



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**SUBJECT:** Agenda for Board Meeting of the Authority March 12, 2019

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**CEO's Report to the Board**

**Authority Matters**

**Incentive Programs**

**Bond Projects**

**Loans/Grants/Guarantees**

**Office of Recovery**

**Real Estate**

**Board Memorandums**

**Executive Session**

**Public Comment**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**February 19, 2019**

**MINUTES OF THE MEETING**

Members of the Authority present: Richard Mumford representing Commissioner Marlene Caride of the Department of Banking and Insurance; Catherine Brennan representing State Treasurer Elizabeth Muoio; Dan Ryan representing Commissioner Catherine McCabe of the Department of Environmental Protection; Public Members Charles Sarlo, Vice Chairman; and Fred Dumont.

Members present via conference call: Commissioner Robert Asaro - Angelo of Department of Labor and Workforce Development; Massiel Medina Ferrara, William Layton and Thomas Scrivo, Public Members.

Absent: Public Members Larry Downes, Chairman; Philip Alagia, Louis Goetting, John Lutz, Third Alternate Public Member; and Rodney Sadler, Non-Voting Member.

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

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

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

In accordance with the Open Public Meetings Act, Mr. 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 December 11, 2018 meeting minutes. A motion was made to approve the minutes by Mr. Ryan, and seconded by Mr. Dumont, and was approved by the 8 voting members present.

Mr. Mumford abstained because he was not present for the meeting.

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

**AUTHORITY MATTERS**

**ITEM:** Small Business Lease Assistance Program

**REQUEST:** To approve the following changes (1) expand the Business Lease Incentive (to be known hereon as the Small Business Lease Assistance Program) to include additional eligible areas effective April 1, 2019; (2) discontinue the Business Improvement Incentive, effective June 28, 2019; (3) supplement the appx \$2.43 million in unused program funding with an additional \$1.47 million utilizing the Economic Recovery Fund account, and; (4) Delegation to Authority staff to approve individual applications to the program.

**MOTION TO APPROVE:** Mr. Ryan

**SECOND:** Mr. Dumont

**AYES:** 9



**ITEM:** Hayward Industries, Inc.

APPL.#45467

**REQUEST:** To approve the application of Hayward Industries, Inc. for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Berkeley Heights, NJ. Project location of Berkeley Heights, Union County qualifies as a Priority Area under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Jobs with Salary in excess of County Average and Targeted Industry of Manufacturing. The estimated annual award is \$228,000 for a 10-year term.

**MOTION TO APPROVE:** Ms. Brennan

**SECOND:** Mr. Ryan

**AYES:** 9

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

**ITEM:** PuppySpot Group, LLC

APPL.#45407

**REQUEST:** To approve the application of PuppySpot Group, LLC for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Jersey City, NJ. Project location of Jersey City, Hudson County qualifies as an Urban Transit HUB Municipality under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Transit Oriented Development. The estimated annual award is \$400,440 for a 10-year term.

**MOTION TO APPROVE:** Mr. Ryan

**SECOND:** Mr. Dumont

**AYES:** 9

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

**Grow New Jersey Assistance Program- Modification**

**ITEM:** Capintec, Inc.

APPL.#41249

**REQUEST:** Consent to a modified project with an overall reduction in the incented new full-time jobs from 45 to 21, reducing the award by over 53%.

**MOTION TO APPROVE:** Mr. Dumont

**SECOND:** Mr. Ryan

**AYES:** 9

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 9**

**BOND PROJECTS**

**Amended Bond Resolutions**

**ITEM:** Cedar Crest Village, Inc. Modification

APPL.# 36863

**REQUEST:** To adjust the variable rate interest formula and modify the definition of margin rate factor to allow for the adjustment of the interest rate based on either decreases or increases in the maximum corporate tax rates. Consent is also recommended for the extension of the Bonds' Mandatory Tender Date, Maturity, and Amortization schedule.

**MOTION TO APPROVE:** Ms. Brennan

**SECOND:** Mr. Dumont

**AYES:** 9

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**



**PROJECT:** The Pennington School APPL.#45527  
**LOCATION:** Pennington Borough, Mercer County  
**PROCEEDS FOR:** Refunding  
**FINANCING:** \$5,775,000 Tax-exempt bond  
**MOTION TO APPROVE:** Ms. Brennan **SECOND:** Mr. Dumont **AYES: 9**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 11**

**Preliminary Resolutions**

**PROJECT:** Middlesex Water Company APPL.#45257  
**LOCATION:** Statewide  
**PROCEEDS FOR:** Renovation, Equipment Purchase, Equipment Renovation  
**FINANCING:** \$100,000,000 total costs  
**MOTION TO APPROVE:** Mr. Dumont **SECOND:** Ms. Brennan **AYES: 9**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

**OFFICE OF ECONOMIC TRANSFORMATION**

**NJ CoVest Fund**

**PROJECT:** InquisitHealth, Inc APPL.#45353  
**LOCATION:** River Edge Borough, Bergen County  
**PROCEEDS FOR:** Working Capital  
**FINANCING:** \$250,000  
**MOTION TO APPROVE:** Mr. Ryan **SECOND:** Mr. Mumford **AYES: 8**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 13**

Commissioner Robert Asaro – Angelo abstained because of questions related to the project.

Commissioner Robert Asaro – Angelo left the call at this time, due to a scheduling conflict.

**OFFICE OF RECOVERY**

**Stronger NJ Business Loan Modifications**

**ITEM:** Mad Hatter Sports Bar & Restaurant APPL.#40547 & 40541  
**REQUEST:** Consent to payment moratorium on the Stronger NJ Business Loans, contingent to the Savoy Bank loan closing.  
**MOTION TO APPROVE:** Mr. Ryan **SECOND:** Ms. Brennan **AYES: 8**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 14**

**REAL ESTATE**

**ITEM:** New Jersey City University P3 Partnership

**REQUEST:** To approve New Jersey City University's second amendment to the application.

**MOTION TO APPROVE:** Mr. Dumont

**SECOND:** Mr. Ryan

**AYES:** 8

**RESOLUTION ATTACHED AND MARKED EXHIBIT:** 15

**BOARD MEMORANDUMS**

**Direct Loan:**

**PROJECT:** C.E.D. Properties, LLC

APPL.#44990

**LOCATION:** Eatontown Borough, Monmouth County

**PROCEEDS FOR:** Refinancing

**FINANCING:** \$560,000 EDA loan and a \$1,300,000 BCB Community Bank loan

**Premier Lender Program:**

**PROJECT:** 508 Rt. 35 LLC

APPL.#45459

**LOCATION:** Neptune Township, Monmouth County

**PROCEEDS FOR:** Purchase of property

**FINANCING:** \$2,600,000 OceanFirst Bank loan with \$600,000 EDA participation

**PROJECT:** JP Realty Holdings LLC

APPL.#45471

**LOCATION:** Carlstadt Borough, Bergen County

**PROCEEDS FOR:** Relocation of company

**FINANCING:** \$1,200,000 M&T Bank loan with \$530,000 EDA participation

**FOR INFORMATION ONLY:** Hazardous Discharge Site - 4th Quarter 2018 approvals - Delegated Authority

**FOR INFORMATION ONLY:** Petroleum Underground Storage Tank Program- 4th Quarter 2018 approvals - Delegated Authority

**FOR INFORMATION ONLY:** PUST and HDSRF Program funding status- 4th Quarter 2018 approvals - Delegated Authority

**FOR INFORMATION ONLY:** Post Closing Credit Delegated Authority Approval for 4Q 2018

**FOR INFORMATION ONLY: Incentives Modifications – 4<sup>th</sup> quarter 2018**

**FOR INFORMATION ONLY: Technology & Life Sciences- Delegated Authority Approvals for 2018**

**FOR INFORMATION ONLY: Real Estate Delegated Authority- 4th Quarter 2018 approvals- Delegated Authority**

**PUBLIC COMMENT**

There was no public comment.

**EXECUTIVE SESSION**

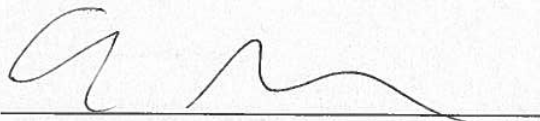
The next item was to adjourn the public session of the meeting and enter into Executive Session to discuss a confidential matter. The minutes will be made public when the need for confidentiality no longer exists.

**MOTION TO APPROVE: Mr. Dumont                      SECOND: Mr. Ryan                      AYES: 8**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 16**

The Board returned to Public Session.

There being no further business, on a motion by Mr. Dumont, and seconded by Mr. Ryan, the meeting was adjourned at 11:34am.

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

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

Erin Gold, Chief of Staff  
Assistant Secretary



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan

**DATE:** March 12, 2019

**RE:** Monthly Report to the Board

### **BUSINESSES OF ALL SIZES EXPAND IN NEW JERSEY WITH NJEDA SUPPORT**

A wide range of businesses that are using NJEDA resources to relocate to or expand in New Jersey were highlighted through groundbreakings and business visits from NJEDA staff this month.

Representatives from NJEDA and OceanFirst Bank visited Flybar, best known as “the original pogo stick company,” to raise awareness of the range of low-cost financing solutions offered by the NJEDA to support the growth of small businesses in New Jersey. Flybar recently moved from New York to New Jersey, supported by an OceanFirst Bank loan with a NJEDA participation to purchase a 5.22-acre property in Howell that included a 51,450-square-foot industrial building to accommodate its expanding inventory and growing team. Through this expansion in New Jersey, Flybar relocated nine employees to the state and expects to create five new jobs in the next two years.

In Bergen County, Cross River Bank utilized Grow New Jersey (Grow NJ) tax credits to expand its headquarters to a new 70,000-square-foot facility in Fort Lee, which will be home to 200 employees from the bank’s former Fort Lee headquarters facility, along with an additional 250 new employees the company plans to hire. Established in 2008, Cross River is a fast-growing financial services organization that merges the established expertise and traditional services of a bank with the forward-thinking offerings of a technology company. The company’s leadership cited the State’s diverse pool of tech-savvy talent and ideal location as the reasons it chose to expand in New Jersey over an alternate location in New York. The bank will initially occupy 36,447 square feet of its new facility and will take on additional space as its employee base grows.

Last week, NJEDA staff participated in a groundbreaking at the future site of Quest Diagnostics’ 250,000-square-foot flagship laboratory on a 12-acre parcel at the ON3 campus in Nutley. Quest was approved for Grow NJ tax credits to enable the company to undertake the project in Nutley, where it will locate more than 1,100 employees, rather than expanding existing company sites in Pennsylvania, Connecticut, and Maryland.

### **STRONGER AND FAIRER MESSAGE COMMUNICATED THROUGH EVENT PARTICIPATION**

NJEDA met with New Jersey’s corporate and academic communities and the Israel Innovation Authority (IIA) this month to discuss initiatives focused on recapturing the state’s leadership in the innovation economy. The meeting was organized by the NJEDA’s Office of International Trade and Investment with the goal of facilitating partnerships with more international companies that are considering New Jersey as a business location. As the Members may recall, NJEDA and IIA entered into a Memorandum of



Understanding during the Governor's trade mission to Israel in October to strengthen economic ties and enhance bi-lateral partnerships among innovators in New Jersey and the State of Israel. We appreciate the IIA's ongoing work with us to attract more Israeli entrepreneurs to the state and to raise awareness of New Jersey companies in the Israeli marketplace.

Through another collaborative effort, NJEDA representatives met with Community Development Financial Institutions and other business stakeholders to hear their ideas about how we can better meet entrepreneurs' needs. We look forward to continuing this productive discussion, both informally and through semi-annual listening sessions.

Two events in February spotlighted opportunities for investment and redevelopment in the City of Paterson. A conference brought together city leaders and William Paterson University faculty and administrators to launch the Propel Paterson initiative, with the goal developing a blueprint for sponsored faculty research and community redevelopment projects. Propel Paterson will examine opportunities in health care, education, business, social services, arts, culture and tourism. Later the same day, NJEDA representatives were on hand as Governor Phil Murphy held an event in Paterson to present his vision for the proposed historic preservation tax credit. The Historic Preservation Tax Credit will serve to revitalize and fully realize the potential of New Jersey's storied cities and towns.

Revitalizing outdated properties was also a focus as NJEDA participated in NJ Future's Redevelopment Forum. NJEDA speakers took part in panels focused on collaborative workspaces, repurposing suburban "white elephants," and "placemaking" at this high-profile event, where Governor Murphy was a keynote speaker.

Last week, I had the pleasure of presenting Governor Murphy's plan for a stronger and fairer New Jersey economy to a large group of Mercer County business owners, executives, and other stakeholders at the Princeton Regional Chamber of Commerce's Monthly Luncheon. The Governor's economic plan was also highlighted at Bisnow's New Jersey State of the Market, the Chamber of Commerce of South Jersey's Business Outlook, and a full roster of other events focused on advanced manufacturing, offshore wind, Opportunity Zones, and support of small businesses.

## **PROGRESS TOWARD BECOMING THE STATE OF INNOVATION**

Following the news that 11 New Jersey collaborative workspaces have now been approved to offer rent support to startup company tenants through [NJ Ignite](#), we announced in February that medical device manufacturer Carbon22 became the first emerging company to be approved for rent support from the program. Carbon22 recently moved into a creative 'flex' office space at Building 78 of Kearny Point. NJ Ignite helps startup companies realize the benefits of collaborative workspaces by providing up to nine months of rent support for startup technology and life sciences businesses that are moving to an approved collaborative workspace. Two employees of Carbon22 attended Governor Murphy's budget address last week as guests of First Lady Tammy Murphy.

In partnership with the Office of the Secretary of Higher Education (OSHE), we announced that Montclair State University has now been integrated into the "Research with NJ" online database, joining the Garden State's five other research universities—New Jersey Institute of Technology, Princeton University, Rowan University, Rutgers the State University of New Jersey, and Stevens Institute of Technology. Research with NJ is a collaborative effort by the NJEDA and OSHE to forge stronger connections between New Jersey's research universities and industry. The free portal showcases New Jersey's experts in science, technology, engineering, and mathematics (STEM). The database includes researchers' professional backgrounds, publications, and achievements. It is structured to encourage

collaborations between entrepreneurs, businesses, and New Jersey's research institutions that lead to innovative products and businesses. The database can be accessed at [www.ResearchwithNJ.com](http://www.ResearchwithNJ.com).

#### **COMMUNITY ENGAGEMENT EFFORTS UNDERWAY RELATED TO STATE OFFICE BUILDING PROJECTS**

Turner Construction has broken ground at the site of the future new Health Department Building at the intersection of Hanover and Willow Streets, and construction of the new Taxation Building adjacent to the NJ Department of Labor and Workforce Development will begin soon. To establish open lines of communication and minimize the impact of construction-related traffic and noise on people that work and live near the Trenton sites, the NJEDA and the New Jersey Department of Treasury have developed a page on the NJEDA website that provides information about the projects, and enables constituents to submit questions, as well as opt-in to receive email updates about possible noise and traffic congestion that could impact drivers, pedestrians and local residents.


New Jersey artists seeking to display their artwork at these new State office buildings may now have an opportunity to do so. The NJEDA, in consultation with the New Jersey State Council on the Arts (NJSCA) has issued a [Request for Expression of Interest](#) to artists to design, construct, and install artwork on and around the project sites. Interested artists must submit samples of their work and a letter of interest by 3:00 p.m. on Tuesday, March 26, 2019. Both buildings will include decorative art elements as well as finished art pieces by created by New Jersey residents.

Turner Construction, the contractor managing the construction of the Health Building, is demonstrating its commitment to the City of Trenton and its residents through a variety of educational and community-focused efforts. Educational opportunities are offered through programs like the Turner School of Construction Management, Youth Force 2020, ACE Mentoring and many others. Turner has also communicated its structured efforts to engage small and emerging subcontractors, a diverse workforce, local vendors/suppliers as well as students. Turner has engaged the African American Chamber of Commerce and other community and business groups to ensure fairness in its procurement and hiring efforts.

#### **CLOSED PROJECTS**

Through February 2019, NJEDA closed on more than \$23 million in lending and other small to mid-sized business assistance to support 22 projects, leveraging more than \$40 million in capital investment and the creation of 83 new permanent jobs.

In addition to the assistance provided through these programs, NJEDA also executed agreements pending certification with five incentive projects for \$32.1 million, leveraging more than \$42.6 million in capital investment, the creation of 505 new jobs, 119 construction jobs, and the retention of 528 jobs at risk of leaving New Jersey.



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## **AUTHORITY MATTERS**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**RE:** Recommendation for Grant Awards – Innovation Challenge Program

### **Request**

The Members are requested to approve Innovation Challenge Program grants of \$100,000 each to the City of Newark, City of Paterson, City of Plainfield, Cape May County, and the City of Hoboken for economic development plans to catalyze planning and key investments to position their city and region to augment their innovation ecosystem.

### **Background**

Governor Murphy has made reclaiming New Jersey's historical position as the capital of American Innovation and Invention a centerpiece of his Stronger and Fairer economic development agenda. In recent decades, New Jersey, and most importantly its cities, has lagged its competitors for developing the kind of innovation-centric real estate, talent and capital strategies that have led to outsized job creation in a range of fields that are poised to dominate the 21st century economy.

In July 2018, the Authority issued a Request for Qualifications/Proposals (RFQ/P) to New Jersey municipal and county governments for the award of contracts of up to \$100,000 each to the highest scoring proposals to produce a plan that will serve to catalyze planning and key investments to position their city and region to augment their innovation ecosystem, will inform the Authority's own plans for economic development activities and programs, and will be shared by the Authority with other local governmental entities to foster further innovation across the State. This resulted in the Members approving nine contracts of \$100,000 each for the following municipalities/counties: City of Bridgeton, City of New Brunswick, Passaic County, City of Trenton, Atlantic County, City of Atlantic City, Camden County, Union Township, and Monmouth County.

Due to the impressive quality of all proposals received in response to the RFQ/P, in October 2018, the Members approved the creation of the Innovation Challenge Program – a program providing grants of up to \$100,000 each to municipal or county proposals that achieve a requisite score of 50 based on publicly available scoring criteria.



### **Innovation Challenge Program**

On November 19, 2018, the Authority began accepting applications for the Innovation Challenge Program. Applications were accepted on a rolling basis and scored by an evaluation committee based on scoring criteria made publicly available in the application instructions, which were posted to the Authority's website at [www.njeda.com/innovationchallenge](http://www.njeda.com/innovationchallenge). Applications were reviewed and scored on a first come, first serve basis, based on date of the Authority's receipt of a completed application, until all available funding was exhausted. Applications were accepted no later than a period 60 days following the release of the grant application, which was Friday, January 25, 2019 at 5:00 pm.

In response to this application, eight (8) proposals were received by the stated deadline. The following is a list of the eight applications that were received, in the order they were received, from the following lead municipalities/counties:

- City of Newark
- City of Paterson
- City of Plainfield
- Cape May County
- City of Long Branch
- City of Hoboken
- City of Jersey City
- City of Kearny

An evaluation committee ("the Committee") comprised of the Senior Vice President, Economic Transformation, Director – Marketing, Communications & Product Development, Manager – Marketing & Stakeholder Outreach, Senior Policy Advisor, Senior Venture Officer and Sr. Construction Officer/Green Building then reviewed and scored the responsive proposals. Participating on the committee in a non-voting role were the Policy Advisor, Office of the Governor, the Deputy Chief of Staff for Economic Growth, Office of the Governor, and the Deputy Secretary, Office of Higher Education.

As part of its review and evaluation of the proposals, the Evaluation Committee considered a group of pre-established evaluation criteria, which included nine (9) factors, one of which was worth up to 20 points, and the remaining eight (8) factors worth up to 10 points each. The criteria were as follows: Evidence of the proposal to demonstrate the plan's ability to achieve one or more goals of the Innovation Challenge (worth up to 20 points), strength of established partnership, commitment of additional funding from partners, presence and strength of a defined collaborative stakeholder engagement process, evidence of plan's ability to grow number of small businesses/attract employers, planning for solutions based on the use of new and emerging technologies, potential for new jobs within or in support of an innovation industry, ability to execute the project or viability of the planning project, and 2017 Municipal Revitalization Index Ranking. The maximum possible score that could be achieved was 100 points.

Based on the scores assigned by the evaluation committee members, it was determined that five (5) proposals should be recommended to the Members for approval as they achieved or exceeded

the requisite overall evaluation criteria score of fifty (50), on a scale of 10-100, as approved by the Members in October 2018. The application submitted by Long Branch was deemed to be non-responsive as it was missing required information as outlined in the grant application. The applications submitted by Jersey City and Kearny were not reviewed by the Committee, as the \$500,000 program funding allotment was already fully committed to prior applications that met the requisite score. The Evaluation Committee Summary matrix form is attached.

### **Overview of Bid Proposals Recommended for Grant Award**

The following is a brief overview of the proposals recommended for grant awards.

**City of Newark** *(in partnership with New Jersey Institute of Technology, Newark Community Economic Development Corporation, New Jersey Innovation Institute, Public Service Electric & Gas, and iNeighborhoods)*

This proposal supports planning to prioritize expansion of the technology infrastructure in Newark - specifically to support urban use of the Internet of Things (IoT). Newark plans to address community-based needs critical to a resilient city model called TechSmart Newark. Ward-level demonstration projects will be developed to extend existing fiber optic and wireless communication systems, and to interconnect software support services for data analytics, video processing, cloud access with novel end-use apps to sensors, IoT devices, street kiosks, and mobile systems. These projects will provide immediate quality of life benefits citywide while serving as beacons to guide local investments into the technology infrastructure. By opening access to city data and systems and establishing interoperability and security standards for urban IoT applications, Newark will leverage this activity to attract the entrepreneurial community of technology developers that will recognize the value of proof of concept and scale-up capacity the City offers.

**City of Paterson** *(in partnership with Montclair State University, William Paterson University Small Business Development Center, and long-term lessees of the Paterson Food Incubator site - North American Regional Center and Palestine Eats)*

Following the development of the Paterson Food Incubator, Paterson officials are still in need of a clear business development strategy that involves consistent training resources and a workforce pipeline. This project will give the City and Incubator resources to work directly with educational entities so that they may co-develop a mutually beneficial pipeline of entrepreneurs ready to support and thrive within the incubator.

This planning project will, therefore, result in a strategically-developed business plan to sustain the physical and human-capital of the Paterson Food Incubator. This will be mutually beneficial considering that: (1) the City and Incubator will gain consistent training resources to support any incubator lessee or occupant failing to sustain their business; and (2) the educational institutions will gain a solid employment partner to which it can refer capable, well-trained entrepreneurs and small business owners looking to work in the burgeoning food industry in the City of Paterson. Overall, the incubator will be a space for day-to-day programming and events,

commercial kitchen use, small restaurants, a bazaar-styled market place, relevant product and artisan showcases, and entrepreneur/small business development trainings.

**City of Plainfield** *(in partnership with Union County, Union County College, Injectron Corporation and Plainfield Central Business District Management Corporation)*

The City of Plainfield, in partnership with Union County, Union County College, Plainfield Central Business District Management Corporation (PCBDMC), and Injectron Corporation, is proposing a technology needs assessment of the community's underutilized and vacant industrial and commercial properties. The overall goal of this assessment will be to determine the feasibility of creating a network of commercial, industrial, and mixed-use corridors within the City so that it may become an epicenter of New Jersey's innovative economy. Specifically, the assessment will focus on the viability of transforming existing properties into spaces that are desirable to emerging business sectors and entrepreneurs through technology upgrades. In conjunction with evaluating specific properties, the assessment will also explore larger infrastructure changes, such as upgrading a current T1 fiber optic line within the community to 5G capacity, in order to close technology gaps that currently isolate many sections of the City from each other and transportation infrastructure. The planning process will conclude with recommendations for current and future technology infrastructure recommendations within the City.

**Cape May County** *(in partnership with Middle Township, Lower Township, Atlantic Cape Community College, Cape May County Chamber of Commerce, Crest Savings Bank, South Jersey Economic Development District, and SCORE)*

Cape May County proposes to expand the breadth and depth of existing business support systems through the coordination of local assets to increase economic development opportunities within the county. The project will create an Entrepreneurial Resource Center to support the economic development plans of the County and local municipalities inside and around designated Opportunity Zones.

The Action Plan will: (1) inventory the partnership's diverse business resources; (2) assess the County's existing resources; (3) survey regional business to identify and catalog appropriate business types; (4) determine the location(s) and delivery methods for business support services; (5) develop curricula and programming to attract new and expanding business; and (6) determine the proper media channels for market to potential participants.

**City of Hoboken** *(in partnership with Stevens Institute of Technology, Hoboken Public Library, and Propelify LLC)*

The City of Hoboken, New Jersey, is proposing a partnership with Stevens Institute of Technology, the Hoboken Public Library, and Propelify LLC to launch a planning process for a co-working innovation center that will make the vital resources of space, mentorship, capital, and community available to innovative practitioners and entrepreneurs in support of the incubation of Smart City small businesses in northern New Jersey.

The planning process will seek to operationalize the project vision by:

- Identifying space and infrastructure needs for expanding the vibrant start-up ecosystem in Hoboken and surrounding areas,
- Developing a programming curriculum that integrates input and contributions from local stakeholders and an existing network of innovation professionals,
- Establishing a mentor-based acceleration model to provide aspiring entrepreneurs with access to ongoing support from experienced innovators in the Smart City vertical,
- Tabulating financial needs for center build-out, operations, and sustainability,
- Formulating a fundraising plan and strategy for center operations,
- Spearheading the development of a venture capital fund that can be used to support investments in New Jersey's Smart City entrepreneurs,
- Organizing a social impact plan that aligns center programming to support the needs of local residents who face barriers to participation in the innovation economy

**Recommendation**

The Members' approval is requested to approve Innovation Challenge Program grants of \$100,000 each to the City of Newark, City of Paterson, City of Plainfield, Cape May County, and the City of Hoboken for economic development plans to catalyze planning and key investments to position their city and region to augment their innovation ecosystem.



Prepared by: Pat Rose

Attachments:

- Innovation Challenge Program - Evaluation Score Summary



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY						
INNOVATION CHALLENGE PROGRAM						
EVALUATION SCORE SUMMARY						
	MUNICIPALITY/COUNTY (AWARDED IN RED)	CITY OF NEWARK	CITY OF PATERSON	CITY OF PLAINFIELD	CAPE MAY COUNTY	CITY OF HOBOKEN
ITEM #	EVALUATION CRITERIA	TOTAL SCORE	TOTAL SCORE	TOTAL SCORE	TOTAL SCORE	TOTAL SCORE
1	Evidence of the proposal to demonstrate the plan's ability to achieve one or more goals of the Innovation Challenge, as outlined in the Scope of Work * <b>NOTE: Scale of 0-20 points.</b>	15.67	12.50	11.17	12.33	15.00
2	Strength of established partnership (higher-ed and other strategic, if applicable) within the Proposal, regarding the reputation, capacity, and proposed level of commitment from the partnering entity(ies); longevity of the partnerships beyond initial project planning stages; benefits and practical advantages of the partnership(s).	8.00	5.50	5.00	6.67	7.83
3	Commitment of additional funding from higher education partners, strategic partners, or other outside sources.	6.67	5.50	4.33	7.17	5.17
4	Presence and strength of a defined collaborative stakeholder engagement process and strategy.	7.50	5.00	5.17	6.33	6.67
5	Evidence of the proposal to demonstrate the plan's ability to grow number of small businesses/attract employers within the municipality/region.	6.83	6.33	6.00	6.17	6.67
6	Emphasis on planning for solutions based on the use of new and emerging technologies.	8.17	4.33	6.33	5.50	7.50
7	Evidence of the proposal to demonstrate the potential for new jobs within or in support of an innovation industry including emerging technology and life sciences, digital media, clean technology/green energy, fin-tech, cyber-security, AI/AR, transportation-tech, etc.).	6.67	5.33	6.17	6.50	6.83
8	Evidence of ability to execute a planning project or viability of a planning project.	7.83	6.00	6.00	6.33	7.33
9	The score is not subjective and was obtained from the 2017 Municipal Revitalization Index.	6 MRI RANK (12) = 6 POINTS	8 MRI RANK (8) = 8 POINTS	2 MRI RANK (26) = 2 POINTS	10 MRI RANK (5) = 10 POINTS NOTE: THE MRI IS FOR WILDWOOD CITY (RANKED 5TH = 10 points), LOCATED IN CAPE MAY CO.	0 MRI RANK (428) = 0 POINTS
EVALUATION CRITERIA SCORE (NOTE: AWARDS TO THE 9 PROPOSALS ACHIEVING A SCORE OF 50 POINTS OR MORE, PER SECTION 7.0 OF THE RFQ/P)		73.34	58.49	52.17	67.00	63.00



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**RE:** Memorandum of Understanding (MOU) – Expansion of Community Collaborative Initiative

### **Request**

The Members are requested to approve a Memorandum of Understanding (MOU) between the Authority and the New Jersey Department of Environmental Protection (NJDEP) for the Authority to provide funding for the expansion of NJDEP's Community Collaborative Initiative (CCI), which will enable NJDEP to embed staff in strategic cities to focus on brownfield redevelopment and urban revitalization efforts and assist targeted communities with their environmental challenges and opportunities.

### **Background**

Through his comprehensive economic plan for building a stronger and fairer economy in New Jersey, Governor Murphy has identified the remediation and redevelopment of brownfield sites as an important component of smart planning that will allow New Jersey to meet its goals for economic growth while minimizing the environmental impact and sprawl that is the byproduct of new development. To facilitate brownfields redevelopment, Governor Murphy has proposed a new set of programs, including a remediation and redevelopment tax credit, as well as an enhanced brownfields loan program through NJEDA that would provide the necessary investment resources to undertake these projects.

In addition to the new resources the Governor has proposed, brownfields redevelopment requires an understanding of complex urban and environmental issues. Therefore, communities undertaking brownfields redevelopment require access to expertise that can help them navigate these issues and find innovative solutions. In recognition of this need, NJDEP has established the CCI, which embeds NJDEP staff in targeted cities with multiple environmental stressors to help the cities navigate environmental and urban issues and set a pathway for successful remediation and redevelopment to occur. Under the current CCI, NJDEP staff are embedded in Camden, Trenton, Perth Amboy and Bayonne.

### **Community Collaborative Initiative – Program Expansion**

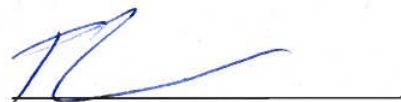
Recognizing the value and success of CCI to date, the Authority and the NJDEP are proposing an MOU that would provide funding from the Authority to NJDEP to expand CCI to support additional cities, providing this resource to a wider range of cities to address environmental issues and best position these cities to undertake brownfields remediation and redevelopment and utilize the brownfields resources that are proposed in the Governor's economic plan and are expected to be available in the near future.

Under the program expansion proposal (attached as Exhibit A), Authority funding would supplement the existing two full-time equivalent NJDEP employees dedicated to CCI with an additional six full-time equivalent employees. The deployment of this expanded CCI workforce would continue to support Camden, Trenton, Perth Amboy and Bayonne, while also expanding to more cities that will benefit greatly from this initiative, such as Newark and Paterson, among others.

The six new full-time employees will be selected from current NJDEP staff, whose replacements will be hired by NJDEP through a state-approved vendor. Authority funding will reimburse NJDEP for salaries and fully allocated fringe and indirect costs, as required by the NJ Department of Treasury – Office of Management and Budget. The total funding commitment from the Authority to NJDEP necessary to support salaries and fully allocated fringe and indirect costs for the six new full-time equivalent employees will be approximately \$1,083,624.

### **Recommendation**

The Members' approval is requested to approve a Memorandum of Understanding, attached as Exhibit B, between the Authority and the New Jersey Department of Environmental Protection (NJDEP) for the Authority to provide funding for six new full-time equivalent employees to be dedicated to the Community Collaborative Initiative at the rate established by the NJ Department of Treasury – Office of Management and Budget. This will result in an expansion of CCI services to a wider range of cities that face environmental challenges.



#### **Attachments:**

- Exhibit A – NJDEP Community Collaborative Initiative Expansion Proposal
- Exhibit B – Proposed Memorandum of Understanding

## COMMUNITY COLLABORATIVE INITIATIVE EXPANSION

### TO EMBED IN ADDITIONAL CITIES & EXPAND PRESENCE IN ASSOCIATED COUNTIES

**SUBJECT:** Proposal for expansion of the Community Collaborative Initiative to enable more Department of Environmental Protection brownfields staff to be embedded in focus cities, following the success of the Camden model.

**PURPOSE:** For EDA to provide funding for the expansion of the CCI to embed additional DEP staff in cities to assist them with their environmental challenges and opportunities and to focus on brownfield redevelopment and urban revitalization efforts.

**BACKGROUND:** Brownfield redevelopment, economic development and revitalization of distressed cities are priorities for the DEP and EDA and are goals outlined in Governor Murphy's State of Innovation Plan. The Community Collaborative Initiative was formed to embed DEP staff in communities with multiple environmental stressors to bring cross-program and interagency resources to find innovative solutions to complex urban issues and set the stage for the revitalization of the city. The CCI is currently working in four cities: Camden, Trenton, Perth Amboy and Bayonne.

**PROPOSAL:** The DEP currently has four staff members working part-time in four cities: Bayonne, Camden, Perth Amboy and Trenton. The six new EDA-funded FTEs combined with two DEP-funded FTEs would allow the DEP to work full-time in these four cities and also expanding to have full-time presence in more cities that will benefit greatly from this initiative, such as Newark and Paterson, among others. The additional staff will provide the DEP's Office of Brownfield Reuse additional resources to assist municipalities and EDA in Opportunity Zones.

**MECHANICS:** CCI would be staffed with DEP employees recruited from various programs. Funding for the new FTEs would pay for contractors to fill in for the DEP employees working on CCI. The programs will backfill employees with contractors, hired through the state-approved vendor, 22<sup>nd</sup> Century.



## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is made this \_\_\_\_\_ day of March 2019, by and between

**THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION**, with its principal office in the Department of Environmental Protection Building, 401 East State Street, Trenton, New Jersey 08625 (hereinafter referred to as the “DEP”),

and

**THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, with its principal office at 36 West State Street, Trenton, New Jersey 08625 (hereinafter referred to as the “EDA”);

The DEP and the EDA are collectively referred to herein as the “Parties.”

**WHEREAS**, the DEP is authorized to execute this MOU under N.J.S.A. 13:1D-9; and

**WHEREAS**, the EDA 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 EDA is authorized to execute this MOU under N.J.S.A. 34:1B-1 et seq.; and

**WHEREAS**, the Parties agree that this MOU is in the best interests of the public; and

**WHEREAS**, the Parties under the powers vested to them by law, have determined that it is in the Parties’ mutual interest to enter into this MOU; and

**WHEREAS**, brownfield redevelopment, economic development and revitalization of distressed cities are priorities for DEP and EDA, and are goals outlined in Governor Murphy’s State of Innovation Plan. The Community Collaborative Initiative (“CCI”) was formed to embed DEP staff in communities with multiple environmental stressors to bring cross-program and interagency resources to find innovative solutions to complex urban issues and set the stage for the revitalization of the city; and

**WHEREAS**, the DEP serves as a single point of contact for the CCI to leverage resources and expertise that brings innovative solutions to complex environmental challenges; and

**WHEREAS**, EDA, recognizing the value of the CCI, wishes to assist in DEP’s efforts by contributing funding toward the addition of dedicated staff; and

**WHEREAS**, EDA has therefore agreed to provide reimbursement to the DEP in an amount equal to the costs of six (6) DEP CCI staff, including salaries and fully allocated fringe and indirect costs as required by OMB, as described more fully herein (“DEP CCI Staff Costs”); and

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

**NOW, THEREFORE**, the Parties hereto agree as follows:

**1. PURPOSE/SCOPE OF PROJECT:** To achieve the goals of this MOU, the Parties hereby agree as follows:

a. The DEP, through its Division of Budget and Financial Operation, shall provide to EDA invoices for the DEP CCI Staff Costs semiannually on January 1 and July 1 of each year for the term of this MOU.

b. Each invoice submitted by the DEP will include a detailed calculation of the DEP CCI Staff Costs, including fully allocated fringe and indirect costs, for the ensuing six (6) month period and will in no case exceed the cost of six (6) full time equivalents. Notwithstanding, the DEP’s initial invoice will be provided to EDA upon execution of this MOU and will calculate the DEP CCI Staff Costs from the date of execution through July 1 of the first year of this MOU.

c. Within 30 days of receipt of each invoice, EDA will remit reimbursement to the DEP of the DEP CCI Staff Costs set forth therein.

d. The DEP will use the reimbursements provided by EDA toward the costs to recruit, hire, train and manage new DEP CCI staff.

e. The DEP will provide to the EDA a quarterly written update on the CCI and related personnel. The Parties agree to a twice-annual meeting between the Chief Executive Officer of the EDA and the Commissioner of the DEP to provide updates on progress.

**2. TERM:** This MOU shall become effective on the date it is fully executed by both Parties and shall continue for a period of two years with an option to extend annually for up to three additional years. The Parties may extend this MOU upon mutual written consent.

**3. 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.

**4. DISPUTE:** If there are any disputes among the Parties concerning this MOU, the Commissioner of DEP and the CEO of EDA, or their authorized representatives, shall confer to resolve the dispute.

**5. AMENDMENT:** This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing that shall be effective as of the date stipulated therein.

**6. 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.

**7. NOTICE:**

All correspondence and notices to the DEP regarding this MOU shall be addressed to:

Chief of Staff  
New Jersey Department of Environmental Protection  
401 E. State Street, Trenton, NJ 08625  
(609) 633-1123

All correspondence and notices to the EDA regarding this MOU shall be addressed to:

Chief of Staff  
New Jersey Economic Development Authority  
36 West State Street, PO Box 990, Trenton, NJ 08625  
609-858-6718

**8. INTENT.** 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 instrument to be signed by their duly authorized representatives or designees to be hereunto affixed the day, month, and year first written above.

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

Catherine R. McCabe  
Commissioner  
New Jersey Department of Environmental Protection

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

Tim Sullivan  
Chief Executive Officer  
New Jersey Economic Development Authority



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**RE:** Memorandum of Understanding (MOU) – New Jersey Economic Development Authority and New Jersey Department of Labor and Workforce Development (NJLWD)

### Request

The Members are requested to approve a Memorandum of Understanding (MOU) between the Authority and NJLWD for NJLWD to provide funding to support NJEDA efforts through marketing, personnel, and programming that will help attract, retain, and strengthen New Jersey's diverse workforce by incentivizing employers to consider moving, hiring, and growing in New Jersey and building awareness among New Jersey residents and businesses of the opportunities and resources available through the NJLWD.

### Background

Through his comprehensive economic plan for building a stronger and fairer economy in New Jersey, Governor Murphy has prioritized workforce development and called on the Authority and NJLWD to explore partnerships and opportunities to strengthen sector-focused workforce development opportunities and ensure the availability of training and resources that will equip residents with the skills needed to be successful and support job and wage growth in New Jersey.

To help develop and achieve these goals as outlined in the Governor's economic plan, the Authority and NJLWD are proposing an MOU that would provide \$3,000,000 in funding from NJLWD to the Authority to support the Authority's marketing, personnel, and programming efforts to drive new business attraction to New Jersey, and to connect businesses and residents of New Jersey with the programs and resources available through NJLWD.

Specifically, the MOU calls for funding to be used in two ways: (1) A national State of New Jersey marketing campaign that will help attract, retain, and strengthen New Jersey's diverse workforce by incentivizing employers to consider moving, hiring, and growing in New Jersey, and (2) to support personnel and programmatic needs related to building awareness among New Jersey residents and businesses of the opportunities and resources available through the NJLWD,

including but not limited to apprenticeships, internships, fellowships, on the job training, customized training programs, and labor standard compliance.

As part of the MOU, the Authority will provide quarterly updates to NJLWD on the use of the funding with respect to the goals described above.

**Recommendation**

The Members' approval is requested to approve a Memorandum of Understanding, attached as Exhibit A, between the Authority and the New Jersey Department of Labor and Workforce Development (NJLWD) for NJLWD to provide \$3,000,000 in funding to the Authority to support the Authority's marketing, personnel, and programming efforts to drive new business attraction to New Jersey, and to connect businesses and residents of New Jersey with the programs and resources available through NJLWD..



**Attachments:**

- Exhibit A – Proposed Memorandum of Understanding



MEMORANDUM OF UNDERSTANDING BETWEEN THE NJ ECONOMIC DEVELOPMENT AUTHORITY AND  
THE NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this \_\_\_\_\_ day of March 2019 by and between the New Jersey Economic Development Authority ("NJEDA") and the New Jersey Department of Labor and Workforce Development ("NJLWD"). The NJEDA and the NJLWD are collectively referred to herein as the "Parties."

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 NJEDA is authorized to execute this MOU under N.J.S.A. 34:1B-1 et seq.; and

WHEREAS, among the NJLWD's responsibilities is helping to strengthen New Jersey's workforce, a critical component of economic development that serves to enable employers statewide to compete successfully in the world marketplace; and

WHEREAS, the NJLWD is authorized to execute this MOU under N.J.S.A. 34:1A-1 et seq.; and

WHEREAS, Governor Phil Murphy has a primary focus on building a stronger and fairer economy through implementation of the statewide economic plan announced in October 2018; and

WHEREAS, the NJEDA and NJLWD have a history of partnering with each other in the furtherance of economic goals and the Parties agree that this MOU will advance implementation of the statewide economic plan and serve to grow New Jersey's economy; and

WHEREAS, the NJLWD has agreed to provide the NJEDA with \$3 million to support NJEDA efforts through marketing, personnel, and programming that will help attract, retain, and strengthen New Jersey's diverse workforce by incentivizing employers to consider moving, hiring, and growing in New Jersey, which will include building awareness among New Jersey residents and businesses of the opportunities and resources available through the NJLWD; and

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

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

1. PURPOSE/SCOPE: To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a) NJLWD will provide to NJEDA \$3 million in funding upon execution of this MOU.
  - b) NJEDA will provide to NJLWD quarterly updates on the use of funds.
  - c) NJEDA will dedicate the funds to support 1) a statewide marketing effort that will help attract, retain, and strengthen New Jersey's diverse workforce by incentivizing

employers to consider moving, hiring, and growing in New Jersey; and 2) to support personnel and programmatic needs related to building awareness among New Jersey residents and businesses of the opportunities and resources available through the NJLWD, including but not limited to apprenticeships, internships, fellowships, on the job training, customized training programs, and labor standard compliance.

2. TERM: This MOU shall become effective on the date it is fully executed by both Parties.
3. SUBJECT TO THE AVAILABILITY OF FUNDING: The funding that NJLWD will provide under this MOU is subject to appropriations and the availability of funds.
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 Commissioner of NJLWD and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
6. AMENDMENT: This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing that shall be effective as of the date stipulated therein.
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.
8. NOTICE:

All correspondence and notices to NJLWD regarding this MOU shall be addressed to:

Roberto Soberanis  
New Jersey Department of Labor and Workforce Development  
1 John Fitch Plaza, Trenton, NJ 08611

All correspondence and notices to NJEDA regarding this MOU shall be addressed to:

Erin Gold  
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:

For the Department of Labor and Workforce  
Development:

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Tim Sullivan

Chief Executive Officer

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DATE

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Robert Asaro-Angelo

Commissioner

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DATE



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**RE:** Mercadien P.C. Contract Award Modification Recommendation for Auditing and Job Certification Review Consulting Services

### **Request**

The Members are asked to approve the following updates to the Mercadien P.C. ("Mercadien") contract: (i) enter into the two one-year optional extensions for 2020 and 2021; (ii) increase Year 3 expenditures from \$100,000 to \$140,100 and each year 2020 and 2021 from \$100,000 to \$150,000 to support an increase in audited companies and scope of audit; and (iii) expand the scope of the engagement to include process evaluation of the incentive programs regarding job data, cost verification, and related documentation review across various State Authorities and Agencies at a maximum not to exceed \$50,000.

### **Background**

On October 14, 2016, the Board approved entering into a contract with Mercadien to perform independent auditing and job and cost certification review consulting services for EDA's incentives programs. The contract award was approved for an annual rolling twelve (12) month maximum not to exceed budget of \$100,000 for auditing of Certified Public Accountant ("CPA") prepared cost certifications and CPA or Chief Financial Officer ("CFO") job certifications for the GROW EOA incentive program. The contract was for three (3) years with two (2) one (1) year extension options, to be exercised at the sole discretion of the Authority at the same prices, terms and conditions based on the Board approved contract award for the respective extension years.

Mercadien has conducted Agreed Upon Procedures of 10% of the Authority's certified projects for 2017 and 2018, which to date the Authority has paid \$200,000 for the Year 1 (2017) and Year 2 (2018) services. As a response to the Office of the Comptroller's Audit that "[f]uture monitoring and oversight should provide a more thorough and comprehensive analysis. . ." the Authority is increasing the size of the review, from 10% of the overall certifications in a year to 20%, as well as increasing the scope of the Agreed Upon Procedures between Mercadien and the Authority to address the recommendations provided by the Comptroller. Additionally, the Authority will have a consulting operational review conducted by Mercadien to evaluate the processes between the Authority and various State agencies (which may include the Division of

Taxation and the Department of Labor and Workforce Development) to ensure verification of job data, cost verification, and related supporting documentation requirements are met.

To accomplish the above objectives the Authority is requesting an increase in the Year 3 (2019) annual budget from \$100,000 to \$140,100, the Year 4 (2020) annual budget from \$100,000 to \$150,000, the Year 5 (2021) annual budget from \$100,000 to \$150,000, and a budget of \$50,000 for the consulting operational review.

**Recommendation**

The Members are requested to approve the following updates to the Mercaden P.C. ("Mercadien") contract: (i) enter into the two one-year optional extensions for 2020 and 2021; (ii) increase Year 3 expenditures from \$100,000 to \$140,100 and each year 2020 and 2021 from \$100,000 to \$150,000 to support an increase in audited companies and scope of audit; and (iii) expand the scope of the engagement to include process evaluation of the incentive programs regarding job data, cost verification, and related documentation review across various State Authorities and Agencies at a maximum not to exceed \$50,000.



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Prepared by: Bruce Ciallella



**INCENTIVE PROGRAMS**

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

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

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

**APPLICANT:** Key Food Stores Co-Operative, Inc. P45550

**PROJECT LOCATION:** 100 Matawan Road Old Bridge Township Middlesex County

### APPLICANT BACKGROUND:

Key Food Stores Co-Operative, Inc., established in 1937, provides inventory and services to over 270 supermarkets located in New York, New Jersey, Connecticut, Pennsylvania and Massachusetts. The company contracts with suppliers to provide grocery, dairy, and frozen products plus perishables including: meat, deli, bakery, prepared foods, and produce. The offerings span from traditional, natural and organic, specialty and international merchandise. By aggregating independent owner volume, the company negotiates for best in market pricing and terms. Its member stores also offer products for sale on-line. The applicant has demonstrated the financial ability to undertake the project. The applicant is currently located in Staten Island, NY.

### MATERIAL FACTOR/NET BENEFIT:

Key Food Stores Co-Operative, Inc. is seeking additional space to accommodate its growth needs. The company is considering a 37,442 Sq. Ft. facility in Old Bridge, NJ or staying in the company’s existing 18,552 Sq. Ft. facility and occupying an additional 12,000 Sq. Ft. in an adjacent building in Staten Island, NY. The project involves the creation of 115 new positions.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Key Food Stores Co-Operative, Inc. has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by Dean Janeway, the CEO of Key Food Stores Co-Operative, Inc., that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$47.9 million over the 20 year period required by the Statute.

