

FOOD DESERT RELIEF ACT

TAX CREDIT PURCHASER CONTRACT

BETWEEN

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

AND

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Approved by NJEDA

## TAX CREDIT PURCHASER CONTRACT

THIS TAX CREDIT PURCHASER CONTRACT (hereinafter, the “*Agreement*”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “*Effective Date*”) by and between \_\_\_\_\_, having its principal office located \_\_\_\_\_ (hereinafter, the “*Purchaser*”), and the New Jersey Economic Development Authority, a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 *et seq.*, having its offices at 36 West State Street, PO Box 990, Trenton, NJ 08625-0990 (hereinafter, the “*Authority*”, the above entities being hereinafter referred to as the “*Parties*”). Capitalized terms used in this Agreement have the meaning given to such term herein, as such definitions are identified and defined in Article I.

### W I T N E S S E T H:

WHEREAS, the Legislature enacted the “Food Desert Relief Act” pursuant to N.J.S.A. 34:1B-303 through 34:1B-310) (hereinafter, the “*Act*”) which was enacted to provide financial assistance to supermarkets, grocery stores, mid-sized food retailers, and small food retailers to establish and retain locations in food desert communities in order to provide a consistent, and easily accessible, source of fresh produce to residents in those communities (hereinafter, the “*Program*”);

WHEREAS, the Act provides, amongst other things, that the Authority may sell and eligible taxpayers may purchase corporation business tax credits and insurance premiums tax credits to raise funds for the Program;

WHEREAS, the Authority published on its website a sample bid form, a sample tax credit purchase agreement, a document describing the auction process, and instructions for submitting questions about those documents (together the “*Solicitation*”) setting forth the criteria and process under which an eligible taxpayer is eligible for a purchase of corporation business tax credits or insurance premium tax credits;

WHEREAS, the Purchaser, by submission of its Tax Credit Bid (as hereinafter defined) certified that it is eligible to purchase tax credits based on the eligibility criteria set forth in the Act and the Solicitation, which certification is incorporated into this Agreement;

WHEREAS, incorporated into the submission of the Tax Credit Bid, the Purchaser proposed to the Authority its Tax Credit Purchase Offer (as hereinafter defined);

WHEREAS, the Authority has approved the Tax Credit Bid (“*Approval*”), and so notified the Purchaser; and

WHEREAS, the Approval and the issuance of the Tax Credit Award is conditioned upon the Purchaser executing this Agreement to establish the terms and conditions of the purchase and use of the Tax Credits.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### Article I. Definitions

“Auction Deposit” or “Deposit” means that refundable deposit in the amount set forth on Schedule A hereto remitted to the Authority by the Purchaser in connection with submitting its Tax Credit Bid in accordance with the Solicitation.

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

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

“Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default hereunder as set forth in Section 8.01 of this Agreement.

“Indemnified Parties” shall have the meaning set forth in Section 7.01 of this Agreement.

“New Jersey S Corporation” means the same as the term is defined in section 12 of P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

“Offer Balance” means an amount equal to the Tax Credit Purchase Offer *less* the Auction Deposit.

“Partnership” means an entity classified as a partnership for Federal income tax purposes.

“Privilege Period” or “Tax Privilege Period” shall mean the fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

“State” means the State of New Jersey.

“Tax Credit” or “Tax Credits” means credit against a tax liability imposed against the Purchaser pursuant to section 1 of P.L.1950, c. 231 (N.J.S.A. 17:32-15), N.J.S.A. 17B:23-5, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), and 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).

“Tax Credit Amount” means the face-value of the Tax Credits awarded pursuant to the terms of this Agreement as evidenced by the Tax Credit Certificate.

“Tax Credit Bid” means the Purchaser’s submission to the Authority of the Tax Credit Purchase Offer and all other documents required pursuant to the Solicitation for a bid for Tax Credits as part of the tax credit auction held in accordance with the Act and Solicitation.

“Tax Credit Certificate” means the certificate issued by the Division to the Purchaser evidencing the Tax Credit Amount.

“Tax Credit Purchase Offer” means the specific cash dollar amount offered by the Purchaser, and set forth in the Tax Credit Bid, to purchase the Tax Credits in accordance with the Act and Solicitation and pursuant to the terms of this Agreement.

