has obtained and submitted to the Authority a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located; and

6. The developer and all affiliates shall comply with the prevailing wage requirements in N.J.A.C. 19:31-27.14.

(b) The Authority shall review the proposed total cost of remediation, evaluate, and validate the project financing gap estimated by each developer applying for a tax credit award as follows:

1. The developer shall demonstrate that the redevelopment project has equity of at least 20 percent of the total cost of remediation, except that if a redevelopment project is located in a government-restricted municipality or a qualified incentive tract, the equity shall be at least ten percent of the total cost of remediation; and

2. The project financing gap analysis shall include but shall not be limited to: an evaluation of the total cost of the remediation, amount of capital sufficient to complete the remediation, and reasonable and appropriate return on investment.

3. As determined by the Department, the remediation costs are reasonable and appropriate.

(c) The Authority shall not approve a developer or enter into a redevelopment agreement with a developer unless the developer demonstrates, to the satisfaction of the Department, that the developer, including all affiliates: did not discharge a hazardous substance at the brownfield site proposed to be in the redevelopment agreement; is not in any way responsible for the hazardous substance; is not a corporate successor to the discharger, or to any person in any way responsible for the hazardous substance, or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11g).

(d) A redevelopment project that received a reimbursement pursuant to sections 34 through 39 of P.L.1997, c.278 (N.J.S.A. 58:10B-26 through -31) shall not be eligible to apply for a tax credit under the program.

#### **19:31-27.4 Program application requirements**

(a) In each State fiscal year for which there are tax credits available for this program, the Authority shall establish the date for the availability of the application and the date by when applications must be submitted. The Authority shall provide prior public notice of these dates through its website.

(b) Each application to the Authority made by a developer shall include the following information:

1. The name of the developer and the names of any affiliates;
2. The name of the redevelopment project as used in all applicable documents, and the address of the brownfield site, including multiple addresses if applicable;
3. The contact information of the person identified as the primary contact for the developer;
4. The address of the developer and prospective future address of the developer if different;
5. Organizational structure of the developer, including all affiliates;
6. The developer's New Jersey tax identification number;
7. The developer's Federal tax identification number;
8. The name and organizational structure of the owner of the site of the redevelopment project;
9. The name and contact information of the Licensed Site Remediation Professional for the redevelopment project;
10. If applicable, the name and contact information of the appropriately licensed or certified professional(s) for the redevelopment project, the basis for qualification of the licensed or certified professional(s) for the relevant remediation activities, and a copy of the corresponding license(s) or certification(s);
11. The total projected number of construction employees and permanent employees at the redevelopment project;
12. The location and description of the brownfield site, including, but not limited to: a narrative description of the brownfield site, a map or aerial photograph clearly indicating the



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boundaries and location of the brownfield site, and the lot and block or other description of the property as required by the Authority;

13. An appraisal of as is value of the brownfield site if remediated;

14. A narrative explaining the level of experience and qualifications of the developer and project team, which shall demonstrate sufficient expertise to complete the redevelopment project, including, but not limited to, examples of successful completion of projects of similar size and scope;

15. A narrative description of the redevelopment project, including, but not limited to: the approach to the redevelopment project, proposed remediation methods for addressing known contamination and hazards, and contingency plans for addressing additional contamination or hazards that may be discovered during implementation of the redevelopment project;

16. An estimate and breakdown of the remediation costs, and the total cost of remediation;

17. Remediation plans, including drawings. All plans shall be prepared by a Licensed Site Remediation Professional or, in the case of remediation that is not subject to the “Site Remediation Reform Act,” sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), by an appropriately licensed or certified professional;

18. An anticipated redevelopment project schedule showing project milestones;

19. The financial information of the redevelopment project, including, but not limited to: any Federal, State or local financial assistance for the redevelopment project; proposed terms of financing; purchase contract agreement for the brownfield site; and projected reasonable and appropriate return on investment;

20. A list of all of the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury permits and approvals or obligations and responsibilities with which the developer is associated or in which the developer has an interest. The list shall identify the entity that applied for or received such permits and approvals, or has such obligations and responsibilities, by identifying program interest numbers, licensing numbers, or the equivalent. The developer shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, of the developer stating that the developer applying for the program satisfies the criteria at N.J.A.C. 19:31-27.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

21. A certification by the chief executive officer, or equivalent officer for North American operations, of the developer that the officer has reviewed the application information submitted and that the representations contained therein are true, correct, and accurate under the penalty of perjury;

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

23. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

24. A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A 52:39-1), that the developer is requesting or receiving; the name of the granting body; the value of each development subsidy; and the aggregate value of all development subsidies requested or received;

25. The status of control of the brownfield site and any agreements that provide a right of access to the developer or an affiliate to perform and complete the redevelopment project. If the developer has not secured access to the site at the time of application, an agreement with the current owner of the site evidencing an intent or obligation to provide the necessary right of access to complete the redevelopment project, including, but not limited to, a letter of intent;

26. A description of the zoning applicable to the brownfield site and a list and status of all required Federal, State, and local government permits and local planning and zoning board approvals that have been issued for the redevelopment project or will be required to be issued pending resolution of financing;

27. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

28. As applicable, the most recent draft or final Site Investigation Report, and/or the most recent Asbestos Containing Materials Survey, Universal Waste Survey, Lead Based Paint Survey, Pre-Demolition Survey, or other similar report, study, or document describing the documentation required by the Authority or the Department;

29. To be scored on the factor in N.J.A.C. 19:31-27.6(b)3, for the entity or entities in the developer's ownership structure that will have direct or indirect control over the actions by the developer to undertake the redevelopment project, information on the diversity of the owners and board of directors (or partners or members if no board of directors exist), which shall include: certification as to the membership in a diverse group for all applicable owner and directors (or partners or members, as appropriate); the percentage of ownership held by each diverse owner; and an explanation on how the current board of directors (or partners or members, as appropriate) and owners are diverse and representative of the community in which the redevelopment project is located based on governmental data, including, but not limited to, the most recently available census data; and

30. Any other necessary and relevant information as determined by the Authority or the Department for a specific application, including, but not limited to, information needed to: complete project financial review, to assess developer capacity, and to demonstrate that the

developer or an affiliate is not responsible for the contamination at the site of the redevelopment project.

(c) The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to: the location of the redevelopment project(s), the types of uses proposed, and the developer's financing and operational plans.

(d) If circumstances require a developer to amend its application to the Authority, the developer, or chief executive officer, or equivalent officer for North American operations, of the developer, shall certify to the Authority that the information provided in its amended application is true, correct, and accurate under the penalty of perjury.

### **19:31-27.5 Fees**

(a) An applicant for tax credits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$2,000.

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$7,000.

(b) A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) The developer shall pay to the Authority a fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000.

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$15,000.

(d) For all redevelopment projects, a developer shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate. The fee shall be as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000.

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$15,000.

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(e) A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-27.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral, shall pay to the Authority a fee, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000 and \$2500 for each additional request.

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$7,500 and \$2500 for each additional request.

(f) Upon application to pledge or assign any or all of its right, title, and interest in and to a redevelopment agreement and in the tax credits payable thereunder, a developer shall pay to the Authority a fee, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$5,000 and \$2500 for each additional request.

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$7,500 and \$2500 for each additional request.

(g) A developer shall pay to the Authority a non-refundable fee for each request for a change, addition, or modification to the award, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, a non-refundable fee of \$2,500 shall be paid for each minor change, addition, or modification; and a non-refundable fee of \$5,000 shall be paid for each major change, addition, or modification to the award, such as those requiring extensive staff time and Board approval;

2. For redevelopment projects with total cost of remediation greater than \$5 million, a non-refundable fee of \$5,000 shall be paid for each minor change, addition, or modification; and a non-refundable fee of \$10,000 shall be paid for each major change, addition, or modification to the award, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by when: the redevelopment project must be completed as set forth in N.J.A.C. 19:31-27.9(e), the annual report and the progress report must be submitted as required in N.J.A.C. 19:31-27.11, and documentation required in N.J.A.C. 19:31-27.12 shall be submitted, a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For redevelopment projects with total cost of remediation of \$5 million or less, the fee shall be \$2,500, except that for any extension that requires Board approval the fee shall be \$7,500.

2. For redevelopment projects with total cost of remediation greater than \$5 million, the fee shall be \$5,000, except that for any extension that requires Board approval the fee shall be \$15,000.

### **19:31-27.6 Approval of completed application**

(a) For redevelopment projects eligible pursuant to section 12 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-280) and N.J.A.C. 19:27.3, the Authority shall review applications submitted by the corresponding application deadline. The review shall determine if the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information to make an eligibility determination for the subject application.

(b) The Authority shall allocate tax credits to eligible redevelopment projects in ranked order based on the factors set forth below. To receive a tax credit award, a developer's application shall meet a minimum score. The Authority shall establish weights for the factors and the minimum score before applications are submitted for the State fiscal year and shall provide public notice of the weights through its website. These factors may include:

1. The environmental history of the brownfield site and the impact of the contamination, hazard, or other environmental concern on the surrounding community.;

2. The degree to which the redevelopment project enhances and promotes job creation and economic development such as the land use and other designations of the site of the redevelopment project related to uses and purposes of the site, including, but not limited to, if it is an area in need of redevelopment;

3. Positive impact of the redevelopment project on the surrounding community. For the entity or entities in the applicant's ownership structure that will have direct or indirect control over the actions by the applicant to undertake the redevelopment project, the extent to which such entity or entities have owners or board of directors (or members or partners if no board of directors) who are diverse and representative of the community in which the redevelopment project is located;

4. Economic feasibility of the redevelopment project and project viability, including level of experience and qualifications of the applicant's key personnel and strategic partners.; and

5. The extent to which the remediation will reduce environmental or public health stressors in an overburdened community, as those terms are defined by section 2 of P.L. 2020, c. 92 (N.J.S.A. 13:1D-158), and how the remediation will address climate resiliency.

(c) Before the Board may consider for approval a developer's application for tax credits:

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1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer 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 developer has entered into a corrective action plan or other agreement with the respective department in order to regain good standing with the above mentioned departments, as applicable.

2. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer:

i. As to the Department of Labor and Workforce Development, Department of Environmental Protection and Department of Treasury:

a. Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective departments that apply to the developer; 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

ii. 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.

iii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgate or issue, their own more stringent rule or standard defining the term “substantial good standing,” the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

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

4. The Authority will confirm with the Department of Environmental Protection that the developer has:

i. Entered into a memorandum of agreement or other oversight document with the Commissioner of the Department of Environmental Protection in accordance with the provisions of section 37 of P.L.1997, c.278 (N.J.S.A. 58:10B-29); or

ii. Complied with the requirements set forth in subsection b. of section 30 of P.L.2009, c.60 (N.J.S.A. 58:10B-1.3) for the remediation of the site of the redevelopment project.

(d) The developer shall certify that any contractors or subcontractors that will perform work at the site of the redevelopment project are registered as required by the “Public Works Contractor Registration Act,” P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on

Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

### **19:31-27.7 Tax credit award amounts**

(a) A developer who is eligible pursuant to, and complies with, the Act and this subchapter, shall be allowed a tax credit for an approved redevelopment project that shall not exceed the following limits:

1. For a redevelopment project located in a qualified incentive tract or government-restricted municipality, 60 percent of the actual remediation costs, 60 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$8 million, whichever is least.

2. For all other redevelopment projects, 50 percent of the actual remediation costs, 50 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$4 million, whichever is least.

(b) The total value of tax credits approved by the Authority shall not exceed the limitations set forth in N.J.S.A. 34:1B-277 through -287. For the purpose of determining the aggregate value of tax credits approved in a fiscal year, a tax credit shall be deemed to have been approved at the time the Authority approves an application for an award of a tax credit. If the Authority approves less than the total amount of tax credits authorized pursuant to this section in a fiscal year, the remaining amount plus any amounts remaining from previous fiscal years shall be added to the limit of subsequent fiscal years until that amount of tax credits are claimed or allowed. Any unapproved, uncertified, or recaptured portion of tax credits during any fiscal year may be carried over and reallocated in succeeding years.

(c) The Authority shall award tax credits to redevelopment projects until either the available tax credits are exhausted or all redevelopment projects that are eligible for a tax credit pursuant to the provisions of the Act and this subchapter receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a developer in accordance with the provisions of subsection a. of section 16 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and subsection (a) above, the Authority may offer the developer a value of the tax credit below the amount provided for in subsection a. of section 16 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and subsection (a) above, provided that the developer's application is eligible for a tax credit award with the lower amount.

### **19:31-27.8 Approval letter**

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application. If approved, the Board shall determine the maximum amount of the tax credit award and the maximum percentage of remediation costs that will be used to calculate the tax credit award. The Board shall promptly notify the applicant and the Director of the Division of Taxation in the Department of the Treasury of the determination.

(b) The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the tax credit award. An approval letter setting forth the conditions subsequent will be sent to the developer. Such conditions shall include, but not be limited to: the requirement that the redevelopment project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4); and that the redevelopment project does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the redevelopment agreement, which shall include satisfaction of all conditions of approval.

(c) The approval letter shall require documentation evidencing project financing including the submittal of executed financing commitments; documents that evidence site control or access by the developer or an affiliate; and a copy of the site plan approval, if applicable.

(d) Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer does not satisfy the conditions in the approval letter within one year after approval of the application.

(e) The approval letter shall provide an estimated date of completion of the redevelopment project and include a requirement for submitting project status reports every six months, beginning at approval of the application and ending upon execution of the redevelopment agreement. If the Authority does not receive a project status report when required or the project status report demonstrates unsatisfactory progress, the Authority may rescind the incentive award.

### **19:31-27.9 Redevelopment agreement**

(a) Following satisfaction of the requirements for the execution of a redevelopment agreement in the approval letter, the Authority shall enter into a redevelopment agreement with the developer. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the redevelopment agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's compliance with the Act, this subchapter, and the requirements of the redevelopment agreement.

(b) The developer, including all affiliates, shall not start any remediation or clean up at the site other than the activities disclosed and approved at the time of approval except for work required due to an order or other written requirement from an official with jurisdiction over the site or the redevelopment project to correct an immediate environmental concern or a health, safety, or other hazard that requires the developer or an affiliate to undertake remediation activities if:

1. The developer provides a copy of the order or written requirement to the Authority; and
2. The developer documents to the Authority's satisfaction that the proposed remediation activity is limited to resolve the hazard.



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(c) The redevelopment agreement shall specify and include:

1. A detailed description of the proposed redevelopment project including details, quantities, and extent of all redevelopment activities, remediation costs, total cost of remediation, and a schedule for the redevelopment project by redevelopment work items;
2. The maximum amount of tax credit award, the maximum amount of total cost of remediation, and the maximum percentage of the remediation costs that will be used to calculate the amount of the tax credit award;
3. A description of the evidence that will be submitted as proof of completion of remediation as required for the redevelopment project:
  - i. Where the remediation is subject to the “Site Remediation Reform Act” sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated in accordance with the statute by a Response Action Outcome issued by a Licensed Site Remediation Professional;
  - ii. For any portion of the remediation that is not subject to the “Site Remediation Reform Act,” sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by a certification from a License Site Remediation Professional and an appropriate licensed or certified professional, as applicable;
4. A requirement that the developer will certify that all information provided by the developer or any affiliate to the Authority and the Department, including information contained in the application, the redevelopment agreement, and any amendment to the redevelopment agreement, is true, correct, and accurate under the penalty of perjury;
5. An ongoing requirement to provide the Authority and the Department with current personnel information that will enable the Authority and the Department to administer the program;
6. Representations that the developer and any affiliate will comply with the minimum environmental and sustainability standards pursuant to N.J.S.A. 34:1B-281c(1);
7. Representations that the developer is in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to: prevailing wage requirements pursuant to P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:31-27.14(b) and (c); affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:31-27.14(a); and environmental laws, including, but not limited to, the “Flood Hazard Area Control Act Rules,” N.J.A.C. 7:13, to the extent that it is applicable;
8. A provision permitting an audit of the developer’s and any affiliate’s evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-27.4, 27.9 and 27.11, and the reports pursuant to N.J.A.C. 19:31-27.11, as the Authority deems necessary;

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9. Reporting requirements pursuant to N.J.A.C. 19:31-27.11;
10. A provision permitting the Authority to amend the agreement;
11. A provision establishing the conditions under which the Authority, the developer, or both parties may terminate the agreement;
12. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth in N.J.A.C. 19:31-27.6(d), that the developer is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;
13. A provision providing that if the developer is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, or the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-27.6(d), and has been given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer shall be subject to N.J.A.C. 19:31-27.15(b);
14. A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the "Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;
15. A requirement for the developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health;
16. The right of the Authority and the Department to conduct site inspections at the site of the redevelopment project at any time during the course of the redevelopment project;
17. Indemnification and insurance requirements from the developer;
18. A description of events that would trigger forfeiture, reduction, or recapture of the tax credits;
119. Conditions of default and remedies, including, but not limited to, a default if a developer made a material misrepresentation on its application or supporting documentation;
20. A provision stating that if the developer or any affiliate sells, leases or subleases the site of the redevelopment project or any portion thereof within four years of completion of the redevelopment project, the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. The developer shall provide to the Authority any information that the Authority determines is necessary to re-

evaluate the developer's rate of return, including, but not limited to, the purchase price. If the developer's final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval by more than 15 percent, the developer shall pay 20 percent of the amount of the excess to the Authority, and the Authority shall deposit such funds in the State General Fund;

21. A provision that the issuance of a tax credit under the program shall be conditioned upon the subrogation to the Department of all rights of the developer or any affiliate to recover remediation costs from any other person who discharges a hazardous substance or is in any way responsible, pursuant to section 8 of P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11g), for a hazardous substance that was discharged at the brownfield site;

22. A provision requiring that the developer obtain consent from the Authority prior to any ownership change of the developer; and

23. A provision that the developer must either comply with their agreement with the Commissioner of the Department of Environmental Protection in accordance with the provisions of section 37 of P.L.1997, c.278 (N.J.S.A. 58:10B-29); or comply with the requirements set forth in subsection b. of section 30 of P.L.2009 ,c.60 (N.J.S.A. 58:10B-1.3) to the satisfaction of both the Authority and the Department for the remediation of the site of the redevelopment project.

(d) The Authority shall not enter into a redevelopment agreement for a redevelopment project that includes at least one retail establishment that will have more than ten employees, or at least one distribution center that will have more than 20 employees, unless the redevelopment agreement includes a precondition that any business that serves as the owner or operator of the retail establishment or distribution center enters into a labor harmony agreement with a labor organization or cooperating labor organizations which represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into a redevelopment agreement with a developer without the labor harmony agreement only if the Authority determines that the redevelopment project would not be feasible if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

(e) The redevelopment project shall be completed and the evidence required to obtain a certification of completion of remediation shall be provided to the Authority and the Department within six years from the time of Board approval of the application. The Authority may extend, in its sole discretion, the time of completion provided that the developer submits evidence satisfactory to the Authority that the redevelopment project is continuing to progress to completion.

(f) The Authority may rescind an award of tax credits under the program if a redevelopment project fails to advance in accordance with the redevelopment agreement.

### **19:31-27.10 Redevelopment project modifications and extensions**

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(a) On or before the date of completion of the redevelopment project, any modification to the redevelopment project as approved by the Board, including, but not limited to, a change in ownership of the developer, a change in the key personnel responsible for the remediation, an increase or reduction in the amount of the remediation cost, a change in redevelopment project scope, or an extension to the date by when the redevelopment project must be completed, shall require review and approval by the Authority to determine that the redevelopment project as modified does not undermine the basis for the tax credit award approved.

(b) In considering whether to approve the modification request, the Authority shall:

1. Determine that the revised redevelopment project continues to meet the requirements for the redevelopment as defined under the program;

2. Confirm that the proposed change to the redevelopment project will not undermine the basis for the tax credit award approved; and

3. Determine that the revised redevelopment project continues to meet the minimum score and would have been eligible based on the order of applications pursuant to N.J.A.C. 19:31-27.6(b) unless the developer demonstrates to the Authority that:

i. The modification is due to unforeseeable conditions related to the redevelopment project beyond the developer's or any affiliate's control and without its fault or negligence;

ii. The developer and any applicable affiliate is using best efforts, with all due diligence, to proceed with the completion of the redevelopment project; and

iii. The developer and any applicable affiliate has made all reasonable efforts to prevent, avoid, mitigate, and overcome the modification.

(c) Modifications and extensions shall not increase the amount of the tax credits awarded.

### **19:31-27.11 Reporting requirements: progress reports and annual reports**

(a) The developer shall submit progress report to the Authority and Department every six months starting at six months from Board approval and ending upon issuance of a certification of completion of remediation by the Department, and unless otherwise determined by the Authority and Department shall consist of:

1. Remediation schedule, including any updates;

2. Summary of remediation completed during the reporting period, remediation in progress, and remediation to be completed for next reporting period;

3. Status of permits, if applicable;

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4. Photos documenting progress of the redevelopment project;
  5. Identification of the percentage of the redevelopment project that is completed, including a narrative that speaks to the redevelopment project progress for all aspects of the redevelopment project;
  6. Changes to key personnel, developer ownership, and the identity and ownership of any affiliates involved with the redevelopment project;
  7. Remediation costs incurred as evidenced by a paid invoice as proof of payment with any change orders; and
  8. Additional information as required by the Authority or the Department.
- (b) A developer approved for a tax credit award shall submit an annual report, beginning on the date of approval by the Board until the submission of documents evidencing the completion of the redevelopment project. The Authority may provide any information contained in the annual report to the Department.
1. The annual report shall consist of:
    - i. A certification indicating whether or not the developer is aware of any condition, event, or act, which would cause the developer not to be in compliance with the approval, the redevelopment agreement, this Act or this subchapter;
    - ii. A certification indicating that the redevelopment project does not violate any environmental law requirements, including, but not limited to, the “Flood Hazard Area Control Act Rules,” N.J.A.C. 7:13;
    - iii. A tax clearance certificate as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer;
    - iv. A certification from the developer that it has not modified the redevelopment project so that it ceases to meet the requirements of the redevelopment agreement;
    - v. A certification from the developer that any contractors or subcontractors performing work at the redevelopment project: are registered as required by the “Public Works Contractor Registration Act,” P.L.1999, c.238 (N.J.S.A. 34:11-56.48 et seq.); have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in New Jersey; and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;
    - vi. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-27.9(d);

vii. For a redevelopment project that includes redevelopment after completion of the remediation required for the redevelopment project, a narrative of the progress of the construction and other activities of the redevelopment project; changes to key personnel, developer ownership, and the identity and ownership of any affiliates involved with the redevelopment project; and

viii. Any information determined by the Authority to be necessary and relevant to its review.

2. The Authority's review of the annual reports required from a developer shall include confirmation with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in substantial good standing with the respective department or has entered into an agreement with the respective department that includes a practical corrective action plan.

3. Upon receipt, review, and acceptance of each annual report submitted, the Authority shall provide to the developer a letter indicating acceptance.

(d) The developer, or an authorized agent of the developer, shall certify that the information in any annual reporting requirement established pursuant to this section is true, correct, and accurate under the penalty of perjury.

(e) The Authority and the Department reserve the right to audit any of the representations made and documents submitted in any annual reporting requirement established pursuant to this section.

(f) The Authority may extend, in individual cases, the deadline for any annual reporting requirement established pursuant to this section.

### **19:31-27.12 Certification of completion of remediation; completion of redevelopment project**

(a) No later than 12 months following completion of the remediation required for the redevelopment project, the developer shall seek certification from the Department that:

1. The remediation required for the redevelopment project is complete. Where the remediation is subject to the "Site Remediation Reform Act," sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by the issuance of a Response Action Outcome for the site of the redevelopment project by a Licensed Site Remediation Professional. For any portion of the remediation which is not subject to the "Site Remediation Reform Act," sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by a certification from the Licensed Site Remediation Professional and from an appropriate licensed or certified professional;

2. The developer complied with the requirements of section 15 of P.L.2020, c.156 (N.J.S.A. 34:1B-283) and N.J.A.C. 19:31-27.11(a) regarding progress reports to the Department, and

section 14 of P.L.2020, c.156 (N.J.S.A. 34:1B-282) and this section, including the requirements of any agreement or other oversight document that the developer may have executed with the Commissioner of the Department of Environmental Protection pursuant to P.L. 2020 c. 156 section 14 (N.J.S.A. 34:1B-282); and

3. The remediation costs were actually and reasonably incurred.

(b) When filing an application for certification under subsection (a) above, the developer shall submit the following information to the Authority and the Department as of the date of completion of the remediation required for the redevelopment project:

1. The total remediation costs incurred by the developer or an affiliate for the redevelopment project, as provided in the redevelopment agreement, and certified by a certified public accountant and a Licensed Site Remediation Professional for costs under the jurisdiction of the “Site Remediation Reform Act,” sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), and, as applicable, other appropriate licensed or certified professional(s) for costs that are not under the jurisdiction of the “Site Remediation Reform Act,” and the total costs of remediation. The Authority shall qualify certified public accountants and provide to the developer the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any affiliate and not on the Authority's list of qualified certified public accountants for purposes of the remediation cost certification if the developer demonstrates an extenuating circumstance prohibiting the developer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to: the unavailability of any of the qualified certified public accountants to timely complete the certification or a lack of independence of the qualified certified public accountants from the developer;

2. Evidence of completion of the remediation, as demonstrated by the issuance of a Response Action Outcome for the site of the redevelopment project by a Licensed Site Remediation Professional where the remediation is subject to the “Site Remediation Reform Act,” sections 1 through 29 of P.L.2009, c.60 (N.J.S.A. 58:10C-1 et seq.), and by a certification from the Licensed Site Remediation Professional and appropriate licensed or certified professional for completion of other remedial activities, if applicable;

3. Information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, if applicable;

4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer not to be in compliance with the approval, the redevelopment agreement, this Act, or this subchapter;

5. A certification by the Licensed Site Remediation Professional of record for the redevelopment project confirming that all remediation work was completed in accordance with the redevelopment agreement; and

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6. Such other information as the Department or Authority deems necessary in order to make the certifications and findings pursuant to subsection (a) above.

(c) To demonstrate compliance with the program, in addition to the submission required under subsection (b) above, the developer shall submit the following to the Authority, as of the date of completion of the remediation required for the redevelopment project, no later than 12 months following completion of remediation required for the redevelopment project:

1. A certification from a Licensed Site Remediation Professional or licensed professional engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer or an affiliate would satisfy the minimum environmental and sustainability standards;

2. A tax clearance certificate as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer;

3. Documentary evidence that a deed restriction has been recorded requiring construction and building services prevailing wage pursuant to N.J.A.C. 19:31-27.14(b) and (c); and

4. Such other information as the Authority deems necessary in order to determine compliance by the developer with the program.

(d) Within 90 days of the Department issuing the certificate of completion of remediation, the Authority accepting as satisfactory the documentation required by subsection (c) above, and the Authority determining that other required conditions of the Act, this subchapter, and the redevelopment agreement have been met, the Authority shall notify the developer and the Director. Thereafter, the developer shall receive its tax credit certificate.

(e) A developer shall apply the tax credit awarded against the developer's liability for the tax imposed pursuant to section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L.1945, c.132 (N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3), section 1 of P.L.1950, c.231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5 for the privilege period in which the developer provides evidence required in this section to the satisfaction of the Department and the Authority. A developer shall not carry forward any unused credit.

(f) Credits granted to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director and accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(g) The Director shall prescribe the order of priority of the application of the credit awarded under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5). The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5) for a



privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5).

(h) For a redevelopment project that includes redevelopment after completion of the remediation required for the redevelopment project, a developer shall submit, no later than six months following the completion of the redevelopment project, the following documents to the Authority:

1. Evidence of a temporary certificate of occupancy or other event evidencing completion of the redevelopment project;

2. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the redevelopment agreement, the Act, or this subchapter;

3. A certification from a licensed professional engineer that the redevelopment project undertaken after completion of remediation has adhered in all material respects to the plan submitted by the developer describing how the developer or an affiliate would satisfy the minimum environmental and sustainability standards; and

4. Any information determined by the Authority to be necessary and relevant to its review.

(i) An authorized agent of the developer shall certify that the information provided to the Department and the Authority pursuant to this section is true, correct, and accurate under the penalty of perjury.

### **19:31-27.13 Application for tax credit transfer certificate; assignment**

(a) A developer may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, during the privilege period in which the Director issues the developer a tax credit pursuant to section 16 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and N.J.A.C. 19:31-27.12. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$25,000, in the privilege period during which the developer or receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5.

(b) The developer shall not sell a tax credit transfer certificate allowed under this section for consideration received by the developer or of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under 26 U.S.C. s.42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the

submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

(c) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

(d) A tax credit transfer certificate issued by the Director and the Authority shall include a statement waiving the rights of the developer to which the tax credit has been granted to claim any amount of remaining credit against any tax liability.

(e) The tax credit transfer certificate issued to a developer by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 9 through 19 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-277 through -287) and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(f) The Authority shall publish on its internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. Name of the transferor;
2. Name of the transferee;
3. Value of the tax credit transfer certificate;
4. State tax against which the transferee may apply the tax credit; and
5. Consideration received by the transferor.