### ELIGIBILITY AND GRANT CALCULATION:

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

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

(\$/Square Foot

**Minimum Capital Investment Requirements of Gross Leasable Area)**

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

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

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

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

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

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

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

Tech start ups and manufacturing businesses 10 / 25

Other targeted industries 25 / 35

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

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

As a Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Project, for an other business in Middlesex County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

<b>Eligibility</b>	<b>Minimum Requirement</b>	<b>Proposed by Applicant</b>
Capital Investment	\$1,497,680	\$5,598,846
New Jobs	35	115
Retained Jobs	50	0

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

<b>Base Grant</b>	<b>Requirement</b>	<b>Proposed by Applicant</b>
Distressed Municipality	Base award of \$4,000 per year for projects located in a designated Distressed Municipality	Old Bridge Township is a designated Distressed Municipality
<b>Increase(s) Criteria</b>		
Jobs with Salary in Excess of County/GSGZ Average	An increase of \$250 per job for each 35% the applicant's median salary exceeds the median salary of the County, or the Garden State Growth Zone, in which the project is located with a maximum increase of \$1,500	The proposed median salary of \$83,230 exceeds the County median salary by 38.59% resulting in an increase of \$250 per year.

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

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
<b>All other projects</b>	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> <li>- <math>\frac{1}{2}</math> of the Grant Calculation for New Full-Time Jobs (<math>\frac{1}{2} * \\$4,250 = \\$2,125</math>) or</li> <li>- The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs (<math>\\$5,598,846 / 10 / (115 + 0) = \\$4,868</math>)</li> </ul> <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>



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

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

Jobs with Salary in Excess of County Average:	\$ 250
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**INCREASE PER EMPLOYEE:**

\$ 250
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**PER EMPLOYEE LIMIT:**

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

\$ 4,250
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**AWARD:**

New Jobs:	115 Jobs X \$4,250 X 100% =	\$488,750
Retained Jobs:	0 Jobs X \$4,250 X 50% =	<u>\$ 0</u>

<b>Total:</b>	<b>\$488,750</b>
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**ANNUAL LIMITS:**

Distressed Municipality	\$ 8,000,000
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**TOTAL ANNUAL AWARD**

<b><u>\$488,750</u></b>
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**PROJECT IS:** (X) Expansion ( ) Relocation  
**ESTIMATED ELIGIBLE CAPITAL INVESTMENT:** \$5,598,846  
**ANTICIPATED COMPLETION DATE**  
**FOR CAPITAL INVESTMENT:** September 30, 2019  
**ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED BUSINESS FACILITY:** October 1, 2019  
**SIZE OF PROJECT LOCATION:** 37,442 sq. ft.  
**NEW BUILDING OR EXISTING LOCATION?** Existing  
**INDUSTRIAL OR NON-INDUSTRIAL FACILITY?** Non-Industrial  
**CONSTRUCTION:** (X) Yes ( ) No

**NEW FULL-TIME JOBS:** 115  
**RETAINED FULL-TIME JOBS:** 0  
**STATEWIDE BASE EMPLOYMENT (AS OF APRIL 30, 2018):** 0  
**CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:** N/A  
**MEDIAN WAGES:** \$83,230

**NET BENEFIT MODEL:** 2017  
**GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):** \$52,753,741  
**TOTAL AMOUNT OF AWARD:** \$ 4,887,500

**NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):** \$47,866,241

**ELIGIBILITY PERIOD:** 10 years

#### CONDITIONS OF APPROVAL:

1. Applicant has not committed to locate the project in New Jersey, such as by executing a lease or a purchase contract, unless the decision to locate in New Jersey is completely contingent on the award of Grow New Jersey tax credits.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within 12 months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

#### APPROVAL REQUEST:

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Key Food Stores Co-Operative, Inc. to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended

award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

**DEVELOPMENT OFFICER: M. Sestrich**

**APPROVAL OFFICER: S. Novak**

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

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

**APPLICANT:** Legend Biotech USA Inc. P45544

**PROJECT LOCATION:** 2101 Cottontail Lane Franklin Township Somerset County

### **APPLICANT BACKGROUND:**

Legend Biotech USA Inc. is an integrated biopharmaceutical company specializing in the discovery and development of novel cell therapies, focused on hematologic malignancies, solid tumors, autoimmune and infectious diseases. The applicant has recently entered into a global collaboration with Janssen Biotech, Inc., a Johnson & Johnson company, to development and commercialize a specific CAR-T therapy. CAR-T immunotherapies are an innovative approach to eradicating cancer cells by harnessing the power of a patient’s own immune system to attack abnormal cells while limiting damage to healthy cells. Headquartered in Piscataway, NJ with 34 employees, Legend Biotech USA is a subsidiary of GenScript Biotech Corporation. GenScript Biotech is an international biotechnology company providing services for researchers in basic life sciences, translational and biomedical fields, as well as pre-clinical antibody drug development, through its global operating entities located in the United States, Hong Kong, Ireland, the Netherlands, Japan and China with over 2,000 employees. The applicant has demonstrated the financial ability to undertake the project through the support of its parent company.

### **MATERIAL FACTOR/NET BENEFIT:**

The applicant is evaluating sites for a new manufacturing, research and development and administrative facility that includes an estimated capital investment of approximately \$7 million in specialized equipment and furnishings plus the creation of 305 high paying positions. The NJ option involves the purchase and renovation of an 85,371 sq. ft. facility in Franklin Township. The alternative is to lease a 111,451 sq. ft. facility in West Chester, PA nearby several Janssen locations. In either scenario, the company’s headquarters with 34 employees will remain in Piscataway.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Legend Biotech USA Inc. has indicated that the grant of tax credits is a material factor in the company’s location decision. The company The Authority is in receipt of an executed CEO certification by Yuan Xu, the CEO of Legend Biotech USA Inc., that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$87 million over the 20 year period required by the Statute.

**ELIGIBILITY AND GRANT CALCULATION:**

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

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

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

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

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

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

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

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

<b>Eligibility</b>	<b>Minimum Requirement</b>	<b>Proposed by Applicant</b>
Capital Investment	\$3,414,840	\$28,584,604
New Jobs	25	305
Retained Jobs	35	0

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

<b>Base Grant</b>	<b>Requirement</b>	<b>Proposed by Applicant</b>
Priority Area	Base award of \$3,000 per year for projects located in a designated Priority Area	Franklin Township is a designated Priority Area
<b>Increase(s) Criteria</b>		
Jobs with Salary in Excess of County/GSGZ Average	An increase of \$250 per job for each 35% the applicant's median salary exceeds the median salary of the County, or	The proposed median salary of \$110,000 exceeds the Somerset County median



**Legend Biotech USA Inc.****Grow New Jersey****Page 3**

	the Garden State Growth Zone, in which the project is located with a maximum increase of \$1,500	salary by 55% resulting in an increase of \$250 per year.
Large Number of New/Retained Full-Time Jobs	An increase of \$500 per job for 251-400 new or retained jobs, \$750 per job for 401-600 new or retained jobs, \$1,000 for 601-800 new or retained jobs, \$1,250 for 801-1,000 new or retained jobs and \$1,500 for more than 1,000 new or retained jobs	The applicant is proposing to create/retain 305 Full-Time Jobs at the project location resulting in an increase of \$500.
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense, Energy, Logistics, Life Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	The applicant is a Life Sciences business.

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

<b>PROJECT TYPE</b>	<b>GRANT CALCULATION</b>
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
<b>All other projects</b>	<p><b>The Retained Full-Time Jobs will receive the lesser of:</b></p> <ul style="list-style-type: none"> <li>- <math>\frac{1}{2}</math> of the Grant Calculation for New Full-Time Jobs (<math>\frac{1}{2} * \\$4,250 = \\$2,215</math>) or</li> <li>- The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs (<math>\\$28,584,604 / 10 / (305 + 0) = \\$9,372</math>)</li> </ul> <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>

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

Priority Area	\$3,000
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**INCREASES PER EMPLOYEE:**

Jobs with Salary in Excess of County Average:	\$ 250
Large Number of New/Retained F/T Jobs:	\$ 500
Targeted Industry (Life Sciences)	\$ 500

<b>INCREASE PER EMPLOYEE:</b>	<b><u>\$1,250</u></b>
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**PER EMPLOYEE LIMIT:**

Priority Area	\$10,500
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<b>LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:</b>	<b>\$4,250</b>
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**AWARD:**

New Jobs:	305 Jobs X \$4,250 X 100% =	\$1,296,250
Retained Jobs:	0 Jobs X \$ 4,250 X 50% =	<u>\$0,000</u>
<b>Total:</b>		<b>\$1,296,250</b>

**ANNUAL LIMITS:**

Priority Area (Est. 90% Withholding Limit)	\$ 4,000,000/(\$1,218,625)
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<b>TOTAL ANNUAL AWARD</b>	<b><u>\$1,296,250</u></b>
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**PROJECT IS:** (X) Expansion ( ) Relocation

**ESTIMATED ELIGIBLE CAPITAL INVESTMENT:** \$ 28,584,604

**ANTICIPATED COMPLETION DATE**

**FOR CAPITAL INVESTMENT:** May 1, 2020

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

**BUSINESS FACILITY:** March 1, 2022

**SIZE OF PROJECT LOCATION:** 85,371 sq. ft.

**NEW BUILDING OR EXISTING LOCATION?** Existing

**INDUSTRIAL OR NON-INDUSTRIAL FACILITY?** Non-Industrial

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

<b>NEW FULL-TIME JOBS:</b>	305
<b>RETAINED FULL-TIME JOBS:</b>	0
<b>STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2018):</b>	34
<b>CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:</b>	N/A
<b>MEDIAN WAGES:</b>	\$ 110,000
<b>NET BENEFIT MODEL:</b>	2017
<b>GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):</b>	\$ 99,764,431
<b>TOTAL AMOUNT OF AWARD: (CAPPED ANNUALLY AT</b>	
<b>90% OF WITHHOLDINGS)</b>	\$ 12,962,500
<b>NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):</b>	\$ 86,801,931
<b>ELIGIBILITY PERIOD:</b>	10 years

**CONDITIONS OF APPROVAL:**

1. Applicant has not committed to locate the project in New Jersey, such as by executing a lease or a purchase contract, unless the decision to locate in New Jersey is completely contingent on the award of Grow New Jersey tax credits.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within 12 months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

**APPROVAL REQUEST:**

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

**DEVELOPMENT OFFICER:** M. Sestrich

**APPROVAL OFFICER:** T. Wells

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

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

**APPLICANT:** Singer NY, LLC P45513

**PROJECT LOCATION:** 1200 Madison Avenue Paterson City Passaic County

**APPLICANT BACKGROUND:**

Singer NY, LLC was formed in 2011 as a wholly owned subsidiary of Singer Equipment Company, Inc. to purchase M Tucker, a Paterson, NJ based foodservice equipment and supplies solution for restaurants, bars, caterers, hospitals, nursing homes, schools, corporate serveries, hotels, churches, supermarkets and clubs. The Paterson warehouse/distribution center of 139,008 sq. ft. operates with 129 employees. Singer Equipment Company is headquartered in a 180,000-square-foot office and distribution center located in Elverson, PA. Singer, a 100-year-old distributor of restaurant equipment and supplies, maintains 8 offices throughout the Mid-Atlantic and Florida, and 3 distribution centers totaling over 340,000 square feet. The company stocks over 12,000 unique items available for delivery to major customers in PA, NJ, NY, DE and MD. The applicant has demonstrated the financial ability to undertake the project through the support of its parent company.

**MATERIAL FACTOR/NET BENEFIT:**

The Company is evaluating options related to its operations in Paterson, NJ due to the expiration of the current lease in 2021. To remain in Paterson, the facility will require a substantial investment to repair and replace the building’s roof which would be made by the landlord but realized as a considerable increase in the rental rate. In addition to the roof, other repairs/investment would be made to the warehouse floor, heating system, and repair of bathrooms and carpet. The alternative is to utilize previously prepared land development plans at the owned facility in Elverson, PA that includes a 69,600 sq. ft. warehouse expansion. The company also recently completed an expansion of its office facilities at Elverson, by 10,000 sq. ft. which would allow for centralizing certain administrative functions being performed at the Paterson location.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Singer NY, LLC has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by Frederick Singer, the CEO of Singer NY, LLC, that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$2.6 million over the 20 year period required by the Statute.

**FINDING OF JOBS AT RISK:**

The applicant has certified that the 74 New Jersey jobs listed in the application are at risk of being located outside the State on or before June 30, 2021, upon expiration of the existing lease in Paterson, NJ. This certification coupled with the economic analysis of the potential locations submitted to the Authority has allowed staff to make a finding that the jobs listed in the application are at risk of being located outside of New Jersey.

**ELIGIBILITY AND GRANT CALCULATION:**

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

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

<u>Minimum Capital Investment Requirements</u>	<u>(\$/Square Foot of Gross Leasable Area)</u>
Industrial/Warehouse/Logistics/R&D - <b>Rehabilitation Projects</b>	<b>\$ 20</b>
Industrial/Warehouse/Logistics/R&D - New Construction Projects	\$ 60
Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects	\$ 40
Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects	\$120
<i>Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem</i>	

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

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

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

<b>Eligibility</b>	<b>Minimum Requirement</b>	<b>Proposed by Applicant</b>
Capital Investment	\$1,853,440	\$5,087,815
New Jobs	27	0
Retained Jobs	38	74

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

Base Grant	Requirement	Proposed by Applicant
Garden State Growth Zone	Base award of \$5,000 per year for projects located in a Garden State Growth Zone	Paterson is a Garden State Growth Zone.
<b>Increase(s) Criteria</b>		
Deep Poverty Pocket or Choice Neighborhood	An increase of \$1,500 per job for a project locating in a Deep Poverty Pocket or Choice Neighborhood	1200 Madison Avenue, is located in a Deep Poverty Pocket.
Transit Oriented Development	An increase of \$2,000 per job for a project locating in a Transit Oriented Development	1200 Madison Avenue is located in a Transit Oriented Development by virtue of being within 1 mile (GSGZ project) of the midpoint of a New Jersey Transit Corporation rail station.
Jobs with Salary in Excess of County/GSGZ Average	An increase of \$250 per job for each 35% the applicant's median salary exceeds the median salary of the County, or the Garden State Growth Zone, in which the project is located with a maximum increase of \$1,500	The proposed median salary of \$44,834 exceeds the Garden State Growth Zone median salary by 48% resulting in an increase of \$250 per year.

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

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
All other projects	The Retained Full-Time Jobs will receive the lesser of: <ul style="list-style-type: none"> <li>- <math>\frac{1}{2}</math> of the Grant Calculation for New Full-Time Jobs (<math>\frac{1}{2} * \\$8,750 = \\$4,375</math>) or</li> <li>- The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs (<math>\\$5,087,815 / 10 / (0 + 74) = \\$6,875</math>)</li> </ul>



Singer NY, LLC

Grow New Jersey

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In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.

### Grant Calculation

**BASE GRANT PER EMPLOYEE:**

Garden State Growth Zone \$5,000

**INCREASES PER EMPLOYEE:**

Deep Poverty Pocket: \$ 1,500  
 Transit Oriented Development: \$ 2,000  
 Jobs with Salary in Excess of GSGZ Average: \$ 250

**INCREASE PER EMPLOYEE:** \$3,750

**PER EMPLOYEE LIMIT:**

Garden State Growth Zone \$15,000

**LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:** \$8,750

**AWARD:**

New Jobs:	0 Jobs X \$0,000 X 100% =	\$0,000
Retained Jobs:	74 Jobs X \$8,750 X 100% =	<u>\$647,500</u>
	<b>Total:</b>	<b>\$647,500</b>

**ANNUAL LIMITS:**

Garden State Growth Zone \$30,000,000

**TOTAL ANNUAL AWARD** **\$647,500**

**PROJECT IS:** ( ) Expansion ( ) Relocation

**ESTIMATED ELIGIBLE CAPITAL INVESTMENT:** \$ 5,087,815

**ANTICIPATED COMPLETION DATE**

**FOR CAPITAL INVESTMENT:** October 1, 2019

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

**BUSINESS FACILITY:** April 1, 2019

**SIZE OF PROJECT LOCATION:** 139,008 sq. ft.

**NEW BUILDING OR EXISTING LOCATION?** Existing

**INDUSTRIAL OR NON-INDUSTRIAL FACILITY?** Non-Industrial

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

<b>NEW FULL-TIME JOBS:</b>	0
<b>RETAINED FULL-TIME JOBS:</b>	74
<b>STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2018):</b>	129
<b>CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:</b>	N/A
<b>MEDIAN WAGES:</b>	\$ 44,834

<b>NET BENEFIT MODEL:</b>	2017
<b>GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):</b>	\$ 9,075,012
<b>TOTAL AMOUNT OF AWARD:</b>	\$ 6,475,000
<b>NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):</b>	\$ 2,600,012

**ELIGIBILITY PERIOD:** 10 years

#### **CONDITIONS OF APPROVAL:**

1. Applicant has not committed to locate the project in New Jersey, such as by executing a lease or a purchase contract, unless the decision to locate in New Jersey is completely contingent on the award of Grow New Jersey tax credits.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within 12 months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

#### **APPROVAL REQUEST:**

The Members of the Authority are asked to: 1) concur with the finding by staff that the jobs in the application are at risk of being located outside New Jersey on or before June 30, 2021; 2) approve the proposed Grow New Jersey grant to encourage Singer NY, LLC to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

**DEVELOPMENT OFFICER:** M. Sestrich

**APPROVAL OFFICER:** T. Wells

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



**MEMORANDUM**

**TO:** Members of the Authority

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

**DATE:** March 12, 2019

**SUBJECT:** Grow New Jersey – Appeal – Clover Health

Pursuant to the Program's enabling legislation, the Authority is to receive annual reports from grant recipients to ensure statutory compliance with the Program. Applicants whose Grow New Jersey incentive grants are deemed forfeited by EDA for failure to report have 20 days to submit appeals, which are reviewed by an independent Hearing Officer.

I reviewed the attached Hearing Officer's report along with Clover Health's written exceptions regarding the 2017 grant forfeiture and I concur with the recommendation that the forfeiture be upheld.

A handwritten signature in blue ink, appearing to be "TS" followed by a long horizontal stroke, is positioned above a solid black horizontal line.

Timothy Sullivan  
Chief Executive Officer



**MEMORANDUM**

**To:** Timothy Sullivan, CEO

**From:** Marcus Saldutti, Hearing Officer

**Date:** March 12, 2019

**Subject:** Clover Health, LLC Grow New Jersey 2017 Grant declination.

**Request:**

Consent of the members to the Hearing Officer's recommendation to uphold staff's determination to withhold the 2017 Grow New Jersey Tax Credit award for Clover Health.

**Background:**

Pursuant to the enabling legislation, the New Jersey Economic Development Authority ("Authority" or "EDA") administers the Grow New Jersey Assistance Program ("Program"), including the review of each application and compliance monitoring to ensure applicants continue to meet the requirements of the Program. As requested by the CEO, I am fulfilling the role of Hearing Officer to independently review this appeal and have completed that review with legal guidance from the Attorney General's Office.

**Previous Action and Appeal:**

By way of background, the Board of Directors of the EDA reviewed and approved Clover Health, LLC's ("the Company or "Applicant") application for Program tax credits on July 14, 2016. As required by the Program statute, the Company entered into an incentive agreement with the EDA that closed on May 12, 2017. Under Program regulations and the terms and conditions of the incentive agreement, the Company is required to submit a certified report within 120 days after the end of the Company's tax privilege period. N.J.A.C. 19:31-18.11. For the Company's 2017 taxable year, this certified report was due by April 30, 2018. On March 27, 2018, EDA sent an email to the Company as a reminder to submit its certified report, which indicated that a failure to do so would result in the forfeiture of the ability to use the 2017 Program Tax Credits in 2018. The Company did not submit the certified report until May 3, 2018.

On May 24, 2018, EDA notified the Company in writing that the 2017 portion of the tax credit award was forfeited for failure to timely submit the required annual report, which was due by April 30, 2018. On May 25, 2018, the Company submitted an email and letter to EDA requesting an exemption for the 2017 annual report submission, citing technical issues the Company experienced attempting to upload its report documents to the iDMS portal, which is the portal

EDA utilizes to collect Program documentation. On May 31, 2018, Charlene M. Craddock, EDA's Senior Incentives Compliance Officer, responded by email to notify the Company that its request for an exemption from the April 30, 2018 deadline was being denied because EDA staff did not find extenuating circumstances to exist. The email noted that the information provided by the Company showed that Company staff experienced technical issues with its computer systems at its first attempt to upload documentation the afternoon of April 30, 2018, and there was no record of the Company attempting to contact EDA prior to the deadline date regarding technical issues.

Subsequently, on June 12, 2018, the EDA received the Company's formal appeal from its legal counsel, Cynthia Borrelli, Esq. of Bressler, Avery, and Ross, P.C. On September 18, 2018, EDA also received a supplemental submission from the Company's counsel regarding the Applicant's attempts to comply with the annual report submission deadline.

**Legal Citation:**

Below are the Grow New Jersey reporting requirements that govern in this matter. These requirements are also incorporated in the Grant Agreement.

**N.J.S.A. § 34:1B-245**, as implemented in the regulations at N.J.A.C. 19:31-18.11;

**N.J.A.C 19:31-18.11** - Reporting requirements and annual reports – reads as follows:

(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. **This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period.** To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d);

The Grant Agreement language governing this matter reads as follows:

## **SECTION 11. ANNUAL COMPLIANCE REPORT; LETTER OF COMPLIANCE.**

After receipt of the Tax Credit Certificate, the Company shall submit to the Authority, no later than 120 days after the end of each Tax Period during the Commitment Period, the Annual Compliance Report as described below.

\*\*\*

**FAILURE TO SUBMIT A COMPLETE PACKAGE OF ALL INFORMATION REQUIREMENTS LISTED HEREIN ABOVE IN THIS SECTION WITHIN THE INDICATED TIMEFRAME WILL LEAD TO FORFEITURE OF THE TAX CREDITS ALLOCABLE TO THAT YEAR.**

### **Discussion:**

The Company presents two main arguments in support of its appeal of the grant forfeiture. The first is that technical difficulties encountered on the April 30<sup>th</sup> submission deadline constitute “extenuating circumstances.” The second argument is that EDA’s prior latitude afforded the Company in submitting documentation in support of its aggregate certificate in October 2017 estops EDA from forfeiting the grant for failure to submit annual reports by the April 30, 2018 deadline articulated in the regulations and in the grant agreement.

The first question to be answered in this appeal is whether the circumstances surrounding the Company’s failure to timely submit the annual report as required by the program regulations and the grant agreement constitute “extenuating circumstances.” It should be noted that neither the Grow regulations nor the statute specifically define extenuating circumstances.

NOLO press, a prominent legal publisher, defines “extenuating circumstances” as “surrounding or mitigating factors that reduce a party's level of responsibility or guilt, whether in a civil or criminal trial. Successfully showing extenuating circumstances might result in a lower damage award, a more lenient punishment, or a lesser charge.” The only EDA regulations that explicitly define, by way of example, “extenuating circumstances” is found in the grant conditions of the Business Employment Incentive Program (“BEIP”) regulations as indicated below:

#### **19:31-10.6 Grant conditions**

(j) Should any business which is awarded a grant under the Act fail to submit to the Authority a copy of its annual certification or submit its annual certification without the information required by the time periods specified in (g) and (g)1 above, any grant payment to be received by any such business shall be forfeited for the applicable reporting year unless the Chief Executive Officer of the Authority determines that there are extenuating circumstances excusing the timely filing required herein. For purposes of this subsection (h), “extenuating circumstances” means the destruction of the business's payroll records due to a fire, earthquake, flood, acts of terrorism, infestation, or the complete loss of the business's computer records. [emphasis added].

In addition to the above, other agencies in State government address “extenuating circumstances” in their regulations. Some of these are as follows:



**N.J.A.C. 10:69-6.8** is a Human Services regulation which addresses the time limitations on entitlement to fair hearings in cases of an action or inaction pertaining to Aid to Families with Dependent Children and reads, in pertinent part, as follows:

- (a) An applicant or beneficiary has a right to request a fair hearing which relates to an agency action or lack of action within 20 days of such action or lack of action.
- (b) If the request for a fair hearing relates to an agency action or lack of action that occurred more than 20 days prior to the date of the request, there shall be no entitlement to a hearing on such action or lack of action, unless extraordinary and extenuating circumstances exist as determined by the Division of Medical Assistance and Health Services. Extraordinary or extenuating circumstances are defined as conditions beyond the applicant or beneficiary's control. This could include, but is not limited to, the beneficiary's receipt of notice after due date or personal illness or incapacity. [emphasis added]

**N.J.A.C. 2:76-6B** – SADC grant agreement with county: SADC - is an Agriculture regulation pertaining to the State Agriculture Development Committee's process to award grants to Counties for the purchase of development easements and reads, in pertinent part, as follows:

- (a) In furtherance of an agreement for a grant for the purchase of a development easement by a county the SADC shall:
  - 1. Conduct a base line inspection of the properties designated in Schedule A of the agreement in cooperation with the county;
  - 2. Review the title commitment, final survey, and other necessary closing documents deemed to be complete and accurate by the county prior to the formal purchase of a development easement;
  - 3. Attend the formal closing for the purchase of a development easement to ensure that the SADC's interests and obligations are fully protected;
  - 4. Provide a grant to the county for the purchase of a development easement on the properties designated in Schedule A of the agreement subject to available funds, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. and N.J.A.C. 2:76-6.11, within 18 months of the SADC's final approval, but not prior to the closing for the purchase of the development easement;
  - 5. Consider a request by the county pursuant to N.J.A.C. 2:76-6.18A(b) 11, to extend the 18-month period to provide a grant to the county as follows:
    - i. The SADC may extend the 18-month period for one additional six-month period when it has determined that extenuating circumstances which are beyond the county's or landowner's control have caused the delay; [emphasis added]

**N.J.A.C 6A:9B-5.12** – Emergency certificate for candidates for educational services certificates - is an Education regulation pertaining to the State Board of Examiners and Certification's process to award emergency certificates for educational services candidates and reads, in pertinent part, as follows:

- (a) An emergency certificate may be issued at any time during the academic year.
- (b) All emergency certificates shall expire on July 31 of each year regardless of

issuance date.

(c) A chief school administrator or his or her designee may apply to the executive county superintendent for an emergency certificate for a candidate in authorized educational services areas if the chief school administrator or his or her designee can demonstrate the inability to locate a suitable certified candidate due to unforeseen shortages or other extenuating circumstances. [emphasis added] The executive county superintendent may approve the application if he or she determines there are no suitable certified candidates to fill the position.

**N.J.A.C. 7:14-8.9** – Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act – is an Environmental Protection regulation pertaining to the penalties associated with the failure to submit a complete discharge monitoring report and reads, in pertinent part, as follows:

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than \$ 100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than \$ 50,000 per month for any one discharge monitoring report, for any discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. To contest a civil administrative penalty assessed pursuant to this section, a violator shall submit evidence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof, within 30 days after the date on which the effluent parameter information was required to be submitted to the Department. [emphasis added] If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

**N.J.A.C. 10:71-5.3** – Income exclusions - is a Human Services regulation pertaining to the exclusion of certain income for Medicaid purposes and, in pertinent part, reads as follows:

15. Income received as compensation for services performed as an employee, or from self-employment, by an unmarried student who is under 22 years of age, shall be excluded to the extent that such income does not exceed \$ 1,200 in a calendar quarter and/or \$ 1,620 per calendar year.

i. A person shall be considered a student if he or she meets the following criteria:

(1) He or she is enrolled in a course or courses of study and attends to the extent

required for continued enrollment. Specifically, a person must attend:

- (A) A college or university at least eight semester or quarter hours weekly; or
- (B) A secondary school at least 12 clock hours weekly; or
- (C) A course of vocational or technical training (other than at a secondary school, college, or university) designed to prepare the student for gainful employment involving shop practice, at least 15 clock hours a week; or without shop practice, at least 12 clock hours per week; or
- (D) Less than the appropriate requirements in (a)15i(1)(A), (B), and (C) above, if it is determined that there are extenuating circumstances beyond the control of the student and he/she is pursuing a course of study comparable to the requirements of (a)15i(1)(A), (B), and (C) above. [emphasis added]

As is evident from the above - which should be noted are not binding on EDA for purposes of this appeal - the overriding themes among these regulations governing programs from EDA and other State entities addressing “extenuating circumstances” are the elements of “control” and “foreseeability.”

In this matter, the Company failed to comply with a program requirement; which requirement is plainly stated in the regulations and in the language of the grant agreement itself as indicated and which Company was reminded of in an email EDA sent on March 27, 2018. This is succinctly summed up in EDA’s Senior Incentives Compliance Officer’s May 29, 2018 email to the Company’s May 24, 2018, request for exemption:

*“This is in response to your letter dated May 24, 2018 requesting reconsideration of the forfeiture of Clover Health, LLC (Clover) 2017 Grow NJ Tax Credit. As indicated in the letter dated May 24, 2018, the 2017 Grow NJ Tax Credit is being forfeited for not submitting the certified annual report within 120 days of the end of Clover’s privilege period pursuant to the Grow NJ Regulations and the Incentive Agreement executed by Clover on May 10, 2017. In addition, an annual report reminder email was sent to Clover on March 27, 2018 which indicated failure to do so would result in the forfeiture of the 2017 Grow NJ Tax Credit. [emphasis added]*

*Please be advised EDA staff reviewed the evidence you had submitted for consideration of extenuating circumstances. The information provided shows that Clover staff experienced technical issues with its computer systems at the first attempt to upload documentation to EDA portal midafternoon on April 30th; we have no record that Clover staff reached out to EDA staff on or before April 30th regarding these issues.*

*Although you indicated that EDA staff had offered flexibility to help resolve upload errors after the 90 day period required to approve the project certification, this was not a date imposed by law with the consequence, absent extenuating circumstances approved by the Authority, of a forfeiture of its Grow NJ Tax Credits; rather failure to meet the 90 day period only jeopardized the year for which the Grow NJ Tax Credit would have been issued.*

*Therefore, EDA staff does not consider the explanation to be extenuating circumstances excusing Clover's failure to comply with the deadline."*

Furthermore, after having experienced technical issues on multiple different occasions in submitting the aggregate certificate in the Fall of 2017 as detailed on page 2 of the Company's Appeal, the Company inexplicably waited until the last minute to attempt the required annual report submission and made no effort to reach out for assistance regarding these issues before the April 30<sup>th</sup> deadline. In fact, the Certification submitted with the Appeal by Michelle Tirado, a business operations associate for the Company, indicates that the Company decided to submit the required documents on April 30, 2018, the deadline for submission.

These facts demonstrate that technical issues were foreseeable as they were previously experienced on multiple occasions by the Company last Fall in submitting documents for the aggregate certificate. With this foreknowledge and prior experience, the Company's decision to wait until the deadline and to risk the grant for failure to timely report was inexplicable and entirely within its control; even more so as the Company was reminded of the deadline by EDA staff five weeks before the annual report was due.

As the June 4, 2018 email from Michelle Tirado to Charlene Craddock conceded:

*"We are extremely sorry for the burden and frustration we have caused you and your team. We should have responded faster, been more diligent in our confirmation, and taken more decisive action to make sure we met designated deadlines for Clover's Annual Report. We failed to do that here and now are dealing with the consequences. We are incredibly embarrassed."*

The Company also presents the argument that EDA is essentially estopped from forfeiting the grant for the current year because EDA previously extended latitude for Clover's late submissions to obtain the "aggregate certificate", thereby inducing the Company to rely upon such latitude with respect to the annual report submission.

The aggregate certificate relates to a company's certifications "...that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met..." and that "...within 90 days of the submission of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications..." N.J.A.C. 19:31-18.7(g). This is separate and apart from the statutory deadline for companies to submit the annual report under N.J.A.C 19:31-18.11, which does have a deadline that if unmet will result in forfeiture of the grant.

The Company states in its appeal that EDA's "...past pattern and practice, together with direct communications between Clover representatives and Board staff, left Clover with the false and deceiving impression that the Board would accommodate such technical difficulties without taking the draconian step of declaring the 2017 tax credit forfeited."

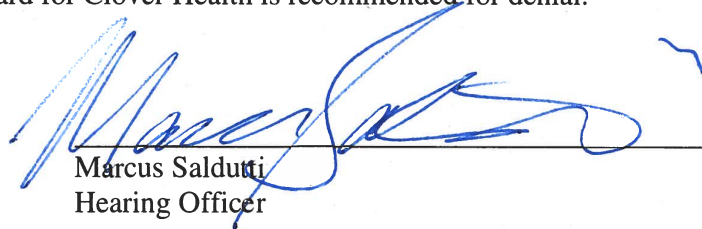
Though EDA previously offered the Company assistance and flexibility regarding the 90-day period for submissions required for obtaining the aggregate certificate, this was a courtesy and not a mandate imposed by law or a condition of the grant agreement that would have risked grant forfeiture absent an extenuating circumstance. Nothing in EDA's actions was "false" or "deceiving". The presumption that the legal and contractual deadline for submitting the annual report was somehow malleable was a leap the Company made on its own without any basis in the regulations or the agreement and in no way can be read to constitute a waiver of the requirements therein.

In fact, the September 5, 2017 letter from Charlene Craddock to Rachel Fish, the Clover Health Chief of Staff, merely states that "If a completed certification package is submitted after October 1, 2017, a 2017 aggregate certification will not be guaranteed." It is clear that EDA did not include any waiver of deadline or any statement upon which the Company could reasonably rely to conclude that the annual reporting deadline was flexible.

The Hearing Officer finds that the circumstances surrounding the Company's failure to timely submit its annual report to EDA were foreseeable and entirely within its control and are not extenuating circumstances that would garner a departure from the requirements of the regulations and grant agreement. Furthermore, the Company's assertion that EDA's prior good will in processing documents for the aggregate certificate was somehow false or deceiving is utterly without merit.

**Recommendation:**

As a result of careful consideration of the above appeal in consultation with the Attorney General's Office, the 2017 Grow New Jersey award for Clover Health is recommended for denial.



Marcus Saldutti  
Hearing Officer

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December 6, 2018

**Via E-Mail & U.S. Mail**

Marcus J. Saldutti, Esq.  
New Jersey Economic Development Authority  
24 Commerce Street, Suite 301  
Newark, New Jersey 07102

**Re: Response to Memorandum on Clover Health, LLC GrowNJ Grant  
Declination**

Dear Mr. Saldutti:

This firm represents Clover Health, LLC, together with its affiliates, including Clover Insurance Company (a New Jersey domestic licensed health insurer) (collectively, "Clover") in the above-referenced matter. We are in receipt of your December 3, 2018 memorandum to Mr. Timothy Sullivan, Chief Executive Officer of the New Jersey Economic Development Authority ("EDA"). While Clover appreciates the thorough analysis presented in the memorandum, it respectfully disagrees with the conclusion and will accept your invitation to file written comments and exceptions to the memorandum as set forth below.

Firstly, Clover's submission appealing the forfeiture determination provides documentation that the EDA has itself acknowledged that its technological platform for submitting GrowNJ grant applications and annual reports is flawed. In documenting the exchange(s) between Clover and EDA in the course of submitting the October 2017 Aggregate Certificate Package, EDA representatives conceded that the submission platform was flawed, and permitted Clover a courtesy extension of time (5 days) to complete the submission. Clover's intent was not to argue that such past acknowledgement of the EDA system's technological flaws legally estops the EDA from making any determination in this matter, but rather merely evidences the fact that certain technological faults exist with the EDA's platform that are beyond the control of Clover and other grant applicants and recipients.

Secondly, Clover notes that although the memorandum cites numerous definitions of "extenuating circumstances" sourced in one instance from another EDA regulation, and in all other instances from other agencies' regulations, no cited definition is applicable to the

## BRESSLER, AMERY &amp; ROSS

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December 6, 2018

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circumstances at issue. As the memorandum notes, N.J.A.C. 19:31-18, which governs the GrowNJ credit program, excludes any definition of “extenuating circumstances” from the regulation, thus leaving application of the concept to the EDA’s sound discretion. In fact, the absence of a definition of “extenuating circumstances” from the GrowNJ regulations, contrasted with the express and specific definition of the same term in another, wholly inapplicable EDA regulation, provides stronger indicia of regulatory intent that the EDA be provided *more* flexibility and leeway with regard to acknowledging extenuating circumstances in the GrowNJ tax credit program than in the Business Employment Incentive Program (“BEIP”) regulation cited by the memorandum (N.J.A.C. 19:31-10). In short, EDA could have elected to narrowly define “extenuating circumstances” to be limited to the destruction of records by catastrophic event, but instead chose to exclude such definition. As such, EDA’s interpretation of “extenuating circumstances” is subject not to incorporation by reference to unrelated regulation, but to the general “arbitrary and capricious” standard applicable to agency action. See, e.g., County of Monmouth v. Dep’t of Corr., 236 N.J. Super. 523, 525 (App. Div. 1989).

Clover submits that it has provided ample evidence that its staff made a concerted and good faith effort to comply with the deadline for submission of an annual certification package, and was thwarted not by its own failures *per se*, but by an inherently flawed and outdated technological platform maintained by the EDA. Clover has compiled and was fully prepared to submit a complete annual certification package on the date specified by the EDA’s rules, but was prevented from doing so by circumstances inherently outside Clover’s control. To enforce forfeiture of the tax credit under such circumstances effectively renders the “extenuating circumstances” language of N.J.A.C. 19:31-18.18 superfluous, and hence such interpretation is both arbitrary and capricious. Moreover, such forfeiture determination vitiates the fundamental policy purposes for the GrowNJ tax credit by demonstrating a restrictive regulatory environment for new business and actively discouraging rapidly growing technology companies from considering GrowNJ tax incentives for locating in New Jersey.

For these reasons, Clover respectfully requests that the EDA reconsider its determination(s) regarding forfeiture of Clover’s 2017 GrowNJ tax credit.

Respectfully submitted,



Cynthia J. Borrelli

CJB/hv

cc: Erica Pham, Esq. (via e-mail)  
Michael J. Morris (via e-mail)



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



**MEMORANDUM**

To: Members of the Authority

From: Tim Sullivan  
Chief Executive Officer

Date: March 12, 2019

RE: **CRT Holdings, LLC**  
Economic Redevelopment and Growth Grant Program  
P #45119

**Request**

As created by statute, the Economic Redevelopment and Growth (ERG) Program offers state incentive grants to finance development projects that demonstrate a financing gap. Applications to the ERG Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the "Economic Opportunity Act of 2014, Part 3," P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 52 :27D-489a et seq. / N.J.A.C. 19:31-4 and the program's rules, developers or non-profit organizations on behalf of a qualified developer, must have a redevelopment project located in a qualifying area, demonstrate that the project has a financing gap, meet minimum environmental standards, meet a 20% equity requirement, and, except with regards to a qualified residential project, mixed-use parking project, or a university infrastructure project yield a net positive benefit to the state. With the exception of residential ERG projects, mixed-use parking projects, and university infrastructure projects, grants are made annually based on the incremental eligible taxes generated as a result of the project.

The Members are asked to approve the application of CRT Holdings, LLC (the "Applicant") for a Project located at Route 440 and Carbon Place, Jersey City, Hudson County (the "Project"), for the reimbursement of eligible taxes generated by the project per the ERG program of the Authority as set forth in the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161 ("Act").

The total costs of the Project are estimated to be \$31,130,134 and of this amount, \$30,040,579 are eligible costs under the ERG program. The Applicant is eligible for an ERG in the amount of 30% of eligible costs which equates to \$9,012,173 due to the location of the project being deemed a Food Desert. However, the Project's net benefit analysis results in the award being limited to \$8,746,104. Therefore, the recommendation is to give 29.11% of actual eligible costs not to exceed \$8,746,104.

### **Project Description**

The Applicant proposes to construct a new 73,413 square foot supermarket and 241 parking spaces located at Route 440 and Carbon Place Jersey City, Hudson County. Currently, the site is being utilized by the New Jersey City University ("NJCU") as a parking lot. NJCU currently owns the property that is leased to a single tenant, CRT Holdings, LLC, for a term of 49 years and annual contract rent of \$650,000. The site is 3.82 acres and consists of two parcels of land separated by Hernandez way. One parcel containing 2.77 acres will contain the Shoprite commercial building. The second lot will consist of auxiliary parking lot for employees. Due to space constraints on the site, the property will contain approximately 209 below building parking spaces. Patrons from the lower parking level would access the upper retail floor via four elevators. The members of the EDA Board are concurrently considering NJCU for approval under the Higher Education Public Private Partnership Program.

The development cost for the property is anticipated to be higher than a typical project due to land constraints. In order to get sufficient parking for the store, the store is being raised a level and will accommodate parking underneath the main structure. There are also several additional costs, including, unsuitable load bearing soils that will require piles, as opposed to regular spread footings. Construction is anticipated to be completed in 24 months.

The Applicant anticipates complying with green building standards through utilizing LED lighting and latest energy efficient refrigeration and HVAC systems. Upon completion of this Project there is expected to be 200 new, full time, direct jobs and an estimated 125 construction jobs.

### **Project Ownership and Developer Capacity**

Currently the site is being utilized by the New Jersey City University ("NJCU") as a parking lot. NJCU currently owns the property that is leased to the CRT Holdings, LLC for a term of 49 years and annual contract rent of \$650,000. The CRT Holdings, LLC will be 90% owned by Hampshire Real Estate Companies, LLC and 10% owned by Crossroads Companies, LLC.

The Applicant has received an LOI from Inserra Supermarkets, Inc. to lease the space with the anticipation of operating a Shoprite Supermarket. Inserra Supermarkets, Inc. has been in business for over 75 years, operates 22 supermarkets and is the third largest ShopRite operator.

Hampshire Real Estate Companies is a privately held real estate investment firm. The firm is a fully integrated real estate development firm with 50 years of operational experience in all aspects of real estate investment including acquisition, developing, leasing, repositioning, managing, financing and disposition of properties. Hampshire Real Estate Companies is headquartered in Morristown New Jersey and employs 95 real estate professionals.

Crossroad Companies specializes in the acquisition, development and construction of supermarket anchored shopping centers as well as mixed-use residential projects. Crossroad Companies offers advisory services to a diverse array of clients ranging from retailers to owners and lenders of commercial properties. New Jersey properties that the Crossroad Companies has developed includes redevelopment of the Wayne Hills Mall in Wayne Township, redevelopment of a former Pathmark supermarket in Fair Lawn, development of free-standing supermarket buildings in Wyckoff and Elizabeth, and development of supermarket anchored, multi-tenant shopping centers in Elmwood Park, West Milford, Hillsdale, Wallington, Hackensack, Lyndhurst and Somerset.

**Project Uses and Sources**

The Applicant proposes the following uses for the Project:

<i><b>Uses (thousands)</b></i>	<i><b>Total Amount</b></i>	<i><b>ERG Eligible Amount</b></i>
Land Costs	\$ 1,125,000	\$1,125,000
Hard Cost Improvements	\$24,604,318	\$24,604,318
Professional Services	\$2,289,250	\$2,289,250
Financing and Other Costs	\$1,022,011	\$1,022,011
Contingency	\$1,000,000	\$1,000,000
Development Fee	\$1,089,555	\$0
<b>TOTAL USES</b>	<b>\$31,130,134</b>	<b>\$30,040,579</b>

The ERG ineligible costs of \$1,089,555 consists of the development fee of \$1,089,555 which was excluded from the eligible ERG costs.

<i><b>Sources of Financing</b></i>	<i><b>Amount</b></i>
Axiom Capital Corporation Loan	\$ 24,904,104
Applicant Equity	\$ 6,226,030
<b>Total</b>	<b>\$ 31,130,134</b>

The Applicant received a letter of interest from Axiom Capital Corporation dated June 25, 2018 for a construction loan with a term of up to 12 months that will convert into permanent financing for a term of 84 months with payments based on a 30-year amortization at an interest rate of 6% in an amount of \$24.9 million. ERG projects are required to have a minimum of 20% equity in the Project. The Applicant has demonstrated the ability to provide \$6.2 million of equity toward the project or 20% equity in the Project.

**Gap Analysis**

EDA staff has reviewed the application to determine if there is a shortfall in the project development economics pertaining to the return on the investment for the developer and their ability to attract the required investment for this project. Staff analyzed the pro forma and projections of the project and compared the returns with and without the ERG over 12 years (two years to build and 10 years of cash flow).

<b>Without ERG</b>	<b>With ERG</b>
Equity IRR -1.56%	Equity IRR 10.52%

As indicated in the chart above, the project would not otherwise be completed without the benefit of the ERG. **With the benefit of the ERG, the Equity IRR is 10.52% which is below the Hurdle Rate Model provided by EDA's contracted consultant Jones Lang LaSalle which indicates a maximum IRR of 14.95% for a project located in Jersey City.**

**Net Positive Benefit Analysis:**

NJSA 19:31-4.5 requires that in order to determine eligibility for the ERG award, the Authority must undertake a fiscal impact analysis by determining whether public assistance provided to the proposed development will result in net positive economic benefits to the State for a period equal to 75% of the useful life of the Project, not to exceed 20 years.

The Authority has conducted the required Net Benefit Analysis with the following taxes included in the Net Positive Benefit calculation:

- 1] 66% of the incremental annual corporate business tax;
- 2] 66% of the incremental gross income tax;
- 3] 100% of the incremental one-time tax generated from the Project's construction;
- 4] 100% of the incremental indirect tax revenues from spending and earnings;

The net positive benefit analysis includes 200 new full-time positions with an annual blended wage of approximately \$26,907 before benefits, for a total annual payroll of \$5,381,400. Construction cost for the project are \$24,604,318 however the model limits the construction costs to \$300 per square foot or \$22,023,900.

The ERG award to CRT Holdings, LLC is equal to lesser of (1) 30% of eligible costs or (2) an amount that results in the projects present value of the total benefit to the State over the analysis period to be a minimum 110% of the award. The Project's total gross present value of the benefit to the State totals \$7.7 million. As per the June 1, 2012 NJEDA Economic Impact Model policy memo a project is eligible for 25% bonus award for being considered an Urban Grocery Store. After the 25% bonus award and 110% coverage ratio is applied to the project the net benefit to the state is \$8.75 million.

#### **Other Statutory Criteria**

**The economic feasibility and the need of the redevelopment incentive agreement to the viability of the project.**

A review of the market study by KW Commercial MTD Realty Group updated March 22, 2018 and originally written as of July 17, 2015 concludes the financial and operating projections are reasonable. The market study found that there are four competitors operating within the projects market area, offering a combined selling square footage of 99,340. The population within the projects market area is approximately 108,000. The ratio of supermarket selling square feet per person is .092. With the proposed Shoprite with a size of 54,400 selling square feet, the ratio of supermarket selling square feet per person is 1.42 selling square feet per person. The National Average, according to the Food Marketing Institute is 5.29 selling square feet per person. Due to the fact that the ratio of supermarket selling square feet per person falls well below the National Average the Market Study defines the trade area of the project as a "Food Desert" thus illustrating that this is a significantly under-served market. The CEO has determined the project is in a location where residents lack adequate access to nutritious foods.

