



MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President and Chief Operating Officer

RE: Camden Waterfront Development and Option Agreement, dated October 19, 2004, as amended on November 18, 2013, July 31, 2015, October 15, 2015, June 30, 2016 (“D&O Agreement”)
Second Amended and Restated Third Amendment of the D&O Agreement

DATE: September 30, 2016

Summary

I request that the Members approve the Second Amended and Restated Third Amendment to the Development and Option Agreement between Camden Town Center, L.L.C (“CTC”) and the Authority. This instrument will set forth that in the event the sale of the CTC equity interest to LPT Liberty Property Trust (“LPT”) does not occur on or before December 2, 2016 CTC will be provided with an additional two calendar months through July 18, 2017, to fulfill the \$25 million minimum threshold expenditure (“MTE”) previously due on May 14, 2017.

Background

A. Approved July 13, 2016 Letter Agreement

At its June 2016 meeting, the Members approved an amendment to the existing Letter Agreement to provide LPT an additional 22 days to purchase the membership interest of CTC. This extension required the closing to occur on or before October 7, 2016.

LPT requested the additional time to finalize the waterfront development permit required by the Department of Environmental Protection that is now finalized. In addition, the Letter Agreement provided that LPT “shall keep the NJEDA informed of any extension of the scheduled Closing Date under the Agreement of Sale and Purchase.”

As a result, LPT is requesting that Steiner + Associates (“Steiner”) extend their closing date approximately two months from October 7, 2016, until December 2, 2016.

B. June 30, 2016 Amended and Restated Third Amendment of the D&O Agreement and Proposed Second Amended and Restated Amendment to the Third Amendment of the D&O Agreement.

1. June 30, 2016 Amended and Restated Third Amendment of the D&O Agreement

Because LPT requested an extension to the closing to no later than October 7, 2016, to purchase CTC's equity interest, the Authority had agreed that the Steiner obligation to meet the \$25 million MTE would be extended to the earlier of:

- May 14, 2017, if LPT did not purchase CTC's equity interest on or before October 7, 2016, or
- Six (6) months after LPT gave written notification that it no longer intended to acquire the existing equity interest in CTC

2. Proposed Second Amended and Restated Third Amendment of the D&O Agreement.

Because LPT now has requested a further extension to close its purchase of CTC's equity interest to no later than December 2, 2016, before Steiner will consent to the extension, Steiner is requesting that its obligation to meet the \$25 million MTE be extended to the earlier of:

- July 18, 2017, if LPT does not purchase CTC's equity interest on or before December 7, 2016, or
- Six (6) months after LPT gives written notification that it no longer intends to acquire the existing membership interest in CTC

A copy of the proposed Second Amended and Restated Third Amendment to the D&O Agreement is attached to this memo as Exhibit A.

Steiner's request to extend the time period to meet the \$25 million MTE is two calendar months, which is approximately the same length of time as LPT's closing date extension request to purchase CTC's equity interest (the closing date will move from October 7, 2016 to December 2, 2016, or 56 days). LPT requires the additional time to finalize the release of the view easement by the Victor Building's mortgagee. The Victor's building's owner has agreed to release the view easement for the projects that are included in the approved D&O Agreement master plan.

Until April 27, 2022, the view easement provides the Victor Building with an unrestricted view of the Delaware River and Philadelphia skyline over properties between the Aquarium Expansion and the former Campbell's Soup Baseball Park. A map depicting the view easement boundaries is attached as Exhibit B.

Under the view easement, development on Parcel 2 of the D&O Agreement, except for the pier, is restricted to between 45 and 54 feet in height (depending upon the distance from the Victor Building) while development on the pier is restricted to 88 feet in height. The proposed C1 building, which will be located on Parcel 2 and will be one of the initial projects that will commence development upon execution of the Restated Fourth Amendment to the D&O Agreement, will be ±328 feet and will exceed the view easement's height limitation.