#### **19:31-27.14 Affirmative action and prevailing wage**

(a) The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project. The affirmative action requirements shall apply until the later of the completion of the redevelopment project and until two years after the tax credit is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-4 shall apply to construction contracts as defined at N.J.A.C. 19:31-4.1 for work performed for the redevelopment project. The prevailing wage requirements shall apply until the later of the completion of the redevelopment project and two years after the tax credit is issued. Prevailing wage shall apply to all work done by tenants at the redevelopment project.

(c) Prevailing wage shall apply to building services at the site of the redevelopment project . This prevailing wage requirement shall continue for 10 years following the completion of the redevelopment project. In the event a redevelopment project, or the aggregate of all redevelopment projects approved for an award under the program, constitute a lease of more than 35 percent of a facility, the prevailing wage shall apply to the entire facility.

### **19:31-27.15 Forfeiture and recapture of tax credits**

(a) Failure to timely submit the annual report or progress report, pursuant to N.J.A.C. 19:31-27.11, absent extenuating circumstances or the written approval of the Authority, may result in forfeiture or recapture a proportional amount of the tax credit award.

(b) In any year in which the developer is not in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury pursuant to N.J.A.C. 19:31-27.9(c)13, the developer may forfeit or recapture some or all of the tax credit award.

(c) If any worker employed to perform building services work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:31-27.14(c) during the relevant tax period, then the developer shall forfeit or the Authority shall recapture, a proportional amount of the tax credit.

(d) If the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-27.9(d). is not satisfied, the developer shall forfeit or recapture some or all of the tax credit award.

(e) For a redevelopment project that includes redevelopment activities after completion of the remediation required for the redevelopment project, if the developer does not complete the redevelopment project after the issuance of the tax credits or if the developer does not comply with a requirement of the program applicable to the redevelopment project after completion of the remediation, including, but not limited to, prevailing wage or affirmative action requirements pursuant to N.J.A.C. 19:31-27.14(a) and (b), the Authority may recapture some or all of the tax credits awarded.

(f) If, based on new information, the Authority determines that forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits as if the Authority had been timely informed.

(g) If, at any time, the Authority determines that the developer made a material misrepresentation on the developer's application, progress report, remediation completion certification, annual report, or any submission to the Authority or the Department, the developer shall forfeit or the Authority shall recapture some or all of the tax credits of the developer, which shall be in addition to any other remedies in the redevelopment agreement and any criminal or civil penalties to which the developer and the respective officer of the developer may be subject.

(h) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and

all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, administrative costs, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation in the Department of the Treasury to determine the recapture amount.

(i) If all or part of a tax credit sold or assigned pursuant to section 17 of P.L. 2020, c. 156, (N.J.S.A. 34:1B-285 and N.J.A.C. 19:31-27.13 is subject to recapture, the Authority shall pursue recapture from the developer, and not from the purchaser or assignee of the tax credit transfer certificate.

(j) The Authority shall notify the Director of any funds recaptured pursuant to this section. Any recaptured funds, including penalties and interest, shall be deposited into the State General Fund.

### **19:31-27.16 Appeals**

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

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 21 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program 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., N.J.S.A. 52:14F-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 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 Board. 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 cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board 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. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. 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.

3. The Board 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 Board shall issue a final decision on the appeal.

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

### **19:31-27.17 Reports on implementation of program**

Beginning in 2022 and every two years thereafter, a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required under this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each redevelopment project to the factors set forth in sections 12 and 13 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-277 through N.J.S.A. 34:1B-278) and N.J.A.C. 19:31-27.6(b), the return on investment for incentives awarded, the redevelopment project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

### **19:31-27.18 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.

## **Appendix B**

### **Brownfield Redevelopment Incentive Program Reasonable and Appropriate Return on Investment**

#### **Introduction**

As with its predecessor real estate development incentive, the Economic Redevelopment and Growth Program (ERG), a key statutory requirement within the Economic Recovery Act of 2020 (ERA) enacted real estate development incentives is that without the incentive award, the redevelopment project is not economically feasible. As such the applicant must demonstrate that a project financing gap exists, which requires that redevelopment project will generate a below market rate of return.

This appendix outlines the Authority's history with such analyses and present policy recommendations for administering related provisions such as determining the reasonable and appropriate rate of return on investment for the project.

#### **Authority History with Gap Financing Programs and Hurdle Rate Determinations**

As noted previously the Authority has experience administering gap financing real estate development incentives through the ERG program dating back to its establishment in 2012. In November of 2012 the Authority Board approved the use of a financial model developed by real estate services firm Jones Lang Lasalle (JLL) for the purpose of determining market returns that would be required for prospective real estate projects in the State to be considered economically viable, i.e., a hurdle rate. This model was subsequently modified in December of 2012 to add functionality and allow for its use more efficiently across the State. A "Modification to the Hurdle Rate Model" memorandum is being proposed concurrently to the Board on October 12, 2022, which specifically addresses the Brownfield Redevelopment Incentive, and the Historic Property Reinvestment Program. The model arrives at a project specific hurdle rate based upon three factors including the projects proposed zip code, industry class, and if it would be located in area of the state exhibiting economic distress.

The model is updated semi-annually to reflect current market realities.

In the event of a large, unique, and/or complex project, which could include complex projects utilizing LIHTC but having a significant commercial component, the Authority has commissioned a proposed project-specific third-party analysis performed by a real estate services firm to determine a project specific hurdle rate. As provided in the Aspire rules, the cost of these services is charged to the applicant.

#### **Policy within ERA enacted real estate development incentives for Determining Reasonable and Appropriate Return on Investment**

Staff is proposing the use of the JLL hurdle rate model, with the modifications proposed in the October 12, 2022 memorandum, for purposes of determining the reasonable and appropriate return on investment

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that projects will be evaluated upon for program eligibility and award sizing. The modifications in the October 12, 2022 memorandum, reflect nuances related to capital financing strategies and market return expectations that may exist within the relevant sub-category.

Although redevelopment projects in the Brownfield Redevelopment Incentive Program include projects that are only remediation as well as projects that also include construction, the Brownfield Redevelopment Incentive Act provides that the project financing gap is based on remediation only. Thus, the project finance gap will only consider the total cost of remediation, and the equity required will be calculated on the total cost of remediation.

As stated in the rules, if the developer sells, leases, or subleases the site of the redevelopment project within four years after the completion of the redevelopment project, the developer is subject to a re-evaluation of the rate of return. Staff will compare the sale price or the net present value of the entire lease or sublease against the appraisal, submitted by the developer at application, which indicated the “as is” value of the site if remediated. If the sale price is greater than the appraised value (regardless of the reason), the rate of return will be re-evaluated using the sale price, which may include an increase in value attributed to additional construction or other post-remediation work that the developer may have undertaken. While the rules do not prescribe a threshold for an increase in the rate of return that requires the re-payment of 20% of the excess, Staff proposes using 15%, consistent with the Aspire statute and rules. Thus, the developer shall pay 20% of the excess only if the developer's re-evaluated rate of return exceeds the Board approved rate of return by 15%.

Staff proposes continuing to use a third-party consultant to perform project-specific analysis for large and highly specific projects. In these circumstances, the Authority staff will continue to rely upon real estate advisory services providers on an as needed basis to determine project specific reasonable and appropriate return on investment for large, unique, and/or highly complex projects. As previously noted, it is likely that some of the product specific programs within the ERA may result in particularly unique projects as it relates to the product and the financing that may be utilized. In these events the authority may rely upon a third-party to complete certain aspects of the return analysis as needed.

## Appendix C

### Brownfields Redevelopment Incentive Program Project Scoring Criteria

NJEDA has developed scoring criteria for the evaluation of the proposed redevelopment projects. The criteria can be used to review redevelopment projects and to allocate tax credits in circumstances where the requests for tax credits exceed the annual maximum cap established by the state.

Based on the statute's imposed annual cap for the Brownfields Redevelopment Incentive Program (BRIP), as well as data reviewed from other states with brownfield tax credit programs, staff anticipate that there is a possibility for the program to be oversubscribed. As a result, staff is recommending the use of scoring criteria to rank or compare the projects against each other. If the volume of BRIP tax credit award requests is less than currently anticipated, resulting in the program being undersubscribed for any particular year, a minimum score will ensure that the proposed redevelopment projects receiving tax credits are consistent with the objectives, goals, and principles of the BRIP. For the initial round, staff is proposing a minimum score of 25 out of 100, to be as inclusive as possible. Staff may adjust the minimum score requirement for future rounds based on an evaluation of the results from the previous rounds.

Applications will be reviewed by a committee comprised of a multidisciplinary team of professionals from NJEDA. At a minimum, the committee will include at least one staff member with experience in brownfields and site remediation, and one with construction and/or project management experience.

The recommended system will score projects with respect to five criteria:

1. Environmental history of the brownfield site and impact of the contamination, hazard, or other environmental concern on the surrounding community (23 points)
2. The degree to which the redevelopment project enhances and promotes job creation and economic development such as the land use and other designations of the site of the redevelopment project related to uses and purposes of the site, including, but not limited to, if it is an area in need of redevelopment (10 points)
3. Positive impact of the redevelopment project on the surrounding community. For the entity or entities in the applicant's ownership structure that will have direct or indirect control over the actions by the applicant to undertake the redevelopment project, the extent to which such entity or entities have owners or board of directors (or members or partners if no board of directors) who are diverse and representative of the community in which the redevelopment project is located (27 points)
4. Economic feasibility of the redevelopment project and project viability, including level of experience and qualifications of the applicant's key personnel and strategic partners.; (29 points)
5. The extent to which the remediation will reduce environmental or public health stressors in an overburdened community, as those terms are defined by section 2 of P.L. 2020, c. 92 (N.J.S.A. 13:1D-158), and how the remediation will address climate resiliency (11 points)



Criterion 1: Environmental History of the Site and Impact of the Contamination, Hazard, or other Environmental Concern on the Surrounding Community (23 Points)

This criterion is for the specific aspects related to the environmental history of the site plus the impact of the contamination to the surrounding environ and any on-site physical hazards, such as on-site buildings and other structures, to the surrounding community. The types of factors that may be considered include:

- A discharge at the site which may pose an immediate environmental concern
- Contaminated Building Material that poses an imminent and significant threat to human health and safety
- Contamination that has migrated off-site which will pose a threat to the surrounding community
- Additional public funding that the state has already invested for redevelopment of the site
- Environmental assessments and pre-remediation surveys that have already been completed such as preliminary assessment, site investigation, asbestos containing materials survey, universal waste survey, pre-demolition survey, and lead based paint survey
- Abandoned or underutilized site for 5 or more years

Criterion 2: The degree to which the redevelopment project enhances and promotes job creation and economic development (10 points)

This criterion will look at specific aspects related to where the project is located and beneficial zoning. This criterion also considers site location as it pertains to economic development on the surrounding community since cleaning up blighted sites will positively impact the community. The types of factors that may be considered include:

- Current Zoning for mixed use high density residential development
- Connectivity to transit
- State site designations such as
  - Endorsed Plan Municipality
  - Area in Need of Redevelopment
  - Area in Need of Rehabilitation
  - Urban Enterprise Zone
  - Brownfield Development Area
  - NJ Redevelopment Authority Eligible Municipality

Criterion 3: Positive Impact of the Redevelopment Project on the Surrounding Community (27 points)

This criterion evaluates the positive impact to the surrounding neighborhood based on the level of local community support and whether the proposed project will provide a positive impact on the

surrounding neighborhood by addressing community needs and attracting business owners and/or employers in the region. The types of factors that may be considered include:

- Community support as evidenced by a written letter/s of support from a non-profit community group in the neighborhood where the site is located
- Community outreach by holding public meetings to discuss the project
- Diverse board of directors and ownership that is representative of the community
- Located within the vicinity of sensitive population such as residence, school, daycare, park, playground
- Located within the vicinity of potable water sources
- State site designation such as
  - Community Collaborative Initiative Community
  - Municipal Revitalization Index for 50 most distressed municipalities
  - Government Restricted Municipality
  - Qualified Incentive Tract

#### Criterion 4: Economic Feasibility of the Redevelopment Project and Project Viability (29 points)

This criterion evaluates the project concept as well as the experience of the team and project schedule for executing the proposed project. It takes into consideration the quality and experience of the project team, proposed project concept/approach as well as whether the project schedule and budget seem realistic and follows industry standards. The economic feasibility of the redevelopment project is also evaluated. The types of factors that may be considered include:

- Experience and qualification of the applicant with projects of similar size/scope
- Presence and strength of strategic partners
- Project management skills, expertise and fit with the project
- LSRP and other licensed or certified professionals with demonstrated history of successful completion of projects of similar size/scope/complexity
- Experience with managing environmental consultants
- Funding sources to show commitment of a stable leveraged funding source(s)
- Proposed project approach with details on how the cleanup will be implemented
- Project schedule that is realistic and achievable within the selected remediation period.
- Remedial construction documents have been reviewed and approved by DEP
- Project costs are appropriate to the level of effort

#### Criterion 5: Environmental Justice and Climate Resiliency (11 points)

This criterion evaluates whether the project has environmental justice or climate resiliency issues. The types of factors that may be considered include:

- Overburdened Communities Census Block Group as having a combined environmental justice stressor total of more than the 50th percentile
- A letter of support demonstrating community support from a local environmental or grassroots organization

- Community engagement by providing ample opportunity for meaningful engagement with the community
- For climate resiliency, a determination that the site is not located in a 100-year FEMA flood plain for future reuse of the site, or for sites located in a 100-year FEMA flood plain, the preparation of a Climate Risk Assessment Plan.

# NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## Stand-Alone Bond

**APPLICANT:** Coriell Institute for Medical Research, Inc.

PROD-00305557

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

**PROJECT LOCATION:** 1321 Walnut Street      Camden City      Camden

### APPLICANT BACKGROUND:

Established in 1953, Coriell Institute for Medical Research, Inc., is a biobank and laboratory providing biospecimens to researchers and scientists. The Company manages a diverse collection of cell lines, DNA, and other biomaterials, gathered and distributed for use by the international biomedical research community. In 1960, Coriell was one of the first two official cell banks recognized by the National Institute of Health. The Institute is currently located at 403 Haddon Avenue, Camden, NJ.

Coriell Institute for Medical Research, Inc., is seeking tax exempt bond financing to relocate its headquarters and construct and develop an innovation and science campus. The Company will be relocating its corporate office from Haddon Ave in Camden to a larger newly constructed facility also in Camden. The Applicant will retain its 125 employees and anticipates hiring an additional 40 full time employees.

The Applicant is a not-for-profit, 501(c)(3) entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the 1986 Internal Revenue Code as amended and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

**OTHER NJEDA SERVICES:** None

### APPROVAL REQUEST:

Authority assistance will enable the Applicant to relocate its headquarters and construct and develop an innovation and science campus.

The project is being presented for preliminary approval.

### FINANCING SUMMARY:

#### BOND PURCHASER:

#### AMOUNT OF BOND:

#### TERMS OF BOND:

**ENHANCEMENT:**                      N/A

### PRODUCT COSTS:

Renovation of Existing Building	\$2,000,000.00	Substantial Environmental Remediation	\$250,000.00
Construction of New Building or Addition	\$32,500,000.00	Contingency	\$1,000,000.00
Construction of Roads, Utilities, Etc.	\$250,000.00	Technology & Networking	\$2,000,000.00
Engineering & Architectural Fees	\$2,000,000.00	Fixtures & Equipment, Furniture	\$2,000,000.00
New Equipment	\$2,000,000.00		
Demolition	\$1,000,000.00		
Streetscape Improvements	\$1,000,000.00		

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**TOTAL COSTS: \$46,000,000.00**

**JOBS:**

NJ Full Time Jobs at Application	Expected New Full Time Eligible Jobs at Project Site	Full Time Maintained Jobs at Project Site	Estimated Construction Jobs
125	40	125	30

**PUBLIC HEARING:** 10/12/2022

**DEVELOPMENT OFFICER:** Kathleen Durand

**BOND COUNSEL:** Chiesa Shahinian & Giantomasi PC

**UNDERWRITER OFFICER:** Chitra

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** Adoption of Written Post-Issuance Compliance Procedures with Respect to the Authority's Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects), 2017 Series A, Transportation Project Sublease Revenue Refunding Bonds (New Jersey Transit Corporation Projects), 2017 Series B and NJ Transit Transportation Project Bonds, 2020 Series A: PROD-00174388 and PROD-00188174

### APPROVAL REQUEST

The Members of the Authority are asked to (i) adopt written post-issuance compliance procedures (the "Written Procedures") with respect to the Authority's Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects), 2017 Series A, Transportation Project Sublease Revenue Refunding Bonds (New Jersey Transit Corporation Projects), 2017 Series B (collectively, the "2017 Bonds") and NJ Transit Transportation Project Bonds, 2020 Series A (the "2020 Bonds") and any Refunding Bonds (as such term is defined in the hereinafter defined 2016 Resolution) or Bonds or Refunding Bonds (as such terms are defined in the hereinafter defined 2019 Resolution) issued pursuant to the 2016 Resolution or the 2019 Resolution (together with the 2017 Bonds and the 2020 Bonds, the "Tax-Exempt Bonds"), (ii) appoint one or more Tax Compliance Officers to carry out the Written Procedures and (iii) approve the use of professionals and authorize Authority staff to take all necessary actions incidental to the foregoing.

### BACKGROUND

The 2017 Bonds were issued pursuant to the laws of the State of New Jersey (the "State"), including the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the "Act") and a resolution of the Authority entitled "Transportation Project Sublease Revenue Bond Resolution (New Jersey Transit Corporation Projects)" adopted by the Authority on December 13, 2016, and a certificate of the Authority, dated as of January 12, 2017, entitled "2017 Series Certificate" (collectively, the "2016 Resolution"). The 2020 Bonds were issued pursuant to the laws of the State, including the Act and a resolution of the Authority entitled "NJ Transit Transportation Project Bond Resolution" adopted by the Authority on December 10, 2019, as supplemented by the First Supplemental NJ Transit Transportation Project Bond Resolution adopted by the Authority on December 10, 2019 and a Series Certificate dated as of January 9, 2020, executed by an Authorized Authority Representative (collectively, the "2019 Resolution" and, together with the 2016 Resolution, the "NJ Transit Projects Resolutions"). All capitalized terms not otherwise defined shall have the

meanings ascribed to them in the 2016 Resolution or the 2019 Resolution, as applicable, or in the Tax Certificate (as hereinafter defined) for each series of Bonds, as applicable.

In accordance with the provisions of the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated January 23, 2017 (the “2017 Tax Certificate”) and the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated January 16, 2020 (the “2020 Tax Certificate” and, together with the 2017 Tax Certificate, the “Tax Certificates”), and as is required pursuant to the Internal Revenue Code of 1986, as amended, and the related regulations promulgated thereunder, since the issuance of the 2018 Bonds, New Jersey Transit Corporation has been undertaking arbitrage compliance with respect to the 2018 Bonds, and the State Treasurer, or his/her designee, has been monitoring private use with respect to facilities financed with the proceeds of the 2018 Bonds. The Authority now desires to memorialize those on-going tax compliance procedures in writing pursuant to and as described in the Written Procedures.

Currently, the Members of the Authority are asked to adopt a Resolution authorizing the Written Procedures and the appointment of one or more Tax Compliance Officers (as such term is defined in the Written Procedures). The Members of the Authority also are asked to authorize an Authorized Officer of the Authority to take any and all actions necessary in connection with the foregoing.

Through a competitive RFQ/RFP process performed by the Attorney General’s Office on behalf of Treasury for State appropriation-backed bonds, and in compliance with Executive Order No. 26 (Whitman 1994), Chiesa Shahinian Giantomasi PC (“CSG”) was selected as Bond Counsel (“Bond Counsel”) in connection with the Written Procedures. The Members are asked to approve the use of CSG as Bond Counsel and authorize Authority staff to take all necessary actions incidental to the adoption of the Written Procedures, subject to review by the Attorney General’s Office and Bond Counsel.

#### RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled “RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES, DESIGNATION OF A TAX COMPLIANCE OFFICER AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY’S TRANSPORTATION PROJECT SUBLEASE REVENUE BONDS (NEW JERSEY TRANSIT CORPORATION PROJECTS) AND NJ TRANSIT TRANSPORTATION PROJECT BONDS” authorizing, among other things, the adoption of the Written Procedures and the appointment of Tax Compliance Officers. The Members are also asked to authorize the use of CSG as Bond Counsel and authorize the Authorized Officers of Authority to take any and all necessary actions incidental to the adoption and implementation of the Written Procedures, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General’s Office.



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Tim Sullivan, CEO

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**  
**POST-ISSUANCE TAX COMPLIANCE PROCEDURES**  
**FOR**  
**USE OF TAX-EXEMPT BOND FINANCED PROPERTY AND PROCEEDS**  
  
**Relating to**  
**TRANSPORTATION PROJECT SUBLEASE REVENUE BONDS**  
**(NEW JERSEY TRANSIT CORPORATION PROJECTS)**  
  
**AND**  
**NJ TRANSIT TRANSPORTATION PROJECT BONDS**



## BACKGROUND – THE BONDS

On January 23, 2017, the New Jersey Economic Development Authority (the “Authority”) issued, on a tax-exempt basis, its \$64,060,000 Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects), 2017 Series A (the “2017 Series A Bonds”), and its \$563,595,000 Transportation Project Sublease Revenue Refunding Bonds (New Jersey Transit Corporation Projects), 2017 Series B (the “2017 Series B Bonds” and, together with the 2017 Series A Bonds, the “2017 Bonds”). The 2017 Bonds were issued pursuant to the laws of the State of New Jersey (the “State”), including the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the “Act”) and a resolution of the Authority entitled “Transportation Project Sublease Revenue Bond Resolution (New Jersey Transit Corporation Projects)” adopted by the Authority on December 13, 2016, and a certificate of the Authority, dated as of January 12, 2017, entitled “2017 Series Certificate” (collectively, the “2016 Resolution”). On January 16, 2020, the Authority issued, on a tax-exempt basis, its \$500,000,000 NJ Transit Transportation Project Bonds, 2020 Series A (the “2020 Bonds”). The 2020 Bonds were issued pursuant to the laws of the State, including the Act and a resolution of the Authority entitled “NJ Transit Transportation Project Bond Resolution” adopted by the Authority on December 10, 2019, as supplemented by the First Supplemental NJ Transit Transportation Project Bond Resolution adopted by the Authority on December 10, 2019 and a Series Certificate dated as of January 9, 2020, executed by an Authorized Authority Representative (collectively, the “2019 Resolution” and, together with the 2016 Resolution, the “NJ Transit Projects Resolutions”). All capitalized terms not otherwise defined shall have the meanings ascribed to them in the 2016 Resolution or the 2019 Resolution, as applicable, or in the Tax Certificates (as hereinafter defined) for each series of Bonds, as applicable.

The 2017 Series A Bonds were issued by the Authority for the purposes of: (i) financing the costs of certain new capital projects of the New Jersey Transit Corporation (the “Corporation”) as described in the 2016 Resolution, (ii) paying capitalized interest on the 2017 Series A Bonds through and including May 1, 2018, and (iii) paying costs of issuance of the 2017 Series A Bonds (the “2017 Series A Project”). The 2017 Series B Bonds were issued by the Authority for the purposes of: (i) refunding the Series B Prior Obligations (as such term is defined in the 2017 Series Certificate), and (ii) paying costs of issuance of the 2017 Series B Bonds (the “2017 Series B Project” and, together with the 2017 Series A Project, the “2017 Projects”). The Series B Prior Obligations were issued to finance the acquisition by the Corporation of certain bus rolling stock and rail rolling stock.

The 2020 Bonds were issued by the Authority for the purposes of: (i) paying costs of a project consisting of the acquisition of commuter buses and locomotives by the Corporation, (ii) paying capitalized interest on the 2020 Bonds through and including November 1, 2022, and (iii) paying costs of issuance of the 2020 Bonds (the “2020 Series A Project” and, together with the 2017 Projects, the “Projects”).

The Authority and the Corporation entered into a lease (collectively, the “2017 Leases”) and a sublease (collectively, the “2017 Subleases”) for each project financed or refinanced with the proceeds of the 2017 Bonds, each dated as of January 1, 2017, pursuant to each of which the Corporation leased the applicable project to the Authority, and the Authority subleased the applicable project back to the Corporation.

The Authority and the Corporation entered into a lease (the “2020 Lease” and, together with the 2017 Leases, the “Leases”) and a sublease (the “2020 Sublease” and, together with the 2017 Subleases, the “Subleases”) for the 2020 Series A Project both dated as of January 1, 2020, pursuant to which the Corporation leased the 2020 Series A Project to the Authority, and the Authority subleased the 2020 Series A Project back to the Corporation.

Pursuant to each Sublease, the Corporation has agreed that it shall not (i) take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the 2017 Bonds or the 2020 Bonds, as applicable, under Section 103 of the Code, (ii) make, or direct the Authority or the Trustee to make, any use of the proceeds of the 2017 Bonds or the 2020 Bonds, as applicable, directly or indirectly, in a manner which would cause the 2017 Bonds or the 2020 Bonds, as applicable, to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

In the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated January 23, 2017 (the “2017 Tax Certificate”) and the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated January 16, 2020 (the “2020 Tax Certificate” and, together with the 2017 Tax Certificate, the “Tax Certificates”), the Corporation represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in each Tax Certificate and will do and perform all acts and things necessary or desirable in order to assure that, under the Code as presently in effect, interest on the 2017 Bonds and the 2020 Bonds will, for purposes of Federal income taxation, be excludable from the gross income of the recipients thereof.

The 2016 Resolution provides for the issuance of Refunding Bonds (as such term is defined in the 2016 Resolution). The 2019 Resolution provides for the issuance of Bonds and Refunding Bonds (as such terms are defined in the 2019 Resolution). For purposes of these procedures, the term “Bonds” refers to the 2017 Bonds, the 2020 Bonds, any Refunding Bonds issued as Tax-Exempt Bonds (as such term is defined under the 2016 Resolution) under the 2016 Resolution, and any Bonds and/or Refunding Bonds issued as Tax-Exempt Bonds (as such term is defined under the 2019 Resolution) under the 2019 Resolution. These procedures may be amended as necessary or appropriate in connection with the issuance of any such future Bonds to conform to the requirements of the Code as may be in effect at the time of such issuance, unless separate post-issuance tax compliance procedures are then adopted in connection with any such future Bonds.

#### **PURPOSE OF POST-ISSUANCE TAX COMPLIANCE PROCEDURES**

Section 141 of the Code contains limitations on the extent to which proceeds of the Bonds can benefit persons other than a state or local governmental unit. In addition, Section 148 of the Code imposes limitations on the investment of proceeds of the Bonds and requires rebate of excess earnings to the federal government. The procedures set forth herein are intended enable the Authority to comply with the applicable requirements of the Code and thereby to preserve the tax-exempt status of the Bonds. These procedures, together with the Tax Certificate, establish procedures for: (1) identifying uses that may constitute private uses; (2) managing and tracking changes in use; (3) accomplishing remedial actions when necessary; (4) ensuring compliance with the arbitrage requirements of the Code; and (5) ensuring compliance with the record retention requirements of the Code.

#### **RESPONSIBILITY**

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of the Bonds (the “Tax Requirements”), the Authority has, by Resolution adopted on October 12, 2022 (the “Post-Issuance Compliance Resolution”), appointed one or more tax compliance officers (each a “Tax Compliance Officer” and, together, the “Tax Compliance Officers”), as set forth below, with respect to the Bonds. The Tax Compliance Officers will have the primary responsibility to monitor the Authority’s compliance with the Tax Requirements for the Bonds. The general responsibilities of the Tax Compliance Officer with respect to tax compliance shall include, but not be limited to, confirming consistent application of these procedures, monitoring the completeness of documentation required by these procedures, and requesting that the Attorney General’s Office engage

nationally recognized bond counsel (“Bond Counsel”) as necessary in the event that a potential issue arises with respect to the tax-exempt status of the Bonds. The Tax Requirements include both limitations on the private use of the Projects and arbitrage limitations on the investment of the proceeds of the Bonds under the Code. The procedures to be undertaken are set forth below and are intended to supplement the Tax Certificates. The Authority, in consultation with Bond Counsel, will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements. The Tax Compliance Officer shall be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

## **PRIVATE ACTIVITY LIMITATIONS**

### ***Private Activity Review***

Federal tax law limits the permitted amount of private business use of tax-exempt bond-financed facilities (“Bond-Financed Property”), such as the Projects, by reference to a percentage of the total amount of proceeds of the tax-exempt bonds issued to finance such Bond-Financed Property (the “Private Activity Limitations”). In the case of private uses that are related to the governmental use of the facility, the limit is 10% of proceeds. In the case of private uses that are unrelated to the governmental use, or that are related but disproportionate to the governmental use, the limit is 5% of proceeds. Federal tax law also limits the amount of private loans financed with tax-exempt proceeds to the lesser of 5% of proceeds or \$5,000,000.

The Corporation has designated the Controller (the “Controller”) of the Corporation to serve as the Corporation Tax Compliance Officer with regard to the matters discussed under this Section. Any references to “Corporation Tax Compliance Officer” in this Section shall mean the Controller.