## **Article II. Approval; Compensation; Condition To Purchase**

**Section 2.01** Approval. Subject to the conditions contained herein and in reliance on the information, representations, and warranties set forth in the Tax Credit Bid, this Agreement, and other documents submitted by the Purchaser to the Authority, the Authority has determined that the Purchaser has satisfied the eligibility criteria of the Solicitation to purchase Tax Credits with a face-value of Tax Credit Award, as set forth in Schedule A.

**Section 2.02** Consideration. Subject to the conditions set forth herein and in exchange for the award of Tax Credits in an amount equal to the Tax Credit Amount, the Purchaser agrees to pay to the Authority the Tax Credit Purchase Offer set forth in Schedule A.

**Section 2.03** Payment of Tax Credit Purchase Offer and Auction Deposit.

(a) Within thirty (30) business days of the Effective Date, the Purchaser shall remit to the Authority via wire transfer of immediately available funds an amount equal to the Offer Balance. The Offer Balance shall be paid via the wire instructions contained in the approval notification.

(b) The Purchaser acknowledges and agrees that the Auction Deposit shall become non-refundable upon the Parties' fully executing this Agreement.

**Section 2.04** Failure to Remit the Offer Balance.

(a) In the event the Purchaser fails to remit the Offer Balance within said thirty (30) business day period the Authority may, in its sole discretion, do any and all of the following:

- (i) offer for purchase the Tax Credits to other approved tax credit purchasers in accordance with the Solicitation; or
- (ii) terminate this Agreement.

(b) Absent extenuating circumstances or written consent by the Authority, at its sole discretion, the Purchaser shall not be eligible to purchase Tax Credits through any competitive auction held by the Authority that occurs during the twelve (12) months immediately following the last day Purchaser was required to remit the Offer Balance. This Section 2.04(b) shall survive termination of this Agreement under Section 2.04(a)(ii) above.

### **Article III.** **Tax Credit Certificate; Application of Tax Credit Amount**

**Section 3.01** Tax Credit Certificate. Upon the Authority's receipt of the Offer Balance in accordance with Section 2.03, the Authority shall notify the Director to issue a Tax Credit Certificate to the Purchaser with a face value equal to the amount of the Tax Credit Amount.

**Section 3.02** Application of Tax Credit Amount. Upon the issuance of the Tax Credit Certificate, the Purchaser may apply the Tax Credits against the Purchaser's State tax liability for the relevant tax for the Purchaser's Tax Privilege Period as of the date of approval by the Authority. Notwithstanding anything contained herein to the contrary, the Director shall prescribe the order of priority for the application of the Tax Credit Amount awarded. The Purchaser may carry forward any unused portion of its Tax Credit Amount resulting from the limitations of the order of priority for use in the seven (7) Tax Privilege Periods next following the Tax Privilege Period for which the Tax Credit Amount is awarded.

**Section 3.03** S Corp and Partnership Application of Tax Credit Amount. In the event the Purchaser is a New Jersey S Corporation or a Partnership, the Tax Credit Amount shall be passed through to the Purchaser's 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. Any agreement amongst the Purchaser's partners, members, or owners documenting such alternate distribution method shall be provided to the Director in advance and shall be accompanied by any additional information as the Director may request or prescribe consistent with any rule, guidance, or other publication issued by the Division. For the avoidance of doubt, no individual partner, individual member or individual

owner of the Purchaser shall be eligible to apply any portion of the Tax Credit Amount against the individual's State tax liability.

#### **Article IV. Term**

**Section 4.01** The term of this Agreement shall commence on the Effective Date and shall expire upon the issuance of the tax credits; provided, however, that the provisions of Article VII (Indemnity), Article VIII (Events of Default & Remedies), Article XI (Audits and Inspections; Records), and Article XII (Miscellaneous) shall survive the termination or expiration of this Agreement.

#### **Article V. Representations Of The Purchaser; Eligibility**

The Purchaser certifies and represents that it satisfies the requirements to be eligible under the Act and the Solicitation to purchase the Tax Credits and that:

(a) The Purchaser is the type of entity identified on Schedule A hereto and is either duly organized, validly existing and in good standing under the laws of the State or is duly qualified to do business in the State. The Purchaser is not in violation of any provision of its governing documents, whether a certificate of incorporation and by-laws or certificate of formation and operating or similar agreement, as applicable, and has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Purchaser herein contemplated have been duly authorized by all requisite action on the part of Purchaser and will not violate any provision of law, any order of any court or agency of government, or the Purchaser's governing documents, whether a certificate of incorporation and by-laws or certificate of formation and operating or similar agreement, as applicable, or any indenture, agreement or other instrument to which the Purchaser is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever.