Based on the expected tax generation of \$1,050,532 in year one (with modest increases each year thereafter), in the amount of incremental State and local direct taxes over the 20-year period and a 75% reimbursement of eligible taxes, there are adequate funds to support the reimbursement of taxes to the Applicant as outlined in the analysis. Per the project's financial returns as mentioned earlier and to obtain the funding necessary to develop this project, there is a demonstrated need for the redevelopment incentive grant agreement.

Based on the information provided, the Project is economically feasible based on the track record and capacity of the Applicant and their development team as well as the committed funding sources for the entire cost budget, which is available to this project.



**The degree to which the redevelopment project within a municipality which exhibits economic and social distress, will advance State, regional, local development and planning strategies, promote job creation and economic development and have a relationship to other major projects undertaken within the municipality.**

Jersey City is a smart growth planning area under the State's strategic plan for redevelopment. A part of the Smart Growth Plan is to help provide Fresh Foods in the underserved areas or "Food Deserts". The proposed project is situated in an area designated as a Food Desert. Due to the project selling fresh foods, the project is within the State of New Jersey's planning strategy. The New Jersey Food Access Initiative (NJFAI) stresses the elimination of New Jersey's Food deserts and cites benefits including a reduction of obesity, leading to heart disease and diabetes in these underserved markets as a main goal. By providing more convenient access to healthy foods, the project will promote the goals of the NJFAI.

A supermarket is a complex facility to construct with refrigeration lines, extensive electrical and plumbing needs. Due to added complexity of building on this site including the construction of a parking area under the store, the construction period is anticipated to be longer than what would be expected of a comparably sized retail facility. Accordingly, the number and length of employment for construction jobs will last for approximately 24 months as opposed to 9-12 month typically required for a one-story retail structure. It is estimated that an average of 125 construction jobs will be created during construction. Post construction the Shoprite Supermarket is expected to create 200 full-time equivalent permanent positions.

There are numerous new economic development projects within Jersey City however most of these projects are located within the Downtown and Waterfront Areas. This project is on the western side of the City that is need of redevelopment and will provide needed goods and services for existing residents.

### **Recommendation**

Authority staff has reviewed CRT Holdings, LLC application and finds that it is consistent with eligibility requirements of the Act. The Treasury has reviewed the application and notified the Authority of the adequacy of the Project's estimated tax revenues and specified the percentage reimbursement of total project costs. Therefore, it is recommended that the Members approve the application and authorize the CEO of the Authority to execute an Incentive Grant Agreement with the Applicant and the State Treasurer, subject to final review and approval of the Office of the Attorney General. All disbursements under the ERG program are subject to annual appropriation by the New Jersey State Legislature.

Closing of the ERG Agreement and the reimbursement of any taxes is contingent upon the Applicant meeting the following conditions regarding the Project within twelve months of approval:

1. Financing commitments for all Project funding sources are consistent with the information provided by the Applicant in its application to the Authority for the ERG; and
2. Evidence of site control and site plan approval for all properties within the Project;
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project;

Reimbursement shall commence upon:

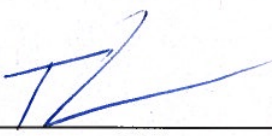
1. Completion of construction and issuance of a permanent Certificate of Occupancy;
2. Submission of a detailed list of all actual eligible costs, which costs shall be satisfactory to the NJEDA; and
3. New tax revenues have been paid to the NJ Treasury and appropriated.

The NJ Treasury annually tracks taxes received from job sites and remits reimbursement equal to a percentage of funds collected during the year.

It is recommended that the members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction.

**Total Actual Eligible Project Costs: \$30,040,579**

**Eligible Recommended Award:** 29.11% of actual eligible costs, not to exceed \$8,746,104 to be paid over 20 years.



Tim Sullivan

**Prepared by:** Matt Boyle





## MEMORANDUM

**TO:** The Members of the Authority

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

**DATE:** March 12, 2019

**SUBJECT:** TDAF I Pru Hotel Urban Renewal Company, LLC ("TDAF") Commercial Economic Redevelopment and Growth ("ERG") Grant

**Request:**

Consent to the assignment of TDAF's commercial ERG agreement to MCR Newark Urban Renewal Company, LLC ("MCR"), which will own and operate the project facility, consisting of a Courtyard by Marriott Newark Downtown and approximately 14,000 sf of retail space.

Other than the conditions described below, all other terms of the original ERG agreement signed by the Authority and the State Treasurer on May 8, 2013, will remain in full force and effect.

**Background:**

TDAF is a real estate development entity formed to develop the Marriott Newark Downtown project in Newark. TDAF is owned by the State of New Jersey Common Pension Fund E (55%), Metropolitan Life Insurance Company (27.5%), The Prudential Insurance Company of America (16.5%), and Tucker Investors, LLC (1%).

Pursuant to a redevelopment plan adopted by the City of Newark, TDAF developed a 30.5-acre site at 842-868 Broad Street, Newark as the Courtyard by Marriott Newark Downtown. The 105,500 sf seven-story building includes a 150-unit hotel and 14,000 sf of ground-floor retail space.

On October 20, 2010 the Members approved the application for an ERG for TDAF I Pru Hotel for up to 20% of eligible project costs with an aggregate amount not to exceed \$6,583,637 to fill a financing gap on the construction of the hotel.

In 2012, the Members approved a \$6.57 million, 20-year, 4.50% fixed rate Redevelopment Area Bond ("RAB") to be repaid through Payment In lieu of Taxes ("PILOT") Agreement from the City to partially finance the project.

TDAF signed a State Economic Redevelopment Growth Incentive Grant Agreement, which was executed on May 8, 2013, and the project certified completion in 2015. The award was adjusted

to \$6,056,362 based on actual eligible costs of \$30,281,811. Pursuant to the ERG Agreement, TDAF will receive reimbursements of 75% of the sales tax and State Hotel Occupancy Fees generated by the businesses operating at the project site as verified by the NJ Division of Taxation each year over 20 years (subject to appropriation.)

TDAF received an initial reimbursement of approximately \$802,000 in the State Fiscal Year (“SFY”) 2016. Additional reimbursements of approximately \$417,000, and \$431,000 were paid for SFY17 and SFY18 respectively. TDAF has recently made application for its SYF19 reimbursement, which is currently under review at the Division of Taxation. To date, \$4,391,000 remains available as reimbursement to the developer.

On December 13, 2018, TDAF entered into a Sale and Purchase Agreement with MCR to sell the hotel project, including the real property, and the business for \$20,250,000. The buyer has valued the ERG at \$2,836,058 as part of the transaction. This was calculated using a projection of ERG cash flows occurring each year from 2019 through 2026 discounted at an 8% interest factor. Closing is scheduled for early April 2019 with operations of the Marriott Newark Downtown to be turned over at that time. The Sale and Purchase Agreement does not allocate any of the purchase price to the ERG incentive although the assignment of payment under the ERG Agreement is a condition of the sale.

TDAF has made a request for a consent to a change of ownership on the RAB concurrent to this modification application, which is currently under review.

TDAF is now requesting consent to the assignment of the ERG agreement to MCR. The ERG statute requires consent by both EDA and the State Treasurer. The ERG regulations provide that the consent by EDA and the State Treasurer to an assignment “shall not be unreasonably withheld.” This assignment to purchaser of a project is novel, as the Authority’s experience to date with assignments other than absolute or collateral assignments to lenders providing construction or permanent financing has been the approval of the assignment in November 2018 of the TDAF I Springfield Avenue Holding Urban Renewal Company ERG to a new operator upon the sale of that project to a Real Estate Investment Trust. Accordingly, EDA staff reviewed the request in consultation with the Attorney General’s Office and conferred with Treasury staff. An intended result of this absolute assignment would be for MCR to step into the shoes of TDAF as the ERG grant recipient and the party to the ERG Grant Agreement.

While the original approval of the ERG relied on the financial wherewithal and development expertise of the developer to complete the project, the approval did not reference the long-term operation or ownership of the project other than through a proforma used to analyze the return on investment. The proforma itself does not refer or appear to rely on any particular owner or operator of the project.

MCR, the entity that will be assigned the ERG, is a special purpose entity created to purchase and operate the hotel and is owned by: MCR Hospitality Fund REIT Holding LLC, wholly owned by MCR Hospitality Fund REIT LLC, which is wholly owned by MCR Hospitality Fund LP. MCR is the 6<sup>th</sup> largest hotel owner-operator in the United States and was established in 2006, and owned by Richard Finvarb, of Miami, Florida. They currently own and operate 94

hotels valued at approximately \$2.0 billion, including the Renaissance Newark Airport hotel at 1000 Spring Street in Elizabeth, NJ and have been an active owner-operator in New Jersey since 2007.

The assignment requires EDA and the State Treasurer's consent for any changes in the operating entity and that any entity receiving ERG reimbursements substantiate operation of the project. Additionally, staff proposes conditioning the consent of the assignment on an amendment to the ERG agreement that requires EDA and the State Treasurer's consent for any changes in the entity operating the project and that any entity receiving ERG reimbursements substantiate its operation of the project.

**Recommendation:**

Consent to the assignment of TDAF's commercial ERG agreement to MCR, which will own and operate the Courtyard by Marriott Newark Downtown as the new owner of the hotel and approximately 14,000 sf of retail space.

All other terms of the original ERG agreement signed by the Authority and the State Treasurer on May 8, 2013, will remain in full force and effect.

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

Prepared by: Susan Greitz

## **UEZ/ENERGY SALES TAX EXEMPTION PROGRAM**



**MEMORANDUM**

To: Members of the Authority

From: Tim Sullivan  
Chief Executive Officer

Date: March 12, 2019

Subject: Ardagh Glass Inc.  
UEZ Energy Sales Tax ("U-STX") Program

**Request:**

Approval of Ardagh Glass Inc.'s application to participate in the U-STX program for one year. The estimated annualized U-STX benefit to Ardagh Glass Inc. is \$726,236 which is based on the prior twelve months electric and gas usage.

**Background**

Ardagh Glass Inc., established in 1995, is a UEZ Certified manufacturer of glass products located in Bridgeton, Cumberland County. The company was approved to participate in the U-STX program in March 2006 and re-qualified each year through December 31, 2016. However, due to the temporary sunset of Bridgeton's UEZ status from December 31, 2016 to May 30, 2018, Ardagh Glass Inc.'s renewal application was not received in 2017 and therefore it is now considered an initial application over \$100,000 which requires Board approval.

On December 12, 2017, Ardagh Glass Inc. was also approved for a GROW New Jersey Award not to exceed \$23,400,000 to incent the retention of 390 employees at the same location. Ardagh Glass Inc. is currently working to satisfy its conditions to maintain approval.

To qualify for a U-STX, a company must be a UEZ-certified manufacturer with at least 250 full-time employees, at least 50% of whom are involved in the manufacturing process. Ardagh Glass Inc. has 379 full-time employees in a UEZ certified facility in Bridgeton City, of which 96% are involved in the manufacturing process. The Department of Labor and Workforce Development has confirmed that the company is in good standing. The company has also received a valid Tax Clearance Certificate from the Division of Taxation. As such, Ardagh Glass Inc. has satisfied the program requirements. The estimated annualized U-STX benefit to Ardagh Glass Inc. is \$726,236 which is based on the prior twelve months electric and gas usage.

**Recommendation**

Approval of Ardagh Glass Inc.'s application to participate in the U-STX program for one year.

A handwritten signature in blue ink, appearing to be "TS", is written over a horizontal line.

**Prepared by: Wendy Wisniewski**

## **BOND PROJECTS**

## **BOND RESOLUTIONS**



# NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## PROJECT SUMMARY - STAND-ALONE BOND PROGRAM

**APPLICANT:** 36-54 Rector Urban Renewal LLC (Newark City)

P38101

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

\* - indicates relation to applicant

**PROJECT LOCATION:** 36-54 Rector Street

Newark City (T/UA)

Essex

**APPLICANT BACKGROUND:**

In August 2008, The City of Newark approved a redevelopment plan and a redevelopment area pursuant to the Local Redevelopment and Housing Law (NJSA 40:12A-1) as amended and supplemented. Included in this area is the project site at 36-54 Rector Street in Newark that will be developed by 36-54 Rector Urban Renewal LLC ("Rector LLC").

Rector LLC is a single purpose real estate entity owned by Boraie Development LLC ("Boraie"). Boraie, founded in 1980 by Omar Boraie, offers an array of services in the urban real estate market. The project consists of the development of 169 rental apartment units, 7,640 square feet of ground floor retail space, residential lobby and amenity space and 117 parking spaces for tenants. The project site is the former Newark Public School Science High School and is located adjacent to the NJ Performing Arts Center.

In April 2012, the Authority approved an Urban Transit Hub Tax Credit Grant (HUB) to an affiliate, 36-54 Rector Street LLC in connection with this project. The HUB is currently under review to close on project agreement and issuance of the total tax credit certificate.

**APPROVAL REQUEST:**

At the request of the City of Newark, Authority assistance will assist in the financing of a portion of the redevelopment of the project site by Rector LLC. The bonds will be repaid from Payments-In-Lieu-Of-Taxes ("PILOT" payments) to be made by the redeveloper and enabled by a tax abatement on the property, pursuant to the Redevelopment Area Bond Financing Law ("RAB"). The applicant's RAB application was approved by the Local Finance Board ("LFB") on April 10, 2013.

Other sources of funds include conventional debt, the Applicant's equity and proceeds from the HUB tax credits.

**FINANCING SUMMARY:****BOND PURCHASER:** Prudential Insurance Company of America (or an affiliate) Direct Purchase**AMOUNT OF BOND:** \$5,330,000 Taxable Redevelopment Area Bond**TERMS OF BOND:** up to 30 years; Fixed interest rate of 5%**ENHANCEMENT:** N/A**PROJECT COSTS:**

Construction of new building or addition	\$57,570,000
Engineering & architectural fees	\$2,500,000
Interest during construction	\$2,500,000
Debt service reserve fund	\$1,850,000
Finance fees	\$1,500,000
Renovation of existing building	\$500,000
Legal fees	\$300,000
Accounting fees	\$180,000

**APPLICANT:** 36-54 Rector Urban Renewal LLC (Newark City)

**P38101**

**Page 2**

**TOTAL COSTS**

**\$66,900,000**

**JOBS:** At Application

0 Within 2 years

20 Maintained

0 Construction

441

**PUBLIC HEARING:** N/A

**BOND COUNSEL:** Chiesa, Shahinian & Giantomasi,

**DEVELOPMENT OFFICER:** P. Ceppi

**APPROVAL OFFICER:** T. Wells

**PUBLIC HEARING ONLY**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**SUBJECT:** Cedar Crest Village, Inc. ("Cedar Crest")  
\$73,779,000 Tax-Exempt Bonds (P36863) – Modification  
**Public Hearing Only**

**Request:**

This memorandum is presented for the public hearing required by the Internal Revenue Code to modify and reduce the interest rate on the Bonds and allow additional time to repay the Bonds as agreed to by BB&T, the Bondholder, and Cedar Crest, as set forth in the attached EDA Resolution dated February 19, 2019.

Pursuant to Section 147 (f) of the Internal Revenue Code, notices were published in the Star Ledger, the Daily Record, and the Trenton Times on February 25, 2019. The EDA Board Meeting of March 12, 2019 will serve as the public hearing.

A handwritten signature in blue ink, appearing to be "TS", is written above a horizontal line.

Prepared By: Angus Comly



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** February 19, 2019

**SUBJECT:** Cedar Crest Village, Inc. ("Cedar Crest")  
\$73,779,000 Tax-Exempt Bonds (P36863) - Modification

**Request:**

The Members' consent is requested to amend the Bonds, as agreed to by the Bondholder and Cedar Crest, to modify and reduce the interest rate on the Bonds and allow additional time to repay the Bonds, as set forth below.

**Background:**

Cedar Crest Village, Inc. ("Cedar Crest" or the "Borrower") is a 501c (3) not-for-profit organization established to operate a continuing care retirement community located on 125 acres in Pompton Plains, New Jersey. The Cedar Crest community provides independent living, assisted living, memory care and skilled nursing units. Within the 1.8 million square foot building, the Company offers 1,500 independent living units, 980 assisted living units, and 113 skilled nursing beds. The project is managed by Erickson Retirement Communities.

Since 2001 the Authority has issued Bonds on behalf of Cedar Crest including, \$78.9 million in 2001 Series tax exempt Bonds to provide permanent financing for Cedar Crest, and \$80.7 million 2006 Series tax exempt Refunding Bonds which were later defeased by a taxable loan.

In 2011, the Members approved \$73.779 million in Series A, B and C tax-exempt bonds enabling Cedar Crest to refinance the taxable loan used to defease EDA's 2006 Refunding Bonds, and to pay a portion of the costs of issuance. The Bond was directly purchased by Bank of America, PNC Bank, and BB&T and has a 25-year term with a variable LIBOR-based interest rate, which was fixed with an interest rate swap agreement at a rate of 2.20% for three years. In 2014, BB&T purchased the Series A Bond from Bank of America and the Series B Bond from PNC, resulting in BB&T becoming sole bondholder.

The Jobs and Tax Act of 2017 reduced the top federal corporate income tax rates from 35% to 21%. Based on the Bonds' existing formula, the interest rate on the Bonds would increase from a variable rate equal to 78% of the 1-Month LIBOR plus 132bps (3.28% as of 1/31/19) to an adjusted rate equal to 0.95\* 1-Month LIBOR plus 160bps (or 3.99% as of 1/31/19). Currently, Cedar Crest and BB&T have agreed to reduce the interest rate. The new proposed rate will be

equal to  $0.79 * 1\text{-Month LIBOR} + 123\text{bps}$  (3.21% as of 1/31/19).

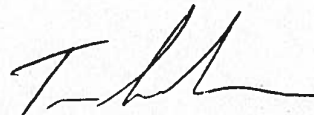
BB&T and Cedar Crest are concurrently seeking to modify the margin rate factor to allow for the adjustment of the Bond's interest rate based on either decrease or increases in maximum corporate tax rates. The new language will add an increase in the maximum marginal rate of Federal income tax as a trigger to adjust the Bond's interest rate as opposed to the original in which just decreases were considered.

The Bondholder and Cedar Crest are also requesting consent to extend the maturity of the Bonds from October 1, 2036 to March 1, 2044 for all three series, and concurrently extending the Mandatory Tender Date from October 1, 2024 to March 1, 2031, to permit the Borrower additional the time to repay the Bonds. Cedar Crest will also extend their interest rate swap through March 1, 2031 which effectively fixes the rate paid by Cedar Crest. The Borrower's requested an early extension on the Mandatory Tender Date to reduce repricing and interest rate risk associated with waiting until a later time to complete the extension. The Bonds' amortization schedule will be amended to reflect the new maturity date.

McCarter & English LLP, Bond Counsel to the Authority has advised that the changes will not affect the tax-exempt status of the Bond. The modification of the interest rate will cause a reissuance and the Authority will file an IRS form 8038. The nature of these changes requires a public hearing and notices will be published in the Star Ledger, the Daily Record, and the Trenton Times. The EDA Board Meeting of March 12, 2019 will serve as the public hearing.

**Recommendation:**

Consent to adjust the variable rate interest formula and modify the definition of margin rate factor to allow for the adjustment of the interest rate based on either decreases or increases in the maximum corporate tax rates. Consent is also recommended for the extension of the Bonds' Mandatory Tender Date, Maturity, and Amortization schedule.

A handwritten signature in black ink, appearing to be 'T. H.', is written above a horizontal line.

Prepared By: Angus Comly

ADOPTED  
FEB 19 2019

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A  
SECOND AMENDMENT TO BOND AGREEMENT RELATING TO THE  
FINANCING OF A PROJECT FOR CEDAR CREST VILLAGE, INC.; AND  
AUTHORIZING OTHER NECESSARY ACTION**

**WHEREAS**, the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Laws of 1974 of the State, approved August 7, 1974, as amended and supplemented (the "Act"), declares that the Legislature has determined that the Department of Commerce and Economic Development statistics of recent years indicate a continuing decline in manufacturing employment within the State, which is a contributing factor to the drastic unemployment existing within the State, which far exceeds the national average, thus adversely affecting the economy of the State and the prosperity, safety, health and general welfare of its inhabitants and their standard of living; and that the availability of financial assistance and suitable facilities are important inducements to new and varied employment promoting enterprises to locate in the State, and to existing enterprises to remain and expand in the State; and

**WHEREAS**, in furtherance of the purposes of the Act and as an inducement to Cedar Crest Village, Inc. (the "Borrower") to refinance the costs of a project located in Pompton Plains, New Jersey (the "Project"), the Authority has by resolution adopted on August 16, 2011 issued its Revenue Refunding Bonds (Cedar Crest Village, Inc. Project), Series 2011 in the aggregate principal amount of \$73,779,000 (the "Bonds") pursuant to a Bond Agreement dated September 29, 2011 (the "Original Agreement") by and among the Authority, the Borrower, Wells Fargo Bank, N.A., as trustee (the "Trustee"), and Bank of America, N.A., Branch Banking and Trust Company ("BB&T") and PNC Bank, National Association, as purchasers (collectively, the "Purchasers") to provide funds to finance the Project, including necessary expenses incidental thereto; and

**WHEREAS**, pursuant to Section 7.7 of the Original Agreement, the Borrower, the Trustee, the Purchasers and the Authority entered into the First Amendment to Bond Agreement dated August 7, 2014 (the "First Amendment" and together with the Original Agreement, the "Amended Bond Agreement") in order to provide for, among other things, (i) the sale of the Bonds held by Bank of America, N.A. and PNC Bank, National Association have to BB&T and (ii) the amendment of certain provisions of the Bonds; and

**WHEREAS**, pursuant to Section 7.7 of the Original Agreement, the Borrower and BB&T have requested that the Authority and the Trustee further amend the Amended Bond Agreement pursuant to a Second Amendment to Bond Agreement, a substantially final copy of which is attached hereto as Exhibit A (the "Second Amendment" and together with the Amended Bond Agreement, the "Bond Agreement") for the purpose of amending the maturity date of the Bonds, amending the interest rate on the Bonds, and making certain other related changes; and

**EXHIBIT 10**



**WHEREAS**, the Authority intends to approve and accept the amendments to the Amended Bond Agreement set forth in the Second Amendment; and

**WHEREAS**, a public hearing with respect to the Borrower and the Project has been conducted by the Authority on February 12, 2019 at 10:00 a.m. at its offices at 36 West State Street, Trenton, New Jersey, after public notice of such hearing was published in the form attached hereto as Exhibit B on January 10, 2019 in The Star Ledger, The Daily Record and The Trenton Times; and

**WHEREAS**, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Amended Bond Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (not less than seven members thereof affirmatively concurring) AS FOLLOWS:**

**Section 1. Approval of the Second Amendment.** Subject to the receipt by the Authority of the executed signature pages to the Second Amendment by the other parties thereto, the Second Amendment, substantially in the form on file with the Authority, is hereby approved, and the Chairman, Vice Chairman, Chief Executive Officer, Chief Operating Officer, Secretary, Assistant Secretary, Managing Director, Post Closing Financial Services, Managing Director, Underwriting or any other who shall have the power to execute contracts pursuant to the By-Laws of the Authority or any resolution adopted thereunder (each an "Authorized Officer") is hereby authorized to execute and deliver on behalf of the Authority the Second Amendment, with such changes, insertions and variations therein as are necessary or desirable and as such Authorized Officers shall approve, such approval to be evidenced by their execution thereof.

**Section 2. Execution and Delivery of Other Documents.** Any Authorized Officer of the Authority is hereby authorized to execute, deliver, attest and affix the seal of the Authority to such other documents, amendments or certificates as the executing officers determine to be reasonable and appropriate to complete the amendment of the Amended Bond Agreement and the authorization, execution and delivery of the Second Amendment. Copies of any such documents, amendments or certificates together with the Second Amendment, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the Authority.

**Section 3. Prior Resolutions.** All prior resolutions, or parts thereof, to the extent inconsistent herewith, are hereby rescinded and repealed to the extent permitted by the By-Laws of the Authority.

**Section 4. Effective Date.** This resolution shall take effect immediately, but no action authorized herein shall have force and effect until ten days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority at which this resolution was adopted has been delivered to the Governor for his approval, unless during such ten day period

the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Adopted: February 19, 2019

**EXHIBIT A**  
**FORM OF SECOND AMENDMENT**

**EXHIBIT B**

**FORM OF NOTICE OF PUBLIC HEARING**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
NOTICE OF PUBLIC HEARING**

The New Jersey Economic Development Authority (the "Authority") will hold a public hearing at its monthly meeting on February 12, 2019, at 10:00 a.m. at its offices located at 36 West State Street, Trenton, New Jersey, for the purpose of providing a reasonable opportunity for interested persons to express their views, both orally and in writing, with respect to proposed issuance by the Authority of one or more series of its bonds (the "Bonds"), with respect to the following application for economic development bond financing for the facilities described below:

Owner, Operator  
or Manager:

Cedar Crest Village, Inc. (the "Corporation"), by itself and through its ownership of all of the membership interests in Point View Campus, LLC

Project Address:

1 Cedar Crest Village Drive  
Pompton Plains, Morris County, New Jersey

Maximum Aggregate  
Amount of

Bonds Requested: \$73,779,000

Description of  
the Project:

The Bonds consist of the outstanding New Jersey Economic Development Authority Revenue Refunding Bonds (Cedar Crest Village, Inc. Project), Series 2011A, B and C. The Bonds were originally issued in 2011 for the purposes of refunding of the Authority's then outstanding Variable Rate Demand Revenue Refunding Bonds (Cedar Crest Village, Inc. Project) Series 2006A (the "2006A Bonds") and Variable Rate Demand Revenue Refunding Bonds (Cedar Crest Village, Inc. Project) Series 2006B (collectively with the Series 2006A Bonds, the "2006 Bonds") and paying certain costs associated with the issuance of the Bonds.

The then outstanding Bonds were deemed to be reissued (i.e., refunded) in 2014, for Federal income tax purposes, as the result of changes made to the terms of the Bonds which caused the Bonds to be treated as exchanged

for different obligations. The outstanding Bonds will again be deemed to be reissued (i.e., refunded) as a result of additional changes to be made to the terms of the Bonds. No funds will be exchanged between the Corporation and the holder of the Bonds as a result of the proposed reissuance/refunding.

The 2006 Bonds were used for the purposes of refunding the Authority's then outstanding Retirement Community Revenue Bonds (Cedar Crest Village, Inc. Facility) Series 2001 A, B and C (the "2001 Bonds") and paying certain costs incurred in connection with the issuance of the 2006 Bonds. The 2001 Bonds were used for the purposes of: (i) paying a portion of the Corporation's cost of acquiring the Cedar Crest Village Continuing Care Retirement Community, consisting of approximately 1,500 independent living apartments, 85 assisted living units, a 120 bed skilled nursing facility and related common buildings and facilities, located on a 125-acre campus (the "Facility"); (ii) the funding of interest on the 2001 Bonds during the construction of the Facility; (iii) funding a deposit to a reserve fund for the 2001 Bonds; and (iv) paying costs of issuance of the 2001 Bonds.

At the meeting, members of the public may appear in person or by attorney to provide information and make statements concerning the foregoing application. **ECONOMIC DEVELOPMENT FINANCINGS OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ARE NOT OBLIGATIONS OF THE STATE OF NEW JERSEY, NOR OF ANY COUNTY OR MUNICIPALITY THEREOF.** Funding for such financings is secured privately through conventional lending sources.

This notice is published in accordance with the public notice requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

## **LOANS/GRANTS/GUARANTEES**

## **HAZARDOUS DISCHARGE SITE REMEDIATION FUND**





**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** March 12, 2019  
**SUBJECT:** NJDEP Hazardous Discharge Site Remediation Fund Program

The following grant project has been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached project summary:

**HDSRF Municipal Grant:**

P45523	Woodbridge Township (Woodbridge Township DPW)	\$74,059
<b>Total HDSRF Funding – March 2019</b>		<b>\$74,059</b>

A blue ink signature of Tim Sullivan, consisting of a stylized 'T' and 'S' followed by a horizontal line.

Tim Sullivan

Prepared by: Kathy Junghans

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY - HAZARDOUS SITE REMEDIATION - MUNICIPAL GRANT**

**APPLICANT:** Woodbridge Township (Woodbridge Township DPW)

**P45523**

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

\* - indicates relation to applicant

**PROJECT LOCATION:** 225 Smith Street

Woodbridge Township (T/UAMiddlesex

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

**APPLICANT BACKGROUND:**

Between March 2010 and November 2014, Woodbridge Township received an initial grant in the amount of \$50,396 under P29341 and supplemental grants totaling \$124,782 under P34947 and P39393 to perform Preliminary Assessment and Site Investigation activities. The project site identified as Blocks 41.C & 41, Lots 3.A, 1.A, & 1.B is the former Woodbridge Department of Public Works ("DPW") which has potential environmental areas of concern (AOCs). The Township of Woodbridge currently owns the project site and has satisfied proof of site control. It is the Township's intent to redevelop the project site for municipal use buildings.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

The City has received a Brownfield Development Area (BDA) designation from the NJDEP for this project site. According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects within a BDA. The grant has been calculated off 75% of the RA costs (\$98,745).

**APPROVAL REQUEST:**

The Township of Woodbridge is requesting aggregate supplemental grant funding to perform RA in the amount of \$74,059 for the approved scope of work at the DPW project site. Because the aggregate supplemental funding including this request is \$198,841, it exceeds the maximum \$100,000 staff delegation approval and therefore requires EDA board approval. The total grant funding including this approval is \$249,237.

**FINANCING SUMMARY:**

**GRANTOR:** Hazardous Discharge Site Remediation Fund

**AMOUNT OF GRANT:** \$74,059

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

**PROJECT COSTS:**

Remedial Action	\$98,745
EDA administrative cost	\$500
<b>TOTAL COSTS</b>	<b>\$99,245</b>

**APPROVAL OFFICER:** K. Junghans

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



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** March 12, 2019  
**SUBJECT:** NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following commercial and residential grant projects have been approved by the Department of Environmental Protection to perform upgrade and site remediation activities. The scope of work is described on the attached project summaries:

**PUST Commercial Grant:**

P45251	Joseph Tittermary	\$ 58,995
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**PUST Residential Grant:**

P45371	Ira Kalinick	\$115,559
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<b>Total UST Funding – March 2019</b>		<b>\$174,554</b>
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A handwritten signature in blue ink, appearing to read "TS", is written over a horizontal line.

Tim Sullivan

Prepared by: Kathy Junghans

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

**APPLICANT:** Ira Kaltinick

**P45371**

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

\* - indicates relation to applicant

**PROJECT LOCATION:** 25 Bryn Mawr Avenue

Lavallette Borough (N)

Ocean

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

**APPLICANT BACKGROUND:**

In December 2016, Ira Kaltinick received a grant in the amount of \$16,034 under P43155 to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank was decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities.

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

**APPROVAL REQUEST:**

The applicant is requesting supplemental grant funding in the amount of \$115,559 to perform the approved scope of work at the project site. Total grant funding including this approval is \$131,593.

The NJDEP oversight fee of \$11,556 is the customary 10% of the grant amount. This assumes that the work will not require a high level of NJDEP involvement and that reports of an acceptable quality will be submitted to the NJDEP.

**FINANCING SUMMARY:**

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

**AMOUNT OF GRANT:** \$115,559

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

**PROJECT COSTS:**

Remediation	\$115,559
NJDEP oversight cost	\$11,556
EDA administrative cost	\$250
<b>TOTAL COSTS</b>	<b>\$127,365</b>

**APPROVAL OFFICER:** K. Junghans

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

**APPLICANT:** Joseph Tittermary

**P45251**

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

\* - indicates relation to applicant

**PROJECT LOCATION:** 2913 Route 130 South Delran Township (N) Burlington

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

**APPLICANT BACKGROUND:**

Between August 2010 and February 2013, Joseph Tittermary, owner of the project site, formerly operated as a gasoline station, received a grant in the amount of \$52,636 under P30720 and a supplemental grant in the amount of \$179,446 under P37246 to perform site remediation as the result of the closure of four underground storage tanks (USTs) at the project site. The tanks were decommissioned in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities.

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

**APPROVAL REQUEST:**

The applicant is requesting aggregate supplemental grant funding in the amount of \$58,995 to perform the approved scope of work at the project site. Because the aggregate supplemental funding including this request is \$238,441, it exceeds the maximum aggregate staff delegation approval of \$100,000 and therefore requires EDA's board approval. Total grant funding including this approval is \$291,077.

The NJDEP oversight fee of \$5,900 is the customary 10% of the grant amount. This estimate assumes that the work will not require a high level of NJDEP involvement and that reports of an acceptable quality will be submitted to the NJDEP.

**FINANCING SUMMARY:**

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

**AMOUNT OF GRANT:** \$58,995

**TERMS OF GRANT:** No Interest; 5 year repayment provision on a pro-rata basis in accordance with the PUST Act.

**PROJECT COSTS:**

Remediation	\$58,995
NJDEP oversight cost	\$5,900
EDA administrative cost	\$500
<b>TOTAL COSTS</b>	<b>\$65,395</b>

**APPROVAL OFFICER:** K. Junghans

## **OFFICE OF RECOVERY**



## **STRONGER NJ BUSINESS LOAN APPEAL**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 12, 2019

**SUBJECT:** Stronger NJ Business Loan Program Appeal – DC Plastic Products Corp

Pursuant to the appeal process approved by the Board at the June 10, 2014 Board meeting, applicants to the Stronger NJ Business Loan program may challenge the EDA's decisions by submitting in writing to the EDA, no later than 30 calendar days from the date of the denial, an explanation as to how the applicant has met the program criteria. A Hearing Officer is assigned to each project to provide an independent review of the appeal.

The Hearing Officer's review includes reviewing the appeal letter, the application and file, as well as speaking directly with the applicant and relevant HUD Programs staff. The applicant has been sent the Hearing Officer's report in advance of the Board Meeting. They have been given an opportunity to reach out directly to the Hearing Officer to discuss the decision and have been notified of the date and time of the Board Meeting.

At this meeting, the Board is being asked to consider one appeal: DC Plastic Products Corp. Attached to this memo you will find the Hearing Officer's recommendation, the Hearing Officer's letter to the applicant, the declination letter and the applicant's appeal. I have reviewed the attached and I concur with the recommendation that the declination under the Stronger NJ Business Loan Program for DC Plastic Products Corp be upheld.

A handwritten signature in blue ink, appearing to be "TS", is written over a horizontal line.

Prepared by: K Tolly  
attachments



## MEMORANDUM

**TO:** Tim Sullivan, Chief Executive Officer  
Members of the Authority

**FROM:** Katina Tolly  
Hearing Officer

**DATE:** March 12, 2019

**SUBJECT:** Stronger NJ Business Loan Program Appeals  
**DC Plastic Products Corporation – SL618984/66381**

### Request:

The Members are asked to approve the Hearing Officer's recommendation to uphold the declination of the Stronger NJ Business Loan application for DC Plastic Products Corporation. Pursuant to the appeal process approved by the Board at the April 30, 2013 Special Board meeting, and revised at the June 10, 2014 Board Meeting, applicants to the Stronger NJ Business Loan Program may challenge the EDA's decisions by submitting in writing to the EDA, no later than 30 calendar days from the date of the denial, an explanation as to how the applicant has met the program criteria. A Hearing Officer is assigned by the CEO to each project to provide an independent review of the appeal. Katina Tolly has fulfilled the role of Hearing Officer to review the following appeal and has completed the review with legal guidance from the Attorney General's Office.

The appeal has been reviewed and a letter has been sent to the applicant with the Hearing Officer's recommendation. The applicant was notified in the letter that they have the opportunity to provide comments or exceptions directly to the Hearing Officer. The letter is attached to this memo.

Based on the review of the appeal submitted by the applicant and the analysis prepared by the initial review team from the EDA, the Hearing Officer recommends the following:

<b>Business Name</b>	<b>Reason for Decline</b>	<b>Discussion</b>
DC Plastic Products Corporation	<ol style="list-style-type: none"> <li>1) Length of time Applicant has been out of business.</li> <li>2) Change in market conditions</li> <li>3) Income projections provided by the Applicant are not supported</li> <li>4) Pending litigation between the Applicant and Insurance Company</li> </ol>	<p>Applicant appealed in May 2018 regarding length of time the Applicant has been out of business, change in market conditions, and inadequacy of financial projections provided. To date, Applicant has only demonstrated that it has overcome reason #4 for declination, despite being provided with ample time to do so.</p>

**Recommendation:**

As a result of careful consideration of the above appeal in consultation with the Attorney General's Office, the recommendation of the Hearing Officer is to uphold the declination of the Stronger NJ Loan application for DC Plastic Products Corporation.

Prepared by: Katina Tolly



March 4, 2019

In Reference to:  
Stronger NJ Business Loan (SL) # 618984/66381

David Moskovits  
DC Plastic Products Corporation  
12 East 2<sup>nd</sup> Street  
Bayonne, New Jersey 07002

RE: Stronger NJ Business Loan Appeal

Dear Dr. Moskovits:

My name is Katina Tolly and I was appointed to serve as the Hearing Officer for your appeal under the Stronger NJ Business Loan Program ("Loan Program").

By way of background, the New Jersey Economic Development Authority ("NJEDA") reviewed and declined your application for a loan on April 16, 2018. The information you provided indicated that you are the manager of DC Plastic Products Corporation ("DCPP"), blown-film extruder of plastic bags located in Bayonne, New Jersey. As part of my review of your loan application and appeal, I have read your appeal letter, your application and file, and spoken with relevant Office of Recovery staff. This letter follows our correspondence to date.

In accordance with 24 CFR §§570 et seq. – Community Development Block Grants, the United States Department of Housing and Urban Development ("HUD") published "Allocations, Common Application, Waivers and Alternative Requirements for Grantees Receiving Community Development Block Grant Disaster Recovery ("CDBG-DR") Funds in Response to Hurricane Sandy", 78 Fed. Reg. 14329 et seq. (March 5, 2013) (the "Published HUD Requirements") which outlines the allocation of Sandy Relief funds and guidelines that recipient and sub-recipient agencies were to follow. As the NJEDA is the sub-recipient of this funding, the NJEDA's Stronger NJ Business Loan is required to adhere to HUD regulations as well as federal regulations outlined by 24 CFR §§570 et seq.

Per HUD regulations, the New Jersey Department of Community Affairs ("DCA") published a CDBG Disaster Recovery Action Plan ("Action Plan"). The Action Plan states in section 4.3.2 that the Program is specifically open to small businesses, however, businesses "may be further limited based on additional criteria determined by NJEDA and outlined in program

guidelines.” Such additional criteria and guidelines can be found in the resolution (“Board Resolution”) approved by the NJEDA’s Board at its June 11, 2013 meeting.

In DCPD’s original declination letter, you were informed that the business is ineligible for a working capital loan under the Loan Program for four reasons:

- 1) Length of time Applicant has been out of business.
- 2) Change in market conditions
- 3) Income projections provided by the Applicant are not supported
- 4) Pending litigation between the Applicant and Insurance Company

In light of this declination and by way of appeal, you expressed concerns as to why DCPD was declined.

Your appeal letter, received by the NJEDA on or about June 6, 2018, addressed the NJEDA’s reasons for declinations, stating that:

*” Length of time Applicant has been out of business” and ”Change in market conditions” if any, are due entirely to the agency’s delay.*

*The application was made initially in 2014. From then until your April 16, 2018 letter the agency periodically - with great delays in between - asked for additional information, all of which was provided.”*

The timeline that you reference represents a combination of the original application and approval, which expired as you could not meet the conditions of closing, and the reactivation of the application more than a year after final expiration of the original commitment.

The initial application in 2014 was approved by our Board on July 10, 2014, with a commitment letter issued on 7/28/14. This commitment letter included terms and conditions of lending, with a deadline to close on the financing by 10/10/14. DCPD accepted and executed same on 8/11/14. The closing date was extended to 12/10/14, as the borrower was negotiating the sale of the business.

You were notified via certified mail on October 7, 2015 (letter dated September 30, 2015) that NJEDA would provide you 30 additional days from the date of the letter to meet the conditions of the Loan, otherwise the approval would become invalid. As you disputed your receipt date of the letter, NJEDA then further agreed to extend the commitment to November 15, 2015 to allow DCPD to meet the requirements of closing.

Email correspondence between you and Ted Bossert of the NJEDA on October 29, 2015 shows that you had been advised that if the loan commitment ultimately expired, you would be able to re-open your application, subject to remaining funding availability, re-review and underwriting. No further information was received from you, and the commitment formally expired.

In May 2017, you contacted the NJEDA via Senator Cunningham's office, citing a desire to reactivate the application. At that time, NJEDA staff requested you provide documentation that the conditions of closing from the original approval had been met. On August 18, 2017, you provided documentation regarding the bankruptcy. On August 28, 2017, a letter was sent to you via certified mail, detailing the documentation required to complete the review of your application. At that time, you were provided a deadline of October 31, 2017 to submit the necessary information.

You provided documentation to the NJEDA on October 30, 2017, however, the financial projections you provided were not current, and required substantial revision.

*"All our projections in the past, speak for themselves. The years after the damages from Superstorm Sandy, we worked 4 1/2 days with 2 to 3 machines at a time, due to problems with the equipment and the building. Within approximately one year of receiving the loan, we should be back working 7 days a week/24 hours a day with all the machines, and will be able to show the same income as 10 years prior to the Superstorm Sandy."*

*"We are fully aware of what the market conditions are at this time. For your information, plastic is one of the largest growing industries and there are a tremendous amount of mergers and acquisitions happening all the time throughout the United States. The United States will become an exporter of plastics, raw material and finished products, due to innovation and technology that natural gas will be converted to plastic raw material. United States will be the first and only country capable to achieve this within the next year and a half."*

*"Please note that DC Products ceased operation in 2015 with full knowledge and agreement of the EDA representative. This was in order to eliminate losses, as well as, unpredictable delivery schedules to customers, etc., and thereby not damage the reputation of the company for the future."*

*"In reference to your statement, that our projection amounts are not agreeable, I would like to bring to your attention that we spoke more than a year ago with representatives of EDA and we made it very clear that we plan to lease out 40 to 50% of the building. This projection still applies that Superior MPM will lease out 40 to 50% of the building at a rate of \$5.50 (plus taxes and insurance) per square foot, for additional income of \$200,000 to \$250,000. This is in*



*addition to DC Products projections. We are more than willing and able to assign leases to the EDA."*

As the company had been out of operation for several years, financial projections were required, as the company would be considered a start-up operation at that point. The financial projections provided to the NJEDA included revenues from government contract business lines that the applicant elected to voluntarily exit beginning in 2009. Actual financial results in the three years prior to Superstorm Sandy reflect downward trends, and do not demonstrate an ability for the company to adapt with the changing markets. It should be noted that in the five years prior to Superstorm Sandy, the business experienced a 73% decline in revenues.

A letter of January 30, 2018 to Elaine Cottrell (from Fred Gruen, on your behalf) indicates a proposed allocation of loan funds that would restore five production lines; you have indicated that the balance of the production lines would await recovery in the pending case of the insurer. If the action were not successful, you would proceed with only five production lines.

Due to inclusion of revenues from business lines previously exited a decade ago, projections based on restoration of 100% of production lines (despite the financial ability to fund restoration of less than 72% of the lines), as well as deterioration in financial performance in the years leading to Superstorm Sandy, DCPD did not support its income projections or demonstrate that it can overcome the change in market conditions.

*"With respect to your observation concerning the INSURANCE LITIGATION, you must understand that its pendency in reason is not a justification for rejecting the application. Should the lawsuit be successful and end in a collected judgment or settlement, as previously discussed with EDA, the same would be remitted to the EDA as a partial prepayment. Therefore, there could and would be no Duplication of Benefits.*

*Furthermore, the outcome of that litigation could yet be years away, and it is now - and since 2014 - that DC Plastic Products Corporation has sought EDA's assistance through the subject loan."*

At the time of the appeal, you submitted satisfactory response regarding the fourth reason for DCPD's declination – pendency of the litigation, with the ability of the EDA to subrogate the claim in order to receive any further future insurance settlement due to DCPD. To date, the fourth reason for declination is the only one that has been fully satisfied.

Based on my review as Hearing Officer, I find that DCPD was unable to demonstrate that it has overcome three of the four reasons for which it was declined, as it has not provided documentation demonstrating its ability to fully and successfully resume operations in the industry as a start-up competitor.

For the reasons above, I will be recommending that the appeal be denied by the NJEDA Board at its meeting on March 12<sup>th</sup>, 2019.

If you have any comments or exceptions to this report, please contact me in advance of the above meeting. My contact information is below.

After the NJEDA Board concludes its review and renders its decision, which is subject to a ten (10) day veto period by the Governor, we will notify you of that final action.

Very truly yours,

A handwritten signature in cursive script that reads "Katina Tolly".

Katina Tolly, Hearing Officer  
(609) 858-6658  
ktolly@njeda.com

c: Tim Sullivan, Chief Executive Officer



April 16, 2018

Certified and U.S. Postal Mail  
David Moskovits  
DC Plastic Products Corporation  
12 East 2<sup>nd</sup> Street  
Bayonne, NJ 07002

RE: Stronger NJ Business Loan (SL) #618984/66381

Dear Mr. Moskovits:

Thank you for applying for a Stronger NJ Business Loan. We sincerely appreciate the time your business invested in applying to the Program. The New Jersey Economic Development Authority ("EDA") has completed a review of your Construction Loan and Working Capital Loan requests. Based on the guidelines we must adhere to, we regret that we are unable to provide your organization with the above referenced loans for the following reasons:

- *Length of time Applicant has been out of business*
- *Change in market conditions*
- *Income projections provided by the Applicant are not supported*
- *Pending litigation between the Applicant and Insurance Company*

A review of the financial statements for the business reveal that the applicant ceased business in 2014. Effectively, DC Plastics would be considered a start-up business and would carry the risks associated with such. Upon analyzing multi-year trends, the EDA concluded that due to the amount of time since the business ceased operations, as well as a change in the market conditions since the height of their revenues, it is improbable the company will regain their customer base. Additionally, these factors establish that the business performance and documentation submitted by the applicant do not adequately support the financial projections provided by the applicant, nor the total loan request of \$5 million.

Furthermore, the business is currently involved in litigation with their Insurance Company in which they are seeking \$5 million, the full value of the Policy, for construction damage, personal property damage, and inventory damage due to Superstorm Sandy. Should the lawsuit be successful, funds received by the business as a result would be considered a Duplication of Benefits, ultimately causing a substantial reduction in the need for assistance through the Stronger NJ Business Loan Program.



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**You may appeal this decision by submitting a written explanation addressing the reason for declination within 30 days of the date of this letter to the following address:**

**NJ Economic Development Authority  
Attn: Office of Recovery  
PO Box 990  
Trenton, NJ 08625-0990**

**Sincerely,**

**Tim Lizura  
President and Chief Operating Officer**

Fred R. Gruen  
[FGruen@gruengoldstein.com](mailto:FGruen@gruengoldstein.com)

**GRUEN & GOLDSTEIN**

LAW OFFICES  
1150 W. Chestnut Street  
P.O. BOX 1553  
UNION, NEW JERSEY 07083

Telephone: 908-687-2030  
Facsimile: 908-687-5391

Stanley Gruen  
{1953-1990}

Alan Goldstein  
{1952-1992}

May 14, 2018

**Via E-mail ([nieda@nieda.com](mailto:nieda@nieda.com)) and CMRRR**

Tim Lizura  
President and Chief Operating Officer  
P.O. Box 990  
Trenton, NJ 08625

**RE: DC Plastic Products Corporation  
Stronger NJ Business Loan (SL) #618984/66381**

We represent DC Plastic Products Corporation and David Moskovits in connection with the captioned and respond here to your letter of April 16, 2018 rejecting the application for an EDA loan of approximately \$5 million.