In order to demonstrate compliance with the Private Activity Limitations, the Corporation Tax Compliance Officer will implement or oversee the procedures described below under “Monitoring Procedures.” These procedures are designed to assist the Corporation Tax Compliance Officer in identifying the potential occurrence of any of the events set forth below (each, a “Tax Event”) with respect to any portion of any of the Projects:

**Change in use of Bond-Financed Property** -- a change in the use of the Bond-Financed Property as a result of any one or more of the other Tax Events set forth below.

**Change of ownership of Bond-Financed Property** -- the ownership of any portion of the Bond-Financed Property is transferred to anyone other than a State or local governmental unit, prior to the earlier of the end of the expected economic life of the Bond-Financed Property or the latest maturity date of any bond of the issue financing (or refinancing) the Bond-Financed Property.

**Private business use of Bond-Financed Property** -- any portion of the Bond-Financed Property is or will be used by anyone other than (i) a State or local governmental unit or (ii) members of the general public who are not using the property in the conduct of a trade or business. Examples of uses that can give rise to private business use include use by a person as an owner, lessee, purchaser of the output of the Bond-Financed Property under a “take” or “take or pay” contract, purchaser or licensee of research conducted at the Bond-Financed Property, a manager or independent contractor under certain management or professional service contracts with respect to the Bond-Financed Property, or any other arrangement with respect to the Bond-Financed Property that conveys special legal entitlements for beneficial use of the property (e.g.,

an arrangement that conveys priority rights to the use or capacity of the financed property) or special economic benefit with respect to the use of the Bond-Financed Property.

**Leases of Bond-Financed Property** -- any portion of the Bond-Financed Property is to be leased or otherwise subject to an agreement which gives possession of any portion of the Bond-Financed Property to anyone other than a State or local governmental unit.

**Management agreement or service agreement with respect to Bond-Financed Property** -- any portion of the Bond-Financed Property is to be used under a management contract or professional service contract (e.g., medical group), other than a contract for services that are solely incidental to the primary function of the Bond-Financed Property, such as janitorial services or office equipment repair.

**Sale of output from Bond-Financed Property** -- any output of the Bond-Financed Property is to be sold under a long-term contract to any person other than a State or local governmental unit.

**Naming rights agreements with respect to Bond-Financed Property** -- any portion of the Bond-Financed Property will become subject to a naming rights or a sponsorship agreement, other than a “brass plaque” dedication.

**Research using Bond-Financed Property** -- any portion of the Bond-Financed Property will be used for the conduct of research under the sponsorship, or for the benefit of, any organization other than a State or local governmental unit.

**Private Loan of proceeds of the Bonds** -- any portion of the proceeds of the Bonds (including any investment earnings thereon) is to be loaned by the Authority to any person other than a State or local governmental unit.

On or prior to the occurrence of any Tax Event or prior to an imminent, suspected, potential, or anticipated Tax Event, the Corporation Tax Compliance Officer will request that the Attorney General’s Office obtain the advice of Bond Counsel to ascertain what effect, if any, a contemplated Tax Event may have on the tax-exempt status of interest on the Bonds. In certain circumstances it may be necessary for the Authority to take a remedial action under Treasury Regulation Section 1.141-12 to preserve the tax-exempt status of interest on the Bonds. Timely identification of a Tax Event is necessary to take a remedial action. In certain cases, remedial action may not be available and the Authority may need to consider entering into a voluntary closing agreement with the IRS.

### ***Monitoring Procedures***

#### **Responsible Persons**

The Corporation Tax Compliance Officer will be responsible for determining the occurrence or possibility of the occurrence of any Tax Event as soon as practicable upon learning of any such occurrence or possibility of such occurrence. The Corporation Tax Compliance Officer will seek the assistance of the pertinent staff of the Corporation in its review.

### Ongoing Contract Review

The Corporation Tax Compliance Officer will oversee the establishment of a procedure for the review on an on-going basis of all existing and prospective contracts between the Corporation and a non-governmental person, including the federal government or a non-profit organization, that involve the use of, management of, or provision of services with respect to, any of the Projects. Excluded from such review process and reporting requirement will be construction contracts, engineering or similar contracts, purchase contracts, and incidental contracts such as contracts for janitorial services or office equipment repair. Based upon such review of contracts, the Corporation Tax Compliance Officer will oversee the maintenance of written records that identify, for each such contract, the type of use by the contracting party, the term of the contract and the compensation arrangement.

For all such contracts requiring review, the Corporation Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel with respect to whether the contract meets, or will meet, the requirements for a safe harbor management contract under the Code and Regulations and applicable Revenue Procedures and Revenue Rulings or another exception to private use or can be revised to meet a safe harbor or exception. For those contracts that cannot meet a safe harbor or exception from private use, including all leases and sale contracts with a non-governmental person, the Corporation Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel as to any further steps to be taken, including remedial action if necessary.

### Change in Use and Remediation

No less frequently than annually, the Corporation Tax Compliance Officer will undertake or coordinate a review to identify any changes in use of any of the Projects that might result in private use and/or private payments, including any privatization initiatives. Should the information collected by the Corporation Tax Compliance Officer indicate that there may be a change in private use and/or private payments from what was contemplated at the time of the issuance of the Bonds, the Corporation Tax Compliance Officer will request that the Attorney General's Office engage Bond Counsel to provide advice as to any steps to be taken, including remedial action if necessary. To the extent that any such potential change comes to the attention of the Corporation Tax Compliance Officer prior to the next scheduled periodic review, the Corporation Tax Compliance Officer shall not wait until the next scheduled periodic review but shall, within a reasonable time after such change comes to the attention of the Corporation Tax Compliance Officer, request that the Attorney General's Office engage Bond Counsel to provide advice as to any steps to be taken, including remedial action if necessary.

### ***Recordkeeping***

The Internal Revenue Service (the "IRS") has advised issuers of tax-exempt obligations that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the IRS in the event of an audit. Accordingly, all files must be maintained for the life of the Bonds plus three years. See IRS FAQs on Record Retention, current as of January 14, 2021, attached as Appendix A. The FAQs, as from time to time updated by the IRS, can be found at the following link: <https://www.irs.gov/tax-exempt-bonds/tax-exempt-bond-faqs-regarding-record-retention-requirements#1>

The records to be maintained by the Corporation Tax Compliance Officer are to include:

1. Information and records regarding any use of proceeds of the Bonds to make or finance a loan to any person other than a state or local governmental unit;
2. Records reflecting actual expenditures of the proceeds of the Bonds;

3. Information and records regarding the continued use and ownership of each Project;
4. Any use arrangements affecting any of the Projects, which result in private business use of any portion of any of the Projects; and
5. Copies of any leases, management contracts, service contracts or other written arrangements with persons other than a state or local governmental unit relating to any of the Projects.

### **ARBITRAGE COMPLIANCE**

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of the Bonds and the rebate of excess investment earnings to the federal government.

The Corporation has designated the Controller of the Corporation to serve as the Corporation Tax Compliance Officer with regard to the matters discussed under this Section. Any references to “Corporation Tax Compliance Officer” in this Section shall mean the Controller.

#### ***Arbitrage Review***

The Corporation Tax Compliance Officer will establish a timeline for review of arbitrage-related issues as more fully described below and to maintain the records and documents described below under “Recordkeeping.” The Corporation Tax Compliance Officer is responsible for maintaining or causing to be maintained records documenting the investment and allocation of proceeds of the Bonds, determining if any spending exception allowed by the Code and set forth in the Tax Certificate is applicable or permitted, causing a rebate analysis to be prepared on each date that a rebate analysis is required or permitted by the Tax Certificate and/or the Code, determining the amount of any required rebate due to the federal government and the applicable due date thereof, depositing or causing the Trustee to deposit in the Rebate Fund the amounts available to be deposited therein pursuant to the Bond Resolution, including Rebate Payments received from the Corporation pursuant to Section 4.3 of each Sublease, and causing the Trustee to apply amounts on deposit in the Rebate Fund to make any required payments to the United States when due, in accordance with the Code and as further described in the Tax Certificate.

#### ***Temporary Periods for Unrestricted Yield***

The available temporary periods with respect to the Bonds are as set forth in the Tax Certificate. If any proceeds of the Bonds remain unexpended beyond the applicable temporary period, the Corporation Tax Compliance Officer must assure that such proceeds are yield restricted. Yield restriction will be accomplished through either an actual investment below the relevant yield or the making of yield reduction payments. The Corporation Tax Compliance Officer will work with the Authority’s auditor or arbitrage consultant to make timely yield reduction payments.

#### ***Rebate***

The Corporation Tax Compliance Officer will be responsible for ensuring that a rebate analysis with respect to the Bonds is performed at the times provided in the Tax Certificate. The Corporation Tax Compliance Officer will work with the Authority’s auditor or arbitrage consultant to make timely filings and payments with respect to any rebate amount due.

### Arbitrage Consultant

The Corporation Tax Compliance Officer will maintain a contract with a third-party nationally recognized arbitrage consultant (the “Arbitrage Consultant”) for the purpose of providing arbitrage consulting services, including but not limited to:

1. Annual analysis of the Bonds;
2. Yield restriction calculations;
4. Arbitrage rebate calculations; and
5. Technical support on an ad-hoc basis.

The Arbitrage Consultant will provide, on an annual basis, an analysis of the Bonds to review and identify potential arbitrage or rebate liability, issues regarding yield restriction compliance, and/or other arbitrage related issues. The Corporation Tax Compliance Officer will review the arbitrage analysis and coordinate with the Arbitrage Consultant to prepare any necessary filings and payments on a timely basis. The Corporation Tax Compliance Officer will timely file or cause to be filed with the IRS the appropriate IRS arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due with respect to the Bonds.

### ***Recordkeeping***

In order to satisfy the arbitrage recordkeeping requirements, the Corporation Tax Compliance Officer will create and maintain, or cause to be created and maintained, records (which records may include spreadsheets, bank statements, investment purchase confirmations, agreements, certificates, etc.) of:

1. Purchases or sales of investments made with the proceeds of the Bonds (including amounts treated as “gross proceeds” as a result of being part of a sinking fund or pledged fund or otherwise under section 148 of the Code, other than amounts that meet the exception for bona fide debt service funds) and receipts of earnings on those investments;
2. The allocations, by date and amount, of the proceeds of the Bonds to expenditures;
3. Information and records showing that investments made with unspent proceeds of the Bonds after the expiration of the applicable temporary period were not invested in higher-yielding investments;
4. Information and records, including bank and earnings statements, that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the Authority has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to the Bonds;
5. In the event that an exception to the arbitrage rebate requirement was not applicable, information and calculations that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of the Bonds was calculated and timely paid with Form 8038-T being timely filed with the IRS;

6. Information and records demonstrating that all rebate calculations and reports prepared in connection with the Bonds were prepared in accordance with the requirements of the Tax Certificate and the Code;
7. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows funded with the proceeds of the Bonds were not invested in higher-yielding investments; and
8. The Tax Certificate.

## **MISCELLANEOUS**

### ***Training Requirements***

The Tax Compliance Officer will arrange for training regarding the requirements of these procedures for him or herself, Authority personnel or Corporation personnel involved in implementing these procedures, and any successor(s) thereto, and will periodically provide or arrange for training for each of such individuals concerning their respective duties under these procedures.



## Appendix A

### **Tax Exempt Bond FAQs Regarding Record Retention Requirements**

- During the course of an examination, IRS Tax Exempt Bonds (TEB) agents will request all material records and information necessary to support a municipal bond issue's compliance with section 103 of the Internal Revenue Code. The following information is intended solely to answer frequently asked questions concerning how the broad record retention requirements under section 6001 of the Code apply to tax-exempt bond transactions. Although this document provides information with respect to many of the concerns raised by members of the municipal finance industry about record retention, it is not to be cited as an authoritative source on these requirements. TEB recommends that issuers and other parties to tax-exempt bond transactions review section 6001 of the Code and the corresponding Income Tax Regulations in consultation with their counsel.

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- These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

- The freely available [Adobe Acrobat Reader](#) software is required to view, print, and search the questions and answers listed below.

#### **Why keep records with respect to tax-exempt bond transactions?**

- Section 6001 of the Internal Revenue Code provides the general rule for the proper retention of records for federal tax purposes. Under this provision, every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6001-1(a) of the Income Tax Regulations amplifies this general rule by providing that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

- The IRS regularly advises *taxpayers* to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the issuer, the conduit borrower and other participants retain sufficient records to support the continued exclusion being taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

- Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.
- Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, 8038-G, 8038-GC, 8038-T, and 8038-R.
- In addition to the general rules under section 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other Code sections and regulations. For example, section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

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### **Who may maintain records?**

- Read together, section 6001 of the Code and section 1.6001-1(a) of the Regulations apply to taxpayers and persons filing tax returns, including returns related to tax-exempt bond transactions (i.e., Forms 8038, 8038-G, 8038-GC, 8038-T, 8038-R, 8328, 8703). This encompasses several parties to the bond transaction including:
  1. issuers as the party responsible for satisfying the filing requirements under section 149(e) of the Code;
  2. conduit borrowers for deductions taken for payment of interest on outstanding bonds or depreciation of bond-financed facilities; and
  3. bondholders, lenders, and lessors as recipients of exempt income from the interest paid on the bonds.
- Since many of the same records may be examined to verify, for example, both the tax-exempt status of the bonds and the interest deductions of the conduit borrower, it is advisable for the bond documents to specify which party will bear the responsibility for maintaining the basic records relating to a bond transaction. Additional parties may also be responsible for maintaining records under contract with any of the parties named above. For example, a trustee may agree to maintain certain records pursuant to the trust indenture.

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### **What are the basic records that should be retained?**

- Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most tax-exempt bond transactions include:

- Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);
- Documentation evidencing expenditure of bond proceeds;
- Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);
- Documentation evidencing all sources of payment or security for the bonds; and
- Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

**Are these the only records that need to be maintained?**

- No, the list above is very general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions. Moreover, certain records may be necessary to support information related to certain requirements applicable to specific types of qualified private activity bonds. With respect to single and multifamily housing bonds as well as small issue industrial development bonds, examples of such additional material records include:

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<p>Single Family Housing Bonds</p>	<ul style="list-style-type: none"> <li>• Documents evidencing that at least 20% of proceeds were available for owner financing of targeted area residences.</li> <li>• Documentation evidencing proper notification of each mortgagor of potential liability of the mortgage subsidy recapture tax.</li> </ul>
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<p>Multi-Family Housing Bonds</p>	<ul style="list-style-type: none"> <li>• Documentation evidencing that the facility is not used on a transient basis.</li> <li>• Documentation evidencing compliance with the income set-aside requirements.</li> <li>• Documentation evidencing timely correction, if any, of noncompliance with the income set-aside requirements.</li> </ul>
<p>Small Issue Industrial Development Bonds</p>	<ul style="list-style-type: none"> <li>• Documentation evidencing compliance with the \$10,000,000 limitation on the aggregate face amount of the issue.</li> <li>• Documentation evidencing that no test-period beneficiary has been allocated more than \$40,000,000 in bond proceeds.</li> </ul>

**In what format must the records be kept?**

- All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material. While this is typically accomplished through the maintenance of hard copies, taxpayers may keep their records in an electronic format if certain requirements are satisfied.
- Rev. Proc. 97-22, 1997-1 C.B. 652 provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media. Such a system may also include reasonable data compression or formatting technologies so long as the requirements of the revenue procedure are satisfied. The general requirements for an electronic storage system of taxpayer records are provided in section 4.01 of Rev. Proc. 97-22. A summary of these requirements is as follows:
  1. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.
  2. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.

3. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).
  4. The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.
  5. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.
  6. The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.
  7. The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.
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#### **How long should records be kept?**

- Section 1.6001-1(e) of the Regulations provides that records should be retained for so long as the contents thereof are material in the administration of any internal revenue law. With respect to a tax-exempt bond transaction, the information contained in certain records support the exclusion from gross income taken at the bondholder level for both past and future tax years. Therefore, as long as the bondholders are excluding from gross income the interest received on account of their ownership of the tax-exempt bonds, certain bond records will be material. Similarly, in a conduit financing, the information contained in the bond records is necessary to support the interest deduction taken by the conduit borrower for both past and future tax years for its payment of interest on the bonds.
  - To support these tax positions, material records should *generally* be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds. This rule is consistent with the specific record retention requirements under section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations.
  - Certain federal, state, or local record retention requirements may also apply.
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#### **How does this general rule apply to refundings?**

- For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 3 years after the final redemption of both bond issues.
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#### **What happens if records aren't maintained?**

- During the course of an examination, TEB agents will request material records and information in order to determine whether a tax-exempt bond transaction meets the requirements of the Code and

regulations. If these records have not been maintained, then the issuer, conduit borrower or other party may have difficulty demonstrating compliance with all federal tax law requirements applicable to that transaction. A determination of noncompliance by the IRS with respect to a bond issue can have various outcomes, including a determination that the interest paid on the bonds should be treated as taxable, that additional arbitrage rebate may be owed, or that the conduit borrower is not entitled to certain deductions.

- Additionally, a conduit borrower who fails to keep adequate records may also be subject to an accuracy-related penalty under section 6662 of the Code on the underpayment of tax attributable to any denied deductions. Section 6662 of the Code imposes a penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one of several factors, including negligence or disregard of rules or regulations. Section 1.6662-3(b)(1) of the Regulations provides that negligence includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. Under section 6662(a) of the Code, the penalty is equal to 20 percent of the portion of the underpayment of tax attributable to the negligence. Section 6664(c)(1) provides an exception to the imposition of accuracy-related penalties if the taxpayer shows that there was reasonable cause for the underpayment and that the taxpayer acted in good faith.

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#### **Can a failure to properly maintain records be corrected?**

- Yes, a failure to properly maintain records can be corrected through the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP). This program provides an opportunity for state and local government issuers, conduit borrowers, and other parties to a tax-exempt bond transaction to voluntarily come forward to resolve specific matters through closing agreements with the IRS. For example, TEB Compliance and Program Management has resolved arbitrage rebate concerns in cases where issuers have approached the IRS and reported a failure to retain sufficient records to determine, precisely, the correct amount of arbitrage rebate due on a bond issue. [More information](#) on VCAP is available.

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#### **Are there exceptions to the general rule regarding record retention for certain types of records?**

- No, but TEB encourages members of the municipal finance industry to submit comments and suggestions for developing record retention limitation programs for specific types of bond records, for specific classes of tax-exempt bond issues, or for specific segments of the bond industry. Comments can be submitted in writing to TEB and sent by e-mail to [TEGE TEB Questions](#).

**RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES, DESIGNATION OF A TAX COMPLIANCE OFFICER AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S TRANSPORTATION PROJECT SUBLEASE REVENUE BONDS (NEW JERSEY TRANSIT CORPORATION PROJECTS) AND NJ TRANSIT TRANSPORTATION PROJECT BONDS**

**WHEREAS**, on January 23, 2017, the New Jersey Economic Development Authority (the "Authority") issued, on a tax-exempt basis, its \$64,060,000 Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects), 2017 Series A (the "2017 Series A Bonds"), and its \$563,595,000 Transportation Project Sublease Revenue Refunding Bonds (New Jersey Transit Corporation Projects), 2017 Series B (the "2017 Series B Bonds" and, together with the 2017 Series A Bonds, the "2017 Bonds"). The 2017 Bonds were issued pursuant to the laws of the State of New Jersey (the "State"), including the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the "Act") and a resolution of the Authority entitled "Transportation Project Sublease Revenue Bond Resolution (New Jersey Transit Corporation Projects)" adopted by the Authority on December 13, 2016, and a certificate of the Authority, dated as of January 12, 2017, entitled "2017 Series Certificate" (collectively, the "2016 Resolution"); and

**WHEREAS**, on January 16, 2020, the Authority issued, on a tax-exempt basis, its \$500,000,000 NJ Transit Transportation Project Bonds, 2020 Series A (the "2020 Bonds"). The 2020 Bonds were issued pursuant to the laws of the State, including the Act and a resolution of the Authority entitled "NJ Transit Transportation Project Bond Resolution" adopted by the Authority on December 10, 2019, as supplemented by the First Supplemental NJ Transit Transportation Project Bond Resolution adopted by the Authority on December 10, 2019 and a Series Certificate dated as of January 9, 2020, executed by an Authorized Authority Representative (collectively, the "2019 Resolution" and, together with the 2016 Resolution, the "NJ Transit Projects Resolutions"; all capitalized terms not otherwise defined shall have the meanings ascribed to them in the 2016 Resolution or the 2019 Resolution, as applicable, or in the Tax Certificate (as hereinafter defined) for each series of Bonds, as applicable; and

**WHEREAS**, the 2017 Series A Bonds were issued by the Authority for the purposes of: (i) financing the costs of certain new capital projects of the New Jersey Transit Corporation (the "Corporation") as described in the 2016 Resolution, (ii) paying capitalized interest on the 2017 Series A Bonds through and including May 1, 2018, and (iii) paying costs of issuance of the 2017 Series A Bonds (the "2017 Series A Project"); and

**WHEREAS**, the 2017 Series B Bonds were issued by the Authority for the purposes of: (i) refunding the Series B Prior Obligations (as such term is defined in the 2017 Series Certificate), and (ii) paying costs of issuance of the 2017 Series B Bonds (the "2017 Series B Project" and, together with the 2017 Series A Project, the "2017 Projects"; the 2017 Projects are more fully described in the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated January 23, 2017 (the "2017 Tax Certificate"), executed and delivered by the Authority in connection with the issuance of the 2017 Bonds); and

**WHEREAS**, the 2020 Bonds were issued by the Authority for the purposes of: (i) paying costs of a project consisting of the acquisition of commuter buses and locomotives by the Corporation, (ii)

paying capitalized interest on the 2020 Bonds through and including November 1, 2022, and (iii) paying costs of issuance of the 2020 Bonds (the “2020 Series A Project” and, together with the 2017 Projects, the “Projects”), all as more fully described in the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated January 16, 2020 (the “2020 Tax Certificate” and, together with the 2017 Tax Certificate, the “Tax Certificates”), executed and delivered by the Authority in connection with the issuance of the 2020 Bonds; and

**WHEREAS**, pursuant to the 2016 Resolution, one or more Series of Refunding Bonds may be issued as provided in the 2016 Resolution and, pursuant to the 2019 Resolution, one or more series of Bonds and/or Refunding Bonds may be issued as provided in the 2019 Resolution (such additional Bonds and/or Refunding Bonds issued as Tax-Exempt Bonds are, collectively with the 2017 Bonds and the 2020 Bonds, hereinafter referred to as the “Tax-Exempt Bonds”); and

**WHEREAS**, the Authority and the Corporation entered into a lease (collectively, the “2017 Leases”) and a sublease (collectively, the “2017 Subleases”) for each project financed or refinanced with the proceeds of the 2017 Bonds, each dated as of January 1, 2017, pursuant to each of which the Corporation leased the applicable project to the Authority, and the Authority subleased the applicable project back to the Corporation; and

**WHEREAS**, the Authority and the Corporation entered into a lease (the “2020 Lease” and, together with the 2017 Leases, the “Leases”) and a sublease (the “2020 Sublease” and, together with the 2017 Subleases, the “Subleases”) for the 2020 Series A Project both dated as of January 1, 2020, pursuant to which the Corporation leased the 2020 Series A Project to the Authority, and the Authority subleased the 2020 Series A Project back to the Corporation; and

**WHEREAS**, the Authority has developed written procedures for post-issuance tax compliance (“Written Procedures”) in connection with the Tax-Exempt Bonds to preserve the tax-exempt status of the Tax-Exempt Bonds by establishing procedures for: (1) identifying uses that may constitute private use of the Tax-Exempt Bonds or the Projects; (2) managing and tracking changes in use of the Tax-Exempt Bonds or the Projects; (3) accomplishing remedial action with respect to the Tax-Exempt Bonds or the Projects if and when necessary to maintain compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury Regulations promulgated thereunder (the “Regulations”) relating to Tax-Exempt Bonds; and (4) assuring compliance with the arbitrage requirements of the Code and Regulations; and

**WHEREAS**, pursuant to each Sublease, the Corporation has agreed that it shall not (i) take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the 2017 Bonds or the 2020 Bonds, as applicable, under Section 103 of the Code, (ii) make, or direct the Authority or the Trustee to make, any use of the proceeds of the 2017 Bonds or the 2020 Bonds, as applicable, directly or indirectly, in a manner which would cause the 2017 Bonds or the 2020 Bonds, as applicable, to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.; and

**WHEREAS**, the Authority’s Written Procedures will also set forth the respective responsibilities of the Authority as issuer of the Tax-Exempt Bonds and the Tax Compliance Officer(s) named therein; and



**WHEREAS**, the Tax Compliance Officer(s) is expected to acknowledge and adopt the Written Procedures, setting forth the respective responsibilities of the Authority and such Tax Compliance Officer(s) as described therein.

**NOW THEREFORE BE IT RESOLVED THAT:**

**Section 1. Written Post-Issuance Tax Compliance Procedures.**

The Written Procedures, in substantially the form presented to this meeting, are hereby approved, provided that an Authorized Officer of the Authority is hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate. The Chief Executive Officer of the Authority or his designee, is hereby authorized and directed, with the advice of Bond Counsel and the State Attorney General, to amend from time to time such Written Procedures as may be necessary or desirable or as may be required by the Code and Regulations.

**Section 2. Designation of Tax Compliance Officer.**

The Chief Executive Officer of the Authority is hereby authorized and directed to appoint one or more Tax Compliance Officers, in addition to or in lieu of the Tax Compliance Officer(s) named in the form of Written Procedures submitted to this meeting.

**Section 3. Additional Proceedings.**

Any of the Chairman, Vice Chairman, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Director, or any other authorized Authority representative who shall have power to execute contracts pursuant to the bylaws or a resolution adopted by the Authority is hereby authorized to take any additional actions which are necessary or desirable to achieve the purposes of this resolution upon advice of Bond Counsel and the State Attorney General.

**Section 4. Effective Date.**

This resolution shall take effect in accordance with the provisions of the New Jersey Economic Development Authority Act, L. 1974, c. 80, as from time to time amended and supplemented.

**MEMORANDUM**

To: Members of the Authority

From: Tim Sullivan  
Chief Executive Officer

RE: New Jersey Bioscience Center at North Brunswick  
661 South Route 1, North Brunswick, Middlesex County  
Amended and Restated Lease Agreement with Ascendia Pharmaceuticals, Inc.

Date: October 12, 2022

**Request**

I request the Members approve executing an Amended and Restated Lease Agreement (“Lease”) with Ascendia Pharmaceuticals, Inc. (“Ascendia”) for approximately 59,558 rentable square feet of laboratory and office space comprising the entire building of 661 South Route 1, North Brunswick at the New Jersey Bioscience Center (“Center”) for a 141-month (11 years and 9 months) term with two five-year renewal options.

**Background**

*A. Lessor’s Background*

Formed in 2012, Ascendia specializes in the invention and development of specialty pharmaceutical products and novel formulation technologies. Ascendia provides formulation, analytical, and manufacturing services to pharmaceutical companies, working collaboratively to provide innovative solutions to challenging drug delivery problems and to create advanced medicines.

Ascendia offers a wide array of pharmaceutical science capabilities for manufacturing and analyzing drug product dosage forms, working with and providing contract manufacturing services to emerging and specialty pharma companies for release of small-scale clinical batches. Ascendia has been named to Inc. 5000 rankings of the fastest growing privately-owned companies in the United States for the third consecutive year. Ascendia has grown from 3 full-time employees at the Center’s Incubator Labs to 40 full-time employees currently, and it has plans to hire an additional 63 full-time employees within the next four years.

Ascendia is a privately held company formed by Jingjun Huang, Ph.D. Prior to forming Ascendia, Mr. Huang previously worked in pharmaceutical research and development and management at Pfizer, Baxter, AstraZeneca, and Roche

*B. Lease Background and Amended and Restated Lease Provisions*

In May 2017, Ascendia moved from space within NJEDA’s Incubator Labs (formerly the

Commercialization Center for Innovative Technologies) and entered into a lease for approximately 15,290 square feet at the Center. Through six lease amendments, Ascendia's leased premises has expanded to approximately 22,698 square feet and Ascendia is also currently subleasing approximately 31,962 square feet in the building from Allergan Sales LLC ("Allergan") through approximately the end of Allergan's lease term which is January 31, 2023. Ascendia's current lease term ends February 28, 2026.

### *1. Lease Term and Renewal Options*

The Amended and Restated Lease will have a term of 141 months (11 years and 9 months) with two, five-year renewal options. Three months of net rent abatement will be provided upon completion of both the Landlord Work and Tenant Work briefly described below. Ascendia has the right to exercise two five-year renewal options, subject to the terms of the lease.

### *2. Rentable Square Feet*

On the execution date, the lease will include 27,596 square feet, which includes the portion of premises Ascendia currently occupies, and as more fully described below, 5,031 square feet of unfinished space. On February 1, 2023, the lease will expand to include the 32,962 square feet that Ascendia currently subleases from Allergan.

### *3. Net Rent*

The undiscounted estimated Net Rent amount for the 141-month term totals approximately \$24,914,113.17. As such, the lease required pre-execution approval by the Office of the State Comptroller, which approval has been received.

Upon Lease commencement, the initial Net Rent for the 22,565 square feet that Ascendia currently occupies will be \$30.14 per square foot. Net Rent for the Unfinished Premises will commence upon completion of the Landlord Work and the Unfinished Premises Tenant Work but no later than 18 months from lease execution, estimated by May 1, 2024, with a then estimated Net Rent of \$31.04 per square foot. Net Rent for the space that Ascendia currently subleases from Allergan will commence on February 1, 2023, at \$32.50 per square foot. All rents will increase 3% annually on the Lease commencement date anticipated to be November 1<sup>st</sup>.