(c) This Agreement constitutes the legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

(d) There is no action or proceeding pending or, to the best knowledge of the Purchaser, threatened by or against the Purchaser by or before any court or administrative agency that might adversely affect the ability of the Purchaser to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Purchaser as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Purchaser hereunder have been obtained.

(e) The Purchaser is not in default under any other program administered by the State.

(f) All information contained in the Tax Credit Bid and in all documents submitted in support of its Tax Credit Bid is true, correct and complete in all material respects, does not contain any untrue statement of a material fact, and does not omit to state a material fact necessary to make the statements contained herein or therein not misleading or incomplete.

(g) The Purchaser has submitted its Auction Deposit in accordance with the Solicitation requirements.

(h) As determined by the New Jersey Department of Labor and Workforce Development (“*DOLWD*”) or the New Jersey Department of Environmental Protection (“*DEP*”), the Purchaser is in substantial compliance with all material statutes, rules, and other enforceable standards of the DOLWD or the DEP that apply to the Purchaser and 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 DOLWD and DEP, with respect thereto. Further, as determined by the Department of the Treasury, the Purchaser has no unpaid liability in excess of any threshold dollar amount(s) that may be established by the Department of the Treasury, including, but not limited to, the Division.

(i) If compliance is required with N.J.S.A. 52:32-60.1, et seq., which prevents the Authority from certain dealings with businesses engaged in activities related to Belarus or Russia, the Grantee or Vendor agrees that by signing this Agreement that the Grantee or Vendor may be required to certify whether or not it is appearing on the list of “Specially Designated Nationals and Blocked Persons” promulgated by the Office of Foreign Assets Control (OFAC), <https://sanctionssearch.ofac.treas.gov>, without a license or exemption related to Belarus or Russia, and that if this statement is willfully false, Grantee or Vendor shall be subject to penalty. Additionally, Grantee or Vendor agrees that it will affirmatively disclose whether it appears on the OFAC list for any reason, and whether or not it has a license or exemption from OFAC.

(j) The Purchaser represents and warrants that it has not violated N.J.S.A. 52:13D-19, which forbids any “New Jersey State officer or employee” from entering into a contractual agreement with the State of New Jersey to execute any contract or agreement with a value of \$25 or more, made, entered into, awarded or granted by any New Jersey State agency. The term “New Jersey State officer or employee” includes that employee or officer’s partners, any other person undertaking or executing said agreement for the use or benefit of the employee or officer or on his or her account, and any corporation which that employee or officer controls or in which they own or control more than 1 percent of the stock. The Purchaser acknowledges that pursuant to the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12, et seq, State employees are prohibited from representing a party other than the State before any State agency; this prohibition includes making personal appearances before any State agency on behalf of a party other than the State, writing letters, sending emails, or making phone calls to any State agency on behalf of a third party, and also includes a ban on signing any documents or applications submitted to any State agency on behalf of a party other than the State including, but not limited to, this agreement.

(k) In compliance with N.J.S.A. 24:6I-49(b)(2), Purchaser represents and warrants:

- (i) that it (a) has neither applied for nor received from the New Jersey Cannabis Regulatory Commission either a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service or that employs a certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service; and (b) is not a property owner, developer, or operator of a project to be used, in whole or in part, by or to benefit a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or to employ a certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service pursuant to N.J.S.A. 24:6I-49(b)(2)(b).
- (ii) The Purchaser acknowledges an on-going obligation to report to the Authority any change to this statement.
- (iii) The Purchaser acknowledges that the issuance of a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis

retailer, or cannabis delivery service, or the issuance of a certification to perform work for or on behalf of a cannabis establishment, distributor, or delivery service to a person or entity that has been awarded a State or local economic incentive shall invalidate the right of the Purchaser to benefit from the economic incentive as of the date of issuance of the license or certification; and that the issuance of a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or issuance of a certification to perform work for or on behalf of a cannabis establishment, distributor, or delivery service at a location that is the subject of a State or local economic incentive shall invalidate the right of the Purchaser property owner, developer, or operator to benefit from the economic incentive as of the date of issuance of the license or certification.