While we recognize that the agency's dilatory conduct in connection with this application and underwriting are discrete issues, one would expect and fundamental fairness requires that in reviewing this application they would be fused.

"Length of time Applicant has been out of business" and "Change in market conditions" if any, are due entirely to the agency's delay.

The application was made initially in 2014. From then until your April 16, 2018 letter the agency periodically – with great delays in between – asked for additional information, all of which was provided.

Mr. Moskovits makes these further salient observations: "Please note that DC Products ceased operation in 2015 with full knowledge and agreement of the EDA representative. This was in order to eliminate losses, as well as, unpredictable delivery schedules to customers, etc., and thereby not damage the reputation of the company for the future.

We need to bring your attention that the previous President and Chief Operating Officer of EDA worked very closely with the Lieutenant Governor's staff and they were fully aware of what was happening".

The desperately slow pace of EDA in connection with the 2014 loan application is chronicled in part in DC Plastic Products Corporations letter to Senator Sandra B. Cunningham of January 11, 2018, copy annexed.

Mr. Moskovits has explained his on the ground participation and frustration: "DC Products tried very hard after Superstorm Sandy, when the losses to the building, as well as to the equipment, caused us to no longer be able to work 24/7 with 7 machines. We had to reduce our production to 4½ days and could never run more than 3 machines, if that, at a time.

We explained this problem to EDA and the length of time dragging on was unfortunately caused by the representation of EDA, insisting that DC Plastics would file for bankruptcy. We had no choice but to agree and did as he requested. However, the bankruptcy procedure took several years till it was signed off by the Judge. The technical details dragged on even after signed off on by the Judge in order to complete the process to EDA satisfaction.

In the interim, about 1½ years ago, there was a conference call with the representative of EDA, including the legal advisor to EDA. At that time we agreed that we would put into escrow approximately \$650,000.00 – if in the event the bankruptcy would unravel and we would have to pay the creditor, EG Plastics, \$450,000.00 (which was a bogus claim to begin with). To our and our attorney's surprise, the EDA representative insisted to wait for the final settlement of the bankruptcy process, in which we had absolutely no control. This unfortunately added another year of delays".

He also comments on the Change in market conditions and income projections allegedly unsupported: "We are fully aware of what the market conditions are at this time. For your information, plastic is one of the largest growing industries and there are a tremendous amount of mergers and acquisitions happening all the time throughout the United States. The United States will become an exporter of plastics, raw material and finished products, due to innovation and technology that natural gas will be converted to plastic raw material. United States will be the first and only country capable to achieve this within the next year and a half.

All our projections in the past, speak for themselves. The years after the damages from Superstorm Sandy, we worked 4 ½ days with 2 to 3 machines at a time, due to problems with the equipment and the building. Within approximately one year of receiving the loan, we should be back working 7 days a week/24 hours a day with all the machines, and will be able to show the same income as 10 years prior to the Superstorm Sandy.

In reference to your statement, that our projection amounts are not agreeable, I would like to bring to your attention that we spoke more than a year ago with representatives of EDA and we made it very clear that we plan to lease out 40 to 50% of the building. This projection still applies that Superior MPM will lease out 40 to 50% of the building at a rate of \$5.50 (plus taxes and insurance) per square foot, for additional income of \$200,000 to \$250,000. This is in addition to DC Products projections. We are more than willing and able to assign leases to the EDA."

As further support for the sufficiency of the income projections, I am enclosing a copy of my letter to Senator Sandra B. Cunningham of February 2, 2018 and the January 29, 2018 e-mail from Jacob J. Genovay to which it responds.

**With respect to your observation concerning the INSURANCE LITIGATION, you must understand that its pendency in reason is not a justification for rejecting the application. Should the lawsuit be successful and end in a collected judgment or settlement, as previously discussed with EDA, the same would be remitted to the EDA as a partial prepayment. Therefore, there could and would be no Duplication of Benefits.**

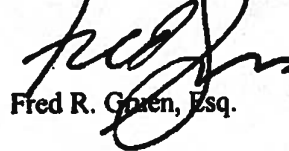
**Furthermore, the outcome of that litigation could yet be years away, and it is now – and since 2014 – that DC Plastic Products Corporation has sought EDA's assistance through the subject loan.**

If they would be helpful to you I have a voluminous documents submitted to and responses from EDA that will shed further light on the fact that the 4-year delay in processing the application is due to EDA conduct.

Please call or write if there is any prospect that anything further can be done by your office or mine on behalf of the applicant to resurrect the application in light of the revelations made here.

Very truly yours,

**GRUEN & GOLDSTEIN**



Fred R. Gruen, Esq.

FRG:cs

Enclosures

cc: David Moskovits (via e-mail)

NJ Economic Development Authority/Office of Recovery (via CMRRR)

DC Plastic Products Inc.  
Superior-MPM, LLC  
c/o David Moskovits  
86 Hobart Avenue, PO Box 353  
Bayonne, New Jersey 07002  
[david.moskovits@gmail.com](mailto:david.moskovits@gmail.com)  
[dcplasticsinc@gmail.com](mailto:dcplasticsinc@gmail.com)

January 11, 2018

**Via E-mail [sencunningham@njleg.org](mailto:sencunningham@njleg.org) and US Mail**

Senator Sandra B. Cunningham  
1738 Kennedy Blvd.  
Jersey City, NJ 07305

**RE: DC Plastic Products Inc./Superior-MPM, LLC  
with EDA/ Commitment date July 28, 2014**

Dear Ms. Cunningham:

Thank you so much for the help that you provided to date in connection with the caption, reaching back several years and through our recent meeting a month or so ago. Here is where things stand, as I understand, together with a brief history.

EDA commitments for repair of Sandy storm damaged land and building (no relief in connection with Sandy has been received from any level of government) and working capital in the amount of \$500,000.00 and \$1,200,000.00 issued on July 28, 2014. A companion commitment for damaged trade equipment replacement for \$3.8 million was promised, but none have been delivered, for reasons unknown. The commitment for trade equipment was and is an essential element of a package to return DC Plastic Products Inc. to operation.

Thereafter I worked on assembling all of the things required by EDA on their closing checklist. Only one thing remained, and that was that there was an outstanding court case against the prospective borrower DC Plastic Products Inc. held by EG Plastics in the amount of approximately \$450,000.00. I explained that the claim had no merit, proposed establishing some kind of security for EDA if necessary. Theodore Bossert, who was apparently in charge of the file for EDA, insisted that DC Plastics, Inc. the predecessor company to DC Plastic Products, Inc. file for bankruptcy and that the bankruptcy be used to accomplish a discharge, negotiated or otherwise, of the EG Plastics claim against DC Plastic Products Inc. With the assistance of bankruptcy counsel I followed those directions, filed bankruptcy for DC Plastics and as part of the process, arranged a negotiated settlement with the Trustee of the EG Plastics claim against DC Plastic Products Inc., as a result as which that claim as discharged. This took a considerable amount of time and money, but since EDA assured me that with a final dismissal or discharge of the EG Plastics claim they would be ready to close, I did what they asked me.



Things moved very slowly thereafter despite my prodding - sometime in I believe 2015 Mr. Bossert arranged a conference call between me and a deputy attorney general representing EDA and a high level EDA representative. We discussed the structure of the loan, made some minor adjustments to give further comfort to EDA (such as establishing a rent impound as collateral security). The EDA representative explained that they wanted further study of this proposal, but on its face, he agreed that it was reasonable and acceptable.

Months and months went by again, and this year I heard from Timothy Trifiletti who identified himself as Senior Loan Eligibility Officer of Recovery/ New Jersey EDA/ HUD program. Mr. Trifiletti said that money was available and asked me to send some additional information, which I did promptly.

Sometime thereafter we sent a revised estimate of the cost to repair and replace the building. We also sent a repair proposal for the trade fixtures in lieu of replacement of the trade fixtures (replacement was a part of the original commitment). We did this because the lead time for replacement fixtures is 2 years, a luxury that we could not accept.

Without the \$500,000.00 for building repair and \$3.8 for fixture repair and \$1.2 for working capital, our efforts to come out from under Sandy will fail.

Anything that you can do to help us resurrect this transaction, which has failed to date for no reason associated with me, will be deeply appreciated.

Very Truly Yours,

David Moskovits

**Cunningham, Sen. D.O.**

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**From:** Jacob J. Genovay <JGenovay@njeda.com>  
**Sent:** Monday, January 29, 2018 2:57 PM  
**To:** Cunningham, Sen. D.O.  
**Cc:** Erin B. Gold  
**Subject:** David Moscovitz, DC Plastics Products, Inc./Superior-MPM, LLC

In response to your inquiry regarding the above-referenced constituent, please see summary as follows:

On July 10, 2014, DC Plastics Products Corp was approved for two Stronger NJ Business Loans, \$1.2 million for working capital and \$3.8 million for construction. A Commitment Letter for the working capital loan was issued on July 28, 2014 which contained Conditions for Closing requiring certain lawsuits and/or judgements be satisfied, dismissed, or their outcome not negatively impact the Borrower's ability to repay the loan.

Despite a 60-day extension of the EDA's Commitment to allow these conditions to be met, DC Plastic Products was not able to provide documentation that the lawsuits/judgements were resolved satisfactorily. Despite the expiration of the commitment, the application remained open in the even Mr. Moskovits was able to provide documentation. However, due to the significant amount of time that had elapsed, on September 30, 2015, the EDA notified DC Plastics that their commitment had expired as of December 10, 2014 and Conditions of Closing had not yet been satisfied and gave Mr. Moskovits an additional thirty (30) days to satisfy the conditions – if the Conditions were not satisfied by this time, the approval would no longer be valid. Mr. Moskovits was informed that if he was interested in pursuing the loan at a later date, and funding was still available, his application could be reopened, subject to re-review and underwriting.

On November 23, 2015, DC Plastic Products was informed via regular and certified mail that its thirty days had passed and the conditions had not been met. Although DC Plastic has offered the Authority additional collateral for the loan until the bankruptcy involving the DC Plastic Products Corp. and David Moskovits and Yolanda Moskovits has been adjudicated, the Authority does not feel that the additional collateral offered is an adequate mitigant in determining whether a settlement and/or Court ruling in the bankruptcy petition would adversely affect the Borrower and Guarantors ability to repay the loan.

According to staff, EDA next had contact with Mr. Moskovits in May 2017 when he contacted the EDA via your office, citing his desire to reactivate his application. He was then contacted by an Eligibility Officer in the Office of Recovery. On June 6, 2017, Mr. Moskovits was asked again to provide the documentation that the Conditions for Closing discussed in 2015 had been satisfied. On August 18, 2018, EDA received documentation regarding the bankruptcy.

Since that time, EDA has been working with Mr. Moskovits to obtain all information required to review and underwrite his loan. On August 28, 2018, a letter was sent to Mr. Moskovits detailing documentation required to complete the review of his application, with a deadline of October 31, 2017 for submittal. While all documentation was received on October 30th, the financial projections provided at that time were not up-to-date and required substantial revision.

As the business has not been operational for some time, the underwriting of the loan must be based on financial projections. To date, the EDA has not received adequate projections with narrative assumptions from Mr. Moskovits. In addition, DC Plastics is suing their insurance provider, Chubb/Westchester for the full \$5 million value of their policy, which includes building and contents loss, as well as business income/interruption. If the litigation is successful, the full EDA loan amount would be reduced to \$2 million for construction related activities, and there would no longer be a working capital gap. In cases where a possible duplication of benefits exists due to an outstanding insurance claim, requested requires a subrogation agreement with the borrower so that any insurance payout would pay off a portion of the loan. In this case, due to the large dollar value of the potential payout, EDA is hesitant to enter into such an agreement because it would reduce the loan by over 50%.

In final, the matter is still being actively reviewed and underwritten, however, the EDA does not have all the needed information to complete review. If you have any questions, please contact me at your convenience.

Thank you for your attention.

**Jacob Genovay**  
Sr. Legislative and Regulatory Officer  
New Jersey Economic Development Authority  
36 West State Street  
PO Box 990  
Trenton, NJ 08625-0990  
609-858-6717 (o.)  
609-278-4796 (f.)  
[jgenovay@njeda.com](mailto:jgenovay@njeda.com)

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**From:** Cunningham, Sen. D.O. [<mailto:SenCunningham@nileg.org>]  
**Sent:** Thursday, January 25, 2018 3:17 PM  
**To:** Jacob J. Genovay <[JGenovay@njeda.com](mailto:JGenovay@njeda.com)>  
**Subject:** Information from Senator Cunningham

Dear Mr. Genovay,

Please see the attached documents, as requested.

Regards,  
Senator Sandra B. Cunningham

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NJ State Senator Sandra B. Cunningham  
1738 John F. Kennedy Boulevard  
Jersey City, New Jersey 07305  
(201) 451-5100 (office)  
(201) 451-0867 (fax)

## **REAL ESTATE**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** Parcel F-1, Tinton Falls  
First Amendment to the Assignment and Assumption Agreement with RWJ  
Barnabas Health, Inc., and the Fort Monmouth Economic Revitalization  
Authority

**DATE:** March 12, 2019

### **Request**

I request that the Members authorize the execution of the First Amendment to the Agreement to Assign ("Assignment") among the New Jersey Economic Development Authority ("NJEDA" or "Assignor"), the Fort Monmouth Economic Revitalization Authority ("FMERA" or "Seller") and RWJ Barnabas Health, Inc. ("RWJBH" or "Assignee"). The First Amendment provides for a sixty (60) day Due Diligence extension for RWJBH to assess subsurface environmental conditions at the location of the Buildings 2700 and 2705 and the 0.028 acre environmental carve out known as Lime Pit CW-1/ECP 16 (the "Lime Pit Area") at Parcel F-1 in the Tinton Falls Reuse Area (the "Property").

### **Background**

#### *1. Approval of the Purchase and Sale and Agreement and Mortgage*

In September 2017, the Members authorized the execution of a Purchase and Sale Agreement ("PSA") between FMERA and NJEDA for the Property, an approximately 36.3-acre parcel in the Tinton Falls section of the Fort that includes Building 2700, also known as the Myer Center, and Building 2705, the former Night Vision Lab. The September 2017 resolution also authorized FMERA's execution of a mortgage on the Property in the amount of NJEDA's estimated investment (\$7,328,771) to reposition the Property for sale and redevelopment.

#### *2. Agreement to Assign*

In February 2018, RWJBH submitted an unsolicited offer to NJEDA to purchase the Property for an amount not to exceed \$8 million. RWJBH intends to develop a health campus on the Property,

which currently includes:

- An ambulatory care center
- A medical office building
- A Cancer Institute of New Jersey cancer center
- A system business office
- Campus space for future medical and health facilities

After negotiations among RWJBH, NJEDA and FMERA (jointly the “Parties”) and the approval of the NJEDA and FMERA Boards, the Parties executed an Agreement to Assign on August 10, 2018, that included the following terms:

- At closing, NJEDA will assign to RWJBH the PSA between FMERA and NJEDA for (a) all of NJEDA’s actual and documented costs to reposition the Property for sale, including, but not limited to, cost of professional services, the demolition, site improvements, and other environmental investigation and remediation activities occurring at the Property plus (b) five percent (5%) of these costs, however, in no event shall the Assignment Price and Homeless Trust Fund Contribution exceed \$8 million.
- The Homeless Trust Fund Contribution, \$727, 996.50, will be paid directly to FMERA by RWJBH at closing; this amount is included in the \$8 million maximum.
- At execution of the Agreement, RWJBH will post a deposit with its title company equal to 15% of NJEDA’s estimated cost to reposition the Property for sale.
- As preconditions to the assignment and closing, RWJBH may perform its own title and survey investigation and due diligence and obtain necessary project approvals. The Approval Period duration is 18 months from the effective date of the Agreement with two 6-month extensions (subject to a \$50,000 non-refundable deposit per extension).
- Conditions precedent to the assignment and closing include an Amendment to the PSA, a Redevelopment Agreement between FMERA and RWJBH, and an amendment to the Fort Monmouth Reuse and Redevelopment Plan.

### *3. First Amendment to the Agreement to Assign*

Under the executed Agreement to Assign, RWJBH’s Due Diligence Period commenced on the Effective Date and concluded one hundred twenty (120) days thereafter on December 10, 2018. Due to the NJEDA’s ongoing demolition efforts on the Myer Center parcel, RWJBH has not been able to conduct subsurface environmental due diligence in the footprints of Buildings 2700, 2705 or the Lime Pit Area. Therefore, RWJBH desires to conduct additional testing to assess subsurface environmental conditions at the Property beneath (i) Buildings 2700 and 2705 and (ii) the Lime Pit Area after the completion of the demolition efforts. The Parties have agreed to modify and amend the Agreement to Assign to reflect the following:




- The provisions of Paragraph 10(a) of the Agreement to Assign notwithstanding, RWJBH shall have sixty (60) days after completion of Demolition to conduct additional inspection, sampling and testing to assess subsurface environmental conditions at the Property beneath (i) Buildings 2700 and 2705 and (ii) the Lime Pit Area (the "Additional Environmental Testing Period")..
- NJEDA and/or FMERA shall provide thirty (30) days advance notice to RWJBH of the completion of Demolition and the anticipated commencement of the Additional Environmental Testing Period. For the avoidance of doubt, the commencement of the Additional Environmental Testing Period shall not occur until such time as RWJBH's access to the Property is unhindered by the Demolition and related equipment/personnel, and such additional testing can be undertaken by RWJBH and its representatives without safety concerns related to the Demolition and related equipment located on the Property.
- RWJBH shall have the right to terminate the Agreement to Assign on written notice to NJEDA and FMERA due to any unsatisfactory subsurface environmental conditions at the Property beneath (i) Buildings 2700 and 2705 on the Property and/or (ii) the Lime Pit Area within the Additional Environmental Testing Period.
- Upon such termination, the Deposit shall be returned to RWJBH and, except as expressly provided by in the Agreement to Assign, all rights and obligations of the Parties shall be null and void. If RWJBH does not elect to terminate the Agreement to Assign within the Additional Environmental Testing Period for the foregoing reason, RWJBH shall conclusively be deemed to have waived its right of termination.

All other material terms of the Agreement to Assign as presented to the Committee and the Board will remain unchanged including the scheduled closing date. The attached First Amendment to the Agreement to Assign is in substantially final form. The final terms of the amendment will be subject to the approval of FMERA's Executive Director and the Attorney General's Office.

**Recommendation**

In summary, I request that the Members authorize the execution of the First Amendment to the Agreement to Assign among the New Jersey Economic Development Authority, the Fort Monmouth Economic Revitalization Authority and RWJ Barnabas Health, Inc. providing for a sixty (60) day Due Diligence extension to assess subsurface environmental conditions beneath Buildings 2700 and 2705 and the Lime Pit Area at Parcel F-1 in the Tinton Falls Reuse Area.

  
\_\_\_\_\_  
Tim Sullivan  
Chief Executive Officer

Attachments: First Amendment to Agreement to Assign  
Prepared by: David E. Nuse and Juan Burgos

**FIRST AMENDMENT TO AGREEMENT TO ASSIGN**

**THIS FIRST AMENDMENT TO AGREEMENT TO ASSIGN** (hereinafter the "First Amendment") is made and entered into the \_\_\_\_ day of February, 2019 (the "Effective Date"), by and among:

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 1974, C.80, N.J.S.A. 34:1 B-1 et seq., with an address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625 (hereinafter referred to as the "Assignor"); and

**RWJ BARBABAS HEALTH, INC.**, a New Jersey non-profit corporation with an address at 95 Old Short Hills Road, West Orange, New Jersey 07052 (hereinafter referred to as the "Assignee"); and

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c.51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, P.O. Box 267, Oceanport, New Jersey 07757 (hereinafter referred to as the "Seller" or "FMERA, and together with Assignor and Assignee, the "Parties").

**WITNESSETH:**

**WHEREAS**, Assignor and FMERA previously entered into that certain Purchase and Sale Agreement, dated as of October 30, 2017, as amended (the "Purchase Agreement"), a copy of which is attached hereto as **Exhibit A**, pursuant to which Assignor has agreed to acquire certain real property identified in Paragraph 3 and Exhibit B of the Purchase Agreement (the "Property"); and

**WHEREAS**, the Parties previously entered into that certain Agreement to Assign, dated as of August 10, 2018, a copy of which is attached hereto as **Exhibit B**, pursuant to which Assignor agreed to assign to Assignee all of Assignor's rights, title and interest in the Purchase Agreement by way of separate document; and

**WHEREAS**, the Agreement to Assign provided for a Due Diligence Period commencing on the Effective Date and concluding one hundred twenty (120) days thereafter; and

**WHEREAS**, the Due Diligence Period expired on December 10, 2018; and

**WHEREAS**, Assignee desires to conduct additional testing to assess subsurface environmental conditions at the Property beneath (i) Buildings 2700 and 2705 and (ii) the lime pit area, as depicted on the sketch attached hereto as **Exhibit C**; and

**WHEREAS**, the Parties recognize and acknowledge that such testing cannot be completed until the existing structures are demolished by Assignor; and

**WHEREAS**, the Parties have agreed to modify and amend the Agreement to Assign, as hereinafter set forth.



**NOW THEREFORE**, in consideration of the sum of \$10.00 and other good and valuable consideration, the parties hereto mutually covenant and agree as follows:

1. Recitals. The recitals set forth above are true and correct and by this reference are incorporated herein in their entirety.
2. Definitions. All terms not defined herein shall have the meaning given to them in the Agreement to Assign. Any conflict between the terms of the Agreement to Assign and this First Amendment shall be governed by the terms of this First Amendment.
3. Amendment of Agreement to Assign. The Agreement to Assign is hereby amended as follows:

The provisions of Paragraph 10(a) of the Agreement to Assign notwithstanding, Assignee shall have sixty (60) days after completion of demolition of Buildings 2700 and 2705 to conduct additional inspection, sampling and testing to assess subsurface environmental conditions beneath (i) Buildings 2700 and 2705, and (ii) the lime pit area as depicted in **Exhibit C** (the "Additional Environmental Testing Period"). Assignor and/or Seller shall provide thirty (30) days advance notice to Assignee of the completion of such demolition and the anticipated commencement of the Additional Environmental Testing Period. For the avoidance of doubt, the commencement of the Additional Environmental Testing Period shall not occur until such time as Assignee's access to the Property is unhindered by the demolition and related equipment/personnel, and such additional testing can be undertaken by Assignee and its representatives without safety concerns related to the demolition and related equipment located on the Property. Assignee shall have the right to terminate the Agreement to Assign on written notice to Assignor and Seller due to any unsatisfactory subsurface environmental condition discovered beneath (i) Buildings 2700 and 2705 and/or (ii) the lime pit area within Additional Environmental Testing Period. Upon such termination, the Deposit shall be returned to Assignee and, except as expressly provided by in the Agreement to Assign, all rights and obligations of the Parties shall be null and void. If Assignee does not elect to terminate the Agreement to Assign within the Additional Environmental Testing Period for the foregoing reason, Assignee shall conclusively be deemed to have waived its right of termination.

4. Counterpart Copies. This First Amendment 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 First Amendment 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 First Amendment.
5. Entire Agreement, Ratifications and Reconciliation. The Agreement to Assign and this First Amendment contain the final and entire Agreement between the Parties

with respect to the sale and purchase of the Property, and are intended to be an integration of all prior negotiations and understandings. Except as modified in this First Amendment, the Agreement to Assign is hereby ratified and remains in full force and effect. The terms and provisions of this First Amendment shall be reconciled with the terms and provisions of the Agreement to Assign to the fullest extent reasonably possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this First Amendment and any terms or provisions of the Agreement to Assign, such term or provision of this First Amendment shall control.

*NO FURTHER TEXT; SIGNATURE PAGE FOLLOWS*

**IN WITNESS WHEREOF**, the parties have executed and delivered this First Amendment as of the date first above written.

**FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY**

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

Title:

**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

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

Title:

**RWJ BARNABAS HEALTH, INC.**

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

Title:



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

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

**DATE:** March 12, 2019

**Summary**

I request the Members approve New Jersey City University's ("Applicant") amended application, under Higher Education Private Public Partnership Program (the "Program") established by P.L. 2009, c. 90, as amended (the "Act"), to allow Crossroads Companies ("Private Partner") develop the following modified "Project" or "Development":

- ±73,413 square foot supermarket on Block 6 of the revised West Campus Master Plan ("Master Plan"), which is attached as **Exhibit A**
- ±221 parking spaces on Block 6
- ±120 surface parking spaces on Block 4A

This modified Project reflects the Applicant and Private Partner's decision, due to unforeseen environmental litigation regarding the project site, to scale down the initial project approved by the Member in September 2015 while retaining the principal uses of the initial project. The modified Project will be developed on approximately ±3.68 acres of land owned by the Applicant as required by the Act. The Project's total development cost will be approximately ±\$31.13 million. Under the Act, the "Authority shall review all completed applications" and "[n]o project shall be undertaken until final approval has been granted by the [A]uthority." N.J.S.A. 18A:64-85.f(3). The amended application is required because the project's scope of the improvements has been revised and the Authority retains "the right to revoke approval if it determines that the project has deviated from the plan submitted" in the approved application. *Id.* Staff performed a substantive review of the amended application and supporting documentation in accordance with the Act and pursuant to the Authority's Higher Education Institution Public-Private Partnership Program Guidelines (the "Guidelines") and recommends its approval. The Authority's approval will be subject to the Applicant submitting additional items that are outlined below. Separately, the Members will consider the Private Partner's application for an Economic

Redevelopment and Growth Grant application for the Project.

### **Background**

#### *A. Initial Approval*

In September 2015, the Members approved the Applicant's a public-private partnership between the Applicant and Crossroads Companies ("Private Partner") for commercial development consisting of 110,000 square foot commercial space that would include  $\pm 600$  structured parking spaces,  $\pm 62,000$  SF supermarket,  $\pm 37,500$  SF fitness center,  $\pm 8,000$  SF rooftop restaurant and 6 NCAA compliant roof top tennis courts on Blocks 4 and 6 on the West Campus with an estimated development cost of  $\pm \$58.12$  million.

The Private Partner would develop the Project and lease the L.A. Fitness, and supermarket and sell the parking structure to the Hudson County Improvement Authority ("HCIA"). HCIA would: 1. issue bonds that would be repaid from parking fees, and 2. lease the rooftop tennis courts to the Applicant and the restaurant to an operator at current market rates. For further reference, a copy of the September 2015 board memo is attached as **Exhibit B**. This memo will outline the Project changes that require the Members' approval.

#### *B. Application Timeliness*

The original application was filed within the existing deadline (August 1, 2015). An application amendment may be filed after the deadline. However, the project must be completed within five years of the Authority's final approval. Real Estate Division Staff has reviewed the amended application and considered the application complete.

#### *C. Private Financing and Ownership of the Land*

Staff has reviewed the amended application to confirm that the Private Partner continues to assume full financial responsibility for the construction of the Project and that the Applicant has no financial responsibility for the Project's construction. The Applicant currently owns the  $\pm 3.68$  acres that will be leased to the Private Partner controlled entity(ies) for the Project. As required by the Act, the Applicant will continue to own the land during the entire lease term.

#### *D. Revised Project Description, Encouraging Green Building and Project Schedule*

##### *1. Revised Project*

The West Campus (approximately  $\pm 22$  acres) is subject to ongoing environmental litigation in the United States District Court in a consolidated matter titled the "Riverkeeper Litigation," civil docket number 05-955. The Riverkeeper Litigation includes resolving what type of development may occur on the remediated portions of the impacted properties, which now includes Blocks 4A and 6 on the West Campus. The initial approved Project location, Block 6, is shown in **Exhibit C**, which is attached to this memo. To accommodate the concerns of the parties, the Private Partner, with the Applicant's consent, redesigned the Project so that no building would be within the "Commercial Area of Concern" on Block 6 as defined in the Riverkeeper litigation. This required the Applicant to subdivide Block 4 into Blocks 4 and 4A so that the Project building could be repositioned on Block 6 with surface parking and additional permit parking on Block 4A.



In addition, the Private Partner and the HCIA could not come to terms on the lease for the parking structure, so the plan was further revised to include surface parking on Block 4A and 6 in lieu of the garage. The proposed revised Project site plans and elevations are attached as **Exhibit D**. Due to the site plan change and the lack of a parking garage, the fitness, center, tennis courts and restaurant also were eliminated from the Project.

The following tables summarizes: 1. the Applicant's request revisions to the Project compared to the previously approved application, and 2. the uses changes by square feet or unit, and percentage change in each use type:

Uses	Approved SF or Units	Revised SF or Units	Proposed SF or Units	
Supermarket	62,000	11,413	73,413	
Fitness Center	37,500	(37,500)	0	
Restaurant	8,000	(8,000)	0	
Tennis Courts	6	(6)	0	
Parking Structure Spaces	600	(600)	0	
Surface Parking Spaces	0	341	341	

Summary of Uses	Approved SF or Units	Revised SF or Units	Proposed SF or Units	% Change
Commercial SF	107,500	(34,087)	73,413	-31.71%
Tennis Courts	6	(6)	0	-100.00%
Parking Spaces	600	(259)	341	-43.17%

The supermarket and 221 parking spaces will be on Block 6, with an additional 120 surface parking will be available on Block 4A. The Private Partner will lease the supermarket, for a 25-year term, to Inserra Supermarkets which will operate a ShopRite, which is unchanged from the initial application.

The Applicant has retained the right to construct a one-level parking structure above the 120 spaces on Block 4A. The Applicant's future parking structure is not within the scope of the amended application and will be developed at the Applicant's own cost and expense.

## 2. Green Building and Project Schedule

The Project initially was approved by the Board for completion by September 9, 2020, which would have been within the five-year statutory completion deadline. However, the Project could not be completed by this deadline due to the Riverkeeper Litigation. The Applicant and Private Partner believed they had designed the Project to comply with the environmental restrictions of the Honeywell environmental cleanup. When their plans became an issue the Applicant and the Private Partner then agreed to revise the Project's design in order to resolve the Riverkeeper Litigation.

Since the resolution of the Riverkeeper Litigation, the Applicant and the Private Partner prepared revised site plans, which the City of Jersey City reviewed, under the Municipal Land Use Law's Capital Plan Review section on November 15, 2018.

Based on the foregoing and subject to the conditions of approval set forth in this Memo, Staff recommends that the Members approve the amended project completion schedule as being a permitted extension under the statute. Neither the Applicant nor the Private Party was the cause of the delay. The pause in the Project as described above was due solely to the Riverkeeper Litigation and was not within the Applicant or Private Partner's control.

The Project will continue to be constructed in a manner that meets or exceeds the 2007 PBU Standard of Pay for Performance as required by the Economic Redevelopment and Growth Grant. The Private Partner proposes to commence construction in November 2019 and complete in the core and shell by April 2021.

Staff further recommends that the Board provide the Applicant and the Private Partner until December 31, 2021 to complete the Project, which provides an additional 8 months for any construction delays (e.g., weather or unforeseen conditions) that may occur.

*E. Revisions to the Partnership Documents*

The Lease between the Applicant and the Private Partner ("Parties") will be amended as follows:

- Revised the project scope as described in this memo
- Incorporate part of Block 4 (new Block 4A) for parking
- Reserve Applicant's right to construct the parking deck on Block 4A as described in this memo
- Fixed the initial rent at \$650,000 per year that was previously set at a minimum of \$500,000 minimum (rent increases remain the same - 10% increase every 10<sup>th</sup> anniversary)
- Delete the parking garage, the rooftop restaurant, tennis courts, and HCIA from the Lease
- Recognize the "Riverkeeper Litigation" as described in this memo as an agreed upon event of "Unavoidable Delay" under the Lease for the completion of the Project

The Development Agreement between the Parties will be amended as follows:

- Revise the project description as noted in this memo
- Delete references to both the parking deck and also the L.A. Fitness, restaurant, and tennis courts as set forth in section D.1. of this memo.
- Revise the parcel description as described in this memo

*F. Private Partner's Experience and Qualifications*

The Private Partner has not proposed any changes to the development team. Staff concludes that the Project's development team, as previously proposed, has sufficient experience to own, develop, construct, operate and maintain the Development.

*G. Project Financing and Feasibility*

*1. Uses and Sources of Funds*

The following chart summarizes the changes between the original and the proposed sources and uses statement:

Uses	Approved	Proposed	Difference	% Difference
Acquisition	\$585,000	\$1,125,000	\$540,000	92.3077%
Improvements	\$50,556,390	\$24,604,318	(\$25,952,072)	-51.33%
Professional Services	\$2,398,469	\$2,289,250	(\$109,219)	-4.55%
Financing and Other Costs	\$3,123,801	\$1,022,011	(\$2,101,790)	-67.28%
Contingency	\$0	\$1,000,000	\$1,000,000	NA
Development Fee	\$1,452,419	\$1,089,555	(\$362,864)	-24.98%
<b>TOTAL</b>	<b>\$58,116,079</b>	<b>\$31,130,134</b>	<b>(\$26,985,945)</b>	<b>-46.43%</b>

Sources	Approved	Proposed	Difference	% Difference
Financing of Deck/Rec space by HCIA	\$29,000,000	\$0	(\$29,000,000)	-100.00%
Redevelopment Area Bond	\$4,000,000	\$0	(\$4,000,000)	-100.00%
1st Lien Debt	\$12,558,040	\$24,904,107	\$12,346,068	98.31%
Equity	\$12,558,040	\$6,226,027	(\$6,332,013)	-50.42%
<b>TOTAL</b>	<b>\$58,116,079</b>	<b>\$31,130,134</b>	<b>(\$26,985,945)</b>	<b>-46.43%</b>

The budget revisions are due to the elimination of the parking deck, L.A. Fitness, restaurant, and tennis courts from the Project.

Except for the letter of intent to lease with Inserra Supermarkets, the amended application did not include any financial commitments. Currently, the application assumes that the initial permanent loan will have a 30-year term, with a 30-year amortization at 4% interest rate. The terms of the equity return to any private investor is currently undisclosed. Providing commitment letters as a condition to approval construction is listed as a condition below.

*2. Operating Proforma*

The operating expense where within typical market conditions, with annual increases estimated at 2%, and reflects the deposits and uses of the long-range maintenance reserve, and the debt service as summarized in section G.1. above with a debt service coverage ratio of 1.70 in year 1 of the Lease.



### *3. Market Study*

The market conditions for the supermarket have not changed. The area continues to be a “food desert,” in which the area is served by .92 supermarket square foot per person, while the national average is approximately 5.29 supermarket square feet per person. With the addition of the ShopRite, the area will have 1.42 supermarket square feet per person, still leaving the market underserved. An update the original study finds that this is still the case. Staff has reviewed the study and the update and concludes that study’s conclusions and recommendations are still valid at this time.

### *4. Long-Range Maintenance Plan*

The long-range maintenance plan remains the same for the Project. The plan submitted complies with industry standards for replacement reserve accounts and capital maintenance plans and the long-range maintenance guidelines prepared by the Authority’s consultant and adopted by the Authority. Accordingly, staff concludes that Applicant has submitted an adequate long-range maintenance plan for the Project.

After reviewing the project’s budget, operating proforma, market study, and supporting information, the Real Estate Division’s staff has assessed the soundness of the financial plan and concludes that the Project continues to be financially feasible and has a supported need. Staff additionally concludes that the Project’s development cost, accounting for prevailing wage, and projected operating expenses continue to be are reasonable and are within current market conditions.

### *H. DPMC Classification*

The Division of Property Management and Construction within Treasury has classified Del-Sano Construction under general construction with a bonding capacity of \$150 million.

### *I. Other Requirements of the Act*

In accordance with the requirements of the Act, the Applicant has produced evidence and has certified to comply with the following requirements of the Act:

1. *Prevailing Wage.* The Private Partner will pay prevailing wage as required by the Act (“Each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college . . . shall be paid not less than the prevailing wage rate”)
2. *Project Labor Agreement.* The Private Partner will enter into the required project labor agreements during the construction, operation, and long-range maintenance of the Project (the Applicant included a draft agreement in its submission)
3. *Bond.* The Private Partner will post the required payment bond or have the bond posted on its behalf.

*J. Recommendation*

Staff recommends that the Board give final approval of the amended application subject to the following conditions being met to the satisfaction of appropriate staff (e.g., Chief Executive Officer, Senior Vice President Finance and Development, or the Vice President of the Estate Division):


1. Providing a copy of the executed Lease and Development Agreements with attachments (excluding the plans and specifications, if applicable)
2. Submitting, in final form, the development and operating budgets in the Authority's Excel template (substantially the same as the documents reviewed by the Authority)
3. Submitting, in final form, project labor agreements for the construction (prior to construction start) and contracts to implement the long-range maintenance plan (at the end of construction), which require not paying less than prevailing wage and to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location
4. Submitting, in final and satisfactory form, posted bonds guaranteeing prompt payment of moneys due to the contractor (and/or subcontractors)
5. Submitting a final copy of the Project's financing commitments:
  - a. Members' approval of the Project's Economic Redevelopment and Growth Grant
  - b. The City of Jersey City approval resolution for PILOT and the executed PILOT agreement executed private financing commitment (construction and permanent)
  - c. Executed private equity financing commitment letter
  - d. Executed loan commitment letters
  - e. The Project owner's current financial statement, no older than 30 days from the date of submission, evidencing the Project Owner's equity in the Project (if any)
  - f. Copy of the binding lease commitment from Inserra Supermarkets
6. Submitting other items (i.e., any other document which may contain a material business term to the "partnership agreement" between the parties) that the Applicant must provide in order to obtain the Authority's final approval
7. Providing quarterly reports commencing upon the Authority providing a letter stating the conditions of this memo have been met for the Project and ending upon the receipt of an initial certificate(s) of occupancy (or equivalent) for the Project

The Applicant and Private Partner will have until December 31, 2021, to complete the Project. No further extensions to the Project completion date will be granted.

The Applicant **shall not** permit the Private Partner or project owner to commence construction of the Project until Authority Staff receives and reviews the requested items listed above and Authority Staff issues a letter stating that conditions in this memo are met.

**Recommendation**

In summary, I request the Members approve the amended application for the modified Project subject to the conditions stated above and authorize designated Authority staff to approve the conditions upon satisfactory completion by the Applicant



---

Tim Sullivan  
Chief Executive Officer

Exhibits A - D

Prepared by: Juan Burgos







Exhibit B

ADOPTED  
SEP 10 2015

Attachment

Resolution of the New Jersey Economic Development  
Authority Regarding Approval of New Jersey City  
University's Higher Education Public Private Partnership  
Application to Develop 110,000 Square Foot Commercial  
Space – West Campus Block 6

WHEREAS, the Members of the New Jersey Economic Development Authority have been presented with and considered a Memorandum in the form attached hereto; and

WHEREAS, a Memorandum requested the Members to adopt a resolution authorizing certain actions by the New Jersey Economic Development Authority, as outlined and explained in the said Memorandum.

NOW, THEREFORE, BE IT RESOLVED by the New Jersey Economic Development Authority:

1. The actions set forth in the Memorandum attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.
2. The Memorandum, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.
3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: September 10, 2015

EXHIBIT 25



**MEMORANDUM**

**TO:** Members of the Authority

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

**RE:** Higher Education Public Private Partnership Program  
New Jersey City University  
West Campus Block 6 (Crossroads Companies)

**DATE:** September 10, 2015

**Summary**

The Members are asked to approve New Jersey City University's ("Applicant") application to develop 110,000 square foot commercial space that will include ±600 structured parking spaces, ±62,000 SF supermarket, ±37,500 SF fitness center, ±8,000 SF rooftop restaurant and 6 NCAA compliant roof top tennis courts ("Project" or "Development"), on approximately ±2.68 acres of land on the Applicant's campus under the Higher Education Private Public Partnership Program (the "Program") established by P.L. 2009, c. 90, as amended (the "Act"). The Project's total development cost will be approximately ±\$58.12 million. The Applicant currently owns the ±2.68 acres. Under the Act, the "Authority shall review all completed applications" and "[n]o project shall be undertaken until final approval has been granted by the [A]uthority." N.J.S.A. 18A:64-85.f(3). Staff performed a substantive review of the application and supporting documentation in accordance with the Act and pursuant to the Authority's Higher Education Institution Public-Private Partnership Program Guidelines (the "Guidelines") and recommends approval of the Applicant's Project. The Authority's approval will be subject to the Applicant submitting additional items that are outlined below.

*New Jersey City University  
Higher Education Public Private Partnership Program  
West Campus Block 6  
Page 1*

### **Background**

#### *The Authority's Scope of Review*

Under the Program, the Authority must review and approve an application, which, in order to be complete, must contain the following items:

1. a full narrative description of the project
2. a public-private partnership agreement between the state or county college and the private developer
3. a land lease or land agreement
4. financial information including the estimated costs and financial documentation for the project
5. a detailed project schedule (i.e., timetable) for completion of the project extending no more than five years after consideration and approval
6. DPMC classification information for the required contractors and/or subcontractors
7. evidence of arrangements for entering into project labor agreements and paying prevailing wages as required by the Act
8. evidence of arrangements for issuance of the required bonds.

The financial documentation shall include a long-range maintenance plan that will "specify the expenditures that qualify as an appropriate investment in maintenance." In addition, the Authority may impose "other requirements that the [A]uthority deems appropriate or necessary."

Within the Act's deadline, the Applicant submitted a complete application for the Project with adequate exhibits and supporting documentation which included an adequate form of the Ground Lease and Project Development Agreements which serve as the partnership agreement for this Project. Real Estate Division Staff deemed the application complete.

The Act requires that any project undertaken through the Program must be financed in whole by the private entity. Staff has reviewed the project documents to confirm that the private partner assumes full financial and administrative responsibility for the construction of the Project and that the Applicant has no financial responsibility for the construction of the Project. The Act also requires that the State or institution of higher education must retain full ownership of the land upon which any project undertaken through the Program. Staff has reviewed the Project documents to confirm that the Applicant will retain full ownership of the land where the Project will be developed.

*Project Description and Schedule*

*A. West Campus Development Plan*

*1. History*

The Applicant's Facilities Master Plan outlines the university's planned expansion on the West Campus. In 1970's, the Applicant started the process to acquire ±21.3 acres, former industrial land, which is bounded by Route 440 to the North, Carbon Plan to the East, South Road to the West, and Wes Side Avenue to the South. In 2005, Jersey City adopted the West Campus Redevelopment plan, which incorporates the Applicant's vision:

The University intends for the West Campus to be more than a typical college campus. It will also be a place for city residents to work, shop and live. When fully developed, the project will include a significant amount of retail space, structured parking, student as well as market-rate housing, academic teaching spaces, academic offices, a performing arts center, and primary and secondary schools.

*2. West Campus Environmental History*

Honeywell remediated the chromium related contamination on the property, which is the subject of a consent decree and deed restrictions. Additionally, the Applicant recently remediated the non-chromium related portions of the property, which is also subject to a deed restriction.

*3. West Campus Site Plan*

The Applicant's current West Campus Master Plan, which is attached as Exhibit A, includes:

- performing arts center
- student dorms (currently being developed as a public private partnership between the Applicant and RISE, formerly Ambling University Development Group)
- 581 market rate apartments, ±50,000 SF ground floor retail, and 620 parking spaces
- and this Project, which will include a supermarket, fitness center, ±650 structured parking spaces, a rooftop restaurant and tennis courts

*4. Block 6*

In December 2014, the Applicant issued a request for qualifications to design, develop, construct, and manage a mixed-use residential over commercial retail on Blocks 2 and 3, and a commercial retail facility and parking structure on Block 6. Although 8 parties submitted qualifications for the proposed development on Blocks 2 and 3, only Crossroad Companies ("Project Owner") submitted qualifications for the development on Block 6.

After evaluation and due diligence, the Applicant invited Crossroads to submit a proposal to develop Block 6 and selected Crossroads Companies ("Project Owner") to finance, plan, design,

*New Jersey City University*

*Higher Education Public Private Partnership Program*

*West Campus Block 6*

*Page 3*



construct, operate and maintain a commercial facility that will include ±62,000 SF supermarket, ±37,500 SF fitness center, structured parking for ±600 spaces, ±8,000 SF rooftop restaurant, and 6 NCAA compliant roof top tennis courts. In June 2015, the Applicant's Board of Trustees approved the Crossroad Companies as the private partner to develop the Project under the Act and authorized the appropriate officials of the Applicant to negotiate and execute documents to consummate the transaction.

Crossroads will create a single purpose entity that will own the Project, enter into a ground lease and development agreement with the Applicant, and enter into the following subleases:

- Upon completion of construction of the structured parking and rooftop tennis courts, the single purpose entity will enter into a subordinate lease with the Hudson County Improvement Authority (HCIA).
- The single purpose entity will enter into subordinate leases with Inserra ShopRite Supermarket and LA Fitness, and a to be determined rooftop restaurant operator.

HCIA will finance the structured parking sublease with tax exempt bonds and will enter into subordinate leases with the Applicant for 150 parking spaces and the rooftop tennis courts.

*B. Estimated Job Creation*

The Project Owner estimates that the Project will create 250 construction jobs and between 250 and 300 permanent jobs.

*C. Encouraging Green Building*

The Act encourages projects to adhere to the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System and/or the NJ Green Building Manual. The Project Owner will be applying for an Economic Redevelopment and Growth Grant (ERG). If the Authority approves the ERG application, the Project Owner will comply with the required 2007 Board of Public Utilities Pay for Performance program, which will meet the Act's requirement.

*D. Project Schedule*

The Applicant provided a schedule to complete construction within 20 months. This end date complies with the Act's requirement that projects must be completed within 5 years of the Authority's approval date.

In accordance with the Guidelines, staff reviewed the Applicant's description of the Project, its design, and project schedule. Staff concludes that the Applicant has proposed a feasible project plan and design, and that the Applicant has proposed a schedule that will meet the Act's five year completion deadline

*Summary of the Partnership Documents*

The parties' roles, responsibilities and benefits in the Project are summarized below:

*A. Applicant*

1. *Lease Term.* The Applicant will lease the property for a 50 year term, commencing on Term Commencement Date, which the parties will select by executing a written agreement. The Applicant has provided the Project with one 25 year option term under the Lease.

2. *Rent.*

- a. *Initial Payments.* The Applicant will receive payments according as follows:

Milestone	Payment		
Upon Lease Effective Date			
On 10th Day after Authority Approves ERG	.3% of Cost	or	\$174,348.24
Upon Approval Jersey City Council's Approval of PILOT and RAB	.3% of Cost	or	\$174,348.24
Upon Receipt of Commitment from HCIA to Finance Purchase of Structured Parking	.2% of Cost	or	\$116,232.16
	.2% of Cost	or	\$116,232.16

If the lease is terminated prior to the rent Commencement Date, the Applicant will retain these payments as liquidated damages.

- b. *Fixed Rent.* The Applicant will receive the following rent payments under the lease:

Milestone	Estimated Payment
Rent Commencement Date (minimum payment shall not be less than \$500,000).	\$650,000
On 10th Anniversary of the Rent Commencement Date, Fixed Rent shall increase by 10%.	\$715,000
On each successive 10th Anniversary, rent shall increase 10% of the immediately preceding period.	\$786,500

The average annual lease payment is ±\$1.1 million, and the present value of the lease payments during the term, with a 4% discount rate, is estimated at ±\$19.41 million.