### *4. Landlord and Tenant Work Allowances*

#### *a. Landlord Work Allowance*

Approximately 5,031 square feet of the building is unfinished ("Unfinished Premises") and NJEDA will provide up to \$200,000 as a Landlord Work Allowance to Ascendia for the removal of the existing wastewater tanks and for the installation of a finished concrete slab within the Unfinished Premises ("Landlord Work"). The Landlord Work must be completed within 18 months of lease execution.

#### *b. Tenant Work Allowance*

NJEDA will provide a total tenant work allowance of \$1,113,059, or \$18.69 per square feet, which Ascendia shall use as follows:

- \$383,865 to be used for improvements exclusively within the Unfinished Premises
- \$441,536, to be used for improvements within the Unfinished Premises and/or within the 22,698 square feet Ascendia currently leases from NJEDA
- \$287,658 to be used within the 31,962 square feet Ascendia currently subleases from

## Allergan

Ascendia must complete its improvements as follows:

- In the Unfinished Premises, within 18 months of lease execution
- In the 22,698 square feet of the premises currently leased from NJEDA, within 24 months of lease execution
- In the 31,962 square feet Ascendia currently subleases from Allergan, by August 1, 2024.

### 5. NJEDA's Supervision of the Work and Distribution of the Allowances

Ascendia's work within the leased premises is subject to review and approval by NJEDA and NJEDA will pay the Landlord and Tenant Work Allowances to Ascendia following satisfactory completion and presentation of invoices and all required documentation. NJEDA will receive a two percent (2%) construction supervisory fee.

### 6. Security Deposit

Ascendia will provide a security deposit in the form of a transferrable irrevocable letter of credit (LOC) in an initial amount of \$858,530 as set forth in the chart below, from a financial institution insured by the Federal Deposit Insurance Corporation with a New Jersey branch, having a strong credit rating, and providing terms for the drawing of funds acceptable to NJEDA. As set forth in the chart below, the LOC amount shall be increased when the leased premises expands to include the 32,962 square feet Allergan space. The LOC amount may be reduced upon Ascendia's achievement of gross and net income thresholds contained in the chart below:

Estimated Dates	Lease Month	Gross Income Threshold	Net Income Threshold	% Reduction	Amount of Reduction	LOC Amount
11/1/2022	1	n/a	n/a	n/a	n/a	\$858,530
2/1/2023	4	n/a	n/a	n/a	n/a	\$1,855,880
4/1/2027	54	\$65,000,000	\$18,182,000	30.00%	\$536,535	\$1,319,345
8/1/2028	70	\$70,000,000	\$19,548,000	35.00%	\$198,579	\$1,120,766
8/1/2029	82	\$75,000,000	\$20,944,000	40.00%	\$343,523	\$777,243

### 7. Lease Financial Analysis

The following chart summarizes the financial benchmarks for the lease, which includes the undiscounted total net rent after deducting the amortization of the landlord work, tenant work, and broker's commission, the present value of the annual net rent after deducting the amortization of the landlord work, tenant work, and broker's commission discounted at 5%, and the average rent per square foot for the term:

Undiscounted Net Rent after amortization of LLW, TW & Broker's Commission	\$21,732,495.59
Net Present Value (as of 12/31/22) of the Net Rent after amortization of LLW, TW & Broker's Commission @ 5%	\$15,882,540.64

Average Rent \$SF for the Term after amortization of LLW, TW &  
Broker's Commission

\$28.53

**Recommendation**

I recommend the board approve execution of: (1) the Amended and Restated Lease Agreement with Ascendia for approximately 59,558 rentable square feet of laboratory comprising the entire building of 661 South Route 1, North Brunswick at the Center, on final terms consistent with the Office of State Comptroller approved Lease, attached as Exhibit A; and (2) any and all documents required to complete this transaction on final terms acceptable to the NJEDA's Chief Executive Officer and the Attorney General's Office.



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Tim Sullivan, CEO

Prepared by: Liza Nolan and Juan Burgos  
att: Amended and Restated Lease Agreement

**AMENDED AND RESTATED  
LEASE AGREEMENT BETWEEN  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
AND  
ASCENDIA PHARMACEUTICALS, INC.**

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## **AMENDED AND RESTATED LEASE AGREEMENT**

This AMENDED AND RESTATED LEASE AGREEMENT (“LEASE”) made as of the \_\_\_\_ day of \_\_\_\_\_ (the “EFFECTIVE DATE”), by and between THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, an instrumentality of the State of New Jersey (“LANDLORD”), and ASCENDIA PHARMACEUTICALS, INC., a Delaware corporation (“TENANT”).

### **WITNESSETH**

WHEREAS, LANDLORD and TENANT entered into a Technology Centre of New Jersey (“TECH CENTRE”) Lease Agreement dated May 24, 2017, (the “ORIGINAL LEASE”) in the premises described therein and located in Tech Two at the TECH CENTRE, 661 Route 1 South, North Brunswick, New Jersey; and

WHEREAS, LANDLORD and TENANT have since entered into a (i) First Amendment to Lease dated July 25, 2017, (ii) Second Amendment to Lease dated January 1, 2018, (iii) Third Amendment to Lease dated October 1, 2019, (iv) Fourth Amendment to Lease dated October 11, 2019, (v) Fifth Amendment to Lease dated January 6, 2021 and (vi) Sixth Amendment to Lease dated May 1, 2021; and (vii) a Letter Extension Agreement dated June 24, 2022; and

WHEREAS, the ORIGINAL LEASE and the first through the sixth lease amendments and letter extension agreement are collectively referred to as the “PRIOR LEASE”; and

WHEREAS, the TENANT is currently occupying a total of 22,698 square feet in the BUILDING as hereinafter defined; and

WHEREAS, the TENANT also occupies additional space in the BUILDING

pursuant to a sublease with Allergan Sales, LLC dated October 18, 2021 (the 'WING B PREMISES'); and

WHEREAS, the term of the WING B PREMISES under the sublease expires on January 31, 2023; and

WHEREAS, LANDLORD and TENANT now desire to amend and restate in its entirety the PRIOR LEASE at the TECH CENTRE now known as the New Jersey Bioscience Center as herein set forth; and

WHEREAS, the LEASE also will incorporate the WING B PREMISES and the UNFINISHED PREMISES as part of the LEASED PREMISES upon the terms and conditions set forth herein; and

WHEREAS, upon the EFFECTIVE DATE of this LEASE the PRIOR LEASE shall be deemed superseded and of no further force and effect except for any provisions that survive the termination of the PRIOR LEASE.

NOW THEREFORE, the LANDLORD and TENANT hereby agree as follows:

**1. DEFINITIONS**

“PROPERTY” means the land, buildings and improvements (including without limitation the BUILDING and other buildings) comprising the 50-acre science and technology park known as the New Jersey Bioscience Center, North Brunswick, New Jersey, Lot 28.01, Block 194 as approximately shown on **EXHIBIT A-1**.

“BUILDING” means the building and improvements known as 661 South U.S. Route

1 and situated and located at the PROPERTY consisting of a one-story building of approximately 59,558 rentable square feet (“RSF”) and related parking and site improvements.

“LEASED PREMISES” means the portions of the BUILDING as delineated on the floor plans constituting **EXHIBIT A-2** attached hereto and made a part hereof, bounded by the interior sides of the centers of all demising walls other than exterior BUILDING walls and the exterior sides of all exterior BUILDING walls. For purposes of this LEASE, TENANT and LANDLORD agree that the LEASED PREMISES consist of:

From the COMMENCEMENT DATE through January 31, 2023, approximately twenty-seven thousand five hundred ninety-six (27,596) RSF (the “INITIAL PREMISES”) which consists of (i) approximately twenty-two thousand five hundred sixty-five (22,565) RSF (“WING A PREMISES”), and (ii) unfinished space of approximately five thousand thirty-one (5,031) RSF (“UNFINISHED PREMISES”). LANDLORD and TENANT acknowledge that the UNFINISHED PREMISES is space that is not presently approved for occupancy and is not to be used by TENANT for any purpose or use (including but not limited to warehouse and storage.) until such time as TENANT undertakes and completes construction as outlined in SECTION 15 hereof.

Beginning February 1, 2023 through the end of the INITIAL TERM (as hereinafter defined) of the LEASE, the WING B PREMISES consisting of approximately thirty-one thousand nine hundred sixty-two (31,962) RSF will be incorporated into LEASED PREMISES following the expiration of the Allergan Sales, LLC sublease with the TENANT. TENANT will then occupy the entire BUILDING containing approximately fifty-nine thousand five hundred fifty-eight (59,558) RSF consisting of the INITIAL PREMISES and the WING B PREMISES.

“TENANT’S PROPERTY SHARE” means the percentage of the RSF of the

LEASED PREMISES divided by the total RSF of the PROPERTY, rounded to the nearest hundredth percent, and then applying that percentage to the OPERATING EXPENSES (as hereinafter defined in Section 6.3 and Section 6.4) attributable to the PROPERTY.

- As of the EFFECTIVE DATE through January 31, 2023, the RSF of the LEASED PREMISES comprises approximately seven and forty-nine hundredth percent (7.49 %) of the total RSF of the PROPERTY which is calculated as follows: the 22,565 RSF of the WING A PREMISES divided by 301,377 RSF.
- Beginning February 1, 2023, the RSF of the LEASED PREMISES comprises approximately eighteen and nine hundredth percent (18.09%) of the total RSF of the PROPERTY which is calculated as follows: the 54,527 RSF total of the WING A PREMISES and the WING B PREMISES divided by 301,377 RSF.
- Upon completion of the UNFINISHED PREMISES TENANT WORK per Section 15 but no later than eighteen (18) months following the COMMENCEMENT DATE through the end of the INITIAL TERM of the LEASE, the RSF of the LEASED PREMISES comprises approximately nineteen and seventy-six hundredth percent (19.76%) of the total RSF of the PROPERTY which is calculated as follows: 59,558 RSF divided by 301,377 RSF.

TENANT'S PROPERTY SHARE may be revised based on decreases or increases to the PROPERTY RSF during the TERM of the LEASE, as measured utilizing the BOMA 2017 for Office Buildings Standard Method of Measurement – ANSI/BOMA Z65.1-2017, Method A. Any TENANT PROPERTY SHARE change will become effective the January 1<sup>st</sup> after any addition or deletion to the PROPERTY RSF.

“PROPERTY COMMON AREA” means the common areas of the PROPERTY, consisting of those areas intended for the non-exclusive use for all tenants of the PROPERTY and their agents, employees, invitees and licensees in common with LANDLORD and other parties including, but not limited to, the sidewalks, walkways,

driveways, landscaped areas, building lobbies, elevators, stairwells and parking lots being referred to.

“TENANT’S BUILDING SHARE” means LEASED PREMISES RSF divided by the BUILDING RSF, rounded to the nearest hundredth percent and then applying that percentage to the OPERATING EXPENSES (as hereinafter defined in Section 6.3 and Section 6.4) attributable to the BUILDING.

- As of the EFFECTIVE DATE through January 31, 2023, the LEASED PREMISES comprises approximately thirty-seven and eighty-nine hundredth percent (37.89%) of RSF of the BUILDING, which is calculated as follows: the 22,565 RSF of the WING A PREMISES divided by the BUILDING 59,558 RSF.
- Beginning February 1, 2023, the LEASED PREMISES comprises approximately ninety-one and fifty-five hundredth percent (91.55%) of the BUILDING which is calculated as follows: the 54,527 total of the WING A PREMISES AND WING B PREMISES divided by the BUILDING 59,558 RSF.
- Upon completion of the UNFINISHED PREMISES TENANT WORK per Section 15 hereof but no later than eighteen (18) months following the COMMENCEMENT DATE through the end of the INITIAL TERM of the LEASE, the LEASED PREMISES comprises one hundred percent (100.00%) of the BUILDING RSF.

## **2. USE OF LEASED PREMISES**

TENANT shall not use or occupy, or permit or suffer to be used or occupied the LEASED PREMISES or any part thereof, other than as a scientific facility including, but not limited to, light manufacturing and assembly, office space, scientific laboratories (dry and/or wet), computer equipment and all uses incidental thereto that are consistent with

applicable municipal zoning ordinances, as same may be amended from time to time. TENANT agrees to use the LEASED PREMISES in a manner consistent with a research/technology/bioscience center.

### **3. LEASE OF LEASED PREMISES**

LANDLORD hereby leases to the TENANT and TENANT hereby leases from the LANDLORD, upon and subject to the terms and provisions of this LEASE, the LEASED PREMISES, together with all rights and benefits appurtenant to the LEASED PREMISES.

### **4. INITIAL TERM and RENEWAL OPTIONS**

4.1.1 The term of this LEASE shall be for the period beginning on [estimated] November 1, 2022 (the "COMMENCEMENT DATE") and ending at midnight on June 30, 2034 (the "TERMINATION DATE") (the "INITIAL TERM"). Provided that there is then no Event of Default by TENANT under the terms of this LEASE, TENANT shall have the option to extend the term of this LEASE for two (2) additional five (5) year periods by giving written notice to LANDLORD of TENANT's intent to extend this LEASE for the renewal period exercised by the TENANT (the "EXTENDED TERM") not later than twelve (12) months before the end of the INITIAL TERM or the EXTENDED TERM, as applicable. The INITIAL TERM and any applicable EXTENDED TERM are collectively referred to as the "TERM". If the TERM is extended for the EXTENDED TERM, "TERMINATION DATE" shall mean the last day of the last EXTENDED TERM.

4.1.2 In the event TENANT first occupies the LEASED PREMISES for less than a full month, then for that partial month TENANT shall pay the LANDLORD on a per diem basis equal to 1/365 of the NET RENT, OPERATING EXPENSES, REAL ESTATE TAXES or PILOT charges. In such event the COMMENCEMENT DATE for the INITIAL TERM shall begin on the first day of the month following the partial month.

4.2 Subject to LANDLORD's prior consent, not to be unreasonably withheld or delayed, TENANT is responsible for utilizing existing or bringing other telephone/internet/wireless services to the LEASED PREMISES and for any setup of telephone/internet/wireless service needed to or within the LEASED PREMISES which shall be installed as part of the TENANT WORK. TENANT will arrange for and pay for its telephone/internet/wireless service directly to the telephone/internet/wireless company.

## 5. **RENT**

5.1. The "NET RENT" (as hereinafter defined) shall commence to accrue and be payable from the COMMENCEMENT DATE.

5.2. TENANT covenants and agrees to pay to LANDLORD NET RENT for LEASED PREMISES as set forth in **EXHIBIT B** attached hereto and made a part hereof. A NET RENT abatement of three (3) months shown on **EXHIBIT B** will only be provided upon (i) full completion in compliance with all governmental laws and requirements (evidenced by receipt of a certificate of occupancy, completion, or approval) of both the LANDLORD WORK and the TENANT WORK, **and** (ii) full completion is achieved no later than thirty-six (36) months from the COMMENCEMENT DATE.

5.3 Except for express provisions stated in this LEASE to the contrary, it is the purpose and intent of LANDLORD and TENANT that the NET RENT shall be absolutely net to LANDLORD, so that this LEASE shall yield net to LANDLORD the NET RENT specified in Sections 5.2 and 5.7 hereof in each year during the TERM of this LEASE and that all costs, expenses and obligations, of every kind and nature whatsoever, relating to the LEASED PREMISES that may arise or become due during the TERM of this LEASE shall be paid by TENANT except as otherwise expressly set forth herein.



5.4 The NET RENT shall be paid to LANDLORD without notice or demand and without abatement, deduction or set-off, except as otherwise expressly set forth herein in current funds in US Dollars at an address or in a manner specified by LANDLORD.

5.5 If the COMMENCEMENT DATE begins on a day other than the first of the month, the NET RENT for that partial month shall be prorated based upon the total number of days in the full calendar month.

5.6 For each month that any installment of NET RENT or ADDITIONAL RENT, PILOT or TENANT's TAX SHARE payable by TENANT is not paid within ten (10) days after the date due, TENANT will pay to LANDLORD as ADDITIONAL RENT a late charge equal to five percent (5%) of the total amount of past due NET RENT, ADDITIONAL RENT and/or TENANT's TAX SHARE or PILOT.

5.7 During an EXTENDED TERM, if any, TENANT covenants and agrees to pay to LANDLORD a NET RENT equal to ninety-five percent (95%) of the then current Fair Market Rent (as defined in **EXHIBIT C** attached hereto and made a part hereof) but no less than the NET RENT payable for the last year of the (i) INITIAL TERM during the first year of the first EXTENDED TERM and (ii) first EXTENDED TERM during the first year of the second EXTENDED TERM. Upon TENANT giving LANDLORD the twelve (12) months' notice of election to extend the INITIAL TERM or first EXTENDED TERM, as the case may be, referred to in Section 4 hereof, LANDLORD AND TENANT shall negotiate in good faith to establish a mutually agreed upon NET RENT for then applicable EXTENDED TERM as set forth in **EXHIBIT C**. If after sixty (60) days of negotiations, LANDLORD and TENANT cannot agree upon the NET RENT for then applicable EXTENDED TERM, Fair Market Rent shall be established pursuant to **EXHIBIT C**. During the EXTENDED TERM, NET RENT shall increase by three percent (3%) on each anniversary of the EXTENDED TERM.

## 6. ADDITIONAL RENT

6.1 The "ADDITIONAL RENT" (as hereinafter defined) shall commence to accrue and be payable from the COMMENCEMENT DATE.

6.2 The ADDITIONAL RENT shall consist of: (1) TENANT'S PROPERTY SHARE, (2) TENANT'S BUILDING SHARE, (3) 100% of OPERATING EXPENSES attributable solely to the LEASED PREMISES; and (4) 100% of all other ADDITIONAL RENT expressly set forth elsewhere in this LEASE.

6.3 OPERATING EXPENSES means operating expenses that are reasonable, actual and necessary, out-of-pocket (using normal accrual method of accounting), obtained at competitive prices and that are directly attributable to the operation, maintenance, management, and repair of the LEASED PREMISES, the BUILDING, and PROPERTY COMMON AREA, as determined under generally accepted accounting principles consistently applied, including:

(a) salaries, and other compensation (including payroll taxes, vacation, holiday, and other paid absence); and welfare, retirement, and other fringe benefits that are paid to employees, independent contractors, or agents of LANDLORD engaged in the operation, repair, management, or maintenance of the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA, including the following: (i) janitorial services personnel; (ii) security personnel and caretakers; and (iii) not more than one on-premises full-time manager and one superintendent, and excluding executive personnel;

(b) repairs, and maintenance of the LEASED PREMISES and the BUILDING (excluding the repainting of the LEASED PREMISES) hereinafter defined in Section 8.6 hereof; repairs and maintenance of the PROPERTY COMMON AREA and, the cost of supplies, tools, materials, and equipment required to complete the work

described under this Section 6.3 (b). To the extent that costs associated with this Section 6.3 (b) are capital in nature, the amount included in the OPERATING EXPENSES will be limited to the annual amortization over its useful life with a reasonable salvage value on a straight-line basis of the costs.

(c) premiums and other charges incurred by LANDLORD for insurance on any portion of the PROPERTY and for employees specified in Section 6.3(a) hereof including:

- 1) fire insurance, extended coverage insurance, and earthquake, windstorm, hail, and explosion insurance;
- 2) public liability and property damage insurance;
- 3) workers' compensation insurance;
- 4) boiler and machinery insurance; sprinkler leakage, water damage, water damage legal liability insurance; burglary, fidelity, and pilferage insurance on equipment and materials;
- 5) health, accident, and group life insurance;
- 6) Pollution legal liability insurance;
- 7) insurance LANDLORD is required to carry under Sections 20.2(a)-(d) hereof; and
- 8) other insurance as is customarily carried by operators of comparable first-class science and technology parks in New Jersey;

(d) costs incurred for inspection and servicing, including all outside maintenance contracts necessary or proper for the maintenance of the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA, such as snow and ice removal, rubbish removal, landscaping, lawn maintenance, and security, and the cost of materials, tools, supplies, and equipment used for inspection and servicing;

(e) payroll taxes, federal taxes, state and local unemployment taxes, and social security taxes paid for the employees specified in Section 6.3(a) hereof;

(f) sales, use, and excise taxes on goods and services purchased for the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA;

(g) license, permit, and inspection fees for the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA;

(h) auditor's fees for public accounting for LEASED PREMISES, BUILDING, and the PROPERTY COMMON AREA;

(i) legal fees, costs, and disbursements but excluding those:

- 1) relating to disputes with tenants in the PROPERTY,
- 2) relating to negotiations of leases with other tenants for space in the PROPERTY,
- 3) based upon the LANDLORD'S negligence or LANDLORD'S willful misconduct,
- 4) relating to enforcing any leases except for enforcing lease provisions for the benefit of the tenants of the PROPERTY, or
- 5) relating to the defense of the LANDLORD's title to, or interest in, the PROPERTY;

(j) management fees to a person or entity other than the LANDLORD subject to the adjustment under Section 6.4(g) hereof;

(k) the annual amortization over its useful life with a reasonable salvage value on a straight-line basis of the costs of any capital improvements made to the

LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA and required by any changes in applicable laws, rules, or regulations of any governmental authorities enacted after the date of full execution of the LEASE;

(l) the annual amortization over its useful life with a reasonable salvage value on a straight-line basis of the costs of any equipment or capital improvements made after the date of full execution of the LEASE, as a labor-saving measure or to accomplish other savings in operating, repairing, managing, or maintaining the LEASED PREMISES and the BUILDING, but only to the extent of the savings;

(m) any costs for substituting work, labor, materials, or services in place of any of the above items, or for any additional work, labor, materials, services, or improvements to comply with any governmental laws, rules, regulations, or other requirements applicable to the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA enacted after the date of full execution of the LEASE, that, at the time of substitution or addition, are considered OPERATING EXPENSES under generally accepted accounting principles consistently applied. To the extent that costs associated with this Section 6.3 (m) are capital in nature, the amount included in the OPERATING EXPENSES will be limited to the annual amortization over its useful life with a reasonable salvage value on a straight-line basis of the costs;

(n) utility service charges for electric, gas, sewer, water and other utility services provided to the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA. In addition, TENANT shall pay electric and gas utility usage for the LEASED PREMISES and shall also pay for any utility usage attributable to and for the UNFINISHED PREMISES if any which LANDLORD shall bill monthly, one month in arrears, commencing from the COMMENCEMENT DATE (currently anticipated to be the month of December 2022), at the current applicable rates, fees, charges, and taxes applicable to the electric and gas usage; and

(o) other costs reasonably necessary to operate, repair, manage, and maintain the LEASED PREMISES, the BUILDING, and the PROPERTY COMMON AREA in a first-class manner and condition.

6.4 Notwithstanding Section 6.3 hereof, OPERATING EXPENSES exclude:

(a) REAL ESTATE TAXES as defined in Section 7.1 hereof;

(b) leasing commissions, costs, disbursements, and other expenses incurred for leasing, renovating, or improving space for tenants;

(c) costs (including permit, license, and inspection fees) incurred in renovating, improving, decorating, painting, or redecorating vacant space or space for tenants;

(d) costs incurred by LANDLORD for alterations to the LEASED PREMISES, the BUILDING, or the PROPERTY COMMON AREA that are considered capital improvements and replacements under generally accepted accounting principles consistently applied, except that the annual amortization of these costs shall be included to the extent expressly permitted in Sections 6.3 (b), (k), (l) and (m) hereof;

(e) costs or amortization of costs of a capital nature which arise in connection with the future development of the PROPERTY or which arise from the LANDLORD's obligation to repair, replace or maintain the BASE BUILDING WORK, including capital improvements, capital equipment, capital repairs, and capital tools, as determined under generally accepted accounting principles consistently applied, except that the annual amortization of these costs shall be included to the extent expressly permitted in Sections 6.3 (b), (k), (l) and (m) hereof;

(f) costs incurred because the LANDLORD or another tenant violated the terms of any lease;

(g) overhead and profit paid to subsidiaries or affiliates of LANDLORD for management or other services on or to the LEASED PREMISES, the BUILDING, or the PROPERTY COMMON AREA or for supplies or other materials, to the extent that the costs of the services, supplies, or materials exceed the competitive costs of the services, supplies, or materials were they not provided by a subsidiary or affiliate;

(h) interest, amortization, or penalties on any mortgages, deeds of trust, or other debt for borrowed money; and rents, penalties or other charges on any ground leases or other underlying leases;

(i) compensation paid to clerks, attendants, or other persons in commercial concessions operated by LANDLORD;

(j) items and services for which TENANT reimburses LANDLORD or pays to third parties or that LANDLORD provides selectively to one or more tenants of the PROPERTY other than TENANT;

(k) advertising and promotional expenditures or charitable and political contributions;

(l) repairs or other work needed because of fire, windstorm, flooding, or other casualty or cause insured against by LANDLORD or to the extent LANDLORD's insurance required under Section 20.2 hereof would have provided insurance, whichever is the greater coverage, excepting, however, costs incurred as a result of that deductible set forth in Section 20.2(c) hereof;

(m) non-recurring costs incurred to remedy defects in BASE BUILDING WORK (as hereinafter defined);

(n) any costs, fines or penalties incurred because LANDLORD violated any governmental rule or authority;

(o) costs incurred to test, survey, cleanup, dispose of, contain, abate, remove, or otherwise remedy hazardous materials, substances or wastes or asbestos-containing materials from the PROPERTY and all related costs for which LANDLORD is responsible pursuant to Section 21 hereof;

(p) any expenses which LANDLORD is reimbursed by a party other than TENANT;

(q) other expenses that under generally accepted accounting principles consistently applied would not be considered normal maintenance, repair, management, or operation expenses;

6.5 The ADDITIONAL RENT shall be paid as follows:

(a) Prior to the COMMENCEMENT DATE, LANDLORD has provided TENANT with LANDLORD's estimate of OPERATING EXPENSES for the last OPERATING YEAR (as hereinafter defined), which estimate, LANDLORD represents, is reasonable and based upon generally accepted accounting principles consistently applied, and which includes reasonably detailed documentation to support such estimate. "OPERATING YEAR" shall mean the twelve (12) month period for which LANDLORD has prepared such an estimate, which period includes the COMMENCEMENT DATE. TENANT shall pay to LANDLORD one-twelfth (1/12<sup>TH</sup>) of the ADDITIONAL RENT monthly



in accordance with Section 5 hereof.

(b) Within a reasonable time after the end of each OPERATING YEAR, LANDLORD shall provide TENANT an itemized statement (the "OPERATING EXPENSE STATEMENT") showing in reasonable detail the OPERATING EXPENSES for the immediately preceding OPERATING YEAR broken down in reasonable detail by component expenses and the amount paid by TENANT during the OPERATING YEAR towards the OPERATING EXPENSES.

(c) If the OPERATING EXPENSE STATEMENT shows that the actual amount TENANT owes for the subject OPERATING YEAR is less than the amount TENANT has paid as ADDITIONAL RENT (the "OVERPAYMENT"), LANDLORD shall return to TENANT the difference. If the OPERATING EXPENSE STATEMENT shows that the actual amount TENANT owes for the subject OPERATING YEAR is more than the amount TENANT has paid as ADDITIONAL RENT (the "UNDERPAYMENT"), TENANT shall pay to LANDLORD the difference together with payment due for the RENT, ADDITIONAL RENT, PILOT OR REAL ESTATE TAXES due for the next month. LANDLORD shall use good faith efforts to issue the OPERATING EXPENSE STATEMENT as soon as reasonably practical after each OPERATING YEAR ends.

(d) During any OPERATING YEAR that is less than a complete calendar year, TENANT's obligation for ADDITIONAL RENT for that OPERATING YEAR shall be prorated by multiplying the ADDITIONAL RENT for the OPERATING YEAR by a fraction expressed as a percentage, the numerator of which is the number of days of the partial calendar year included in the INITIAL TERM or EXTENDED TERM, as appropriate, and the denominator of which is 365.

(e) TENANT, and its agents, and employees shall have the right one time per year ninety (90) days after receiving the OPERATING EXPENSE STATEMENT and

any PILOT rate reset bill to audit LANDLORD'S books and records concerning the OPERATING EXPENSE STATEMENT, and such PILOT rate reset bill and raise any disputes regarding its accuracy at TENANT'S sole cost and expense. TENANT shall have access to LANDLORD'S books and records concerning such OPERATING EXPENSE STATEMENT and PILOT rate reset bill at the LANDLORD'S offices with five (5) days written notice to LANDLORD. Books and records shall be kept in accord with generally accepted accounting principles consistently applied. If TENANT disputes the accuracy of the OPERATING EXPENSE STATEMENT or such PILOT rate reset bill, TENANT shall still pay the amount shown owing pending resolution of such dispute. Upon resolution of such dispute, TENANT, through written direction to LANDLORD, may recover that part of the ADDITIONAL RENT or PILOT relative to any overpayment by TENANT through a refund by LANDLORD or a credit to next due and owing payment of rent. If TENANT does not raise any objections within the 90-day period, then TENANT accepts as final the amount shown owing on the OPERATING EXPENSE STATEMENT or PILOT rate reset bill (as appropriate).