## **Article VI. Covenants Of The Purchaser**

At all times during the Term, the Purchaser covenants and agrees as follows:

- (a) The Purchaser shall not assign, sell, or transfer all or any portion of the Tax Credit Amount evidenced by the Tax Credit Certificate except in accordance with Article IX below.
- (b) The Purchaser shall provide such other information as requested by the Authority or Division to confirm the Purchaser has adhered with the terms and conditions of this Agreement, the Tax Credit Bid, and the Solicitation.

## **Article VII. Indemnity**

**Section 7.01 Indemnification.** The Purchaser covenants and agrees to protect, indemnify and hold harmless the Authority, the State, the Department of the Treasury and the Division and their respective members, agents, officers, employees and servants (collectively, the “*Indemnified Parties*”) from all losses, claims, damages, liabilities, and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.) suffered by any Indemnified Party or brought by any person or entity against any Indemnified Party, and caused by, related to, arising or purportedly arising out of, or from the submission of the Tax Credit Bid or the purchase or use by the Purchaser of the Tax Credits, without limitation any actions or inactions of the Purchaser relating to this Agreement or the Tax Credit Certificate, except for losses, claims, damages, liabilities and costs arising from the gross negligence or willful misconduct of such Indemnified Party claiming indemnification hereunder.

**Section 7.02** The Purchaser releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, and agrees to indemnify and hold each Indemnified Party harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in Section 7.01 or at the direction of the Purchaser with respect to any of such matters above referred to.

**Section 7.03** If any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Purchaser, such Indemnified Party shall promptly notify the Purchaser in writing, and the Purchaser shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the Purchaser's expense in any such action and to participate in the defense thereof if a conflict of interest arises out of the representation by the same counsel.

The Purchaser shall not be liable for any settlement of any such action effected without the Purchaser's written consent, but if settled with the consent of the Purchaser, or if there is a final judgment for the claimant on any such action, the Purchaser agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement of judgment. Notwithstanding anything in this Agreement to the contrary which may limit recourse to the Purchaser or may otherwise purport to limit the Purchaser's liability, the provisions of this Section 7.03 shall control the Purchaser's obligations.

**Section 7.04** Notwithstanding anything herein to the contrary, the Purchaser shall pay all claims, demands, expenses and other amounts for which the Purchaser has indemnified the Authority hereunder immediately as the same shall arise and the same shall be immediately due and payable by the Purchaser to the Indemnified Parties without demand therefore.

**Section 7.05** The Purchaser agrees that the Authority is not liable in damages for the issuance, non-issuance, use, sale, or marketability of the Tax Credits. The Purchaser acknowledges the risks of relying on the use and sale of the tax credits. The Purchaser further acknowledges and accepts that the Legislature may enact further changes to the Act or to tax laws and that the terms and conditions set forth herein, including the Tax Credit Amount and when such amounts may be applied, are subject to changes to the Act and Regulations and to tax laws. Nothing herein shall be construed as a waiver of the Purchaser's right to challenge the validity of any Legislation or Regulation that may be enacted after the date on which this Agreement is executed which changes the material terms of this Agreement.

**Section 7.06** The provisions of this Article VII shall be in addition to any and all other obligations and liabilities the Purchaser may have to any Indemnified Party at common law and shall survive the expiration or earlier termination of this Agreement.

## **Article VIII. Events of Default & Remedies**

**Section 8.01** Events of Default. The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default":

(a) The Purchaser fails to strictly observe or comply with the terms, conditions, and laws relating to the use, sale, assignment or transfer of the Tax Credit Certificate or a tax credit transfer certificate; or

(b) Any representation or warranty made by the Purchaser in its Tax Credit Bid, in this Agreement, or in any other related submission to the Authority is false, misleading, or inaccurate in any material respect as of the date made; or

(c) The Purchaser fails to observe or perform in any other material respect any other term, covenant or condition of the Purchaser under this Agreement, and, provided such failure is capable of cure, such failure shall have continued for thirty (30) days after the earlier of (1) delivery to the Purchaser of written notice thereof from the Authority or (2) the Purchaser's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and the Purchaser is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty five (45) days and in no case to extend beyond the expiration of this Agreement; or



(d) The Purchaser is declared in default by the Authority or the State or any division of the State under any existing or new assistance or incentive program provided by the Authority and/or the State to the Purchaser and any entities that have common principals with the Purchaser. For purposes of this cross-default, a principal of an entity shall be any executive officer, director, or general partner of the entity; any person or other entity directly or indirectly controlling the entity; or a person or other entity directly or indirectly owning or controlling ten percent (10%) or more of the entity's ownership interest.