3. *Utilities and Approvals.* Landlord will cooperate with tenant regarding the following:
  - a. *Utilities.* Applicant will cooperate with the Project Owner to file utility applications and “documents necessary to obtain” utility services.
  - b. *Other Approvals.* Applicant agrees to cooperate with the Project Owner “in obtaining any and all licenses, certificates, authorizations, permits, consents and approvals” required for the Project.
  - c. *EDA Reporting.* Applicant and the Project Owner will cooperate for any required EDA reporting under the Act.
4. *Sell or Assign the Property.* Subject to the terms of the Lease and the Act, the Applicant may sell or assign the Property.
5. *Discharge of Easements and Rights of Way.* Except for permitted exceptions under the Lease, the Applicant “shall obtain, deliver and record a discharge of all Utility Services easements, rights of way and other such rights recorded against” the leased property “as of the date of the Lease.
6. *Quiet Enjoyment.* The Applicant agrees that during the lease term, the Project Owner “shall lawfully and quietly hold, occupy and enjoy the Premises . . . without hinderance or molestation by or from anyone claiming by, through or under the [Applicant],” except for Permitted Exceptions.
7. *Right to Perform Project’s Owner’s Lease Covenants.* The Applicant may, after providing the required notice and the Project Owner has failed to perform, “pay any Imposition . . . take out, pay for, maintain or deliver any [required] insurance, . . . cause any lien . . . to be discharged. . . , or perform any other act” required by the Lease.
8. *Environmental Issues.* Applicant remains responsible for the following environmental issues:
  - a. *Consent Decree and Deed Notice Environmental Issues Prior to the Lease Effective Date.* The Applicant remains responsible for compliance with the Consent Decree, and environmental deed notices filed on the West Campus property prior to the Lease’s Effective Date.

- b. *Non-Compliance with Environmental Issues that Arose Prior the Lease Effective Date.* The Applicant remains responsible for non-compliance with environmental laws that are not governed by the Consent Decree and/or the environmental deed notices and that existed prior to the Lease's Effective Date.
  - c. *Applicant's Responsibility to Remediate.* For items that existed prior to the Leases' Effective Date, if during the lease term "Hazardous Materials are discovered that would require remediation by [the Applicant]. . . and the [Applicant] is unable to perform the remediation due to cost to remediate, then the [Applicant] may choose to terminate this Lease upon thirty (30) days written notice . . . [and] the Parties shall meet to determine, what, if any, refund would be due the Tenant."
9. *Change Orders.* The Applicant will review and approve the Project change orders.
  10. *Other Work.* The Applicant may perform "other work" on the West Campus, so long as it does not "materially interrupt, interfere with, hinder or delay" the Project.
  11. *Ownership of Improvements at End of the Term.* At the end of the Lease term, Applicant is entitled to all the improvements (excluding trade fixtures and business improvements not part of the Project) free and clear of all liens.

*B. Project Owner*

1. *Rent and Impositions.* The Project Owner will pay the initial payment, the fixed rent, and any required impositions.
2. *Obtain Required Approvals and Utility Services.* The Project Owner must obtain all required approvals and required utility services for the Project.
3. *Design and Construction.* The Project Owner will be responsible for the design, development, construction, equipping and furnishing the Project as required by the Development Agreement and the Lease.
4. *Development Team.* The Project Owner is responsible for the hiring, supervising and compensating the design, construction and other professionals necessary to develop the Project.
5. *Project Financing.* At its sole cost and expense, the Project Owner shall be responsible for the Project budget and financing the Project development.

6. *Project Schedule.* The Project Owner will be responsible for delivering the Project within the time frame of the approved project schedule.
7. *Environmental Issues.*
  - a. *No Discharge.* During the term of the Lease, the Project "shall not permit . . . any Person to, use, handle, store, generate, manufacture, transport, discharge or release any Hazardous Materials" on the property.
  - b. *Compliance with Consent Decree and Deed Notices.* The Project Owner agrees to comply with the requirements of the environmental consent decree and deed notices on the property.
8. *Utility Service.* The Project Owner will be responsible for all utility charges at the site.
9. *Indemnification.* The Project Owner agrees to indemnify, defend and hold harmless the Applicant "arising . . . in connection" with the Project Owner's "possession, use, occupancy or management" of the Project.
10. *Bond and Insurance.* The Project Owner will obtain insurance require by the Lease and bonds required by the Development Agreement.

*C. Hudson County Improvement Authority as Sub-Tenant*

HCIA will sublease the parking structure and rooftop tennis courts from the Project Owner, under terms substantially similar to those that exist between the Applicant and Project Owner (see above Applicant and Project Owner's Responsibilities), with the following additional terms and conditions:

1. *Term.* The lease term will coincide with the bond financing term (or earlier repayment), currently estimated at 40 years, but in no event will the sublease term be longer than the Lease between the Applicant and the Project Owner.
2. *Rent.* HCIA will pay the Project Owner the development cost of the deck as rent upon issuing the bonds. No further rent will be due during the term.
3. *Financing.* HCIA will use "commercial reasonable efforts" to issue the bonds for the rent payment for the leasehold improvements.

4. *Parking Space Sublease.* The HCIA will sublease 150 spaces to the Applicant at the starting rent of \$135 space per month.
5. *Rooftop Lease.* The HCIA will lease the rooftop tennis courts to the Applicant for market rate consideration, which is currently estimated at \$257,500 annually.
6. *Parking Rates.* HCIA will have the right to set the parking rates to maintain the required bond underwriting obligations.
7. *Development Obligation.* The development and construction obligations of the parking structure and rooftop improvements *will remain with the Project Owner.*

*Partner's Experience and Qualifications*

The Guidelines call for an assessment of the experience and qualifications of the development partner and its team.

*A. Project Owner*

*1. Crossroads Companies*

Formed in 2001 by the principals of Inserra Supermarkets (Steven Hitman and Larry Inserra), Crossroads Companies has owned and or developed over 1 million SF of shopping center space. Crossroads current portfolio includes 900,000 SF valued at \$175 million. The current development pipeline includes 4 supermarkets with an estimated value of \$85 million. Some of the Project Owner's current projects include:

Project	Description	Cost
Shopping Center, Wallington NJ	118,000 SF retail	\$29,000,000.00
Shopping Center, Somerset NJ	95,000 SF retail	\$13,000,000.00
William Jefferson Clinton Tower, West New York NJ	78,000 SF retail, 73 apts., 80 pking. Sp.	\$18,600,000.00
TOTAL		\$60,600,000.00

*2. Inserra Supermarkets, Inc.*

The anchor tenant for the Project and a related entity to the Project Owner, Inserra Supermarkets, Inc., operates 22 ShopRite stores in New York and New Jersey, with annual revenues of approximately \$1.15 billion. The supermarket operator employees 4,000 associates and provides full and part time employees with a comprehensive medical and other benefits package (health, dental, vision, disability, substance abuse counseling and legal services).

*B. Studio Hillier*

Studio Hillier, formed in 2011, was started by Robert J. Hillier, the former owner and principal of the Hillier Group, a well known architectural, planning and project management firm started in 1966, will lead the design team for this Project. Hillier has participated in 2,400 commercial retail developments totaling \$10 billion in development cost.

*C. Del-Sano Construction Corporation.*

In business for 39 years, this firm has constructed over 1,500 residential units in the New York metropolitan area, and approximately 2.5 million square feet of commercial retail space with a total construction cost of approximately \$1 billion. The firm has a bonding current capacity \$150 million (with \$70 million available) and a DPMC classification of \$77 million for general construction.

*D. Hudson County Improvement Authority (HCIA)*

HCIA will purchase and operate the completed parking deck from Project Owner. HCIA has financed approximately 1,440 structured parking spaces in the amount of \$38 million (total project cost of \$47 million) and currently operates and/or manages one parking structure in Hudson County.

Staff concludes that the Project's development team has sufficient experience to own, develop, construct, operate and maintain the Development.

*Project Financing and Feasibility*

*A. Sources and Uses of Funds,*

The following chart summarizes the project's uses and sources:

Uses of Funds		% Project
Acquisition	\$585,000	1.01%
Improvements	\$50,556,390	86.99%
Professional Services	\$2,398,469	4.13%
Financing & Other Costs	\$3,123,801	5.38%
Contingency	\$0	0.00%
Development Fee	\$1,452,419	2.50%
<b>TOTAL</b>	<b>\$58,116,079</b>	<b>100.00%</b>



Sources of Funds		% Project
HCIA Deck Leasehold	\$29,000,000	49.90%
Jersey City RAB	\$4,000,000	6.88%
Permanent Loan	\$12,558,040	21.61%
Equity	\$12,558,040	21.61%
<b>TOTAL</b>	<b>\$58,116,079</b>	<b>100.00%</b>

*B. Leasing and Financing Commitments*

*1. Parking Structure Sublease*

HCIA will sublease the parking structure and the rooftop tennis courts from the Project Owner funded by a tax exempt bond issuance and a contribution (either through a lease or other agreement) from the city of Jersey City.

The sublease terms will require the Applicant to lease 150 parking spaces and the tennis courts from HCIA. The balance of the spaces will be open to the general public.

*2. Inserra Supermarkets*

Inserra Supermarkets will lease approximately 64,455 SF, to operate a ShopRite, for 10 years (with five ten-year renewal options) with a base rent of \$27 SF, increasing 10% every 5 years. Inserra Supermarkets will pay its proportional share of common area maintenance, real estate taxes and insurance.

The Project Owner will provide a \$110 SF fit-out allowance and the lease will provide Inserra Supermarkets with parking spaces (to be determined) within the HCIA's garage. Supermarket customers will receive free parking.

*3. LA Fitness*

LA Fitness will lease approximately 36,980 SF for 10 years (with four five-year options), with a base rent of \$24 SF, increasing 10% every 5 years. Common area maintenance charges will start at \$3.00 SF, and may increase up to 3% annually on the controllable portion of the charges (which excludes, taxes, insurance, utilities and snow removal).

The Project Owner will provide a \$85 SF tenant fit out allowance. LA Fitness will receive a rent credit on any unused allowance.

The lease will provide LA Fitness with ±250 parking spaces on the 3<sup>rd</sup> and 4<sup>th</sup> floors of HCIA's parking deck; LA Fitness customers will receive free parking.

*4. Applicant's Parking and Rooftop Tennis Courts Term Sheets*

*a. Structured Parking*

For the term of the sublease between the Project Owner and HCIA, the Applicant will lease 150 parking spaces from HCIA at a rate of \$135 per month per space for an initial 10 years, totaling \$243,000 annually. The rent will increase 10% every 10 years, starting in Year 11.

*b. Tennis Courts*

For the term of the sublease between the Project Owner and HCIA, the Applicant will lease the NCAA compliant rooftop tennis courts from HCIA for an initial triple net rent that will be determined as follows: total development cost for the rooftop tennis courts minus any grants for green/open space multiplied by 5% (assuming the bond rate is 4%). This rent will increase 10% every 10 years, commencing in Year 11.

*5. Financing Commitments*

Hampshire will be a member of a to be formed single purpose entity created by the Project Owner for the ShopRite and LA Fitness portion, and rooftop restaurant portion of the Project. Hampshire will invest 90% of the equity ( $\pm$ \$11.3 million), with the Project Owner contributing the remaining 10%. ( $\pm$ \$1.2 million).

*C. Market Study*

*1. Retail Study*

KW Commercial/MTD Realty Group prepared a market/feasibility study for the Project and found the following:

- a. Market Area Is a "Food Desert."* The market area is served by .79 supermarket SF per person, with the national average is approximately 5.47 supermarket SF per person. The ShopRite will have 3 competitors that have a combined square feet of 83,040. With the addition of ShopRite in the market the area will have 1.22 SF per person, still leaving the market underserved.
- b. No Fitness Center Competition.* The LA Fitness will have no local competitors and will be available to serve the new apartment residents in the other phases of the West Campus developments as well as the Applicant's students, faculty and staff.
- c. Competitive Lease Rates.* The lease rates, at \$24 SF and \$27 SF respectively, for the LA Fitness and ShopRite are competitive with the local market's net effective rent of \$25.71 SF. The Project Owner anticipates leasing the rooftop restaurant for approximately \$25 SF. "The blended net rent for the project is \$26.38, which is 2.6% over the area average and considered to be certainly within the correct range."

- d. *Competitive Retail Inaccessible to Residents of the Local Market.* Twenty-seven percent of the Project's market area population does not own a vehicle, and most of the retail in the area is on the West side of Route 440 and a distance from the Project's market area, creating an access issue. However, the Project's within the market area is close to public transportation to serve residents within the market area without a vehicle. The study also notes that even when including the retail on the west side of Route 440, the area has 9.49 SF of retail space per person, which is only 41% of national average, leading to the conclusion that the market area residents have an unmet retail need.

The study's author concludes, based on the strong demand for this location, and "primarily due to the fact that there is such little retail in this market . . . this center will be fully leased upon construction" completion.

## *2. Parking Demand Analysis*

KSE Engineers, P.C. prepared a parking demand analysis and reviewed the parking structures financial assumptions and found that there will be sufficient parking demand to support the parking structure because: (a) the new retail on Block 6, which will require approximately 210 daily spaces; and (b) there will be need for visitor parking for the Applicant and apartment resident visitors. The firm also concluded that the structured parking's revenue projections will be sufficient to support the parking decks' estimated debt service and operating expenses.

### *D. Operating Proforma*

#### *1. Project Owner*

The retail operating proforma included aggressive annual assumptions for vacancy (2%) and operating expense inflation (2%); income conservatively grows at 1.5%. Because the Project includes mostly credit tenants (ShopRite and LA Fitness), these assumptions are acceptable; however, even assuming that the operating expense grow at a rate of 3%, and the remaining assumptions are held constant, the Project will be able to maintain a debt service coverage ratio of 1.25.

#### *2. Parking Deck*

Because of the fluctuating customer base for the larger retail tenants, the submitted proforma assumes that the larger commercial tenants (LA Fitness and ShopRite), will bear a substantial portion of the common area maintenance expense of the parking structure. The HCIA will be responsible for the debt service and long-range maintenance of the parking deck. The submitted operating proforma reflects sufficient funds to maintain a debt service coverage ratio of 1.25 and deposit funds into the long-range maintenance reserve.

*E. Long-Range Maintenance Plan*

The Act requires that the budget, operating proforma and financial documents submitted with an application must include a long-range maintenance plan that specifies expenditures that qualify as an appropriate investment in capital improvements and maintenance. As part of its financial documentation, the Applicant submitted a long-range maintenance plan which included standards for the calculation of funds for replacement over the useful life of the project, detail for the initial calculation of need for replacement funds (e.g., estimated items, useful life, replacement costs, quantity and total costs), estimated the total amount required, and provided a schedule for use of the reserve funds over the Project's life.

The Project Owner and HCIA will pay for long-range maintenance items from an annual reserve funded through operating income and surplus cash. Staff concludes that the Project Owner and HCIA will have sufficient capital reserves to meet the Project's long-range maintenance needs during the Lease term.

The plan submitted complies with industry standards for replacement reserve accounts and capital maintenance plans and the long-range maintenance guidelines prepared by the Authority's consultant and adopted by the Authority. Accordingly, staff concludes that Applicant has submitted an adequate long-range maintenance plan for the Project.

After reviewing the project's budget, operating proforma, long-range maintenance plan, market and demand studies, and other supporting information, the Real Estate Division's staff that the Project's development budget, construction costs, developer's compensation, income and operating assumptions are within the existing market conditions, taking into account prevailing wage, to develop a project of this type. In addition, Staff has assessed the soundness of the financial plan and concludes that the Project is financially feasible and has a demand.

*Other Requirements of the Act*

In accordance with the requirements of the Act, the Applicant has produced evidence and has certified to comply with the following requirements of the Act:

- *Prevailing Wage.* The private partner will pay prevailing wage as required by the Act ("Each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college . . . shall be paid not less than the prevailing wage rate")
- *Project Labor Agreement.* The private partner will enter into the required project labor agreements during the construction, operation, and long-range maintenance of the project (the Applicant included a sample agreement in its submission)

- *DPMC Classification and Required Bond.* The Division of Property Management and Construction within Treasury has classified Del-Sano Construction under general construction with a contract capacity of \$77 million with a bonding capacity of \$150 million

*Recommendation*

Staff recommends that the Board give final approval of the application subject to the following conditions being met to the satisfaction of appropriate staff (e.g., Chief Executive Officer, President and Chief Operating Officer, Senior Vice President of Finance and Development, or the Director of the Estate Division):

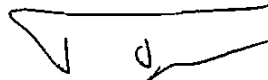
1. Providing a copy of the executed Lease and Development Agreements with attachments (excluding the plans and specifications, if applicable)
2. Submitting, in final form, the development and operating budgets in the Authority's Excel template (substantially the same as the documents reviewed by the Authority)
3. Submitting, in final form, project labor agreements for the construction and contracts to implement the long-range maintenance plan, which require not paying less than prevailing wage and to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location
4. Submitting, in final and satisfactory form, posted bonds guaranteeing prompt payment of moneys due to the contractor (and/or subcontractors)
5. Submitting the Project's financing commitments:
  - a. redevelopment area bond approval resolution and final version of the bond indenture
  - b. City of Jersey City approving resolution for PILOT and the executed PILOT agreement
  - c. executed private financing commitment (construction and permanent)
  - d. HCIA board approval of the sublease and final version of the sublease
  - e. HCIA board approval of the bond and final version of the bond indenture
  - f. executed private equity financing commitment
  - g. current financial statement, no older than 30 days from the date of submission, of Project's Owner evidencing the equity financing for the Project
  - h. Applicant's final lease for the parking and tennis courts
  - i. binding lease commitments from ShopRite and LA Fitness
6. Submitting quarterly reports through the end of construction

7. Submitting other items (i.e., any other document which may contain a material business term to the "partnership agreement" between the parties) that the Applicant must provide in order to obtain the Authority's final approval

The Applicant **shall not** permit the Project Owner to commence construction of the Project until Authority Staff receives and reviews the requested items listed above and Authority Staff issues a letter stating that conditions in this memo are met.

**Recommendation**

In summary, I ask for the Members to authorize the Authority's staff to approve the project upon meeting the conditions outlined in this memo.



---

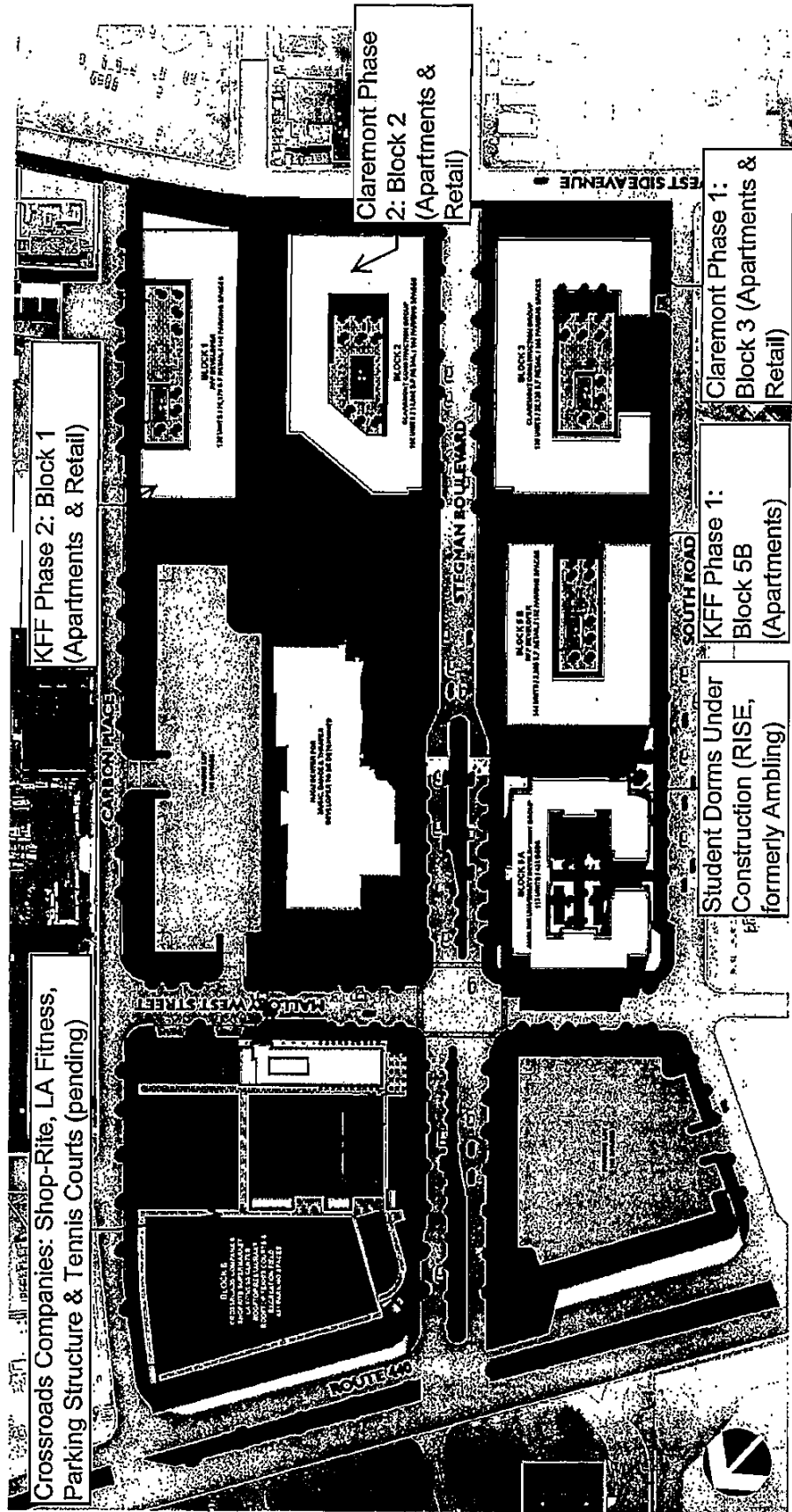
Timothy J. Lizura  
President and Chief Operating Officer

Prepared by: Juan Burgos

**EXHIBIT A: WEST CAMPUS SITE PLAN**

*New Jersey City University  
Higher Education Public Private Partnership Program  
West Campus Block 6*





# **NEW JERSEY CITY UNIVERSITY**

Location: Jersey City, New Jersey

## **WEST CAMPUS MASTER PLAN**

3/19/2015 11:35:27 AM

EXHIBIT C



**studiohiller**  
architectural & interior planning group  
10000 E. 1st Ave., Suite 100  
Denver, CO 80231  
Tel: 303.733.1100  
Fax: 303.733.1101  
www.studiohiller.com

CONCEPT DESIGN C



PROJECT:

**SHOP RITE SUPERMARKET AND  
FITNESS CENTER**

PROPOSED BLOCK 88 STEGMAN BLVD  
HARVEY COUNTY  
JERSEY CITY, NJ

TITLE:

**Rendering - Stegman Blvd & Mallory  
West**

DATE: 3.18.2015

REV.

SCALE:

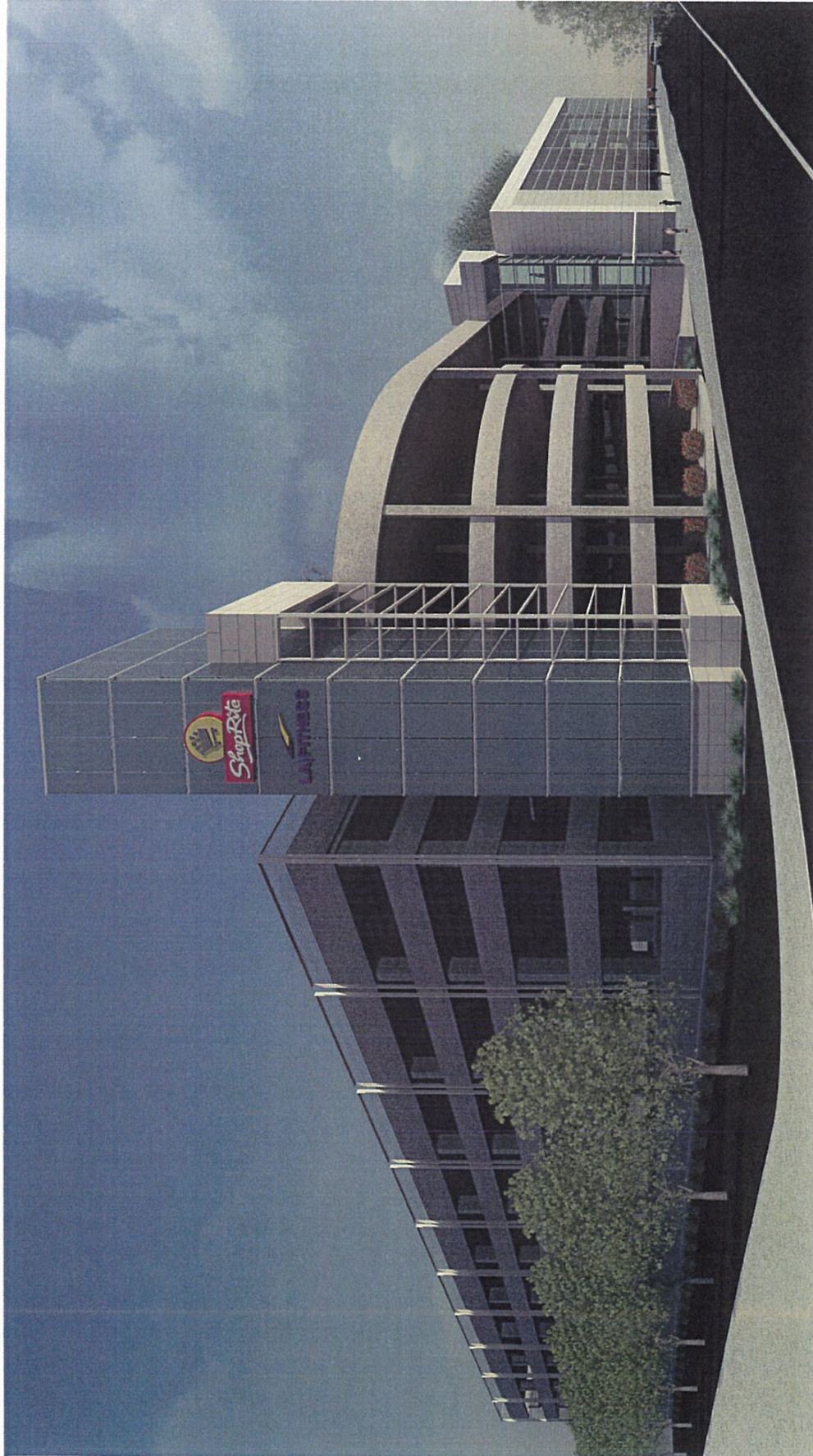
PROJECT NO: 0005

SKETCH NO:

**\_PR 13**



3/19/2019 11:36:29 AM



**studiohiller**  
ARCHITECTURE | INTERIOR DESIGN | LANDSCAPE

1000 ROUTE 1  
SUITE 200  
JERSEY CITY, NJ 07310  
TEL: 201.734.1100  
WWW.STUDIOHILLER.COM

## CONCEPT DESIGN C

**Crossroads Companies**

**inscira**  
SUPERMARKETS INC.

PROJECT:

**SHOP RITE SUPERMARKET AND  
FITNESS CENTER**

PROPOSED BLOCK 86 STEGMAN BLVD  
HUDSON COUNTY  
JERSEY CITY, NJ

TITLE:

**Rendering - Rt440 & Stegman Blvd**

DATE: 3.16.2015

REV:

SCALE:

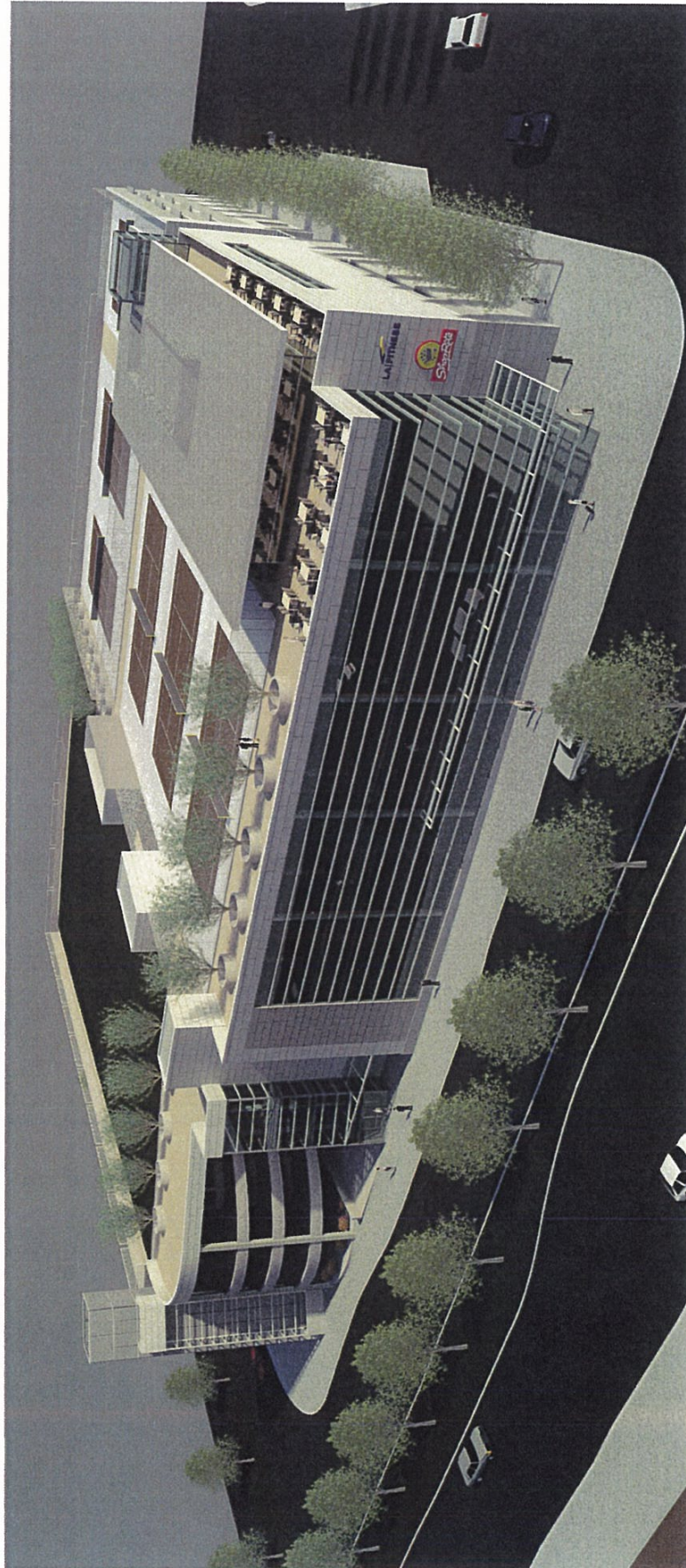
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SKETCH NO:

**\_PR 14**



3/19/2015 11:36:31 AM



**studiohiller**  
ARCHITECTS

1000 NEW YORK AVENUE, SUITE 200  
NEW YORK, NY 10022  
TEL: 212.512.1000  
WWW.STUDIOHILLER.COM

CONCEPT DESIGN C

**Crossroads Companies**

**inscra**  
SUPERMARKETS INC.

PROJECT:  
**SHOP RITE SUPERMARKET AND  
FITNESS CENTER**

PROPOSED BLOCK 88 STEGMAN BLVD  
HUDSON COUNTY  
JERSEY CITY, NJ

TITLE:  
**Aerial View**

DATE: 3.16.2015  
REV:  
SCALE:  
PROJECT NO: 0005  
SHEET NO:  
PR 15





**PROPOSED  
RETAIL BUILDING  
NOT FOR  
CONSTRUCTION**

SPACE SCHEDULE		
Name	Area	
<b>1. SUPERMARKET</b>		
CASEWORK AREA	1,081 SF	
COOLERS	167 SF	
COALERS	880 SF	
COALERS	181 SF	
COALERS	1,681 SF	
COALERS	2,686 SF	
MEAT CASEWORK AREA	5,425 SF	
SALES LOBBY	12,884 SF	
<b>2. RESTAURANT - Support</b>		
KITCHEN	374 SF	
PREP AREA	420 SF	
COOKING	597 SF	
COOKING	597 SF	
ELEV	185 SF	
ELEV	185 SF	
ELEV	185 SF	
ELEV MACHINE RM	275 SF	
ELEV MACHINE RM	275 SF	
STORAGE	1,680 SF	
LOWBALL PARKING ENTRY	1,680 SF	
RESTRALE	2,423 SF	
PARKING ELEV LOBBY	43 SF	
PARKING ELEV LOBBY	43 SF	
PARKING ELEV LOBBY	1,564 SF	
<b>3. SR. PARKING</b>		
SR. PARKING	4,737 SF	
SR. PARKING	17,483 SF	
EXTERNAL PARKING AREA	81,908 SF	
<b>Grand Total</b>	<b>912,063 SF</b>	

**CONTRACTOR**

Del-Sano Contracting Corp.  
2037 Morris Avenue  
Union, NJ 07083

T. 908.688.8891  
F. 908.683.3573

**SHOP RITE  
SUPERMARKET**

**PROPOSED BLOCK B6  
LOT 1  
HUDSON COUNTY  
JERSEY CITY, NJ**







DOCUMENT REVISION	
NO.	DESCRIPTION
1	ISSUED FOR PERMITTING
2	ISSUED FOR PERMITTING
3	ISSUED FOR PERMITTING
4	ISSUED FOR PERMITTING
5	ISSUED FOR PERMITTING
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100	ISSUED FOR PERMITTING

**studiohiller**  
COMMERCIAL DESIGN GROUP, INC.

PROPOSED BLOCK 86  
LOT 1  
HARRISON COUNTY  
INDIANAPOLIS, IN  
Site Plan  
Renderings

2. ADJUSTMENT - ADDRESS - SEE PLAN SHEET

PROPOSED RETAIL BUILDING  
NOT FOR CONSTRUCTION

Crossroads  
Companies



ShopRite



Present  
SHOP RITE  
SUPERMARKET

PROPOSED BLOCK 86  
LOT 1  
HARRISON COUNTY  
INDIANAPOLIS, IN  
Site Plan  
Renderings

SCALE  
PROJECT NO. 1511  
SHEET NO.  
**A008**

View from University Blvd and Hernandez Way



View from Carbon Street and Route 440



View from University Blvd and Route 440

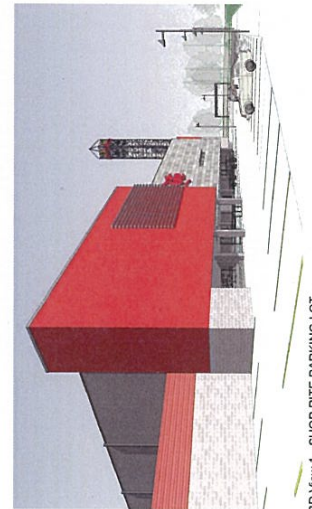
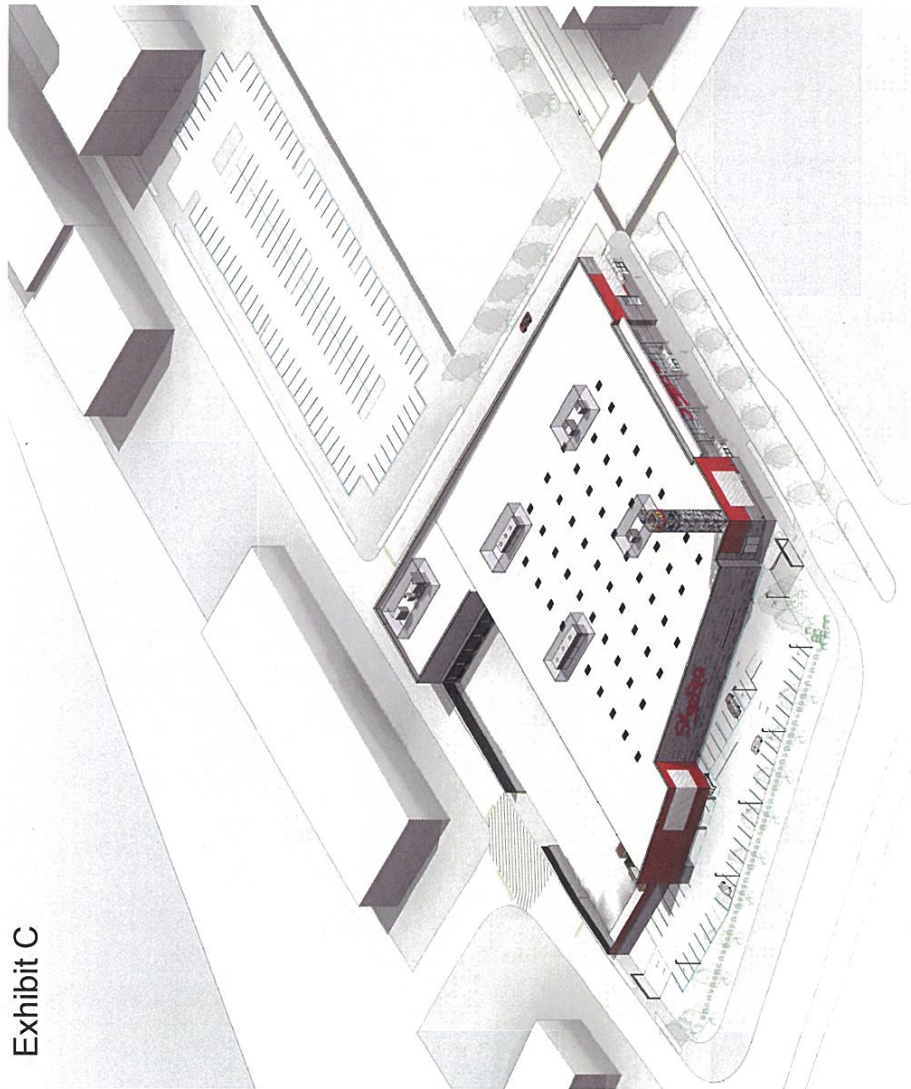


View from Hernandez Way and Carbon Street

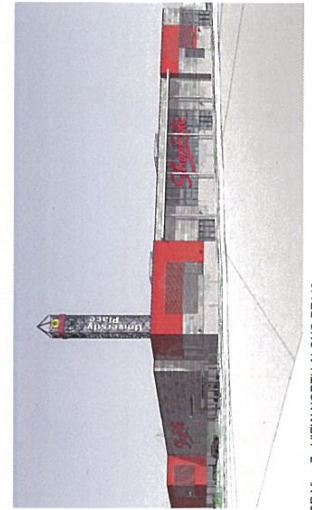




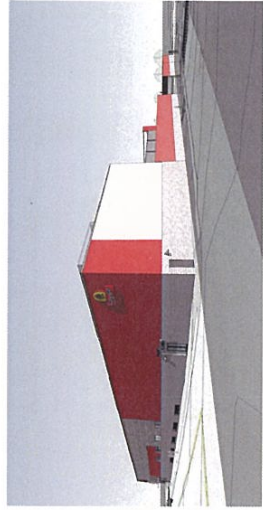
Exhibit C



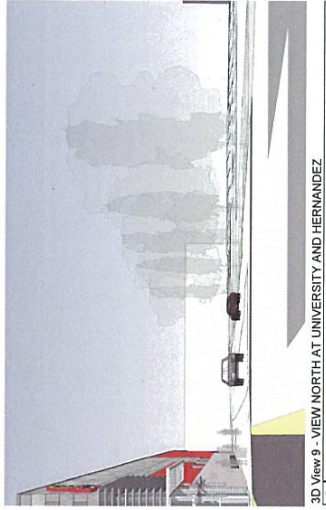
3D View 1 - SHOP RITE PARKING LOT



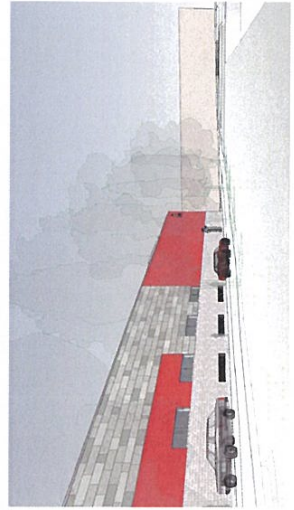
3D View 7 - VIEW NORTH ALONG RT440



3D View 9



3D View 12 - HERNANDEZ AT SHOP RITE



3D View 11 - VIEW OF THE SHOPRITE ENTRANCE

REVISION	DATE	DESCRIPTION
1	03/12/19	Initial Design
2	03/12/19	Revised Design
3	03/12/19	Final Design
4	03/12/19	Final Design
5	03/12/19	Final Design
6	03/12/19	Final Design
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16	03/12/19	Final Design
17	03/12/19	Final Design
18	03/12/19	Final Design
19	03/12/19	Final Design
20	03/12/19	Final Design

**studiohiller**  
ARCHITECTS

1000 WEST 10TH AVENUE  
SUITE 100  
DENVER, CO 80202  
TEL: 303.733.1111  
WWW.STUDIOHILLER.COM

PROJECT: PROPOSED RETAIL BUILDING  
LOCATION: 1000 WEST 10TH AVENUE  
DATE: 03/12/19

DESIGNED BY: STUDIOHILLER ARCHITECTS  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
DATE: 03/12/19

NOT FOR CONSTRUCTION  
PROPOSED RETAIL BUILDING

Crossroads Companies  
ShopRite

PROPOSED BLOCK 86  
HARRISON COUNTY  
SHELBY COUNTY, TN  
SHEET NO. A005

PROJECT: SHOP RITE SUPERMARKET

SCALE: PROJECTED 1/8" = 1'

SHEET NO. A005



**skidulab**  
190 Westmoreland Street  
Princeton, NJ 08542  
T 609 683 3938  
F 609 683 3960  
www.skidulab.com

J. Robert Wilson, Architect Ltd. No. 4306

of 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674,



Crossroads Companies

Project  
SHOP RITE  
SUPERMARKET

PROPOSED BLOCK B5  
LOT 1  
JULIENSON COUNTY

Site Plan - NJCU

SCALE: 1" = 30'-0"  
PROJECT NO. 1288

**SHEET NO:**  
**A004**





**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** Purchase and Sale Agreement & Redevelopment Agreement with Asbury Park Development Partners, LLC for the Marina Parcel in Oceanport

**DATE:** March 12, 2019

**Request**

I am requesting that the Board consent to the Fort Monmouth Economic Revitalization Authority ("FMERA") entering into the redevelopment agreement that is contained within FMERA's Purchase and Sale & Redevelopment Agreement ("PSARA") with Asbury Park Development Partners, LLC ("APDP") for the sale and redevelopment of the Marina Parcel (the "Project") in the Oceanport Reuse Area.

**Background**

FMERA issued a Request for Offers to Purchase ("RFOTP") in connection with the planned redevelopment of the Marina Parcel in Oceanport on October 25, 2013. The Marina Parcel is an approximately 3.988-acre property that contains a 71-slip marina and boat launch ramp at Oceanport Creek, a riparian license from the State of New Jersey, together with Buildings 450, 498, 499, and 202 (the pump house aka building 494) and associated off-street parking. This parcel is located at Oceanport and Riverside Avenues in the 400 Area of the Oceanport Reuse Area and is targeted for reuse in the Fort Monmouth Reuse and Redevelopment Plan (the "Reuse Plan").

Responses to the RFOTP were due on January 27, 2014 and two responses were received from APDP and another proposer, who was deemed non-compliant. An evaluation committee scored the APDP proposal and recommended proceeding with negotiations for a PSARA.

The Reuse Plan envisioned the 3.988-acre Marina parcel would be used as a marina, restaurant, a public boat ramp, and to provide public access to the water. APDP proposes infrastructure upgrades, repairs, and expansion of the existing boat house and Building 498, repairs to the marina, and landscaping and development of a new or expanded restaurant facility.

The Marina Parcel is a Phase 1 property under the June 25, 2012 Economic Development Conveyance Agreement between the Army and FMERA. The entire parcel constitutes an environmental carve-out and title is still held by the Army. The Army has received No Further Action letters from the New Jersey Department of Environmental Protection and prepared a final Finding of Suitability to Transfer ("FOST"). The Marina deed is currently under review and upon finalization, the Army will transfer the Property to FMERA by spring 2019.

**Purchase and Sale & Redevelopment Agreement**

Pursuant to the terms of the PSARA, APDP will pay \$900,000 for the property. Closing will occur within thirty (30) days of satisfaction of the conditions precedent to closing, which include but are not limited to: 1) APDP obtaining all approvals; 2) receipt of a final remediation document that demonstrates that any area of concern or Hazardous Substance at the Property has been remediated in accordance with all applicable Environmental Laws which document includes a covenant not to sue; 3) approval of APDP as redeveloper by the New Jersey Economic Development Authority; and 4) FMERA acquiring title to the Property from the Army via quitclaim deed. Under the PSARA, APDP has a sixty-day (60) due diligence period starting on the effective date and will endeavor to obtain all approvals within six (6) months of expiration of the due diligence period. APDP will have the option of extending its six (6) month period for obtaining Project approvals for one additional six (6) month period with a written notice to FMERA provided FMERA has determined that APDP is diligently and in good faith pursuing approvals. FMERA will convey the property to APDP in as-is condition, but with clear title and subject to the Army's on-going obligations under CERCLA to address certain pre-existing contamination that may exist on the property.

The Project consists of infrastructure upgrades, repairs, and expansion of the existing boat house and Building 498, demolition of Buildings 202 (the pump house aka building 494) and 499, repairs to the marina, landscaping, and the development of a new or expanded restaurant facility. APDP has already completed construction of improvements to the property, including infrastructure upgrades, expansion and/or repair of the existing boathouse, repair of the marina and Buildings 450 and 498, landscaping and development of a restaurant facility. APDP shall commence the remainder of the Project upon closing and will complete the remainder of the Project no later than sixty (60) months from closing. FMERA will have the right to repurchase the property if the Project is not timely commenced or completed. APDP will incur a minimum capital investment of approximately one million one hundred fifty thousand (\$1,150,000) dollars to complete the Project. The Purchaser will also be obligated to create 100 new jobs, consisting of full-time, part-time, and temporary/ seasonal positions at the property related to the Project within three (3) years of receiving a certificate of occupancy or pay a penalty of \$750 for each job not created, not to exceed \$75,000.

Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA's Land Use Rules; (ii) a provision requiring

the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper's rights under the PSARA prior to completion of the project. Based on the redevelopment provisions of the PSARA between FMERA and APDP, staff concludes that the essential elements of a redevelopment agreement between FMERA and APDP are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with APDP for its redevelopment of the Marina Parcel.

Attached is a form of the PSARA between FMERA and APDP that was approved by FMERA's Board on July 18, 2018. The final terms of the PSARA are subject to the approval of FMERA's Executive Director and the Attorney General's Office.

**Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale & Redevelopment Agreement with Asbury Park Development Partners, LLC for the Marina Parcel in Oceanport.



---

Tim Sullivan  
Chief Executive Officer

Attachment: Purchase and Sale & Redevelopment Agreement  
Prepared by: Donna T. Sullivan & David E. Nuse

**PURCHASE AND SALE AGREEMENT  
AND REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**As Seller,**

**AND**

**Asbury Park Development Partners, LLC**

**As Purchaser**

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

**TABLE OF CONTENTS [To Be Updated]**

<b>1. Definitions</b>	<b>8</b>
<b>2. Purchase and Sale Agreement</b>	<b>15</b>
<b>3. The Property</b>	<b>15</b>
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## **EXHIBIT LIST**

- A. Quitclaim Deed from Army to FMERA (Army Quitclaim Deed) [To be incorporated by reference and provided at a later date as set forth herein]**
- B. Conceptual Plan [To be updated and attached]**
- C. Survey & Description of Property [Attached]**
- D. Title Insurance Policy [To be delivered by Purchaser at a later date as set forth herein]**
- E. Promissory Note Regarding Job Creation [Attached]**
- F. Form of Sublease Agreement [To be attached]**

**PURCHASE AND SALE AGREEMENT AND  
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** ("Agreement") is made as of June \_\_, 2018 ("Effective Date") between **Fort Monmouth Economic Revitalization Authority**, ("FMERA" or "Authority" or "Seller") a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, referred to as the Seller, and **Asbury Park Development Partners, LLC**, ("APDP" or "Purchaser") a limited liability company of the State of New Jersey, whose address is 601 Bangs Avenue, Suite 410, Asbury Park, New Jersey 07712, referred to as the Purchaser. Seller and Purchaser are collectively referred to herein as the "Parties".

**WITNESSETH:**

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

**WHEREAS**, FMERA has publicly advertised a Request for Offers to Purchase ("RFOTP") land and improvements for the property located at Oceanport and Riverside Avenues of the 400 area of the Oceanport Reuse Area consisting of approximately 3.988 acres of upland, a 71-slip marina and boat launch ramp at Oceanport Creek, a riparian license from the State of New Jersey, together with Buildings 450, 498, 499 and 202 (the pump house aka building 494) associated off-street parking in the Borough of Oceanport (the "Property" as further identified,

described and defined herein) in accordance with FMERA's Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq.;

**WHEREAS**, there exists an Economic Development Conveyance Agreement ("EDC Agreement"), between the United States Department of the Army ("Army") and FMERA which addresses the terms by which the Army shall transfer to Seller a portion of Fort Monmouth, which includes the Property;

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

**WHEREAS**, Seller anticipates acquiring the Property from the Army via quitclaim deed (the "Army Quitclaim Deed") upon the Army's issuance of a Finding of Suitability to Transfer ("FOST");

**WHEREAS**, FMERA has adopted the Fort Monmouth Reuse and Redevelopment Plan, last amended December 2017, as same may be amended from time to time (the "Plan");

**WHEREAS**, the Purchaser proposes to utilize the Property as a marina, public boat ramp and restaurant, which will include retail, event space and related uses in accordance with the Plan;

**WHEREAS**, the Parties acknowledge that Purchaser has already completed construction of improvements to the Property, including infrastructure up-grades, expansion and/or repair of the existing boathouse, repair of the marina and Buildings 450 and 498, landscaping and development of a restaurant facility;

**WHEREAS**, Seller has entered into a separate contract with Purchaser as interim operator of the Property following a Request for Proposal process (the "Operating Contract"), which Operating Contract has continued on a month-to-month basis and shall terminate as of the Execution Date of this Agreement;

**WHEREAS**, Purchaser shall continue its operations on the Property pursuant to the pre-acquisition lease or sub-lease, as appropriate, to be executed simultaneously with this Agreement.

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

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

#### **DEFINITIONS**

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

**1. Definitions:**

**"Affiliate"** means with respect to Purchaser, any other Person directly or indirectly controlling or controlled by, or under direct common Control with APDP; a named partner, or an Affiliate of a named partner, in APDP as set forth in Purchaser's January 27, 2014 proposal to purchase the Property ("Named Partner"). For purposes of this definition the term "Control", (including the correlative meanings of the term "controlled by" and "under common control with" as used with respect to Purchaser) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations and policies of the Purchaser, whether through the ownership of voting securities or by contract or otherwise.



**“Agreement”** means this Purchase and Sale Agreement and Redevelopment Agreement dated above, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.

**“All Approvals”** means all Non-Appealable Final Approvals, permits, decisions, reviews and agreements issued by municipal, county, state, federal and quasi-governmental authorities needed to obtain building permits for all of the commercial uses on the Property and related off-site improvements so as to allow the continuous development of the Project and which Approvals shall contain terms and conditions acceptable to Purchaser in its reasonable discretion, including but not limited to, the following Non-Appealable Final Approvals: (i) the mandatory conceptual review approval of the Project by FMERA which is required pursuant to N.J.A.C. 19:31C-3.20(c); (ii) preliminary and final subdivision approval, if applicable; and (iii) preliminary and final site plan approval, if applicable, including the required review by FMERA in connection with “d” variances; (iv) a Final Remediation Document issued to APDP by either the New Jersey Department of Environmental Protection (“NJDEP”) or APDP’s licensed site remediation professional that documents that the Property has been remediated and which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2; and (v) any approvals and permits required pursuant to the Coastal Area Facilities Review Act (“CAFRA”), N.J.S.A. 13:19-1, et seq. Each such approval shall be referred to as an “Approval.”

**“Approval Costs”** shall mean all costs and expenses including, without limitation, attorneys’, consulting, engineering, and application fees associated with obtaining All Approvals.

**“Approval Period”** shall be six (6) months commencing upon the completion of the Due Diligence Period. Purchaser will diligently seek to obtain all required permits and approvals

within such six (6) month period. Notwithstanding the foregoing, the Approval Period may be extended by Purchaser for one (1) additional six (6) month period with written notice to Seller in the event that the Seller has determined that the Purchaser is diligently and in good faith pursuing All Approvals but Purchaser has not obtained the Approvals. Such additional six (6) month period shall run from the expiration of the Approval Period until the six-month anniversary of the expiration date.

**“Army”** means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.

**“CERCLA”** means the Comprehensive Environmental Response and Liability Act of 1980 (P.L. 96-510) as amended.

**“CERCLA Covenants”** shall have the meaning ascribed in Section 21.

**“Closing”** shall mean the transfer of the Property from the Seller to the Purchaser and the transfer of the Purchase Price from the Purchaser to the Seller which shall occur upon the satisfaction or waiver of the Conditions Precedent to Closing set forth in Section 14.

**“Complete”**, **“Completed”** or **“Completion”** means the issuance of a certificate of occupancy or temporary certificate of occupancy by the Municipality for a building to be occupied for the intended commercial use as part of the Project. Thereafter Seller shall issue a Certificate of Completion.

**“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Section 14.

**“Deposit”** shall mean collectively the Initial Deposit and Second Deposit described in Section 5 herein.

**"Discharge"** pursuant to N.J.S.A. 58:10-23.11b, as same may be amended, means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

**"Due Diligence Period"** means the sixty (60) day period commencing on the Effective Date of this Agreement and ending at 5:00 p.m. on the 60th day thereafter, during which the Purchaser, upon prior written notice to seller, at its sole cost and expense, may investigate the Property to determine whether the as-is condition of the Property is satisfactory to the Purchaser.

**"EDC Agreement"** shall mean the Agreement between the Army and FMERA dated June 25, 2012 which sets forth the terms by which the Army will convey portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA will acquire same from the Army.

**"Effective Date"** shall mean the date set forth in the introductory paragraph of this Agreement, if no date is set forth in the introductory paragraph, the Effective Date shall mean the date upon which the last party to sign this Agreement executes this Agreement.

**"Environmental Laws"** or **"Environmental Law"** shall mean each and every applicable federal, state, county or municipal environmental and/or health and safety statute, ordinance, rule, regulation, order, code, directive or requirement.

**"Final Remediation Document"** pursuant to N.J.S.A. 58:10-23.11b, as it may be amended, means a no further action letter ("NFA") issued by the NJDEP pursuant to N.J.S.A. 58:10B-1 et al., or a response action outcome ("RAO") issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.

**“Finding of Suitability to Transfer”** or **“FOST”** means the Finding of Suitability to Transfer (“FOST”) to be prepared by the Army. The purpose of the FOST is to document the environmental suitability of the Property for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST will include the CERCLA Notice, Covenant and Access Provisions and other Deed Provisions and the Environmental Protection Provisions necessary to protect human health or the environment after transfer of the Property from the Army to FMERA.

**“Force Majeure”** shall mean the failure or delay of performance by Seller or Purchaser of any provision of the Agreement by reason of the following: labor disputes, strikes, picket lines, boycott efforts, war (whether or not declared), riots, moratorium regarding sewer, water or any other utilities, litigation filed against either Seller or Purchaser affecting the Property, acts of God, or materially adverse conditions affecting the real estate market and the Project or any individual phase of the Project as demonstrated by an independent market study prepared by a qualified economist or financial consultant selected by the Party seeking a delay in performance based upon materially adverse real estate market conditions and approved by the non-benefitting party which approval shall not be unreasonably withheld or delayed. In such cases, neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of the aforementioned events or conditions. Any extension of the timeframes for performance of obligations set forth in this Agreement for Force Majeure shall be contingent upon the Party claiming a Force Majeure notifying the other Party in writing within thirty (30) days of the occurrence of the event resulting in the failure or delay of performance. The time of performance shall be extended for the period of the delay occurring as a result of the Force

Majeure event; provided, however, that in no event shall the extension of the timeframe exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.

**"Hazardous Substances"** means all substances set forth in N.J.A.C. 7:1E-1.7 as same may be amended from time to time.

**"Improvements"** shall mean the buildings, fixtures and structures located on Property.

**"Interested Parties"** means Purchaser's Mortgagee, Purchaser's Lender, and/or Purchaser's Tax Credit Investor.

**"Municipality"** shall mean the Borough of Oceanport, in the County of Monmouth, State of New Jersey.

**"No Further Action Letter" ("NFA")** has the same meaning as set forth at N.J.S.A. 58:10B-1.

**"Non-Appealable Final Approval"** shall mean an Approval where the time to challenge or appeal the grant or denial of the Approval, or a term or condition of the Approval, before any administrative body or court of law has expired, and no challenge or appeal is pending. The term shall also mean an Approval decided after a challenge or appeal has been filed where the challenge or appeal has been decided in APDP's favor, and all terms and conditions contained in the Approval are acceptable to the Purchaser in its reasonable discretion.

**"Person"** means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, government authority, or other entity of whatever nature.

**"Preliminary Site Plan Approval" and "Preliminary Subdivision Approval"** shall have the meanings set forth in N.J.S.A. 40:55D-1 et seq.

**“Project”** means the development on the Property consisting of (a) the acquisition of the 3.9 acre property located at Oceanport and Riverside Avenues of the 400 area of the Oceanport Reuse Area consisting of a 71-slip marina and boat launch ramp at Oceanport Creek, a riparian license from the State of New Jersey, together with Buildings 450, 498, 499 and 202 (the pump house aka building 494) and associated off-street parking in the Borough of Oceanport; (b) the demolition of Buildings 202 (the pump house aka building 494) and 499; and (c) the construction of improvements to the Property, including infrastructure up-grades, expansion and/or repair of the existing boathouse, repair of the marina and Buildings 450 and 498, landscaping and development of a new or expanded restaurant facility which may include retail, office, event space and/or related uses. The Project shall be subject to the Purchasers ability to obtain All Approvals. The Project may be amended upon mutual agreement of Seller and Purchaser if Purchaser is unable to obtain the same, subject to FMERA board approval and Plan amendment, as applicable. The Project is further described herein at Section 6 and depicted in the conceptual site plan attached hereto as Exhibit B.

**“Property”** means the 3.9 acre property located at Oceanport and Riverside Avenues of the 400 area of the Oceanport Reuse Area consisting of a 71-slip marina and boat launch ramp at Oceanport Creek, a riparian license from the State of New Jersey, together with Buildings 450, 498, 499 and 202 (the pump house aka building 494) and associated off-street parking in the Borough of Oceanport. The Property is further described in Section 3 and is also depicted in the boundary survey and the metes and bounds description that is attached hereto as Exhibit C.

**“Purchaser”** shall mean Asbury Park Development Partners, LLC and its authorized assignees or successors pursuant to Section 30.

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

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

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

## **2. Purchase and Sale Agreement.**

Subject to the terms and conditions set forth in this Agreement and the performance by the Parties of all of the obligations hereunder, the Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to purchase and acquire from Seller, the Property. The Seller will sell and convey to the Purchaser the Property in its as-is condition, subject to Seller’s obligations and Purchaser’s rights under this Agreement, which consists of: (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Seller’s rights relating to the Property; and (c) all personal property specifically included in this Agreement.

## **3. The Property.**

The 3.9 acre property located at Oceanport and Riverside Avenues of the 400 area of the Oceanport Reuse Area consisting of a 71-slip marina and boat launch ramp at Oceanport Creek, a riparian license from the State of New Jersey, together with Buildings 450, 498, 499 and 202



(the pump house aka building 494) and associated off-street parking in the Borough of Oceanport. The Property is further described in Section 3 and is also depicted in the boundary survey and the metes and bounds description that is attached hereto as Exhibit C.

**4. The Purchase Price.**

Subject to the adjustments as called for in Section 25, if any, the price that the Purchaser will pay the Seller for the Property is \$900,000.

**5. Payment of the Purchase Price.**

Subject to the adjustments as called for in Section 25, if any, the Purchaser will pay the purchase price as follows:

At the time of submission of its proposal, Purchaser deposited an initial deposit of \$15,000 (the "Initial Deposit") with the Seller and the Seller has transferred said Initial Deposit, with interest, to its counsel's Attorney Trust Account	\$ 15,000
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A second deposit of \$120,000 to be deposited with Seller by Purchaser upon the execution of this Agreement by the Parties (the "Second Deposit"), and to be transferred, with interest, to its counsel's Attorney Trust Account	\$ 120,000
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Balance to be paid at closing of title, by wire transfer, in cash or by certified check (subject to adjustment at closing)	<u>\$765,000</u>
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<b>Total purchase price</b>	<b><u>\$900,000</u></b>
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**6. Redevelopment Project, Capital Investment, and Job Creation.**

a. **Redevelopment Project:** Purchaser represents that Purchaser proposes to utilize the property for a marina and restaurant. The Parties to this Agreement recognize and acknowledge

that the Purchaser has completed the renovation of the restaurant and marina and has received Certificates of Occupancy for same. Purchaser shall commence the remainder of the Project upon closing and will complete the remainder of the Project no later than sixty (60) months from Closing. Notwithstanding the foregoing, in the event that the Project is not complete within sixty (60) months from Closing by reason of Force Majeure, the Parties agree that, provided Purchaser's construction is ongoing and/or Purchaser has proceeded in good faith toward the completion of the Project, then in such event, Purchaser shall be entitled to a twelve (12) month extension of the sixty (60) month completion date without penalty.

b. It shall be a default under this Agreement for Purchaser to fail to commence or complete the Project timely, as required herein. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with sixty (60) days advance written notice of Seller's intent to declare a default under this Section 6 and the Purchaser shall have the opportunity to cure within said notice period. The written notice may be conveyed any time after the 61<sup>st</sup> day prior to the commencement or completion deadline.

c. **Capital Investment:** Purchaser, or its Affiliate, plans to make improvements to the 3.9 acre marina parcel for an estimated cost of \$1,150,000. The improvements include infrastructure upgrades, repairs and expansion of the existing boat house and Building 498, repairs to the marina, landscaping and development of a new or expanded restaurant facility or rehabilitation of existing buildings, as the case may be, made by Purchaser, or its Affiliate, during the term of its Operator Contract and after Purchaser acquires title to the Property.

d. **Job Creation:** Purchaser, or its Affiliate, will create one-hundred (100) new jobs, consisting of full-time, part-time and temporary/seasonal positions, on the Property related to the Project within three (3) years of receiving a Certificate of Occupancy.

Commencing one (1) year and thirty (30) days from the date of issuance of the Certificate of Occupancy, Purchaser shall provide Seller with an annual report of the number of jobs created on the Property for each of the three (3) years following the issuance of a Certificate of Occupancy.

To the extent Purchaser fails to achieve one-hundred (100) new jobs at the Property within three (3) years of receiving a Certificate of Occupancy, then on that date it shall be liable to pay to Seller \$750 for each job not created. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice pursuant to Section 45. Purchaser's total obligation for not creating any new jobs shall not exceed \$75,000.

- i. **New Jobs Security**: Prior to Closing, Purchaser shall secure its obligation to create one-hundred (100) new jobs at the Property, or pay Seller Seven Hundred and Fifty Dollars (\$750) per job not created, through the granting of a promissory note ("Note") from Purchaser in a form substantially similar to Exhibit E. The provisions of Section 6 shall survive Closing, shall run with the land, and shall be a one-time obligation as set forth above. It is agreed and understood that upon receipt of notice, which can be provided at or before closing, of creation of one-hundred (100) jobs as set forth above or the payment of any monies for jobs not created, then Seller shall, within thirty (30) days of notice of creation or payment, cancel or otherwise discharge the Note which shall no longer be in force or effect. It is agreed and understood that Purchaser has within three (3) years of the following the issuance of a Certificate of Occupancy, as set forth above to provide one-hundred (100) jobs as set forth

herein, the option to pre-pay any such obligation for any deficiency and thereafter Seller shall cancel the Note as set forth above.

e. **Completion Bond:** At Closing, Purchaser shall secure its obligation to complete the Project, through the purchase of a performance bond for the benefit of FMERA underwritten by a surety or financial institution, and in a form acceptable to FMERA, or promissory note. The performance bond or promissory note shall be in an amount sufficient to fund the demolition of Buildings 494 and 499 and the restoration of the land upon which they are situated. FMERA's right to make a demand to draw on the completion bond or promissory note shall survive the Closing and/or termination of this Agreement, and shall run with the land, and shall be a continuing obligation.

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

#### **7. Declaration of Covenants.**

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

1.) The uses of the Property shall be limited to those uses permitted pursuant to the Plan, as amended.

2.) Purchaser, as the approved redeveloper, will commence and complete the Project within the period of time established in this Agreement; and

3.) Purchaser, as the approved redeveloper, will not sell, lease or transfer the Property, the Project or this Agreement prior to the Completion of the Project without the written consent of FMERA, except as set forth in Section 30 hereof.

**8. Reversion to Seller.**

a. The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth herein have not been met, then Seller shall have the right of reversion of title, at Seller's sole option, to the Property, if Purchaser has not completed construction on the Property within the timeframes set forth in Section 6.a above. Such right of reversion shall be, by its terms as set forth in the quitclaim deed, subordinate to any and all land, construction, permanent or other lender whose lien shall have superiority over any such rights. Seller's reversion right shall always be subject to and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage in favor of any Interested Parties or (ii) any rights or interests for the protection of Interested Parties.

b. Should Seller exercise this reversion option, Seller and Purchaser agree that (i) the value of the Property is \$900,000. Seller shall pay Purchaser \$900,000, plus the base cost of all improvements installed at the Property if the Property becomes subject to this reversion option. Any reversion purchase price paid by Seller shall be applied first to reduce any outstanding balance of any mortgage or lien imposed on the Property by Purchaser.

c. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with ninety (90) days advance written notice of Seller's intent to exercise its right of reversion. The ninety (90) day period referred to in the foregoing sentence is known as the "Reversion Cure Period." During the Reversion Cure Period, any of the Interested Parties may either (a) cure the default identified in Seller's Reversion Notice or (b) agree with Seller on a proposal, which must be acceptable to both parties in both parties' reasonable discretion, for one or more of the Interested Parties to cure Purchaser's default beyond the Reversion Cure Period. If, following the

expiration of the Reversion Cure Period, the default is neither cured nor have the parties agreed upon a proposal to cure the default, then Seller may move forward with its right of reversion.

d. The Seller's right of reversion shall survive the Closing and/or termination of this Agreement, and shall run with the land on any portion of the Property that is subject to the Seller's right of reversion pursuant to Section 8.a. The Seller's right of reversion shall be deemed of no further force and effect upon the Completion of the Project on the applicable portion of the Property.

e. Purchaser or its successors and assigns may request that the Seller execute a release evidencing the termination of Seller's right of reversion on any portion of the Property that has been Completed upon the presentation of (i) proof of Completion and (ii) a form of release that shall be recorded at the sole cost and expense of the Purchaser or its successors and assigns.

**9. Prevailing Wage.**

Prevailing wage will only apply to the extent that a project includes "public work" as that term is defined in the State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., or if Purchaser receives financial assistance from FMERA, the State or any other State entity. This prevailing wage obligation shall survive Closing and/or termination of this Agreement and shall continue until construction of the Project is Completed.

**10. Purchaser Financially Able to Close.**

The Purchaser represents that it has or will have sufficient cash available at Closing to complete the purchase without financing. The Closing shall not be contingent upon the Purchaser or any other Person obtaining financing to pay the Purchase Price. Notwithstanding Purchaser's representation that it has or will have sufficient cash available at Closing to complete the

purchase without financing, Purchaser may in Purchaser's sole discretion choose to seek and obtain financing to complete the purchase.

**11. Deposit Monies.**

a. All deposit monies (and interest accrued thereon) will be held by FMERA's attorney ("Escrow Agent") in its interest-bearing, Attorney Trust Account pursuant to the Escrow letter in a form acceptable to the Purchaser and Seller until the date of Closing or as otherwise provided in this Agreement. At Closing, Purchaser shall receive a credit against the Purchase Price in the amount of the Deposit and all interest accrued thereon. If Purchaser terminates this Agreement in accordance with its terms, the Escrow Agent shall refund the Deposit to Purchaser within three business days of receipt of Purchaser's notice.

b. In the event that the Agreement is terminated by the Seller because Purchaser defaults and said default is not cured within the time frames established herein, then the Escrow Agent shall pay the Seller the One Hundred and Thirty Five Thousand Dollar (\$135,000.00) Deposit and all accrued interest as liquidated damages.

**12. Title and Survey Investigation.**

a. Seller agrees that prior to and as a Condition Precedent to Closing, Seller shall:

- (i) Deliver title to the Property that is good, marketable, fee simple title, valid of record and insurable at regular rates; and
- (ii) Satisfy, remove, discharge and/or cure to the reasonable satisfaction of Purchaser and the Title Company the following requirements and exceptions that are identified in the Title Commitment:

b. If Purchaser elects to obtain a survey, then no later than thirty (30) days from the end of the Due Diligence Period, Purchaser shall deliver to Seller a copy of Purchaser's survey together



with a list of survey objections. Not later than ten (10) days after Seller receives Purchaser's survey objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at the Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either terminate this Agreement within 30 days of receipt of Seller's response (or within 30 days of Seller's failure to respond) or proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Purchaser supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the survey objections by the Purchaser and Seller shall have no further obligation to cure the Purchaser's survey objections either prior to or at Closing.

c. Purchaser shall have the further right to order a run-down title examination(s) at any time prior to Closing, at Purchaser's cost and expense, and to submit to Seller any title and/or survey objections which may have arisen since the initial title and survey examination.

d. If Seller fails to meet the requirements of Section 12.a, or if Seller has agreed to cure a survey objection pursuant to Section 12.b and fails to do so, or if Purchaser has additional title and/or survey objections as a result of its run-down title examination pursuant to Section 12.c and Seller fails to cure such objections, then Purchaser may: (i) delay Closing to a date mutually agreed upon by Seller and Purchaser so that Seller or Purchaser removes or cures such non-permitted exception at Seller's expense; (ii) close title and pay the Purchase Price with sufficient sums from the Purchase Price, as determined by the Title Company, being placed into escrow with the Escrow Agent, to be used by Purchaser to cure or clear such non-permitted exception at Seller's expense; or (iii) terminate this Agreement. In the event that the Purchaser elects to proceed in accordance with Section 12.d (ii), the amount placed into escrow with the Escrow

Agent to be used by Purchaser to cure or clear such non-permitted exception at Seller's expense shall not exceed the Seller's net share of the Purchase Price as such, the maximum amount of money available to be placed in escrow to cure or clear such non-permitted exceptions and address any environmental remediation obligations pursuant to Section 21(c) below will never exceed Thirty Two Thousand Dollars (\$32,000) which represents the entirety of sales proceeds net of real estate commissions, New Jersey Economic Development Authority ("EDA") working capital loan payoff, if applicable, and homeless trust fund payments (Seller's Net Proceeds").

e. From the date of this Agreement, Seller shall not permit any further encumbrance on the Property without Purchaser's prior written consent, other than with respect to any working capital loan(s) Seller may receive from EDA without Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion.

**13. Due Diligence Period.**

a. Purchaser and its agents, shall have the right, during the Due Diligence Period, and at all times during the term of this Agreement, to access the Property, to inspect the Property and to investigate all matters relating thereto, including, but not limited to, existing zoning requirements, the physical condition of the Property, the environmental condition of the Property and its environs, and any other matters Purchaser deems relevant to its decision to purchase the Property.

b. Purchaser may terminate this Agreement in its sole, absolute and unfettered discretion by delivering written notice of such termination to Seller prior to 5 PM on the last day of the Due Diligence Period. Upon termination of this Agreement during the Due Diligence Period, the Deposit shall be promptly returned to Purchaser.

c. Purchaser, its agents and Purchaser's prospective assignees, shall provide Seller with proof of the following insurances prior to being provided access to the Property:

(i.) Comprehensive General Liability policy (including insurance with respect to owned or operated motor vehicles which may be provided under a separate policy) as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an additional insured endorsement (broad form) for contractual liability. Limits of liability shall be maintained at the level of Five Million Dollars (\$5,000,000.00) per occurrence, except automobile liability may be at a minimum of One Million Dollars (\$1,000,000) , for each occurrence of bodily injury, death, and property damage liability. Seller shall be named an additional insured on this policy;

(ii.) Worker's Compensation applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per occurrence for bodily injury liability and One Hundred Thousand Dollars (\$100,000) occupational disease per employee with an aggregate limit of Five Hundred Thousand Dollars (\$500,000) occupational disease;

If, at or before the Closing, Purchaser elects to terminate this Agreement and not purchase the Property, Purchaser shall repair any damage caused by its investigations and shall restore the Property to substantially the same condition as existed immediately prior to such investigations. Purchaser hereby indemnifies and holds Seller harmless from any liability to the extent related to any negligent act or omission of Purchaser or Purchaser's agents or representatives in the performance of any and all activities conducted on the Property by Purchaser until Closing, unless such liability is the result of Seller's negligence or intentional acts or omissions.

**14. Conditions Precedent to Closing.**

a. The Closing for the Property is subject to and conditioned upon the following conditions, which are agreed by the parties to be included for the protection of the Purchaser and Seller:

- (i) The receipt by Purchaser of All Approvals within the timeframes set forth herein. Despite anything to the contrary herein, Purchaser may elect to waive All Approvals and close on the Property without said Approvals;
- (ii) Receipt by Purchaser of a Final Remediation Document that demonstrates that any area of concern or Hazardous Substance at the Property has been remediated in accordance with all applicable Environmental Laws which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2;
- (iii) Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of Closing and shall have cured all defaults;
- (iv) Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 12;
- (v) Purchaser has not terminated this Agreement in accordance with the terms set forth in this Agreement;
- (vi) Seller shall have acquired title to the Property from the Army via the Army Quitclaim Deed;

- (vii) Purchaser shall have applied for activation of its liquor license upon Seller acquisition of the property; and purchaser shall have obtained New Jersey Division of Alcohol and Beverage Control approval to activate the license; and
- (viii) Approval of Purchaser as Redeveloper by the Board of the New Jersey Economic Development Authority.

b. The Seller and Purchaser mutually agree as follows concerning the Conditions Precedent to Closing:

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

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

a. The Closing shall take place within thirty (30) days of satisfaction of the Conditions Precedent to Closing detailed in Section 14. The Closing will be held at the offices of Purchaser's counsel.

b. If any event constituting a Force Majeure is in effect at the time of the Closing, then the date for the Closing shall be Tolloed and suspended for an equal number of days not to exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.

c. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and to Purchaser's Title Company: (1) quitclaim

deed; (2) entity resolution; (3) paid receipt of Real Estate Broker; (4) tax and utility bills, if any; (5) Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA), (6) Bill of Sale for any Personalty; (7) IRS Form 1099; (8) a post-Closing adjustments letter whereby the parties agree to readjust the pro-rations should any error or mistake be discovered within twelve (12) months of Closing; (9) a partial release of the EDA mortgage with respect to the Property, if applicable; and (10) all documents reasonably requested by Purchaser's title company and, as applicable, lender or investor, to complete Closing. Purchaser shall deliver the Purchase Price and a Title Closing Statement at Closing.

d. At Closing, Purchaser shall pay the balance of the Purchase Price (after application of a credit for the Deposit and all accrued interest) to the Seller. Purchaser shall make payment at Purchaser's option by either certified check or attorney trust account check or with the consent of Seller by wire transfer.

**16. Transfer of Ownership.**

Upon receipt of payment of the balance of the Purchase Price at Closing, the Seller shall transfer ownership of the Property to the Purchaser via a properly executed quitclaim deed. The quitclaim deed shall be in a form reasonably acceptable to Purchaser and the Title Company. The quitclaim deed between the Parties shall include a metes and bounds description of the Property that shall be based upon the boundary survey supplied and paid for by FMERA which is attached hereto as Exhibit C and which may, at Purchaser's election, include the survey description to be prepared by the Purchaser, at Purchaser's sole cost and expense. The quitclaim deed between the Purchaser and Seller shall be subject to all notices, CERCLA Covenants, covenants, access provisions, deed provisions and environmental protection provisions recorded

upon the Property as set forth in the Army Quitclaim Deed and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24. Upon delivery and acceptance of the Quitclaim Deed, the operator contract shall terminate automatically.

**17. Personal Property and Fixtures.**

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

- a. The following fixtures are EXCLUDED from this sale: none.
- b. The following personal property is EXCLUDED from this sale: none.

**18. Physical Condition of the Property.**

This Property is being sold “as is”. The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Purchaser has inspected the Property and relies on this inspection and any rights, if any, which may be provided for elsewhere in this Agreement. Purchaser is FMERA’s operator for the Property. Accordingly, until Closing, the Purchaser shall be responsible for maintaining the grounds, the buildings and the improvements.

**19. Acknowledgment and Covenants Regarding FOST.**

Purchaser and Seller agree and acknowledge that the Army is responsible for the environmental investigation and remediation of the Property, as required by applicable law. The Purchaser and Seller agree that to the extent that the notices, covenants, access provisions, deed provisions and environmental protection provisions concerning the Property found in the FOST are contained in the Army Quitclaim Deed, then such terms shall run with the land. Purchaser,



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

**20. Risk of Loss.**

As interim operator of the Property, Purchaser shall be responsible for all losses and damages to the Property prior to Closing by fire, windstorm, casualty or other cause, and for all damages or injuries to persons or property occurring thereon or relating thereto, including losses and damages that may be caused by acts of the Purchaser or its officers, employees, agents, contractors, licensees or sub lessees. Seller and Purchaser agree that any damage or destruction to the Property shall not otherwise affect the rights and responsibilities under this Agreement, and that Purchaser shall not be entitled to any offset against the Purchase Price for any damage or destruction to the buildings, structures, fixtures or improvements located on, under or above the Property that might occur prior to Closing.

**21. Environmental Matters.**

a. Purchaser and Seller acknowledge that pursuant to CERCLA, the Army will retain responsibility for any Army caused environmental contamination, with the exception of mold, asbestos containing materials, lead-based paint and commercially-applied pesticides and

termiticides (collectively, the "Other Environmental Conditions") that may be present on the Property as of the date of the Army Quitclaim Deed. The Parties acknowledge that the quitclaim deed between Seller and the Purchaser shall contain certain covenants required by CERCLA (the "CERCLA Covenants") which covenants will be required pursuant to the Army Quitclaim Deed and the FOST for the Property.

The Seller shall not bear any responsibility or liability to the Purchaser or its successors or assigns for the presence of Other Environmental Conditions on the Property as of or after the Closing. Purchaser shall be solely responsible for the proper disposal of any Other Environmental Conditions encountered during the demolition or renovation of buildings and improvements on the Property.

b. If Seller receives notice from any Person at any time prior to the Closing that any Discharge of a Hazardous Substance has occurred on the Property which has not already been documented in the FOST, then Seller shall provide Purchaser with notice of the Discharge on the Property within three (3) days of receiving notice. Seller shall advise Purchaser within thirty (30) days of receiving the notice of Discharge whether Seller or the Army or other responsible third party shall remediate such Discharge and obtain a Final Remediation Document. If Seller advises Purchaser that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge and obtain a Final Remediation Document, then Purchaser shall have thirty (30) days from the receipt of this notice from the Purchaser to terminate this Agreement. If Purchaser fails to terminate this Agreement within thirty days of receipt of notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge, then the Purchaser shall have waived the right to terminate the Agreement due to the Discharge. If Purchaser waives the right to terminate the Agreement after receiving notice from

the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge of a Hazardous Substance on the Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at Closing.

c. If Seller or the Army or the other responsible third party agree to remediate the Property by delivering a Final Remediation Document and Seller or the Army or the other responsible third party subsequently fails to provide the Final Remediation Document prior to the date set for the Closing, then Purchaser may (1) terminate this Agreement and recover the Deposit, (2) delay Closing to a date reasonably specified by Purchaser to allow sufficient time for Seller or the Army or the other responsible third party to obtain the Final Remediation Document, or (3) in the event that the Seller has agreed to remediate the Property by delivering a Final Remediation Document and Seller subsequently fails to provide the Final Remediation Document prior to the date set for the Closing then the Purchaser may proceed to Closing and pay the Purchase Price; provided, however, that a sum equal to all or a portion of the proceeds due Seller at Closing, which shall be reasonably determined by Purchaser's and Seller's environmental consultant, shall be placed into escrow with the Escrow Agent, which shall be used by Purchaser to address or remediate such Discharge and obtain the Final Remediation Document. In the event that the Purchaser elects to proceed in accordance with Section 21.c (3), the amount placed into escrow with the Escrow Agent to be used by Purchaser to cure or clear non-permitted title exceptions pursuant to Section 12.d above and address or remediate such Discharge and obtain a Final Remediation Document at Seller's expense shall not exceed the Seller's share of the Seller's Net Sale Proceeds, as provided in Section 12.

**22. Termination of Agreement.**

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

**23. Default by Seller.**

a. If Seller shall be unable or fail to convey the Property in accordance with the terms of this Agreement, then Purchaser shall have the right to terminate this Agreement and upon return of the Deposit (together with all interest accrued thereon) and any other sums specifically required by this Agreement, this Agreement shall be terminated and neither party shall have any further rights or obligations hereunder, except for any rights or obligations that specifically survive the termination of this Agreement.

b. Purchaser acknowledges that the remedies set forth in this Section 23 are Purchaser's exclusive remedies in the event of any breach of or default under this Agreement by Seller or the inability or unwillingness of Seller to consummate the Closing as provided in this Agreement. In no event shall Purchaser have any claim for any damages against Seller, except as set forth in this Section 23. The terms of this Section 23 shall survive the Closing and/or any termination of this Agreement.

c. The Purchaser agrees that prior to declaring the Seller in default hereunder, Purchaser shall provide Seller with thirty (30) days advance written notice of such default and Seller shall have the right to cure such default within said thirty (30) day period.

**24. Default by Purchaser.**

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

(i) Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement hereunder, and continuance of such failure for a period of sixty (60) days, after receipt of written notice from the Seller specifying the nature of such failure and requesting that such failure be remedied.

(ii) Purchaser shall have (a) applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; or (b) a custodian shall have been legally appointed with or without consent of Purchaser; or (c) Purchaser has (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or (d) Purchaser has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (e) a petition in bankruptcy shall have been filed against Purchaser, and shall not have been dismissed for a period of ninety (90) consecutive days; or (f) an Order for Relief shall have been entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code; or (g) an Order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Purchaser, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (h) Redeveloper shall have suspended the transaction of its usual business.

(iii) Purchaser has abandoned or substantially suspended any work on the Approvals such abandonment or suspension of work shall not be cured, ended or remedied within sixty (60) days after written demand by the Seller.

(iv) The Purchaser shall place on the Property any unauthorized encumbrance or lien on the Property prior to Closing, or shall suffer any levy or attachment to be made on the Property prior to Closing, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Property prior to Closing and the encumbrance or lien shall not have been removed or discharged satisfactorily to the Seller at the sole cost and expense of the Purchaser within sixty (60) days after written demand by the Seller to do so.

b. If an occurrence of default by Purchaser occurs or Purchaser fails or refuses to consummate the Closing (where no default by Seller has occurred under the Agreement and all Conditions Precedent to Closing have been satisfied), then Seller, as its sole and exclusive remedy, may terminate this Agreement by giving notice thereof to Purchaser. Upon any such termination, Seller shall retain as liquidated damages the portion of the Deposit stated in Section 11.b above and all accrued interest and neither party shall have any further rights or obligations hereunder, except any rights or obligations that specifically survive the termination of this Agreement.

c. Seller agrees that prior to declaring the Purchaser in default, Seller shall provide Purchaser with sixty (60) days advance written notice of such default and Purchaser shall have the right to cure such default within sixty (60) of receipt of written notice of the default.

**25. Assessments for Municipal Improvements.**

a. The Purchaser and the Seller agree to adjust the following expenses as of the closing date: none.

b. The Purchaser or the Seller may require that any person with a valid claim or right affecting the Property be paid from the proceeds of this sale.

c. Certain municipal improvements, including, but not limited to, sidewalks and sewers, may result in the Municipality charging property owners to pay for the improvement. All unpaid charges (assessments) against the Property for work completed before the date of Closing will be paid by the Seller at or before Closing, unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such assessments. If the improvement is not completed before the date of Closing then only the Purchaser will be responsible. If the improvement is completed at or before Closing, but the amount of the charge (assessment) has not been determined by the Municipality, the Seller will pay an estimated amount at Closing (unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such assessments). When the amount of the charge is finally determined by the Municipality, the Seller will pay any deficiency to the Purchaser (if the estimate proves to have been too low), or the Purchaser will return any excess to the Seller (if the estimate proves to have been too high).

**26. Possession.**

At Closing, the delivery of the quitclaim deed for the Property by Seller to Purchaser and possession of the Property by Purchaser and the acceptance of the Quitclaim Deed by Purchaser shall be deemed full performance by Seller of its obligations under this Agreement, except for any duties that expressly survive Closing as provided herein.

**27. Liens.**

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



**28. Cooperation.**

a. Seller agrees to cooperate with Purchaser in obtaining any required FMERA signatures or consents in connection with Purchaser's efforts to obtain the Approvals for the development of the Project on the Property and shall endeavor to obtain same from its Executive Director, within one week of presentation; from the FMERA Real Estate Committee, within thirty (30) days from presentment; and from the FMERA board, within forty five (45) days of presentment, subject to the Governor's ten (10) day veto period. Where required by law, FMERA will sign as owner or applicant on applications made by the Purchaser. Any delay beyond these time periods shall constitute an event entitling Purchaser to Tolling of the time periods set forth herein for performance by the Purchaser. At Closing Seller shall assign any permits or approvals related to the Project to the Purchaser.

**29. Parties Liable.**

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

**30. Assignment.**

a. Seller shall have the right to assign this Agreement without the consent of Purchaser to the State of New Jersey or any division thereof.

b. Purchaser shall not have the right to assign this Agreement prior to the Completion of the Project without first obtaining the express written consent of the Seller, which consent shall not be unreasonably withheld provided that (i) the assignee is an Affiliate of Purchaser; (ii) the assignee is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions; (iii) the assignee has demonstrated to the satisfaction of FMERA that the potential

assignee has the financial ability to meet the funding requirements of the assignee's Project; (iv) the assignee provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement including but not limited to the redevelopment obligations to the extent that they relate to the portion of the Property and Project being assigned; (v) the assignment will not delay the Completion of the Project; and (vi) the assignee provides FMERA with satisfactory proof of the managerial experience and project experience of the assignee with projects of similar size and magnitude to the assignee's project;

c. The Parties agree that if Seller authorizes an assignment in accordance with the terms herein, then Seller shall enforce this Agreement against the assignee and Seller shall release Purchaser from any and all duties, obligations, claims and damages arising under this Agreement, provided that the assignee has unconditionally accepted the assignment of this Agreement.

d. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement to an Affiliate urban renewal entity created to undertake the Purchaser's Project, without first obtaining the Seller's consent provided that the Affiliate or urban renewal entity is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions and the Affiliate or urban renewal entity provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement.

**31. Successors and Assigns.**

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

**32. Entire Agreement.**

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

**33. Governing Law.**

a. This Agreement shall be governed by, interpreted under and construed and enforced in accordance with, the laws of the State of New Jersey without respect to any principles of conflict of law, both as to interpretation and performance. Seller and Purchaser waive any statutory or common law presumption which would serve to have this document construed in favor and against either party as the drafter.

b. The Seller and the Purchaser agree that any and all claims made or to be made against the Seller based in contract law, including but not limited to, claims and damages described in Section 23(a) for all out of pocket costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

**34. Partial Invalidity.**

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and

provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

**35. Headings.**

The headings of the various Sections and Exhibits of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.

**36. No Partnership or Joint Venture.**

Nothing contained in this Agreement will make or will be construed to make the parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between Purchaser and Seller hereunder is that of seller and purchaser. Nor should anything in this Agreement render or be construed to render either of the parties hereto liable to the other for any third party debts or obligations due the other party.

**37. No Third-Party Rights or Benefits.**

Nothing in this Agreement shall be construed as creating any rights of enforcement against any person or entity that is not a party to this Agreement, nor any rights, interest or third-party beneficiary status for any entity or person other than Purchaser and Seller. This Agreement is not an obligation of the State of New Jersey or any political subdivision thereof (other than FMERA) nor shall the State or any political subdivision thereof (other than FMERA) be liable for any of the obligations under this Agreement. Nothing contained in this Agreement shall be deemed to pledge the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).

**38. No Waiver.**

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

**39. Time Periods.**

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

**40. Publication.**

Purchaser and Seller agree (i) to consult with and cooperate with each other on the content and timing of all press releases and other public announcements relating to the transactions contemplated by this Agreement and (ii) that any press release to be used with respect to the transactions contemplated hereby will be in the form agreed to by the parties. Purchaser shall not issue any announcement or statement without the express written approval of Seller as to the text of the announcement.

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

Purchaser shall not record nor attempt to record this Agreement; however, Purchaser may record the following: a) a memorandum or "short form" of this Agreement, b) a Notice of Settlement or c) other reporting requirements under the Federal Securities Laws or other securities laws applicable to the Purchaser, provided that the documents that Purchaser proposes to record are provided to the Seller for review and approval, which shall not be unreasonably delayed or withheld, prior to recording. In the event Purchaser records this Agreement without having obtained the prior written consent of Seller thereto, then Purchaser shall be deemed in material incurable default under this Agreement and Seller shall be authorized without any notice whatsoever: (i) to terminate this Agreement and (ii) to take the Initial Deposit set forth in Section 5, including interest as liquidated damages, such damages being difficult, if not impossible to ascertain. This Section shall survive the termination of the Agreement.

**42. Authority Representations of Purchaser and Seller.**

Purchaser and Seller hereby represent to each other on and as of the date of this Agreement and on and as of the transfer(s) provided for herein, that each have full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller and Purchaser shall be duly authorized to sign the same on Purchaser's and Seller's behalf and to bind Seller and Purchaser thereto. This Agreement and all documents to be executed pursuant to Seller and Purchaser are and shall be binding upon and enforceable against Seller and Purchaser in accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any

judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchase or Seller is bound.

**43. Lis Pendens.**

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

**44. Political Campaign Contributions.**

- a. For the purpose of this Section, the following shall be defined as follows:
  - i. "Contribution" means a contribution reportable by a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" P.L. 1973, c. 83 (C.19:44A-1 et seq.), a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.
  - ii. "Business Entity" means:
    1. a for-profit entity as follows:



- a. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
  - b. in the case of a general partnership: the partnership and any partner;
  - c. in the case of a limited partnership: the limited partnership and any partner;
  - d. in the case of a professional corporation: the professional corporation and any shareholder or officer;
  - e. in the case of a limited liability company: the limited liability company and any member;
  - f. in the case of a limited liability partnership: the limited liability partnership and any partner;
  - g. in the case of a sole proprietorship: the proprietor; and
  - h. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
2. any subsidiary directly or indirectly controlled by the Business Entity;
  3. any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Business Entity, other than a candidate committee, election fund, or political party committee;

4. principals who own or control more than 10 percent of the profits or assets of a Business Entity or 10 percent of the stock in the case of a Business Entity that is a corporation for profit (“Principals”); and
  5. with respect to an individual who is included within the definition of Business Entity, the individual’s spouse or civil union partner, and any child residing with the individual, provided, however, that, P.L. 2005, c. 51 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) (“Chapter 51”).
- iii. P.L. 2005, c. 51 — means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).
- b. The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Purchaser shall be a material term of this Agreement.
  - c. Purchaser hereby certifies to the Authority that commencing on and after October 15, 2004, Purchaser (and each of its Principals, subsidiaries and political

organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Purchaser and the Authority pursuant to P.L. 2005, c. 51. Purchaser hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

- d. Purchaser hereby covenants that Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any Contributions of money, or pledge of a Contribution, including in-kind Contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Section 44.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of

P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

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

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

- f. The Parties agree that on July 12, 2018, FMERA received confirmation from the Department of the Treasury's Chapter 51 Review Unit that Purchaser was approved for 2-year Chapter 51/EO117 certification. Purchaser hereby acknowledges and agrees that pursuant to P.L.2005, c. 51, Purchaser shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Purchase Price is paid to the Authority, any Contribution is made by Purchaser and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

**45. Notices:**

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

to:

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

With a copy to:

Riker Danzig Scherer Hyland & Perretti LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962-1981  
Attention: Scott G. Collins, Esq.

And to:

APDP, LLC  
601 Bangs Avenue  
Suite 410  
Asbury Park, NJ 07712  
Attention: Mario Criscione

With a copy to:

Erik Anderson, Esq.  
Reardon Anderson, LLC  
55 Gilbert Street North  
Suite 2204  
Tinton Falls, New Jersey 07701

b. All notices which must be given under this Agreement are to be given either by:

- i. personal service,
- ii. certified mail, return receipt requested, addressed to the other party at their address specified above, or
- iii. overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail).

Either party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice. Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

**46. Brokerage Commissions.**

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

**47. Counterparts.**

This Agreement may be simultaneously executed in several counterparts, or with counterpart signature pages, and may be delivered by facsimile or electronic mail, it being



understood that all such counterparts or counterpart signature pages, taken together, shall constitute one and the same instrument.

**48. Exhibits.**

By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in this Agreement, which have been delivered previously to Purchaser in a package separate from this Agreement, with the exception of Exhibits A and D.

**49. Recitals.**

The Recitals are incorporated herein as if restated at length.

**50. Miscellaneous.**

a. Market Conditions. Purchaser agrees that as of the Effective Date, the current real estate market conditions do not constitute a materially adverse condition that would entitle Purchaser to declare Force Majeure and fail or delay to perform its obligations pursuant to this Agreement. Purchaser agrees that real estate market conditions must be worse than the conditions existing as of the Effective Date in order to warrant a claim for Force Majeure.

b. Temporary Signage. The Parties agree to cooperate with regard to the placement of signage on the Property after the Effective Date, which signage will contain information reasonably acceptable to both Parties regarding the Project. The Parties agree that the signage may be updated to include additional information as the Project progresses.

c. Marketing. To the extent that Seller requests Purchaser to prepare renderings of the Project and to the extent that said requests are reasonable, Purchaser agrees to provide Seller with renderings of the Project so that Seller may use same for public presentations and to further market the Property and Fort Monmouth.

d. Utilities.