## **7. REAL ESTATE TAXES**

7.1 As used in this Section 7, the following terms shall be defined as hereinafter provided:

(a) "REAL ESTATE TAXES" shall mean all taxes, liens, charges, imposts and assessments of every kind and nature, ordinary or extraordinary, foreseen or unforeseen, general or specific, levied, assessed or imposed by any Governmental authority with respect to the PROPERTY excluding all corporate franchise, income, gains, transfer, exercise, succession, gift, profit tax payable by LANDLORD and excluding payments due to the Township of North Brunswick (the "TOWNSHIP") pursuant to an Agreement dated June 3, 1996 (and as currently amended every five (5) years for payment in lieu of taxes (the "PILOT AGREEMENT") between LANDLORD and the TOWNSHIP

which is covered by the provisions of Section 7.1(c) hereof and excluding:

- (1) federal, state, or local income taxes,
- (2) franchise, gift, transfer, excise capital stock, estate, succession, or inheritance taxes, and
- (3) fines, penalties or interest for late payment of REAL ESTATE TAXES.

(b) "TAX YEAR" shall mean each calendar year, or such other period of twelve (12) months as now or hereafter may be duly adopted as the fiscal year for real estate tax purposes of the Governmental unit in which the PROPERTY is located, occurring during the TERM of this LEASE.

(c) During the TERM hereof, TENANT shall pay a Payment in Lieu of Taxes ("PILOT") to LANDLORD (who shall thereafter forward said payment to the TOWNSHIP) for the LEASED PREMISES in accordance with the terms of the PILOT AGREEMENT referenced in Section 7.1(a) hereof. TENANT acknowledges the TOWNSHIP is a third-party beneficiary of the obligations of TENANT hereunder, and the TOWNSHIP may pursue a breach of contract action against TENANT in accordance with the terms hereof. Likewise, the LANDLORD acknowledges that the TENANT is a third-party beneficiary of the rights of LANDLORD under the PILOT AGREEMENT. In the event that the PILOT AGREEMENT is no longer valid or enforceable, TENANT shall commence paying TENANT'S TAX SHARE of REAL ESTATE TAXES as otherwise provided for in this Section 7. TENANT acknowledges that LANDLORD has provided TENANT with a copy of the PILOT Agreement between LANDLORD and TOWNSHIP attached hereto as **EXHIBIT D**.

(d) "TAX SHARE" shall mean that percentage derived by dividing the LEASED PREMISES RSF by the total RSF of the floor areas of all buildings built at the PROPERTY at the beginning of the applicable TAX YEAR, which LANDLORD represents as of the EFFECTIVE DATE is approximately 301,377 RSF so that the TAX SHARE is equal to:

- As of the COMMENCEMENT DATE through January 31, 2023 of the INITIAL TERM of the LEASE, the TAX SHARE is equal to approximately 7.49 % rounded to nearest hundredth percent.
- Beginning February 1, 2023, the TAX SHARE is equal to approximately 18.09% rounded to nearest hundredth percent.
- Upon completion of the UNFINISHED PREMISES TENANT WORK per Section 15 hereof but no later than eighteen (18) months following the COMMENCEMENT DATE through the end of the INITIAL TERM of the LEASE, the TAX SHARE is equal to approximately 19.76% rounded to nearest hundredth percent.

TENANT'S TAX SHARE may change depending upon the applicable PROPERTY RSF during the TERM of the LEASE.

7.2.(a) In the event of the invalidity of the PILOT AGREEMENT as described in Section 7.1(c) hereof, TENANT shall pay to LANDLORD an amount equal to TENANT'S TAX SHARE of REAL ESTATE TAXES with respect to each TAX YEAR during the remaining TERM of this LEASE. If less than a full twelve (12) month period of a TAX YEAR is included within the TERM of this LEASE, TENANT's TAX SHARE shall be prorated for such partial TAX YEAR. TENANT's TAX SHARE, or PILOT as the case may be, for each TAX YEAR shall be paid as follows:

7.2.(b) TENANT shall pay one twelfth (1/12) of the TENANT'S TAX SHARE of the REAL ESTATE TAXES or PILOT, rounded to the nearest one cent, as applicable, for the

immediately preceding TAX YEAR, monthly at the same time as NET RENT, as an estimate and on account of the TENANT'S TAX SHARE of REAL ESTATE TAXES, or PILOT as the case may be, for the current TAX YEAR, which payments shall be subject to increase at any time, upon receipt by TENANT of a written notice from LANDLORD pursuant to Section 7.3 increasing the amount of monthly estimated payments.

7.3 Promptly after receipt of a REAL ESTATE TAX bill or a PILOT rate reset bill pursuant to the PILOT AGREEMENT, LANDLORD shall furnish TENANT a tax statement (the "TAX STATEMENT"), along with applicable supporting documentation received from the Township, showing the amount of REAL ESTATE TAXES or PILOT for the applicable TAX YEAR. If the TAX STATEMENT shows that the actual amount TENANT owes for TENANT's TAX SHARE of REAL ESTATE TAXES or PILOT is less than the amount TENANT has paid therefor, LANDLORD shall return to TENANT the difference (the "TAX OVERPAYMENT"). If the TAX STATEMENT shows that the actual amount TENANT owes for TENANT's TAX SHARE of REAL ESTATE TAXES or PILOT is more than the amount TENANT has paid therefor, TENANT shall pay to LANDLORD the difference (the "TAX UNDERPAYMENT"). The TAX OVERPAYMENT or TAX UNDERPAYMENT shall be paid within thirty (30) days of receipt by TENANT of the TAX STATEMENT. LANDLORD shall use good faith efforts to issue the TAX STATEMENT as soon as reasonably practical after each TAX YEAR ends.

## **8. CONDITION OF THE LEASED PREMISES**

8.1 Except as otherwise set forth herein, from and after the COMMENCEMENT DATE, LANDLORD shall be under no duty or obligation to make any repairs or alterations to the LEASED PREMISES.

8.2 LANDLORD shall deliver the LEASED PREMISES in clean condition, free of debris with all mechanical, electrical, and air-conditioning equipment in good working order.

8.3 LANDLORD represents and warrants that as of the COMMENCEMENT DATE:

(a) the BUILDING is structurally sound and weather tight;

(b) the BUILDING, the LEASED PREMISES (including LANDLORD WORK but excluding any TENANT IMPROVEMENTS), and the PROPERTY COMMON AREA are in good working order and are in compliance with all applicable building codes, rules and regulations, laws and ordinances including, but not limited to, the Americans with Disability Act.

8.4 LANDLORD covenants, at no cost or expense to the TENANT, to complete all necessary repairs or replacements required to cause the BUILDING to comply with Sections 8.3(a) and (b) above as of the EFFECTIVE DATE, within sixty (60) days from written notice from TENANT; provided, however, that if such repair or replacement cannot reasonably be completed within said sixty (60) days, LANDLORD shall not be in breach of this covenant if LANDLORD has commenced such repair or replacement within said sixty (60) day period and thereafter diligently prosecutes such repair or replacement to completion. LANDLORD and TENANT acknowledge that the UNFINISHED PREMISES are not to be occupied until completion of the LANDLORD WORK by TENANT per Section 15.3 hereof.

8.5 LANDLORD covenants during the TERM, at no cost or expense to the

TENANT, to promptly make or cause to be made all necessary repairs to the BASE BUILDING WORK. BASE BUILDING WORK is defined as footings, foundations, concrete slab, structural steel, exterior walls, and roof deck of the BUILDING. Within one hundred eighty (180) days of the EFFECTIVE DATE, LANDLORD shall provide a written report of the BUILDING roof condition. If the report recommends BUILDING roof replacement during the term of the LEASE, the roof replacement will be performed by LANDLORD and the costs attributed in conformance with Section 6.3(b) hereof.

8.6 Parking spaces located in front of or behind the BUILDING are available on a non-exclusive basis free of charge for use by TENANT and TENANT PARTIES as hereinafter defined and that said parking area is completed in compliance with all applicable laws. A minimum of 2.0 spaces per 1,000 square feet of space within the LEASED PREMISES shall be available for TENANT unreserved parking use.

8.7 TENANT shall have the use of all BUILDING access system component and BUILDING access components including but not limited to card readers and mag locks. TENANT shall have the right to install and maintain, at TENANT'S sole cost and expense, TENANT'S own access control systems subject to LANDLORD'S advance approval which approval shall not be unreasonably withheld. TENANT shall keep all new key cores on the same master system that currently exists at the PROPERTY to ensure that LANDLORD has full and complete access to the BUILDING and LEASED PREMISES in the event of an emergency as well as to perform periodic inspections.

## **9. ALTERATIONS, ADDITIONS AND IMPROVEMENTS**

9.1 "TENANT IMPROVEMENTS" are defined as any modifications, alterations, and/or improvements, excluding routine painting, carpeting, and/or flooring, to

the interior of the LEASED PREMISES or the BUILDING. TENANT shall not make or cause to be made any TENANT IMPROVEMENTS greater than \$50,000 not agreed to herein without the prior written consent of LANDLORD, which consent LANDLORD shall not unreasonably withhold or delay. TENANT shall bear any and all cost and expense of making TENANT IMPROVEMENTS including without limitation obtaining all required approvals, permits, and certificates from the governmental authorities having jurisdiction of the BUILDING. TENANT IMPROVEMENTS are not intended to include personal property, moveable equipment, and trade fixtures not mounted to the LEASED PREMISES. Any request for LANDLORD'S consent for installation of TENANT IMPROVEMENTS shall specify which TENANT IMPROVEMENTS will be removed by TENANT at the end of the TERM and which TENANT IMPROVEMENTS are to remain at the LEASED PREMISES after the end of the TERM. Notwithstanding the foregoing, any approved TENANT IMPROVEMENTS, including but not limited to the installation of security equipment, that connect to the BUILDING or PROPERTY building management system are to remain at the LEASED PREMISES after the expiration of the TERM. Removal by TENANT of alterations and improvements installed or located in the LEASED PREMISES shall be in accordance with the terms and conditions set forth in Section 10.5 hereof.

9.2 During the TERM of the LEASE, TENANT IMPROVEMENTS, if any, shall be undertaken by TENANT at TENANT'S expense in a good and workmanlike manner using a contractor approved in advance in writing by LANDLORD, which approval shall not be unreasonably withheld. TENANT IMPROVEMENTS shall be constructed in accordance with all laws, codes and regulations and in accordance with the plans, drawings and specifications approved by LANDLORD in accordance with Section 9.1 hereof.



9.3 TENANT shall prosecute the construction of TENANT IMPROVEMENTS to completion with diligence. Absent the prior written approval of LANDLORD, TENANT shall not have any right to remove TENANT IMPROVEMENTS once they have been installed and/or constructed except in accordance with Section 9.1 hereof.

9.4 TENANT shall deliver to LANDLORD satisfactory proof that worker's compensation insurance has been procured to cover all persons employed in connection with the construction of TENANT IMPROVEMENTS, and that all other insurance reasonably required by LANDLORD is in effect, including builders' risk.

9.5 All work relating to TENANT IMPROVEMENTS shall be subject to the requirements of: (i) the Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.), (ii) the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.), and (iii) the affirmative action requirements of LANDLORD.

9.6 TENANT shall cause TENANT IMPROVEMENTS to be constructed free of any mechanic's lien, claim or charge.

(a) TENANT shall, within thirty (30) days after receiving written notice of any such mechanic's lien for material or work claimed to have been furnished to the LEASED PREMISES on TENANT's behalf and at TENANT's request, discharge the lien, or post a bond equal to the amount of the disputed claim with companies reasonably satisfactory to LANDLORD. If TENANT posts a bond, it shall contest the validity of the lien. TENANT shall indemnify, defend, and hold LANDLORD harmless from losses incurred from these liens.

(b) If TENANT does not discharge the lien or post the bond within the

thirty (30) day period, LANDLORD may, after ten (10) days written notice to TENANT, pay any amounts, including interest and reasonable legal fees, necessary to discharge the lien. TENANT shall then immediately be liable to LANDLORD for the amounts paid by LANDLORD.

(c) This Section 9.6 is not a consent to subject the PROPERTY or any portion thereof to those liens.

9.7 TENANT covenants and agrees to, at all times, indemnify, protect and save harmless LANDLORD from and against any and all cost, expense, liability or loss of any nature whatsoever (including reasonable legal fees) resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges (but excluding consequential, special and punitive damages) which the LANDLORD may directly or indirectly suffer, sustain or be subject to by reason or on account of TENANT's construction of TENANT IMPROVEMENTS excluding any costs, loss, expense or liability arising from the gross negligence or intentional acts of LANDLORD, and its employees or agents.

## **10. AFFIRMATIVE COVENANTS OF TENANT**

10.1 TENANT shall, throughout the TERM of this LEASE, pay the NET RENT, ADDITIONAL RENT, TENANT'S UTILITY SHARE, TENANT'S TAX SHARE of the REAL ESTATE TAXES or PILOT (as applicable), and all other charges herein reserved as rent on the days and times and at the place that the same are made payable.

10.2 TENANT shall, throughout the TERM of this LEASE, without demand keep and maintain the LEASED PREMISES as follows (collectively, the "MAINTENANCE ACTIVITIES"): (i) reasonably clean and free from all ashes, dirt, waste and other refuse

matter; (ii) avoid waste of or damage to the LEASED PREMISES; (iii) replace all glass windows, doors, which become broken; (iv) keep and maintain all waste and drain pipes within the LEASED PREMISES open; (v) operate, maintain and repair under the supervision of a “black seal” certified boiler operator, if required under applicable governmental regulations, all boilers and boiler systems servicing the LEASED PREMISES; (vi) repair all damage to plumbing servicing the LEASED PREMISES; (vii) keep in reasonably good order and repair and maintain (but not replace) all heat, air-conditioning, ventilation, mechanical, electrical, gas and plumbing systems servicing the LEASED PREMISES, including but not limited to maintenance of the building management system software and hardware; (viii) keep in reasonably good order and repair and maintain all non-structural portions of the LEASED PREMISES; and (ix) generally keep and maintain the LEASED PREMISES in as good order and repair as they are on the COMMENCEMENT DATE, ordinary wear and tear alone excepted (subject to LANDLORD required repairs per Section 8.4 hereof and damage by fire or other casualty pursuant to the provisions of Section 13 hereof). Maintenance shall include replacements and betterments when reasonably needed; except for HVAC equipment, which will be replaced by LANDLORD if and when LANDLORD reasonably determines that replacement is appropriate and treated as a capital improvement under and included in OPERATING EXPENSE. Furthermore, upon TENANT’S surrender of possession of the LEASED PREMISES, TENANT shall, at TENANT’S expense, contract for the vacated units to be de-commissioned and thoroughly cleaned to remove hazardous residue, as reasonably determined by LANDLORD.

10.3 TENANT will perform its own janitorial cleaning of the LEASED PREMISES at TENANT’S sole cost and expense.

10.4 TENANT shall, throughout the TERM of this LEASE, comply with all the

terms of any State or Federal statute or local ordinance or regulation applicable to TENANT or its manner of use of the LEASED PREMISES, and save, indemnify, defend and hold LANDLORD harmless from penalties, fines, costs or damages resulting from failure to do so.

10.5 TENANT shall, subject to Section 10.2 hereof, peaceably deliver up and surrender possession of the LEASED PREMISES in a broom-swept condition, at the expiration or sooner termination of the LEASE hereof, promptly delivering to LANDLORD, at LANDLORD'S office, all keys or access cards to the LEASED PREMISES and BUILDING and surrender the LEASED PREMISES and BUILDING in the same good order and repair as it is on the EFFECTIVE DATE, ordinary wear and tear alone excepted (subject to damage by fire or other casualty pursuant to the provisions of Section 13 hereof). TENANT shall, to the extent assignable, assign any warranties on TENANT IMPROVEMENTS to LANDLORD upon the surrender of the LEASED PREMISES.

10.6 TENANT will be responsible for and shall pay for all utility services metered or submetered, chargeable to and provided to the LEASED PREMISES separate from and in addition to the OPERATING EXPENSES provided for in Section 6.3 hereof. TENANT'S share of electric and gas utility service charges for the LEASED PREMISES shall be charged to the TENANT by the LANDLORD one (1) month in arrears.

10.7 TENANT affirmatively states and confirms to LANDLORD that any existing or future judgment, settlement, sanction or order rendered against TENANT in connection with any enforcement action or litigation against TENANT will not be asserted or claimed by TENANT as a reason or basis for avoiding any of TENANT's obligations under this LEASE.

10.8(a) In the event and to the extent TENANT's financial statements as described below are not publicly available to LANDLORD on TENANT's website, TENANT shall, throughout the TERM of this LEASE, deliver to LANDLORD within thirty (30) days of a request reasonably made by LANDLORD (but not more than twice per calendar year during each of the first three (3) years of the INITIAL TERM of the LEASE and thereafter one (1) time per calendar year during the balance of the TERM) internally prepared financial statements for TENANT including balance sheets, income statement and statement of cash flows for the preceding twelve-month period.

10.8(b) TENANT also shall deliver to LANDLORD within thirty (30) days of request by LANDLORD such additional financial statements, reports and information as may be requested in LANDLORD's reasonable discretion.

10.9 TENANT acknowledges that LANDLORD is an authority of the State of New Jersey which is subject to the N.J. Open Public Records Act (N.J.S.A. 47:1A-A et. seq.) and the N.J. Open Public Meetings Act (N.J.S.A. 10:4-6 et. seq.). TENANT further acknowledges that the N.J. Open Public Records Act sets forth very strict time frames for responding to requests for public records and severe penalties for failure to comply with the N.J. Open Public Records Act and that the N.J. Open Public Meetings Act requires that certain decisions be presented to and discussed by LANDLORD's Board of Members at an open, public meeting. TENANT understands and agrees that notwithstanding any provision of this Section 10.9 to the contrary, it shall not be a violation of this LEASE and that LANDLORD shall have no liability to TENANT for: (i) releasing documents under an N.J. Open Public Records request if LANDLORD determines, in its best judgment, that such documents were required to be released under the N.J. Open Public Records Act; or (ii) presenting and discussing TENANT's financial information at an open, public meeting.

10.10 TENANT has provided to LANDLORD an inventory of items from TENANT'S sublease with Allergan Sales, LLC that TENANT intends to retain as its personal property.

## **11. LANDLORD SERVICES**

11.1 LANDLORD, at LANDLORD'S cost and expense (subject to reimbursement as ADDITIONAL RENT pursuant to the terms of this LEASE), shall cause the following services to be provided:

- (a) provide lawn care and landscaping, as well as maintain sidewalks and exterior lighting for the PROPERTY COMMON AREA;
- (b) provide snow shoveling and snow and ice removal from the parking area, sidewalks, drives and roadways on the PROPERTY COMMON AREA;
- (c) provide general external and structural maintenance to the BUILDING;
- (d) keep in good order and repair and maintain, in accordance with all applicable laws, rules and regulations, the fire water pump, pump house, sewer, water, gas, electrical and fire lines located at the PROPERTY;
- (e) intentionally deleted;
- (f) provide a dumpster near the BUILDING for TENANT's use for ordinary and customary office refuse;
- (g) cause the BUILDING, the LEASED PREMISES, and the PROPERTY COMMON AREA to comply with all applicable laws, ordinances, rules and regulations including, but not limited to, the Americans with Disability Act (subject to reimbursement as OPERATING EXPENSES pursuant to Section 6.3 and 6.4 hereof;

11.2 If any interruption of utilities or essential services that (1) results from LANDLORD'S default hereunder or LANDLORD'S negligence, (2) is within the LANDLORD'S reasonable control to correct and (3) does not result from TENANT'S default or failure to maintain hereunder or TENANT'S negligence, shall continue for more than fifteen (15) consecutive days and shall render the LEASED PREMISES untenable for the normal conduct of TENANT'S business, a pro rata portion based upon the untenable square feet of the LEASED PREMISES of the NET RENT and ADDITIONAL RENT and other payments hereunder shall abate from the period beginning on the sixteenth (16<sup>th</sup>) consecutive day of such interruption and continuing until and to the extent use of the LEASED PREMISES is restored to TENANT. LANDLORD shall have no other or further liability to TENANT for any interruption or suspension of heating, air-conditioning, ventilation, electric, plumbing, mechanical services to the LEASED PREMISES.

## **12. RULES AND REGULATIONS**

12.1 Rules. TENANT, its employees and invitees, shall comply with the PROPERTY rules and regulations attached as **EXHIBIT E** (the "RULES") attached hereto and made a part hereof, and reasonable modifications and additions to the RULES adopted by the LANDLORD which may include but are not limited to any COVID19 Safety Guidelines that TENANT is given thirty (30) days advance notice of; provided, however, that such modifications or additions do not unreasonably and materially interfere with TENANT'S conduct of its business or TENANT'S use and enjoyment of the LEASED PREMISES and do not require payment of additional moneys.

12.2 Conflict with LEASE. If a RULE issued under Section 12.1 hereof conflicts with or is inconsistent with any LEASE provision, the LEASE provision controls.

### **13. DAMAGE OR DESTRUCTION OF LEASED PREMISES**

13.1 LANDLORD agrees that if the LEASED PREMISES is damaged by fire, or other casualty to an extent not rendering it completely untenable, LANDLORD shall promptly cause such damage to be repaired and restored excluding any TENANT WORK or TENANT IMPROVEMENTS provided the repairs and restoration can be completed within two hundred forty (240) days and except if such fire or casualty is caused by TENANT, a pro-rata portion based on the untenable square feet of the LEASED PREMISES of the NET RENT and ADDITIONAL RENT, and other payments hereunder shall abate from the date of such damage to the date of completion of such repairs and restoration by LANDLORD. If LANDLORD so repairs and restores, TENANT shall promptly thereafter restore all TENANT WORK and/or any TENANT IMPROVEMENTS.

13.2 If the LEASED PREMISES shall be damaged by fire, flooding, or other casualty to an extent rendering it completely untenable, LANDLORD shall promptly cause such damage to be repaired and restored promptly excluding any TENANT WORK or TENANT IMPROVEMENTS provided the repairs and restoration can be completed within two hundred forty (240) days and except if such fire, or other casualty is caused by TENANT, the NET RENT and ADDITIONAL RENT and other payments hereunder shall abate completely from the date of such damage to the date of completion of such repairs and restoration by LANDLORD. If LANDLORD so repair and restores, TENANT shall promptly thereafter restore all TENANT WORK and/or any TENANT IMPROVEMENTS.

13.3 Notwithstanding the Force Majeure provision in Section 25 of this LEASE, if the LEASED PREMISES and BUILDING cannot be restored to tenantable condition within the two hundred forty (240) day period set forth in Section 13.1 or Section 13.2 hereof, as



determined, within one hundred twenty (120) days after the damage occurs, by a qualified architect, engineer, contractor or other qualified professional reasonably approved by LANDLORD and TENANT, then either party may terminate this LEASE by written notice to the other party no later than fifteen (15) days after notice of such professional determination. In the event either party so terminates this LEASE, and if no EVENT OF DEFAULT exists (except for an EVENT OF DEFAULT which cannot be cured because of such casualty to the LEASED PREMISES) hereunder, NET RENT, ADDITIONAL RENT and TENANT'S TAX SHARE of REAL ESTATE TAXES or PILOT shall be prorated as of the date of the termination, and this LEASE shall terminate as if the TERM hereof had expired. In the event that TENANT so terminates this LEASE, all insurance proceeds for TENANT IMPROVEMENTS shall be assigned to LANDLORD except for any insurance proceeds for TENANT IMPROVEMENTS which pursuant to Section 9.1 hereof will be removed by TENANT at the end of the TERM.

13.4 All repairs and restoration conducted by or on behalf of LANDLORD pursuant to this Section 13 shall be completed with due and reasonable diligence.

#### **14. CONDEMNATION**

14.1 If the entire LEASED PREMISES or a portion of the LEASED PREMISES are taken by right of eminent domain for any public or quasi-public use or by private purchase in lieu thereof and such taking of a portion of the LEASED PREMISES renders the LEASED PREMISES not reasonably accessible or usable then this LEASE shall automatically end on the earlier of the date title vests or the date TENANT is dispossessed by the condemning authority.

14.2 If the taking of a part of the LEASED PREMISES materially interferes with

TENANT'S ability to continue its business operations in substantially the same manner and space then TENANT may end this LEASE within sixty (60) days following receipt by TENANT of LANDLORD's written proposal to restore and replace the LEASED PREMISES within the remaining portion of the LEASED PREMISES.

If there is a partial taking and this LEASE continues, then the LEASE shall end as to the part taken and the NET RENT, ADDITIONAL RENT, TENANT'S SHARE of REAL ESTATE TAXES or PILOT, and TENANT'S ADDITIONAL RENT (as set forth in Section 6.2 hereof) shall abate in proportion to the part of the LEASED PREMISES taken.

14.3 If the LEASE is canceled as provided in Sections 14.1 or 14.2 hereof, then the NET RENT, ADDITIONAL RENT, TENANT'S SHARE of REAL ESTATE TAXES or PILOT, and other charges shall be payable up to the cancellation date. LANDLORD shall promptly refund to TENANT any prepaid, unaccrued NET RENT, ADDITIONAL RENT and TENANT'S SHARE of REAL ESTATE TAXES or PILOT, if any, less any sum then owing by TENANT to LANDLORD.

14.4 If the LEASE is not canceled as provided for in Sections 14.1 or 14.2 hereof, then LANDLORD at its expense shall promptly repair and restore the LEASED PREMISES to the condition that existed immediately before the taking, except for the part taken, to render the LEASED PREMISES a complete architectural unit, but LANDLORD's obligation to spend money to do so shall be limited to the extent of the condemnation award received by LANDLORD for the taking.

14.5 LANDLORD reserves all rights to damages paid because of any partial or entire taking of the LEASED PREMISES. TENANT assigns to LANDLORD any right TENANT may have to the damages or award. Further, TENANT shall not make claims

against LANDLORD or the condemning authority for damages. Notwithstanding the foregoing, TENANT shall have the right to make a separate claim to the condemning authority for the amortized cost of TENANT'S trade fixtures, personal property and TENANT'S reasonable relocation expenses, provided that any such TENANT award shall not diminish the award payable to LANDLORD.

14.6 If part or all of the LEASED PREMISES is condemned for a limited period of time (a "TEMPORARY CONDEMNATION"), this LEASE shall remain in effect. The NET RENT, ADDITIONAL RENT and TENANT'S SHARE of REAL ESTATE TAXES or PILOT, and TENANT'S obligation for the LEASED PREMISES shall abate during the TEMPORARY CONDEMNATION in proportion to the TENANT's loss of use of the LEASED PREMISES in its business operations as a result of the TEMPORARY CONDEMNATION. LANDLORD shall receive the entire award for any TEMPORARY CONDEMNATION.

## **15. LANDLORD WORK/TENANT WORK**

### **LANDLORD WORK**

15.1 Concurrently with the performance of the UNFINISHED PREMISES TENANT WORK described below, TENANT is required to complete on behalf of the LANDLORD the following in the UNFINISHED PREMISES: (i) install a finished concrete slab, and (ii) remove the wastewater tanks and associated equipment and patch and/or replace concrete flooring as necessary (collectively the "LANDLORD WORK").

15.2 LANDLORD shall provide up to two hundred thousand dollars (\$200,000.00)("LANDLORD WORK ALLOWANCE") to TENANT to cover all anticipated costs associated with the above LANDLORD WORK including all actual and reasonable

architectural engineering and permitting costs/fees for the concrete slab, patch flooring and the demolition of the wastewater tanks. TENANT shall be solely responsible for all costs incurred above the LANDLORD WORK ALLOWANCE. TENANT shall submit invoices and reports for reimbursement. The LANDLORD WORK shall be performed by TENANT in accordance with all requirements set forth in the TENANT WORK Sections 15.11, 15.12, 15.13, 15.14, 15.15, and 15.16 below. TENANT shall competitively bid LANDLORD'S WORK with guidance from LANDLORD's Affirmative Action and Prevailing Wage groups. The LANDLORD's Real Estate Division shall review and approve TENANT's plans for LANDLORD WORK prior to the work commencing. LANDLORD shall not be required to review TENANT's plans until LANDLORD reasonably determines that TENANT's plans are complete in all material respects (the "COMPLETE PLANS"). LANDLORD shall notify TENANT within seven (7) business days of LANDLORD's receipt of such plans if the plans are not complete and will set forth in reasonable details the basis for the rejection of the plans for LANDLORD's WORK. Upon TENANT having delivered to LANDLORD the COMPLETE PLANS, LANDLORD shall have thirteen (13) business days from LANDLORD's receipt to approve such COMPLETE PLANS. TENANT expressly acknowledges that TENANT shall not commence such work prior to receipt of LANDLORD'S approval of such plans.

15.3 TENANT shall fully complete (as evidenced by receipt of a certificate of occupancy, certificate of completion or certificate of approval) LANDLORD WORK within eighteen (18) months of the COMMENCEMENT DATE.