**Section 8.02 Remedies Upon Default.**

(a) Upon the occurrence of any Event of Default at any time hereafter, the Authority may, so long as such Event of Default is continuing, do one or more of the following as the Authority in its sole discretion shall determine, without limiting any other right or remedy the Authority or the Division may have on account of such Event of Default:

(i) If the Purchaser has not applied the Tax Credit Certificate against its State tax liability in accordance with Section 3.02 or sold or assigned the Tax Credit Award, in full or in part, pursuant to Article IX, the Authority may require the surrender by the Purchaser to the Authority of the Tax Credit Certificate for suspension or cancellation.

(ii) The Authority may exercise any other right or remedy that may be available to it under applicable law or under this Agreement, including, without limitation: (1) for an Event of Default under Section 8.01(b), recapture of any or all of the Tax Credit Amount, and/or (2) proceeding by appropriate court action (legal or equitable) to enforce the terms hereof. All damages may include 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 amount, including, but not limited to, counsel fees, court costs, and other costs of collection, and Damages payable under (1) and (2) shall include interest on such recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties.

(b) Damages payable by the Purchaser under this Article VIII shall be limited to the amount specified in Section 8.02(a); provided, however, that nothing in this Section 8.02(b) shall limit the Purchaser's obligation to make payments to the Indemnified Parties pursuant to Article VII hereof.

(c) The rights and remedies of the Authority under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Authority or the Division allowed by law with respect to any Event of Default under this Agreement. Failure by the Authority to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon any Event of Default by the Purchaser hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Purchaser with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default by the Purchaser be continued or repeated.

**Article IX. Transfer**

The Purchaser may apply, subject to the fee of \$5,000 in N.J.A.C. 19:31-28.5(f), to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the Purchaser being allowed any amount of the Tax Credit against the tax liability of the Purchaser, pursuant to N.J.A.C. 19:31-28.11.

**Article X. Audits And Inspections; Records**

**Section 10.01 Audits and Inspections.** At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, the Purchaser shall make available to the Authority, any other State agency, or their duly authorized representative for examination all of the Purchaser's evidence and documentation supporting the Purchaser's Tax Credit Bid and satisfaction of its obligations under this Agreement.

**Section 10.02 Record Maintenance.** In addition to any other period of time required by law, including, but not limited to, any tax law, the Purchaser shall establish and maintain during the Term, and for five (5) years thereafter such records as are required by the Authority in Section 10.01 above and all relevant supporting documentation. Records required by the Authority with respect to any questioned costs, litigation or dispute between the Authority and the Purchaser arising out of this Agreement shall be maintained for the time needed to resolve any such issue. If for any reason the Authority shall require a review of the records related to this Agreement, the Purchaser shall, at its own cost and expense, provide all such records to the Authority. The Purchaser shall maintain and organize its records related to this Agreement and otherwise in connection with its participation in the Program in such form so that, in case of a review of its records or audit, it is able to verify and document the information it has provided in connection with the Tax Credit Bid and this Agreement. The Purchaser agrees to be subject to review and audit by the Authority, the Office of the State Comptroller, and any other agency or department of the State in relation to this transaction. The provisions of this Section 10.02 shall survive termination of this Agreement.

## **Article XI. Miscellaneous**

**Section 11.01 Entire Agreement.** This Agreement, together with the Tax Credit Bid, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, both written and oral, between the Parties with respect to the subject matter hereto.

**Section 11.02 Severability.** If any term or provision of this Agreement or any application thereof shall be declared invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

**Section 11.03 Amendments and Modifications.** Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Authority and Purchaser and except that this Agreement shall be amended in accordance with the provisions of any future regulations duly promulgated by the Authority that may affect the standard terms and conditions of tax credit sales approved pursuant to the Act without the approval of Purchaser.