- i. Seller shall provide access to public sewer and water systems at the property line.
  - ii. Seller shall be responsible for providing electric service to the Property until such time that Purchaser is able to obtain electric service directly from Jersey Central Power & Light Company or other source at the property line.
  - iii. Purchaser shall be responsible for replacement, repair, maintenance and/or relocation of all utilities within the Property.
- e. Public Access. Purchaser agrees to provide access to the waterfront to the general public, including the public boat ramp.
- f. Retail Sales Taxes. FMERA is authorized to create infrastructure districts to support the redevelopment of the Fort. Retail sales within the districts will be exempt to the extent of 50% of the retail sales taxes (except taxes generated from the retail sale of motor vehicles, alcoholic beverages, cigarettes or energy) normally collected by the State of New Jersey, and FMERA may collect a franchise assessment not to exceed the remaining 50% of retail sales taxes normally collected, to be used by FMERA toward on-site or off-site infrastructure improvements, or parking or transportation facilities, or work that reduces, abates, or prevents environmental pollution, or other improvements that provide a public benefit within or to an infrastructure district. FMERA may, at its Board's discretion, opt to collect less than 50% of normal sales taxes through the franchise assessment, effectively allowing retailers to charge less than the current sales tax imposed under the New Jersey Sales and Use Tax Act. In the event FMERA creates an infrastructure district that includes the Property within its

boundaries, the Purchaser and any tenants operating a retail business on the Property shall apply to be a certified retail vendor.

- g. Sublease of the Property Prior to Closing. Provided that Purchaser has not terminated this Agreement or is in default hereunder, Purchaser may request that Seller grant Purchaser a sublease in the form attached hereto as Exhibit F to use and occupy the Property prior to Closing for the purposes of operating the Improvements as a public marina and restaurant. The sublease will be for one (\$1.00) dollar and will be on an absolutely triple net basis. The parties agree and acknowledge that Purchaser's prior improvements to the marina and Building 450 and its operation and maintenance of the Property for the benefit of the Seller and the general public constitute full consideration for Purchaser's use and occupancy of the Property for all periods prior to the execution of this Agreement.
- h. Purchaser acknowledges and agrees that it shall have the sole responsibility to resolve, at its own expense, any and all riparian claims associated with the Property. Seller has represented that it has been in discussions regarding the riparian claims at issue with the State of New Jersey and that the State of New Jersey is willing to resolve said issue by allowing the purchase of the impacted land/riparian rights for approximately \$18,000. Seller will cooperate with Purchaser in resolving any issues with the State of New Jersey regarding riparian rights.

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

ATTEST:

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, Seller

\_\_\_\_\_

By:

\_\_\_\_\_

Bruce Steadman  
Executive Director

ATTEST:

ASBURY PARK DEVELOPMENT  
PARTNERS, LLC, Purchaser

\_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

100% 90% 80% 70% 60% 50% 40% 30% 20% 10% 0%

STATE OF NEW JERSEY )

)

COUNTY OF MONMOUTH)

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

\_\_\_\_\_

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## **BOARD MEMORANDUM**



**MEMORANDUM**

**TO:** Members of the Authority

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

**DATE:** March 12, 2019

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

The following projects were approved under Delegated Authority in February 2019:

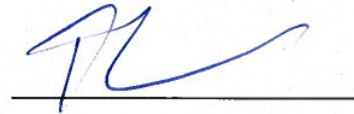
**Premier Lender Program:**

- 1) Joshneali LLC (P45517) and American Lawn Sprinkler Company, Inc. ("ALS") (P45518) are located in Englishtown Borough, Monmouth County. Joshneali LLC is a real estate holding company formed to purchase and own the project property. The operating company, ALS, was founded in 1996 as a full-service commercial landscaping and irrigation company offering design, construction and landscape maintenance for homeowners, builders and homeowner associations. M & T Bank approved a \$997,500 bank loan contingent upon a 43.86% (\$437,500) Authority participation and a \$250,000 line of credit contingent upon a 50% Authority guarantee, not to exceed \$125,000. Proceeds will be used to refinance existing debt and for working capital. Currently, the Company has 12 employees and plans to create two new jobs within two years.
- 2) Mira Property Management, LLC (P45535), located in East Brunswick Township, Middlesex County, is a real estate holding company formed in 2006 to purchase and own the project property. The operating company, Mira International Foods Inc., was founded in 1974 to manufacture and distribute foods such as hummus, tahine, baba ghanouj, and fava beans. Mira evolved into development, production and marketing of premium mango & guava nectars made from trees near the banks of Egypt's Nile River. Mira now focuses on expanding distribution and promotion of their nectars, launching "Azul Pure" coconut water. The Provident Bank approved a \$1,800,000 bank loan contingent upon a 27.78% (\$500,000) Authority participation. Proceeds will be used to refinance existing debt. The Company currently has 11 employees and plan to create two new positions within the next two years.



**Small Business Fund Program:**

- 1) First Class Uniform Inc. (P45528) is a manufacturer and reseller of uniforms and accessories for security officers and law enforcement. The Company is headquartered in California. The Company was approved for a \$280,000 direct loan to purchase the project property to form East Coast operations, with plans to create six new jobs over the next two years.



**Prepared by: G. Robins**

## **EXECUTIVE SESSION**



**EXECUTIVE SESSION**

**MEMORANDUM**

**TO:** Members of the Authority

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

**RE:** Eighth Amendment to Lease Agreement and Surrender and Cancellation Agreement with Chromocell Corporation  
The Technology Centre of New Jersey  
685 South Route 1, North Brunswick, NJ (Tech IV, 1<sup>st</sup> Floor)

**DATE:** March 12, 2019

**Summary**

I request that the Members approve entering into the following agreements with Chromocell Corporation ("Chromocell"):

- The Eighth Lease Amendment Agreement which will:
  - authorize the Authority to apply the current security deposit of \$143,500 to the current outstanding balance of due of \$354,042.62
  - authorize Chromocell to pay the remaining balance due, \$221,069.75 including the Additional Rent late fee of 5%, on or before March 30, 2019
  - authorize Chromocell to replenish the security deposit of \$159,716.58 in six equal installments commencing April 1, 2019
  - require Chromocell to enter into a Surrender and Cancellation Agreement with the Authority
- A Surrender and Cancellation Agreement for the leased premises, which will govern the relationship between Chromocell and the Authority for any future default by Chromocell under the Lease.

**Background**

In August 2018, the Members authorized a rent and PILOT forbearance for three (3) months (July, August and September), with full rent due commencing in October, plus 50% of one (1) month of the forbearance rent, until the July, August and September 2018 are paid in full in March 2019.

In late September 2018, Chromocell advised staff of the following: it could not reach a settlement with Astellas and is currently pursuing its legal remedies to recoup its out of pocket expenses and

termination fee, that it would need (i) a further forbearance of the rent, (ii) reduce its footprint in Tech IV, and (iii) fully develop its additional request for assistance from the Authority.

In October, due to the continued financial hardship caused by the Astellas contract termination, Chromocell requested the following revisions to the lease: the reduction of leased premises from 26,184 SF to 14,662 SF and an additional six month rent forbearance.

In November 2018, the Members authorized Chromocell's request to reduce its leasehold premises from 26,184 to 14,662 rentable square feet. Although Chromocell requested an additional rent forbearance through April of 2019, staff recommended to the board, and the Members approved the following:

- Require Chromocell to pay the additional rent, PILOT and utilities for the period July to December 2018 on or before December 31, 2018
- A 50% rent forbearance for the first quarter of 2019 (January through March)
- Amortizing the rent from July through December 2018 over 21 months, at 0% interest, with payments commencing in April 2019.

On January 31, 2019, Chromocell paid \$62,000 on the outstanding balance due (\$356,360.16). Chromocell did not make a payment in February.

On February 4, staff notified Chromocell by email and letter that if full payment of the outstanding balance due is not received on or before February 16, the Lease would be deemed in default.

As of March 1, 2019, Chromocell's balance due was \$354,042.62 and Chromocell did not make any payment. However, Chromocell did provide its current prospects to improve revenue, and included some executed and prospective letter of intents and agreements. These items are attached as Exhibit A to this memo.

On March 4, 2019, staff met with Chromocell and discussed the current situation. Staff advised Chromocell if the Lease could not be made current, the Authority's recourse would be to commence an eviction proceeding. Chromocell provided an update on its current prospects for additional revenue and stated that it had approximately \$200,000 in cash on hand and was entering into an agreement for a bridge loan by the end of month with an investor. As a result of the discussion during the meeting, staff proposed the following resolution to the current default under the Lease:

- The Authority apply the current security deposit, \$143,500, to the outstanding balance, and permit Chromocell to replenish the security deposit in payments over six months. If the Authority would have called a formal default under the Lease, the security would have been applied to the outstanding balance. Staff did not consider this a significant concession.
- Chromocell pay by March 11<sup>th</sup>, the balance of the amount due, \$210,542.62, which would make the Lease current. If the amount due was not paid by March 15<sup>th</sup>, it will incur an Additional Rent late charge of 5%.
- Chromocell could either continue to occupy the leased premises or move into 1 or 2

laboratories in BDC within Tech IV, reducing its occupancy costs.

- Any future default under the current Lease or a new BDC lease would be governed by a Surrender and Cancellation Agreement, in which Chromocell would agree to forgo its rights to contest an eviction proceeding and would surrender the premises within 60 days of a default under the Lease. During the 60-day occupancy period, Chromocell would have to pay occupancy costs according to the terms of the Seventh and Eighth Amendments to the Lease.

On March 6<sup>th</sup>, Chromocell provided the following counter-proposal:

- Chromocell would remain in the current space.
- The Authority apply the security deposit (\$143,500) to the outstanding balance immediately.
- Chromocell pay the outstanding balance, including the late fee (\$221,069.75) on March 29<sup>th</sup>, the day it would close with bridge loan with the prospective investor.
- Chromocell would replenish the new security deposit -over six months and will also enter into the Surrender and Cancellation Agreement.

Staff recommends accepting Chromocell's counter proposal for the following reasons:

- An eviction action would not remove Chromocell by March 30<sup>th</sup>.
- If an eviction action is filed before the end of March, at best estimate, it would take approximately 60 days to resolve, depending on the Superior Court's Special Civil Part's docket.
- If Chromocell does not make the payment on March 30<sup>th</sup>, then it would surrender the premises within 60 days under the Surrender and Cancellation Agreement (assuming Chromocell has signed the Surrender and Cancellation Agreement).
- If Chromocell does not vacate within 60 days of the default, the Authority may proceed with an action in the Special Civil Part to remove Chromocell and cannot contest it under the Surrender and Cancellation Agreement.

Attached to this memo are:

- Exhibit B which includes the Eighth Amendment to the Lease which outlines payment of the security deposit over 6 months and recognizes that any future default under the Lease would be governed by the Surrender and Cancellation Agreement.
- Exhibit C which includes the Surrender and Cancellation Agreement, in which Chromocell will agree to forgo its rights to contest any eviction action with respect to any future default under the lease and agrees to vacate the premises with 60 days of any future default.

The proposed Eighth Lease Amendment and the Surrender and Cancellation Agreements are

attached to this memo as Exhibits B and C. They have not yet been provided to Chromocell. The final documents may be subject to revision, although the basic terms and conditions will remain consistent with the attachment. The final terms of these agreements will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

**Recommendation**

For the reasons stated in this memo, I recommend the Members authorize entering into the Eighth Lease Amendment and the Surrender and Cancellation Agreement.



---

Tim Sullivan  
Chief Executive Officer

att: Exhibits A through C  
Prepared by: Juan Burgos

EXHIBIT A

Confidential

## MEMORANDUM

**chromocell**

**TO** NJ EDA  
**FROM** Christian Kopfli, Marcus Sands  
**DATE** February 15, 2019  
**RE** Chromocell – Rent Payment Plan

Chromocell Corporation (“Chromocell”, “we” or “us”) has received the letter regarding outstanding rent payments from the NJ EDA (“you”), and, in response thereto (and pursuant to our telephonic discussions with Ms. Donna Sullivan and Mr. Juan Burgos on February 4<sup>th</sup>), we have prepared this Memorandum (“Memo”) setting forth: (i) an outline of the current financial status of Chromocell and opportunities for near term revenue and/or financing, a proposed plan to pay down sums due under the Lease Agreement dated December 10, 2008, as amended (the “Lease”). Of note, we had to redact some of the names of our commercial partners due to ongoing confidentiality obligations, but we added the relevant (redacted) documents to this memo to provide you with as much detail as possible.

I. Status

Flavors Business/Research:

On January 22<sup>nd</sup>, 2019 Chromocell executed a Preliminary License Agreement with a large ingredient company (attached on Exhibit A) for the collaborative development and commercialization of a proprietary, novel, natural sweetener. Chromocell received \$1.5M as an upfront payment and expects to receive an additional \$1.0M in April 2019 upon completion of a Milestone under an Evaluation Work Plan. Efforts to complete the Milestone are underway and the outlook is highly promising. An additional \$1M payment under the Preliminary License Agreement is due upon satisfactory completion the Evaluation Work Plan (expected Q3/2019) and a positive outlook for the development of the sweetener. The Preliminary License Agreement is a prelude to a larger collaboration under a definitive agreement under current negotiations based on an executed Term Sheet (also set forth in Exhibit A). Funding under the definitive agreement (payments from the ingredient company to Chromocell), is budgeted for \$10.5M over the 2.5-3 year term of an overall Development Plan. Furthermore, Chromocell and the ingredient company are in active negotiations with several Consumer-Packaged Goods Companies (CPG’s) that are seeking preferential rights to the sweetener (when it is commercially available) in exchange for an advance payment(s) and/or royalties. Payment amounts from the CPG’s have not been aligned but proposals have been in the single-digit millions. Finally, our draft of the definitive agreement includes milestones and royalties (including minimum annual royalties) based on Net Sales of the sweetener by the ingredient company or its sublicensees/distributors.

Separate and apart from the agreement with the ingredient company, Chromocell is in negotiations with a well-known private equity fund about making a significant equity investment into Chromocell’s research and flavors division FlavorHealth. It is planned to close this transaction in Q2/2019 and proceeds are estimated to be double-digit millions.



FlavorHealth/Chromocell has also just executed a Term Sheet with a leading Stevia company (attached hereto as Exhibit B) pursuant to which the Parties will be working on a flavors project for stevia taste improvement with expected potential minimum flavor purchase requirements (the Stevia company from Chromocell) of approximately \$500K in 2019, \$4.1M in 2020 and \$8.1M in 2021.

In collaboration with a financial advisor (Conexus Capital Advisors), Chromocell is actively running an auction process for rights to/acquisition of its patent pending, natural sweet taste enhancing compounds referred to commercially as Orciol® flavor. More than two dozen prospective bidders have been contacted and several are actively evaluating Orciol under NDA/MTA. Formal bid requests are expected to be sent by month's end.

Finally, in addition to the above, we have a significant pipeline of projects with other food/ingredients companies for the potential sales of our proprietary flavors. We expect material sales to occur this spring.

#### Therapeutics:

Chromocell's therapeutics assets focus on CC8464 a clinical stage, patented, potent, selective inhibitor of NaV1.7 ion channel which is being developed as a non-opioid analgesic for chronic and acute neuropathic and nociceptive pain.

We have engaged a leading advisor (Torreya Partners) in the therapeutic space to assist in the partnering and/or financing of the CC8464 development program. Several prospective suitors have been contacted and at least the following entities are in active discussions:

- Orbimed Advisors
- HBM Partners
- Supernus Pharmaceuticals
- Sands Capital Partners
- Flexion Therapeutics
- Vertex Pharmaceuticals
- AMGEN
- HIG Finance
- Eli Lilly

Negotiations are most advanced with a specialty pharma partner where draft term sheets have been exchanged (current, marked-up draft attached hereto as Exhibit C). At a business development meeting on February 12 expressed continued interest in CC8464 and, proposed consummating a transaction for a license to an injectable formulation of the compound in Spring 2019 pending negotiation of an acceptable agreement and completion of scientific due diligence. This would result in an upfront payment of at least \$5M.





It is expected that the value of CC8464 in an oral formulation will be higher than the injectable on account of the larger market-size. The other prospective investors/collaborators are evaluating the asset for global rights in oral formulations and need not be mutually exclusive with a transaction with the specialty. Minimum investment amounts for the CC8464 Program in the oral (and outside injectable) field we are seeking are \$8M.

Finally, we are in discussions with a law firm to litigate against Astellas Pharma, Inc. for breach under our terminated Collaboration Agreement. This law firm would work for us on a contingency basis and would seek multi-million dollars in damages from Astellas for, *inter alia*, lack of Diligence in developing CC8464 and bad faith termination. As amounts to be paid in settlement or secured in judgment in the litigation are uncertain we decline to place a value on the amount.

## II. Plan

Given the bonified value of our assets in both the flavors and the therapeutics space, the significant number and advanced state of the business discussions, we are confident that Chromocell will be in a position to regain compliance with the terms of the Lease. Specifically, Chromocell proposes starting April 15, 2019 to pay \$25,000 per month through May 15, 2020 to pay down the \$294,360.16 in past due rent, utilities, CAM, PILOT. This would be in *addition* to the rent (including amortized rent)/CAM/PILOT/utilities that otherwise become due as set forth in the Lease. Further, if the cash flow position of our company further increases, we will accelerate the payment of past due amounts as much as possible.

Sources:

Ingredient House Funding: \$1M April 15, 2019, \$1M Q2/2019  
Private Equity Investment (Research/Flavors): ~\$10M Q2/2019  
Specialty Pharma: \$5M Q2/2019  
CC8464 Oral Investment: ~\$8M Q3/2019  
Sales: 0.5M Q3/2019

### Non-Binding Proposal Of Terms ("Term Sheet")

**Parties** [ ] Therapeutics, Inc. ("[ ]")  
Chromocell Corporation ("**Chromocell**")

**Objectives** As more fully described below, [ ] and Chromocell plan to use commercially reasonable efforts to negotiate in good faith a definitive written agreement ("**Agreement**") pursuant to which [ ] will obtain the exclusive right to develop and commercialize products comprising the Compound (as defined below) in the Field (as defined below), subject to paying Chromocell the royalty and milestone payments set out below.

Notwithstanding any other provision of this proposal, the parties agree that this term sheet is non-binding (except that the provisions under "**Confidentiality**," "**Negotiation Period**," and "**Diligence Items**" shall be binding) and neither party is obliged to enter into any further agreement. The parties acknowledge that prior to the execution of the Agreement they will need to agree, and have their respective organizations approve, the terms of the Agreement

#### **DEFINITIONS**

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**"Compound"** Chromocell's proprietary compound CC8464 and any other molecular entities as well as any complexes, chelates, clathrates, acid, base, esters, salt, isomer, stereoisomers, enantiomer, pro-drug form, metabolite, hydrate, solvate, polymorph, degradants and other non-covalent derivatives and crystalline forms thereof covered by the patents and patent applications included in the Chromocell IP.

**"Competing Product"** Any pharmaceutical product that has as its intended primary mechanism of action the inhibition of a NaV1.7 ion channel, either alone or in combination with other products in the Field.

**"Field"** Treatment, prevention and diagnosis of post-surgical pain in humans and animals using a non-oral formulation of the Compound other than topical formulations (such as ointments, liniments, patches, eye-drops and ear-drops).

**"Chromocell IP"** The patents, patent applications, proprietary information and know-how owned or controlled by Chromocell or its affiliates as of the execution date of the Agreement or thereafter during its term that are reasonably necessary or useful for the research, development, manufacture, use, importation or sale of Products in the Field.

**"Product"** Any pharmaceutical product developed under the Agreement containing the Compound, the manufacture, sale or use of which would, but for the licenses granted under the Agreement, infringe a patent included in the Chromocell IP or which embodies or incorporates proprietary know-how included in the Chromocell IP.

**"Territory"** Worldwide.

**“Valid Claim”** With respect to any country, a claim of an issued and unexpired patent or patent application included within the Chromocell IP in such country which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of a competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise.

## GENERAL TERMS

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**License Grant** Chromocell will grant to [ ] an exclusive, royalty-bearing, sub-licensable (through multiple tiers) license under the Chromocell IP to research, develop, make, have made, use, import, export, offer for sale, sell and otherwise commercialize the Compound and Products in the Field in the Territory.

**Materials** At execution of the Agreement, Chromocell will provide [ ] with existing supplies of the Compound in its possession for [ ]’s use in the development of the Product. [ ] shall pay Chromocell the fully burdened manufacturing costs therefor.

**Diligence** [ ] will use commercially reasonable and diligent efforts, consistent with the usual practice followed by other similarly-situated biopharmaceutical companies, which efforts shall be no less than those used in pursuing the development and commercialization of other similar pharmaceutical products with similar market potential and at a similar stage in development, to develop and commercialize at least one Product. The Agreement shall contain an objective standard of Diligence mutually agreed by the Parties.

**IV Product** Chromocell, on its own or through a third party has the right to develop a plan for a non-injectable formulation of Compound in the Field (intravenous, “IV Product”). [ ] will have a right of first negotiation to initiate or fund such program on its own. Any therapeutic products resulting from such program shall be subject to the same conditions (Milestones and Diligence) as set forth in this term sheet if [ ] exercises its right to do the program on its own.

**Intellectual Property** With respect to intellectual property, (a) inventorship of intellectual property (including patents) arising out of the performance of the Agreement will be owned by the party developing it; (b) [ ] shall have the right to comment, step in to prosecute and maintain the Chromocell IP throughout the Territory; and (c) [ ] shall have the first right to enforce the Chromocell IP in respect of Products in the Field and defend third party claims against the Chromocell IP in respect of infringing products in the Field. [ ] shall pay the costs for prosecuting and maintaining Chromocell IP.

**Exclusivity** During the Term, Chromocell will not, license, assign or otherwise dispose of any of its rights in the Compound, Product or Chromocell IP to any third parties using any non-oral formulation for treatment or prevention of post-surgical pain. Additionally, during the Term, Chromocell will not develop, manufacture, commercialize or otherwise exploit any Competing Product in the Field.

## FINANCIAL PROVISIONS

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**Upfront** [ ] shall pay to Chromocell an upfront payment of \$6 Million. \$4M of the upfront payment shall be payable within 5 days after execution of the Agreement and the remaining \$2M shall be payable upon the earlier of (i) written confirmation from FDA that the Compound is no longer on clinical hold or (ii) the submission by [ ] of an IND and acceptance by FDA.

**Milestone Payments** After the achievement of each of the following milestones with respect to the first Product (and any IV Product) in the Field, Chromocell shall invoice and [ ] shall pay the following one-time milestone payments:

<u>Milestones</u>	<u>Payment (USD)</u>
<b>Clinical Milestones (Initiation means first subject dosed)</b>	
Initiation of Phase I Clinical Trial	\$3 Million
Initiation of Phase II Clinical Trial	\$5.5 Million
Initiation of Phase III Clinical Trial	\$8 Million
<b>Regulatory Milestones (for human use)</b>	
NDA Filing Acceptance in US	\$5 Million
NDA Approval in US	\$10 Million
First EMA Marketing Approval	\$3 Million
First EMA Pricing Approval	\$8 Million
First PMDA Marketing Approval in Japan	\$1.75 Million
First PMDA Pricing Approval in Japan	\$4.5 Million
Second Indication Approval by FDA	\$7.5 Million
Second Indication Approval by EMA	\$5.5 Million
<b>Commercialization Milestones</b>	
First calendar year in which worldwide annual net sales for a Product exceed:	
\$75 Million	\$5 Million
\$150 Million	\$12 Million
\$300 Million	\$25 Million
\$600 Million	\$50 Million

**Royalties** During the royalty term, [ ] shall pay a royalty on annual net sales of the Products at the following rates, where the sale of the Product in the relevant country will infringe a Valid Claim:

<u>Annual Worldwide Net Sales per Product</u>	<u>Royalty Rate</u>
Portion less than or equal to \$75 Million	9%
Portion greater than \$75 Million and less than or equal to \$150 Million	10%
Portion greater than \$150 Million and less than or equal to \$300 Million	11%
Portion greater than \$300 Million	12%

<b>Know-How Royalty</b>	During the royalty term, in any country in which the sale of a Product will not infringe a Valid Claim, [ ] shall pay a royalty in respect of the know-how included in the Chromocell IP equal to seventy five percent (75%) of the royalties set forth above on the net sales of such Product in such country
<b>Third Party License Fees</b>	<p>In the event that [ ] determines that it must acquire rights to intellectual property owned by a third party in respect of the Compound in order to research, develop, manufacture, use, import, sell or otherwise commercialize the Product, [ ] shall have the right to acquire such rights through a license or otherwise and deduct from the royalty payments due to Chromocell fifty percent (50%) of the amounts actually paid by [ ] to such third parties; provided, however that in no event shall the royalties payable to Chromocell be reduced by more than 50%.</p> <p>Unless included above, Chromocell shall remain responsible for the payment of royalty obligations, if any, due to third parties under any Chromocell IP which is licensed to Chromocell and sublicensed to [ ] under the Agreement. All such payments shall be made by Chromocell in accordance with the terms of its license agreements.</p>
<b>Royalty Term</b>	Royalties will be payable on a Product-by-Product and country-by-country basis until the later of (a) the expiration of the last to expire Valid Claim claiming the Product or the use for which it is being sold in such country and (b) 12 years from the first commercial sale of the Product. Following the royalty term on a country-by-country basis, the licenses granted to [ ] with respect to the Product shall become fully paid-up, sub-licensable, royalty-free, transferable, perpetual and irrevocable licenses continuing beyond the term of the Agreement.

#### TERM AND TERMINATION

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<b>Term</b>	The term of the Agreement will commence upon execution and continue until the expiration of the royalty obligations of [ ], unless earlier terminated as permitted by the Agreement.
<b>Termination</b>	<p>Either party will have customary rights to terminate the Agreement in the event of material breach (subject to a cure period) by, or bankruptcy of, the other party.</p> <p>[ ] will have the right to terminate the Agreement at any time on ninety (90) days prior written notice with no cause upon payment of \$1 million.</p>

#### MISCELLANEOUS

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<b>Negotiation Period</b>	Chromocell agrees that, unless negotiations between [ ] and Chromocell are terminated earlier by mutual written agreement, [ ] will have the exclusive right to negotiate the proposed transaction described in this Term Sheet or any similar transaction with regard to the Compound and Product in the Field until December 21, 2018 (" <b>Exclusivity Period</b> "). During the Exclusivity Period, Chromocell and [ ] will use reasonable and good faith efforts to negotiate and execute the Agreement. Neither Chromocell nor any of its officers, directors or agents shall, directly or indirectly (including, without limitation, through any investment banker, attorney or accountant retained by or on behalf of any such person), (a) solicit, initiate or encourage the submission of any proposal or offer (" <b>Proposal</b> ") from
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any person or entity relating to the rights in or to the Compound or Product in the Field, or any liquidation, dissolution, recapitalization of, , Chromocell or relating to any other similar transaction involving Chromocell; (b) participate in any discussions or negotiations regarding, or furnish to any other person or entity any information with respect to a potential Proposal; or (c) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage any effort or attempt by or enter into an agreement with any other person or entity to do or seek to do any of the foregoing.

The parties agree to use reasonable and good faith efforts to negotiate and, after reaching agreement and receiving all corporate approvals, sign the Agreement prior to December 21, 2018, in part to minimize transaction costs.

<b>Diligence Items</b>	During the Exclusivity Period, Chromocell will cooperate with [ ] to allow it to complete satisfactory confirmatory diligence, including (a) review of the raw data, laboratory, regulatory, development and other documents related to the Compound, including the IND filing; (b) completion of freedom to operate analysis on the Chromocell IP; (c) review of the Astellas license agreement and termination documents related thereto; and (d) other matters reasonably required for [ ] to understand the Compound .
<b>Governing Law</b>	New York
<b>Expenses</b>	Each party will pay its own expenses (including legal and accounting fees) associated with negotiating and executing the Agreement, if any and neither party will be liable for the other party's expenses, regardless of whether the parties execute the Agreement.
<b>Confidentiality</b>	The parties will keep confidential the terms of this Term Sheet and that negotiations between the parties are occurring. The Agreement will contain customary provisions regarding non-disclosure and non-use of confidential information.

**THE PARTIES ACKNOWLEDGE AND AGREE THAT (A) THE AGREEMENT WILL CONTAIN ADDITIONAL TERMS AND CONDITIONS (INCLUDING THOSE CUSTOMARY IN AGREEMENTS OF THIS NATURE) MUTUALLY AGREED UPON BY BOTH PARTIES, (B) PRIOR TO THE EXECUTION OF THE AGREEMENT THEY WILL NEED TO AGREE, AND HAVE THEIR RESPECTIVE ORGANIZATIONS APPROVE, THE TERMS AND CONDITIONS OF THE AGREEMENT AND (C) THAT NEITHER PARTY IS OBLIGATED TO ENTER INTO THE AGREEMENT.**

The parties have by duly authorized persons executed this term sheet as of [ ] --, [ ].

[ ]

**Chromocell Corporation**

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

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

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

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

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

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

Confidential 2/7/2019

**Term Sheet**

**Stevia Taste Improver Terms ("Term Sheet") between [ ] ("[ ]") and Chromocell Corporation ("FlavorHealth")**

**Terms in this document are for discussion only and are not intended to be binding for either party except for the paragraph re: use restrictions and confidentiality.**

<b>Terms</b>	<b>Description</b>
<b>Intent</b>	To establish a business relationship between [ ] and FlavorHealth that leverages the strengths of FlavorHealth and [ ] to deliver value to both organizations and great-tasting products to global customers.
<b>Field</b>	Manufacturing and applying natural Flavor(s) with Modulating Properties ("FMP")
<b>Ingredients</b>	RebAMP™ 2662126-007 and other FMP ingredients that meet [ ] business needs and specifications
<b>Business Model</b>	FlavorHealth will supply FMP(s) to [ ] or to [ ] customers as directed by [ ] and as agreed by the parties.
<b>Implementation</b>	<p><b><u>Developmental Phase (Months 1-2)</u></b>            Prepare Stevia+FMP product(s) for market</p> <ul style="list-style-type: none"> <li>○ Under this agreement, both parties will identify specific projects, market segments or product targets within 10 business days of signing of the Term Sheet date.</li> <li>○ Both parties will dedicate R&amp;D resources to finalize product formula(s) that incorporate [ ] ingredients and FlavorHealth FMPs.</li> <li>○ All R&amp;D activities to be conducted at FlavorHealth labs in North Brunswick NJ.</li> <li>○ All samples will consist of blended Stevia and Flavors.</li> <li>○ Blended sampling and modifications will be limited to collaborative sessions not more than 3 times per month.</li> <li>○ [ ] will have free access to samples volumes of the identified FMP's in reasonable quantities that are free of charge for further assessment and product development.</li> <li>○ Both parties will have First Right of Refusal on all collective projects proposed by either party, terms and governance of each collaboration will be defined in separate agreement.</li> </ul> <p><b><u>Product Launch (Months 3-6)</u></b>            [ ] and FlavorHealth will promote Stevia+FMP product(s) through respective channels and jointly when applicable, activities include but no limited to:</p> <ul style="list-style-type: none"> <li>○ Promote products to existing and prospective customers</li> <li>○ Generate demand and interest through Marketing activities</li> <li>○ Customer visits across the USA/Canada/Mexico</li> <li>○ Direct mail and promotion/advertising of solutions</li> </ul>

Confidential 2/7/2019

	<ul style="list-style-type: none"> <li>o Development of co-branded marketing and sales literatures</li> <li>o Joint customer presentations</li> <li>o Product showcase at global exhibitions</li> <li>o Product development workshops</li> </ul> <p>In addition, subject to (i) approval of Confidential Customers (“Customer”), (ii) Both parties’ compliance with confidentiality requirements of Customers and (iii) in compliance with applicable legal requirements, both companies will periodically and/or at each other’s request to provide certain business information (including but not limited to, approval status, sales forecast, forecast of product use by Customers, sales by geography and ingredient).</p> <p>Quantities of the Blended Stevia &amp; Flavor samples to be determined and purchased by [ ] at “most favored nation” pricing subject to volume commitments to be distributed to all potential customers.</p> <p><b><u>Commitment Phase (Month 6 to Year 2)</u></b> Pursuant to successful product launches, [ ] shall purchase FMP ingredients as detailed below:</p> <ul style="list-style-type: none"> <li>o FlavorHealth will provide [ ] “most favored nation” pricing for its specified flavors</li> <li>o [ ] has preferred supply right to specific FMP ingredients in both powder and liquid options</li> <li>o FlavorHealth will recommend and use [ ] ingredients on all applicable projects</li> <li>o Further product development and marketing approaches to mirror incubation phase specified above for new products and applications.</li> </ul>								
<b>Scale</b>	<p>For [ ] Health Sciences, LLC to obtain MFN pricing, [ ] agrees to purchase minimum quantities set forth in the table below (“<b><u>Minimum Purchase</u></b>”) or as required by the combination of FlavorHealth and [ ] customers, whichever quantity is greater.</p> <table border="1"> <thead> <tr> <th>Calendar Year</th><th>FMP Scale (metric ton)</th></tr> </thead> <tbody> <tr> <td>2019</td><td>5</td></tr> <tr> <td>2020</td><td>35</td></tr> <tr> <td>2021</td><td>70</td></tr> </tbody> </table> <p>Above figures are estimates based on [ ]’s and FlavorHealth’s global business assessment, the actual purchase requirements will be established by the Parties in Q3 of 2019 and be subjected to terms of an executed supply agreement.</p>	Calendar Year	FMP Scale (metric ton)	2019	5	2020	35	2021	70
Calendar Year	FMP Scale (metric ton)								
2019	5								
2020	35								
2021	70								
<b>Pricing</b>	<p>Reference prices of liquid FMP RebAMP™ 2662126-007 are shown below. Price may vary and be determined at the time of purchase or execution of supply agreement.</p> <p><b>Tier Pricing:</b></p> <ul style="list-style-type: none"> <li>o Tier 1 (150-500kg) - \$150/kg</li> </ul>								



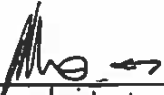
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	<ul style="list-style-type: none"> <li>o Tier 2 (500-1000kg) - \$135//kg</li> <li>o Tier 3 (1000kg+) - \$120 kg</li> </ul> <p>FlavorHealth will make good faith efforts to minimize price volatility and ensure supply continuity.</p>
<b>Regulatory</b>	<p>FMP 2662126-007 and other FMPs shall be compliant with regulatory guidances promulgated by the Flavor and Extract Manufacturer's Association (FEMA) at the minimum.</p> <p>FlavorHealth will supply usual technical and regulatory documents. Any additional documentation will be made on a case-by-case basis upon request.</p>
<b>Intellectual Property Rights</b>	<p>Intellectual property ("IP") pertaining to the composition and use of FlavorHealth's FMPs in formulations or products will be owned by FlavorHealth.</p> <p>IP pertaining to [ ]'s manufacturing, distribution, customer base will belong to [ ] Health Sciences, LLC.</p> <p>FMP's/flavors and their use in combination with high intensity sweeteners, salt, protein ingredients or as standalone ingredients to reduce off-tastes constitute proprietary rights, trade secrets and patent rights of FlavorHealth ("FlavorHealth IP"). [ ] shall ensure and shall cause its customers to ensure that FlavorHealth IP and trade secrets are protected in all cases. [ ] is granted the limited license to use FlavorHealth IP for agreed projects as set forth herein or as may be agreed in a definitive agreement.</p> <p>IP developed by the parties jointly will be owned by [ ] and FlavorHealth and be assigned to each other for the period of collaboration. If the collaboration ends at any time, individual IP rights including jointly developed IP will revert to FlavorHealth.</p> <p>[ ] shall use the Chromocell's FMP's/flavors and technical information provided by FlavorHealth solely for performing the program detailed in "Implementation" section of this Term Sheet and shall not modify the FMP/flavors without the prior written consent of FlavorHealth. [ ] shall not attempt to directly or indirectly commercialize the FMP/flavors outside of this agreed scope, nor shall [ ] directly or indirectly, by itself or through a third party, identify or attempt to identify the chemical constituents of, reverse-engineer, analyze, modify or otherwise characterize the FMP's/flavors.</p>
<b>Confidentiality</b>	<p>Except as approved by the Parties, FlavorHealth and [ ] and their respective affiliates agree to refrain from disclosing the other Party's and any of its affiliates' interest, involvement or identity relating to the matters described herein, the existence or any of the contents of this Term Sheet or the fact of its submission, or the terms of any negotiations in respect of the matters described herein.</p>

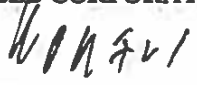
Confidential 2/7/2019

***Accepted and Agreed:***

XXXX XXXXX, XXXX

Signature:   
Name: Michael Chen  
Title: Executive Vice President

CHROMOCELL CORPORATION

Signature:   
Name: C. Kopp  
Title: CEO



## PRELIMINARY LICENSE AGREEMENT

THIS PRELIMINARY LICENSE AGREEMENT ("Preliminary License Agreement") is made and entered into on this the 22nd day of January 2019 (the "Effective Date") by and between Chromocell Corporation, a Delaware Corporation with a place of business at 685 US Highway One, North Brunswick, NJ 08902 (together with its affiliates including on behalf of its FlavorHealth division, "CHROMOCELL"), and [ ] ("[" ]") with a place of business at [ ]. Each of CHROMOCELL and [ ] is a "Party" and together are the "Parties".

### RECITALS:

WHEREAS, each of Chromocell and [ ] wishes to collaborate in the development and commercialization of Chromocell's novel natural sweetener CC71788 (the "Product");

WHEREAS, [ ] wishes to enter into a definitive license agreement ("Definitive Agreement") to exclusively distribute and/or manufacture the Product in territories to be defined by the Parties, provided that Chromocell successfully demonstrates to [ ]'s satisfaction that the Product meets certain functional performance and cost parameters, and thus is commercially viable;

and

WHEREAS, the Parties desire to initiate the collaboration under this Preliminary License Agreement while a definitive agreement ("Definitive Agreement") is drafted and negotiated based on the Parties' non-binding Term Sheet of even date herewith and attached hereto as Exhibit A; and

NOW, THEREFORE, in consideration of the premises and mutual obligations of the Parties hereunder, the Parties hereto agree as follows:

1. Evaluation Work Plan. Chromocell agrees to use commercially reasonable and diligent efforts to conduct the research and development activities set forth in the Evaluation Work Plan attached as Exhibit B hereto and incorporated by reference herein. The Parties respective roles and responsibilities are set forth in the Evaluation Work Plan as well as the timing of the activities. The Evaluation Work Plan may only be revised upon agreement of the Parties. Each Party shall be responsible for its actions and omissions in connection with the Evaluation Work Plan and shall comply with all applicable federal, state or local laws, codes, ordinances, regulations, standards, rules, requirements or orders in connection with such activities.

2. Definitive Agreement and Communications. Upon execution of this Preliminary License Agreement, the Parties will start negotiating a Definitive Agreement, based on the non-binding Term Sheet that is signed by the Parties concurrently with the Preliminary License Agreement. The Parties aim to conclude the negotiations within three months after the Effective Date of this Preliminary License Agreement. While the Definitive Agreement is negotiated, the Parties shall communicate regularly regarding progress under the Evaluation Work Plan and milestones achieved, including bi-weekly update calls between scientists from each Party designated as Project Managers. The Project Managers shall serve as the primary point of contact between the Parties regarding scientific and technical matters of the Collaboration during the Term (defined below). The Parties agree to establish a Steering Committee of three representatives of each Party to make strategic decisions regarding the collaboration and guide activities under the Evaluation Work Plan and further roles to be defined in the Definitive Agreement consistent with the non-binding Term Sheet.

3. **Initial License Payment.** Upon verification and acceptance of the Evaluation Work Plan, including validation of costs, the Parties will execute the Preliminary License Agreement. Within 5 (five) days of the effective date of the Preliminary License Agreement (once it has been duly executed by each Party), [ ] shall wire to an account designated by Chromocell an initial fee of \$1,500,000USD as an upfront royalty payment. A second royalty payment of \$1,000,000USD will be paid by [ ] upon the successful completion of the "Sensory Profile" milestone as described in the Evaluation Work Plan (Exhibit B), and a third and final royalty payment upon Chromocell having both successfully completed all activities described in the Evaluation Work Plan and having [ ] determine that there is an overall positive outlook for commercialization of the Product, a further amount equivalent to the incurred costs directly associated with executing the Evaluation Work Plan, which in any event is not to exceed \$1,000,000. These payments, the total of which in no event will exceed \$3.5 million, will be used by Chromocell exclusively to fund activities under the Evaluation Work Plan (Exhibit B), and shall be deemed to be an upfront prepayment of royalties for the exclusive global license to manufacture, use, apply, further develop, market, sell and distribute the Product as further set forth in the Definitive Agreement. Potential future funding will be made as set forth in the Definitive Agreement. Should the Parties, after negotiating in good faith fail to reach mutually acceptable terms for the Definitive Agreement, within three (3) months of the effective date of this Preliminary License Agreement, Chromocell will promptly reimburse [ ] the net amount of any pre-paid royalty payments not already spent or committed to third parties as pass through costs, in amount not to exceed \$425,000 in the point in time when negotiations on the Definitive Agreement cease, which in no case will be greater than \$2,500,000. The Parties shall consider where practicable utilizing [ ]'s resources to conduct activities under the Evaluation Work Plan and Development Plan to realize cost savings or to avoid delays in development.

4. **Licenses and Intellectual Property.** Chromocell hereby grants to [ ] a license under Chromocell's intellectual property in respect of the Product to conduct [ ]'s in-kind development as Chromocell conducts the Evaluation Work Plan. Comprehensive intellectual property ownership, maintenance, prosecution, defense, enforcement and license provisions including for commercialization of Product shall be set forth in the Definitive Agreement based on the non-binding Term Sheet.

5. **Confidential Information.** The exchange of information and materials under this Preliminary License Agreement shall be governed by the Parties' Confidential Disclosure Agreement dated as amended October 10, 2018 (the "CDA") until a Definitive Agreement is executed. Chromocell is aware, and Chromocell shall advise its employees, agents and representatives who are informed of the matters that are the subject of this Preliminary License Agreement, of the restrictions imposed by the United States securities laws, as applicable, on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities and on the communication of such information to any other person when it is reasonably foreseeable that such other person will purchase or sell such securities on the basis of such information.

6. **Potential CPG Partners.** During the Product development phase, the Parties may engage one or more consumer packaged goods companies in a limited manner to determine interest in the collaboration in applications development and consumer research regarding the Product, participation in future funding of development and/or licensing of the Product for specific applications, as well as other roles to be defined in the Definitive Agreement. All decisions to work with CPG's during the Product development phase must be a mutual decision by both Parties. In addition, each Party will keep the other Party apprised about their respective activities with respect to CPG's and the Product.

7. **Term and Termination.** This Preliminary License Agreement shall be effective as of the Effective Date and shall expire on the earlier of (i) completion of Evaluation Work Plan, or (ii) the execution of a Definitive Agreement (the "Term"). The parties acknowledge their respective obligations to mitigate damages if this Preliminary License Agreement is terminated for cause or without cause. Either Party may terminate its evaluation of the Product and its participation in this Preliminary License Agreement at any time and for any reason prior to the mutual execution of the Definitive Agreement. [ ] will also have the right to terminate the agreement if during the course of executing the Evaluation Work Plan, it is determined by [ ] that the Product does not meet certain functional performance and cost parameters, and thus is commercially viable. In such case (a termination under either of the foregoing two sentences), Chromocell will return to [ ] any unused portion of the prepaid royalties. In the event of a termination for failure to reach terms on the Definitive Agreement, see Section 3 above.

8. **Waiver and Severability.** No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. If any provision of this Preliminary License Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this Preliminary License Agreement shall be construed as if the illegal, invalid or unenforceable provision had never been a part of this Preliminary License Agreement and the remaining provisions of this Preliminary License Agreement shall be given full force and effect; provided, however, that each of the Parties shall negotiate in good faith to reach a substitute provision that has the same economic and/or legal effect of the invalid, illegal or unenforceable provision that is enforceable.

9. **Entire Agreement and Amendments.** This Preliminary License Agreement together with the CDA: (i) sets forth the entire understanding between the Parties and supersedes all prior agreements, understandings and commitments, whether oral, written or otherwise with respect to the subject matter hereof; (ii) may be amended or modified only by the written consent of both Parties; and (iii) may be assigned by a Party only with the prior written consent of the other Party, not to be unreasonably conditioned, delayed or withheld. The terms of this Preliminary License Agreement shall not be construed as creating a principal/agent, partnership or joint venture relationship between the Parties. Neither Party is authorized to execute any agreements, make any changes in any agreements, incur or assume any obligations, liabilities or responsibilities, or perform any other act in the name of or on behalf of the other Party. Each Party operates at its own risk and expense. Except as expressly set forth herein, nothing in this Preliminary License Agreement shall be construed to confer upon or give to any person or entity, other than the Parties to this Preliminary License Agreement, any rights or remedies under or by reason of this Preliminary License Agreement.

10. **Notice.** Whenever this Preliminary License Agreement requires or permits the consent or approval of a Party, such consent or approval shall be in writing and shall be effective if in writing and hand delivered, sent by nationally-recognized overnight delivery service or mailed by certified mail, return receipt requested, postage prepaid, to the applicable address set forth in the recitals hereof; provided that, notwithstanding the foregoing, consents or approvals communicated by a Party by facsimile or email shall be effective if and when actually received by the other Party. Each Party may designate by notice in writing a new address to which any consent or approval may thereafter be delivered.

11. **Governing Law.** This Preliminary License Agreement shall be governed and construed in accordance with the laws of the State of New Jersey (USA), without regard to the principles of conflicts of laws.

12. ~~Counterparts.~~ This Preliminary License Agreement may be executed in counterparts and all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or electronically shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, this Preliminary License Agreement is executed by or on behalf of the parties hereto as of the day and year first above stated.

CHROMOCELL CORPORATION

XXXX XXXX

By: Kopfli  
Christian Kopfli, Esq.  
Chief Executive Officer

By:   
Name:   
Title: 

**Exhibit A**

**Non-Binding Term Sheet  
Novel Natural Sweetener Development and Commercialization  
Chromocell Corporation ("Chromocell") and [ ] (" [ ]")  
January 22, 2019**

<b>Collaboration</b>	<ul style="list-style-type: none"> <li>• This confidential, non-binding term sheet ("<b>Term Sheet</b>") sets forth the material terms and conditions of a proposed collaboration between Chromocell and [ ] (the "<b>Collaboration</b>") in which they will jointly evaluate, and subsequently develop and commercialize Chromocell's novel natural sweetener (the "<b>Product</b>"). The development, commercialization and associated funding has been more fully described in a development plan and budget (the "<b>Development Plan</b>"), included in <b>Exhibit C</b>, to which this Term Sheet is attached. The first stage of the collaboration is a Preliminary License Agreement, with an Evaluation Work Plan inclusive of <b>Exhibit B</b>, to which this Term Sheet is attached. This non-binding Term Sheet is for discussion purposes only, and except for the sections entitled "Expenses" and "Confidentiality" there is no obligation on the part of either negotiating party until definitive agreements ("<b>Definitive Agreement</b>") are negotiated and signed by both parties and other conditions set forth herein are met. Either party may terminate its discussions with the other party at any time and for any reason.</li> <li>• The Parties agree to commence the Collaboration under the Preliminary License Agreement while the Definitive Agreement is being negotiated.</li> </ul>
<b>Parties</b>	<ul style="list-style-type: none"> <li>• The Collaboration will be led by Chromocell and [ ] and their respective affiliates (the "<b>Parties</b>").</li> <li>• During the Product development phase, one or more consumer packaged goods companies (each, a "<b>CPG</b>"), as mutually agreed upon by the Parties may participate in the Collaboration in particular roles to be defined. Initial participants may be Keurig Dr Pepper, Nestlé S.A. and The Coca-Cola Company.</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>• The Collaboration will include, the Evaluation Work Plan and Development Plan, that will support the following: <ul style="list-style-type: none"> <li>- Process development (synthetic and biosynthetic route-scouting and scale-up for nature identical and natural/bio-produced Product);</li> <li>- Physico-chemical, sensory and other characterization and optimization of Product for commercial development and application;</li> <li>- Safety and toxicological assessment of Product for building the regulatory dossier</li> <li>- Regulatory submissions and approval (U.S. and select International jurisdictions to be agreed);</li> <li>- Industrialization of Product including commercial manufacturing and supply;</li> <li>- Intellectual property ("<b>IP</b>") development, prosecution, and enforcement;</li> <li>- Naming, marketing, PR, branding, advocacy and pricing of Product</li> <li>- Sales and distribution of Product;</li> <li>- Public relations and market positioning regarding Collaboration; and</li> <li>- Such other activities as the Parties might agree.</li> </ul> </li> </ul>

<b>Responsibilities</b>	<ul style="list-style-type: none"> <li>• The Collaboration will be jointly managed by Chromocell and [ ] with each Party leading in particular areas of expertise as follows.</li> <li>• [ ] will lead: <ul style="list-style-type: none"> <li>- Industrialization (including scale-up), sales and distribution and marketing efforts to use and advocate a Trademark (as and when in [ ]'s opinion it makes sense to do so) under an agreed licensing arrangement</li> <li>- Pricing</li> <li>- Applications and development work relating to the Product</li> </ul> </li> <li>• Chromocell will lead: <ul style="list-style-type: none"> <li>- Process development</li> <li>- Physico-chemical and sensory characterization and optimization</li> <li>- Safety and Toxicology</li> <li>- Regulatory submissions and approvals</li> </ul> </li> <li>• Chromocell and [ ] will mutually agree upon other additional areas of leadership at appropriate times during the Collaboration. IP prosecution, defense and enforcement will be a joint activity of the Parties, with details set forth in the Definitive Agreement.</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>• A Joint Steering Committee ("JSC"), with three (3) representatives from each Party, will be formed to oversee, provide direction, and make strategic decisions during the execution of the Collaboration. The JSC shall meet quarterly. The representatives may change from time to time at the discretion of the Parties. The JSC may designate one or more subcommittees at its discretion.</li> <li>• The JSC will make decisions by consensus (i.e., each of Chromocell and [ ] must agree). If the JSC cannot decide, the matter will be escalated and resolved in accordance with the conflict resolution procedures to be defined in the Definitive Agreement (see "Dispute Resolution" below for summary).</li> <li>• Project managers will be assigned by each Party (one by Chromocell and one by [ ]) to: <ul style="list-style-type: none"> <li>- Manage and coordinate the work between the Parties (as set forth in "Responsibilities" above);</li> <li>- Have recurring calls or meetings and serve as primary point of contact between the Parties; and</li> <li>- Provide updates and recommendations to the JSC.</li> </ul> </li> </ul>
<b>Term &amp; Termination</b>	<ul style="list-style-type: none"> <li>• The term of the Collaboration shall commence as of the effective date of the Preliminary License Agreement and have: (i) a development term lasting approximately three (3) years (which can be extended upon agreement of the Parties) (the "<u>Development Term</u>") and (ii) a commercialization term lasting the longest of (a) the expiration of the last to expire patent covering Product or its use, (b) the date that there is no know-how or confidential information controlled by Chromocell or [ ] concerning the Product or its manufacture or use, or (c) thirty (30) years from the first commercial sale (the "<u>Commercialization Term</u>").</li> <li>• Standard termination provisions including termination for breach and consequences of termination will be addressed and made part of the Definitive Agreement.</li> <li>• To the extent expressly set forth in the Definitive Agreement, the Collaboration can also be terminated if material milestones are missed during the Development Term or if insufficient commercialization efforts are occurring during the Commercialization Term. The Definitive Agreement will also set forth the consequences of any such termination.</li> </ul>



<b>Research and Development Funding</b>	<ul style="list-style-type: none"> <li>• If and once the Definitive Agreement has been signed, [ ] will fund:               <ul style="list-style-type: none"> <li>- Chromocell's activities in accordance with the mutually agreed upon Evaluation Work Plan, followed by the Development Plan and budget mutually agreed upon on an advanced, calendar quarterly basis; and</li> <li>- [ ]'s activities in accordance with the Development Plan.</li> </ul> </li> </ul>
<b>Commercialization and Reversion</b>	<ul style="list-style-type: none"> <li>• Subject to the provisions set forth below, [ ] will be granted the global right to exclusively commercialize (manufacture, develop, market and/or sell, distribute) Product in food (inclusive of nutraceuticals), pharmaceuticals and beverage applications for the Commercialization Term and shall use commercially reasonable and diligent efforts to commercialize Product.</li> <li>• Any rights vis-à-vis CPG companies that are not mutually agreed upon during the Product development phase, shall be granted in the sole discretion of [ ].</li> <li>• During the Product development phase, certain CPG companies may be granted preferential rights to Product matrices or geographies to be determined in connection with Product launch, with the goal of time-limited preferential rights. During the Product development phase, [ ] and Chromocell will jointly determine the scope and extent of these rights, if any are granted.</li> <li>• In the event [ ] does not diligently commercialize Product (as evidenced by meeting the milestones set forth in the Definitive Agreement) in a given market or geography, the applicable commercialization rights could revert to Chromocell or its designee as further described in the Definitive Agreement. The Definitive Agreement will have a more detailed regulation for this, including a buy-out provision that would compensate [ ] for the time, effort and investment it has made in growing a market for the Product. Additionally, Chromocell and [ ] may have at any time and from time to time during the Commercialization Term, discussions regarding which areas in which Chromocell may take a role in commercialization if the parties agree on a role for Chromocell, they shall negotiate in good faith terms of such arrangement</li> </ul>
<b>Intellectual Property Rights</b>	<ul style="list-style-type: none"> <li>• Each Party will retain all right, title and interest in and to its IP ("Background IP"); each party will grant to the other non-exclusive rights to the Background IP as necessary to fulfill each Party's respective obligations under the Collaboration.</li> <li>• Collaboration IP that is jointly invented by the Parties under the Collaboration shall be owned jointly by the Parties (with each free to use without accounting to the other Party), subject to the license provisions and other conditions set forth in this Term Sheet and/or the Definitive Agreement.</li> <li>• In the Definitive Agreement, Chromocell shall grant to [ ] an exclusive global license under Chromocell's intellectual property to manufacture, use, apply, further develop, market, sell and distribute the Product as further set forth in the Definitive Agreement.</li> <li>• Comprehensive intellectual property ownership, maintenance, prosecution, defense, enforcement and license provisions including for commercialization of Product shall be set forth in the Definitive Agreement.</li> <li>• Parties will strive to build a comprehensive IP portfolio covering Product, its use, manufacture, as well as formulations and applications.</li> </ul>
<b>Royalties</b>	<ul style="list-style-type: none"> <li>• As further described in the Definitive Agreement, [ ] shall pay Chromocell tiered royalties (including minimum annual royalties) on net sales of Product to not exceed 10% of revenue in a year unless the Parties agree to a co-commercialization arrangement with a profit share and/or co-promotion rights.</li> <li>• All amounts paid by [ ] to Chromocell under the Preliminary License Agreement shall be reflected in the context of determining royalty tiers and credited as an upfront payment against any royalties owed under the Definitive Agreement.</li> </ul>

<b>Supply to Chromocell</b>	<ul style="list-style-type: none"> <li>During the term of [ ]'s exclusive global license to manufacture, use, apply, further develop, market, sell and distribute the Product and subject to availability, [ ] shall supply Chromocell's requirements of Product for areas that are not being commercialized by [ ] as agreed by the Parties at a price to be specified in the Definitive Agreement.</li> <li>[ ] and Chromocell shall negotiate a supply agreement in good faith in advance of Chromocell's commercialization efforts on terms and conditions to be mutually agreed upon by the Parties.</li> </ul>
<b>Confidentiality and Publicity</b>	<ul style="list-style-type: none"> <li>Except as approved by the Parties, Chromocell and [ ] and their respective affiliates agree to refrain from disclosing the other Party's and any of its affiliates' interest, involvement or identity relating to the matters described herein, the existence or any of the contents of this Term Sheet or the fact of its submission, or the terms of any negotiations in respect of the matters described herein. Notwithstanding the foregoing, [ ] may make a disclosure, with prior notice to Chromocell, if [ ] has received the written opinion of outside counsel that such disclosure must be made to not commit a violation of law, regulation or rules of the New York Stock Exchange, as applicable.</li> <li>Upon execution of the Definitive Agreement, each Party may make a press release announcing the Collaboration, provided that any such press release shall be mutually acceptable to the Parties.</li> </ul>
<b>Dispute Resolution, Governing Law</b>	<ul style="list-style-type: none"> <li>Disputes under the Collaboration and in respect of negotiating the Definitive Agreement shall first be heard by the JSC for resolution.</li> <li>If the JSC cannot resolve the dispute, it will be escalated to a senior executive of Chromocell and a senior executive of [ ].</li> <li>If the senior executives cannot resolve the dispute it will be decided by binding arbitration by the American Arbitration Association under its Commercial Arbitration Rules (except a dispute, controversy or claim involving confidentiality or infringement or another matter for which a party seeks injunctive relief). The arbitration shall be conducted by three (3) arbitrators, of whom one shall be appointed by each party and the third (and presiding) arbitrator shall be appointed by the American Arbitration Association. The arbitration award shall be final and binding on the parties hereto and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Except as expressly set forth in this section, the parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings.</li> <li>This Term Sheet shall be governed by the laws of the state of New Jersey.</li> </ul>
<b>Definitive Agreement</b>	<ul style="list-style-type: none"> <li>As soon as practicable after the execution of this Term Sheet, the Parties shall commence negotiations on the Definitive Agreement which shall contain the terms summarized herein as well as such other usual and customary terms (indemnification, representations, warranties, compliance with all applicable antitrust laws) that are customary for a transaction of the size and nature contemplated hereby and that are not inconsistent with this Term Sheet. The Parties shall use commercially reasonable efforts to finalize the Definitive Agreement on or before ninety (90) days from the execution date of the Preliminary License Agreement.</li> </ul>
<b>Expenses</b>	<ul style="list-style-type: none"> <li>Each Party shall bear its own fees and expenses in connection with the negotiation of this non-binding Term Sheet and the transactions contemplated hereby.</li> </ul>

IN WITNESS WHEREOF, this Term Sheet is executed by or on behalf of the parties hereto as of the day and year first above stated.

CHROMOCELL CORPORATION

By: Wongli  
Christian Kopfli, Esq.  
Chief Executive Officer

XXXX XXXX

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]

**Exhibit B****Evaluation Work Plan****KEY NOTES:**

- *Evaluation Work Plan outlines activities performed as part of key assessment that are being conducted to support a broader understanding of the Sweetener*
- *Completion of this Evaluation Plan with positive outlook towards Commercialization would be anticipated to be followed by continued development of the Sweetener as part of the overall Development Plan (not described here) that includes activities such as industrialization, regulatory submission, application/consumer testing, commercial launch, and other aspects*
- *All of the information in this Exhibit B is the Parties' best estimate as of the date of the Preliminary License Agreement; the project timelines, the scope of each phase and the associated cost will be validated and mutually agreed upon by the Parties as part of the Evaluation Work Plan*
- *No funding beyond the initial royalty pre-payments is guaranteed until the Definitive Agreement has been mutually agreed upon and executed by each of the Parties.*

Area	Evaluation WORK PLAN (estimated at 6 months)	\$
Physicochemical characterization	<ol style="list-style-type: none"> <li>Comprehensive understanding of stability, under specified conditions <ul style="list-style-type: none"> <li>Stability under controlled conditions, includes Hydrolytic, Dry Powder and Chiral stability evaluations with time course sampling and analytical assessments</li> <li>Stability under food processing conditions, Assessment in 3 conditions</li> <li>Analytical ID &amp; Characterization of degradants, byproducts, reaction products from stability/food processing experiments, includes ID of MOA</li> </ul> </li> <li>Provide commercially applicable solutions for solubility of CC71788 in applications: <ul style="list-style-type: none"> <li>Dissolution studies</li> <li>Salt forms, crystal forms etc</li> </ul> </li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status. Go/No-Go decisions involved by joint teams, as applicable</i></p>	0.80M
Nature identical material	<ol style="list-style-type: none"> <li>Synthesis of sufficient nature-identical material, in house, to support slated studies <ul style="list-style-type: none"> <li>Bench scale synthesis to support evaluation work</li> </ul> </li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status</i></p>	0.10M
Sensory profile	<ol style="list-style-type: none"> <li>Generate C/R function in aqueous <ul style="list-style-type: none"> <li>Critical in understanding sweetness equivalency to determine ADI</li> <li>Key for regulatory mapping of exposure</li> </ul> </li> <li>Sensory support for stability studies</li> <li>Evaluation of 71788 in combination with high grade stevia <ul style="list-style-type: none"> <li>Interplay will be key to understand taste profile</li> <li>Key for regulatory mapping of ADI-exposure</li> </ul> </li> </ol>	0.60M
Bioproduction POC	<ol style="list-style-type: none"> <li>Biorefinery/Bioconversion approach via molecular biology <ul style="list-style-type: none"> <li>Primer design and cloning</li> <li>Enzyme ID for product formation</li> <li>POC validation on bench for enzyme conversion</li> </ul> </li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status.</i></p>	0.75M
Safety toxicology	<ol style="list-style-type: none"> <li>Successful design &amp; completion of <i>in vivo</i> metabolism experiments to determine metabolite profile. Finalize safety route</li> <li>Appropriate data to support safety of reaction products (as applicable)</li> </ol> <p><i>Key Checkpoint after metabolism studies to determine if an alternative route for safety assessment is necessary.</i></p>	0.85M
Regulatory, IP	<ol style="list-style-type: none"> <li>Additional filings for IP</li> <li>Initial ADI assessments based on sensory results (C/R function, blends) for US jurisdiction</li> </ol>	0.20M

	<p><i>Key Challenges to be addressed on a set frequency to assess "on track" status</i></p>	
	<p>1. Determine naming and labeling 2. Determine trademark, marketing and branding strategy in discussions w/ partners</p>	<p>0.30M</p>

**Exhibit C****Development Work Plan****KEY NOTES:**

- Chromocell will be driving activities associated with bioproduction POC, regulatory submission, safety assessment, physical chemical characterization and sensory evaluation
- [ ] will be driving activities associated with pilot scale and industrial production
- Experiments not defined here are considered outside the scope of the development plan
- All of the information in this Exhibit C is the Parties' best estimate as of the date of the Preliminary License Agreement; the project timelines, the scope of each phase and the associated cost will be validated and mutually agreed upon by the Parties as part of the Development Work Plan
- No funding beyond the initial royalty pre-payments is guaranteed until the Definitive Agreement has been mutually agreed upon and executed by each of the Parties.

Area	Stage 1 Deliverables	\$
Physicochemical characterization	<ol style="list-style-type: none"> <li>1. Light Stability in chamber under accelerated controlled conditions towards forced degradation, followed by analytical chemistry assessment of stability</li> <li>2. Natural Sunlight Stability with analytical chemistry assessment</li> <li>3. Long term assessments in commercial matrix (6months): Hydrolytic, Chiral and Dry Powder Stability including sensory readout for taste quality</li> <li>4. Analytical ID &amp; Characterization of degradants, includes ID of MOA</li> <li>5. Define limitations &amp; scope of commercial utility (as applicable) based on stability profile</li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status. Go/No-Go decisions involved by joint teams, as applicable</i></p>	1.25M
Nature identical material	<ol style="list-style-type: none"> <li>1. Synthesis of sufficient nature-identical material, to support stated studies <ul style="list-style-type: none"> <li>• Successful inventory of "kg" scale material at desired purity</li> <li>• Generation of COA/Spec around synthetic material (including micro testing)</li> </ul> </li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status</i></p>	0.50M
Sensory profile	<ol style="list-style-type: none"> <li>1. Complete DA assessment in 3 applications for sweetness intensity &amp; off-taste profile</li> <li>2. Complete organoleptic/taste testing of stability samples (related to physicochemical)- continues into Stage 2</li> <li>3. Complete sensorial assessment in commercial application, as blends with other sweeteners, define scope w/ 2 sweeteners</li> <li>4. Define commercial feasibility and scope for use of CC71788 with other sweeteners</li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status. Discussion/Deployment of mitigation plan to be reviewed by joint teams</i></p>	0.85M
Bioproduction	<ol style="list-style-type: none"> <li>1. Successful validation of bioconversion or biosynthesis POC <ul style="list-style-type: none"> <li>• ID appropriate CRO for collaboration for method validation of bioproduction</li> <li>• Molecular evolution, process optimizations, efficiency optimizations etc to improve enzyme yields, conversion rates, productivity</li> <li>• Proof of concept validation; includes bringing all the key enzymes and reagents together to start from substrate and result in final product (compound)</li> <li>• Successful transfer of all materials and learnings from bioproduction POC to [ ]/relevant parties</li> </ul> </li> <li>2. Scoping pilot scale production, feasibility of approach, cost and efficient production of final product (compound)- driven by [ ]</li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status</i></p>	1.50M (excludes / driven activity)
Safety toxicology	<ol style="list-style-type: none"> <li>1. Initiation of appropriate tox and genotox experiments, based on metabolic profile (assuming streamlined track) <ul style="list-style-type: none"> <li>• ID and contracting with appropriate CRO (s) for safety and toxicology studies</li> <li>• Schedule <i>in vivo</i> feeding study (90 day); determine NOEL (no observed effect limit)</li> <li>• Initiate studies to understand gut microbiome effects</li> <li>• Schedule appropriate <i>in vitro</i> <i>in vivo</i> studies for byproducts/degradants identified from stability testing, input from analytical regarding quantification/level of exposure</li> <li>• Analytical support: characterization of samples, formulation for <i>in vivo</i> studies, purification/isolation of desired reference material/degradants/by products (as applicable)</li> </ul> </li> </ol> <p><i>Key Checkpoint after metabolism studies to determine if an alternate route for safety assessment is necessary</i></p>	1.75M

Regulatory, IP	<ol style="list-style-type: none"> <li>1. Complete regulatory assessment for selected, non-US jurisdictions</li> <li>2. Determine strategy for publishing scientific data (including natural occurrence &amp; common name)</li> <li>3. Initiate discussions surrounding assembly of expert panel members</li> <li>4. Preliminary engagement with regulatory agency members</li> <li>5. Initiate IP strategy for non-US jurisdictions</li> <li>6. IP filing to include additional claims covering bio-production, formulation etc</li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status</i></p>	0.5M
Marketing, Branding, PR	<ol style="list-style-type: none"> <li>1. Define marketing and GTM strategy, including consumer research – in discussions with [ ]</li> </ol>	TBD
TOTAL STAGE 1 (initiation): \$6.35M		

Area	Stage 2 Deliverables	\$
Physicochemical characterization	<ol style="list-style-type: none"> <li>1. Delivery of a commercially soluble form of CC71788 for commercial systems</li> <li>2. Provide list of food categories where CC71788 is stable (under processed conditions), over time and demonstrates desired taste performance w/ no off tastes</li> <li>3. Complete long term stability studies</li> <li>4. Validate impurity profile between industrial lot and nature identical material</li> </ol>	0.5M
Sensory profile	<ol style="list-style-type: none"> <li>1. Completion of organoleptic/taste profiles for shelf-life stability (physicochemical studies) evaluation.</li> <li>2. Application Development/CLTs – driven by CPG partners</li> </ol>	0.15M
Bioproduction	<ol style="list-style-type: none"> <li>1. Successful optimization of pilot scale production</li> <li>2. Successful optimization of industrial scale production, cost effective, sustainable and reproducible</li> </ol>	Driven by [ ]
Safety toxicology	<ol style="list-style-type: none"> <li>1. Complete and compile, all safety and toxicology data in preparation of GRAS submission (US)- assuming streamlined route</li> <li>2. Validate impurity profile between naturally produced and nature-identical material map additional experiments, if needed</li> <li>3. Identify &amp; initiate additional safety experiments required outside of US jurisdiction for regulatory approval- ongoing</li> </ol>	2.0M
Regulatory, IP	<ol style="list-style-type: none"> <li>1. Successful publication of all scientific data, as applicable</li> <li>2. Complete compilation of GRAS dossier</li> <li>3. Complete evaluation of GRAS dossier by Expert panel</li> <li>4. FDA GRAS submission</li> <li>5. File provisionals/patent claims in additional, non-US jurisdictions</li> </ol> <p><i>Key Checkpoints to be evaluated on a set frequency to assess "on track" status. FDA GRAS submissions and compilation include valuable input from [ ] for activities under methods of manufacture (production).</i></p>	1.5M
Marketing, Branding, PR	<ol style="list-style-type: none"> <li>1. Deploy marketing and GTM strategy in preparation for commercial launch of material- in discussions w/ [ ] and CPG partners</li> </ol>	TBD
TOTAL STAGE 2 (milestone based): \$4.15M		

EXHIBIT B

**EIGHTH LEASE AMENDMENT AGREEMENT**

THIS LEASE AMENDMENT AGREEMENT, made as of the 30th day of March, 2019 (the “EIGHTH LEASE AMENDMENT AGREEMENT”) is by and between CHROMOCELL CORPORATION (“TENANT”), and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“LANDLORD”).

WHEREAS, TENANT and LANDLORD entered into a certain Biotechnology Development Center Lease Agreement made the 10<sup>th</sup> day of December, 2008 (the “INITIAL LEASE”); and

WHEREAS, TENANT and LANDLORD entered into a certain Lease Amendment Agreement made as of the 12th day of March, 2010 leasing and demising approximately 846 rentable square feet of space (the “FIRST LEASE AMENDMENT AGREEMENT”); and

WHEREAS, TENANT and LANDLORD entered into a certain Lease Amendment Agreement made as of the 2nd day of March, 2011, leasing and demising approximately 10,676 rentable square feet of space (the “SECOND LEASE AMENDMENT AGREEMENT”); and

WHEREAS, TENANT and LANDLORD entered into a certain Lease Amendment Agreement made as of the 1st day of October 2012, allowing TENANT’s use of approximately 700 rentable square feet of space known as the Temporary Additional Premises (the “THIRD LEASE AMENDMENT AGREEMENT”); and

WHEREAS, TENANT and LANDLORD extended the THIRD LEASE AMENDMENT AGREEMENT through December 31, 2015 via three extension letters dated March 19, 2013, October 9, 2013 and May 28, 2015 respectively; and

WHEREAS, TENANT and LANDLORD entered into a certain Lease Amendment Agreement made as of the 1<sup>st</sup> day of January, 2016, allowing TENANT to use approximately 700 rentable square feet of space known as the Temporary Additional Premises (the “FOURTH LEASE AMENDMENT AGREEMENT”); and

WHEREAS, TENANT and LANDLORD extended the FOURTH LEASE AMENDMENT AGREEMENT through November 30, 2017 via two extension letters dated September 22, 2017 and October 26, 2017 respectively; and

WHEREAS, TENANT and LANDLORD entered into a certain Lease Modification Agreement made as of the 2nd day of January 2018, allowing TENANT to have one (1) hazardous material storage unit at the Centre (the “FIRST LEASE MODIFICATION”); and

WHEREAS, contemporaneously with the FIFTH LEASE AMENDMENT AGREEMENT, TENANT and LANDLORD entered into a certain Second Lease



Modification Agreement which extended the INITIAL TERM lease termination date to December 31, 2018 and reduces the NET RENT from \$32.25 per rentable square foot to \$27.00 per rental square foot for the balance of the INITIAL TERM beginning January 1, 2018 and ending December 31, 2018 (the “SECOND LEASE MODIFICATION”);

WHEREAS, TENANT and LANDLORD entered into a certain Lease Amendment Agreement made as of the 11<sup>th</sup> of September 2018, allowing TENANT to extend the period of time for the payment of the July, August and September 2018 NET RENT and payment in lieu of taxes (“PILOT”) to the Township of North Brunswick (the “SIXTH LEASE AMENDMENT AGREEMENT”);

WHEREAS, TENANT and LANDLORD entered into a certain Lease Amendment made as of the 1<sup>st</sup> day of December 2018, to do the following: (a) allow TENANT to further delay the payment of (i) NET RENT for the period July through December 2018, (ii) fifty percent (50%) of the NET RENT for the period January 2019 through March 2019, with the repayment in full to occur between April 2019 and December 2020 as AMORTIZED RENT, (b) allow TENANT to pay ADDITIONAL RENT, PILOT or TENANT’S TAX SHARE for the amounts due between July 1, 2018 and December 31, 2018, on or before December 31, 2018, and (c) require TENANT, without penalty, to surrender to the LANDLORD 11,522 rentable square feet of laboratory and office space added to the LEASED PREMISES in the LEASE AMENDMENT AND THE SECOND LEASE AMENDMENT AGREEMENT resulting in the LEASED PREMISES being reduced to 14,662 rentable square feet; (the “SEVENTH LEASE AMENDMENT AGREEMENT”);

WHEREAS, the LEASE, FIRST LEASE AMENDMENT AGREEMENT, SECOND LEASE AMENDMENT AGREEMENT, THIRD LEASE AMENDMENT AGREEMENT, FOURTH LEASE AMENDMENT AGREEMENT, FIFTH LEASE AMENDMENT AGREEMENT, SIXTH LEASE AMENDMENT AGREEMENT, SEVENTH LEASE AMENDMENT AGREEMENT, FIRST LEASE MODIFICATION, and SECOND LEASE MODIFICATION are collectively referred to herein as the “LEASE”;

WHEREAS, TENANT and LANDLORD have agreed that TENANT shall pay the past amount due under the LEASE by paying \$221,069.75 which includes the ADDITIONAL RENT late fee charges from January 1 through March 15, 2019, on or before March 30, 2019, and by the LANDLORD applying the \$143,500 security deposit to the remaining balance;

WHEREAS, TENANT and LANDLORD have agreed that TENANT shall replenish the security deposit in the amount of \$159,716.58, in six equal installments of \$26,618.43, commencing on April 1, 2019; and

WHEREAS, TENANT and LANDLORD have agreed that TENANT and LANDLORD are entering into a separate SURRENDER AND CANCELLATION AGREEMENT as of the same day as this EIGHTH LEASE AMENDMENT AGREEMENT that will apply to any future default under the LEASE;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties amend the LEASE as follows:

1. Paragraph 14 of the SECOND LEASE AMENDMENT AGREEMENT is deleted and replaced with the following:

Upon TENANT's execution of this EIGHTH LEASE AMENDMENT AGREEMENT, the TENANT shall deposit with the LANDLORD, in six equal installments of twenty-six thousand, six hundred nineteen dollars and forty-three cents (\$26,619.43), commencing on April 1, 2019, for a total of one hundred thousand fifty nine, seven hundred sixteen dollars and fifty eight cents (\$159,716.58) ("SECURITY DEPOSIT") in cash funds paid with the monthly AMORTIZED RENT, ADDITIONAL RENT, NET RENT, and PILOT as noted in EXHIBIT A to the EIGHTH AMENDMENT AGREEMENT, which is attached to and made a part of the EIGHTH LEASE AMENDMENT AGREEMENT. If an EVENT OF DEFAULT by TENANT exists 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. It is understood that the SECURITY 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 repay to LANDLORD within ten (10) business days after demand by LANDLORD any amount necessary to restore the SECURITY DEPOSIT to the full amount set forth above.

2. LANDLORD and TENANT agree that as of March 1, 2019, the current amount due under the LEASE is \$354,042.62.
3. LANDLORD agrees to apply TENANT's current SECURITY DEPOSIT of \$143,500 to the current amount due as of March 1, 2019, resulting in a balance due of \$210,542.62.
4. Because TENANT will pay \$210,542.62 after March 15th, this balance due will incur an ADDITIONAL RENT late charge of 5%, which equals \$10,527.13, resulting in a balance due of \$221,069.75.
5. TENANT agrees to pay, by wire transfer, \$221,069.75, on or before 5:00 pm (EDT) on March 30, 2019.
6. LANDLORD and TENANT agree that any future Event of Default under the LEASE will be governed by the SURRENDER AND CANCELLATION AGREEMENT which will be executed contemporaneously with this EIGHTH LEASE AMENDMENT AGREEMENT, provided that the LANDLORD's remedies under the LEASE, as modified by this EIGHTH LEASE AMENDMENT AGREEMENT, and the SURRENDER AND CANCELLATION AGREEMENT shall be cumulative and concurrent.

- a. Section 16.1 of the INITIAL LEASE is deleted and replaced with the following:

Notwithstanding anything to the contrary, an “Event of Default” shall occur without need for notice by the TENANT and without any grace period if TENANT:

- b. Section 16.5 of the INITIAL LEASE is deleted and replaced with the following:

Notwithstanding anything to the contrary, the LANDLORD shall not be required to provide any notice to the TENANT or any grace period for an event listed in Sections 16.2, 16.3, or 16.4 to constitute an “Event of Default.”

- c. Any references to an applicable grace period in the LEASE shall be deleted in accordance with the new Sections 16.1 and 16.5 above.

7. Miscellaneous:

A. Unless expressly stated to the contrary in this EIGHTH LEASE AMENDMENT AGREEMENT all references in the LEASE to “LEASE” shall also refer to “EIGHTH LEASE AMENDMENT AGREEMENT.”

B. Except as expressly modified hereby, all terms, conditions, definitions, undertakings and covenants of the LEASE shall remain in full force and effect and are in no way abrogated by this EIGHTH LEASE AMENDMENT AGREEMENT. Capitalized terms used in the within EIGHTH LEASE AMENDMENT AGREEMENT but not otherwise defined herein shall have the meanings ascribed to them in the LEASE.

C. If any provision of this EIGHTH LEASE AMENDMENT AGREEMENT shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or of the LEASE.

D. The recitals hereinabove are hereby incorporated into this EIGHTH LEASE AMENDMENT AGREEMENT as though set forth herein in their entirety.

E. This EIGHTH LEASE AMENDMENT AGREEMENT may not be amended except upon written consent of both parties hereto.

F. This EIGHTH LEASE AMENDMENT AGREEMENT shall be interpreted under the laws of the State of New Jersey.

G. This EIGHTH LEASE AMENDMENT AGREEMENT 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 EIGHTH LEASE AMENDMENT AGREEMENT 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 of this EIGHTH LEASE AMENDMENT AGREEMENT.

**[INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Eighth Lease Amendment Agreement as of the date first written above.

**Attest:**

**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

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

Title:

\_\_\_\_\_  
Name: Lori Matheus

Title: Senior Vice President, Finance and  
Development

**Attest:**

**CHROMOCELL CORPORATION**

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

Title:

\_\_\_\_\_  
Name: Christian Kopfli

Title: Chief Executive Officer

**EXHIBIT A TO THE EIGHTH LEASE AMENDMENT AGREEMENT**

PERIOD	AMORTIZED RENT
July 1, 2018	\$58,914.00
August 1, 2018	\$58,914.00
September 1, 2018	\$58,914.00
October 1, 2018	\$58,914.00
November 1, 2018	\$58,914.00
December 1, 2018	\$58,914.00
January 1, 2019	\$16,989.60
February 1, 2019	\$16,989.60
March 1, 2019	\$16,989.60

TENANT shall pay AMORTIZED RENT, over 21 months with no interest, commencing in April 2019 through December 2020, in the monthly amount of \$19,259.66

Total Amortized Rent Due **\$404,452.80**

Amortized Rent Due Monthly Commencing 4/1/19 **\$19,259.66**

**TOTAL NET RENT DUE AND SECURITY DEPOSIT DUE**

PERIOD	AMORTIZED RENT	ANNUAL NET RENT \$SF (excl. AMORTIZED RENT)	NET RENT	SUBTOTAL NET RENT DUE	SECURITY DEPOSIT	GRAND TOTAL NET RENT DUE and SECURITY DEPOSIT
April 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$26,619.43	\$79,858.28
May 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$26,619.43	\$79,858.28
June 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$26,619.43	\$79,858.28
July 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$26,619.43	\$79,858.28
August 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$26,619.43	\$79,858.28
September 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$26,619.43	\$79,858.28
October 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$0.00	\$53,238.85
November 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$0.00	\$53,238.85
December 1, 2019	\$19,259.66	\$27.81	\$33,979.19	\$53,238.85	\$0.00	\$53,238.85
January 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
February 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
March 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
April 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
May 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
June 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
July 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
August 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
September 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
October 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
November 1, 2020	\$19,259.66	\$28.64	\$34,993.31	\$54,252.97	\$0.00	\$54,252.97
December 1, 2020	\$19,259.80	\$28.64	\$34,993.31	\$54,253.11	\$0.00	\$54,253.11
<b>TOTAL DUE</b>	<b>\$404,453.00</b>		<b>\$776,701.23</b>	<b>\$1,181,154.23</b>	<b>\$159,716.58</b>	<b>\$1,340,870.81</b>

EXHIBIT C

**SURRENDER AND CANCELLATION OF LEASE**  
**AND OCCUPANCY AGREEMENT**

**THIS AGREEMENT (“AGREEMENT”)** made as of the 29<sup>th</sup> day of March 2019, between the New Jersey Economic Development Authority (“EDA”) and Chromocell Corporation (“CHROMOCELL”).

**W I T N E S S E T H**

**WHEREAS**, EDA is the owner of the building known as Tech Four, containing approximately 60,000 rentable square feet at the Technology Centre of New Jersey, North Brunswick, New Jersey; and

**WHEREAS**, CHROMOCELL and EDA entered into a certain Biotechnology Development Center Lease Agreement made the 10<sup>th</sup> day of December 2008 (the “INITIAL LEASE”); and

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Amendment Agreement made as of the 12th day of March 2010 leasing and demising approximately 846 rentable square feet of space (the “FIRST LEASE AMENDMENT AGREEMENT”); and

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Amendment Agreement made as of the 2nd day of March 2011, leasing and demising approximately 10,676 rentable square feet of space (the “SECOND LEASE AMENDMENT AGREEMENT”); and

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Amendment Agreement made as of the 1st day of October 2012, allowing CHROMOCELL’S use of approximately 700 rentable square feet of space knowns as the Temporary Additional Premises (the “THIRD LEASE AMENDMENT AGREEMENT”); and

**WHEREAS**, CHROMOCELL and EDA extended the THIRD LEASE AMENDMENT AGREEMENT through December 31, 2015 via three extension letters dated March 19, 2013,

October 9, 2013 and May 28, 2015 respectively; and

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Amendment Agreement made as of the 1<sup>st</sup> day of January 2016, allowing CHROMOCELL's to use approximately 700 rentable square feet of space known as the Temporary Additional Premises (the "FOURTH LEASE AMENDMENT AGREEMENT"); and

**WHEREAS**, CHROMOCELL and EDA extended the FOURTH LEASE AMENDMENT AGREEMENT through November 30, 2017 via two extension letters dated September 22, 2017 and October 26, 2017 respectively; and

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Modification Agreement made as of the 2nd day of January 2018, allowing CHROMOCELL to have one (1) hazardous material storage unit at the Centre (the "FIRST LEASE MODIFICATION"); and

**WHEREAS**, contemporaneously with the FIFTH LEASE AMENDMENT AGREEMENT, CHROMOCELL and EDA entered into a certain Second Lease Modification Agreement which extended the INITIAL TERM lease termination date to December 31, 2018 and reduces the NET RENT from \$32.25 per rentable square foot to \$27.00 per rental square foot for the balance of the INITIAL TERM beginning January 1, 2018 and ending December 31, 2018 (the "SECOND LEASE MODIFICATION");

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Amendment Agreement made as of the 11<sup>th</sup> day of September 2018, allowing CHROMOCELL to extend the period of time for the payment of the July, August and September 2018 NET RENT and payment in lieu of taxes ("PILOT") to the Township of North Brunswick (the "SIXTH LEASE AMENDMENT AGREEMENT");

**WHEREAS**, CHROMOCELL and EDA entered into a certain Lease Amendment Agreement made as of the 1st day of December 2018, allowing CHROMOCELL to extend the



period of time for the payment of the July through December 2018 NET RENT and payment in lieu of taxes (“PILOT”) to the Township of North Brunswick, and surrender 11,522 rentable square feet of space effective December 31, 2018 (the “SEVENTH LEASE AMENDMENT AGREEMENT”);

**WHEREAS**, on February 4, 2019, EDA sent CHROMOCELL a written notice of default for failure to pay amounts due under the SEVENTH LEASE AMENDMENT AGREEMENT and of EDA’s right to pursue its rights and remedies if all outstanding balance was not paid by February 16, 2019;

**WHEREAS**, Chromocell and EDA are entering into a certain Lease Amendment Agreement made as of the same day as this AGREEMENT, permitting CHROMOCELL to replenish a new security deposit over a six-month period for its current rentable square feet of space (the “EIGHTH LEASE AMENDMENT AGREEMENT”);

**WHEREAS**, the INITIAL LEASE and all subsequent lease amendment agreements constitute the LEASE between the CHROMOCELL and EDA;

**WHEREAS**, CHROMOCELL entered the Premises on December 19, 2008, and has occupied the Premises from that date to currently under the LEASE; and

**WHEREAS**, in the event CHROMOCELL defaults under the LEASE, CHROMOCELL desires to cancel and terminate its occupancy and all rights and obligations of CHROMOCELL thereunder as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the good and valuable consideration paid in hand by each party to the other, the receipt and sufficiency whereof are hereby acknowledged by both parties, EDA and the CHROMOCELL do hereby covenant and agree as follows:

1. All the recital clauses hereinabove set forth are hereby incorporated by reference as though set forth verbatim and at length herein.

2. Upon an EVENT OF DEFAULT under the LEASE, CHROMOCELL shall vacate and surrender the Premises unto EDA, its successors and assigns and all of the right and interest of CHROMOCELL therein, and EDA shall accept the surrender of the Premises by CHROMOCELL as of midnight on the earlier of (i) the date that CHROMOCELL actually surrenders the Premises in accordance with the terms of this AGREEMENT or (ii) on the date 60 days after the EVENT OF DEFAULT (the "SURRENDER DATE").

3. CHROMOCELL hereby confirms that any and all structural alterations or improvements installed or constructed at the Premises by CHROMOCELL do legally belong to and are owned by EDA as of the SURRENDER DATE and shall not be removed or restored by CHROMOCELL. The EDA hereby confirms that all of CHROMOCELL's signage, personal property, personalty, furniture, assets that were acquired by CHROMOCELL, trade fixtures and equipment used in connection with any of CHROMOCELL's programs do legally belong to and are owned by CHROMOCELL as of the SURRENDER DATE. CHROMOCELL shall remove such items at its own expense on or prior to the SURRENDER DATE. Any damage to the Premises resulting from such removal shall be repaired at CHROMOCELL's sole cost and expense on or before the SURRENDER DATE.

4. CHROMOCELL hereby releases, discharges and indemnifies, defends and holds harmless the EDA from any claims whatsoever for payment of any sums or performance of any obligations arising out of or related to the Premises that occurred during the time of CHROMOCELL's occupancy thereof. CHROMOCELL hereby confirms that CHROMOCELL is not aware of any unsatisfied claims against EDA for payment of any sums or performance of any obligations arising out of or related to its occupancy of the Premises, as of the date of execution of this AGREEMENT.

5. CHROMOCELL hereby represents and warrants to EDA that: (i) CHROMOCELL

shall comply with its obligations under the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. (“ISRA”) in connection with any hazardous substance proved to exist as a direct result of CHROMOCELL’s use and occupancy commencing as of December 19, 2008 through and including the actual date of its surrender of the Premises, however nothing herein shall be intended to shift or assume the EDA’s obligations under ISRA; and (ii) as of the SURRENDER DATE, the Premises will be free of any and all Hazardous Substances proved to exist as a direct result of CHROMOCELL’s use and occupancy of the Premises commencing December 18, 2008.

6. CHROMOCELL hereby represents and warrants to EDA that on or before the actual date of its surrender: (i) CHROMOCELL and any and all licensees or other entity or person who held or occupied any portion of the Premises under CHROMOCELL have surrendered the Premises; (ii) CHROMOCELL has lawfully and completely terminated any and all rights of occupancy or possession of any licensee or other entity or person may have been granted by CHROMOCELL with respect to the Premises; and (iii) CHROMOCELL will both notify any and all of its vendors of its intention to vacate the Premises and ensure removal of any vendor equipment on or before the SURRENDER DATE.

7. CHROMOCELL represents that CHROMOCELL has dealt with no real estate broker in connection with this AGREEMENT. CHROMOCELL shall indemnify and hold EDA harmless from any and all claims by any real estate agent, consultant or broker for real estate commission or listing agreement that claims to have represented or retained by CHROMOCELL in connection with the surrender of the Premises.

8. (a) EDA and CHROMOCELL have entered into an EIGHTH LEASE AMENDMENT AGREEMENT setting forth: application of the current SECURITY DEPOSIT toward the current amount due; payment on March 30, 2019 of \$221,069.75; replenishment of the SECURITY DEPOSIT in six equal installments of \$26,619.43 commencing on April 1, 2019; and

the amounts due as AMORTIZED RENT and NET RENT as outlined in the Exhibit A of the SEVENTH LEASE AMENDMENT AGREEMENT, ADDITIONAL RENT as outlined in Section 6 of the LEASE, and PILOT as outlined Section 7 of the LEASE and any other charge or expense during its continued occupancy through the SURRENDER DATE (the “Monthly Payment”) except as otherwise set forth in this AGREEMENT.

(b) CHROMOCELL reaffirms its obligation under the LEASE to pay the Monthly Payment on or before the first day of each subsequent month through the SURRENDER DATE.

(c) INTENTIONALLY OMITTED

(d) CHROMOCELL reaffirms its obligation to maintain in full force until the SURRENDER DATE, at its sole cost and expense, the current insurance coverages set forth the Certificate of Liability Insurance set forth on Exhibit B attached hereto and the Evidence of Personal Property Insurance set forth on Exhibit C attached hereto (collectively the “Certificates”). CHROMOCELL shall furnish to EDA renewal Certificates for the same or better coverages at least fifteen (15) days before their expiration. CHROMOCELL acknowledges that all of the insurance coverages expire on **INSERT TYPE OF INSURANCE AND EXPIRATION DATES HERE**

(e) INTENTIONALLY OMITTED.

(f) INTENTIONALLY OMITTED.

(g) Assuming CHROMOCELL fulfills all obligations in the EIGHTH LEASE AMENDMENT AGREEMENT as referenced in subsection (a) above, including, but not limited to, timely payment of Monthly Payments identified in subsection (b) above, maintains the insurance coverages set forth in subsection (d) above, and complies with subsection (e) above; and the obligations of Paragraph 9 hereof, EDA hereby confirms that EDA is not aware of any unsatisfied claim against CHROMOCELL for payment of any rent or other sums or performance of any

obligations arising out of or related to the Premises as of the date of the final installment payment to replenish of the SECURITY DEPOSIT as required in the EIGHTH LEASE AMENDMENT AGREEMENT.

9. (a) CHROMOCELL shall comply with CHROMOCELL's surrender obligations and return of all keys and Building access cards at the time of surrender.

(b) CHROMOCELL also agrees to leave and vacate the Premises as maintained pursuant to the LEASE and Subsection 8(e) hereof, in broom clean condition free of all furniture and other personalty subject to inspection and approval by EDA. Any such items remaining in the Premises after the SURRENDER DATE shall be deemed abandoned by CHROMOCELL and may be removed by EDA at the sole cost and expense of CHROMOCELL.

(c) As part of the surrender, EDA and CHROMOCELL shall provide for a walkthrough inspection after the Premises has been offered for delivery up to EDA hereunder.

10. (a) CHROMOCELL acknowledges and consents by way of this AGREEMENT to EDA filing (i) a complaint in the appropriate New Jersey court of competent jurisdiction for eviction of CHROMOCELL from the Premises, and (ii) entry of a Judgment for Possession and issuance of Warrant of Removal in the event CHROMOCELL does not fully comply with the terms of this AGREEMENT by no later than the SURRENDER DATE or earlier dates as expressly provided herein or during any holdover period as set forth in sub-section (c) below in connection with the Monthly Payments of , insurance, holdover rent, maintenance of the Premises as detailed in Section 8(e) above. CHROMOCELL hereby agrees to: (i) waive issuance of a notice to quit and demand for possession of the Premises; (ii) not contest the filing of the complaint; and (iii) consent to and not contest the entry of a Judgment for Possession and Warrant of Removal.

(b) In the event CHROMOCELL remains in the Premises or any part thereof after the SURRENDER DATE, CHROMOCELL shall (i) in addition to any other amounts owed by

CHROMOCELL to EDA, pay a holdover rent and occupancy fee in the amount one hundred fifty percent (150%) of the Monthly Payment, (ii) maintain the insurance requirements in Subsection 8(d), and (iii) remain obligated for maintenance as described in Subsection 8(e), until CHROMOCELL vacates the Premises in full compliance with the terms of this AGREEMENT.

(c) In the event CHROMOCELL fails to maintain the Premises as set forth in Subsection 8(e) hereof, EDA may, with ten (10) days written notice to CHROMOCELL, except in the event of an emergency, perform such obligation(s) on behalf of CHROMOCELL and an amount equal to the actual cost thereof shall be added to the next Monthly Payment payable under the LEASE and this AGREEMENT. This provision is not intended to, nor does it, expand the scope of CHROMOCELL's maintenance and all other obligations which shall be governed in accordance with Subsection 8(e) above.

(d) Notwithstanding CHROMOCELL's holdover of the Premises, EDA shall continue to have the right to commence or continue prosecution of eviction proceedings against CHROMOCELL during the holdover period, and CHROMOCELL will not contest the filing of the complaint or continuation of such proceedings and hereby consents to the entry of a Judgment for Possession and Warrant of Removal. Further, nothing contained herein shall serve limit and or waive EDA's rights and remedies for any damages EDA may incur as to such holdover.

11. The occupancy of CHROMOCELL at the Premises is hereby terminated as of the SURRENDER DATE. The parties shall thereafter have no further or other obligation to each other unless otherwise set forth herein. In consideration of the mutual connection with CHROMOCELL's occupancy at the Premises except as agreements contained herein (that is, provided that CHROMOCELL has fulfilled all of its obligations, including, but not limited to, payment of all amounts due), as of the SURRENDER DATE the parties release and forever discharge each other from any claims whatsoever for claims arising out of or related to EDA's lease

to CHROMOCELL of the Premises and CHROMOCELL's occupancy of the Premises, including without limitation, payment of any sums or performance of any obligations, with the exception of the obligations that survive this AGREEMENT.

12. This AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

13. This AGREEMENT may not be modified or amended except by a written agreement executed by the parties thereto.

14. This AGREEMENT 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 AGREEMENT 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 of this AGREEMENT.

**IN WITNESS WHEREOF**, EDA and the CHROMOCELL have respectively executed this Surrender and Cancellation of Lease and Occupancy Agreement as of the day and year first above written.

**Attest:**

**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

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

Title:

\_\_\_\_\_  
Name: Lori Matheus

Title: Senior Vice President, Finance and  
Development

**Attest:**

**CHROMOCELL CORPORATION**

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

Title:

\_\_\_\_\_  
Name: Christian Kopfli

Title: Chief Executive Officer