15.4 TENANT shall segregate line items for the LANDLORD WORK separate and apart from TENANT WORK so that pricing for LANDLORD WORK can be easily determined by LANDLORD. All invoices for LANDLORD WORK shall be submitted to LANDLORD for reimbursement upon completion of the entirety of the LANDLORD WORK. Provided that the invoices submitted to LANDLORD (i) include all of the supporting

documentation required per Section 15.12 hereof, (ii) are satisfactory to LANDLORD in all respects, and (iii) in aggregate do not exceed the LANDLORD WORK ALLOWANCE, LANDLORD then shall pay the amount set forth in such invoice(s) within thirty (30) days of receipt of such invoice(s).

15.5 To receive the LANDLORD WORK ALLOWANCE, LANDLORD WORK shall be performed by TENANT in a good and workmanlike manner and shall be constructed in accordance with all applicable laws, codes, regulations and requirements including but not limited to the prevailing wage and affirmative action and all of the other requirements of this LEASE.

## **TENANT WORK**

15.6.1 TENANT, at TENANT's sole cost and expense, shall contract for and administer the design and construction of the fit-out and improvement of the LEASED PREMISES ("TENANT WORK"). TENANT plans to undertake the following, subject to LANDLORD review and approval in advance of TENANT's construction drawings/plans consisting of the following:

- a) UNFINISHED PREMISES: TENANT plans to construct a Good Manufacturing Practices ("GMP") suite for manufacturing of medium scale sterile dosage forms including building out of infrastructure including but not limited to a WFI system and steam generator for GMP use ("UNFINISHED PREMISES TENANT WORK"). TENANT shall undertake and fully complete the UNFINISHED PREMISES TENANT WORK (as evidenced by receipt of certificate of occupancy, certificate of completion or certificate of approval) within eighteen (18) months of the COMMENCEMENT DATE.

- b) WING B PREMISES: TENANT plans to convert the existing processing and packaging area within the WING B PREMISES into a GMP suite for manufacturing of non-sterile pharmaceutical dosage forms for human clinical trials. This WING B PREMISES TENANT WORK is anticipated to be undertaken and fully completed (as evidenced by receipt of certificate of occupancy, certificate of completion or certificate of approval) by August 1, 2024.
- c) WING A PREMISES; TENANT plans to construct a GMP suite for manufacturing of small-scale sterile dosage forms including building out of infrastructure such as an autoclave and backup generator within the INITIAL PREMISES outside of the UNFINISHED PREMISES area. This WING A PREMISES TENANT WORK is to be undertaken and fully completed (as evidenced by receipt of certificate of occupancy, completion or approval) within twenty-four (24) months of the COMMENCEMENT DATE.

15.6.2. Before commencing construction of TENANT WORK, TENANT shall provide LANDLORD with plans, drawings, and specifications, and obtain written approval of LANDLORD. Provided such plans, drawings and specifications are generally consistent with Section 15.6.1 above, LANDLORD approval(s) shall not be unreasonably withheld or delayed. LANDLORD'S approval also is subject to TENANT providing satisfactory evidence of sufficient funds to complete the TENANT WORK at the time of TENANT'S submission of its plans, drawings and specifications to the LANDLORD.

15.6.3 TENANT and LANDLORD acknowledge that in order to meet the completion dates outlined in Section 15.6.1 above, TENANT will make best efforts to provide plans, drawing and specifications for LANDLORD review as outlined below:

- a) For UNFINISHED PREMISES, within two (2) months of the COMMENCEMENT DATE.
- b) For WING B PREMISES, within four (4) months of the COMMENCEMENT DATE.
- c) For WING A PREMISES, within six (6) months of the COMMENCEMENT DATE.

15.7 TENANT acknowledges that HDR Architects & Engineers, P.C. (“HDR”) is the LANDLORD’S engineer for the PROPERTY. TENANT shall have the right to hire its own engineer, but shall in good faith provide HDR with the opportunity to submit a bid for any engineering services it seeks to contract for relating to the Lease. TENANT shall have the right to hire its own architect, other essential consultants and a general contractor for its TENANT WORK and will undertake all such TENANT WORK, subject to LANDLORD approval in advance, which approval shall not be unreasonably withheld or delayed.

15.8 LANDLORD will make available to TENANT an allowance (the “TENANT WORK ALLOWANCE”) to pay a portion of the costs of constructing and installing TENANT WORK as set forth in **EXHIBIT G** attached hereto. **EXHIBIT G** outlines restrictions and requirements for the use of the TENANT WORK ALLOWANCE and specific timelines for TENANT to spend or accrue each allocation of the TENANT WORK ALLOWANCE. To receive this specific allocation of the TENANT WORK ALLOWANCE, TENANT shall be responsible for all costs incurred in excess of the respective allocation of the TENANT WORK ALLOWANCE. LANDLORD shall only reimburse TENANT for TENANT’S WORK within the defined LEASED PREMISES location upon both (i) TENANT’S completion of the TENANT WORK within the defined LEASED PREMISES location also as set forth in the chart in **EXHIBIT G** in conformance with Section 15.3 hereof and compliance with all provisions of Section 15 hereof and (ii) TENANT’S submission to LANDLORD and LANDLORD’S reasonable approval of documentation supporting TENANT’S payment in full of the TENANT WORK within the defined LEASED PREMISES location.

15.9 TENANT shall be charged a two percent (2%) construction supervisory fee by LANDLORD on the cost of its TENANT WORK (excluding furniture & equipment). The 2% construction supervisory fee will be deducted from LANDLORD'S payment to TENANT of the TENANT WORK ALLOWANCE as set forth in Section 15.8 hereof.

15.10 To receive the TENANT WORK ALLOWANCE, TENANT WORK shall be performed by TENANT in a good and workmanlike manner and shall be constructed in accordance with all applicable laws, codes, regulations and requirements including but not limited to the prevailing wage and affirmative action and all of the other requirements of this LEASE.

15.11 TENANT shall prosecute the construction of TENANT WORK to completion with diligence. TENANT or TENANT's contractor shall obtain all required building permits, approvals and certification required for TENANT WORK from the New Jersey Department of Community Affairs from time to time and shall provide copies of construction permits to LANDLORD and receive LANDLORD authorization prior to commencing TENANT WORK.

15.12 All work relating to TENANT WORK shall be subject to the requirements of: (i) the Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.), (ii) the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.), and (iii) the affirmative action requirements of LANDLORD.

15.13 Prior to the start of construction, TENANT shall deliver to LANDLORD satisfactory proof that worker's compensation insurance has been procured to cover all persons employed in connection with the construction of TENANT WORK. TENANT also



shall obtain from each of its subcontractors satisfactory proof that the worker's compensation insurance has been procured.

15.14 TENANT shall cause TENANT WORK to be constructed free of any mechanic's lien, claim or charge. TENANT, within thirty (30) days after receiving written notice of any such mechanic's lien for material or work claimed to have been furnished to TENANT WORK on TENANT's behalf and at TENANT's request, discharge the lien, or post a bond equal to the amount of the disputed claim with companies reasonably satisfactory to LANDLORD. If TENANT posts a bond, TENANT shall contest the validity of the lien. TENANT shall indemnify, defend, and hold LANDLORD harmless from losses incurred from such liens. If TENANT does not discharge the lien or post the bond within the thirty (30) day period, LANDLORD may, after ten (10) days written notice to TENANT, pay any amounts, including interest and reasonable legal fees, necessary to discharge the lien. TENANT shall then immediately be liable to LANDLORD for the amounts paid by LANDLORD.

15.15 TENANT covenants and agrees to, at all times, indemnify, protect and save harmless LANDLORD from and against any and all cost, expense, liability or loss of any nature whatsoever (including reasonable legal fees) resulting from any and all losses, damages, detriments, suits, claims, judgments, demands, costs and charges (but excluding consequential, special and punitive damages) which the LANDLORD may directly or indirectly suffer, sustain or be subject to by reason or on account of TENANT's construction of TENANT WORK excluding any costs, loss, expense or liability arising from the gross negligence or intentional acts of LANDLORD, and its employees or agents.

15.16 TENANT WORK shall remain the property of TENANT for all tax and depreciation purposes, and, at the end of the TERM shall become the property of the

LANDLORD. At the end of the TERM, TENANT shall provide a bill of sale or other such documentation reasonably requested by LANDLORD to confirm LANDLORD's ownership of the TENANT WORK.

15.17 Should TENANT not fully complete (as evidenced by receipt of a certificate of occupancy, certificate of completion or certificate of approval) both the LANDLORD WORK and the TENANT WORK within thirty-six (36) months of the COMMENCEMENT DATE, (as such time period may be extended by the number of days of delay arising from FORCE MAJEURE, as hereinafter defined, if any) TENANT shall not receive the NET RENT abatement per Section 5.2 hereof and LANDLORD, in its sole discretion may require that TENANT restore the LEASED PREMISES to its original condition at TENANT'S sole expense .

## **16. EVENT OF DEFAULT**

16.1 An EVENT OF DEFAULT shall occur after the applicable grace period described in Sections 16.2(a) and 16.2(b) hereof have run if TENANT:

(a) Does not pay in full when due any and all installments of NET RENT, ADDITIONAL RENT, TENANT's TAX SHARE or PILOT or any other charge or payment herein reserved, included, or agreed to be treated or collected as rent and/or any other charge, expense, or cost herein agreed to be paid by TENANT; or

(b) Violates or fails to perform or otherwise breaks any covenant, agreement or obligation under this LEASE; or

(c) Becomes insolvent, or makes an assignment for the benefit of creditors, or

if a petition in bankruptcy is filed by TENANT, or if TENANT is adjudicated a bankrupt, or a bill in equity or other proceeding for the appointment of a receiver for TENANT is filed, or if proceedings for reorganization or for composition with creditors under any State or Federal law be instituted by TENANT, or if the real or personal property of TENANT shall be levied upon or sold.

16.2 Anything herein contained to the contrary notwithstanding, anything or act which would otherwise be an EVENT OF DEFAULT by TENANT hereunder shall not be an EVENT OF DEFAULT hereunder unless:

(a) TENANT shall have failed to correct the alleged EVENT OF DEFAULT within a period of ten (10) days if the EVENT OF DEFAULT be one which can be cured by the payment of money; or

(b) TENANT shall have failed to correct the alleged EVENT OF DEFAULT within a period of thirty (30) days after LANDLORD delivers written notice of such failure to TENANT if the default be one which cannot be cured by the payment of money or, if the alleged default be one which cannot with due diligence be cured within said thirty (30) day period, within such additional period as is reasonably necessary to correct the alleged EVENT OF DEFAULT, provided TENANT shall commence curing such EVENT OF DEFAULT within said thirty (30) day period and shall thereafter diligently prosecute the curing of the alleged EVENT OF DEFAULT.

## **17. LANDLORD'S REMEDIES**

As used in this Section 17, the term "DEFAULT RENT" refers to the amount of the whole balance of NET RENT, ADDITIONAL RENT, TENANT'S UTILITY SHARE and

TENANT's TAX SHARE of REAL ESTATE TAXES or PILOT for the entire balance of the INITIAL TERM and EXTENDED TERM if any for which TENANT has become bound, or any part of such charges and any other damages due to LANDLORD from TENANT under this LEASE from and after the date of occurrence of an EVENT OF DEFAULT.

Upon the occurrence of any EVENT OF DEFAULT:

17.1 LANDLORD may declare the whole balance of NET RENT, ADDITIONAL RENT, LEASED PREMISES maintenance, TENANT'S UTILITY SHARE and TENANT'S TAX SHARE of REAL ESTATE TAXES or PILOT for the entire balance of the INITIAL TERM and EXTENDED TERM for which TENANT has become bound, or any part of (the "ACCELERATED RENT"). TENANT shall pay an amount equal to the difference between the ACCELERATED RENT and the then fair and reasonable rental value of the LEASED PREMISES for the same period. Such difference and any other damages due to LANDLORD from TENANT under this LEASE shall be due and immediately payable without regard to whether the LEASE has been terminated. In the computation of such damages, the difference between the ACCELERATED RENT and the fair and reasonable rental value of the LEASED PREMISES for the same period is to be discounted to the date of such default at the rate of seven (7%) percent per annum.

17.2 LANDLORD may terminate this LEASE by sending to TENANT a written Notice of Termination no less than five (5) days before the Termination and thereby immediately, upon such fifth (5th) day, without the need to take any further action, terminate, cancel and extinguish all of TENANT's rights of possession and occupancy to or in the LEASED PREMISES.

17.3 LANDLORD may re-let the LEASED PREMISES or any part or parts thereof

to such person or persons as may, in LANDLORD'S discretion, be best; and TENANT shall be liable for any loss of DEFAULT RENT. Upon a re-let all rent received by LANDLORD from any new tenant shall be applied to TENANT'S DEFAULT RENT liability. Notwithstanding the foregoing, in the event that LANDLORD relets the LEASED PREMISES or any part or parts thereof at a rent higher than TENANT'S rent, TENANT shall have no claim for such excess rents. Any such re-entry or re-letting by LANDLORD under this SECTION shall be without prejudice to LANDLORD'S claim for actual damages (including but not limited to the costs of re-letting), and shall under no circumstances, release TENANT from liability for the payments of DEFAULT RENT and such damages arising out of the breach of any of the covenants, terms, and conditions of this LEASE. LANDLORD shall use commercially reasonable efforts to re-let the LEASED PREMISES taking into account the space then available for lease at the PROPERTY. In no event shall LANDLORD be required to lease or attempt to lease the LEASED PREMISES in preference to other space then available for lease in the PROPERTY

17.4 Should TENANT fail to cure an EVENT OF DEFAULT under Section 16.2 hereof within the applicable grace period, LANDLORD may exercise "self-help" remedies to regain possession of the LEASED PREMISES or bar TENANT from entry into the LEASED PREMISES provided that LANDLORD does so at all times in accordance with a court order.

17.5 LANDLORD may exercise all or any of the rights granted to a LANDLORD in law or in equity upon an event of default by a tenant under a lease including, without limitation, termination of the LEASE and a suit to recover damages for such breach in an amount equal to both the DEFAULT RENT and the ACCELERATED RENT for which TENANT has become bound.

17.6 LANDLORD or its mortgagee of the LEASED PREMISES (subject to Section 32.2 hereof) may (but shall not be obligated to do so) cure such EVENT OF DEFAULT and the cost thereof shall be added to the next monthly installment of NET RENT payable under this LEASE.

17.7 LANDLORD's remedies under this LEASE shall be cumulative and concurrent.

## **18. LANDLORD'S DEFAULT**

A breach by LANDLORD shall occur if LANDLORD fails to correct an alleged breach within a period of thirty (30) days after receipt of written notice of such breach from TENANT or, if the alleged breach be one which cannot with due diligence be cured within said thirty (30) day period, within such additional period as is reasonably necessary to correct the alleged breach, provided LANDLORD shall commence curing such breach within said thirty (30) day period and shall thereafter diligently prosecute the curing of the alleged breach.

## **19. WAIVER**

Any waiver by a party of a breach by the other party under this LEASE shall be limited to a particular breach so waived by said first party and shall not be deemed a waiver of any other remedy by said first party.

## **20. INSURANCE**

20.1 TENANT shall maintain in full force during the LEASE hereof at its sole cost and expense the following types and minimum amounts of insurance:

(a) Commercial General Liability and, if necessary, Commercial Umbrella insurance with a combined limit of not less than two million dollars (\$2,000,000) each occurrence. Insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising out of, occasioned by or resulting from products, completed operations, personal injury and advertising injury, premises, operations, independent contractors, and liability assumed under an insured contract. Any deductible, or self-insured retention, applicable to the aforementioned insurance shall be approved by LANDLORD, such approval not to be unreasonably withheld or delayed, and written using ISO endorsement CG 03 00 (or a substitute providing similar terms and conditions) which otherwise requires the TENANT to be responsible for the deductible or retention. If such Commercial General Liability insurance contains a General Aggregate limit, it shall apply separately to the LEASED PREMISES. LANDLORD shall be included as an additional insured under the TENANT's Commercial General Liability policy using ISO additional insured endorsement CG 20 11 (or a substitute form providing similar coverage), and under the Commercial Umbrella insurance, if any. This insurance shall apply as primary insurance with respect to any other Commercial General Liability insurance or self-insurance programs afforded to the LANDLORD with respect to the PROPERTY. If the aforementioned insurance is written on a claim made basis, the TENANT warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time the lease is terminated and provide Certificates of Insurance evidencing continuance of coverage with the original claims made retroactive date.

(b) Automobile Liability and, if necessary, Commercial Umbrella insurance with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-

owned vehicles. LANDLORD shall be included as an additional insured under the TENANT's Automobile Liability policy using ISO additional insured endorsement CA 20 01, (or a substitute form providing similar coverage), and under the Commercial Umbrella insurance, if any. This insurance shall apply as primary insurance with respect to any other Automobile Liability insurance or self-insurance programs afforded to the LANDLORD with respect to the PROPERTY.

(c) Workers' Compensation and Employers' Liability covering all of its employees on, in, or about the LEASED PREMISES in accordance with applicable statutes of the State of New Jersey and endorsed to include coverage for any federal or other state law that may be found to have legal jurisdiction. The Employers' Liability limits shall not be less than one million dollars (\$1,000,000) each accident for bodily injury by accident or each employee for bodily injury by disease.

(d) Commercial Property Insurance covering TENANT's property, fixtures, equipment and TENANT IMPROVEMENTS, covering one hundred percent (100%) of the full replacement cost of the property insured. Coverage is to include business income, business interruption or extra expense and loss of rents and in no event, shall LANDLORD be liable for any business income or other consequential loss sustained by TENANT, whether or not it is insured, even if such loss is caused by the negligence of LANDLORD or its agents. Commercial Property Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form CP 10 30 00 (or a substitute providing similar terms and conditions). Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form. Any deductible, or self-insured retention, applicable to the aforementioned insurance shall be approved by LANDLORD, such approval not to be unreasonably withheld or delayed.



LANDLORD shall be included as a Loss Payee and such insurance shall provide that proceeds for damage or destruction to LEASED PREMISES payable thereunder shall be payable to the LANDLORD and the TENANT as their respective interest may appear.

20.2 LANDLORD shall maintain or cause to be maintained in full force during the LEASE hereof at its sole cost and expense (subject to reimbursement as OPERATING EXPENSES pursuant to Section 6 hereof) the following types and amounts of insurance:

(a) Commercial General Liability, and if necessary, Commercial Umbrella Insurance with a combined limit of not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage, to include liability assumed under an insured contract.

(b) Automobile Liability, and if necessary, Commercial Umbrella Insurance with a limit of not less than One Million Dollars (\$1,000,000) each accident, to cover owned, hired and non-owned vehicles.

(c) Commercial Property Insurance covering the full replacement value of the PROPERTY as built-up from time to time, excluding TENANT IMPROVEMENTS and any alterations, fixtures or personal property installed by TENANT or tenants. Commercial Property Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form CP 10 30 00 (or a substitute providing similar terms and conditions). Such insurance shall carry a maximum deductible of \$200,000.00, as amended from time to time by agreement between LANDLORD and tenants. The TENANT'S pro-rata share of the BUILDING SHARE of the deductible for any claims paid under such policy shall be paid as ADDITIONAL RENT pursuant to Section 6 hereof.

(d) Pollution Legal Liability covering losses which may arise from the

PROPERTY of not less than Five Million Dollars (\$5,000,000) policy aggregate, inclusive of legal and clean-up costs. A deductible of not more than \$100,000 will be applied to each incident, inclusive of legal and clean-up costs. Coverage shall include Bodily Injury and Property Damage resulting from either On-Site or Off-Site Pollution Conditions as defined by the policy contract.

20.3 TENANT and LANDLORD hereby waive any recovery of damages and rights against each other (including their employees, directors, officers, agents or representatives) for loss or damage to the PROPERTY, LEASED PREMISES, BUILDING, or TENANT IMPROVEMENTS, and betterments, fixtures, equipment, and any other personal property to the extent covered by the commercial property insurance or boiler and machinery insurance required above. TENANT waives all rights against the LANDLORD and its agents for recovery of damages to the extent these damages are covered by the Commercial General Liability, Automobile Liability or Commercial Umbrella Liability insurance maintained by TENANT. If the policies of insurance purchased by TENANT as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the insured shall cause them to be endorsed with a waiver of subrogation as required above.

20.4 All insurance policies required hereunder shall be issued by an insurance company or companies authorized to do business in the State of New Jersey with a current A.M. Best's rating of no less than A-, VI.

20.5 By the EFFECTIVE DATE and upon each renewal of its insurance policies, TENANT shall furnish to LANDLORD a certificate of insurance executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. All policies and certificates shall provide for thirty (30) days

written notice to the Landlord prior to cancellation and/or material change of any insurance required hereby. If the insurance policies cannot be endorsed to provide notice of cancellation to third parties, then it is the responsibility of the TENANT to provide notice of cancellation to LANDLORD within forty-eight (48) hours of receipt of notification from the insurance company. Failure of LANDLORD to demand such certificate or other evidence of full compliance with these insurance requirements or failure of LANDLORD to identify a deficiency from evidence that is provided shall not be construed as a waiver to TENANT'S obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this lease at LANDLORD's option. TENANT shall provide certified copies of all insurance policies required within ten (10) days of LANDLORD's written request for such policies. If TENANT fails to provide the required evidence of insurance within thirty (30) days after notice of demand, TENANT shall be responsible for any increases in LANDLORD's insurance premiums due to this default. LANDLORD shall in connection therewith, including without limitation, also charge TENANT for LANDLORD's reasonable attorneys' fees, on demand as ADDITIONAL RENT. By requiring insurance herein, LANDLORD does not represent that coverage and limits will necessarily be adequate to protect TENANT, and such coverage and limits shall not be deemed as a limitation on TENANT's liability under the indemnities granted to LANDLORD in this LEASE.

20.6 Each party hereby agrees to review the amounts of coverage required under this LEASE from time to time, but in no event more frequently than every five (5) years, and the parties shall, in good faith, agree upon any reasonable changes in amounts of coverage required of each party by this LEASE. TENANT shall also provide such additional types of insurance in such amounts as LANDLORD shall from time to time reasonably require.

## 21. ENVIRONMENTAL

21.1 TENANT represents, warrants and covenants that (a) it shall at all times conduct its occupancy and operations at the LEASED PREMISES so as to comply materially with all “ENVIRONMENTAL LAWS” (as hereinafter defined), except if caused by NON-TENANT CONTAMINATION (as hereinafter defined) and (b) it will keep the LEASED PREMISES free of any lien imposed pursuant to any ENVIRONMENTAL LAWS other than any lien imposed by reason of actual or threatened contamination by HAZARDOUS SUBSTANCES on the LEASED PREMISES prior to the COMMENCEMENT DATE or due to acts or omissions of LANDLORD, (or its employees, agents, representatives, invitees, licensees, customers or contractors), of tenants or others occupying the LEASED PREMISES prior to the TERM hereof, of owners or tenants of neighboring properties, of other identified third parties, or of forces of nature (such as natural emission of radon gas) (collectively, the “NON-TENANT CONTAMINATION”).

21.2 TENANT warrants that it will promptly deliver to the LANDLORD copies of all permits, licenses, and notices of violation submitted by the TENANT to, or received from, any federal, state, county or municipal environmental agency, including without limitation the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection. Upon the request of LANDLORD, TENANT shall provide LANDLORD with reasonably available evidence of TENANT’s compliance with ENVIRONMENTAL LAWS.

21.3 In addition to TENANT’s obligations under Section 21.1 hereof, to the extent applicable, TENANT shall, at TENANT’s own expense, comply with the reporting requirements of the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq. and the Toxic Catastrophe Prevention Act, N.J.S.A. 13: 1K-19 et seq.

21.4 At the expiration or earlier termination of this LEASE, TENANT shall surrender the LEASED PREMISES to LANDLORD free of any and all HAZARDOUS SUBSTANCES and in compliance with all ENVIRONMENTAL LAWS, excepting, however, any such presence of HAZARDOUS SUBSTANCES or any such noncompliance with ENVIRONMENTAL LAWS due to the NON-TENANT CONTAMINATION.

21.5 Subject to the provisions of this Section 21, and subject to the TENANT not posing any unreasonable risk of harm to the BUILDING, PROPERTY, or people, TENANT shall be entitled to use and store on the LEASED PREMISES the HAZARDOUS SUBSTANCES that are necessary for TENANT'S business provided that they shall be stored in "de minimus" quantities (as defined under ISRA) and further provided that such usage and storage, and TENANT's disposal of all waste resulting therefrom, are in full compliance with all applicable ENVIRONMENTAL LAWS.

21.6 LANDLORD shall have the right but not the obligation, at all times during the LEASE TERM to (a) inspect the LEASED PREMISES, (b) conduct investigations and take samples to determine whether TENANT is in compliance with the provisions of this Section 21, and (c) request lists of all HAZARDOUS SUBSTANCES used, stored or located on the LEASED PREMISES, the reasonable costs of all such investigations, tests and inspections to be borne by TENANT and reimbursed to LANDLORD, as ADDITIONAL RENT on demand if TENANT is in violation of this Section 21.

21.7 Violations - Environmental Defaults.

(a) TENANT shall give to LANDLORD immediate verbal and follow-up written notice of any actual, threatened or suspected spills, releases or discharges of

HAZARDOUS SUBSTANCES on the LEASED PREMISES caused by the acts or omissions of TENANT or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors (collectively, "TENANT PARTIES"). TENANT covenants to promptly investigate, clean up and otherwise remediate any spill, release or discharge of HAZARDOUS SUBSTANCES caused by the acts or omissions of TENANT or any TENANT Parties at TENANT'S sole cost and expense; such investigation, clean up and remediation to be performed in accordance with all applicable ENVIRONMENTAL LAWS and to the reasonable satisfaction of LANDLORD and after TENANT has obtained LANDLORD'S written consent, which shall not be unreasonably withheld or delayed. TENANT shall return the LEASED PREMISES to the condition existing prior to the introduction of any such HAZARDOUS SUBSTANCES.

(b) In the event of (1) a violation at the LEASED PREMISES of any ENVIRONMENTAL LAW, (2) a release, spill or discharge of a HAZARDOUS SUBSTANCE on or from the LEASED PREMISES, (3) the discovery of an environmental condition at the LEASED PREMISES, or (4) TENANT'S failure to provide all information, submissions or take all actions of any kind required by ISRA or requested by NJDEP which violation, release, spill, discharge, environmental condition or failure to cooperate is caused by the acts or omissions of TENANT or TENANT PARTIES at any time from and after the COMMENCEMENT DATE (together "ENVIRONMENTAL DEFAULT"), LANDLORD shall have the right, but not the obligation, to immediately enter the LEASED PREMISES to supervise and/or approve any actions required to be taken by TENANT to address the ENVIRONMENTAL DEFAULT. If the LANDLORD reasonably determines that TENANT'S reaction to address any ENVIRONMENTAL DEFAULT is insufficient to comply with any ENVIRONMENTAL LAW, then LANDLORD may perform any lawful and reasonable actions necessary to address the ENVIRONMENTAL DEFAULT, the cost of which, shall be charged to TENANT as ADDITIONAL RENT. Except for emergency

situations, LANDLORD shall provide TENANT five (5) days prior written notice of LANDLORD's intended actions to address the ENVIRONMENTAL DEFAULT.

21.8 TENANT shall indemnify, defend (with counsel reasonably approved by LANDLORD) and hold LANDLORD and its respective affiliates, shareholders, directors, officers, employees and agents harmless of, from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings, costs and expenses of any kind or nature, known or unknown, contingent or otherwise, which arise out of the occurrence of any ENVIRONMENTAL DEFAULT (including, but not limited to, reasonable attorneys', consultant, laboratory and expert fees).

21.9 ISRA Compliance.

(a) To the extent that ISRA is applicable to TENANT, TENANT shall, at TENANT'S own expense, comply with ISRA. At no expense to LANDLORD, TENANT shall promptly provide all information available to TENANT and required by LANDLORD for preparation of non-applicability affidavits and shall promptly sign such affidavits when requested by LANDLORD.

(b) In the event ISRA is applicable, for any reason, TENANT shall, prior to vacating the LEASED PREMISES, comply in full with any requirements imposed by ISRA.

21.10 Definitions.

(a) "HAZARDOUS SUBSTANCES" means (1) asbestos and any asbestos containing material and any substance that is then defined or listed in, or

otherwise classified pursuant to, any ENVIRONMENTAL LAWS or any applicable laws or regulations as a “hazardous substance”, “hazardous material”, “hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (2) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources and (3) petroleum products and by products, polychlorinated biphenyl, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), and medical waste.

(b) “ENVIRONMENTAL LAWS” collectively means and includes all present and future federal, state and local laws, regulations, orders and official decisions and any amendments thereto (whether common law, statute, rule, order, regulation or otherwise), permits, and other requirements or guidelines (having the force and effect of law) of governmental authorities applicable to the LEASED PREMISES and relating to the environment and environmental conditions or to any HAZARDOUS SUBSTANCE or HAZARDOUS SUBSTANCE activity and any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency, NJDEP or any local governmental authority.

(c) “ISRA” means the New Jersey Industrial Site Recovery Act (N.J.S.A. 13:1k-5, et seq.).

(d) “NJDEP” means the New Jersey Department of Environmental Protection or its successor authority of agency.



#### 21.11 Disposal and Removal of Solid Wastes.

(a) TENANT shall, at its sole cost, contract with a reputable, private refuse removal company approved by LANDLORD in writing in advance for the removal and disposal of any solid waste (other than solid wastes lawfully discharged through the Municipality's sewer system or conventional waste haulers) generated or introduced by TENANT from the LEASED PREMISES, in accordance with all ENVIRONMENTAL LAWS. LANDLORD's approval shall not be unreasonably withheld or delayed.

(b) TENANT shall not dispose of any HAZARDOUS SUBSTANCES or radioactive materials through the sewer system or the dumpster provided by LANDLORD.

(c) TENANT shall store and dispose of all biological waste in accordance with ENVIRONMENTAL LAWS.

#### 21.12 Remedies.

The parties recognize that no adequate remedy at law may exist for a breach of this Section 21. Accordingly, either party may obtain specific performance of any provisions of this Section 21. This Section 21 shall not be construed to limit any remedies which either party may have against the other at law or in equity for a breach of this Section 21. It is agreed that a number of immaterial breaches of this Section 21 occurring over time and with some regularity may, cumulatively, reasonably be deemed to constitute a material breach.

21.13. Survival. The provisions of this Section 21 shall survive the end of the TERM and the termination of this LEASE. No subsequent modification or termination of this

LEASE by agreement of the parties or otherwise, shall be construed to waive or to modify any provisions of this Section 21 unless the termination or modification agreement or other document expressly so states in writing.

21.14. Environmental Audit. During the LEASE, LANDLORD shall be permitted to enter the LEASED PREMISES during reasonable business hours for the purpose of performing an environmental audit. LANDLORD shall use reasonable efforts to minimize LANDLORD's interference with TENANT's operations during such environmental audits.

## **22. HOLDING OVER**

Should TENANT remain in possession of the LEASED PREMISES, or part thereof, beyond the end of the TERM without the execution of a new lease by LANDLORD and TENANT, or the exercise of a renewal option by TENANT, TENANT shall become a tenant from month-to-month of the LEASED PREMISES, or part thereof, under all the terms, conditions, provisions and obligations of this LEASE and TENANT shall pay an amount equal to one hundred fifty percent (150 %) of the total NET RENT, ADDITIONAL RENT, and PILOT existing immediately prior to the holdover and such month-to-month tenancy may be terminated by either LANDLORD or TENANT as of the end of any calendar month upon thirty (30) days prior written notice.

## **23. NO CONSEQUENTIAL DAMAGE**

In no event shall a party be liable to the other party for any incidental, indirect, punitive, special or consequential damages, whether based upon contract, negligence, tort or other theory of law. Any and all claims for damages that TENANT or anyone claiming under TENANT seeks against LANDLORD under or pursuant to this LEASE shall be made

in accordance with and subject to the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 *et seq.*).

**24. SIGNAGE**

LANDLORD shall identify, at LANDLORD's expense, TENANT on a sign near the entrance to the BUILDING as well as appropriate monuments and directional signs now existing or contemplated for the PROPERTY. TENANT shall be permitted to place and maintain a sign bearing its logo directly outside of the entrance to the LEASED PREMISES which sign as well as the location of the ground mounted signage shall be reasonably acceptable to LANDLORD.

**25. FORCE MAJEURE**

Any delays or failure by either party in its performance hereunder (excepting however, with respect to the obligation to pay money hereunder) shall be excused if, and to the extent caused by decrees, or restraint of Government, Acts of God, strikes, labor "holidays" or coercive action of workmen, fire, flood, windstorm, explosion, riots, war, sabotage, freight embargoes, or any other causes beyond the reasonable control of the affected party (each, a "FORCE MAJEURE"), provided that the affected party has provided reasonable notice to the other party and makes reasonable efforts to overcome the FORCE MAJEURE.

**26. REAL ESTATE BROKERS**

26.1.1. LANDLORD has engaged Jones Lang LaSalle Americas, Inc. ("LANDLORD'S BROKER") as LANDLORD's broker in connection with this LEASE and

by a leasing services agreement between LANDLORD and LANDLORD'S BROKER, LANDLORD has agreed to compensate LANDLORD'S BROKER as set forth in the leasing services agreement. TENANT represents that TENANT has not dealt with any brokers other than Savills Inc. (the "TENANT'S BROKER") and that TENANT'S BROKER is entitled to be paid a commission during the INITIAL TERM by LANDLORD'S BROKER pursuant to a separate agreement between LANDLORD'S BROKER and TENANT'S BROKER for such commission owing and paid by LANDLORD'S BROKER to TENANT'S BROKER pursuant to the leasing services agreement between LANDLORD AND LANDLORD'S BROKER.

26.1.2. TENANT acknowledges that The Garibaldi Group and Chilmark Real Estate Services were the brokers for the TENANT under the PRIOR LEASE (collectively, the "INITIAL BROKER"). LANDLORD represents that LANDLORD has (a) not dealt, negotiated, or discussed with the INITIAL BROKER in connection with this LEASE and (b) no written agreement with the INITIAL BROKER in connection with the execution of this LEASE. TENANT shall indemnify, defend (with counsel reasonably approved by LANDLORD) and hold LANDLORD and its respective affiliates, shareholders, directors, officers, employees and agents harmless of, from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings, costs and expenses (including reasonable legal fees) of any kind or nature, known or unknown, contingent or otherwise which LANDLORD may directly or indirectly suffer, sustain or be subject to by or account of any claims for a commission or other damages by the INITIAL BROKER under this LEASE transaction.

26.1.3 Except to the extent TENANT'S representation set forth hereinabove shall have been breached, LANDLORD shall be responsible for any commissions alleged to be owing to any brokers or finders other than TENANT'S BROKER in connection with this LEASE.

26.2 In the event TENANT extends the TERM of this LEASE pursuant to Section 4.1.1 hereof after the expiration of the leasing services agreement between LANDLORD and LANDLORD'S BROKER and TENANT is represented by TENANT'S BROKER, LANDLORD, in its sole discretion shall have the option to either: (i) give TENANT a credit against NET RENT, for the amount of commission TENANT paid to TENANT'S BROKER to complete and negotiate the extension of this LEASE only, provided (and only to the extent) that such commission is market rate commission and not greater than five (5%) percent of NET RENT attributable to the first EXTENDED TERM or the second EXTENDED TERM, as the case may be provided that no Commission shall be paid to TENANT BROKER for the period beyond December 31, 2037 or (ii) cause LANDLORD'S BROKER or replacement broker (if a replacement broker has been engaged by LANDLORD after the expiration of the current leasing services agreement between LANDLORD and LANDLORD'S BROKER) to pay TENANT'S BROKER a market rate commission (but not greater than five (5%) percent of the attributable NET RENT) pursuant to a written agreement to be entered into between the TENANT'S BROKER and LANDLORD'S BROKER or replacement broker, if applicable, provided that no Commission shall be paid to TENANT BROKER for the period beyond December 31, 2037.

## **27. RIGHT OF ENTRY**

LANDLORD shall have the right to enter the LEASED PREMISES, upon forty-eight (48) hour's prior written notice, to show the LEASED PREMISES: (1) to prospective lenders or purchasers and (2) during the nine (9) months immediately before the LEASE ends to prospective tenants. In the exercise of the right of entry provided herein, LANDLORD shall not unreasonably interfere with the conduct of TENANT's business in

the LEASED PREMISES. TENANT shall have the right to have a representative of TENANT accompany LANDLORD or its agents, contractors or representatives during any entry into the LEASED PREMISES except in the event of an emergency.

**28. STATUTORY AUTHORITY**

This LEASE is entered into pursuant to the provisions of the New Jersey Economic Development Authority Act, N.J.S.A. 34:1 B I et seq.

**29. LIABILITY OF THE STATE OF NEW JERSEY**

This LEASE is not an obligation of the State of New Jersey 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.

**30. ACCESS**

TENANT, its employees, agents, and invitees shall have access to the LEASED PREMISES twenty-four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year.

**31. SUBLEASING AND ASSIGNMENT**

31.1 TENANT may, with the prior written consent of the LANDLORD, which shall not be unreasonably withheld or delayed within thirty (30) days of LANDLORD's receipt of all required documentation including but not limited to the identity of the proposed

subtenant or assignee, terms of the proposed transaction, actual and intended activities, draft sublease or assignment, and financial documents as noted in Section 31.1(f) hereof, assign this LEASE or sublet the whole or any part of the LEASED PREMISES. Notwithstanding the foregoing, LANDLORD shall provide its consent if such assignment or sublease meets all of the following conditions:

- a) No EVENT OF DEFAULT exists under this LEASE beyond any applicable cure period provided;
- b) the assignee or subtenant is not an entity which LANDLORD is barred or prohibited from contracting with pursuant to LANDLORD'S disqualification/debarment regulations, which are set forth in N.J.A.C. 19:30-2.1 through 2.7 and the assignee or subtenant has satisfied all of the State compliance obligations including but not limited to political campaign contributions as set forth in Section 39 hereof and business registration certificate requirements. TENANT shall promptly deliver to LANDLORD written notice thereof together with a copy of such assignment or sublease document(s) and appropriate certificates of insurance from the TENANT's assignee or subtenant. Any attempted assignment or subletting of the LEASED PREMISES in violation of LANDLORD'S disqualification/debarment regulations shall be void ab initio and of no legal force or effect;
- c) the assignee assumes all of the obligations of TENANT under this LEASE from and after the date of the assignment, or the subtenant agrees to be subject to all the terms and conditions of this LEASE;
- d) such assignment or sublease will only permit the uses that are

consistent with that of an office or laboratory, and/or are permitted under this LEASE;

- e) TENANT promptly furnishes LANDLORD with an executed copy of the assignment or sublease;
- f) such assignee has sufficient financial strength to fully comply with the terms and conditions contained in this LEASE, evidenced by a tangible net worth (as established in accordance with G.A.A.P. standards) of not less than \$8,000,000 and there is no pending or threatened significant litigations against assignee or other court proceedings involving assignee that if adversely decided would materially interfere with assignee's ability to continue operations in a sound financial condition; and;
- g) such assignee or subtenant provides LANDLORD proof of insurance as outlined in Section 20 of this LEASE.

31.2 Anything in this LEASE to the contrary notwithstanding the consent of the LANDLORD need not be obtained if the assignment or sublease is to a parent, subsidiary or affiliate of TENANT, or a joint venture of which TENANT or one of its affiliates is a partner or member (each a "TENANT AFFILIATE"); provided that: (i) the TENANT AFFILIATE is not an entity which LANDLORD is barred or prohibited from contracting with pursuant to LANDLORD'S disqualification/debarment regulations, which are set forth in N.J.A.C. 19:30-2.1 through 2.7; (ii) the TENANT AFFILIATE has satisfied all of the State compliance obligations including but not limited to political campaign contributions as set forth in Section 39 hereof and business registration certificate requirements; and (iii)



TENANT has promptly delivered to LANDLORD written notice thereof together with a copy of such assignment or sublease document(s) and appropriate certificates of insurance from the TENANT AFFILIATE. Any attempted assignment or subletting of the LEASED PREMISES in violation of LANDLORD'S disqualification/debarment regulations shall be void ab initio and of no legal force or effect.

31.3 TENANT shall not be permitted to assign the LEASE or sublet the LEASED PREMISES to a person or entity which is a tenant or subtenant of any other premises within the PROPERTY, without LANDLORD'S prior written approval.

31.4 Any assignment of this LEASE, or any sublease of the LEASED PREMISES by TENANT shall not relieve TENANT of any of its obligations under this LEASE.

## **32. QUIET ENJOYMENT, SUBORDINATION, ESTOPPEL**

32.1 LANDLORD covenants that as long as there is no EVENT OF DEFAULT hereunder, TENANT shall peaceably and quietly have hold and enjoy the LEASED PREMISES for the TERM of this LEASE.

32.2 TENANT shall subordinate its interest under this LEASE to any and all mortgagees of the LEASED PREMISES, existing prior to or subsequent to the COMMENCEMENT DATE, in accordance with the terms and conditions of the subordination, non-disturbance and attornment agreement attached hereto as **EXHIBIT H**, by entering into such agreement with such mortgagee promptly upon receipt of written request therefor by LANDLORD.

32.3 LANDLORD AND TENANT shall, from time to time, within ten (10) business



36 West State Street  
PO Box 990  
Trenton, NJ 08625-0990

with a copy addressed and sent to:

New Jersey Division of Law,  
Treasury-Finance and Benefits Section  
Hughes Justice Complex  
PO Box 106  
Trenton, NJ 08625  
Attn: Meredith Friedman, DAG

Either party may change these persons or addresses by giving notice as provided above. The attorney for either the LANDLORD or TENANT shall also be entitled to provide notice in the manner set forth herein on behalf of their respective clients. TENANT shall also give required notices to LANDLORD'S mortgagee after receiving notice from LANDLORD of the mortgagee's name and address. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage receipt(s) of all persons and addresses to which notice is to be given.

#### **34. PARTIAL INVALIDITY**

If any LEASE provision is invalid or unenforceable to any extent, then that provision and the remainder of this LEASE shall continue in effect and be enforceable to the fullest extent permitted by law.

**35. BINDING ON SUCCESSORS**

This LEASE shall bind the parties' heirs, successors, and permitted assigns.

**36. GOVERNING LAW**

This LEASE shall be governed by the laws of the State of New Jersey. Any and all claims made or to be made against LANDLORD 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, TENANT agrees that any and all claims made or to be made against LANDLORD 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.

**37. DAYS**

Unless expressly stated to the contrary, all references to "days" herein shall mean consecutive calendar days.

**38. SECURITY DEPOSIT**

Upon TENANT's execution of this LEASE, TENANT shall deposit with LANDLORD a security deposit ("SECURITY DEPOSIT") in the form of a transferrable Irrevocable Letter of Credit ("LOC") in an initial amount of \$858,530 as set forth in the chart below, from a financial institution insured by the Federal Deposit Insurance Corporation with a New Jersey branch, having a strong credit rating, and providing terms for the drawing of funds reasonably acceptable to LANDLORD. LANDLORD's successor and/or assigns shall have the same rights as the LANDLORD under the LOC. TENANT shall renew the LOC

annually or for the time period set forth therein if required by the terms of the LOC.

By March 31<sup>st</sup> of each calendar year for which TENANT will request a LOC amount reduction, TENANT shall provide LANDLORD an audited financial statement of TENANT's gross and net income for the prior calendar year. Subject to the receipt, review and approval of TENANT's audited financial statement and TENANT'S achievement of gross and net income thresholds contained in the chart below, LANDLORD shall agree to the following reduction of the LOC:

Estimated Dates	Lease Month	Gross Income Threshold	Net Income Threshold	% Reduction	Amount of Reduction	LOC Amount
11/1/2022	1	n/a	n/a	n/a	n/a	\$858,530
2/1/2023	4	n/a	n/a	n/a	n/a	\$1,855,880
4/1/2027	54	\$65,000,000	\$18,182,000	30.00%	\$536,535	\$1,319,345
8/1/2028	70	\$70,000,000	\$19,548,000	35.00%	\$198,579	\$1,120,766
8/1/2029	82	\$75,000,000	\$20,944,000	40.00%	\$343,523	\$777,243

Within thirty (30) days of LANDLORD'S receipt of a complete audited financing statement confirming TENANT's achievement of the applicable gross and net income thresholds contained in the chart above, LANDLORD shall provide a notice to TENANT that the LOC may be reduced accordingly. TENANT shall not reduce the amount of the LOC until it receives this notice of approval from LANDLORD.

If an EVENT OF DEFAULT by TENANT exists and is continuing beyond any applicable notice and cure period under this LEASE at any time, LANDLORD may use, apply or retain the whole or any part of the SECURITY DEPOSIT to the extent necessary to cure said EVENT OF DEFAULT. LANDLORD will drawdown funds as required by the LOC. It is understood that the deposit is not to be considered as the last rental payment due under

this LEASE. If at any time during the TERM of this LEASE, LANDLORD applies all or a portion of this SECURITY DEPOSIT to cure TENANT's EVENT OF DEFAULT, TENANT shall either post cash with the LANDLORD or replenish the LOC within ten (10) business days after demand by LANDLORD in writing any amount necessary to restore the SECURITY DEPOSIT to the applicable sum according the chart above, and the failure to do so will constitute an EVENT OF DEFAULT pursuant to Section 16.1(b) hereof.

For each month that any amount necessary to restore the SECURITY DEPOSIT to the full sum set forth above is not paid within ten (10) days after the date due, TENANT will pay to LANDLORD in cash funds (paid by either certified funds, cashier's check or wire transfer) as ADDITIONAL RENT a late charge equal to five percent (5%) of the total amount necessary to restore the SECURITY DEPOSIT to the full sum set forth above.

### **39. POLITICAL CAMPAIGN CONTRIBUTIONS**

39.1 For the purpose of this Section 39, the following shall be defined as follows:

a) Contribution means a contribution reportable as a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act.® P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed" reportable" under these laws.

b) Business Entity

i. a for-profit entity as follows:

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

ii. any subsidiary directly or indirectly controlled by the business entity;

iii. any political organization organized under section 527 of the Internal Revenue Code directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

iv. with respect to an individual who is included within the definition of business entity the individual, spouse, or civil union partner, and any child residing with the individual, provided, however, that, this Executive Order as hereinafter defined shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate

for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

c) PL 2005, C.51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) 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).

39.2 The terms, restrictions, requirements and prohibitions set forth in PL 2005, C.51 are incorporated into this LEASE by reference as material terms of this LEASE with the same force and effect as if PL 2005, C.51 were stated herein in its entirety. Compliance with PL 2005, C.51 by TENANT shall be a material term of this LEASE.

39.3 In addition to any other Event of Default specified in this LEASE, LANDLORD shall have the right, but not the obligation, to declare an event of default under this LEASE if: (i) TENANT makes or solicits a Contribution in violation of PL 2005, C.51, (ii) TENANT knowingly conceals or misrepresents a Contribution given or received; (iii) TENANT makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) TENANT makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) TENANT 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 TENANT directly, would violate the restrictions of PL 2005, C.51; (vi) TENANT funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) TENANT engages in any exchange of Contributions to circumvent the intent of PL 2005, C.51; (viii) TENANT directly



or indirectly through or by any other person or means, does any act which would violate the restrictions of PL 2005, C.51; or (ix) any material misrepresentation exists in any Executive Order Certification and Disclosure which was delivered by TENANT to LANDLORD in connection with this LEASE.

39.4 TENANT hereby acknowledges and agrees that pursuant to PL 2005, C.51, TENANT shall have a continuing obligation to report to the Office of the State Treasurer, EO 134 Review Unit any Contributions it makes during the TERM of this LEASE. If after the COMMENCEMENT DATE, any Contribution is made by TENANT and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of PL 2005, C.51, LANDLORD shall have the right, but not the obligation, to declare this LEASE to be in default.

#### **40. GENERATORS**

TENANT shall have the right to use the existing generator throughout the TERM of the LEASE and shall be responsible for maintaining it at TENANT's sole cost. Additionally, TENANT shall have the right to install a generator at the existing concrete pad as a TENANT IMPROVEMENT, subject to LANDLORD approval which shall not be unreasonably withheld or delayed.

#### **41. ELECTRONIC SIGNATURES**

Pursuant to written policy, LANDLORD allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. TENANT also agrees to be bound by electronic signatures as a signatory to this LEASE.

**42. ENTIRE AGREEMENT**

This LEASE contains the entire agreement between the parties about the LEASED PREMISES. Except for the RULES, for which Section 12 hereof controls, this LEASE shall be modified only by a writing signed by both parties.

This LEASE may be executed in any number of counterpart copies, all of which shall have the same force and effect as if all parties hereto had executed a single copy hereof. Facsimile or PDF signatures to this LEASE shall have the same force and effect as “ink” signatures and no “ink” copy of any facsimile or PDF signature is required to bind the party signing by facsimile or PDF to this LEASE.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this LEASE to be executed by their duly authorized representatives as of the day and year first above written.

**THE NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY, LANDLORD**

---

WITNESS

---

SIGNATURE  
Dan Jennings  
Executive VP – Real Estate Development  
& Programs

**ASCENDIA PHARMACEUTICALS, INC.,  
TENANT**

---

WITNESS

---

SIGNATURE  
NAME:  
TITLE:

**EXHIBIT A-1:**

**NEW JERSEY BIOSCIENCE CENTER**

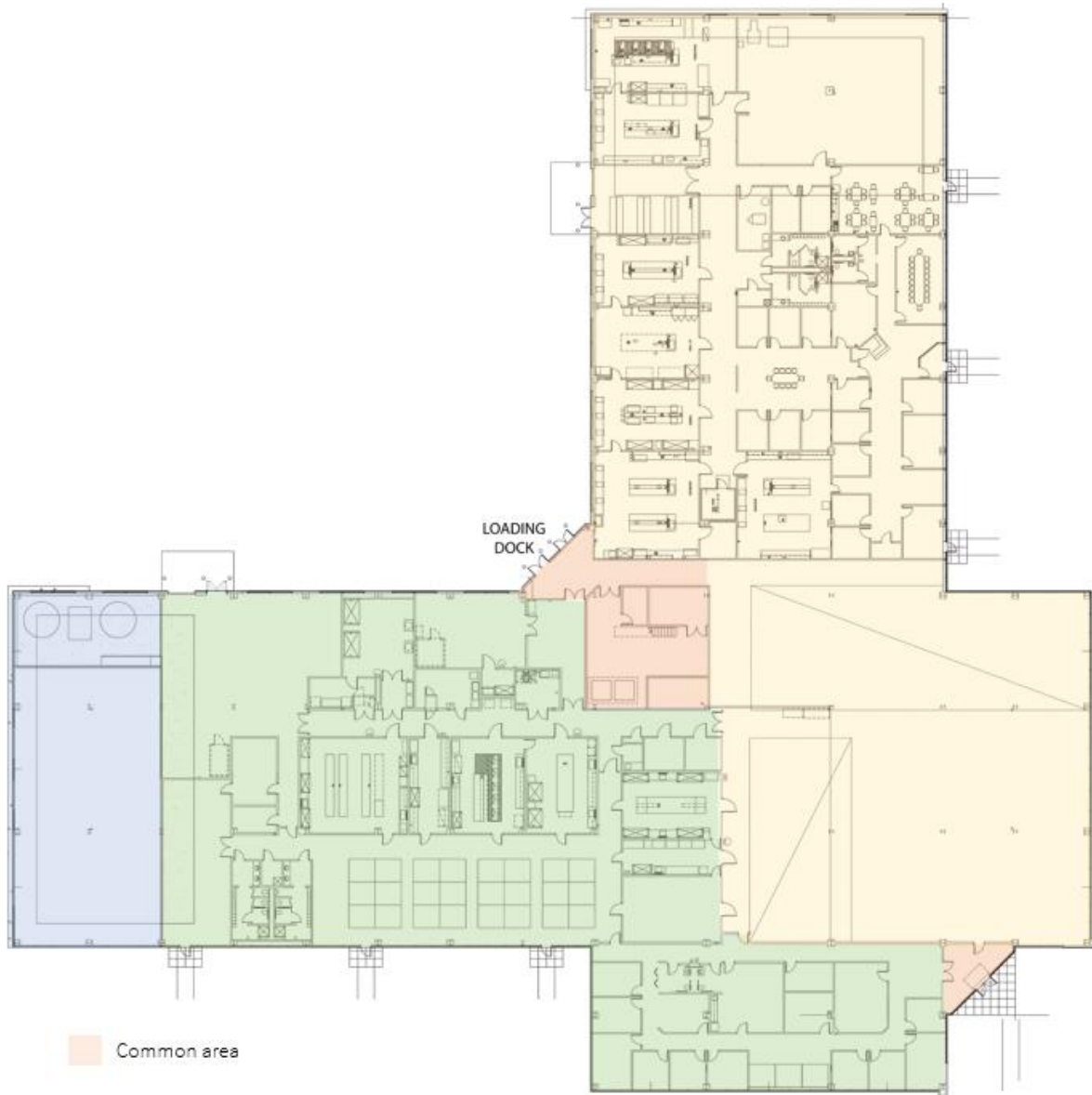


**EXHIBIT A-2: LEASED PREMISES**

WING A PREMISES approximately shown in green shaded area.

UNFINISHED PREMISES approximately shown in blue shaded area.

WING B PREMISES approximately shown in yellow shaded area.



**EXHIBIT B: NET RENT**

**Ascendia Pharmaceuticals, Inc.**

Lease Mos. 141  
Lease Yrs. 11.75

1. During the INITIAL TERM of the LEASE, the NET RENT per square foot is outlined in the following chart:

Net Rent Per Square Foot (WING A PREMISES AND UNFINISHED PREMISES)			
Date	Beginning of Lease Month	End of Lease Month	Net Rent per Square Foot (NR \$SF)
11/1/2022	1	12	\$30.14
11/1/2023	13	24	\$31.04
11/1/2024	25	36	\$31.97
11/1/2025	37	48	\$32.93
11/1/2026	49	60	\$33.92
11/1/2027	61	72	\$34.94
11/1/2028	73	84	\$35.99
11/1/2029	85	96	\$37.07
11/1/2030	97	108	\$38.18
11/1/2031	109	120	\$39.33
11/1/2032	121	132	\$40.51
11/1/2033	133	141	\$41.73

Net Rent Per Square Foot WING B PREMISES			
Date	Beginning of Lease Month	End of Lease Month	Net Rent per Square Foot (NR \$SF)
2/1/2023	7	12	\$32.50
11/1/2023	13	24	\$33.48
11/1/2024	25	36	\$34.48
11/1/2025	37	48	\$35.51
11/1/2026	49	60	\$36.58
11/1/2027	61	72	\$37.68
11/1/2028	73	84	\$38.81
11/1/2029	85	96	\$39.97
11/1/2030	97	108	\$41.17
11/1/2031	109	120	\$42.41
11/1/2032	121	132	\$43.68
11/1/2033	133	141	\$44.99

2. A NET RENT abatement of three (3) months will only be provided upon (i) full completion in compliance with all governmental laws and requirements (evidenced by receipt of a certificate of occupancy, completion, or approval) of both the LANDLORD WORK and the TENANT WORK, and (ii) full completion is achieved no later than thirty-six (36) months from the COMMENCEMENT DATE. The schedules in Section 3. of Exhibit B below estimates NET RENT ABATEMENT in months 34, 35, and 36. Upon full completion of the LANDLORD and TENANT WORK, LANDLORD and TENANT will agree to a LEASE AMENDMENT reflecting the actual RENT ABATEMENT months which will commence 1 month after LANDLORD's review and approval of TENANT's required submittals according to Section 15 of the LEASE.

3. During the INITIAL TERM of the LEASE, TENANT shall pay NET RENT as follows:  
The schedules below anticipates completion of both the LANDLORD WORK and TENANT WORK within the UNFINISHED PREMISES by the end of month 18.

Net Rent Payment Schedule (WING A PREMISES AND UNFINISHED PREMISES)							
Date	Beginning of Lease Month	End of Lease Month	RENTABLE NR \$SF	ACTUAL SQUARE FEET	ACTUAL MONTHLY NET RENT	ACTUAL ANNUAL NET RENT	MONTHS @ NET RET
11/1/2022	1	3	\$30.14	22,565	\$56,675.76	\$170,027.28	3
2/1/2023	4	12	\$30.14	22,565	\$56,675.76	\$510,081.84	9
11/1/2023	13	18	\$31.04	22,565	\$58,368.13	\$350,208.78	6
5/1/2024	19	24	\$31.04	27,596	\$71,381.65	\$428,289.90	6
11/1/2024	25	33	\$31.97	27,596	\$73,520.34	\$661,683.06	9
8/1/2025	34	36	\$0.00	27,596	\$0.00	\$0.00	3
11/1/2025	37	48	\$32.93	27,596	\$75,728.02	\$908,736.24	12
11/1/2026	49	60	\$33.92	27,596	\$78,004.69	\$936,056.28	12
11/1/2027	61	72	\$34.94	27,596	\$80,350.35	\$964,204.20	12
11/1/2028	73	84	\$35.99	27,596	\$82,765.00	\$993,180.00	12
11/1/2029	85	96	\$37.07	27,596	\$85,248.64	\$1,022,983.68	12
11/1/2030	97	108	\$38.18	27,596	\$87,801.27	\$1,053,615.24	12
11/1/2031	109	120	\$39.33	27,596	\$90,445.89	\$1,085,350.68	12
11/1/2032	121	132	\$40.51	27,596	\$93,159.50	\$1,117,914.00	12
11/1/2033	133	141	\$41.73	27,596	\$95,965.09	\$863,685.81	9
<b>TOTAL ANNUAL WING A AND UNFINISHED PREMISES NET RENT FOR THE INITIAL TERM</b>						<b>\$11,066,016.99</b>	<b>141</b>

Rent Commencement Date

Net Rent Payment Schedule (WING B PREMISES)							
Date	Beginning of Lease Month	End of Lease Month	RENTABLE NR \$SF	ACTUAL SQUARE FEET	ACTUAL MONTHLY NET RENT	ACTUAL ANNUAL NET RENT	MONTHS @ NET RET
2/1/2023	4	12	\$32.50	31,962	\$86,563.75	\$779,073.75	9
11/1/2023	13	18	\$33.48	31,962	\$89,173.98	\$535,043.88	6
5/1/2024	19	24	\$33.48	31,962	\$89,173.98	\$535,043.88	6
11/1/2024	25	33	\$34.48	31,962	\$91,837.48	\$826,537.32	9
8/1/2025	34	36	\$0.00	31,962	\$0.00	\$0.00	3
11/1/2025	37	48	\$35.51	31,962	\$94,580.89	\$1,134,970.68	12
11/1/2026	49	60	\$36.58	31,962	\$97,430.83	\$1,169,169.96	12
11/1/2027	61	72	\$37.68	31,962	\$100,360.68	\$1,204,328.16	12
11/1/2028	73	84	\$38.81	31,962	\$103,370.44	\$1,240,445.28	12
11/1/2029	85	96	\$39.97	31,962	\$106,460.10	\$1,277,521.20	12
11/1/2030	97	108	\$41.17	31,962	\$109,656.30	\$1,315,875.60	12
11/1/2031	109	120	\$42.41	31,962	\$112,959.04	\$1,355,508.48	12
11/1/2032	121	132	\$43.68	31,962	\$116,341.68	\$1,396,100.16	12
11/1/2033	133	141	\$44.99	31,962	\$119,830.87	\$1,078,477.83	9
<b>TOTAL ANNUAL WING B PREMISES NET RENT FOR THE INITIAL TERM</b>						<b>\$13,848,096.18</b>	<b>138</b>

**Total Net Rent Payment Schedule WING A and WING B PREMISES**

Date	Beginning of Lease Month	End of Lease Month	BLENDED NR \$SF	RENTABLE SQUARE FEET	ACTUAL MONTHLY NET RENT	ACTUAL ANNUAL NET RENT	MONTHS @ NET RET
11/1/2022	1	3	\$30.14	22,565	\$56,675.76	\$170,027.28	3
2/1/2023	4	12	\$31.52	54,527	\$143,239.51	\$1,289,155.59	9
11/1/2023	13	18	\$32.47	54,527	\$147,542.11	\$885,252.66	6
5/1/2024	19	24	\$32.35	59,558	\$160,555.63	\$963,333.78	6
11/1/2024	25	33	\$33.32	59,558	\$165,357.82	\$1,488,220.38	9
8/1/2025	34	36	\$0.00	59,558	\$0.00	\$0.00	3
11/1/2025	37	48	\$34.31	59,558	\$170,308.91	\$2,043,706.92	12
11/1/2026	49	60	\$35.35	59,558	\$175,435.52	\$2,105,226.24	12
11/1/2027	61	72	\$36.41	59,558	\$180,711.03	\$2,168,532.36	12
11/1/2028	73	84	\$37.50	59,558	\$186,135.44	\$2,233,625.28	12
11/1/2029	85	96	\$38.63	59,558	\$191,708.74	\$2,300,504.88	12
11/1/2030	97	108	\$39.78	59,558	\$197,457.57	\$2,369,490.84	12
11/1/2031	109	120	\$40.98	59,558	\$203,404.93	\$2,440,859.16	12
11/1/2032	121	132	\$42.21	59,558	\$209,501.18	\$2,514,014.16	12
11/1/2033	133	141	\$43.48	59,558	\$215,795.96	\$1,942,163.64	9
<b>TOTAL ANNUAL WING A AND WING B PREMISES NET RENT FOR THE INITIAL TERM</b>						<b>\$24,914,113.17</b>	<b>141</b>

## **EXHIBIT C: FAIR MARKET RENT**

- a) For purposes of this LEASE, the term “fair market rent” shall be defined for each EXTENDED TERM as the annual fair market rent for leases which have been executed within 365 days immediately preceding TENANT’s written request, as provided in Section 4.1 of the LEASE, for LANDLORD’s determination of the fair market rent for such EXTENDED TERM, in arm’s length transactions without the landlord or the tenant thereunder having any compulsion to rent, having terms of similar length to that of the EXTENDED TERM and demising comparable space to that of the LEASED PREMISES excluding TENANT IMPROVEMENTS and located within a five-mile radius of the location of the LEASED PREMISES and evaluated as if the TENANT had maintained the LEASED PREMISES in the condition required by the terms of the LEASE (considering size, use and the improvements in place in such comparable space, and considering any other options of such tenants to extend the term or otherwise), and deducting in a fair and equitable manner all of the actual and projected costs of the landlords thereunder in the negotiation, execution and performance of such leases which are not costs of LANDLORD during the EXTENDED TERM under this LEASE and adding in a fair and equitable manner all of the actual and projected costs of LANDLORD during the EXTENDED TERM under this LEASE which are not costs of the landlords under such leases in the negotiation, execution and performance of such leases, so that LANDLORD shall receive, on a completely “net” basis, the same rental income, including payments of OPERATING EXPENSES, REAL ESTATE TAXES and other formulas or pass-throughs then currently in effect, that it would receive upon a re-letting of the LEASED PREMISES to an independent, unrelated third party for a term equivalent to that of the EXTENDED TERM and expressly including in such determinations all rent concession, TENANT IMPROVEMENT refurbishment allowances, and TENANT WORK.
- b) LANDLORD shall determine the fair market rent for the applicable term and give TENANT notice thereof in each case within thirty (30) days following receipt of written request from TENANT. Should TENANT disagree with LANDLORD's determination, TENANT may elect, by written notice delivered to LANDLORD within thirty (30) days after receipt of LANDLORD's notice received pursuant to the immediately preceding sentence, to have the fair market rent for such EXTENDED TERM determined by appraisal in accordance with the following procedures, the results of which shall be binding upon both LANDLORD



and TENANT. Within ten (10) days after TENANT notifies LANDLORD of TENANT's election to determine fair market rent by appraisal, each of LANDLORD and TENANT shall, by written notice to the other, designate an appraiser having at least ten (10) years experience as a MAI appraiser doing business in the State of New Jersey. Within ten (10) days following the appointment of the second of such appraisers, the two appraisers so appointed shall select a third appraiser meeting the same requirements as to experience.

- c) In the event that the two appraisers are unable timely to agree upon the third appraiser, then LANDLORD and TENANT shall attempt to agree upon the third appraiser within ten (10) days thereafter, and if they fail to do so the third appraiser shall be an appraiser meeting the qualifications herein set forth and appointed under the commercial arbitration rules of the American Arbitration Association relating to appointment of arbitrators, following application by either party hereto, on notice to the other party hereto, to the American Arbitration Association office in closest proximity to the BUILDING. The three appraisers so chosen shall render their decision as to the fair market rent (as such term is herein defined) within thirty (30) days following the appointment of the third appraiser. Should the three appraisers be unable to agree on the fair market rent, the fair market rent shall be the average of the three respective fair market rents determined by the three appraisers, excluding from such computation, however, any fair market rent which deviates by more than twenty five percent (25%) from the average of the three fair market rents so determined. LANDLORD and TENANT shall each bear their own costs of such appraisal and equally share the cost of the third appraiser and any arbitration hereunder.

**EXHIBIT D: PILOT AGREEMENT**

## **EXHIBIT E:            RULES AND REGULATIONS**

1.     The entrances, sidewalks, halls, passages, concourses, plaza, lobbies, stairways, and driveways shall not be obstructed by TENANT or used for any purpose other than for ingress to and egress from the LEASED PREMISES or the PROPERTY. The halls, passages, entrances, stairways, balconies and roof are not for the use of the general public, and LANDLORD shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of LANDLORD shall be prejudicial to the safety, character, reputation, or interest of the PROPERTY or its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom TENANT normally deals in the ordinary course of its business unless such persons are engaged in illegal activities.

2.     TENANT, its employees, contractors, agents, servants, visitors, and licensees shall not go upon the roof or into mechanical rooms of the BUILDING without the written consent of LANDLORD.

3.     The exterior windows and doors that reflect or admit light or air into the LEASED PREMISES or the halls, passageways or other public places in the PROPERTY, shall not be covered or obstructed by TENANT. No showcase or other articles shall be put in front or affixed to any part of the exterior of the BUILDING nor placed in the halls, corridors or vestibules, nor shall any article obstruct any air-conditioning supply or exhaust.

4.     No awnings, air conditioning units, fans, aerials, antennas, or other projections or similar devices shall be attached to the BUILDING, regardless of whether inside the BUILDING or on its facade or its roof, without the prior written consent of LANDLORD, not to be unreasonably withheld. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window, transom or door of the LEASED PREMISES or the BUILDING without the prior written consent of LANDLORD, not to be unreasonably withheld. All curtains, blinds, shades, screens, and other fixtures must be of a quality, type, design and color, and attached in the manner approved by LANDLORD, not to be unreasonably withheld. All electrical fixtures shall be fluorescent, of a quality, type, design,

and color approved by LANDLORD, not to be unreasonably withheld, unless the prior consent of LANDLORD has been obtained for any other lighting or lamping.

5. No TENANT or employees, contractors, agents, servants, visitors, or licensees of TENANT shall sweep or throw or permit to be placed, left or discarded from the LEASED PREMISES any rubbish, paper, articles, objects or other substances into any of the corridors or halls, or out of the doors or stairways of the BUILDING and/or the PROPERTY.

6. TENANT shall at all times keep the LEASED PREMISES neat and orderly.

7. Any TENANT deciding to move any equipment or office furniture into, out of, or within the BUILDING must notify LANDLORD at least one (1) day in advance of intended move. Such notification shall include: (i) the date of the move, and (ii) the time of move (which shall not be during normal working hours without LANDLORD's consent, not to be unreasonably withheld).

8. TENANT shall not alter any lock or install a new or additional lock or any bolt or other security device on any door of the LEASED PREMISES without prior written consent of LANDLORD, not to be unreasonably withheld. If LANDLORD shall give its consent, TENANT shall in each case furnish LANDLORD with two keys for each such lock and security device.

9. No signs, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any TENANT on any part of the outside of the LEASED PREMISES or PROPERTY, or on the inside of the LEASED PREMISES without the prior written consent of LANDLORD, not to be unreasonably withheld. In the event of violation of the foregoing by TENANT, LANDLORD may remove same without any liability, and may charge the reasonable expense incurred by such removal to the TENANT or tenants violating this rule. Interior signs on door and directory tablet shall be inscribed, painted or affixed for each tenant by LANDLORD at the reasonable expense of such tenant, and shall be of a size, color and style reasonably acceptable to LANDLORD.

10. LANDLORD shall have the right to prohibit any advertising by TENANT which, in LANDLORD's reasonable opinion, tends to impair the reputation of the PROPERTY or its desirability as a research park, and upon written notice from LANDLORD, TENANT shall refrain from or discontinue such advertising. In no event shall TENANT, without the prior written consent of LANDLORD, not to be unreasonably withheld, use the name of the PROPERTY or use pictures or illustrations of the PROPERTY in any advertising other than in indicating TENANT's address.

11. Dock facilities are to be used only for loading and unloading procedures. No PROPERTY parking or storage privileges are extended in docking facilities.

12. Tenant shall not store, either permanently or temporarily, any equipment, supplies, furniture, etc. outside of Tenant's Leased Premises including but not limited to storage on/in loading docks, mechanical rooms, common areas of the park, or common areas of the buildings without prior written approval by Landlord. Exterior storage of any items by Tenant may require a lease amendment and may incur additional rent charges at Landlord's discretion.

13. No dumpsters are to be placed at the loading dock without prior notification and approval by LANDLORD, not to be unreasonably withheld.

14. If TENANT desires telecommunications signaling, telephonic, protective alarm, connections, or other such wires, apparatus, or devices, LANDLORD will reasonably direct electricians as to where and how the wires are to be introduced. No boring or cutting for wires or otherwise shall be made without reasonable directions and approval from LANDLORD, not to be unreasonably withheld. All wires must be clearly tagged at the distributing boards and junction boxes, and elsewhere as reasonably required by LANDLORD, with the number of the office/lab to which said wires lead, the purpose of the wires, and the name of the concern, if any, operating or servicing the same.

15. The electrical, mechanical, and telephone closets, water and wash closets, drinking fountains and other plumbing, electrical and mechanical fixtures shall not be used

for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, coffee grounds, acids or other substances shall be deposited therein, except that, with respect to TENANT's engaged in research, laboratory use of acids shall be permitted subject to the applicable sections of the Lease relating to the use of Hazardous Substances. No access to the electrical, mechanical and telephone closets will be permitted without the prior consent of LANDLORD, not to be unreasonably withheld. All damages resulting from any misuse of the fixtures shall be borne by the TENANT who, or whose employees, contractors, agents, servants, visitors or licensees, shall have caused the same. No person shall waste water by interfering or tampering with the faucets or otherwise.

16. TENANT shall not create, execute, or deliver any financing or security agreement of any kind that may be considered or give rise to any lien upon the LEASED PREMISES, or the PROPERTY.

17. Except as otherwise permitted by this Lease, TENANT, any of TENANT's employees, contractors, agents, servants, visitors, or licensees, shall not at any time use, bring or keep upon the LEASED PREMISES, or the PROPERTY any flammable, combustible, caustic, poisonous or explosive fluid, chemical or substance, or any chemical except such as are components of commercial products not regulated by law in their use or disposal and except such as are normally used (a) by occupants of office buildings for ordinary cleaning and office related supplies in reasonable quantities or (b) in laboratories as permitted by law.

18. No portion of the LEASED PREMISES, or PROPERTY shall be used or occupied at any time for the sale of merchandise, goods or property of any kind at auction or otherwise, or as sleeping or lodging quarters.

19. In the design, layout, construction, renovation, and/or installation of TENANT's demising walls, partitions, furniture, fixtures, equipment, and all other improvements and betterments of or in the LEASED PREMISES, the specified live load per square foot (100 p.s.f.) shall not be exceeded at any time.

20. TENANT shall not engage or pay any employees on the LEASED PREMISES, except those actually working for such TENANT and TENANT shall not advertise for labor giving an address at said LEASED PREMISES.

21. No bicycles, vehicles, animals, or birds of any kind (other than service or guide animals) shall be brought into or kept by TENANT in the LEASED PREMISES or at the PROPERTY except that (a) bicycles and vehicles may be brought into the PROPERTY, and (b) in the case of laboratories animals and birds permitted by law in the performance of experiments may be kept, provided that (i) the TENANT complies with all applicable laws and Lease provisions relating to the keeping of such animals or birds and (ii) they are kept in a manner that they do not create a nuisance for other tenants in the BUILDING or the PROPERTY.

22. TENANT shall not do or commit, or suffer to be done or committed, any act or thing whereby, or in consequence whereof, the rights of other tenants will be unreasonably obstructed or interfered with, or other tenants will in any other way be unreasonably injured or annoyed, or whereby the BUILDING will be damaged, nor shall TENANT cause or suffer to be caused any noise, vibrations, obnoxious odors, or electronic interference which unreasonably disturbs other tenants, the operation of their equipment or the operation of any equipment in the BUILDING (including, without limitation, radio, television reception). Except as otherwise permitted by the LEASE, TENANT shall not suffer nor permit the LEASED PREMISES or any part thereof to be used in any manner or anything to be done therein nor suffer nor permit anything to be brought into or kept in the LEASED PREMISES which, in the reasonable judgment of LANDLORD, shall in any way materially impair or tend to materially impair the character, reputation, or appearance of the PROPERTY.

23. TENANT shall not serve, nor permit the serving of alcoholic beverages in the LEASED PREMISES unless TENANT shall have procured Host Liquor Liability Insurance, issued by companies and in amounts reasonably satisfactory to LANDLORD, naming LANDLORD as an additional party insured.

24. Except as otherwise explicitly permitted in this LEASE and except for the use

of microwave ovens, toaster ovens and vending machines or service of soda & snacks, TENANT shall not allow any cooking, the operation or conduct of any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, install or permit the installation or use of any food, beverage, cigarette, cigar or stamp dispensing machine. No cooking devices of any kind are permitted to be installed inside or out of the LEASED PREMISES including but not limited to propane, charcoal or electric grills or smokers.

25. Any person in the PROPERTY may be subject to identification by employees and agents of LANDLORD. LANDLORD may institute, as it deems necessary for the safety of TENANT and other tenants, security policies with which all persons in or entering the PROPERTY would be required to comply. TENANT shall exercise reasonable precautions to protect property from theft, loss or damage. LANDLORD shall not be responsible for the theft, loss or damage of any property, except if due to LANDLORD's negligence.

26. LANDLORD shall, in no case, be responsible for the admission or exclusion of any person to or from the BUILDING for access or for invasion, hostile attack, insurrection, mob violence, riot, public excitement or other commotion.

27. TENANT shall as soon as reasonably possible notify LANDLORD of any injury to a person or damage to property regardless of cause within the LEASED PREMISES and all public areas within the BUILDING of which TENANT has knowledge.

28. Canvassing, soliciting, and peddling at the PROPERTY is prohibited and TENANT shall cooperate in preventing the same, and report all such activity to LANDLORD.

29. TENANT, upon the termination of the tenancy, shall deliver to LANDLORD all of the keys, combinations to all locks, of offices, rooms and toilet rooms which shall have been furnished TENANT or which TENANT shall have made, and in the event of loss of any keys so furnished, TENANT shall pay LANDLORD the reasonable cost therefor.



30. These Rules and Regulations shall be read in conjunction with the LEASE and the Exhibits thereto. To the extent these Rules and Regulations are inconsistent with the remainder of the LEASE and Exhibits, the LEASE and other Exhibits shall control.

31. LANDLORD may, by not less than 20 days prior written notice to TENANT, promulgate additional rules and regulations, and/or modifications of the rules and regulations which are, in LANDLORD's reasonable judgment, desirable for the general safety, comfort and convenience of occupants and tenants at the PROPERTY, provided such rules and regulations do not discriminate against TENANT. All such rules and regulations shall be deemed a part of this LEASE, with the same effect as though written herein.

32. No smoking shall be permitted in the BUILDING. Landlord prohibits smoking throughout the BUILDING. Smokers are permitted to smoke outside the BUILDING in designated areas only. Designated receptacles must be used to properly extinguish cigarettes.

**EXHIBIT F: LANDLORD WORK**

**INTENTIONALLY OMITTED**

**EXHIBIT F-1: TENANT WORK**

**INTENTIONALLY OMITTED**

**EXHIBIT G: TENANT WORK ALLOWANCE**

- A. LANDLORD will provide a TENANT WORK ALLOWANCE totaling \$1,113,059, which TENANT can use or accrue only during the time periods set forth in the chart below. LANDLORD will reimburse TENANT for this TENANT WORK ALLOWANCE as outlined in this chart and only following completion of TENANT WORK per Section 15.8 hereof. TENANT acknowledges that the \$383,865 allocated for the UNFINISHED PREMISES TENANT WORK is restricted for use solely within the UNFINISHED PREMISES.
- B. Per Section 15.9 hereof, the 2% construction supervisory fee will be deducted from LANDLORD’S payment of the TENANT WORK ALLOWANCE.
- C. TENANT shall be solely responsible for all costs incurred or accrued in excess of the TENANT WORK ALLOWANCE.
- D. To receive the TENANT WORK ALLOWANCE, TENANT WORK shall be performed by TENANT in a good and workmanlike manner and shall be constructed in accordance with all applicable laws, codes, regulations and requirements including but not limited to the prevailing wage and affirmative action and all of the other requirements of this LEASE.

LEASED PREMISES Location	RSF	Approx. \$RSF	TENANT WORK ALLOWANCE Allocation per LEASED PREMISES location	Period For TENANT to Spend or Accrue TENANT WORK ALLOWANCE	LANDLORD Payment of TENANT WORK ALLOWANCE	Where TENANT WORK ALLOWANCE Can Be Expended
WING A PREMISES	27,596	\$16.00	\$441,536	24 months from LEASE COMMENCEMENT	LANDLORD reimburse after full TENANT Payment and compliance with Sections C and D hereof	INITIAL PREMISES

UNFINISHED PREMISES	5,031	\$76.30	\$383,865	18 months from LEASE COMMENCEMENT	LANDLORD reimburse after full TENANT Payment and compliance with Sections C and D hereof	Only UNFINISHED PREMISES
WING B PREMISES	31,962	\$9.00	\$287,658	6 months from LEASE COMMENCEMENT	LANDLORD reimburse after full TENANT Payment and compliance with Sections C and D hereof	Only WING B PREMISES
<b>TOTAL LEASED PREMISES/ BUILDING</b>	<b>59,558</b>	<b>\$18.69</b>	<b>\$1,113,059</b>			
<b>INITIAL PREMISES</b>	<b>27,596</b>	<b>\$29.91</b>	<b>\$825,401</b>			

**EXHIBIT H: SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

(Space Above Line For Recorder's Use  
Only)

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN  
AGREEMENT (this "Agreement") is effective as of 20-\_\_, by and among  
\_\_\_\_\_(("MORTGAGEE"), \_\_\_\_\_ ("TENANT"), and  
the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and  
politic under the laws of the State of New Jersey ("LANDLORD").

**WITNESSETH:**

WHEREAS, LANDLORD and TENANT have entered into that certain Lease  
Agreement, dated as of \_\_\_\_\_ 20\_\_ (collectively, together with any and all amendments  
thereto, the "Lease"), in connection with those certain building improvements and real leased  
premises referenced therein and situated in the Township of North Brunswick, County of  
Middlesex, State of New Jersey, and more particularly described in Exhibit A attached hereto  
and incorporated herein by this reference (the "LEASED PREMISES"); and

WHEREAS, MORTGAGEE and LANDLORD have entered into or are about to  
enter into a certain Mortgage and Agreement dated as of \_\_\_\_\_ (collectively,  
together with any and all amendments thereto, the "Mortgage") encumbering, among other  
premises, the LEASED PREMISES;

WHEREAS, TENANT desires to be assured of continued occupancy of the  
LEASED PREMISES under the terms of the Lease; and

WHEREAS, MORTGAGEE, LANDLORD, and TENANT consider this  
Agreement to be in their mutual best interests in connection with the LEASED PREMISES;

NOW, THEREFORE, in consideration of the promises, covenants, conditions, provisions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MORTGAGEE, LANDLORD, and TENANT hereby represent, acknowledge, covenant and agree as follows:

1. The Lease. The Lease is incorporated into this Agreement for all purposes. Each of LANDLORD and TENANT covenants and represents to MORTGAGEE and to each other that the Lease is in good standing, and in full force and effect without any further modification or amendment as of the date hereof, and that the Lease shall not be terminated or cancelled except as expressly provided in the Lease.

2. Subordination. The Lease and all estates, options and charges therein contained or created thereunder is and shall be subject and subordinate to the lien, operation and effect of the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof.

3. Non-Disturbance. So long as TENANT is not in default (beyond any period(s) given under the Lease to TENANT to cure such default) in (a) the payment of any monetary obligation under the Lease, or (b) the performance of any of the other terms, covenants or conditions with which TENANT is obligated to comply pursuant to the Lease, TENANT's possession under the Lease and TENANT's rights and privileges thereunder shall not be altered, terminated, diminished, or interfered with by MORTGAGEE, and accordingly, TENANT's occupancy shall not be disturbed by MORTGAGEE during the term of the Lease (including any applicable renewal term), except in accordance with the terms of, and LANDLORD's rights under, the Lease.

4. Recognition and Attornment. If MORTGAGEE succeeds to the interest of LANDLORD in and to the LEASED PREMISES or under the Lease or enters into possession of the LEASED PREMISES, except in accordance with the terms of and LANDLORD's rights under the Lease, the Lease and all terms therein, and the rights and privileges of TENANT thereunder, shall continue in full force and effect and shall not be



altered, terminated, diminished, or interfered with by MORTGAGEE, and TENANT and MORTGAGEE shall be bound to each other under all of the terms, covenants and conditions of the Lease for the balance of the Lease term thereof (including any applicable renewal term), all with the same force and effect as if MORTGAGEE were the landlord under the Lease. In such event, TENANT shall attorn to MORTGAGEE as its landlord, such attornment to be effective and self-operative without the execution of any other instruments on the part of MORTGAGEE or TENANT, immediately upon MORTGAGEE succeeding to the interest of LANDLORD under the Lease; provided, however, that TENANT shall be under no obligation to pay any rent, additional rent or other charges to MORTGAGEE until TENANT receives written notice from MORTGAGEE that it has succeeded to the interest of the LANDLORD under the Lease. LANDLORD hereby authorizes and directs TENANT to deliver such payment to MORTGAGEE upon receipt of such written notice. The respective rights and obligations of TENANT and MORTGAGEE upon such attornment, to the extent of the then remaining balance of the term of the Lease (including any applicable renewal term), shall be and are the same as are then in existence between TENANT and LANDLORD as set forth in the Lease.

5. Rights Under the Lease. If MORTGAGEE shall (a) succeed to the interests of LANDLORD in and to the LEASED PREMISES or under the Lease, or (b) enter into possession of the LEASED PREMISES, MORTGAGEE shall be bound to TENANT under all of the terms, covenants and conditions of the Lease, and TENANT shall, from and after MORTGAGEE's succession to the interests of LANDLORD in and to the LEASED PREMISES or under the Lease or entry into possession of the LEASED PREMISES, as the case may be, have the same remedies against MORTGAGEE as landlord for the breach of any provision contained in the Lease that TENANT might have had under the Lease against LANDLORD if MORTGAGEE had not succeeded to the interests of LANDLORD in and to the LEASED PREMISES or under the Lease or entered into possession of the LEASED PREMISES, as the case may be.

Additionally, in the event of MORTGAGEE's (x) succession to LANDLORD's interests in and to the LEASED PREMISES or under the Lease, or (y) entry into possession of the LEASED PREMISES, TENANT shall be bound to MORTGAGEE under all of the terms, covenants and conditions of the Lease, and MORTGAGEE shall, from and after

MORTGAGEE's succession to the interest of LANDLORD under the Lease or entry into possession of the LEASED PREMISES, as the case may be, have the same rights and remedies against TENANT for the breach of any provision contained in the Lease that LANDLORD might have had under the Lease against TENANT if MORTGAGEE had not succeeded to the interests of LANDLORD in and to the LEASED PREMISES or under the Lease or entered into possession of the LEASED PREMISES, as the case may be.

6. Persons Other Than MORTGAGEE. The recognition, nondisturbance and other covenants herein made by MORTGAGEE for the benefit of TENANT shall be binding upon MORTGAGEE and any person other than MORTGAGEE who may acquire the interest of MORTGAGEE in and to the Mortgage, the LEASED PREMISES and/or the Lease as a result of foreclosure or any sale, assignment or transfer of the Mortgage, the LEASED PREMISES and/or the Lease.

7. Notices. Any notice required or permitted to be delivered hereunder shall be deemed received on the earlier of: (a) the date actually received; (b) three (3) days after such notice is deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TENANT, LANDLORD or MORTGAGEE, as the case may be, at the address of such party set forth opposite the signature of such party hereto, or such other address as may thereafter be provided in writing to the respective parties; or (c) delivery to the designated address of the addressee set forth below by a third party commercial delivery service. Any notice sent to any party hereunder shall be sent to all other parties hereunder.

8. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be

detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

9. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from the Agreement and the other provisions of this Agreement shall remain in full force and effect to the maximum extent permitted by law.

10. Entire Agreement. This Agreement contains the sole and entire agreement and understanding between the parties with respect to the subject matter hereof and shall supersede any and all other oral or written agreements between the parties with respect to the subject matter hereof. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

11. No Modification. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

12. Electronic Signatures. Pursuant to written policy, LANDLORD allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. MORTGAGEE and TENANT also agree to be bound by electronic signatures as a signatory to this Agreement.

(Signature Page Follows Immediately)

IN WITNESS WHEREOF, the parties hereto have caused this Subordination, Nondisturbance and Attornment Agreement to be duly executed as of the date first above written.

MORTGAGEE:

MORTGAGEE's Address:

By:

Name:

Title:

with a copy to:

LANDLORD's Address:

Executive Vice President of Real Estate  
& Community Development  
New Jersey Economic Development  
Authority  
P.O. Box 990  
Trenton, New Jersey 08625-0990

LANDLORD:

NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY, an  
instrumentality of the State of New  
Jersey,

By:

Name:

Title:

with a copy to:

New Jersey Division of Law  
Treasury – Finance and Benefits  
Section  
Hughes Justice Complex  
P.O. Box 106  
Trenton, New Jersey 08625  
Attention: Meredith Freidman , DAG

TENANT's Address:

TENANT:

with a copy to:

By:

Name:

Title:

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/  
Licenses for Third Quarter - *For Informational Purposes Only*

The following approvals were made pursuant to Delegated Authority for Leases and ROE/  
Licenses in July, August and September 2022 :

### LEASES

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>S.F.</u>
Euprotein	Bioscience Center Incubator	Month to Month	Month to Month	2,400sf
SPES Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	1,600sf
Bright Cloud International	Bioscience Center Incubator	Month to Month	Month to Month	900sf
Sonder Research X	Bioscience Center Incubator	Amendment	10 months	5,445sf
Skunkworx Labs	Bioscience Center Incubator	Amendment and Extension	14.5 months	4,025sf
Smirta Innovation	Bioscience Center Incubator	Extension	One year	125sf
Echo Biosolution	Bioscience Center Incubator	Extension	One year	125sf
Skunkworx Bio	Bioscience Center Incubator	Name Change	13 months	4,025sf
BioAegis Therapeutics	Bioscience Center Step Out Labs	Amendment	One Year	1,810sf

Couragene, Inc.	Bioscience Center Incubator	New Lease	One Year	931sf
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**RIGHT OF ENTRY/LICENSES/EXTENSIONS**

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>

**MISCELLANEOUS**

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>




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Tim Sullivan, CEO

Prepared by: Cyndi Costello