The Second Amended and Restated Third Amendment also includes a provision that, in the event LPT does not purchase CTC's equity interest, NJEDA will afford the same cooperation to Steiner that it has afforded to LPT.

C. Staff Recommendations

1. *Approve the Proposed Second Amended and Restated Third Amendment to the D&O Agreement*
Staff recommends granting the extension of the \$25 MTE milestone because:

- The release of the view easement is necessary to implement the approved D&O Agreement master plan
- The additional time will permit resolution of the legal issues to finalize the release of the view easement
- The additional time is approximately the same amount of time Steiner is providing LPT to purchase the equity interest in CTC.

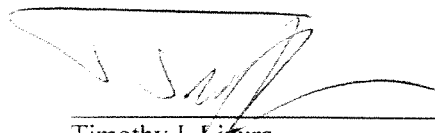
2. *Delegate to the Chief Executive Officer or President and Chief Operating Officer the Authority to Amend Section 12(b)(iii) of the Second Amended and Restated Third Amendment for a Period Not to Exceed Two Calendar Months*

Staff also recommends delegating the authority to the Chief Executive Officer ("CEO") or the President and Chief Operating Officer ("President & CEO") to amend Section 12(b)(iii) for a period not to exceed two calendar months if requested by Steiner and LPT and provided LPT demonstrates that the reason for the extension relates to the action or inaction of third parties. Prior to approval of the amendment to Section 12(b)(iii), the CEO or President & CEO will consult with the Chair and the Real Estate Committee.

Recommendation

I ask that the Members approve, subject to conditions stated in this memo, the following:

- The Second Amended and Restated Third Amendment of the Development and Option Agreement. The final document may be subject to revisions, although the basic terms and conditions will remain consistent with those in Exhibit A. The final terms of the agreement will be subject to the approval of the President and Chief Operating Officer, and the Attorney General's Office.
- Delegated authority to the Chief Operating Officer or President and Chief Operating Officer to amend Section 12(b)(iii) for a period not to exceed two calendar months.



Timothy J. Lizura
President and Chief Operating Officer

Prepared by: Juan Burgos
Attachments: Exhibits A and B

**EXHIBIT A: PROPOSED SECOND AMENDED AND RESTATED
THIRD AMENDMENT TO THE DEVELOPMENT AND
OPTION AGREEMENT**

**SECOND AMENDED AND RESTATED THIRD AMENDMENT TO DEVELOPMENT
AND OPTION AGREEMENT**

THIS SECOND AMENDED AND RESTATED THIRD AMENDMENT TO DEVELOPMENT AND OPTION AGREEMENT (the “**Third Amendment**”) dated October __, 2016, effective as of November 9, 2015, is entered into by and between CAMDEN TOWN CENTER, LLC, a New Jersey limited liability company (“**CTC**”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, an instrumentality of the State of New Jersey (“**NJEDA**”).

WHEREAS, the Parties hereto previously entered into that certain Development and Option Agreement dated as of October 19, 2004, as amended by that certain Amendment to Development and Option Agreement dated as of November 18, 2013 and that certain Second Amendment to Development and Option Agreement dated July 29, 2015 (as so amended, collectively, the “**Original Agreement**”);

WHEREAS, in connection with an agreement to accelerate the development of the Camden Waterfront from \$100 million being incurred or spent within five years hereof (as set forth in the Original Agreement) to \$150 million being incurred or spent within three and one half years after closing under the Liberty PSA (as defined below), NJEDA has approved Liberty Property Trust or an affiliate entity controlled by Liberty Property Trust (together “**Liberty**”) acquiring all of the existing membership interests in CTC, thereby indirectly acquiring ownership of CTC’s real and personal property assets, as well as certain liabilities of CTC (collectively, the “**CTC Membership Interests**”);

WHEREAS, pursuant to a certain Agreement of Sale and Purchase dated August 19, 2015, as amended (collectively, the “**Liberty PSA**”), Liberty had agreed to acquire the CTC Membership Interests subject to and contingent upon the terms and conditions of the Liberty PSA by October 7, 2016 and now has requested CTC to extend that date to December 2, 2016;

WHEREAS, pursuant to Section 12(b)(iii) of the Original Agreement, it is NJEDA’s position that CTC must cause an additional \$25,000,000 of Milestone Threshold Expenditure (for an interim total of \$45,000,000) to be actually paid or incurred by November 30, 2015;

WHEREAS, CTC has requested and NJEDA has agreed to extend the November 30, 2015 date set forth in Section 12(b)(iii) in order to allow Liberty an opportunity to acquire the CTC Membership Interests or, in the alternative, to allow CTC an opportunity to meet the next Milestone Threshold Expenditure date in the event that Liberty decides not to complete the acquisition of the CTC Membership Interests;

WHEREAS, NJEDA and Liberty have agreed upon the terms of a [Second] Restated Fourth Amendment to Development and Option Agreement which will become effective if and when Liberty completes its acquisition of the CTC Membership Interests pursuant to the Liberty PSA;

WHEREAS, the Parties desire to amend certain portions of the Agreement in compliance with Section 28 of the Original Agreement.

NOW, THEREFORE, subject and in consideration of the premises, the mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. The recital clauses set forth above are hereby deemed to be a part of this Third Amendment as though set forth verbatim at length herein.

2. Defined Terms.

(a) “**Agreement**” shall refer to the Original Agreement, as amended by this Third Amendment.

(b) Defined terms used but not otherwise defined in this Third Amendment shall have the meanings ascribed to such terms in the Original Agreement.

3. Amendment to Section 12 of the Original Agreement.

(a) Section 12(b)(iii) of the Original Agreement is amended and restated as follows:

“(iii) An additional Twenty-Five Million Dollars (\$25,000,000) no later than the earlier of (x) six (6) calendar months after the end of the period commencing on the date of the execution of the Liberty PSA and ending seventeen (17) calendar months thereafter or (y) six (6) calendar months after Liberty gives written notification that it no longer intends to acquire the CTC Membership Interests and the Liberty PSA is terminated.

4. Miscellaneous.

(a) The provisions of Section 28 of the Original Agreement shall apply to this Third Amendment *mutatis mutandis*.

(b) This Third Amendment may be executed in any number of counterparts (and by facsimile or electronic mail signature pages), each of which shall be deemed to be an original, but all of which shall constitute the same agreement. When counterparts have been executed by and delivered to all parties hereto or their counsel, they shall have the same effect as if the signatures were all on the same copy hereof.

(c) Should the Liberty PSA be timely terminated and CTC notifies NJEDA of this termination in a timely manner,, NJEDA hereby agrees to afford to CTC the same or similar accommodations as outlined in the Restated Fourth Amendment to Development and Option Agreement through the execution of a similar amendment, and to cooperate with CTC in the

exercise of its rights and benefits under the Development and Option Agreement (as amended), including assisting CTC in negotiations with DRPA and other New Jersey entities in the orderly development of the Option Property (as described in the Development and Option Agreement). The provisions of this Section 4(c) are a material inducement to CTC executing this Third Amendment.

5. Effectiveness. Where the terms of this Third Amendment are inconsistent with the terms of the Original Agreement, the terms of this Third Amendment shall control. Except as expressly amended by this Third Amendment, the terms of the Original Agreement remain in full force and effect and are unmodified. This Second Amended and Restated Third Amendment amended and restates the Amended and Restated Third Amendment dated June 30, 2016.

IN WITNESS WHEREOF, the Parties have caused this Second Amended and Restated Third Amendment to be duly executed on their own behalf by their respective officers thereunto duly authorized, all as of the date first above written.

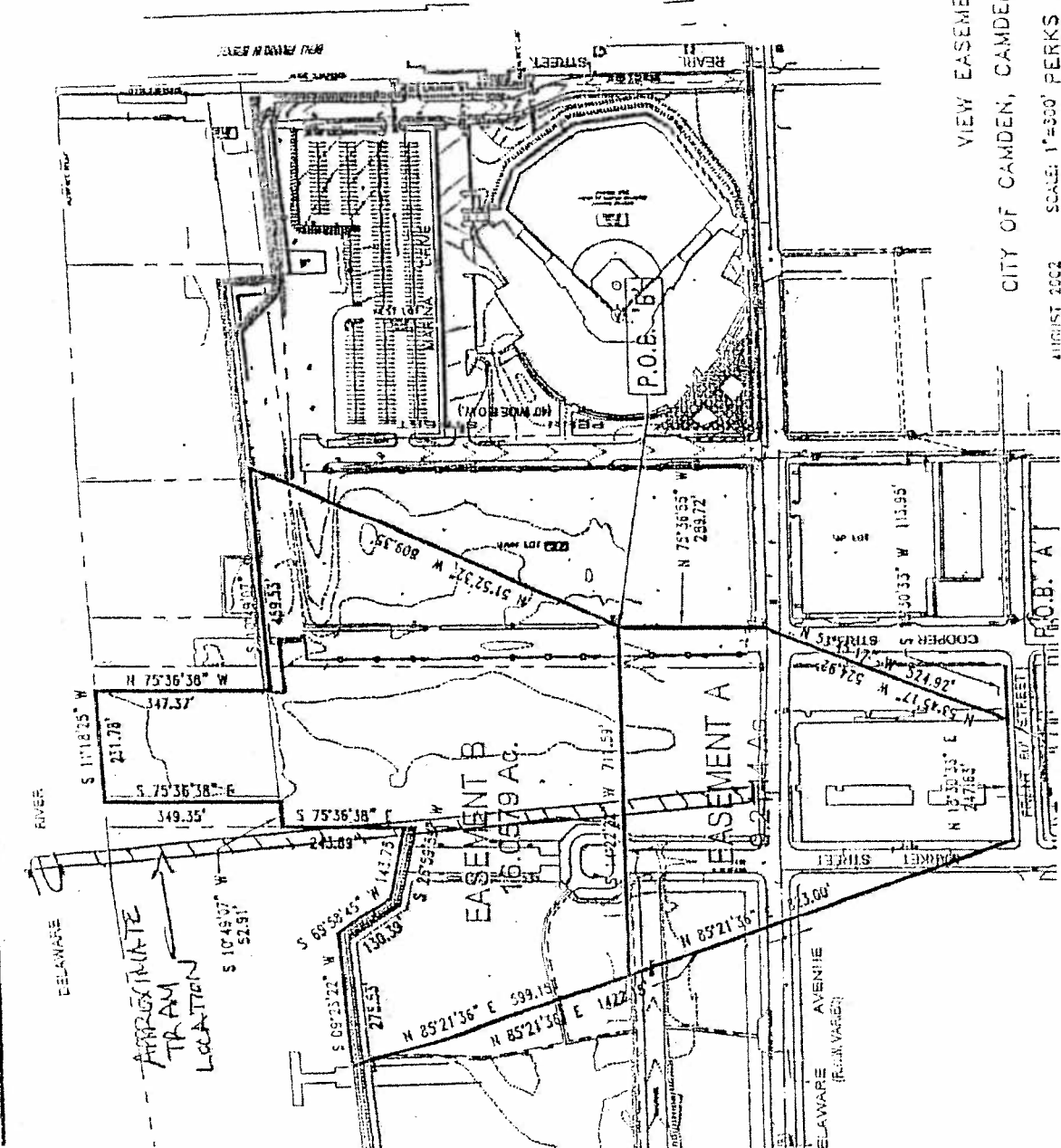
CAMDEN TOWN CENTER, LLC

By: _____
Name:
Title:

NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Name:
Title:

EXHIBIT B: MAP OF VICTOR BUILDING VIEW EASEMENT



VIEW EASEMENT

CITY OF CAMDEN, CAMDEN COUNTY, N.J.

AUGUST 2002 SCALE: 1"=350' PERKS REUTTER ASSOCIATE