**Section 11.04 No Waiver.** No failure by the Authority or Purchaser to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon an Event of Default hereunder shall constitute a waiver of any such Event of Default or of any such term. To the fullest extent permitted by law, no waiver of any Event of Default shall affect or alter this Agreement, and this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

**Section 11.05 Public Announcement.** As a condition to entering into this Agreement, the Purchaser acknowledges and agrees that the Authority may publish on the Authority's website, and in such other locations and forms as shall be determined by the Authority, the following information relating to this Agreement:

- (a) The name of the Purchaser;

- (b) The face value of the Tax Credit Award purchased by the Purchaser;
- (c) The State tax against which the Purchaser may apply the Tax Credit; and
- (d) The Tax Credit Purchase Offer paid by the Purchaser for the Tax Credit Award.

**Section 11.06** Notices. All notices, demands, requests, consents, approvals and other communications hereunder (collectively, “Notices”) shall be in writing and, unless otherwise required by law or regulation, shall be either (a) personally delivered, (b) sent by overnight courier, (c) sent by registered or certified mail, return receipt requested to the address provided herein, or (d) sent by electronic mail (email) to the address set forth herein so long as delivery of such email is confirmed by either automatic read receipt or email confirmation by the recipient and so long as a follow-up notice is sent by the methods set forth in clauses (a), (b) or (c) above.

If to the Authority, to:                                 New Jersey Economic Development Authority  
    36 West State Street (FedEx, UPS, etc. delivery),  
    P.O. Box 990 (USPS mail only)  
    Trenton, NJ 08625-0820  
    Attn: Chief Economic Security Officer  
    Email: FDRTCAuction@njeda.gov

If to the Purchaser, to the address set forth on Schedule A hereto.

By giving the other Party at least five (5) days prior written notice, either party may, by Notice given as provided above, designate a different address or addresses for Notices. All Notices hereunder shall be deemed received (the time period measured by the giving of Notice shall commence): (i) upon delivery, if personally delivered or sent by overnight courier, or (ii) upon the date set forth on the return receipt if given by registered or certified mail.

**Section 11.07** Successors and Assigns. All the terms and provisions of this Agreement shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The Purchaser shall include a successor, as determined by the Authority in its sole discretion, to the Purchaser.

**Section 11.08** Headings and Table of Contents. The headings and table of contents in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**Section 11.09** Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. Any and all claims made or to be made against the Authority 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. Any and all claims made or to be made against the Authority 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., the provisions of which are hereby incorporated.

**Section 11.10** Forum and Venue. The forum and venue for all actions related to the matters which are the subject of this Agreement shall be a court of competent jurisdiction in the County of Mercer and the State.

**Section 11.11** Conflicts. No conflict between the provisions of this Agreement and any other document shall render ineffective any provision of this Agreement, relieve the Purchaser of the obligation to fully perform any provision hereof or prevent the Authority from exercising any of its rights and remedies hereunder.

**Section 11.12** Third Party Beneficiaries. This Agreement has been entered into solely by and among the Parties that have executed this Agreement; and except as otherwise expressly provided in this Agreement, this Agreement will not be deemed to create any rights in third parties or to create any obligations of any party hereto to any such third parties. Notwithstanding anything contained herein to the contrary, the Indemnified Parties shall be third-party beneficiaries to this Agreement, with the authority to enforce the provisions of Article VII hereof.

**Section 11.13** Counterparts/Electronic Signature. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Electronic signature of this Agreement in accordance with the Uniform Electronic Transaction Act (UETA), N.J.S.A. 12A:12-1 to -26 shall be deemed to be valid execution and delivery as though an original ink. The parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Agreement and affirm that their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Agreement. The electronic signature can be done either by ADOBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning. Any signed counterpart may be delivered by electronic transmission (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)) with the same legal force and effect for all purposes as delivery of an originally signed agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed and delivered by their respective officers duly authorized as of the date and year set forth below.

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**[Purchaser Name]**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

SAMPLE

Schedule A

Tax Credit Information Sheet

Purchaser Name:

Address:

Attention:

Phone:

Email address:

Entity Type:

State of Formation:

Date of Formation:

If Purchaser not formed in New Jersey, date of registration in New Jersey:

Tax Credit Bid Date:

Tax Credit Type Requested: (Corporation Business Tax or Insurance Premiums Tax)

Tax Credit Purchase Offer:

Auction Deposit Paid:

Offer Balance:

Date of Approval:

Purchaser Tax Privilege Period:

Face Value of Tax Credit Award: