



MEMORANDUM

TO: Members of the Authority
FROM: Timothy Sullivan
Chief Operating Officer
DATE: October 11, 2018
SUBJECT: Agenda for Board Meeting of the Authority October 11, 2018

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

Chairman's Report to the Board

CEO's Report to the Board

Board Presentation

Authority Matters

Incentive Programs

Edison Innovation Fund

Bond Projects

Loans/Grants/Guarantees

Real Estate

Board Memorandums

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

September 13, 2018

MINUTES OF THE ANNUAL MEETING

Members of the Authority present: Larry Downes, Chairman; Patrick Mullen representing Commissioner Marlene Caride of the Department of Banking and Insurance; Paul Yuen representing Commissioner Robert Asaro - Angelo of Department of Labor and Workforce Development; Catherine Brennan representing State Treasurer Elizabeth Muoio; Dan Ryan representing Commissioner Catherine McCabe of the Department of Environmental Protection; Public Members Charles Sarlo, Vice Chair; Philip Alagia, Louis Goetting, William J. Albanese, Sr., Second Alternate Public Member; and John Lutz, Third Alternate Public Member.

Present via conference call: Public Member William Layton.

Absent: Mary Maples of the Executive Branch; Public Members Thomas Scrivo, Fred Dumont, Massiel Medina Ferrara; 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. Downes 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 August 10, 2018 meeting minutes. A motion was made to approve the minutes by Ms. Brennan, and seconded by Mr. Ryan, and was approved by the 9 voting members present.

The next item of business was the approval of the August 10, 2018 executive session meeting minutes. A motion was made to approve the minutes by Mr. Lutz, and seconded by Mr. Ryan, and was approved by 9 voting members present.

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

Mr. Albanese joined the meeting.

Mr. Goetting joined the meeting.

BOARD PRESENTATION

Dr. Houshmand, President; and Dr. Sukumaran, Vice President for Research; Rowan University, gave a presentation on Rowan's Role in Expanding Economic Opportunities in New Jersey.

AUTHORITY MATTERS

ITEM: Annual Organizational Meeting

REQUEST: Approve the recommendations associated with the annual organizational meeting.

MOTION TO APPROVE: Mr. Albanese **SECOND:** Mr. Mullen **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

ITEM: Recommendation for Award – 2018-RFQ/P-081 – Innovation Planning Challenge

REQUEST: The Members are requested to approve entering into contracts for planning services pursuant to the Innovation Planning Challenge Request for Qualifications/Proposal.

MOTION TO APPROVE: Mr. Mullen **SECOND:** Mr. Ryan **AYES: 10**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Mr. Albanese recused himself because he represents the Passaic County Community College.

INCENTIVE PROGRAMS

Grow New Jersey Assistance Program

ITEM: Corcentric, LLC

APPL.#45090

REQUEST: To approve the finding of jobs at risk.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Corcentric, LLC

APPL.#45090

REQUEST: To approve the application of Corcentric, LLC for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Cherry Hill, NJ. Project location of Cherry Hill, Camden 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 Targeted Industry of Finance. The estimated annual award is \$138,744 for a 10-year term.

MOTION TO APPROVE: Mr. Mullen **SECOND:** Ms. Brennan **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ITEM: The RealReal, Inc.

APPL.#44883

REQUEST: To approve the application of The RealReal, Inc. for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Perth Amboy City, NJ. Project location of Perth Amboy City, Middlesex County qualifies as a Distressed 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 Large Number of New/Retained F/T Jobs. The estimated annual award is \$3,885,000 for a 10-year term.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

ITEM: Suuchi, Inc.

APPL.#45115

REQUEST: To approve the application of Suuchi, Inc. for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Kearny Town, NJ. Project location of Kearny Town, Hudson County qualifies as a Distressed 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 Target Industry within 3 miles of a college, university or non-doctor university and QBF used to conduct Collaborative research; Capital Investment in Excess of Minimum (non-mega), Large number of New/Retained F/T jobs; Targeted industry of Manufacturing. The estimated annual award is \$3,717,470 for a 10-year term.

MOTION TO APPROVE: Mr. Lutz **SECOND:** Mr. Albanese **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

ITEM: Unique Designs, Inc.

APPL.#45105

REQUEST: To approve the application of Unique Designs, Inc. for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Secaucus, NJ. Project location of Secaucus, Hudson County qualifies as a Distressed 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 Capital Investment in Excess of Minimum (non-mega), Targeted industry of Manufacturing. The estimated annual award is \$1,005,000 for a 10-year term.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

Grow New Jersey Assistance Program- Modification

ITEM: New York Life Insurance Company

APPL.#40595

REQUEST: Consent to a second six-month extension to fulfill new job requirements.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

ITEM: Tokio Marine North America, Inc

APPL.#42397

REQUEST: Consent to the reduction of new jobs.

MOTION TO APPROVE: Ms. Brennan **SECOND:** Mr. Alagia

AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

EDISON INNOVATION FUND

ITEM: Incubator and Collaborative Workspace Rent Initiative

REQUEST: Approve the program changes and clarifications as outlined.

MOTION TO APPROVE: Mr. Lutz **SECOND:** Ms. Brennan

AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

NJ CoVest Fund Program

PROJECT: Additive Orthopaedics LLC

APPL.#45036

LOCATION: Little Silver Borough, Monmouth County

PROCEEDS FOR: Working Capital

FINANCING: \$250,000

MOTION TO APPROVE: Mr. Goetting **SECOND:** Mr. Ryan **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

ITEM: NJ CoVest Early Stage Technology Company Investment Program

REQUEST: Approve program changes as outlined.

MOTION TO APPROVE: Mr. Albanese **SECOND:** Mr. Yuen **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

BOND PROJECTS

ITEM: Tax Compliance Procedures for Tax Exempt Bonds

REQUEST: Consent to Bond Compliance Procedures

MOTION TO APPROVE: Mr. Albanese **SECOND:** Mr. Yuen **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

LOANS/GRANTS/GUARANTEES

Hazardous Discharge Site Remediation Fund

ITEM: Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

PROJECT: City of Cape May (Johns' Tire & Auto Repair Center)
APPL.#45060

LOCATION: Wildwood City, Cape May County

PROCEEDS FOR: Remedial Investigation

FINANCING: \$119,505

PROJECT: Borough of Somerville (Color Technology)

APPL.#45048

LOCATION: Somerville Borough, Somerset County

PROCEEDS FOR: Remedial Investigation

FINANCING: \$455,730

Petroleum Underground Storage Tank (PUST)

ITEM: Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program projects approved by the Department of Environmental Protection.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

PROJECT: Edward Barnett t/a Barnett's Citgo station

APPL.#44973

LOCATION: Downe Township, Cumberland County

PROCEEDS FOR: Remediation

FINANCING: \$211,630

REAL ESTATE

ITEM: Amendment to Construction Contract, Replacement Parking Lot Project, Camden, NJ

REQUEST: Approve a change order to the construction services contract to complete the improvements

MOTION TO APPROVE: Ms. Brennan **SECOND:** Mr. Ryan **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

ITEM: Creation of a NJ Incubator & Collaborative Workspace Rent Initiative (ICWRI) at CCIT
REQUEST: Approve the creation of a NJ ICWRI for CCIT tenants.
MOTION TO APPROVE: Mr. Ryan **SECOND:** Mr. Alagia **AYES: 11**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

BOARD MEMORANDUMS

FOR INFORMATION ONLY: Projects approved under Delegated Authority

Premier Lender Program:

PROJECT: 470 West First Ave, LLC APPL.#45173
LOCATION: Roselle Borough, Union County
PROCEEDS FOR: Purchase of Property
FINANCING: \$2,970,000 ConnectOne Bank loan with \$1,000,000 EDA participation


PROJECT: Pathways to Independence, Incorporated APPL.#45069
LOCATION: Kearny Town, Hudson County
PROCEEDS FOR: Purchase of Property
FINANCING: \$720,000 Valley National Bank loan with \$200,000 EDA participation

PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Mr. Alagia, and seconded by Mr. Albanese, the meeting was adjourned at 11:30am.

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.



Erin Gold, Chief of Staff
Assistant Secretary



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan
DATE: October 11, 2018
RE: Monthly Report to the Board

September was a busy month for the EDA team, as we supported the finalization of Governor Phil Murphy’s economic development strategic plan and prepared for its October 1 unveiling. The much-anticipated plan was met with great enthusiasm by the hundreds of business owners, corporate executives, developers, state leaders, and other interested parties in attendance as the Governor announced the plan’s details at ON3, a world-class campus and biotechnology office space located on the 116-acre former Hoffman-LaRoche site. The campus spans the Clifton-Nutley border.

The Governor’s plan is designed to set New Jersey on the path to a stronger and fairer economic future, with innovation and diversity playing a key role in achieving this goal. As Governor Murphy laid out the objectives of the economic development strategic plan, he affirmed that the success of the plan will hinge on inclusivity – of women, people of color, and immigrants, and a renewal of the State’s leadership in innovation.

Staff across many departments of the EDA contributed to the development of the plan. The EDA team’s unflinching commitment to getting this right resulted in a comprehensive plan that will help drive meaningful, equitable growth.

The Five Key Goals of the plan are:

- Driving faster job growth than all Northeast peer states by fostering a better, more supportive business climate
- Achieving faster median wage growth than all Northeast peer states
- Creating the most diverse innovation ecosystem in the nation and doubling venture capital investment in the state
- Closing the racial and gender wage and employment gaps
- Encouraging thriving and inclusive New Jersey urban centers and downtowns, with a focus on reducing poverty

The Four Strategic Priorities of the plan are:

- Invest in People
- Invest in Communities

- Make New Jersey the “State of Innovation”
- Make Government Work Better

In partnership with the Governor, state agencies, the Legislature, and other stakeholders, the EDA will play a role in overseeing many of the initiatives outlined in the plan, including:

- NJ Aspire Tax Credit Program
- NJ Forward Tax Credit Program
- NJ Innovation Evergreen Fund
- Expanded Brownfields Program
- New Small Business Loan Program
- Historic Tax Credit Program

OTHER UPDATES

Earlier this week, the EDA partnered with the Department of the Treasury to host a networking event for small, minority- and women-owned businesses to showcase the opportunities that lie ahead as two new state office building projects get underway. Government representatives and construction management professionals were present to help business owners explore subcontracting opportunities on the two new state-sponsored projects in downtown Trenton that will replace the aging structures that currently house the Department of Health, as well as the Division of Taxation.

Also in Trenton, Governor Murphy signed Executive Order #40, establishing the New Jersey State Capital Partnership, an initiative designed to harness state support and resources to spur economic development in Trenton and help chart a new course for New Jersey’s capital city.

In support of the State’s offshore wind efforts, the EDA issued a Request for Ideas (RFI) from qualified entities with perspectives on offshore wind port infrastructure and supply chain development in New Jersey. We look forward to reviewing all responses, which are due October 15.

Finally, I am excited to announce the creation of a new division of Portfolio Management and Compliance, which will be led by Bruce Ciallella. Bruce and his team will focus on developing and overseeing internal process improvement initiatives to increase operational efficiencies and ensure the highest level of due diligence and fiduciary oversight.

SEPTEMBER STAKEHOLDER OUTREACH

Outreach to EDA’s diverse constituencies and stakeholders in the past month included a keynote at the NJ Manufacturing Extension Program’s Manufacturing Day, participation in a session on the State’s innovation ecosystem at the Governor’s Conference on Housing and Economic Development, a presentation on EDA resources for businesses at the Monmouth/Ocean Development Council, a session at the Regional Planning Association’s New Jersey Committee meeting, and a meeting with the Economic Development Committee of the Southern NJ Development Council.

We participated at ribbon cuttings for two companies establishing headquarters in the Garden State, including Adlai-Nortye, at the EDA’s Biotechnology Development Center in North Brunswick, and Billtrust, which is expanding at a new facility in Lawrence Township. In addition, the EDA hosted a

fireside chat at its Commercialization Center for Innovative Technologies with Modern Meadow CEO Andras Forgacs.

CLOSED PROJECTS

Through September 2018, EDA closed on \$93 million in lending assistance to support 95 projects, leveraging more than \$215 million in capital investment and the creation of 927 new permanent jobs.

In addition to the assistance provided through lending programs, EDA also executed agreements pending certification with 19 incentives projects for more than \$357 million, leveraging more than \$455 million in capital investment, the creation of 1,546 new jobs, 1,643 construction jobs, and the retention of 4,039 jobs at risk of leaving New Jersey.

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

AUTHORITY MATTERS



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan
Chief Executive Officer
DATE: October 11, 2018
RE: 21st Century Redevelopment Program

Summary

The Members are asked to approve:

1. The creation of the 21st Century Redevelopment Program - a program to award grants of up to \$50,000 each to communities for economic development plans with solutions and strategies for commercial “ghosts” or “stranded assets.” These plans will help inform and establish new and innovative solutions and best practices that may be applicable throughout the State. Grant awards will be based on proposals that achieve a minimum score based on the evaluation criteria set forth in the attached product specifications.
2. NJEDA Economic Recovery Fund utilization of up to \$250,000 to capitalize the 21st Century Redevelopment Program.

Background

A number of demographic and economic trends are re-shaping where people in New Jersey live and work, with the suburbs experiencing an outmigration of jobs and population similar to those that cities have experienced.

New Jersey now has a surplus of suburban retail and office parks.

Suburban offices and shopping malls boomed during the 1980s and 1990s, when the supply of cheap land and easy access to highways were a strong attraction. These buildings are now over a quarter-century old and are outmoded and less desirable, and many are sitting empty or are underutilized. Most importantly, the real estate market has shifted, with corporations seeking locations close to transit and that attract a younger talent pool. This urban centric trend is happening nationally, with GE moving from Fairfield, CT to Boston; McDonald’s moving from Oak Brook, IL to Chicago; and Weyerhaeuser moving to Pioneer Square in Seattle from a 430-acre campus outside the city.

Many suburban municipalities that are car-based, have multiple or no town centers and are facing stagnation or even a population exodus.

Many of New Jersey's suburban municipalities with no town centers (or multiple small "centers,") that are car-dependent and largely made up of single-family detached homes, are at risk. These municipalities must strategically plan their land use to attract or keep young residents and employers.

Empty corporate campuses, underutilized malls and shopping centers, and vacant office buildings left behind by the 1980-1990s building boom have become a drain on many New Jersey communities. As a result, these communities are dealing with the loss of tax revenues, the costs of maintaining infrastructure and roads around these properties, and a lack of resources to solve the issues.

Local government entities face hurdles planning the retrofitting, redevelopment, and repurposing of large stranded assets.

The growing need for newer, suburban municipalities to address stranded assets adds to the needs that have existed and, in some cases, continues to exist in older cities and suburbs. To allow New Jersey to better attract economic activity and jobs, the Authority intends to solicit the services of redevelopment agencies, municipalities, or counties to produce plans for repurposing or removing stranded assets in their communities.

By issuing this solicitation to local government entities across the State, the Authority seeks to obtain economic development plans from local communities and regions with solutions and strategies for their stranded assets which may be replicable for other municipalities and regions in New Jersey.

Program Details

The 21st Century Redevelopment Program will provide grants of up to \$50,000 each to eligible redevelopment agencies, municipalities, or counties to create strategies to redevelop or regreen their stranded assets.

Planning proposals may focus on any number of elements, including:

- Determining cost-benefits of retrofitting, redeveloping or greening the property or properties
- Driving economic growth for the locality and region
- Creating greater social, economic, and environmental sustainability
- Expanding affordable and multi-family housing
- Attracting employers and a diverse, talented workforce
- Expanding entrepreneurial opportunities and support local businesses
- Promoting walkable neighborhoods and improve accessibility and mobility

- Connecting to public transportation
- Improving livability and healthy outcomes for the local population

Applications for the 21st Century Redevelopment Program will be accepted on a rolling basis according to the scoring criteria in the attached product specifications. For an applicant to be considered for a grant, an entity must meet a minimum score of 65, at which point the application will be recommended to the Board for approval. Applications will be evaluated, and funds awarded on a first come, first served basis based on date that the Authority receives a completed application. Applications will be accepted for a period of no more than 90 days following the release of the application to the public, and a deadline will be established, published, and communicated to interested parties that no applications will be accepted following the 90 days (or sooner, if the \$250,000 funding pool is fully exhausted before then.)

The attached product specifications provide greater detail as to the minimum eligibility requirements the applicant must meet to be considered for an award. Applications must include plans for specific deliverables that can be fully completed (with copies provided to EDA for public consumption) six calendar months after the execution of funding agreement between EDA and the recipient. A municipality, county or redevelopment agency may only submit one application each. A proposal on behalf of a county does not preclude a municipality within that county from submitting their own proposal.

In addition to producing a plan, grantees will be required to participate in at least two events hosted by the Authority to share lessons learned from the planning process, with the goal of fostering a dynamic discussion about repurposing suburban stranded assets and to assist other similarly situated municipalities.

Recommendation

Approval is requested for the 21st Century Redevelopment Program in the maximum amount of \$250,000 from the Economic Recovery Fund to fund grants of up to \$50,000 each to communities for economic development plans with solutions and strategies for commercial “ghosts” or “stranded assets.” These plans will help inform and establish new and innovative solutions and best practices that may be applicable throughout the State. Grant awards will be based on proposals that achieve a minimum score based on the evaluation criteria set forth in the attached product specifications.



Tim Sullivan
Chief Executive Officer

Prepared by: Allison Kopicki & Pat Rose

Attachments

Exhibit A – 21st Century Redevelopment Program Specifications

EXHIBIT A
21st Century Redevelopment Program
Proposed Specifications
October 2018

Total Funding Amount	Up to \$250,000
Administrating Agency	EDA
Program Purpose & Overview	<p>A number of demographic and economic trends are re-shaping where people in New Jersey live and work, with the suburbs experiencing an outmigration of jobs and population similar to those that cities have experienced.</p> <p>Empty corporate campuses, underutilized malls and shopping centers, and vacant office buildings left behind by the 1980-1990s building boom have become a drain on many New Jersey communities. As a result, these communities are dealing with the loss of tax revenues, the costs of maintaining infrastructure and roads around these properties, and a lack of resources to solve the issues.</p> <p>To allow New Jersey to better attract economic activity and jobs, the Authority will make grant funding available to redevelopment agencies, municipalities, or counties to develop (or accelerate the implementation of) plans for repurposing or removing stranded assets in their communities. In this pilot venture, The Authority will award grants of up to \$50,000 each for proposal that meet the evaluation criteria set forth below.</p>
Minimum Eligibility Requirements	<ul style="list-style-type: none"> • Applicant must be a redevelopment agency, municipality, or county • Must have evidence of a stranded asset matching one of the below: <ul style="list-style-type: none"> ○ Retail: 750,000 square feet or more with a vacancy rate greater than 25% ○ Office: 75,000 square feet or more with a vacancy rate greater than 20% for at least 3 years • A stranded asset may be a building, a corporate campus that was used by a single entity, buildings that are adjacent to each other, or buildings across a parking surface or structure that is dedicated for use by the buildings. • Must submit a timeline that demonstrates that planning can be completed with six months of execution of agreement with

EXHIBIT A
21st Century Redevelopment Program
Proposed Specifications
October 2018

	<p>Authority</p> <ul style="list-style-type: none"> • 20% match of grant amount required - with preference for local match from property owner or an anchor institution (institution of higher education, medical center, foundation, etc.) • Entity must agree to participate in at least 2 events hosted by EDA to share lessons learned with other New Jersey municipalities and counties facing stranded assets challenges • Applicant acknowledges it will share ownership of deliverables with EDA for the purpose of making results publicly available to foster a dynamic discussion about repurposing stranded assets and to assist other similarly situated municipalities. • A municipality or a county may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. A proposal on behalf of a county does not preclude a municipality within that county from submitting their own proposal.
Award Amount	Up to \$50,000 per eligible applicant.
Eligible Projects	<p>Rolling applications to be reviewed based on a publicly-available scoring grid. Applications must meet a minimum score in order to be recommended for grant awards.</p> <p>Applications must include plans for specific deliverables, which must be completed six months after closing of funding agreement between EDA and recipient.</p> <p>Planning proposals may focus on any number of elements, including the following:</p> <ul style="list-style-type: none"> • Determine cost-benefits of retrofitting, redeveloping or greening the property or properties • Drive economic growth for the locality and region • Create greater social, economic, and environmental sustainability • Expand affordable and multi-family housing • Attract employers and a diverse, talented workforce • Expand entrepreneurial opportunities and support local businesses • Promote walkable neighborhoods and improve accessibility and

EXHIBIT A
21st Century Redevelopment Program
Proposed Specifications
October 2018

	<p style="text-align: center;">mobility</p> <ul style="list-style-type: none"> • Connect to public transportation • Improve livability and healthy outcomes for the local population
<p>Scoring Criteria</p>	<p>Grants will be awarded on a first come, first served basis based on date EDA receives a completed application, but no later than 90 days following release of application or until total funding pool is exhausted (whichever is sooner).</p> <p>Highest Score Possibility: 100 points Minimum Score Requirement: 65 points</p> <p>Criteria #1 will be measured along the below scale:</p> <p style="padding-left: 40px;">0 points – <i>Feature is absent.</i> 1 – 7 points – <i>Feature is present but shows deficiencies.</i> 8-11 points – <i>Meets requirements.</i> 12-17 – points – <i>Marginally exceeds requirements.</i> 18-20 points - <i>Significantly exceeds requirements.</i></p> <p>Criteria #1 – Identification of Project Purpose and Merits (Up to 20 points) – Proposals Identify opportunities for creating vibrancy in the community, including but not limited to:</p> <ul style="list-style-type: none"> • Presence of an articulated public use component (such as public space, parks, etc). • Ability to address locality-specific needs and challenges. • Emphasis on long term viability and adaptability of a given concept. • Dedication to principles of environmental sustainability, such as stormwater management and reduced carbon emissions. • Ability to consider and mitigate any past difficulties that created challenges for a given asset/grouping of assets. • Ability to identify and balance local needs with those of the region and state as a whole.

EXHIBIT A
21st Century Redevelopment Program
Proposed Specifications
October 2018

	<p>Criteria #2 will be measured along the below scale:</p> <p>0 points – No effect on land use. 1 – 7 points – Minimal effect on land use. 8-12 points – Moderate effect on land use. 13-20 points – Significant effect on land use.</p> <p>Criteria #2 – Scope and Scale (Up to 20 points)- Preference will go to project areas that can display scale, both independently and relative to the greater municipal area (i.e. as a percentage). This includes such elements as total available commercial square footage, parking space, etc.</p> <p>Criteria #3 will be measured along the below scale:</p> <p>1-5 points – Demonstrates minor structural challenge 6-12 points - Demonstrates 2 -3 structural challenges 13-20 points – Demonstrates more than 3 structural challenges</p> <p>Criteria #3 - Commitment to Social Impacts (Up to 20 points) – Preference will go to sites located in municipalities facing inherent structural challenges (i.e. lacking public transit, planning resources, challenging geography etc.).</p> <p>Criteria 4-6 will be measured along the below scale:</p> <p>1-5 points- Feature is present but shows deficiencies 5-7 points -- Meets requirements 7-10 points – Significantly exceeds requirements</p> <p>Criteria #4 - Previous Record (Up to 10 points) – Preference will go to municipalities who can demonstrate a track record of:</p> <ul style="list-style-type: none">• Partnership and engagement with private industry for purposes of re-development.• Adherence to the municipality’s affordable housing obligations• Dedication to principles of environmental sustainability.• Efforts to advance walkability and bike facilities in the municipality.
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EXHIBIT A
21st Century Redevelopment Program
Proposed Specifications
October 2018

	<p><i>Note: this could be demonstrated through any number of efforts such as those through Complete Streets Plans, participation in Safe Routes to School program.</i></p> <p>Criteria #5 - Regional Partnership (Up to 10 points)- Preference will go to entities who are able to display strong local leadership as well as regional collaboration towards re-development efforts. Applications should demonstrate a commitment by local leadership to engage in re-development projects with neighboring municipalities, the county, and/or higher-education institutions whether by a record of past project involvement or a commitment to future efforts, or both.</p> <p>Criteria #6 - Community Engagement (0 to 10 points) – Preference will go to communities that are able to display efforts to engage local residents and businesses in planning efforts. Local interest may be shown in the form of both past and present support, whether formal (municipal resolutions) or informal (community discussion and engagement).</p> <p>Criteria #7 will be measured along the below scale:</p> <p style="padding-left: 40px;">5 points – MRI Distress Score 30-39 7 Points – MRI Distress Score 40-49 10 Points – MRI Distress Score 50 or higher</p> <p>Criteria #7 - Municipal Revitalization Index Score (0 to 10 points) – The Municipal Revitalization Index (MRI) serves as the State’s official measure and ranking of municipal distress. The MRI ranks New Jersey’s municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.</p>
<p>Application Process and Board Approval</p>	<ul style="list-style-type: none"> • Scoring committee to review applications based on publicly released scoring criteria. • Proposals that achieve a minimum score will be recommended for approval by EDA Board. • Applications to be reviewed on a first come, first served basis until \$250,000 total funding pool is fully exhausted, or 90 days following the release of the application (whichever is sooner).



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: October 11, 2018

RE: Innovation Challenge Program

Summary

The Members are asked to approve:

1. The creation of the Innovation Challenge Program - a program to award grants of up to \$100,000 each to communities for economic development plans to catalyze planning and key investments to position their city and region to augment their innovation ecosystem. Grant awards will be based on proposals that achieve a minimum score based on the evaluation criteria set forth in the attached product specifications.
2. NJEDA Economic Recovery Fund utilization of up to \$500,000 to capitalize the Innovation Challenge Program.

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.

Governor Murphy's March announcement of a vision for an innovation economy included, as an example, among others, a large-scale Innovation Hub in New Brunswick. To expand the reach of the innovation economy, more work is needed to facilitate major investments in all of New Jersey's urban centers, with a focus on creating partnerships between the public sector, institutions of higher education, innovative real estate developers, and entrepreneurial private sector leaders.

New Jersey and its cities have limited access to incubators and other supportive real estate components which foster the growth and development of start-up ecosystems. New Jersey's cities also need support to develop infrastructure strategies to support innovation (i.e., mobility, walkability, bike-ability, transit-oriented development, fiber/broadband, utility infrastructure).

On July 17, 2018, the New Jersey Economic Development Authority (EDA) 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.

Based on the proposals received in response to the RFQ/, on September 13, 2018, nine contracts of \$100,000 each were approved by the EDA Board 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, staff's review of the prior method of soliciting proposals and needs across municipalities and counties, and the capacity of EDA to fund additional plans, the Authority is making additional funding available in the form of a grant program called the Innovation Challenge Program, providing grants of up to \$100,000 each to be awarded to the municipal or county proposals that achieve a requisite score based on publicly available scoring criteria.

Program Details

The Innovation Challenge Program will provide grants of up to \$100,000 each to eligible municipal or county governments for planning proposals to catalyze planning and key investments to position their city and region to augment their innovation ecosystem.

Planning proposals may focus on any number of elements, including:

- Driving inclusive economic growth and increasing opportunities to build wealth
- Improving supportive infrastructure, such as broadband capacity, walkability, or access to public transit
- Growing the number of local small businesses
- Providing better access to STEM jobs and ladders of opportunity
- Attracting top talent and employers
- Increase commercial activity in under-developed metro areas
- Building an entrepreneurial culture

Applications for the Innovation Challenge Program will be accepted on a rolling basis according to the scoring criteria in the attached product specifications. For an applicant to be considered for

a grant award, an entity must meet a minimum score of 50, at which point the proposal will be recommended to the Board for approval. Proposals will be evaluated, and funds awarded on a first come, first served basis based on date of EDA's receipt of a completed application. Applications will be accepted no later than 60 days following the release of the grant application (or sooner, if the \$500,000 funding pool is fully exhausted before then). A deadline will be established, published, and communicated to interested parties, based on the release date of the application.

A municipality or a county may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. A proposal on behalf of a county does not preclude a municipality within that county from submitting their own proposal.

The nine municipalities/counties that were awarded planning contracts through RFQ/P 081 – Innovation Planning Challenge are not eligible to apply for the Innovation Challenge Program in a lead role but may be included as a partner in applications where they play a non-lead role.

The attached product specifications provide greater detail as to the minimum eligibility requirements the applicant must meet to be considered for an award. Applications must include plans for specific deliverables that can be fully completed (with copies provided to EDA for public consumption) six calendar months after the execution of funding agreement between EDA and the recipient.

Recommendation

Approval is requested for the Innovation Challenge Program in the maximum amount of \$500,000 from the Economic Recovery Fund to fund grants of up to \$100,000 each to communities for economic development plans to catalyze planning and key investments to position their city and region to augment their innovation ecosystem. Grant awards will be based on proposals that achieve a minimum score based on the evaluation criteria set forth in the attached product specifications.



Tim Sullivan
Chief Executive Officer

Prepared by: Allison Kopicki & Pat Rose

Attachments
Exhibit A – Innovation Challenge Program Specifications

**Exhibit A - Innovation Challenge Planning Grant
Proposed Specifications
October 2018**

Total Funding Amount	Up to \$500,000
Administrating Agency	EDA
Program Purpose & Overview	<p>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.</p> <p>Governor Murphy’s March announcement of a vision for an innovation economy included, as an example, among others, a large-scale Innovation Hub in New Brunswick. To expand the reach of the innovation economy, more work is needed to facilitate major investments in all of New Jersey’s urban centers, with a focus on creating partnerships between the public sector, institutions of higher education, innovative real estate developers, and entrepreneurial private sector leaders.</p> <p>New Jersey and its cities have limited access to incubators and other supportive real estate components which foster the growth and development of start-up ecosystems. New Jersey’s cities also need support to develop infrastructure strategies to support innovation (i.e., mobility, walkability, bike-ability, TOD, fiber/broadband, water infrastructure).</p> <p>To address these gaps, the Authority will create the Innovation Challenge Program - a program to award grants of up to \$100,000 each to communities for economic development plans to catalyze planning and key investments to position their city and region to augment their innovation ecosystem. Grant awards will be based on applications that achieve a minimum score based on the evaluation criteria set forth in the attached product specifications.</p>
Eligible Applicants	<ul style="list-style-type: none"> • Applicant must meet one of the following definitions: <ul style="list-style-type: none"> ○ New Jersey municipal government (a proposal submitted by a single municipality) – must represent total population of 25,000 or more. ○ New Jersey county government (a proposal submitted by a single county) ○ Municipal partnership (two to four New Jersey municipalities partnering on a proposal) – must represent total population of 25,000 or more.

**Exhibit A - Innovation Challenge Planning Grant
Proposed Specifications
October 2018**

	<ul style="list-style-type: none"> ○ Regional partnership (a New Jersey county partnering with another New Jersey county or a New Jersey municipality from a different county on a single proposal; or five or more New Jersey municipalities partnering on a single proposal) – must represent total population of 100,000 or more. • Must demonstrate ability to provide a 20 percent match of the grant amount to be reinvested back into the planning project. The 20 percent match can be in the form of a financial contribution or a contribution of in-kind resources defined as non-monetary resources that will add value to or help advance the planning project. • Proposals must include a higher education partnership, defined as a partnership with a public or private institution of higher education, to leverage external expertise to best achieve the goals of the Innovation Challenge. While all proposals are required to have a higher education partnership, preference will be given to proposals that include additional strategic partners. Partnerships must be formalized by a signed agreement, which can be conditional to a successful contract award. • The nine municipalities/counties that were awarded planning contracts through RFQ/P 081 – Innovation Planning Challenge are not eligible to apply for the Innovation Challenge Program in a lead role but may be included as a partner in applications where they play a non-lead role. • A municipality or a county may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. A proposal on behalf of a county does not preclude a municipality within that county from submitting their own proposal.
Award Amount	Up to \$100,000 per eligible applicant.
Eligible Projects	<p>Rolling application with applications reviewed based on a publicly-available scoring grid. Each successful entity must meet a minimum score of 50. Grants will be awarded on a first come, first basis based on date of receipt of completed application, but no later than 60 days from the release of the application, or until the total funding pool is exhausted (whichever is sooner).</p> <p>Applications must include plans for specific deliverables, which must be completed six months after closing of funding agreement between EDA</p>

**Exhibit A - Innovation Challenge Planning Grant
Proposed Specifications
October 2018**

	<p>and recipient.</p> <p>Planning proposals may focus on any number of potential project types, including the following:</p> <p>Real Estate Development Projects Planning for feasibility and development of projects that have commercial or mixed uses, including retail, office, hospitality, community, and industrial. Examples of projects may involve the construction or rehabilitation of commercial and mixed-use buildings for multi-tenant business development within an innovation economy industry, entities that provide necessary services to the innovation economy, industry specialized laboratory or research and development space to be used by a technology business. Projects may be stand-alone or distinct parts of a larger development.</p> <p>Infrastructure Projects Planning for the development of infrastructure improvements or strategies that, when completed, will increase the innovation capacity of the municipality in which they are located. These projects can involve, but are not limited to, mobility, walkability, bike-ability, transit-oriented development, fiber-broadband capacity, and utility infrastructure.</p> <p>Workforce, Entrepreneurship Development or Training Planning for programs or resources that would enhance the region's economic stability and prosperity by providing access to training or resources to produce more and better-prepared workers and expand entrepreneurship to support the innovation economy.</p> <p>Other Any plan not specifically detailed above that addresses one or more of the Innovation Challenge goals. We welcome new approaches to expanding an innovation economy that do not fall into the categories above.</p>
<p>Scoring Criteria</p>	<p>Applications will be evaluated on a first come, first served basis based on date of receipt of completed application, but no later than 60 days from the release of the application, or until the total funding pool is exhausted (whichever is sooner).</p> <p>Highest Score Possibility: 100 points Minimum Score Requirement: 50 points</p> <p>Criteria #1 will be measured along the below scale:</p> <p align="center"><i>0 points – Absence of ability to meet the criteria.</i></p>

**Exhibit A - Innovation Challenge Planning Grant
Proposed Specifications
October 2018**

	<p><i>1 – 7 points – Minimal ability to meet the criteria.</i> <i>8-11 points – Satisfactory ability to meet the criteria.</i> <i>12-17 – points – Exceptional ability to meet the criteria.</i> <i>18-20 points - Unique ability to meet the criteria.</i></p> <p>Criteria #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</p> <p>Criteria #2-8 will be measured along the below scale:</p> <p><i>0 points - Absence of ability to meet the criteria.</i> <i>1 – 3 points – Minimal ability to meet the criteria.</i> <i>4 – 6 points – Satisfactory ability to meet the criteria.</i> <i>7 – 9 points – Exceptional ability to meet the criteria.</i> <i>10 points - Unique ability to meet the criteria.</i></p> <p>Criteria #2 - Strength of established partnership (higher-ed and other strategic, if applicable) within the Proposal:</p> <p>Factors to be considered include:</p> <ul style="list-style-type: none">• Reputation, capacity, and proposed level of commitment from the partnering entity.• Longevity of partnerships beyond initial project planning stages.• Cultivation of multiple partnerships, where practical and beneficial. <p>Criteria #3 - Commitment of additional funding from higher education partners, strategic partners, or other outside sources.</p> <p>Factors to be considered include:</p> <ul style="list-style-type: none">• Ability to identify specific sources of additional funding committed to the project, including amounts and any conditions that may be attached to those commitments. <p>Criteria #4 - Presence and strength of a defined collaborative stakeholder engagement process and strategy.</p> <p>Factors to be considered include:</p> <ul style="list-style-type: none">• Identification of stakeholders critical to the success of the project
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**Exhibit A - Innovation Challenge Planning Grant
Proposed Specifications
October 2018**

	<ul style="list-style-type: none">• Identified roles stakeholders have in helping to achieve objectives• Stakeholder engagement plan to define the type of relationship and engagement with individual stakeholders• Communications channels / engagement techniques with stakeholders <p>Criteria #5 - Evidence of the proposal to demonstrate the plan's ability to grow number of small businesses/attract employers within the municipality/region.</p> <p>Factors to be considered in scoring include:</p> <ul style="list-style-type: none">• Ability to identify unique local barriers to the attraction of businesses and employers; and• Formulate locality-specific potential solutions to address those barriers.• Consideration of pre-existing factors related to locality access (public transportation, parking, traffic, walkability, bike-ability) and means by which to improve and/or build upon those factors. <p>Criteria #6 - Emphasis on planning for solutions based on the use of new and emerging technologies.</p> <p>Technologies to be considered include but are not limited to:</p> <ul style="list-style-type: none">• Clean energy;• Smart transportation and/or parking;• Data collection and predictive analytics;• Smart infrastructure (such as sensors for potholes or sewage); Mobile applications. <p>Criteria #7 - Evidence of the proposal to demonstrate the potential for new jobs within or in support of an innovation industry including but not limited to:</p> <ul style="list-style-type: none">• emerging technology and life sciences,• digital media• clean technology/green energy• fin-tech, cyber-security• AI/AR, transportation-tech <p>Criteria #8 - Evidence of ability to execute a planning project</p>
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**Exhibit A - Innovation Challenge Planning Grant
Proposed Specifications
October 2018**

	<p>Factors to be considered include:</p> <ul style="list-style-type: none"> • Outreach and communication to community, stakeholders, etc. • Development of measurable, achievable milestones • Experience in successful completion of planning projects similar in size and scope to the proposed project • Thoughtfulness of plan and potential for impact • Experience, capacity, and skills of planning team and/or consultants <p>Point scale for Criteria #9 will be administered as follows:</p> <ul style="list-style-type: none"> • 10 points for Top 1-5 rank • 8 points for 6-10 Rank • 6 Points for 11-15 Rank • 4 Points for 16-25 Rank • 2 Points for 25-50 Rank. <p>Criteria #9 - Ranking of lead municipality within the top 50 2017 Municipal Revitalization Index, or municipal or regional partnership that includes a municipality to be directly impacted by the planning project that is ranked in the top 50 2017 Municipal Revitalization Index.</p> <p><i>In the case of multiple municipalities on a single proposal, a proposal will receive the requisite number of points based on the ranking of the municipalities within the proposal, on a cumulative basis, but not to exceed a total of 10 for the category. For example, if a proposal includes three municipalities ranked between 25-50 on the MRI Index, the proposal will receive a score of “6” for the criterion. If the proposal includes two municipalities ranked in the top 1-5 on the MRI Index, the proposal will receive a score of “10” for the criterion. If a county is involved in a proposal in a lead role or as a partner, the proposal receives points based on all municipalities located within that county.</i></p>
<p>Application Process and Board Approval</p>	<ul style="list-style-type: none"> • Scoring Committee to review applications based on publicly released scoring criteria. • Applications that achieve a minimum score of 50 will be recommended for approval by EDA Board.



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: October 11, 2018
RE: “Access” Pilot Lending Program

Request

Launch a pilot lending program, “Access”, to provide an aggregate of \$15 million to support small business in New Jersey and delegate authority to staff to approve applicants that meet all the program criteria.

Background

Since its inception, EDA has provided direct loans and guarantees to banks to promote job growth and capital investment in New Jersey.

Staff recommends launching a pilot lending program as part of an overall strategy to support small business.

Traditionally, EDA has independently underwritten direct loans and evaluated participations/guarantees in bank loans based on applicants’ historical financial performance, management expertise/succession planning, domestic/foreign industry trends, competition, customer sales concentrations, performance on its existing obligations and other criteria that support a credit decision. While great emphasis of the underwriting decision is based on cash flow and an applicant’s ability to repay the loan, EDA has required support from collateral resulting in a loan to value of no greater than 100% for real estate and 90% for equipment.

Based on feedback from our Premier Lender partners and understanding the current lending gap in the marketplace, EDA sees an opportunity to help small businesses by lending on a cash flow basis with less reliance on hard collateral. This will allow more flexibility to borrowers and us to be more impactful in the market.

Staff recommends introducing the “Access” program which is proposed as a pilot lending program for 12-months, limited to an overall aggregate exposure cap of \$15 million which will allow us to gauge market acceptance, in particular, with regard to the Premier Lending Partner component, to gauge market acceptance across multiple banks and their respective markets. The program will provide capital access to small businesses through both the Premier Lending partners as well as directly.

Premier Lending Partner Component

Makes available up to \$10 million in overall exposure with a maximum of \$1.5 million per borrowing relationship. To be approved for cash flow direct loans and up to 50% participation or guarantees with Premier Lending Banks, applicants meet all the following criteria:

- The business has been in operation, generating consistent or growing sales and profitability for at least two (2) years.
- The average historical and global debt service coverage over the past two (2) years is at least 1.25x.
- Approvals will be subject to EDA's credit underwriting policy and EDA will use the Premier Bank's underwriting analysis to support its underwriting approval.
- Loan exposure for fixed asset financing will be capped to \$1 million with a maximum term of five (5) years and a maximum amortization of 10 years for equipment and 20 years for real estate.
- Loan exposure for working capital financing will be capped to \$500,000 with a maximum term of five (5) years.
- Collateral will be a lien on assets purchased for fixed financing and a lien on all business assets for working capital financing.
- EDA will take a subordinate lien on collateral.
- Loan to value may be greater than 90% on equipment and greater than 100% on real estate based on other underwriting factors.
- Loans will be risk rated using EDA's revised risk rating model.
- All owners having a 10% or greater ownership in the business will provide personal guarantees for the duration of the loan term.
- The FICO score of 50% of the personal guarantors must be at least 700.

Direct Loans to Small Businesses

Makes available up to \$5 million in aggregate exposure with a maximum of \$750,000 per borrowing relationship. These will be EDA direct loans to businesses, and as above, to be approved for loans, small businesses must meet all the following criteria:

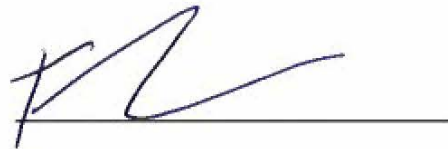
- The business has been in operation, for at least two (2) full years of operations.
- The average historical and global debt service coverage over the past two (2) years is at least 1.25x.
- Approvals will be subject to EDA's credit underwriting policy.
- Loan exposure for fixed asset financing will be capped to \$500,000 with a maximum term of five (5) years and a maximum amortization of 10 years for equipment and 20 years for real estate.
- Loan exposure for working capital financing will be capped to \$250,000 with a maximum term of five (5) years.
- Collateral will be a lien on assets purchased for fixed financing and a lien on all business assets for working capital financing.
- EDA will take a subordinate lien to a senior lender on the same collateral. Should the EDA be the sole lender, our lien will be in first position.
- Loan to value may be greater than 90% on equipment and greater than 100% on real estate based on other underwriting factors.
- Loans will be risk rated using EDA's revised risk rating model.
- All owners having a 10% or greater ownership in the business will provide personal guarantees for the duration of the loan term.
- The FICO score for 50% of the personal guarantors must be 700.

Delegated Authority

As the amounts above are within limits of delegated authority under the established Premier Lending Partner and Small Business Fund programs, staff is seeking delegated authority under this pilot program for approval. Staff will present to the Board any applicant that does not meet all the above criteria but for which staff finds reasons exist to recommend approval.

Recommendation

Approval to launching a 12-month "Access" Pilot Loan program, limited to \$15 million in credit exposure, with specific maximum exposures specified above, to support New Jersey businesses with fixed asset and working capital financing based on applicants' cash flow and demonstrated business track record, as indicated by meeting the program criteria. Approval of delegated authority for staff to approve applicants that satisfy all the program criteria.

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a horizontal line extending to the right.

Prepared By: Business Development, Credit, Incentive, and Real Estate Underwriting, and Finance/Bond Portfolio Management.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: October 11, 2018

RE: Proposed New Rules: N.J.A.C. 19:31-20
Offshore Wind Economic Development Tax Credit Program

Summary:

The Members are requested to approve:

1. special adopted new rules (attached) for the Offshore Wind Economic Development Tax Credit Program
2. authorization for staff to file the new rules to be adopted and become effective upon acceptance by the Office of Administrative Law
3. proposed net benefits test parameters outlined below to be used for the Offshore Wind Economic Development Tax Credit Program

Program Overview:

The Offshore Wind Economic Development Act, P.L. 2010, c. 51, as amended by P.L. 2018, c. 17, authorizes the Authority to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of certain qualified wind energy facilities in wind energy zones.

Under the Program, businesses making at least \$50 million in new capital investments in a qualified wind energy facility and employing at least 300 new, full-time employees at that facility may be eligible for tax credits.

Businesses must apply for the tax credits by July 1, 2024 and satisfy the capital investment and employment conditions for award of the credits by July 1, 2027, subject to additional conditions in the special adopted new rules.

The tax credits are equal to 100 percent of the claimants' qualified capital investments made, except as may be limited by the net positive economic benefits test, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation

business tax or insurance premiums tax.

Tenants in qualified wind energy facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$17.5 million of the capital investment in the facility, at which the business, including tenants, employs at least 300 new, full-time employees in that facility.

The Program is limited to wind energy zones, i.e., property located in the South Jersey Port District established pursuant to The South Jersey Port District Corporation Act, P.L. 1968, c.60 (N.J.S.A. 12:11A-1 et seq.).

The rules list the general outline of the net benefit test, including coverage, time line and what taxes to consider. Staff proposes that within those parameters, the net benefit be administered as follows:

Net-Benefits Test Parameters

- Utilize a minimum 110% net-benefit requirement for any project (standard level for other EDA programs)
 - Given the nature of the projects that will fall under this credit, it is likely the net-benefit test will materially reduce awards under this program;
 - The 110% threshold is the standard level of current EDA programs and EDA staff feel that it provides for award levels that will have a material impact on project-level economics and decision making.
- Use a standard net-benefit timeline of 10-years, with the ability to extend based upon applicant's commitments to the State, up to 20 years
 - Certain programs, such as Grow NJ, specify in the legislation the length of the timeline and the current net benefit test reflects these requirements. The legislation for the Program does not so specify;
 - The Applicant commitment to the State of 10 years aligns with the period of award under the statute;
 - Applicants may request an extended period (up to 20 years) if there is verifiable evidence of a longer company commitment to the state (e.g., a lease for 20+ years). This is similar to how the Authority has been administering Grow NJ net benefit since 2016;
 - As in Grow, failure to stay for the entire period may lead to recoupment of a portion of the award.
- Consider only direct benefits post construction (jobs, investment, CBT, any other taxes paid by the applicant)
 - This is a change from the approach used in other EDA programs, which also consider indirect and induced benefits;
 - This program has a unique feature that allows applicants to count jobs within the applicant's supply chain against the total direct employment thresholds, therefore, including indirect benefits in addition creates the risk of double counting;
 - Given the program is capital investment-based, rather than job-based, it is reasonable to expect the majority of the economic impact post construction will come through direct channels.
- Net-benefit test will be re-triggered each time the applicant falls 10% below their last

certified jobs or total wage-value commitment

- In current programs, this is done at the time of certification if employment or capital investment are significantly lower than the approved application. This requirement will be expanded to encompass reductions throughout the life of the credit;
- This approach will ensure businesses don't oversell their job numbers or wage commitments and then under deliver.

The rules also include the following significant provisions of the Program:

Jobs Requirements

- As per the statute, there is a hard-minimum threshold of 300 new jobs
 - There is no provision in the statute that allows for counting of retained jobs (there is clear legislative intent that the focus is on NEW jobs);
 - Unlike other programs, there is no "grace" or "buffer" zone within the statute that would allow for a reduced award for a reduced number of jobs (e.g., you can't get 80% of the award for 80% of the jobs).
- Jobs will be counted on a headcount basis within the applicant company
 - If a worker in the applicant company is working more than 35 hours per week, they will still be treated as one job holder;
 - As in all programs, there is the ability for the Authority to recognize what constitutes a full-time employee by custom or practice in each industry. For instance, if there is a union contract in place that dictates the number of hours an employee works, the Authority will be able to take that into account;
 - Similarly, EDA may choose to utilize a 40 hour a work week rather than a 35 hour work week depending on standard practice for the company (to be verified at application).
- Jobs created at supply chain partner companies can be counted on a cumulative hour/FTE basis
 - Due to the variable, project-based nature of the industry, suppliers will be able to add up total hours linked to supply chain contacts and then divide by 35 hours per week to get a weekly FTE number;
 - All supply chain jobs must also be NEW jobs (above a baseline set before the first year supplier agreement with the applicant);
 - This allows supply chain partners to have workers that work more than 35 hours per week to be counted as multiple FTEs.
- All jobs can only be counted if the job-holder spends at least 80% of their time in NJ
 - This is a change from the current Grow NJ Program which requires that employees spend 80% of their time at a specific qualified business facility;
 - This allows companies to more easily count employees who are involved in in-state transportation of parts and sales/marketing.

Other

- At application, the business will be required to indicate that a workforce development / employee training plan will be included (support to be provided by EDA and LWD to help the applicant establish the plan).

Fees

- The proposed fees are aligned to the current Grow NJ Program standards.
- A non-binding letter of intent must be signed between the business and the Authority CEO before the project will be presented to the board and an execution fee will be due at that time.

Finally, pursuant to P.L. 2018, c. 17, the new rules will be adopted and become effective upon acceptance for filing by the Office of Administrative Law and will remain in effect for 12 months thereafter or until the rules are proposed for public comment and readopted through standard rulemaking procedures.

Recommendation:

The Members of the Board are requested to approve:

1. special adopted new rules for the Offshore Wind Economic Development Tax Credit Program
2. authorization for staff to file the new rules to be adopted and become effective upon acceptance by the Office of Administrative Law
3. proposed net benefits test parameters outlined herein to be used for the Offshore Wind Economic Development Tax Credit Program



Tim Sullivan
Chief Executive Officer

Prepared by: Brian Sabina and Jacob Genovay

Attachment:
Special Adopted New Rules: N.J.A.C. 19:31-20

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Offshore Wind Economic Development Tax Credit Program

Special Adopted New Rules: N.J.A.C. 19:31-20

Special New Rules Adopted: October __, 2018 by New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: October __, 2018 as _____.

Authority: P.L. 2010, c. 57 and P.L. 2018, c. 17.

Effective Date: October __, 2018.

Expiration Date: October __, 2019.

Take notice that the New Jersey Economic Development Authority has adopted new rules at N.J.A.C. 19:31-20 to implement the Offshore Wind Economic Development Tax Credit Program established pursuant to section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 51, as amended by P.L. 2018, c. 17, which authorizes the Authority to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of certain qualified wind energy facilities in wind energy zones.

Under the Program, businesses making at least \$50 million in new capital investments in a qualified wind energy facility and employing at least 300 new, full-time employees at that facility may be eligible for tax credits. Businesses must apply for the tax credits by July 1, 2024 and satisfy the capital investment and employment conditions for award of the credits by July 1, 2027, subject to the rules in this subchapter. The tax credits are equal to 100 percent of the claimants' qualified capital investments made, except as may be limited by the net positive economic benefits test, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax or insurance premiums. Tenants in qualified wind energy facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$17.5 million of the capital investment in the facility, at which the business, including tenants, employs at least 300 new, full-time employees in that facility. Finally, the Program is limited to wind energy zones, i.e., property located in the South Jersey Port District established pursuant to The South Jersey Port District Corporation Act, P.L. 1968, c.60 (N.J.S.A. 12:11A-1 et seq.).

In accordance with P.L. 2010, c. 57, as amended by P.L. 2018, c. 17, these new rules were adopted and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4) as adopted by the New Jersey Economic Development Authority and will remain in effect until _____, 2019 or until the rules are proposed for public comment and readopted through standard rulemaking procedures.

Full text of the special adoption follows:

SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM

19:31-20.1 Applicability and scope

These rules are promulgated by the New Jersey Economic Development Authority (the “Authority”) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the “Act”), which authorizes the Authority to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of qualified wind energy facilities in wind energy zones.

19:31-20.2 Definitions

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

“Act” means the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended.

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. §1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. §414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under this Program.

“Approval letter” means the letter sent by the Authority that sets forth the conditions to maintain the approval and to receive the tax credit, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which furthers the purposes of this Program. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

“Authority” means the New Jersey Economic Development Authority.

“Business” means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate.

“Capital investment” in a qualified wind energy facility means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property, including associated soft costs. Capital investment includes obtaining and in-stalling furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED<(R)> building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third party certification program and the nationally accepted benchmark for the design, construction and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility or improvement shall not constitute a capital investment. Also included is remediation of the qualified wind energy facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. To be included, the capital investment must be commenced after the August 19, 2010, effective date of the Act. For purposes of this subchapter, “commenced” shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

“Complex of buildings” means buildings that are part of the same financing plan and operational plan.

“Developer” means, with respect to a qualified wind energy facility, a business that intends to construct and lease a wind energy facility. A developer may seek to receive approval that the facility will constitute a qualified wind energy facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

“Eligibility period” means the 10-year period in which a business may claim an offshore wind economic development tax credit, beginning with the tax period in which the Authority

accepts the certification of the business that it has met the capital investment and employment qualifications of the Program.

“Equipment supply coordination agreement” means an agreement between a business and an equipment manufacturer, supplier, installer, or operator that supports a qualified offshore wind project, or other wind energy project as determined by the Authority, and that indicates the number of new, full-time jobs to be created by the agreement participants towards the employment requirement as set forth in N.J.A.C. 19:31-20.3. “Equipment supply coordination agreement” shall not include sub-contracts or agreements between the equipment manufacturer, supplier, installer, and operator and parties other than the business that has applied for a credit under this Program.

“Full-time employee” means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A full-time employee is also a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the business. “Full-time employee” shall not include an employee who is a resident of another state and whose income is not subject to the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey, provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included.

“Full-time employee at the qualified wind energy facility” means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

“Leasable area” means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

“Letter of compliance” means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.7(d) that must accompany the use of the tax credit certificate.

“Net leasable area” means the usable area or actual occupiable area of a building, a floor or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and thus is not fixed for the life of a building as would be the case with leasable area.

“New full-time employee” means a position that did not previously exist in this State and that is created by the business and filled by a full-time employee at the qualified wind energy facility. A new full-time employee may also include new full-time employee resulting from an equipment supply coordination agreement, provided that the employee spends at least 80 percent of his or her time in New Jersey, or any other period of time in New Jersey generally accepted by custom or practice as full-time employment, as determined by the Authority. New full-time employee resulting from an equipment supply coordination agreement may include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent. With regard to new full-time employees resulting from an equipment supply coordination agreement, one “new full-time employee” means 35 hours of employment per week dedicated to the work required under the agreement, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, regardless of whether or not the hours of work were performed by one or more persons. New full-time position shall also include new full-time positions that a business creates after receipt of approval pursuant to N.J.A.C. 19:31-20.7 that are transferred to the qualified wind energy facility upon completion thereof and meet the requirements of this Program.

“Offshore wind economic development tax credit” means the tax credit permitted under section 6 of the Act, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5.

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

“Professional employer organization” means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

“Progress information” means the information that must be submitted pursuant to N.J.A.C. 19:31-20.7(e).

“Program” means the Offshore Wind Economic Development Tax Credit Program created pursuant to section 6 of the Act and provided in this subchapter.

“Project” means the employment and the capital investment in a qualified wind energy facility that is at least the employment and capital investment required by the Program within a designated wind energy zone.

“Qualified offshore wind project” means the same as the term is defined in section 3 of P.L.1999, c. 23 (N.J.S.A. 48:3-51).

“Qualified wind energy facility” means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development or administration of component parts that support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority, and that are located in a wind energy zone.

“Soft costs” means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

“Tenant” means a business that is a lessee in a qualified wind energy facility.

“Wind energy zone” means property located in the South Jersey Port District established pursuant to “The South Jersey Port Corporation Act,” P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

19:31-20.3 Eligibility criteria

(a) In order to be eligible to be considered for an offshore wind economic development tax credit for a qualified wind energy facility:

1. If the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified wind energy facility totaling not less than \$50,000,000. A business that acquires a qualified wind energy facility after August 19, 2010, the effective date of the Act, shall also be deemed to have acquired the capital investment made or acquired by the seller, subject to the disqualifications in N.J.A.C. 19:31-20.13. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner’s minimum capital investment of \$50,000,000 provided that the owner so indicate in the owner’s application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ, in the aggregate with tenants at the qualified wind energy facility, not fewer than 300 new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement; and

iii. Demonstrate to the Authority that the State’s financial support of the proposed capital investment will yield a net positive economic benefit.

2. If the business is a tenant in a qualified wind energy facility:

i. The owner of the qualified wind energy facility shall make or acquire capital investments in the facility totaling not less than \$50,000,000, as calculated in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified wind energy facility that represents at least \$17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;

iii. Employ, in the aggregate with other tenants at the qualified wind energy facility, at least 300 new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement;

iii. The business shall lease the qualified wind energy facility for a term of not less than 10 years; and

iv. Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive benefit and received approval of the qualified energy facility or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

(b) In order to determine whether the tenant's leasable area of the qualified wind energy facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified wind energy facility.

(c) The net positive benefit required in (a)1iii and (a)2iv above shall equal at least 110 percent of the approved tax credit allocation amount, to the State for the period equal to 75 percent of the useful life of the investment, not to exceed 10 years, provided that the Authority may determine, at its discretion, that the net positive economic benefit may extend to 20 years based on the length of the business's commitment to maintain the project at the qualified wind energy facility. To support the determination of a net positive benefit, the business shall submit to the Authority, prior to approval, a non-binding letter of intent executed between the Chief Executive Officer of the Authority and the chief executive officer, or equivalent officer for North American operations, of the business stating that the tax credits will yield a net positive economic benefit in the amount required in this paragraph, taking into account the criteria listed at N.J.A.C. 19:31-20.7(c).

(d) Full-time employment for an accounting or privilege period, or the portion thereof after the certification of the business that it has met the capital investment and employment qualifications, shall be determined as the average of the monthly full-time employment for the period or portion thereof.

(e) Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

(f) A business shall be treated as owner of a qualified wind energy facility if it holds title to the facility if it ground leases the land underlying the facility for at least 50 years.

(g) A business that is investing in a qualified wind energy facility may apply for tax credits valued at less than the total amount of the capital investments in its project.

19:31-20.4 Restrictions

(a) A business shall not be allowed offshore wind economic development tax credits if:

1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital and employees that qualify the business for this Program; or

2. The business receives assistance pursuant to the "Business Retention and Relocation Assistance Act," P.L. 1996, c. 25 (C.34:1B-112 et seq.).

(b) A business that is allowed a tax credit under this Program shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L. 2002, c. 43 (C.52:27BBB-1 et al.).

(c) Capital investments in a qualified wind energy facility must be incurred after the effective date of P.L. 2010, c. 57 which is August 19, 2010, but prior to its submission of documentation pursuant to N.J.A.C. 19:31-20.7(f).

(d) If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for offshore wind economic development tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, or Municipal Rehabilitation and Economic Recovery Act, as applicable.

19:31-20.5 Application submission requirements

(a) Each application to the Authority made by a business that is an owner or tenant shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

- i. The name of the business;
- ii. The contact information of the business;
- iii. Prospective future address of the business (if different);
- iv. The type of the business;
- v. Principal products and services and three-digit North American Industry Classification System number;
- vi. The New Jersey tax identification number;
- vii. The Federal tax identification number;
- viii. The total number of employees in New Jersey at the time of application and in the last tax period prior to the application;
- ix. The total list of New Jersey operations;
- x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the Program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
- xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
- xiii. A list of all the development subsidies, as defined by P.L. 2007, c.200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidizes are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;
- xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and
- xv. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

- i. An overall description of the proposed project;
- ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified wind energy facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified wind energy facility;
- iii. The estimated value of the capital investment;
- iv. A certification by the chief executive officer, or equivalent officer for North American operations, of the business, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified wind energy facility will yield a net positive economic benefit in the amount required by N.J.A.C. 19:31-20.3(c), taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;
- v. Identification of the site of the proposed qualified wind energy facility, including the block and lot of the site as indicated upon the local tax map or other documentation acceptable to the Authority;
- vi. A project schedule that identifies projected move dates for the proposed qualified wind energy facility;
- vii. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;
- viii. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility;
- ix. The total number of anticipated new full-time positions that would be created in New Jersey and occupy the qualified wind energy facility, and the total number of full-time employees that would occupy the qualified wind energy facility, and the distribution of such totals identified by business entity;
- x. The total number of anticipated new full-time positions that would be created in New Jersey through any equipment supply coordination agreement and the projected length of time the agreement(s) will be in effect;
- xi. Any plans to hire and train local residents, including specifically residents of the municipality, and to contribute to the local economy and community; and

xii. Any other necessary and relevant information as determined by the Authority for a specific application.

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be new full-time employees as defined in this Program;

ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified wind energy facility;

iii. To the extent a tenant other than the business is meeting the employment requirement in the qualified wind energy facility, a submission from the tenant relating to (a)3i above;

iv. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy such as the tax credits, pursuant to P.L. 2007, c. 200; and

v. Any other necessary and relevant information as determined by the Authority for a specific application.

4. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.

(b) A developer may apply to have a building approved as a qualified wind energy facility by submitting the information required pursuant to (a)2i, ii, iii, and v above. Any tenant seeking an approval of tax credits for a qualified wind energy facility so approved will be required to submit the information required pursuant to (a)1, 2iv and vi through xii, 3, and 4 above.

(c) The business applying to the Program shall submit an application fee set forth at N.J.A.C. 19:31-20.6.

19:31-20.6 Application and servicing fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee of \$5,000, with payment in the form of a check, payable to the "New Jersey Economic Development Authority."

(b) In addition to the application fee in (a) above, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of .5 percent of the approved tax credit, not to exceed \$500,000, shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c).

(d) A non-refundable fee of .5 percent of the tax credit, not to exceed \$500,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report. For each project with tax credits of \$1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$20,000 per year; and for each project with tax credits in excess of \$1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$75,000 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of \$5,000 and \$2,500 for each additional request made annually.

(g) For each project with total tax credits of \$5,000,000 or less, a non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$5,000,000, a non-refundable fee of \$10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee of \$5,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a nonrefundable fee of \$10,000 shall be paid for any subsequent six-month extension.

19:31-20.7 Review of allocation and certification of project completion

(a) A business seeking an approval of tax credits for a qualified wind energy facility must apply for tax credits by July 1, 2024, and a business shall submit its documentation for approval of its credit amount by July 1, 2027.

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest date a completed application is submitted or if interest in the Program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

(c) In determining whether the company meets the net economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by the business, property taxes or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees. The Authority may also consider, at its discretion, local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth caused by the business's relocation to the wind energy zone. The Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives. The Authority may also consider taxes paid directly or generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated. The determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority and shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Board shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. The approval letter shall also set forth a condition requiring the business to maintain the project at the qualified wind energy facility after the eligibility period to the extent the net positive economic benefit is calculated based on a period of years after the eligibility period pursuant to N.J.A.C. 19:31-20.3(c).

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the Program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the offshore wind economic development tax credits.

2. In the approval notice to the business, the Authority shall set a date by which its approval will expire.

(e) Within six months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for and site control of the qualified wind energy facility. Commencing with the date six months following the date of application approval and every six months thereafter until completion of the project, each approved business shall submit an update of the status of the project to the Authority. Unless the Authority determines in its sole discretion that extenuating circumstances exist for extensions, the Authority's approval of the tax credits shall expire if the Authority does not timely receive the progress information or status update.

(f) Upon completion of the capital investment and employment requirements of the Program, the business shall submit a certification of a certified public accountant and any receipts or verifiable documentation requested by the Authority which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1. The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided, however that in no event, will the amount of tax credits exceed the amount of tax credits previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The certification with respect to employment shall include the number of full-time employees and new full-time positions employed at the qualified wind energy facility, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under this Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of this Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time jobs or salaries in the certification is reduced below the number of new full-time jobs in the approval of the incentive grant or the salaries proposed in the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

3. The certification shall also include the list of affiliates that contributed to the capital investment or full-time employees at the qualified wind energy facility and the number of full-

time employees in New Jersey in the last tax period prior to the credit amount approval of any such affiliate that was not listed in the application.

4. This certification shall be submitted to the Authority no later than three years after the Authority's application approval unless the Authority determines in its sole discretion that there are extenuating circumstances for extensions, but in no event later than July 1, 2027.

5. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the timely certification of the business that it has satisfied the capital investment and employment requirements of the Program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

19:31-20.8 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the eligibility period;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the Program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business among the business and the affiliates;

5. Events that would trigger reduction and forfeiture of tax credit amounts; and

6. Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 101.

19:31-20.9 Tax Credit amount; application and allocation of the tax credit

(a) The amount of the credit allowed pursuant to this Program shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, except as may be limited by the net positive economic benefits test and shall be taken over the eligibility period, at the rate of one-tenth of the total amount of the business' credit for each tax

accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the authority as having met the investment capital and employment qualifications, subject to any reduction or disqualification provided in P.L. 2018, c. 17 and this subchapter as determined by annual review by the Authority.

(b) In no event shall the amount of tax credits exceed the amount of tax credits previously approved by Board as follows:

1. If the owner uses space in a qualified wind energy facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area.

2. In order to determine the amount of the tenant's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-20.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

(c) The business may apply the credit against its corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and or capital investment requirements of the Program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-20.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the wind energy facility or employees at the business facility during the tax period for which the tax credits are issued.

(d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy for the tax period.

(e) A business that is a partnership shall not be allowed a credit under this Program directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or at the end of the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by the time and accompanied by the additional information as the director may require.

(f) The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.

(g) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter.

19:31-20.10 Application for tax credit transfer certificate

(a) A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be sold. Once approved by the Authority and the Director of the Division of Taxation, a certificate shall be issued. The certificate, upon receipt thereof by the business from the Director and the Authority, may be sold or assigned, in full or in part, in an amount not less than \$25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.

(b) The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount.

(c) In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the owners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-20.5(a).

(d) In no event shall the purchaser or assignee of a tax credit transfer certificate make any subsequent transfers, assignments, or sales of a tax credit transfer certificate.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

19:31-20.11 Cap on total credits

The value of all credits approved by the Authority may be up to \$100,000,000, except as may be increased by the Authority as set forth in this paragraph. The Authority shall monitor application and allocation activity under this Program. If the Chief Executive Officer of the Authority judges certain qualified offshore wind projects to be meritorious, the cap may, in the discretion of the Authority, be exceeded for allocation to qualified wind energy facilities in such amounts as the Authority deems reasonable, justified and appropriate.

19:31-20.12 Reduction and forfeiture of tax credits

(a) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under this Program, then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the required full-time employees at the qualified wind energy facility. The number of full-time employees in a business's Statewide workforce shall not include a new full-time employee at the qualified wind energy facility.

(b) If, in any tax period, the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreement drops below 300, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of full-time employees employed at the qualified wind energy facility and resulting from an equipment supply coordination agreement to 300, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(c) The credit amount for any tax period ending after January 13, 2026, which is the date eighteen years after the effective date of P.L. 2007, c. 346 (N.J.S.A.34:1B-207 et seq.), during which the documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available.

(d) In the event that any certification required from the business or the other party to any equipment supply coordination agreement, including, but not limited to the certifications required pursuant to N.J.A.C. 19:31-20.14(a)2, is found to be willfully false or that the business submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may require repayment of all tax credits received by the business.

(e) The Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the eligibility period that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c).

19:31-20.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified wind energy facility or sublease of the business's tenancy as follows:

1. If the qualified wind energy facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the eligibility period, the sublessee shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the Program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

19:31-20.14 Annual review reporting requirements; letter of compliance

(a) After notification pursuant to N.J.A.C. 19:31-20.7(g), the business shall furnish to the Authority an annual review report certified by a certified public accountant 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 full-time positions employed at the qualified wind energy facility, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under this Program, the salary of all new full-time employees, the number in the business's Statewide employment, total lease payments, the list of affiliates that contributed to the full-time employees at the qualified wind energy facility, 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, 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. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of this Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In

the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If in a tax period subsequent to a reduction in the size of the grant the business increases the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report above 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year, the Authority may reevaluate the net positive economic benefit and increase the size of the grant accordingly, but in no event shall the amount of tax credit that the business may apply in a tax period be greater than one-tenth of the total tax credit amount approved by the Authority. In the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. This reduction shall not affect any forfeiture under N.J.A.C. 19:31-20.12

2. A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, P.L. 2007, c. 346 or this subchapter.

(b) Failure to submit its annual report within 120 days after the end of the business's tax privilege period or submission of the annual report without the information required above, shall result in forfeiture of any annual tax credits to be received by the business unless the Authority determines in its sole discretion that there are extenuating circumstances excusing the business from the timely filing required.

(c) The tax credit certificate may provide for additional reporting requirements.

(d) In conducting its annual review, the Authority shall require a business to submit any information determined by the Authority to be necessary and relevant to its review and may require an audit of payroll and employment records.

(e) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate shall be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance shall indicate whether the business may take all or a portion of the credits allocable to the tax privilege period.

19:31-20.15 Appeals

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

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

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

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

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

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

19:31-20.16 Severability

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

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: Keyme, Inc. P45185

PROJECT LOCATION: 101 Hudson Street, 23rd floor Jersey City Hudson County

APPLICANT BACKGROUND:

Keyme, Inc., established in 2012, creates and owns physical kiosks that are used in conjunction with a mobile application to allow users to store, copy, share, and duplicate physical keys. While the company uses robotics and artificial intelligence, that technology is internal to the kiosk and is not provided directly to the end user. The scans are stored in the cloud, and that data is then sent to the physical kiosks, which fabricates copies of the keys. Kiosks can also scan keys inserted directly into a scanning apparatus. The kiosks are located in various cities across the United States, generally alongside a box retailer, grocery store, or corner store. In 2017, the number of kiosks increased to more than one thousand. The applicant is currently located in New York, NY. The applicant has demonstrated the financial ability to undertake the project.

MATERIAL FACTOR/NET BENEFIT:

Keyme, Inc. is seeking additional space to accommodate its growth needs. The company is considering a 15,000 Sq. Ft. facility in Jersey City, NJ or a 13,151 Sq. Ft. facility in Brooklyn, NY. The project involves the creation of 120 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 Keyme, 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 Greg Marsh, the CEO of Keyme, 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 \$546,902 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>	(\$/Square Foot of Gross Leasable Area)
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Industrial/Warehouse/Logistics/R&D - Rehabilitation Projects	\$ 20
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

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
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 a other targeted industry business in Hudson County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$600,000	\$600,000
New Jobs	10	120
Retained Jobs	25	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:

Base Grant	Requirement	Proposed by Applicant
Urban Transit Hub Municipality	Base award of \$5,000 per year for projects located in a designated Urban Transit Hub Municipality	Jersey City is a designated Urban Transit Hub Municipality
Increase(s) Criteria		
Transit Oriented Development	An increase of \$2,000 per job for a project locating in a Transit Oriented Development	101 Hudson Street is located in a Transit Oriented Development by virtue of being within ½ mile of the midpoint of a New Jersey Transit Corporation light rail station.
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense,	The applicant is a Manufacturing business.

	Energy, Logistics, Life Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	
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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"> - 1/2 of the Grant Calculation for New Full-Time Jobs ($1/2 * \\$7,500 = \\$3,750$) or - The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs ($\\$600,000 / 10 / (120 + 0) = \\500) 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:

Urban Transit HUB Municipality \$ 5,000

INCREASES PER EMPLOYEE:

Transit Oriented Development: \$ 2,000

Targeted Industry (Manufacturing): \$ 500

INCREASE PER EMPLOYEE:

\$ 2,500

PER EMPLOYEE LIMIT:

Urban Transit HUB Municipality \$12,000

LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:

\$ 7,500

AWARD:

New Jobs: 120 Jobs X \$7,500 X 100% = \$900,000

Retained Jobs: 0 Jobs X \$ 500 X 100% = \$ 0

Total: \$900,000

ANNUAL LIMITS:

Urban Transit HUB Municipality \$10,000,000

TOTAL ANNUAL AWARD

\$900,000

TOTAL ANNUAL AWARD BASED ON THE BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO THE AWARD) BEING 110% OF THE AWARD WITH A COMMITMENT TO REMAIN IN THE QUALIFIED BUSINESS FACILITY FOR 15 YEARS:

New Jobs: 120 Jobs X \$4,556 X 100% = \$546,720

Retained Jobs: 0 Jobs X \$500 X 100% = \$ 0

TOTAL ANNUAL AWARD

\$546,720

PROJECT IS: (X) Expansion () Relocation	
ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 600,000
ANTICIPATED COMPLETION DATE	
FOR CAPITAL INVESTMENT:	December 1, 2018
ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED BUSINESS FACILITY:	September 1, 2021
SIZE OF PROJECT LOCATION:	15,000 sq. ft.
NEW BUILDING OR EXISTING LOCATION?	Existing
INDUSTRIAL OR NON-INDUSTRIAL FACILITY?	Non-Industrial
CONSTRUCTION: (X) Yes () No	

NEW FULL-TIME JOBS:	120
RETAINED FULL-TIME JOBS:	0
STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 30, 2017):	0
CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:	N/A
MEDIAN WAGES:	\$ 30,000

NET BENEFIT MODEL:	2017
GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):	\$ 6,014,102
TOTAL AMOUNT OF AWARD:	\$ 5,467,200
NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):	\$ 546,902

ELIGIBILITY PERIOD:	10 years
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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.
6. If the number of employees, salaries or capital investment to be counted in the Net Benefit Test (NBT) falls by more than 10% from the amounts contained herein, the net benefit to the state will need to be recalculated under the then current NBT model, which may reduce the amount of the Grow NJ Award.

APPROVAL REQUEST:

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Keyme, 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

Keyme, Inc.

Grow New Jersey

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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. Peters

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:	Neumann Gruppe USA, Inc.	P45190
PROJECT LOCATION:	111 River Street	Hoboken City Hudson County

APPLICANT BACKGROUND:

Neumann Kaffee Gruppe (NKG) is the world's leading green coffee service group. With 49 companies in 27 countries, NKG is present in many markets and offers a broad range of services and products along the green coffee value chain. Neumann Gruppe USA, Inc., a subsidiary of NKG, is a holding company and the Applicant for this project. Two related companies, Rothfos Corporation and InterAmerican Coffee, Inc. comprise the consolidated results of Neumann Gruppe USA, Inc. for purposes of this application. The applicant has demonstrated the financial ability to undertake the project and is currently located in New York City, NY.

MATERIAL FACTOR/NET BENEFIT:

The company is exploring an opportunity to lease approximately 13,662 square feet at 111 River Street in Hoboken NJ, for a period of 10 years with an opportunity to renew the lease for an additional 5 years. In addition, the Company has an opportunity to expand by an additional 5,819 square feet during the term of the lease should it deem necessary. It is anticipated that the Company will employ 45 employees. Since these positions are coming from out of State, they are all considered to be new employees. This project would move the headquarters of Neumann Gruppe USA, Inc. to Hoboken City, NJ. Employees include the CEO’s of the two related entities as well as other back-office positions. The alternate location is its current 8,514 square foot facility in New York City, NY.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Neumann Gruppe USA, 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 Daniel Dwyer, the CEO of Rothfos Corporation and another from Florian Benkhofer, the CEO of InterAmerican Coffee, Inc., which state 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 \$10.3 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
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
All other businesses/industries	35 / 50
<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 an Non-Industrial – Rehabilitation Project for a other business in Hudson County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$546,480	\$1,300,880
New Jobs	35	45
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:

Base Grant	Requirement	Proposed by Applicant
Urban Transit Hub Municipality	Base award of \$5,000 per year for projects located in a designated Urban Transit Hub Municipality	Hoboken City is a designated Urban Transit Hub Municipality
Increase(s) Criteria		
Transit Oriented Development	An increase of \$2,000 per job for a project locating in a Transit Oriented Development	111 River Street is located in a Transit Oriented Development by virtue of being within ½ mile of the midpoint of a Port

		Authority Transit Corporation rail station.
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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	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> - ½ of the Grant Calculation for New Full-Time Jobs ($1/2 * \\$7,000 = \\$3,500$) or - The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs ($\\$1,300,880 / 10 / (45 + 0) = \\$2,890$) <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:		
Urban Transit HUB Municipality		\$ 5,000
INCREASES PER EMPLOYEE:		
Transit Oriented Development:	\$ 2,000	
INCREASE PER EMPLOYEE:		<u>\$ 2,000</u>
PER EMPLOYEE LIMIT:		
Urban Transit HUB Municipality	\$12,000	
LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:		
		\$ 7,000
AWARD:		
New Jobs:	45 Jobs X \$7,000 X 100% =	\$315,000
Retained Jobs:	0 Jobs X \$2,890 X 100% =	<u>\$ 0,000</u>
	Total:	\$315,000
ANNUAL LIMITS:		
Urban Transit HUB Municipality	\$10,000,000	
TOTAL ANNUAL AWARD		<u>\$315,000</u>

PROJECT IS: (X) Expansion () Relocation	
ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 1,300,880
ANTICIPATED COMPLETION DATE FOR CAPITAL INVESTMENT:	December 31, 2018
ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED BUSINESS FACILITY:	January 15, 2019
SIZE OF PROJECT LOCATION:	13,662 sq. ft.
NEW BUILDING OR EXISTING LOCATION?	Existing
INDUSTRIAL OR NON-INDUSTRIAL FACILITY?	Non-Industrial
CONSTRUCTION: (X) Yes () No	
NEW FULL-TIME JOBS:	45
RETAINED FULL-TIME JOBS:	0
STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2017):	0
CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:	N/A
MEDIAN WAGES:	\$ 61,200
NET BENEFIT MODEL:	2017
GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):	\$ 13,492,641
TOTAL AMOUNT OF AWARD:	\$ 3,150,000
NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):	\$ 10,342,641
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 Neumann Gruppe 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: Maggie Peters

APPROVAL OFFICER: Mark Chierici

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



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan
Chief Executive Officer
DATE: October 11, 2018
SUBJECT: Audible, Inc. Extension (“Audible”)
\$39,375,000 Grow NJ – P40678

Request:

Consent to a second six-month extension from November 15, 2018 to May 15, 2019 to provide the applicant sufficient time to complete the renovations and submit accompanying certifications for issuance of its tax credit certificate.

The Members are asked to approve this second sixth-month extension because staff delegations to approve these actions are limited to the first sixth-month extension, which was provided to the applicant in April 2016 to extend the time to certify from May 15, 2018 to November 15, 2018.

Background:

Audible, a subsidiary of Amazon.com, Inc., is a leading provider of spoken audio information and entertainment on the Internet.

On May 15, 2015, Audible was approved for a ten (10) year Grow New Jersey award not to exceed \$39,375,000 to incent the creation of 350 new jobs and the retention of 50 full-time jobs to relocate to a 77,000 square foot existing non-industrial facility in Newark, which will be renovated, restored, and refurbished as office space.

The Grow New Jersey statute requires projects to be certified and accompanying tax credits issued within three (3) years of the Authority’s approval. However, the Authority may grant up to two (2) six-month extensions of the deadline provided that the tax credit issuance date occurs within four years of the date of Board approval. Audible requested and received a first six-month extension in April 2016 to provide it more time to complete the renovations and refurbishment.

The applicant is now requesting a second six-month extension through May 15, 2019 which will allow the applicant sufficient time to add seismically independent new structures, which will require modifications to the interior fit out. These things coupled together will add 90 days to the construction timeline, resulting in new completion date of December 2018. The extension will also allow Audible enough time to submit accompanying certification documentation for issuance of the tax credit certificate. Audible has made capital investments of approximately \$50,000,000 (Mega Project) with \$58,000,000 estimated by year end and have created over 400 new jobs to date, that will be placed in the building shortly after the completion date.

Recommendation:

The Members are asked to consent to a second six-month extension from November 15, 2018 to May 15, 2019 to allow the applicant sufficient time to complete the renovations and certify project costs and jobs.

A handwritten signature in blue ink, appearing to be "T. Sullivan", is written over a horizontal line. The signature is located in the lower right portion of the page.

Prepared by: Tyshon Lee



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan
Chief Executive Officer
DATE: October 11, 2018
SUBJECT: Jackson Hewitt Inc. & Subsidiaries ("JH")
\$2,673,750 Grow NJ – P40714

Request:

Consent to a second six-month extension from November 15, 2018 to May 15, 2019 to provide the applicant sufficient time to complete the capital investment and submit accompanying certification for issuance of its tax credit certificate.

The Members are asked to approve this second sixth-month extension because staff delegations to approve these actions are limited to the first sixth-month extension, which was provided to the applicant in April 2018 to extend the time to certify from May 15, 2018 to November 15, 2018.

Background:

On May 15, 2015, Jackson Hewitt Inc was approved for a ten (10) year Grow NJ Award not to exceed \$2,673,750 for the retention and relocation of 69 Grow NJ eligible jobs from its current facility in Parsippany-Troy Hills, New Jersey to an existing non-industrial premise located in Jersey City that will become its headquarters facility.

The Grow NJ statute requires projects to be certified and accompanying tax credits issued within three (3) years of the Authority's approval. However, the Authority may grant up to two (2) six-month extensions of the deadline provided that the tax credit issuance date occurs within four years of the date of Board approval. JH requested and received its first six-month extension in April 2018 to provide additional time through November 15, 2018 to complete and submit its capital investment cost certification and documentation for issuance of its tax credit certificate.

The applicant is now requesting its second six-month extension through May 15, 2019 which will allow sufficient time to complete its capital investment cost certification for issuance of its tax credit certificate. JH has completed construction, received its certificate of occupancy and has relocated all 69 jobs to its new headquarters in Jersey City.

Recommendation:

The Members are asked to consent to a second six-month extension from November 15, 2018 to May 15, 2019 to allow the applicant sufficient time to complete its cost certification and documentation for issuance of its tax credit certificate.

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



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan
Chief Executive Officer
DATE: October 11, 2018
SUBJECT: Resintech, Inc. Extension
\$138,817,600 Grow NJ – P42319

Request:

Consent to approve the second six-month extension from April 14, 2020 to October 14, 2020 to provide the applicant sufficient time to complete the renovations and submit accompanying certifications for issuance of its tax credit certificate.

The Members are asked to approve this second sixth-month extension because staff delegations to approve these actions are limited to the first sixth-month extension which was provided to the applicant in August 2018 to extend the time to certify from October 14, 2019 to April 14, 2020.

Background:

On October 14, 2016, Resintech was approved for a ten (10) year Grow New Jersey Award not to exceed \$138,817,600 for the retention and relocation of 92 Grow eligible jobs from its current facility in West Berlin to a new industrial premise in Camden.

The Grow New Jersey program calls for projects to be completed and the accompanying tax credits issued within three years of the Authority's approval of the project. In extenuating circumstances, the Authority may grant two six-month extensions of the deadline, however, in no event shall the tax credit issuance date occur later than four years following the date of approval by the Authority.

EDA granted the initial six-month extension in August 2018 but has since learned that the applicant requires a second six-month extension to close on financing required to complete the project. The Members are therefore asked to approve the second six-month extension to October 2020, to facilitate the closing with the lender.

Recommendation:

Consent to a second six-month extension from April 14, 2020 to October 14, 2020 to allow the applicant to close on financing necessary to complete renovations and certify project cost and jobs.

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

Prepared by: Robert Carroll

EDISON INNOVATION FUND

**TECHNOLOGY BUSINESS TAX CERTIFICATE
TRANSFER PROGRAM APPEALS**



MEMORANDUM

TO: Members of the Authority
FROM: Timothy Sullivan, Chief Executive Officer
DATE: October 11, 2018
SUBJECT: Technology Business Tax Certificate Transfer Program – Appeals

Pursuant to the Program's enabling legislation, the Authority annually reviews applications to ensure applicants meet the statutory requirements of the Program. Staff's recommendations for approval or declination are then presented to the Members for approval. Applications that are declined have 20 days to submit appeals which are reviewed by an independent Hearing Officer.

At the August 10, 2018 Board Meeting, the Members considered 52 requests from companies to participate in the Program. A total of 49 requests were recommended for approval, 2 requests were withdrawn from consideration, and 1 request was recommended for declination.

I reviewed the attached Hearing Officer's report regarding the appeal of Authorized Luxury Group and I concur with the recommendation that the declination be upheld.



Timothy Sullivan
Chief Executive Officer



MEMORANDUM

To: Timothy Sullivan, CEO,
Members of the Authority

From: Marcus Saldutti, Hearing Officer

Date: October 11, 2018

Subject: Authorized Luxury Group Appeal of NOL Program Declination

Request:

Consent of the members to the Hearing Officer's recommendation to uphold the declination of the NOL application for Authorized Luxury Group.

Background:

Pursuant to the enabling legislation, the New Jersey Economic Development Authority ("Authority" or "EDA") administers the Technology Business Tax Certificate Transfer Program ("Program"), including the review of each application to ensure applicants meet the requirements of the Program. Staff recommendations are then presented to the Members for consideration. 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:

By way of background, the Board of Directors of the EDA reviewed and declined Authorized Luxury Group's ("Company") application for Program benefits on August 10, 2018. The Board concluded that the Company failed to meet the definition of a "Technology business" as per N.J.A.C. 19:31-12.2.

Subsequently, on August 31, 2018 the EDA received the Company's formal appeal.

Legal Citations and Discussion:

In 1995, pursuant to N.J.S.A. 34:1B-7.37, the New Jersey Emerging Technology and Biotechnology Financial Assistance Act (the "Act") established the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

In 1997, pursuant to N.J.S.A. 34:1B-7.42a. and as subsequently amended, a Corporation business tax benefit certificate transfer program was established within the New Jersey Emerging

Technology and Biotechnology Financial Assistance Program.

§ 34:1B-7.42b. Defines "Technology company" to mean:

"...an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in this State who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

The EDA defined "Technology business" at N.J.A.C. 19:31-12.2 to mean:

"...an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices."

Within this Act, pursuant to N.J.S.A. 34:1B-7.38. Findings, declarations; the Legislature made several findings. Among them was one specific to the technology and biotechnology companies as defined in the statute, which demonstrates the intent to fund only those companies that fit the specific criteria in the definition:

34:1B-7.38. c. In order for society to appreciate the anticipated potential rewards from emerging technology and biotechnology research, private industry must have access to sufficient financial resources to conduct research and transfer research discoveries into viable, commercial products;

Discussion:

During the August 10, 2018 Board meeting the Technology and Life Sciences ("TLS") staff recommended declining the Company from participation in the Program. TLS staff concluded that the primary business of the Company is not technology per the legislative and regulatory definitions. TLS staff further concluded that the Company primarily employs technology to enhance the means by which it sells watches. In short, the technology serves to support the

Company's primary business.

The Hearing Officer has made a review of the following: application with attachments; Company appeal with exhibit and attachment; Board memorandum; declination letter; TLS memo of October 2, 2018; and TLS site visit notes, the Hearing Officer agrees with the TLS conclusion to decline the application.

The Company presents two primary arguments in support of its application to the Program in its appeal. The first is that its business fits within the legislation as written. To that end, the Company details its examination of the syntax and grammar of the legislation by way of the engagement of language experts who, according to the Company, concluded that the legislation is ambiguous. No expert reports were attached to the appeal and it is unknown whether "Attachment one: Fit with Definition of Technology Business" was prepared by the Company or the independent experts it cites. As such, it was not possible to assess the veracity of the claims in the analyses

Moreover, the Company's interpretation conflicts with the standard interpretation applied by the EDA. Specifically, the Company interprets "whose primary business is the provision of a scientific process, product, or service" to limit "scientific" to apply only to "process" and not apply to "product" or "service." However, reasonable statutory interpretation allows for the adjective describing the noun to not be repeated when listing multiple nouns. This is supported by the legislative findings referring to "emerging technology and biotechnology research" (emphasis added) as being one of the purposes of the Act. Therefore, with an understanding that scientific applies to process, product and service, the Hearing Officer believes the definition of a Technology company, combined with the legislative intent, provides enough specificity to come to a conclusion in this matter.

The second primary argument presented in support of the Company's application is that its business is similar to prior successful applicants to the Program. The Company acknowledges in its appeal that "...the acceptance process may include elements that we are not aware of (e.g. physical office interviews/visits) that may have contributed to the Board's decision on other applicants." However, the task at hand is the determination of whether or not this applicant qualifies under, and furthers the legislative intent, of the Program.

When reviewing this applicant, EDA's practice with regard to platform-based business is to review various standard factors including, but not limited to, the Company's own description of its business model, the extent the technology is used, and the primary revenue source to determine whether it satisfies the statutory definition of a "Technology company." When applying those factors here, the Hearing Officer found that the Company describes itself as being engaged in the e-commerce sale of luxury watches. Next, the EDA's site visit found that, although one employee is focused on the Company's new software, Winston, the majority of their technical team was focused on using standard technology to execute business practices.

Lastly, the Company generates revenue by receiving a commission from the sale of watches rather than license out their proprietary technology. Based on these factors, which are factors that EDA has used in the past to review other applicants, including those listed by the Company, the

Hearing Officer concludes that the Company only provides a technological platform which would not qualify it as a “Technology company” under the statute.

The appeal concluded with an invitation for EDA to visit the Company’s office, which invitation was subsequently accepted by TLS staff at Committee direction.

On October 2, the Hearing Officer received from Brian Sabina, Senior Vice President, Economic Transformation, a memorandum, which was shared with the Company, making several findings. This memorandum also attached a summary of the site visit, including clarifying facts obtained from the Company. The memorandum concludes with a recommendation to uphold the declination. The Hearing Officer is accepting the statements regarding the visit as facts and is taking those facts into account in rendering a determination.

The application and subsequent appeal failed to substantiate that the Company’s primary business was a scientific process, product, or service that employs highly educated individuals who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. These are statutory elements and are fundamental to qualifying for the Program.

In reviewing the statutory elements, I reviewed the Company’s written description of its business in its application, the company’s financial statements, and the Company’s website, which indicate that they are focused on, and in the business of, selling luxury watches online. Although technology is involved in the sale of the watches, as reported by TLS staff, the Company employs primarily standard technology adapted for the company (e.g. standard file transfer protocol) and off the shelf technology (e.g. Magento – an open source cloud commerce platform and Net Suite – an integrated cloud business software suite).”

The proprietary middleware called “Winston” (copyright application pending) serves only to connect the aforementioned technologies in providing an interface for brands and jewelers to adjust pricing and stocking. In sum, the middleware is used to facilitate the sale of luxury watches and does not constitute the Company’s primary business.

Moreover, as supported by the October 2 TLS memo notes, the Hearing Officer found that the majority of the Company’s technical staff was focused on using standard technology to execute ordinary business practices with only one employee focusing on the Company’s core technology, Winston. The fact that the majority of the technical staff is not working toward the development of the Company’s core technology does not fit with the general attributes found in a technology company. Taking this into consideration, along with the fact that the Company is not licensing or selling the technology, the Hearing Officer concludes that the Company does not qualify as a technology company pursuant to the statute.

Tellingly, according to the TLS site visit notes, CEO Fred Levine stated that the Company is not licensing out technology. Mr. Levine did indicate that in the future they see multiple applications for their system; however, at present, the Company is more focused on growing the business.

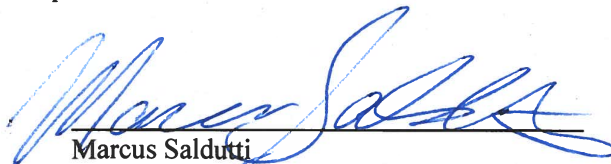
Ultimately, this applicant is an on-line retailer adapted for a niche industry with a core business

of selling luxury watches - that is why it exists and how it intends to profit.

Although the Hearing Officer finds the company's endeavor to be novel and potentially disruptive, a review of the appeal and available evidence demonstrates that Authorized Luxury Group does not qualify as a technology business as defined in the statute and regulations, nor is its primary business consistent with the legislative intent of the Program, which is to provide financial resources to conduct research and transfer research discoveries into viable, commercial products.

Recommendation:

As a result of careful consideration of the above appeal in consultation with the Attorney General's Office, the application of Authorized Luxury Group is recommended for denial.



Marcus Saldutti
Hearing Officer



August 31, 2018

Dear NJEDA Board and Mr. Marcus Saldutti (Hearing Officer for appeals)

Despite the NJEDA rejection of our application for the Technology Business Tax Certificate Transfer Program, the Authorized Luxury Group, Inc. (ALG) continues to believe it is an ideal candidate for the program and therefore, through this letter, are formally appealing the Board's decision.

Background

Summarizing background presented to the Board at the August 10th public hearing, as the CEO of ALG, I am leading this process on the company's behalf. We are a highly visible, very high potential growth technology company with an intense desire to contribute to the renaissance of the downtown Newark area. Personally, after working at McKinsey & Co. for 5 years after business school I led the international business for Movado Group and then left to become a serial entrepreneur. Prior to ALG, I founded, built, and then sold LGI Network to the NPD Group. LGI Network became the global standard for information in the watch and jewelry industry. We based the company in Randolph, NJ and then moved it later to Parsippany. The leading jewelers across the country and many of the top brand CEOs around the world specifically approached me to develop a means to address a retailing model for the watch industry that was fundamentally broken (i.e., no viable way to connect with consumers online while ensuring a consistently elevated experience and image). The premise was to develop a new national model and platform that tied together the critical elements to allow global brands and local "mom & pop" bricks & mortar retailers to efficiently allow these local retailers to serve the luxury watch (and one day jewelry) consumer that prefers to purchase online. The technology and ecosystem we have built enables fragmented local jewelers to be central to the solution (vs essentially forcing consumers that want to buy this way to go around local retailers – and removing this fast growing crucial source of consumption from them).

ALG raised considerable capital and has substantial new funding waiting on the sidelines and has already built and is live with the platform. Already 9 of the top 25 brands in the world are working with ALG's consumer branded site (Troverie.com) – in all cases requiring the signoff of the global CEOs of these mega-luxury goods companies. This compares very favorably to all other players that are trying to connect with this market. These CEOs, like ALG, see the United States as the first market among a global expansion path. Furthermore, we already have a presence in over 50 cities across the country through our affiliated jeweler partners, again dwarfing other established players.

Despite our broad exposure, and an abundance of arguments to suggest that ALG would be best situated in NYC, we based the headquarters of ALG in Newark because of our passion to be part of Newark's renaissance. Already I have been a vocal advocate to my business and supplier networks – and commonly speak to the choice of Newark as our home in interviews with the press (and the virtues of Newark generally).

At the public hearing, I shared detailed information supporting ALG's application and fit with the written legislation. This information is attached as an exhibit. The rejection letter sent by NJEDA sent on August 13th to ALG synthesizes the reason for declining ALG's application as: "It [NJEDA] was concluded that the **primary business of the applicant is not technology** per the legislative definition above. While the applicant utilizes technology to enhance the means through which it sells watches, **the technology serves to support its primary business.**" Since this seems to be the crux of NJEDA's concern with our application, further comments on the appeal with focus on this issue.

Fit with Written Legislation

ALG continues to believe our application (and underlying business) meets the legislative definition. Attachment one of the exhibit details our examination of the grammar and syntax of the legislation and describes our view. Despite considerable efforts by the NJEDA to be as clear as possible in the legislation, given the complex sentence structure used in the legislation (considerable multiple adjectives and adverbs, “or” clauses) we read the legislation differently, and attachment one, with appropriate simplifications (yet no changes) to the exact legislative language, clearly defines our business. We have engaged more specialized language experts (e.g., English educators) and they concur that, at a minimum the language could be clearer, and that as it is currently written it is ambiguous.

Similarity to other Accepted Company

Based on this, and before embarking on our very considerable efforts to move forward with the application (and the \$2,500 fee), we looked to other companies that had/have been accepted into the program for instructive evidence about our fit with the program and the Board’s decision-making process. We understand that the acceptance process may include elements that we are not aware of (e.g., physical office interviews/visits) that may have contributed to the Board’s decisions on other applicants. Naturally, we do not have access to such information and therefore relied on publicly available information to learn about the other companies approved for the program. Based on this review, we identified a number of accepted programs that appear similar to ALG in that the **primary business of the applicant is not technology**, and rather, **the technology serves to support its primary business**. Since this was the singled-out reason for rejecting ALG’s application, we initially were optimistic about being approved for the program concluding that the Board, like ALG, interpreted the Statute like we did. We hope the Board and Hearing Officer will reflect this striking similarity on the pivotal element explicitly highlighted by NJEDA as it reviews our appeal.

Two of the companies that are worth noting along these lines are CircleBlack, Inc. and Reflik, Inc. To be clear, we are not suggesting these companies are not appropriate for the program. In fact, just the opposite. We believe each, like ALG, are consistent with the letter of the written legislation and the overall stated and unstated goals of making New Jersey a “go-to” place for situating and expanding technology businesses and other businesses that support technology businesses. Similar to the NJEDA’s call-out to learning from our website’s description of our business, one can quickly review each of these companies’ websites to find:

- CircleBlack. “Using cutting-edge technology, CircleBlack is a simple, secure, powerful platform for both Advisors and Investors. CircleBlack Advisor acts as a hub, giving your firm and advisors the tools needed to efficiently drive business forward while building more rewarding relationships with clients.”
- Reflik, Inc. “Reflik, the leader in crowdsourcing talent, finds top candidates in half the time and for half the cost, through its extensive network of recruiters and industry professionals.” Of from its Google Ad topline summary: “Reflik provides a new and technologically advanced way to hire top employees without any administrative burden. Learn about our recruiting platform today.”

In both cases, technology is not their primary business (CircleBlack is a financial services platform; Reflik is an employment recruiting platform). They, like ALG, share the disruptive and enabling premise of leveraging technology to create powerful platforms and ecosystems to bring efficiency to fragmented markets. On the other elements outlined as important to the Program, I would be surprised if either of these companies align as well with the program’s stated definition. For example, nearly all of our 12 employees are about using sophisticated processes and knowledge to develop/provide our service. I can only guess that a much larger percent of each of

these companies' workforces are speaking directly to customers regarding the service (whether financial services or recruiting). We very rarely have direct contact with consumers purchasing watches – those that use our platform (eg retailers) do. Also, our location at the hub of Newark's innovation zone further points to why investing in ALG is a natural fit with the goals of the Program.

Conclusion and Invitation

After reflecting on the summary above, we hope the Hearing Officer better understands why ALG is such a strong fit with the Program, and based on the actions taken by the Board and the written legislation, why we came to this conclusion and applied to the Program. We would welcome the opportunity to answer any other questions you may have and, if the NJEDA is interested, for someone to visit our office. You will see a flurry of activity with computers and screens and data analytics – all focused on developing our platform and ecosystem. What you won't see is anyone selling watches.

We have a great future ahead and look forward to continuing to be advocate for Newark – and continue serving as an ambassador stressing that the city and state is all about trying to create the right environment for technical companies to prosper.

We look forward to hearing about next steps regarding the appeal.

Sincerely,



Fred Levin
CEO, Authorized Luxury Group, Inc.

EXHIBIT ONE: PRESENTATION AT PUBLIC HEARING

Authorized Luxury Group Inc. Presentation to NJEDA
Public hearing, August 10, 2018

Matter: ALG application for 2017 Technology Business Tax Certificate Transfer Program

To the Board:

We respectfully request the board reconsider our application based on the following clarifications. We look forward to answering any questions.

Case supporting approving ALG's application:

1. **We satisfy all key eligibility requirements** that we are aware of:
 - ✓ We are located in Newark NJ in one of the innovation zones
 - ✓ We dramatically exceed definition of "new or expanding" growing from 0 to 12 employees in less than a year – with plans to aggressive continue hiring
 - ✓ We own or have filed for proprietary intellectual property (per Q14 of NJEDA published FAQs)
 - ✓ We meet the definition of a technology business as specified in legislation (see attachment 1)
 - ✓ We have unused NOLs and will continue to invest in the years to come
2. **We are highly visible and a true innovator** – and will only become more visible with upcoming exposure, our aggressive global outlook, and our leading competitive position. We are and will continue to attract serious and *positive* public exposure for Newark and NJ.
3. **The program leader, Kathleen Coviello, and members of her team (Rachel McCauley) are supportive** and have indicated that they believe ALG represents the type of application that the state should support with these types of programs.
4. **We believe we are equally or more in-line with the key goals and eligibility requirements of selected companies that were accepted** this year. E.g.,
 - ✓ Innovation zone location (bolstering current situation w only two accepted applicants in a zone)
 - ✓ Demonstrated employment growth and future growth potential for ALG and also assisting in maintaining the competitive position for bricks & mortar retailers across the state
 - ✓ Level of technical focus/background of employment base (5 of 12 employees with technical degrees or prior employment at technology leading companies; all other employees minimum of college graduates)
 - ✓ Business focus: Company that is recognized as one of a handful of technology leaders in the industry – unlike more standard financial services providers shopping analytics companies.

Attachment one: Fit with Definition of Technology Business

"Technology business" means an emerging corporation (1), that has a headquarters or base of operations located in New Jersey (2), that owns, has filed for, or has a license to use protected, proprietary intellectual property (3) whose primary business is the provision of a scientific process, product, or service (4) and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey (5) who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service(6). Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices. "

Re-printed From NEW JERSEY ADMINISTRATIVE CODE, TITLE 19. OTHER AGENCIES NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY; CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS; SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM (section § 19:31-12.2 Definitions)

- 1) ALG, Inc. was formed in August of 2017 and since that time has hired, and currently employs 12 employees dramatically exceeding the definition outlined in the legislation
- 2) Located at 60 Park Place, Newark NJ, in an innovation zone
- 3) Filed copyright application for Winston Fragmented Jeweler Operational Platform (see Copyright application)
- 4) ALG provides the service of connecting the fragmented network of thousands of bricks & mortar retailer store-fronts across the country with leading luxury goods companies and consumers via our innovative and disruptive technology platform (see Exhibit B in the application). The platform essentially eradicates the inefficiencies of these local business with our technology platform and harnesses their considerable strengths (reputation, relationships, inventory, skilled employees) enabling them to compete against nationally-focused category killers like net-a-porter or Tourneau. ALG designed and developed its proprietary computing software in-house using the resources identified in #5.
- 5) 5 of our 12 employees are focused on technology as either their entire focus or a key focus of their position. (see follow-up email sent to Rachel McCauley on July 24)
- 6) ALG's service is developed using cutting edge processes and proprietary and complicated algorithms as well as computing software processes like Agile and languages like JavaScript that require highly specialized knowledge (see references in #4 and #5 above)

BOND RESOLUTIONS



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

SUBJECT: NJEDA/School Facilities Construction Bonds

DATE: October 11, 2018

SUMMARY OF PROPOSED FINANCING

The Authority is currently being asked to approve the issuance of one or more series of 2018 School Facilities Construction Refunding Bonds (the “2018 Refunding Bonds”), and one or more series of the 2018 School Facilities Construction Bonds (the “2018 New Money Bonds”) and various related actions described below. The 2018 Refunding Bonds (to be issued in an amount not to exceed \$450 million), will be used to (i) refund or pay the principal of and/or interest on a portion of certain currently outstanding School Facilities Construction Bonds or Notes (“Prior Obligations”), and (ii) pay the costs of issuance of the 2018 Refunding Bonds. The proceeds of the 2018 Refunding Bonds will be used for refunding purposes within the meaning of the Act (as defined below) and will not count against the statutory debt issuance limitation placed on the School Facilities Construction Program. The 2018 New Money Bonds (to be issued in an amount not to exceed \$525 million), will be used to finance authorized school facilities projects and to pay the costs of issuance of the 2018 New Money Bonds.

BACKGROUND

Since April 2001, the Authority has issued prior series of tax-exempt and taxable School Facilities Construction Bonds and Notes in the aggregate principal amount of \$10,801,804,000 for new money projects under the Educational Facilities Construction and Financing Act, L. 2000, c. 72, as amended and supplemented by L. 2007, c. 137 and L. 2008, c. 39 (the “Act”). Additionally, the Authority has issued prior series of refunding bonds in the aggregate principal amount of \$13,865,115,000 that restructured and refunded all or a portion of several Series of tax-exempt and taxable bonds and notes, previously issued under the Act.

The Authority in connection with the School Facilities Construction Program (the “School Program”) has \$9,606,050,000 of tax-exempt and taxable bond and notes outstanding as of October 1, 2018.

PLAN OF FINANCE

The Authority is currently being asked to approve the issuance of one or more series of 2018 Refunding Bonds and 2018 New Money Bonds.

The 2018 Refunding Bonds will be used to (i) refund or pay the principal of and/or interest on a portion of certain currently outstanding School Facilities Construction Bonds or Notes (“Prior Obligations”), and (ii) pay the costs of issuance of the 2018 Refunding Bonds. The 2018 New Money Bonds will be used to: (i) finance authorized school facilities projects; and (ii) pay the costs of issuance of the 2018 New Money Bonds.

APPROVAL REQUEST

The Authority is being requested to approve the adoption of the Thirty-Eighth Supplemental School Facilities Construction Bond Resolution (the “Thirty-Eighth Supplemental Resolution”) authorizing the issuance of one or more series of 2018 Refunding Bonds in an amount not to exceed \$450 million, and the issuance of one or more series of 2018 New Money Bonds in an amount not to exceed \$525 million. The 2018 Refunding Bonds and 2018 New Money Bonds will be issued for the purposes described above. The 2018 Refunding Bonds and 2018 New Money Bonds will be secured by the State Contract with the Treasurer, as amended by Amendment No.1 to the State Contract dated April 22, 2010, to implement the funding provisions of the 2008 Amendment to the Act (the “State Contract”).

The 2018 Refunding Bonds are expected to be issued as fixed rate tax-exempt bonds, and subject to the following parameters, all as determined by an Authorized Officer of the Authority, in consultation with the Treasurer, the Office of Public Finance, the Attorney General’s Office and Bond Counsel:

1. The final maturity of any 2018 Refunding Bonds issued as tax-exempt Bonds for the purpose of refunding outstanding Bonds will not exceed the final maturity of the Bonds to be refunded or paid;
2. The final maturity of any 2018 Refunding Bonds issued as tax-exempt Bonds for the purpose of refunding outstanding Notes will not exceed 30 years from the date of original issuance of the Notes to be refunded or paid;
3. The final maturity of any 2018 Refunding Bonds issued as taxable Bonds will not exceed 20 years from the date of issuance;
4. The true interest cost of the 2018 Refunding Bonds issued as tax-exempt Bonds will not exceed 6%; and
5. The true interest cost of the 2018 Refunding Bonds issued as taxable Bonds will not exceed 8%.

The 2018 New Money Bonds are expected to be issued as fixed rate tax-exempt bonds, and subject to the following parameters, all as determined by an Authorized Officer of the Authority, in consultation with the Treasurer, Office of Public Finance, Attorney General's Office and Bond Counsel:

1. The final maturity of any 2018 New Money Bonds will not exceed 30 years from the date of issuance;
2. The true interest cost of the 2018 New Money Bonds will not exceed 8%;

The Authority is also being asked to approve certain actions of, and delegation of actions to, an Authorized Officer of the Authority with information provided by the Treasurer, Bond Counsel, and the Attorney General's Office and in consultation with, the Office of Public Finance, Bond Counsel and the Attorney General's Office, as applicable, and as approved by the Treasurer, which actions are more fully set forth in the Thirty-Eighth Supplemental Resolution, which is incorporated herein by reference, and will be memorialized in one or more Series Certificates, and may include, without limitation:

1. To determine the date of issuance, sale and delivery, the maturity dates, the principal amount and the redemption provisions of each series of 2018 Refunding Bonds and 2018 New Money Bonds in accordance with the parameters set forth above;
2. To determine whether each series of the 2018 Refunding Bonds and 2018 New Money Bonds shall be issued as tax-exempt or taxable bonds and/or notes;
3. To select and appoint any additional co-managers and/or underwriters upon recommendation of the State Treasurer, utilizing Treasury's RFQ/RFP process in accordance with Executive Order No. 26 and Executive Order No. 37;
4. To select and appoint a firm to serve as bidding agent, upon recommendation of the Treasurer based on Treasury's competitive RFP/RFQ process, to solicit bids and to enter into or purchase Defeasance Securities (as defined in Sections 101 and 1201(2) of the Resolution) with proceeds of any Series 2018 Refunding Bonds issued to refund the Prior Obligations, in the event that such Authorized Officer of the Authority determines that it is advantageous to the Authority to invest any such proceeds in Defeasance Securities;

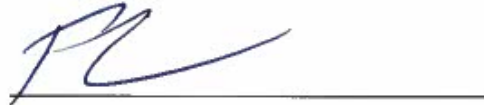
In exercising the Authority's discretion to approve specific transactions authorized under the Thirty-Eighth Supplemental Resolution, it is anticipated that the Authorized Officers of the Authority will make decisions on behalf of the Authority in consultation with the Treasurer.

Professionals were selected in compliance with Executive Order No. 26. Chiesa Shahinian & Giantomasi PC was selected as Bond Counsel through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed transactions. Through Treasury's competitive RFP/RFQ process, as applicable, the following professionals were chosen: Bank of America Merrill Lynch as senior managing underwriter and U.S. Bank National Association as Trustee, Paying Agent, Registrar, and Escrow Agent. The Thirty-Eighth Supplemental Resolution will also authorize Authority staff to take all necessary actions incidental to

the issuance of the 2018 Refunding Bonds and 2018 New Money Bonds, including without limitation, the selection of additional professionals, if any, pursuant to a competitive process utilizing Treasury's RFP/RFQ process in accordance with Executive Order No. 26 and Executive Order No. 37.

RECOMMENDATION

Based upon the above description, and subject to the criteria set forth above, the Authority is requested to: (i) approve the adoption of the Thirty-Eighth Supplemental Resolution authorizing the issuance of the 2018 Refunding Bonds in the total aggregate principal amount not to exceed \$450 million, the issuance of the 2018 New Money Bonds in the total aggregate principal amount not to exceed \$525 million as well as other matters in connection with the issuance and sale thereof and otherwise described above; (ii) approve the several actions and delegation of actions to an Authorized Officer of the Authority as may be necessary or advisable in order to issue the 2018 Refunding Bonds and 2018 New Money Bonds and to undertake the other transactions described in (i) above on terms which are in the best interest of the State; (ii) authorize the use of the aforementioned professionals; and (iii) authorize Authority staff to take all necessary actions incidental to the issuance of the 2018 Refunding Bonds and 2018 New Money Bonds; subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.



Prepared by: Teresa Wells

COMBINATION PRELIMINARY AND BOND RESOLUTIONS

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM**

APPLICANT: LEAP STEM, LLC

P45195

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 527 and 528-544 Cooper Street Camden City (T/UA)

Camden

APPLICANT BACKGROUND:

LEAP STEM, LLC is a special purpose limited liability company, created for the sole purpose of owning or leasing a portion of the Project and leasing it to Leap Academy Charter School, Inc.

LEAP (Leadership, Education and Partnership) Academy Charter School, Inc. (the "School" or "LEAP") is a comprehensive K-12 public charter school serving students in Camden, NJ. The School focuses on providing college preparatory education with an emphasis on the content areas of Science, Technology, Engineering and Mathematics. Edward Xavier Barrios is the Chief Academic Officer of the school. LEAP has no outstanding issues with the Office of Charter & Renaissance Schools. The School's charter has been renewed four times; its current charter covers the period of 2017-2021, through June 30, 2021.

The Authority has provided prior financing to LEAP through P41359 which closed in 2015 in the amount of \$5,940,000 for 13 years via a direct purchase by TD Bank. In addition, LEAP Cramer Hill, LLC closed on tax-exempt bond financing in the amount of \$9,500,000 in 2014, through P39147, as well as an additional \$1,000,000 through P41961 in 2016, on behalf of the LEAP Schools.

The applicant is a not-for-profit, 501(c)(3) entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the 1986 Internal Revenue Code as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

APPROVAL REQUEST:

The proceeds of this tax-exempt financing will be used by LEAP STEM, LLC to purchase a long-term leasehold interest in the Project from LEAP Academy. LEAP Academy will use the sale proceeds to pay off a Republic Bank bridge loan undertaken to refinance the TRF New Markets Tax Credit financing originally used to build LEAP's STEM School. That financing was in the aggregate amount of \$10,000,000. The New Markets Tax Credit financing had three separate Promissory Notes: "Note A" for \$5,472,174, "Note B" for \$2,562,608.00, and "Note C" for \$1,965,218. Note C was to be forgiven upon the payment in full of Note A and Note B. Sinking fund payments had been deposited into a restricted account of LEAP at Chase Bank which totaled over \$2,000,000. Approximately \$1,000,000 of the Sinking Fund Account was to be applied to the repayment of Note A as part of the refinancing.

In using the bridge loan Leap Academy was able to capture a loan forgiveness of slightly more than \$2 million.

Leap Academy will lease the STEM School to LEAP STEM, LLC, a not-for-profit entity, which will lease the facility back to Leap Academy. LEAP STEM, LLC will be the borrower of the EDA bond to be purchased directly by Republic Bank. The proceeds of the LEAP STEM, LLC EDA bond issue will be used repay the Republic bridge loan. Lease payments by Leap Academy will be used by LEAP STEM amortize the bond issue.

PUBLIC HEARING ONLY

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM - (PREMIER LENDER)**

APPLICANT: The Friends of TEAM Charter Schools, Inc.

P45075

PROJECT USER(S): TEAM Academy Charter School, Inc. *

* - indicates relation to applicant

PROJECT LOCATION: Various

Newark City (T/UA)

Essex

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

APPLICANT BACKGROUND:

The Friends of TEAM Charter Schools, Inc. is a 501(c)(3) not-for-profit fundraising and real estate holding company formed for the benefit of assisting charter schools, including TEAM Academy Charter Schools, a network of charter schools in Newark, New Jersey ("TEAM"). The TEAM Charter Schools are an independent organization and part of the KIPP Foundation charter school network based in California. The KIPP Foundation is a private foundation that supports charter schools with over 1,500 teachers serving more than 27,000 kids in schools across the country. TEAM currently serves 4,364 students in grades K-12 in Newark. TEAM is in good standing with the Department of Education.

In 2014, TEAM's management formed KIPP New Jersey, a not-for-profit charter management organization to continue managing TEAM Charter Schools in Newark and expanding to manage schools in Camden (KIPP Cooper Norcross Academy) and in Miami, FL (opened August 2018). Gary DeBode is the President of The Friends of TEAM Charter Schools.

To finance facilities projects for TEAM, Kingston Educational Holdings 1, Inc., NCA Facility, Inc. and Ashland School, Inc. closed on several bond financings with the Authority. In 2011 and 2012, the Authority issued \$25,535,000 of Qualified Zone Academy Bonds (QZAB) (Appl. P37036), \$17,465,000 QZAB (Appl. P37793), \$14,635,000 Qualified School Construction Bond (QSCB) (Appl. P37793) and \$40,000,000 QSCB (Appl. P38412) for benefit of Kingston Educational Holdings to fund various capital projects for several schools located on Ashland St., Custer Ave., 18th Ave., and Littleton Ave, all in Newark. In 2011, NCA Facility closed on a \$6,675,017 QSCB (Appl. P34894) for the benefit of Newark Collegiate Academy, proceeds of which were used to finance a portion of the costs to acquire a high school located on Norfolk Street, Newark. In 2013, Ashland School, Inc. closed on \$20,885,000 tax-exempt bond (Appl. P38307) to finance the acquisition of two schools located on Ashland St. and Custer Ave., Newark.

In related bond financings, for the benefit of KIPP Cooper Norcross Academy in Camden, KIPP Cooper Norcross Inc. closed on a \$60,000,000 QSCB in 2014 to acquire the Lanning Square School located on Clinton Street, Camden for an elementary and middle school. In 2017, proceeds of a \$29,833,634 QSCB (Appl. P42944) were used to acquire the Whittier School, located on Chestnut St., Camden and total of \$15,508,000 in QZABs (Appl. P44726) were used to acquire the Charles Sumner School, located on South 8th St., Camden.

The applicant is a 501(c)(3) not-for-profit entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the 1986 Internal Revenue Code as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

APPROVAL REQUEST:

Authority assistance will enable the Applicant to (i) reimburse the cost of acquisition and fund renovation of an existing school building at 300 N. 13th Street, Newark from the Essex County Vocational Board of Education. The building of approximately 194,000 sq. ft. consisting of over 65 classrooms, a kitchen, an auditorium, a gymnasium and offices on approximately 2 acres, will ultimately be used for an elementary and middle school; (ii) make renovations to KIPP Newark Collegiate Academy ("NCA") located at 129 Littleton Avenue, Newark to fit-out roughly 20,000 sq. ft. of unfinished floor space to accommodate 16 full size classrooms, bathrooms, conference rooms and offices; as well as technology and electrical upgrades; (iii) make renovations to the student and staff bathrooms at KIPP Life Academy located at 103 Bragaw Avenue (owned by Newark Public Schools); (iv) refinance a conventional loan used to purchase property adjacent to the NCA Academy on Littleton Avenue; (v) renovate and equip various schools or school related facilities located on Ashland St., Custer Ave., 18th Ave., Norfolk St. and 13th Ave., all located in Newark; (vi) fund a debt service reserve fund and (vii) pay a portion of the costs of issuance.

This Project is being presented at the October 11, 2018 Board Meeting for a Public Hearing Only.

FINANCING SUMMARY:

BOND PURCHASER:

AMOUNT OF BOND:

TERMS OF BOND:

ENHANCEMENT: N/A

PROJECT COSTS:

Acquisition of existing building	\$6,000,000
Renovation of existing building	\$4,065,145
Contingency	\$1,550,855
Debt service reserve fund	\$770,000
Engineering & architectural fees	\$450,000
Refinancing	\$260,000
Furniture & Fixtures	\$159,000
Finance fees	\$145,000
Legal fees	\$100,000
TOTAL COSTS	\$13,500,000

JOBS: At Application 71 Within 2 years 80 Maintained 0 Construction 31

PUBLIC HEARING: 10/11/18 (Published 09/27/18) **BOND COUNSEL:** Chiesa, Shahinian & Giantomasi,
DEVELOPMENT OFFICER: M. Athwal **APPROVAL OFFICER:** T. Wells

LOANS/GRANTS/GUARANTEES

HAZARDOUS DISCHARGE SITE REMEDIATION FUND



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: October 11, 2018
SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following grant and loan projects have been approved by the Department of Environmental Protection to perform preliminary assessment and remedial investigation activities. The scope of work is described on the attached project summaries:

HDSRF Municipal Grant:

P45165 Borough of Pennington (Pennington Borough Sanitary) \$ 301,604

HDSRF Commercial Loan:

P44999 Sprague's Oil Service, Inc. \$ 61,400

Total HDSRF Funding – October 2018 \$ **363,004**

A handwritten signature in black ink, appearing to read "TJ", is written over a horizontal line.

Tim Sullivan

Prepared by: Kathy Junghans

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

APPLICANT: Borough of Pennington (Pennington Borough Sanitary) P45165
PROJECT USER(S): Same as applicant * - indicates relation to applicant
PROJECT LOCATION: Delaware Avenue Pennington Borough (N) Mercer
GOVERNOR'S INITIATIVES: () Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

Borough of Pennington, identified as Block 206, Lots 4, 5 and 12 is a former landfill which has potential environmental areas of concern (AOCs). The Borough of Pennington owns the project site and has satisfied proof of site control. It is the Borough's intent upon completion of the environmental investigation activities to redevelop the project site for recreational use.

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

APPROVAL REQUEST:

Borough of Pennington is requesting grant funding to perform PA and RI in the amount of \$301,604 at the Pennington Borough Sanitary Landfill project site.

FINANCING SUMMARY:

GRANTOR: Hazardous Discharge Site Remediation Fund
AMOUNT OF GRANT: \$301,604
TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

Remedial investigation	\$294,459
Preliminary assessment	\$7,145
EDA administrative cost	\$500
TOTAL COSTS	\$302,104

APPROVAL OFFICER: K. Junghans

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - HAZARDOUS DISCHARGE SITE REMEDIATION PROGRAM**

APPLICANT: Sprague's Oil Service, Inc P44999
PROJECT USER(S): Same as applicant * - indicates relation to applicant
PROJECT LOCATION: 26 Little Street Matawan Borough (N) Monmouth
GOVERNOR'S INITIATIVES: () Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

Sprague's Oil Service, Inc. is the owner of a commercial property located at 26 Little Street, Matawan NJ 07747. Sprague's Oil Service, Inc. is 100% owned by Harry Clune. Harry Clune has operated an oil distribution business from the site for many years and is the responsible party. The Applicant is requesting funding from the HDSRF for proposed remedial investigation and remedial action work associated with gasoline underground storage tanks ("UST's") that leaked into soils and groundwater at the site.

The Applicant engaged the services of EnviroSure, Inc., based out of Shrewsbury, New Jersey to determine the remediation required to the site. The scope of the services required to bring the site into compliance with SRRRA/ARRCS was evaluated by EnviroSure, Inc. Tanks and impacted soils were removed in April 2011 and most of the impacted soils are reported to have been removed, however, the owner believes some impacted soils may have remained in place. Enviro Sure, Inc. believes that minor soil delineation sampling is required to "delineate" contaminated soils, typically Volatile Organic Compounds plus 15 unidentified compounds including benzene, with sampling of Tertiary Butyl Alcohol included. NJDEP has reviewed the project and determined that the costs are technically eligible. The remediation work is expected to be completed within two years from closing.

APPROVAL REQUEST:

Approval is recommended for a \$61,400 HDSRF loan based on the strong likelihood of the property being sold after full remediation and the proceeds used to fully repay our loan.

FINANCING SUMMARY:

LENDER: Hazardous Discharge Site Remediation Fund
AMOUNT OF LOAN: \$61,400
TERMS OF LOAN: 5-Year Term with no monthly payments required; interest to accrue. Principal plus accrued interest is due upon maturity or sale of the property. The interest rate will be based on the Federal Discount Rate set at time of approval or closing, whichever is lower, with a floor of 5.00%.

PROJECT COSTS:

Remedial investigation	\$61,400
TOTAL COSTS	\$61,400

APPROVAL OFFICER: M. Boyle

PETROLEUM UNDERGROUND STORAGE TANK (PUST)



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: October 11, 2018
SUBJECT: NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following commercial, not for profit 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 Grants:

P44974	Angelina Ciallella	\$ 659,024
P44965	Clara Engine	<u>\$ 640,485</u>
		\$ 1,299,509

PUST Not for Profit Grant:

P44975	American Vegan Society	\$ 157,338
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PUST Residential Grant:

P44605	David Leininger	<u>\$ 124,257</u>
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Total UST Funding – October 2018	\$ 1,581,104
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Tim Sullivan

Prepared by: Kathy Junghans

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

APPLICANT: Angelina Ciallella P44974
PROJECT USER(S): Same as applicant * - indicates relation to applicant
PROJECT LOCATION: 837 Route 33 Freehold Township (N) Monmouth
GOVERNOR'S INITIATIVES: () Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND:

Between May 1999 and May 2017, Angelina Ciallella received an initial grant in the amount of \$72,990 under P10776 and supplemental grants totaling \$256,330 under P10776s, P14697, P22704 and P43652 for the removal and remediation of groundwater contamination, contaminated soil, waste classification, soil removal and analysis for areas of concern (AOCs) at the project site. The NJDEP has approved supplemental costs to perform additional remedial activities.

Financial statements provided by the applicant demonstrate that the 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 \$659,024 to perform the approved scope of work at the project site. Because the aggregate supplemental funding including this request is \$915,354, it exceeds the maximum aggregate staff delegation approval of \$100,000 and therefore requires EDA's board approval. The project site is located in a suburban planning area and is eligible for up to \$1 million in grant funding. Total grant funding to date including this approval is \$988,344.

The NJDEP oversight fee of \$65,902 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: \$659,024
TERMS OF GRANT: No Interest; 5 year repayment provision on a pro-rata basis in accordance with the PUST Act

PROJECT COSTS:

Remediation	\$659,024
NJDEP oversight cost	\$65,902
EDA administrative cost	\$500
TOTAL COSTS	\$725,426

APPROVAL OFFICER: K. Junghans

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

APPLICANT: Clara Engine

P44965

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 300 Haddon Avenue

Collingswood Borough (N) Camden

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

APPLICANT BACKGROUND:

Between May 1999 and June 2014, Ted Engine, the operator of the project site, received grants totaling \$283,662 under P10851, P10851s and P38964 to remove underground storage tanks (USTs), and perform soil and groundwater remediation. Clara Engine, the owner of the project site is continuing the 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 test for a conditional hardship grant.

APPROVAL REQUEST:

The applicant is requesting aggregate supplemental grant funding in the amount of \$640,485 to perform the approved scope of work at the project site. Total grant funding including this approval is \$924,147. The project site is located in the Metropolitan Planning area and may receive up to \$1 million in grant funding.

The NJDEP oversight fee of \$64,046 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: \$640,485

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

PROJECT COSTS:

Remediation	\$640,485
NJDEP oversight cost	\$64,049
EDA administrative cost	\$500
TOTAL COSTS	<hr/> \$705,034 <hr/>

APPROVAL OFFICER: K. Junghans

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

APPLICANT: American Vegan Society

P44975

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 72 Dinshah Lane

Franklin Township (T)

Gloucester

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

APPLICANT BACKGROUND:

In May 2017, American Vegan Society is a 501(c)(3) which is a not-for-profit organization, received a grant in the amount of \$142,298 under P43331 to remove a leaking underground storage tank (UST) and perform the required remediation outside the building. The tank was decommissioned in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities.

Certifications provided by the 501(c)(3) not-for-profit applicant meet the requirements for a conditional hardship grant.

APPROVAL REQUEST:

The applicant is requesting supplemental grant funding in the amount of \$157,338 to perform the approved scope of work at the project site. Total grant funding including this approval is \$299,636.

The NJDEP oversight fee of \$15,734 is the customary 10% of the grant amount. This assumes that the work will not require a high level of NJDEP involvement.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT: \$157,338

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

PROJECT COSTS:

Remediation	\$157,338
NJDEP oversight cost	\$15,734
EDA administrative cost	\$500
TOTAL COSTS	\$173,572

APPROVAL OFFICER: K. Junghans

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

APPLICANT: David Leininger P44605
PROJECT USER(S): Same as applicant * - indicates relation to applicant
PROJECT LOCATION: 617 Route 9 South Lower Township (T) Cape May
GOVERNOR'S INITIATIVES: () Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

Between November 2006 and January 2014, David Leininger, the owner of the project site, received an initial grant in the amount of \$74,562 under P17598 and a supplemental grant in the amount of \$301,181 under P38515 for the closure of five leaking underground storage tank (USTs) and perform the required remediation. The tanks were decommissioned and removed in accordance with NJDEP requirements. Currently the project site includes an apartment complex and a vacant car wash which had historically been used as a gasoline station. The tanks had not been used since the 1960s. The NJDEP has determined that the supplemental project costs are technically eligible.

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 aggregate supplemental grant funding in the amount of \$124,257 to perform the approved scope of work at the project site. Because the aggregate supplemental funding including this request is \$425,438, it exceeds the maximum aggregate staff delegation approval of \$100,000 and therefore requires EDA board approval. Total grant funding including this approval is \$500,000.

The NJDEP oversight fee of \$12,426 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: \$124,257
TERMS OF GRANT: No Interest; 5 year repayment provision on a pro-rata basis in accordance with the PUST Act

PROJECT COSTS:

Remediation	\$124,257
NJDEP oversight cost	\$12,426
EDA administrative cost	\$500
TOTAL COSTS	\$137,183

APPROVAL OFFICER: K. Junghans

REAL ESTATE



TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

RE: Parcel F-1, Tinton Falls
Assignment and Assumption Agreement with RWJ Barnabas Health, Inc.

DATE: October 11, 2018

Summary

I request the Members approve the execution of an Assignment and Assumption Agreement (“Assignment”) between the New Jersey Economic Development Authority (“NJEDA”) and RWJ Barnabas Health, Inc. (“RWJBH”) providing for the assignment to RWJBH of the purchaser’s interest in the October 30, 2017 Purchase and Sale Agreement (“PSA”) between the Fort Monmouth Economic Revitalization Authority (“FMERA”) and NJEDA for Parcel F-1, an approximately 36.3-acre parcel in the Tinton Falls within Fort Monmouth . This assignment shall take place at the closing of title between FMERA and RWJBH.

Background

Last year, FMERA and NJEDA staff began to explore how the two authorities could collaborate to facilitate development of the Property as hereinafter defined. NJEDA possesses substantial and significant experience managing large scale demolition and redevelopment projects across the state. Because of NJEDA’s experience and expertise in undertaking redevelopment projects, FMERA’s enabling legislation authorized it to enter into designated redevelopment agreements with NJEDA for property within Fort Monmouth allowing for NJEDA’s active role in the redevelopment effort.

In September 2017, the Members authorized:

- The execution of a Purchase & Sale Agreement (“PSA”) between the Authority and FMERA for 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 “Property” or “Parcel F-1”)
- The expenditure of funds to remediate and demolish the Myer Center and other existing improvements located on the Property in the amount of \$7,328,771
- The execution of a mortgage on the Property for the amount of Authority’s estimated investment (\$7,328,771) to reposition the Property for sale and redevelopment

- An increase in the amount of \$194,300 to the T&M Associates contract for Construction Administration Phase services and Environmental Site Investigation services.
- The award of the abatement and demolition contract to Tricon Enterprises, Inc. of Keyport, NJ for budget amount of \$5,669,400 which includes a 10% contingency in the amount of \$515,400.

In February of this year, 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 (the “Agreement”), which includes 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 and has since deposited with its title company an amount equal to 15% of NJEDA’s estimated assignment price
- 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

The Parties have now finalized the Assignment and PSA Amendment. The Parties agree to waive the PSA amendment as a condition precedent to the Assignment, as NJEDA now desires to first assign to RWJBH, and RWJBH desires to first assume from NJEDA, NJEDA’s rights, title, and interest in the PSA. Executing the Assignment first will enable FMERA and RWJBH to execute

the PSA Amendment directly. The validity of the Assignment will be expressly contingent upon the execution of the PSA Amendment, which will take place immediately thereafter. Both documents will be executed by the Parties at the time of Closing.

Because the PSA was an agreement between two state entities, NJEDA and FMERA, it did not include certain standard contract provisions of FMERA's Purchase and Sale Agreements with private redevelopers. Now that RWJBH, as a private redeveloper, intends to accept the Assignment, a PSA Amendment is necessary to incorporate FMERA's standard contract provisions. The PSA Amendment also incorporates the above-referenced terms contained in the August 2018 Agreement to Assign, as applicable. Additionally, as a condition of closing, RWJBH will be obligated to enter into a redevelopment agreement (including the reuse and redevelopment plan amendment) with FMERA detailing its pre- and post-closing development obligations.

If the closing between RWJBH and FMERA does not occur, the PSA will remain in effect between FMERA and NJEDA. To preserve the status quo between NJEDA and FMERA under the PSA, FMERA and NJEDA have agreed that all time periods and deadlines in the PSA will be tolled, with the exception of NJEDA's requirement to pay the Homeless Trust Fund contribution no later than five (5) years from the effective date of the PSA.

Attached as Exhibit A to this memo in substantially final form is the Assignment and Assumption Agreement. The final form of the Assignment and Assumption Agreement will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

Recommendation

In summary, I request that Members authorize at the closing of title of the execution of an Assignment and Assumption Agreement between, NJEDA and RWJBH providing for the assignment to RWJBH of the purchaser's interest in the October 30, 2017 Purchase and Sale Agreement between FMERA and NJEDA.



Tim Sullivan
Chief Executive Officer

Exhibit A: Assignment and Assumption Agreement
Prepared by: Juan Burgos

Exhibit A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Assignment") is made and entered into the ___ day of _____, 201 ("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. 34:1B-1 et. seq., with an address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990 (hereinafter referred to as the "Assignor" or "EDA"); and

RWJ BARNABAS HEALTH, INC., a New Jersey non-profit corporation with an address of 95 Old Short Hills Road, West Orange, New Jersey 07052 (hereinafter referred to as the "Assignee" or "RWJBH", and together with Assignor, the "Parties").

WITNESSETH:

WHEREAS, Assignor 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., with an address at 502 Brewer Avenue, P.O. Box 267, Oceanport, New Jersey 07757 (hereinafter referred to as "FMERA") entered into a Purchase and Sale Agreement dated October 30, 2017 (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 Section 3 and Exhibit B of the Purchase Agreement (the "Property"); and

WHEREAS, Assignor issued an Invitation to Bid on Abatement, Demolition and Site Improvements for the Property on June 26, 2017 (as described in Bid No. 2017-RED-BID-CON-067 and the Memorandum and related Resolution of Assignor, each dated as of September 14, 2017), and entered into a Contractor Agreement with Tricon Enterprises, Inc. to perform same; and

WHEREAS, Section 26 of the Purchase Agreement provides that Assignor may assign the Purchase Agreement to a redeveloper to undertake a redevelopment project on the Property, so long as the redeveloper (i) is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit (the "Chapter 51 Review Unit"), (ii) provides FMERA with an unqualified and unconditional acceptance of the terms and conditions of the Purchase Agreement, and (iii) the redeveloper and its project are approved by FMERA; and

WHEREAS, Assignee submitted an unsolicited offer to purchase the Property to Assignor through a proposed Letter of Intent dated February 18, 2018, and on April 16, 2018, the Parties and FMERA executed a non-binding Expression of Interest to Enter into an Agreement to Assign the Purchase and Sale Agreement Between FMERA and Assignor dated October 30, 2017 ("Expression of Interest"); and

WHEREAS, Assignee is a non-profit corporation organized under the New Jersey Nonprofit Corporation Act (N.J.S.A. 15A:1-1 et. seq.); and

Exhibit A

WHEREAS, Assignee is exempt from Chapter 51 and Executive Order 117 Vendor Certification and Disclosure of Political Contributions compliance; and

WHEREAS, Assignee wishes to purchase the Property to undertake a redevelopment project thereon, which will include the development of a new state of the art medical campus including (i) an Ambulatory Care Center, (ii) a medical office building, (iii) a Cancer Institute of New Jersey Cancer Center, (iv) a System Business Office and (v) campus space for future medical and health facilities (the "Project"), subject to the execution of a Redevelopment Agreement between Assignee and FMERA; and

WHEREAS, on August 10, 2018, FMERA, EDA and RWJBH executed an Agreement to Assign, a copy of which is attached hereto as **Exhibit B** (the "Agreement to Assign") by which EDA agreed execute a separate agreement, subject to satisfaction of certain conditions precedent contained in the Agreement to Assign pursuant to which EDA would assign to RWJBH, and RWJBH would to assume from EDA, all of EDA's rights, title and interest in the Purchase Agreement; and

WHEREAS, pursuant to Section 8 of the Agreement to Assign, FMERA, EDA and RWJBH agreed as a condition precedent to the Assignment and Closing to amend the Purchase Agreement to accommodate FMERA, RWJBH and the Project (the "First Amendment"); and

WHEREAS, FMERA, EDA and RWJBH agree to waive the amendment of the Purchase Agreement as a condition precedent to the Assignment as EDA now desires to first assign to RWJBH, and RWJBH desires to first assume from EDA, all of EDA's rights, title, and interest in the Purchase Agreement, except as set forth herein, provided that this Assignment shall not be effective until the First Amendment is fully executed; and

WHEREAS, FMERA, EDA and RWJBH further agree that FMERA and RWJBH will directly amend the Purchase Agreement to accommodate FMERA, RWJBH and the Project immediately following the execution of the above reference Assignment.

NOW THEREFORE, in consideration of TEN DOLLARS (\$10.00), and the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties mutually agree as follows:

1. Recitals; Definitions. The recitals and the Agreement to Assign, to the extent applicable, are imported by reference into this Assignment as if set out and repeated in full herein. Capitalized terms used in this Assignment that are not defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

2. Assignment by Assignor. Assignor hereby assigns to Assignee, all of Assignor's rights, title and interest in the Purchase Agreement, as of the Effective Date except that Assignee shall not be responsible for all or any portion of the Demolition (as defined in the Agreement to Assign) or Work (as defined in the Purchase Agreement), and Assignor shall retain all responsibility and liability for the performance of the Demolition and Work. The Assignor's responsibility and liability will terminate upon Assignor's delivery of proof of substantial

Exhibit A

completion of the Demolition in accordance with Section 8(vi) of the Agreement to Assign by Assignor's contractor to Assignee upon substantial completion of the Demolition. For the avoidance of doubt, Assignee is not assuming any obligation, financial or otherwise, related to the Demolition or Work.

3. Acceptance of Assignment. Except as described in Section 2 above, Assignee hereby accepts the Assignment and agrees to assume and perform all of the obligations of the Assignor under the Purchase Agreement, as of the Effective Date.

4. Assignment Price. In consideration of the Assignment by Assignor, Assignee shall pay the Homeless Trust Contribution to FMERA and the balance of the Assignment Price to the Assignor as set forth in Sections 5 and 6 of the Agreement to Assign. At Closing, FMERA and EDA shall share the net proceeds of the Assignment Price as follows:

- i. to EDA, the amount of the actual costs for the Work, improvements, environmental work, carrying costs and any other costs incurred by EDA for the benefit of the Property;
- ii. if (i) above has been satisfied, to EDA an amount equal to a return of five percent (5%) of the total costs in (i) above;
- iii. if (i) and (ii) above have been satisfied, to FMERA, the amount of the actual costs of the marketing, property management, carrying costs, improvements, and any other costs by FMERA that benefit the Property; and
- iv. if (i), (ii), and (iii) above have been satisfied, to FMERA and EDA an equal amount of any remaining proceeds.

The terms of this Section 4 shall survive Closing and any termination of the Purchase Agreement, as may be amended, the Agreement to Assign and this Assignment.

5. Conditions Precedent to Assignment. Assignee represents and warrants to Assignor that all of the conditions precedent to Assignment set forth in the Agreement to Assign for which Assignee is responsible have been completed in accordance with the terms of the Agreement to Assign by Assignee. Assignor represents and warrants to Assignee that all of the conditions precedent to Assignment set forth in the Agreement to Assign for which Assignor is responsible have been completed in full by Assignor.

6. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of New Jersey. The Assignee agrees that any claims

Exhibit A

asserted against Assignor based in contract law in connection with this Assignment shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

8. Assignment Validity. The validity of this Assignment is expressly contingent upon the execution thereafter of the First Amendment between FMERA and RWJBH. The Parties and FMERA agree that the Closing will not occur unless and until (i) the Assignment and First Amendment have been fully executed as contemplated in the Agreement to Assign; and (ii) Assignee and FMERA have entered into a redevelopment agreement for the Project. The Parties hereto acknowledge and agree that the form of First Amendment to the Purchase Agreement was approved by FMERA's Board on September [25], 2018 and by EDA's Board on [REDACTED], 2018, and that no further approval is required prior to execution of same. The Parties hereby agree to execute the First Amendment in the form approved as described above immediately following the execution of this Assignment.

(Signature Page to follow.)

DRAFT

Exhibit A

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals and/or have caused their corporate seal to be affixed hereto the day and year first written above.

Attest

RWJ BARNABAS HEALTH, INC.

Name:
Title:

Attest

**NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY**

Name:
Title:

FMERA hereby consents to this Assignment and Assumption Agreement and agrees to the terms of Section 4 hereof on this _____ day of _____, 201_____.

**FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY**

Attest

Name:
Title:



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: October 11, 2018

RE: Camden Waterfront Project
Parking Management Agreement with New Jersey Aquarium, LLC

Summary

I request the Members approve the execution of a new Parking Management Agreement (Agreement), for a one-year term retroactive to September 16, 2018, with a one-year renewal option, between the New Jersey Aquarium, LLC (NJA) and the Authority regarding the Camden Waterfront Project.

Background

In 2003, the Treasurer requested that the Authority administer the real estate development component of a complex series of transactions to modernize and expand the New Jersey State Aquarium and spur development of 30 acres of land adjacent to the Aquarium along the Camden Waterfront. This endeavor resulted in NJEDA's acquisition and sale of properties, the design and construction of two parking lots, and its administration of several legal agreements.

The Adventure Aquarium is currently operated by NJA, the managing member of Camden Aquarium, LLC, which leases the Adventure Aquarium from the State of New Jersey. As outlined in their Operating Agreement dated October 29, 2003, the members of Camden Aquarium L.L.C. are NJA and the New Jersey Sports and Exposition Authority (NJSEA). Pursuant to the Operating Agreement, NJA has the right to operate the parking lots surrounding the Aquarium and is entitled to a reasonable management fee to be negotiated between NJSEA or its designee and NJA. Since the conclusion of the Completion Loan period, August 2012, NJEDA has been entitled to receive net parking revenues after costs of operating the parking lots are paid and subject to the reasonable management fee to NJA.

In August 2015, the Members approved execution of the Parking Management Agreement with NJA for a term of one-year term with three one-year renewal options. The last renewal term expired in September 2018.

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The Parties have determined that each has a joint and mutual interest in continuing the public/private venture that has led to the overall success of Adventure Aquarium and to continue to promote visitorship to the Camden Waterfront, which will also have the effect of increasing parking revenues. This growth, along with the additional promotions, events and marketing of the Camden Waterfront destinations, is expected to materially increase parking revenues.

In furtherance of the Parties' objective to ensure the overall success of the Camden Waterfront, NJA has (i) expanded and enhanced security, clean-up, and programming for special events on the Camden Waterfront including the annual New Year's and July 4th celebrations, as well as other seasonal festivities and events; and (ii) undertaken a targeted marketing program to promote visitorship to the Camden Waterfront. In addition to their 10% management fee, as consideration for NJA providing these promotional activities, for the 2018-2019 season, the Authority will allow NJA to receive 14% of the parking revenue, up to \$253,000.00 to pay a portion of the costs for these activities. The consideration allowed for the promotional activities will decrease by 1% for the 2019-2020 extension and will not exceed \$253,000.00 annually.

NJA also agrees to seek contributions from other parties to provide additional funding for Camden Waterfront Promotional Activities. NJA will be submitting the proposed budget for 2019 which is to be paid from the parking revenue. In anticipation of the participation and contribution from other parties, it is the Authority's intent to support other initiatives in Camden with NJEDA's share of parking revenue. Accordingly, the Authority's contribution for funding of Camden Waterfront Promotional Activities will end with the expiration of the term of the 2019-2020 Parking Management Agreement, should the Agreement be further extended.

Approval is also requested to delegate to the CEO authority to enter into a similar Parking Management Agreements for the 2019-2020 season.

NJA will be required to prepare and the Authority will have the right to approve, an annual budget for the promotional activities, an annual marketing plan and budget, and an annual promotional events plan. Each quarter, NJA will be required to submit an operating statement showing expenses incurred and paid by NJA, a report of promotional events that occurred, a report of marketing efforts accomplished and an accounting of total parking revenues and aggregate revenues.

Execution and delivery of the Parking Management Agreement by the Authority will be contingent upon NJSEA or its designee approving the amount of the parking lot management fee to be paid to NJA pursuant to the existing Aquarium project documents.

A substantially final form of the Parking Management Agreement is attached. The final form of the Agreement will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

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Recommendation

In summary, I request that the Members' consent to the execution of a Parking Management Agreement between the New Jersey Aquarium, LLC and the Authority on terms generally consistent with the attached Agreement, subject to the approval of the Chief Executive Officer and the Attorney General's Office and a delegation of authority to the CEO to enter into similar Agreement for the 2019-2020 season on the conditions stated above.



Tim Sullivan
Chief Executive Officer

Prepared by: Cathleen A. Hamilton

PARKING MANAGEMENT AGREEMENT

THIS PARKING MANAGEMENT AGREEMENT (the "Agreement") is made as of the 16th day of September, 2018 (the "Effective Date") between the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** ("NJEDA"), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990 and **NEW JERSEY AQUARIUM, L.L.C.** ("NJ"), having an address at 1 Aquarium Drive, Camden NJ 08103 (collectively the "Parties").

WITNESSETH:

WHEREAS, Adventure Aquarium, located on the Camden Waterfront in the City of Camden, New Jersey (the "Aquarium"), is operated by NJA, which is the managing member of Camden Aquarium, LLC, which leases the Adventure Aquarium from the State of New Jersey pursuant to a lease dated October 29, 2003;

WHEREAS, pursuant to an Operating Agreement dated October 29, 2003, the members of Camden Aquarium L.L.C. are NJA and the New Jersey Sports and Exposition Authority ("NJSEA");

WHEREAS, pursuant to Section 6.3.7 of the First Amendment to Operating Agreement dated May 25, 2005 ("First Amendment"), NJA has duly notified NJSEA or its designee of its intent to continue to operate the Aggregate Parking Spaces, as defined in the First Amendment, in accordance with the terms of the First Amendment;

WHEREAS, in accordance with Section 6.3.7 of the First Amendment, NJA is entitled to a reasonable management fee to be negotiated between NJSEA or its designee and NJA;

WHEREAS, pursuant to Section 6.3.1 of the First Amendment, at the end of the Completion Loan Period, NJEDA is entitled, subject to a reasonable management fee to NJA pursuant to Section 6.3.7, to Aggregate Revenues, which is defined in the First Amendment as 100% of revenues from the Parking Lots after costs of operating the Parking Lots are paid plus the Additional Revenues, all terms as are defined in the First Amendment;

WHEREAS, as used in this Agreement, the term "Total Parking Revenues" refers to the cost of operating ("COO") the Parking Lots plus the Aggregate Revenues;

WHEREAS, NJA has entered into an Operator Agreement for the management and operation of the Parking Lots in the manner described in Section 3 of the First Amendment which Operator Agreement allows the Parking Operator to be paid a portion of the revenue generated by the Parking Lots to cover cost of operating the Parking Lots;

WHEREAS, the Parties have determined that each has a joint and mutual interest in continuing the public/private venture that has led to the overall success of Adventure Aquarium and to continue to promote visitorship to the Camden Waterfront, which will also have the effect of increasing parking revenues; and

WHEREAS, the Parties are desirous of entering into this Agreement to replace the prior Parking Management Agreement that expired on September 15, 2018.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, and for other good and valuable consideration, the Parties do hereby agree as follows:

ARTICLE 1

1.01 Term/Automatic Termination.

1.01(a) The term of this Agreement shall commence on September 16, 2018 and expire on September 15, 2019 (the "Term"). One further extension of this Agreement may be granted upon the sole discretion of the NJEDA.

1.01(b) Notwithstanding the foregoing, this Agreement shall automatically be terminated if any or all of the following agreements upon which the ability of the parties hereto to perform is contingent terminates: (1) the ground lease between NJEDA and the State for the Parking Lots, (2) the Lease between the State and Camden Aquarium L.L.C. for Adventure Aquarium, (3) the Operating Agreement, or (4) the Management Agreement.

1.02 Operation of the Aggregate Parking Spaces.

1.02(a) In accordance with the First Amendment, NJA has notified NJSEA and/or its designee of its election to continue managing the Aggregate Parking Spaces. NJSEA or its designee and NJA have agreed, and NJEDA concurs, that a reasonable management fee to NJA for managing the Aggregate Parking Spaces shall be 10% of Total Parking Revenues.

1.02(b) The Parties acknowledge that the current schedule of parking rates is as set forth on Schedule 1 attached hereto and made a part hereof (the "Parking Rates"). The Parties hereby agree that any change to the Parking Rates must be approved by all Parties, and the NJSEA or its designee.

1.02(c) The Parties acknowledge that for the past several years the fee paid to the Parking Operator for operating the Parking Lots (the "Parking Operator's Fee") has been thirty (30%) percent of revenue from the Parking Lots and that said Parking Operator's Fee has been sufficient to enable the Parking Operator to satisfactorily operate the Parking Lots. For purposes of this Agreement, this fee represents the costs of operating the Parking Lots. The Parties hereby agree that the rate of the Parking Operator's Fee shall continue to be thirty (30%) percent of revenue from the Parking Lots and that any change to the rate of the Parking Operator's Fee must be approved by all Parties, and the NJSEA or its designee.

1.02(d) The Parties also acknowledge that nothing herein is intended to modify or amend the First Amendment, and NJA's responsibilities thereunder.

1.03 Obligations of NJA.

1.03(a) In furtherance of the Parties' objective to ensure the overall success of the Camden Waterfront, including, but not limited to the continued success of the Adventure Aquarium, and as generally

outlined in the Camden City Marketing & Events Proposal dated _____, 2018 and as further agreed to between the Parties, NJA shall continue to: (i) work with the Camden Special Services District ("CSSD") a 501(c)(3) not for profit corporation; and (ii) undertake a marketing program to promote visitorship to the Camden Waterfront, which will also have the effect of increasing parking revenues (i and ii collectively referred to as the "Camden Waterfront Promotional Activities"). Subject to NJA satisfying the conditions set forth in Paragraphs 1.03(b) and 1.03(c) below, NJEDA agrees to allow NJA to receive and use fourteen percent (14%) of Total Parking Revenues up to Two Hundred and Fifty-Three Thousand Dollars (\$253,000.00) (the "NJEDA Contribution") to pay a portion of the costs of Camden Waterfront Promotional Activities. NJA agrees that no more than twenty percent (20%) of the NJEDA Contribution for Camden Waterfront Promotional Activities will be allocated as payment for staff, legal, insurance or administrative costs of the budget for Camden Waterfront Promotional Activities.

If the NJEDA approves an extension of this Agreement for 2019-2020, it is the intent to allow NJA to receive and use no more than thirteen percent (13%) of Total Parking Revenues up to Two Hundred Fifty-Three Thousand Dollars (\$253,000.00) to pay a portion of the costs of Camden Waterfront Promotional Activities with the same twenty percent (20%) cap on staff, legal, insurance and administrative costs.

1.03(b) Within thirty (30) days of the date of this Agreement, NJA shall submit the following final documents for approval to NJEDA's Real Estate Division, which approval shall not be unreasonably withheld:

- (i) 2018 final budget for Camden Waterfront Promotional Activities;
- (ii) 2018 final operating statement showing expenses incurred and paid by NJA;
- (iii) final report of promotional events that occurred; and
- (iv) final report of marketing efforts accomplished.

1.03(c) Within 30 days after the end of each 3-month period of the Term, NJA shall submit the following items to NJEDA's Real Estate Division:

- (i) a satisfactory operating statement showing expenses incurred and paid by NJA for the Camden Waterfront Promotional Activities during the past 3 months;
- (ii) a satisfactory report of promotional events that occurred during the past 3 months; and
- (iii) a satisfactory report of marketing efforts accomplished during the past 3 months.

1.03(d) NJA shall seek contributions from NJA and contributions from other parties to providing funding for Camden Waterfront Promotional Activities in addition to the NJEDA Contribution. In the event NJA is not able to generate sufficient funds other than the NJEDA Contribution to fully fund the

annual budget, marketing plan and promotional events approved by NJEDA Real Estate Division, NJA may request NJEDA's permission to cancel or limit the scope of any such event. In anticipation of the participation and contribution from other parties, it is NJEDA's intent to support other initiatives in Camden with NJEDA's share of Parking Revenue. Accordingly, NJA and NJEDA further acknowledge and agree that the NJEDA Contribution for funding of Camden Waterfront Promotional Activities will end with the expiration of the 2019-2020 Parking Management Agreement, if further extended.

1.03(e) During the term of this Agreement, NJA will cause the Parking Operator to deliver to NJEDA a satisfactory account of Total Parking Revenues and Aggregate Revenues within thirty (30) days of the close of the previous quarter.

ARTICLE 2

FINANCIAL COVENANTS

2.01 Distribution of Parking Revenues. In consideration of the foregoing, the Parties agree that, during the Term, revenue from Aggregate Parking Spaces shall be distributed as follows:

- (a) the Parking Operator shall receive a Parking Operator's Fee of 30% of revenue from the Parking Lots; and
- (b) NJA shall receive a management fee of 10% of Total Parking Revenues; and
- (c) NJA shall receive 14% of Total Parking Revenues to pay a portion of costs for Camden Waterfront Promotional Activities until the NJEDA Contribution has been reached;
- (d) NJEDA shall receive the balance of parking revenues, which in any event shall not be less than 46% of Total Parking Revenues; and
- (e) Once the NJEDA Contribution has been reached, NJEDA shall receive the balance of parking revenues, which in any event shall not be less than 60% of Total Parking Revenues.

2.02 Manner of Payment. NJA shall cause parking revenues to be distributed to each Party within thirty (30) days after the completion of each calendar quarter.

2.03 Unused Funds. Any NJEDA Contribution received by NJA but not used by NJA to pay costs of the Camden Waterfront Promotional Activities in that year will be returned to NJEDA within 30 days of the end of the Term.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.01. Each Party hereby represents and warrants to each other Party, to the best of their knowledge, information and belief, that:

(1) Such Party has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein as of the date of this Agreement.

(2) Such Party is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on its behalf.

(3) No receiver, liquidator, custodian or trustee of such Party, or any affiliate of thereof, has been appointed or is contemplated as of the date of this Agreement, and no petition to reorganize it pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the it has been filed or is contemplated as of the Effective Date.

(4) To the best of such Party's knowledge and belief after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement, such Party's execution hereof, or any action or act taken or to be taken by such Party pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the such Party's property, assets, liabilities or condition which will materially and substantially impair such Party's ability to perform under this Agreement.

(5) Such Party's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any other agreement, indenture, instrument or judgment to which it is a party.

(6) Each of the agreements referenced in the recitals hereto, or upon which the Parties obligations are condition, and to which such Party is a party thereto, remains in full force and effect, and no default which remains uncured has been noticed by any other party thereto.

ARTICLE 4 **MISCELLANEOUS**

4.01 Default/Dispute Resolution/Remedies.

4.01(a) If a Party defaults in the performance any of its obligations hereunder and such default is not cured within thirty (30) calendar days after receipt of written notice of such default from any of the non-defaulting parties, such default shall be deemed an "Event of Default".

4.01(b) If an Event of Default occurs, such Event of Default shall be submitted to the highest in command in each of the Party's organization for their review and decision. Such highest in command shall issue a written decision on the alleged Event of Default within thirty days of referral thereto. In the event that the highest in command in each of the Party's organization disagree (a "Non-Resolved Event of Default"), then each Party may seek any and all legal or equitable remedies permitted by applicable law.

4.01(c) If NJA commits a Non-Resolved Event of Default under this Agreement, NJEDA may

terminate this Agreement.

4.02 Assignment. This Agreement shall not be construed to create any rights on behalf of any person or entity other than the Parties. Neither this Agreement nor any rights or duties hereunder may be assigned or delegated by Parties hereto, except as expressly contemplated or authorized hereby, without the written consent of each the other Parties and any such purported assignment or delegation shall be null and void and of no force or effect.

4.03. Notices: All notices required to be served or given hereunder shall be in writing and will be deemed given when received by personal delivery, fax or by an overnight delivery service which issues a receipt from delivery, or two business days after having been mailed by certified mail, return receipt requested, and addressed as follows:

If to NJEDA: New Jersey Economic Development Authority
36 West State Street
P.O. Box 990
Trenton, New Jersey 08625-0990
Attention: Donna Sullivan, VP - Real Estate
Phone: (609) 858-6678

With a copy to : New Jersey Division of Law
Pension and Financial Transactions Section
Hughes Justice Complex
PO Box 106
Trenton, NJ 08625
Attention: Gary A. Kotler, DAG

If to NJA: New Jersey Aquarium, LLC
1 Riverside Drive
Camden, New Jersey 08103
Attention: Vince Nicoletti, Executive Director and Vice President
Phone: (856) 831-4102

With a copy to: Herschend Entertainment Company, LLC
5445 Triangle Parkway, Suite 300
Peachtree Corners, Georgia 30092
Attention: Steve Earnest, Esq.
Phone: 678-993-1941

4.04. Modifications. The entire agreement between the Parties is contained herein and no change, modification, termination, or discharge of this Agreement shall be effective unless in writing and signed by the Parties.

4.05 Severability. The validity of any Articles and Sections, clauses or provisions of this Agreement

shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

4.06 Governing Law; Jurisdiction and Venue, Waiver of Trial by Jury. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey. Additionally, any claims asserted against NJEDA based in contract law in connection with this Agreement shall be subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13- 1, et seq. and that any claims asserted against NJEDA based in tort law in connection with this Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

4.07 No Individual Liability. No Commissioner, member, director, officer, agent, or employee of each Party shall be held personally liable under any provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach hereof.

4.08 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts will constitute one and the same instrument.

4.09 Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

4.10 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.

4.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

4.12 Waiver. No waiver made by any party with respect to any obligation of any other party under this Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

4.13 Capitalized Terms. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meaning ascribed to them in the First Amendment.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Parking Management Agreement to be duly executed and delivered as of the date and year first above written and by so executing, represent and warrant they have the authority to do so.

Attest:

**NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY**

Donna T. Sullivan,
Vice President-Real Estate

Lori Matheus,
Senior Vice President

Attest:

NEW JERSEY AQUARIUM, L.L.C.

Name:
Title:

John Fitzgibbons
Vice President of NJA

EXHIBIT A

Adventure Aquarium Public Parking Rates:

Passenger Vehicles

General Public	\$10.00 per vehicle, per day
Annual Passholder	\$ 5.00 per vehicle, per day
Private Events	\$ 5.00 per vehicle, per day

Commercial Vehicles

School or Tour Bus	\$10.00 per vehicle, per day
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MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

RE: FMERA Purchase and Sale & Redevelopment Agreement with KKF
University Enterprises, LLC for the Squier Hall Complex in Oceanport

DATE: October 11, 2018

Request

I am requesting that the Members 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 KKF University Enterprises, LLC ("KKF") for the sale and redevelopment of the Squier Hall Complex (the Project) in the fort's Oceanport Reuse Area.

Background

FMERA was created by P.L. 2010, c. 51 ("the Act") to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority ("NJEDA") as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with the NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In October 2016, FMERA and the Army entered into an Economic Development Conveyance Agreement ("EDC Agreement") with the Army for the Phase 2 portion of the Fort, and title to the property was transferred to FMERA in November 2016. The Squier Hall Parcel is located in the Oceanport section of the Phase 2 property.

Squier Hall, also known as Building 283, is a two-story, 76,538 sf administration building located on Sherrill Avenue on the fort's Main Post. Constructed in 1935, the building is eligible for the National Register of Historic Places and is slated for office, research & development or educational use in the Fort Monmouth Reuse and Redevelopment Plan ("Reuse Plan). Squier Hall is part of a

complex of seven buildings (283, 288, 291, 292, 293, 295 and 296) totaling 153,835 sf and covering approximately 28.6 acres (the "Property"). FMERA acquired a ± 5.73 -acre portion of the overall Property (the "Phase I Parcel") containing Squier Hall and Building 288 from the Army this past spring. Staff anticipates that the Army will transfer a second approximately ± 6.1 -acre tract containing the balance of the buildings (the "Phase II Parcel") by year-end 2018. The remaining land, a ± 16.9 acre environmental carve-out consisting of portions of the M8 and M18 landfills (the "Phase III Parcel"), will likely be transferred to FMERA in 2019.

The Reuse Plan identifies Building 288 to be demolished and replaced with a new Monmouth County homeless shelter. The County, however, has opted to build its new shelter at an alternate location on the fort. Accordingly, in July 2016 FMERA's Board adopted Plan Amendment #6 which allowed for the development of a homeless shelter on Murphy Drive and the demolition of Building 288 or its renovation for an alternate use.

At its August 2014 meeting the FMERA Board authorized staff to offer the Squier Complex for sale through the Offer to Purchase process, along with two optional parcels: An approximately sixteen (16) acre parcel with two delineated landfills; and the adjacent Building 555. Building 555 is a circa 1941 semi-permanent administrative and general-purpose building targeted for demolition in the Reuse Plan, to be replaced by office or high-tech industry uses. Running along Sherrill Avenue from Malterer to Irwin Avenue, Building 555 and its parking encompass approximately 3.5 acres. FMERA received one proposal in response to its April 29, 2016 Request for Offers to Purchase ("RFOTP"), from KKF. An evaluation committee reviewed the proposal and found it to be compliant with the RFOTP, and recommended proceeding with negotiations for a PSARA. KKF's proposal did not include an offer to purchase Building 555, which was an optional property in the RFOTP, but did include the optional landfills.

KKF's proposal calls for the renovation of Squier Hall for lease to New Jersey City University ("NJCU") for a baccalaureate completion site for upper division educational coursework similar to the University's current programming at the Wall Higher Education Center, known as NJCU Monmouth. Those programs, primarily including nursing, national security studies and business, would be relocated to Squier Hall. In the future, KKF may develop a residence hall and possible future additional academic buildings on site to accommodate the newly established student body of up to 800 students, and potentially use the Phase III Parcel for parking and recreational uses. KKF will invest a minimum of \$10,440,748 in renovating approximately 46,000 sq. ft of Squier Hall and demolishing the other buildings. Because all existing buildings on the site other than Squier Hall would be demolished and because the allowable use of the Phase III land under the Reuse Plan is limited to open space, redevelopment of the Phase II and Phase III Parcels will require a Reuse Plan amendment and a separate Redeveloper Agreement.

The sole member of KKF University Enterprises, LLC at the time of proposal was Kimberly J. Kaye-Fried. However, Ms. Kaye-Fried's ownership interest was transferred and her interest in KKF was assigned to Robert M. Kaye on January 31st, 2018. KKF University Enterprises, LLC, as the transitional familial successor to Robert M. Kaye, will be relying upon the strength of The Statement of Financial Condition of Robert M. Kaye relative to the Project's equity requisites,

completion guarantee requirements, and in securing financing commitments. KKF will purchase the Property in a cash transaction.

Purchase and Sale & Redevelopment Agreement

Pursuant to the terms of the PSARA, KKF will pay \$2,500,000 for the entirety of the Property. In the event that KKF closes on the Property by phase, the purchase price will be allocated as follows: \$1,500,000 for the Phase I parcel; \$700,000 for the Phase II parcel; and \$300,000 for the Phase III parcel. KKF proposes to renovate Building 283 (Squier Hall), and demolish Buildings 288, 291, 292, 293, 295 and 296. KKF shall take all necessary measures to ensure the National Register historic preservation covenants on the Property for Squier Hall are observed.

Closing will occur within forty-five (45) days of satisfaction of the conditions precedent to closing or twenty (20) days after all title and environmental obligations are satisfied, whichever is later. The conditions precedent to closing include: KKF completing due diligence and obtaining all approvals necessary to develop the Project; an amendment to the Reuse Plan to accommodate the Project; and the consent from the NJEDA Board of KKF as redeveloper. The Phase I and II closings are not contingent on the sale of the Phase III parcel. The parties will endeavor to satisfy these Phase I contingencies within twelve (12) months of the expiration of the due diligence period. The parties will endeavor to satisfy these Phase II contingencies within twelve (12) months of the expiration of the later of the due diligence period or the adoption of the Reuse Plan Amendment. KKF will have the option of extending its twelve (12) month approval period for both Phase I and Phase II by two additional extension periods (six (6) and twelve (12) months) for an additional eighteen (18) months if it has not obtained them within the initial timeframe so long as KKF is proceeding in good faith. FMERA will convey the Property to KKF in as-is condition, but with clear title and subject to the Army's on-going obligations under CERCLA to address pre-existing contamination that may exist on the Property.

KKF will commence construction of the Project (Phase I and Phase II) no later than ninety (90) days of receipt of the earlier of (a) receipt of the respective Squier Hall approvals for the phase, or (b) the end of the respective Approval Period, provided that the commencement date shall be no earlier than the respective Squier Hall closing. KKF will complete construction of each phase within three (3) years of commencing construction for that phase. FMERA will have a right to repurchase the Property if construction is not timely commenced or completed. KKF shall make a minimum capital investment in the Project of \$10,440,748. KKF estimates that it will create approximately fifty-eight (58) temporary construction related jobs in connection with the Project, and that the Project will create a minimum of seventy (70) permanent full- or part-time jobs within forty-eight (48) months of closing or pay a penalty of \$1,500 for each permanent job not created.

KKF will also be responsible for funding a new sewer main running west from the Property along Sherrill Avenue and connecting to a meter pit in the M8 landfill, a distance of approximately twenty-two hundred (2,200) feet.

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 KKF, staff concludes that the essential elements of a redevelopment agreement between FMERA and KKF are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with KKF for its redevelopment of the Squier Hall Complex.

Attached is a substantially final form of the PSARA between FMERA and KKF as approved by FMERA's Board at its September 25, 2018 meeting. 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 Agreement & Redevelopment Agreement with KKF University Enterprises, LLC for redevelopment of the Squier Hall Complex in the Oceanport section of the former Fort Monmouth.



Tim Sullivan
Chief Executive Officer

Attachments: Purchase and Sale & Redevelopment Agreement
Proposed Parcel Map

Prepared by: Kara A. Kopach

**PURCHASE AND SALE AGREEMENT
AND REDEVELOPMENT AGREEMENT**

BETWEEN

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

As Seller,

AND

KKF UNIVERSITY ENTERPRISES, LLC

As Purchaser

As of _____, 2018

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EXHIBIT LIST

- A. [Form Quitclaim Deed from Army to FMERA (Army Quitclaim Deeds) [Attached]]**
- B. Conceptual Plan [Attached- Subject to Further Amendments by Mutual Agreement of the Parties]**
- C. Property Phase Plans**
- D. Boundary Survey entitled “_____ prepared for Seller by _____, having an address at _____, dated _____ and Metes and Bounds Description prepared in accordance therewith [Attached]**
- E. Boundary Survey [To be provided by Seller prior to effective date]**
- F. Title Insurance Binder [To be provided by Purchaser Prior to Closing]**
- G. Promissory Note Regarding Job Creation [To be provided by Purchaser Prior to Closing]**
- H. Release of Declaration of Covenants [To be provided by Seller on a Form Agreed Upon by the Parties Prior to Closing]**
- I. Release of Rights of Reversion [To be provided Seller on a Form Agreed Upon by the Parties Prior to Closing]**
- J. Form of Certificate of Completion [To be delivered by Seller at a later date as set forth herein.]**

**PURCHASE AND SALE AGREEMENT AND
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** (“Agreement”) is made as of _____, 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, and **KKF University Enterprises, LLC** with an address of 40 Monmouth Parkway, P.O. Box 70, West Long Branch, New Jersey 07764 (“KKF” or “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, in accordance with FMERA’s Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq., FMERA publicly advertised a Request for Offers to Purchase (“RFOTP”) (a) the approximately 11.8-acre parcel of land containing seven buildings (buildings 283 (Squier Hall), 288, 291, 292, 293, 295 and 296) located on Sherrill Avenue in the Oceanport Reuse Area of the Main Post of fort Monmouth (the “Squier Hall Property”) as further identified, described and defined herein, and (b) an additional approximately 15.0-acre parcel of landfill space known as FTMM-08 and FTMM-18 (the

“FTMM Property”) as further identified, described and defined herein for a total acreage for the Squier Hall Property and FTMM Property of approximately 26.8 acres, and;

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 transferred or intends to transfer to Seller a portion of Fort Monmouth, which includes the Squier Hall Property and the FTMM Property;

WHEREAS, Seller is subject to the terms and conditions of the EDC Agreement;

WHEREAS, the Purchaser proposes to use the Squier Hall Property for educational and/or civic uses. Specifically, Purchaser proposes to adaptively reuse Squier Hall for a baccalaureate completion site for upper division educational coursework similar to the current programming at the Wall Higher Education Center, which programs would be relocated to the new site, and to create a residence hall and future academic support buildings and other appurtenant structures, subject to a later Redevelopment Agreement, on site to accommodate the newly established student body,

WHEREAS, the Purchaser intends to enter into a later Redevelopment Agreement to use the FTMM Property for parking and recreational uses; and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Squier Hall Property and the FTMM Property subject to the terms and conditions set forth herein; and

WHEREAS, Seller acquired an approximately 5.733-acre portion of the Squier Hall Property and is in the process of acquiring the residual approximately 6.1 acres of Squier Hall Property and the FTMM Property from the United State Army;

WHEREAS, the Army is in the process of conducting certain environmental review and remediation as to certain portions of the Squier Hall Property and the FTMM Property;

WHEREAS, the parties contemplate Seller will convey title to the Squier Hall Property and the FTMM Property to the Purchaser in phases, as a result of the timing of the Army's environmental actions;

WHEREAS, Purchaser has entered in to a long-term sublease for the Squier Hall Property with New Jersey City University ("NJCU") dated March 2, 2018 which is conditioned upon the performance of the parties as 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:

1. Definitions

For all purposes of this Agreement, the following terms shall have the respective meanings set forth below:

- a. **"Affiliate"** means with respect to Purchaser, any other Person directly or indirectly controlled by, or under direct common Control of KKF. 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.

- b. **“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.
- c. **“All Approvals for the Squier Hall Project” or “Squier Hall 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 and allow the use of Squier Hall for the Squier Hall I Project or for Squier Hall II Project, respectively, on the Squier Hall Property and related off-site improvements 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 Squier Hall 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, (iv) execution of an acceptable Developer’s Agreement with the Borough of Oceanport and/or County of Monmouth as may be required; (v) if applicable a Final Remediation Document issued to KKF by either the New Jersey Department of Environmental Protection (“NJDEP”) or KKF’s licensed site remediation professional that documents that the Squier Hall Property has been remediated; (vi) such permits or approvals as may be required from State Historic Preservation Office (“SHPO”) and FMERA and (vii) such permits or approvals as may be needed from the NJDEP which include, but are not

limited to, a sewer extension permit, stream encroachment permit, Coastal Area Facility Review Act (“CAFRA”), and fresh water wetland permit. Seller represents that the only historical approvals required will be those as required by SHPO and/or FMERA. Each such approval shall be referred to in this Section 1(c) shall be referred to as an “Approval.”

- d. **“Approval Costs”** shall mean all costs and expenses including, without limitation, attorneys’, consulting, engineering, escrow and application fees associated with obtaining approvals for the Squier Hall Project.
- e. **“Approval Extension Period”** means two extension periods, one (1) 6-month period from the end of the Initial Approval Period which Purchaser shall be entitled to provided it has initially applied and continues to process such Approvals as set forth above in good faith and an additional one (1) 12-month period from the end of the first extension period which shall apply in the event of delay caused to the Purchaser by an inability to obtain Approvals from the Borough of Oceanport, the New Jersey Department of Environmental Protection and other third parties despite diligent efforts on the part of the Purchaser to obtain Approvals for the Squier Hall Project,.
- f. **“Approval Period”** with respect to the Phase I (Squier Hall) means collectively the Initial Approval Period and the Approval Extension Period for a total period of time not to exceed thirty (30) months from the expiration of the Squier Hall Due Diligence period as set forth herein, unless otherwise extended by a force majeure event as set forth herein for the Squier Hall Project, and with respect to Phase II (Squier Hall) Property means collectively

the Initial Approval Period and the Approval Extension Period for a total period of time not to exceed thirty (30) months from the later of the expiration of the Phase II Squier Hall Due Diligence period or the adoption of the Reuse Plan Amendment as set forth herein, unless otherwise extended by a force majeure event as set forth herein for the Squier Hall Project.

- g. **“Army”** means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- h. **“CERCLA”** means the Comprehensive Environmental Response and Liability Act of 1980, 42 U.S.C. §9601 et seq. (1980) as amended.
- i. **“CERCLA Covenants”** shall have the meaning ascribed in Section 24.
- j. **“Certificate of Completion”** is defined in Section 8.
- k. RESERVED
- l. **“Complete”, “Completed” or “Completion”** means completion of the Project as described in Section 7. Thereafter Seller shall issue a Certificate of Completion.
- m. **“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Sections 15 through 17.
- n. **“Deposit”** shall mean collectively the Initial Deposit and Second Deposit described in Section 5 herein.
- o. **“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.

- p. **“Due Diligence for Phase I (Squier Hall) Property” or “Phase I Due Diligence Period”** Purchaser shall have a period of ninety (90) days following execution of this PSARA to investigate the suitability of the Phase I (Squier Hall) Property for development of the intended uses listed in Section 7 hereof entitled “Squier Hall Project”. The ninety (90) day period shall not commence until the full execution of this PSARA, during which period the Purchaser upon prior written notice to Seller, and at Purchaser’s sole cost and expense, may investigate the Phase I (Squier Hall) Property to determine whether the as-is condition of the Phase I (Squier Hall) Property is satisfactory to the Purchaser. The Phase I Due Diligence period with respect to the Phase I (Squier Hall) Property shall be extended for (1) an additional period of ninety (90) days (i) in the event the Purchaser’s environmental assessment indicates further investigation is warranted; or (ii) if the environmental assessment uncovers another significant environmental concern that has not been identified in the Army’s FOST (as defined below) which would require the Purchaser to conduct additional environmental testing as to the Phase I (Squier Hall Property); or (2) the Phase I Due Diligence Period may be further extended by the mutual agreement of the parties for such additional period as the parties may determine and subject to FMERA Board approval. Notwithstanding the foregoing, Seller shall grant Purchaser immediate access

to the Phase I (Squier Hall) parcel in order to commence due diligence investigations in advance of the formal Phase I Due Diligence Period.

- q. **“Due Diligence for the Phase II (Squier Hall) Property” or “Phase II Due Diligence Period”** Purchaser shall have an additional period of ninety (90) (90) days following the delivery of the Squier Hall II FOST solely to investigate the suitability of the Phase II (Squier Hall) Property, during which period the Purchaser upon prior written notice to Seller, and at Purchaser’s sole cost and expense, may investigate the Phase II (Squier Hall) Property to determine whether the as-is condition of the Phase II (Squier Hall) Property is satisfactory to the Purchaser. The Due Diligence period with respect to the Phase II (Squier Hall) Property shall be extended (1) for an additional period of sixty (60) days (i) in the event the Purchaser’s environmental assessment indicates further investigation is warranted; or (ii) if the environmental assessment uncovers another significant environmental concern that has not been identified in the Army’s FOSTs which would require the Purchaser to conduct additional environmental testing as to the Phase II (Squier Hall) Property; or (2) the Phase II Due Diligence period may be further extended by the mutual agreement of the parties for such additional period as the parties may determine and subject FMERA Board approval.
- r. **“Due Diligence For the Phase III (FTMM) Property” or “FTMM Due Diligence Period”** The parties acknowledge that Purchaser will be unable to conduct full environmental assessments of the Phase III (FTMM) property unless and until the Army has delivered the FTMM FOST. Accordingly,

Purchaser will have a period of sixty (60) days following the receipt of the FTMM FOST solely for the purpose of conducting an environmental assessment of the III FTMM Property in order to investigate its suitability for development of the intended uses listed in Sections (y) & 7 (the “FTMM Due Diligence Period”). The sixty (60) day period shall commence on the delivery by Seller to the Purchaser of the FTMM FOST. The FTMM Due Diligence Period shall be extended for (1) an additional period of sixty (60) days (i) in the event the Purchaser’s environmental assessment indicates further investigation is warranted; or (ii) if the environmental assessment uncovers another significant environmental concern that has not been identified in the FOST; or (2) by the mutual agreement of the parties for such additional period as the parties may determine and subject to FMERA Board approval. The Due Diligence for the FTMM Property shall not encompass or otherwise be affected by the Parties’ pursuit of an amendment to the Reuse Plan as contemplated in Section 1 (uu) and Section 6.

- s. **“EDC Agreement”** shall mean the Agreement between the Army and FMERA dated October 25, 2016 which sets forth the terms by which the Army conveyed portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA will acquire same from the Army.
- t. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement.

- u. **“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.
- v. **“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 Remedy in Place document for the FTMM Property only.
- w. **“Finding of Suitability to Transfer”** or **“FOST”** means the document delivered by the Army which identifies that a particular property is suitable for transfer. The purpose of the FOST is to document the environmental suitability of certain parcels at Fort Monmouth for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST includes 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 certain parcels from the Army to FMERA. The FOST for Phase I (Squier Hall) is entitled “Draft Final Finding of Suitability to Transfer, (FOST), Fort Monmouth, New Jersey, Fort Monmouth, Squier Hall” dated September 2017 (“Squier I FOST”). The Seller anticipates that the Phase II (Squier Hall) FOST will be delivered on or about October 1, 2018 (“Squier II FOST”); however, the date is subject to delivery by the Army and Seller makes no covenant or guarantee regarding the delivery date. The parties acknowledge

that the Phase III (FTMM) FOST ("FTMM FOST") will be delivered at a later but presently undetermined date.

- x. **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.

- y. **“FTMM Closing”** shall mean the transfer of the FTMM Property from the Seller to the Purchaser; which shall occur upon the satisfaction of the Conditions Precedent to Closing set forth in Section 17.
- z. **“FTMM Property”** means the approximately 15.0-acre parcel of landfill space known as FTMM-08 and FTMM-18, located within the Borough of Oceanport, County of Monmouth, New Jersey.
- aa. **“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.
- bb. RESERVED
- cc. **“Improvements”** shall mean the building, fixtures and structures located on Property.
- dd. RESERVED
- ee. **“Initial Approval Period”** for the Phase I Squier Hall Property shall be twelve (12) months from the end of the Phase I Squier Hall Due Diligence period. . The Initial Approval Period for the Phase II (Squire Hall) Property shall be twelve (12) months from later of the end of the Phase II Squier Hall Due Diligence period or the adoption of the Reuse Plan Amendment.
- ff. RESERVED.
- gg. **“MLUL”** means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
- hh. **“Municipality”** shall mean the Borough of Oceanport, in the County of Monmouth, State of New Jersey.
- ii. **“No Further Action Letter” (“NFA”)** has the same meaning as set forth at N.J.S.A. 58:10B-1.

- jj. **“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 Purchaser’s favor, and all terms and conditions contained in the Approval are acceptable to the Purchaser in its reasonable discretion.
- kk. **“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.
- ll. **“Phase I (Squier Hall)”** shall mean the approximately 5.733-acre parcel inclusive of the Squier Hall building as delineated in blue on the Phase Plans annexed hereto as **Exhibit C**.
- mm. **“Phase II (Squier Hall)”** shall mean the approximately 6.1-acre parcel as generally delineated in green on the Phase Plans annexed hereto as **Exhibit C**.
- nn. **“Phase III (FTMM)”** shall mean collectively the M-8 landfill (FTMM-08) and M-18 landfill (FTMM-18) parcel totaling approximately 15.0 acres as generally delineated in red on the Phase Plan annexed hereto as **Exhibit C**.
- oo. **“Preliminary Site Plan Approval”** and **“Preliminary Subdivision Approval”** shall have the meanings set forth in N.J.S.A. 40:55D-1 et seq.

- pp. **“Purchaser”** shall mean KKF University Enterprises, LLC.
- qq. **“Purchase Price”** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Section 5.
- rr. **“Remedy in Place” shall mean those remedies consistent with 42 U.S.C. 9601(24) that could be taken at locations of release.**
- ss. RESERVED
- tt. RESERVED
- uu. **“Reuse Plan”** is defined in the Recitals.
- vv. **“Reuse Plan Amendment”** means a final and unappealable amendment to the Fort Monmouth Reuse and Redevelopment Plan adopted by FMERA pursuant to N.J.S.A. 19:31C-3.27(c), and rendering the Squier Hall Project, which includes Phase I (Squier Hall) and Phase II (Squier Hall), fully conforming to the Reuse Plan pursuant to Section 7 herein below.
- ww. **“Squier Hall Closing”** shall mean the transfer in one or more phases of the Squier Hall 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 of the Conditions Precedent to Closing set forth in Sections 15 and 16.
- xx. **“Squier Hall Phase I Project”** means the proposed adaptively reused Squier Hall for a baccalaureate completion site for upper division coursework on the Phase I (Squier Hall) site similar to Purchaser’s current programming at the Wall Higher Education Center, which programs operating in Wall would be relocated to the property, as well as, demolition of Building #288 and

construction of surface parking and related appurtenances and structures. Purchaser will renovate Squier Hall's exterior and grounds, perform base building upgrades including HVAC and security systems, and fit out approximately 46,000 sf of space for NJCU incurring a minimum capital investment of \$10,440,748 million. The Squier Hall Project is further described herein at Section 7 and depicted in the current version of the conceptual site plan attached hereto as **Exhibit B**, which may be amended by mutual agreement of the parties prior to submission in connection with an application for a Reuse Plan Amendment as contemplated in Section 6. Purchaser's obligation to complete the Squier Hall Phase I Project within a time certain is set forth herein at Section 7

yy. **"Squier Hall Phase II Project"** means the demolition and site clearance of the existing structures of the Phase II (Squier Hall) site, including Buildings 291, 292, 293, 295, 296, as further herein at Section 7 and depicted in the current version of the conceptual site plan attached hereto as **Exhibit B**, which may be amended by mutual agreement of the parties prior to submission in connection with an application for a Reuse Plan Amendment as contemplated in Section 6. It is anticipated by the parties that KKF will seek separate approval from the appropriate authorities for the demolition of structures on Phase II (Squier Hall) Property. Purchaser's obligation to complete the Squier Hall Phase II Project within a time certain is set forth herein in Section 7.

zz. **"Squier Hall Project"** or **"Project"** means collectively the Squier Hall Phase I Project and the Squier Hall Phase II Project.

aaa. “**Squier Hall Property**” means the land and premises in the Borough of Oceanport, County of Monmouth, including approximately 11.8-acre parcel of land containing seven buildings (Buildings 283 (Squier Hall), 288, 291, 292, 293, 295 and 296) located on Sherrill Avenue in the Oceanport Reuse Area of the Main Post of Fort Monmouth as shown on the boundary survey prepared for Seller by Langan Engineering Associates to be attached hereto as **Exhibit C**. The Squier Hall Property is bordered by Sherrill Avenue, Fort Monmouth, and Parkers Creek and consists of the Phase I (Squier Hall) and Phase II (Squier Hall) parcels but excludes the FTMM Property. The Squier Hall Property is further described in Section 3 and is also depicted in the boundary survey and the metes and bounds description that is to be attached hereto as **Exhibit D**.

bbb. “**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. In no event shall the extension of the time frames exceed twelve (12) months, in the aggregate for all Force Majeure or Tolling events.

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 Squier Hall Property and the FTMM Property: The Seller will sell and convey to the Purchaser the Squier Hall Property and the FTMM Property in its as-is condition, which consists of: (a) the existing land and buildings, other improvements and fixtures on the land; and (b) all of the Seller's rights relating to the land and buildings.

3. The Property.

The Squier Hall Property is the property as more fully described in the exhibit attached as **Exhibit D.** The FTMM Property is the property as more fully described in the exhibit attached as **Exhibit E.**

4. The Purchase Price.

Subject to adjustments as called for in Section 28, the price that the Purchaser will pay the Seller for the Squier Hall Property and the FTMM Property is Two Million Five Hundred Thousand (\$2,500,000.00) Dollars, with \$2,200,000.00 to be paid at the Squier Hall Closing and \$300,000.00 to be paid at the FTMM Closing. In the event that the Squier Hall Property is delivered in separate phases, the Purchase Price for Phase I (Squier Hall) shall be \$1,500,000.00 and the Purchase Price for Phase II (Squier Hall) shall be \$700,000.00. Purchaser will be responsible for all demolition costs, including any necessary asbestos and lead-based paint remediation.

5. Payment of the Purchase Price.

Subject to adjustments as called for in Section 28, and subject further to the time and place of closing requirements as set forth in Section 18, the Purchaser will pay the purchase price as follows:

At the time of submission of its proposal, Purchaser deposited an initial deposit of One Hundred Thousand \$100,000.00 (the “ Initial Deposit ”) with the Seller, which deposit represents five percent (5%) of Purchaser’s initial offer price.	\$100,000.00
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A second deposit of Two Hundred Seventy-Five Thousand (\$275,000.00) dollars due upon execution of this Agreement, which deposit represents the balance of fifteen percent (15%) of the Purchase Price, which has been deposited at the execution of this Purchase and Sale Agreement.	\$275,000.00
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\$1,825,000 to be paid at closing of title of the Squier Hall Property, by wire transfer, in cash or by certified check (subject to adjustment at Closing). Subject to adjustments as previously set forth herein if delivered in Phases.	<u>\$1,825,000.00</u>
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\$300,000 at FTMM Closing for the FTMM Property, by wire transfer in cash or certified check	\$300,000.00
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Total purchase price	<u>\$2,500,000.00</u>
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6. Contingencies

- a. The Parties acknowledge and agree that the Fort Monmouth Reuse & Development Plan (“Reuse Plan”) as amended by Amendment #6 dated July 20, 2016 currently permits educational uses and accessory uses customarily associated with

such education uses, and further would permit the demolition of existing building identified as #288 currently located on the Squier Hall Property. Purchaser therefore intends to seek approvals as necessary to develop the Squier Hall Project under the currently-existing zoning to the fullest extent possible as set forth herein. Nevertheless, Seller shall cause to be amended to comprehensively rezone the Squier Hall Property for all of Purchaser's intended uses as listed below in Paragraph 7.

Purchaser shall provide a conceptual site plan to FMERA on the Effective Date or November 1st, 2018, whichever is later, along with a detailed memo outlining the proposed changes to the Reuse Plan required to permit the development of the Project as proposed by the Purchaser and which will serve as the basis of the Reuse Plan Amendment, FMERA shall provide to Purchaser a draft Reuse Plan Amendment based upon Purchaser's conceptual site plan and memo within thirty (30) days of receipt of Purchaser's conceptual site plan and memo. Purchaser shall provide comments to FMERA on the draft Reuse Plan Amendment within seven (7) days of receipt of same. FMERA's planner shall provide a final draft Reuse Plan Amendment to FMERA and Purchaser incorporating Purchaser's comments to the extent accepted by FMERA within seven (7) days of receiving Purchaser's comments. Purchaser shall have seven (7) days from receipt of the final draft Reuse Plan Amendment to advise FMERA if the final draft is acceptable. In the event that Purchaser does not accept the final draft Reuse Plan Amendment, Purchaser shall provide notice in writing to FMERA of the reasons the final draft Reuse Plan Amendment is unacceptable to Purchaser and of Purchaser's intent to terminate this Agreement if the issues go unresolved. FMERA shall have seven (7) days from receipt of same to enter into

discussions with Purchaser regarding the unresolved issues, and either revise or refuse to revise the final draft Reuse Plan Amendment. In the event the parties cannot agree on an acceptable Reuse Plan Amendment, Purchaser shall have the right to terminate this Agreement and receive a return of its entire Deposit, and the Parties shall have no further obligations to each other except those that survive termination of this Agreement. Upon Purchaser's approval of the final draft Reuse Plan Amendment, FMERA's Board shall have 30 days to introduce the final draft Reuse Plan Amendment. After the Board's introduction of the amendment and at the end of the Governor's veto period, the host municipalities shall have 45 days to review and comment on the final draft Reuse Plan Amendment. FMERA shall have 45 days to adopt the Reuse Plan Amendment. Notwithstanding anything in this paragraph, any time Purchaser submits a revised version of the conceptual site plan or a revised detailed memo, the timeline provided in this paragraph shall start as if no such conceptual plan or memo had been provided previously. Purchaser's submission of a revised conceptual site plan will not serve to toll or extend the Due Diligence for Phase I or Phase II contained herein.

If Seller cannot obtain the Reuse Plan Amendment as contemplated herein despite best efforts, Purchaser shall be entitled to cancel this Agreement.

b. The Squier Hall Closings, as to any phase, shall be contingent on Purchaser obtaining all Approvals required respectively for Purchaser to develop the Squier Hall Property.

- c. Closing on the Squier Hall Property contingent on Army's issuance of its FOST evidencing environmental clearance and Seller acquiring title to the balance of the Squier Hall Property.
- d. Closing on the FTMM Property is contingent on Army's issuance of its FTMM FOST evidencing environmental clearance and Seller acquiring title to the FTMM Property from the Army. The Purchaser shall not be required to purchase the FTMM Property in the event that the Seller is not able to deliver the FTMM FOST within five (5) years of the Effective Date.
- e. Purchaser's execution of a lease of the Project to New Jersey City University ("NJCU"). Purchaser shall provide Seller with a final copy of the fully executed Memorandum of Lease between Purchaser and NJCU within forty-five (45) days of the Effective Date of this Agreement. The Memorandum of Lease shall confirm the lease term and NJCU's proposed use of the Squier Hall Project consistent with the uses set forth herein.
- f. The sale of and closing upon the Squier Hall Property however is expressly not contingent upon the final sale and closing upon the FTMM Property. At Purchaser's option, Purchaser may terminate the PSARA solely as to the FTMM Property for any reason whatsoever during the FTMM Due Diligence period, without penalty. In the event of the termination of the Agreement as to the FTMM Property, KKF nevertheless shall grant a permanent access easement to Seller, the Army, and the NJDEP for access to the FTMM Property for the maintenance and for other such use and/or disposition of the FTMM Property as FMERA may determine. FMERA shall promptly restore any disturbance caused by its access. Any third-party utilizing the

access easement shall execute a right of entry agreement with Purchaser which shall contain terms and conditions typical to right of entry agreements, including, but not limited to, the obligation for such third party to: (i) provide evidence of insurance listing KKF as an insured, (ii) with the exception of the Army and the NJDEP, indemnify KKF for any injury or loss incidental to its access, and (iii) restore any disturbance caused by its access.

7. Redevelopment Project, Capital Investment, and Job Creation.

- a. Redevelopment Project:** Purchaser intends to use the Squier Hall Property for the Squier Hall I Project and the Squier Hall II Project.
- b.** Purchaser's site plan and subdivision for the development of the Squier Hall Property will be subject to FMERA's Mandatory Conceptual Review and Oceanport's planning board review.

Purchaser will apply for and diligently pursue the required permits and approvals for the Phase I Squier Hall Project within forty-five (45) days following the completion of Due Diligence for the Squier Hall Phase I Property

Purchaser will apply for and diligently pursue the required permits and approvals for the Phase II Squier Hall Project within forty-five (45) days following the later to occur of the final and non-appealable Amendment to the Reuse Plan or completion of Due Diligence for the Squier Hall Phase II Property; provided, that if any such permits or approvals are dependent upon

other approvals, Purchaser shall not be required to apply for such approvals or permits until the prerequisites therefor have been satisfied.

Purchaser will obtain all permits and approvals necessary to develop the Squier Hall Project as set forth in Section 1(c) herein. The Squier Hall Approvals period may be tolled for up to twelve (12) months for a Tolling event due to Force Majeure as defined in Section 1(x) herein.

Purchaser shall commence the Squier Hall I Project within (90) days of the earlier of (a) receipt of the respective Squier Hall Approvals for the phase, or (b) the end of the respective Approval Period, provided that the commencement date shall be no earlier than the respective Squier Hall Closing, and complete the Squier Hall Project, as evidenced by receipt of certificates of occupancy, within thirty-six (36) months thereafter as same may be extended as provided in this Agreement (the "Squier Hall Phase I Completion Date" or "Squier Hall Phase I Completion").

Purchaser shall commence the Squier Hall II Project within (90) days of the earlier of (a) receipt of the applicable Squier Hall Approvals for the phase, or (b) the end of the respective Approval Period, provided that the commencement date shall be no earlier than the respective Squier Hall Closing, and complete the Squier Hall II Project, as evidenced by receipt of certificates of occupancy, within thirty-six (36) months thereafter as same may be extended as provided in this Agreement (the "Squier Hall Phase II Completion Date" or "Squier Hall Phase II Completion").

In the event that improvements constituting the Squier Hall Project as set forth in Section 7 are not complete by the Completion Date as contemplated above by reason of Force Majeure or such reasons as agreed between the Parties and provided Purchaser's construction is ongoing and Purchaser is proceeding in good faith toward the completion of the Squier Hall Project, then in such event, Purchaser shall be entitled to an extension of the thirty-six (36) month completion date without penalty for a term as reasonably agreed upon by FMERA, but for a period no longer than an additional twelve (12) months.

Notwithstanding the foregoing, the Purchaser reserves the right, in its sole discretion, to waive the Squier Hall Approval Period, with the exception of MCR approval and municipal site plan approval, and close title without completing the approval process.

- c. **Job Creation**: Purchaser covenants to create or will cause to be created fifty-eight (58) construction related part-time and/or full-time jobs and approximately seventy (70) part-time and/or full-time jobs at the Squier Hall Property after completion of the Squier Hall I Project. Purchaser represents that it will create or cause to be created the aforesaid jobs within (12) months of obtaining an initial certificate of occupancy for the Squier I Hall Project, but no later than forty-eight (48) months from the Squier Hall Closing for Phase I (Squier Hall), or pay a penalty of \$1,500 for each permanent job not created.

To the extent the Purchaser fails to achieve the creation of a minimum of seventy (70) total jobs on the Squier Hall Project within forty-eight (48) months of the Squier Hall Closing for Phase I (Squier Hall), then on that date it shall be liable to pay to the Seller One Thousand Five Hundred (\$1,500) Dollars for each job not created. It is agreed and understood that Purchaser's obligation to create seventy (70) jobs within forty-eight (48) months of the Squier Hall Closing for Phase I (Squier Hall) is a one-time obligation. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice pursuant to this Section. Purchaser's total obligation for not creating any new jobs shall not exceed One Hundred Five Thousand (\$105,000.00) Dollars.

- i. **New Jobs Security**: Prior to the Squier Hall Closing for Phase I (Squier Hall), Purchaser shall secure its obligation to create minimum of seventy (70) new or relocated jobs at the Squier Hall Property, or pay up to One Hundred Five Thousand (\$105,000.00) Dollars, through the granting of a promissory note ("Note") from Purchaser in a form substantially similar to **Exhibit E**. The provisions of this Section shall survive the Squier Hall 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 of creation of seventy (70) 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 forty-eight (48) months of the Squier Hall Closing for Phase I (Squier Hall) to provide seventy (70) 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.

ii. **Bonds Required by the Borough of Oceanport:** Purchaser shall comply with the bonding requirements of the Borough of Oceanport, in the context of preliminary and final site plan improvements, in accordance with the Municipal Land Use Law of the State of NJ, N.J.S.A. 40:55D – 1 et seq. (“MLUL”). It is agreed and understood that any such bonds posted with the Borough of Oceanport for site plan or other improvements, shall be released pursuant to the applicable provisions of the MLUL.

iii. **Promissory Note:** Prior to respective the Squier Hall Closing, Purchaser shall secure its obligation to complete the Squier Hall Project, with a promissory note for the benefit of FMERA, in the amount not greater than the cost of completing the Squier Hall Project, minus the cost of improvements completed by the Purchaser prior to closing and minus the cost of improvements bonded to the Borough of Oceanport. The amount of such promissory note shall be correspondingly reduced as evidence of completion of the various items comprising the Squier Hall Project is presented to FMERA. Completion of each item of the improvements shall be evidenced by

closed permits, in the case of items requiring permits, or the Purchaser's certification, in the case of items not subject to permit inspections, and subject to Seller's inspection and confirmation. It shall be a default under this Agreement for Purchaser to fail to commence or complete the improvements timely, as required herein. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with ninety (90) 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 ninety first (91st) day prior to the commencement or completion deadline. FMERA's right to make a demand on the promissory note shall survive the respective closings and/or termination of this Agreement, and shall run with the land, and shall be a continuing obligation until such time as the project(s) is/are completed. Upon completion of all of the improvements secured by bond or promissory note, Purchaser shall provide a Certification of Completion which Seller must review and respond to within no more than twenty (20) days of receipt. If the Seller indicates that all improvements as described have not been completed, it shall provide a written list of all such items that remain outstanding. At such time as Seller determines that all improvements as described have not been completed, Seller shall cancel or otherwise discharge the promissory note which shall no longer be in force and

effect and the Purchaser shall have no further liability with respect to the same.

Each and every one of the foregoing representations and covenants contained in this Section shall survive Squier Hall Closing and the FTMM Closing, shall run with the land for the Squier Hall Property, and shall be a continuing obligation.

8. Declaration of Covenants.

Seller shall provide Purchaser with a declaration of covenants and restrictions (the “Squier Hall Declaration”) upon the Squier Hall Property within thirty (30) days of the execution of this Agreement. The Squier Hall Declaration shall run with the land for Squier Hall Property and shall contain the following and which shall expire upon the issuance of a Certificate of Completion issued by Seller and thereafter the Purchaser shall be entitled to record the Release of the Squier Hall Declaration as set forth in **Exhibit F** attached. The Squier Hall Declaration shall indicate or otherwise contain:

- a. The uses of the Squier Hall Property shall be limited to those uses permitted pursuant to the Fort Monmouth Reuse and Redevelopment Plan, as amended.
- b. Purchaser, as the approved redeveloper, will commence and complete the Squier Hall Project within the period of time established in this Agreement.
- c. Purchaser, as the approved redeveloper, will not sell, lease or transfer the Squier Hall Property, the Squier Hall Project, or this Agreement prior to the Completion of the projects without the written consent of FMERA, except as set forth in Section 31 hereof.

Purchaser shall provide Seller with a copy of the recorded declaration of covenants and restrictions against the Squier Hall Property within six (6) months of the Squier Hall Closings.

9. Reversion to Seller.

a. The respective quitclaim deeds from Seller to Purchaser as to the Squier Hall Property shall provide that if the timeframes for Completion set forth in Article 7 above have not been met, then Seller shall have the right of reversion of title, at Seller's sole option, to Squier Hall Property and/or the FTMM Property as applicable ("Lot Subject to Reversion"); provided, however, that Seller's foregoing right of reversion shall in no event be applicable to any specific lot or unit .

(i) if the Squier Hall Property is closed as a single transaction, the Seller's right of reversion shall terminate upon completion of Squier Hall I Project and Squier Hall II Project, the commencement of construction of interior renovations to Squier Hall (Building #283) and the demolition of the structures on Phase II (Squier Hall); or

(ii) if the Squier Hall Property is closed in phases, the Seller's right of reversion for Phase I (Squier Hall) shall terminate upon interior renovations to Squier Hall (Building #283) completion of the Squier Hall I Project. The Seller's right of reversion for Phase II (Squier Hall) shall terminate upon demolition of the structures on Phase II (Squier Hall).

b. Seller agrees to provide Purchaser with ninety (90) days advance written notice of Seller's intent to exercise its right of reversion ("Seller's Reversion Notice"). The ninety (90) day period referred to in the foregoing sentence is known as the "Reversion Cure

Period.” During the Reversion Cure Period, Purchaser may either (a) cure the default identified in Seller’s Reversion Notice or (b) agree with Seller on a proposal by which NJCU may cure Purchaser’s default beyond the Reversion Cure Period (the “Reversion Cure Plan”). If, following the expiration of the Reversion Cure Plan, then Seller may move forward with its right of reversion as discussed above, provided that, if the Seller determines that NJCU is negotiating a Reversion Cure Plan in good faith as of the expiration of the Reversion Cure Period then Seller may extend the Reversion Cure Period in its sole discretion to allow the parties to either (i) finalize the Reversion Cure Plan or (ii) terminate such negotiations if it becomes obvious to the Seller that a Reversion Cure Plan cannot be agreed upon. If the Reversion Cure Period expires or is terminated after being extended without there being any agreement on a Reversion /cure Plan, then any amount to be paid by Seller to Purchaser shall be paid to Purchaser.

d. Should Seller exercise its reversion right, with any applicable Reversion Cure Period having expired, then Seller and Purchaser agree (i) if no improvements have been made to a Lot Subject to Reversion, then the Purchaser shall be paid the existing land value of the respective lot being reacquired by Seller follows and as applicable: (a) one million five hundred thousand dollars (\$1,500,000) for the Squier Hall I parcel and, (b) seven hundred thousand dollars (\$700,000) for the Squier Hall II parcel; or (ii) if there have been improvements made to a Lot Subject to Reversion, then the Purchaser shall be paid the corresponding per Lot price above for said Lot plus the prorated amount of costs of the improvements installed to benefit said Lot (if any) incurred by Purchaser, excluding any allocated overhead costs, profit, interest and carrying costs (i.e., property taxes, maintenance

and property management expenses), or the appraised value of the improvements, whichever is greater.

e. The Seller's right of reversion shall survive the Squier Hall Closing, the FTMM Closing, and/or termination of this Agreement and shall run with the land on any portion of the Squier Hall Property that is subject to Seller's right of reversion pursuant to Section 9(a). The quitclaim deeds from Seller to Purchaser shall also include the following: (i) that Seller's right of reversion shall not apply to any portion of the Squier Hall Property that has been conveyed to the Municipality and (ii) that the right of reversion shall automatically and immediately terminate and be released for each and every portion of the Squier Hall Property, including each subdivided lot, that evidences the issuance of a certificate of occupancy or temporary certificate of occupancy by the Municipality or otherwise meets the requirements set forth in Section 9(a) herein.

f. 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 Squier Hall Property that has been Completed upon the presentation of (i) proof that any of the conditions listed in Section 9(a) have been satisfied and (ii) a form of release that shall be recorded at the sole cost and expense of the Purchaser or its successors and assigns.

10. Prevailing Wage.

Prevailing wage will apply only to the extent that Purchaser's proposed development includes "public work" as that term is defined in the New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq., or if the Purchaser receives financial assistance from FMERA, the State or any other State entity. Development of land that is subleased to Purchaser is

considered to be “public work” and would need to pay no less than prevailing wage rates to construction workers.

11. Purchaser Financially Able to Close.

The Purchaser represents that it has or will have sufficient cash available at the Squier Hall Closing and the FTMM Closing to complete the purchase without financing. To the extent not already provided, then within ten (10) days of the full execution of this Agreement Purchaser shall provide to Seller such proof its financial ability to purchase the Squier Hill Property. Thereafter, and in advance of each respective closing, Purchaser shall provide Seller with proof of its continued cash sufficiency. The respective closings for the Squier Hill Property and the FTMM Property 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 the Squier Hall Closing and at the FTMM Closing to complete the purchase without financing, Purchaser may in Purchaser’s sole discretion choose to seek and obtain financing to complete the purchase.

12. 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 executed by the Purchaser and Seller until the date of the Squier Hall Closing or as otherwise provided in this Agreement. At the Squier Hall 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. The Initial and Second Deposit shall be refundable upon termination of this Agreement pursuant to the Sections entitled "12. Deposit Monies," "13. Title and Survey Investigation," "14. Due Diligence Period," "15. Conditions Precedent to Closing," "24. Environmental Matters," "25. Termination of Agreement," and "26. Default by Seller."

- 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 Deposit and all accrued interest as liquidated damages.

13. Title and Survey Investigation.

- a. Attached hereto as **Exhibit E** is a Title Insurance Policy Commitment No. _____ ("Title Commitment") that was issued by _____ ("Title Company") for the Purchaser. Seller agrees that prior to and as a Condition Precedent to Closing, Seller shall:
 - i. Deliver title to the Squier Hall Property and the FTMM 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:
 - 1. _____.

- b. Seller's survey of the Squier Hall Property and the FTMM Property is attached as Exhibit C and Exhibit D respectively to this Agreement. If Purchaser elects to obtain a survey, then no later than thirty (30) days from the end of the respective due diligence periods, 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 Squier Hall Closing and the FTMM 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 thirty (30) days of receipt of Seller's response (or within thirty (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 the Squier Hall Closing or the FTMM Closing.
- c. Purchaser shall have the further right to order a run-down title examination(s) at any time prior to the Squier Hall 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 this Section 13, or if Seller has agreed to cure a survey objection pursuant to Section 13(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 13(c) and Seller fails to cure such objections, then Purchaser may: i) delay the Squier Hall Closing and/or the FTMM 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; or ii) terminate this Agreement and receive a full refund of the Deposit.

- e. From the Effective Date, and with the exception of any utilities easements that may be necessary for the development of any adjacent property, Seller shall not permit any further encumbrance on the Squier Hall Property or the FTMM Property without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

14. Due Diligence Periods.

- a. Purchaser, its agents and Purchaser's prospective assignees, shall have the right, during the respective Due Diligence Periods as set forth in Section 1(p)(q) & (r), and at all times during the term of this Agreement, upon FMERA receiving title to the respective property from the Army, to access the Squier Hall Property and/or the FTMM Property, to inspect the Squier Hall Property and/or the FTMM Property and to investigate all matters relating thereto, including, but not limited to, title, existing zoning requirements, the physical condition of the Squier Hall Property and/or the FTMM Property, the environmental condition of the Squier Hall Property and/or the FTMM

Property and its environs, and any other matters Purchaser deems relevant to its decision to purchase the Squier Hall Property and/or the FTMM Property.

- b. Pursuant to subparagraph (a) above, and subject to Army's consent for portions of the Squier Hall Property and/or the FTMM Property that remain under its ownership, Seller and/or Army is to grant Purchaser a license to enter the Squier Hall Property and/or the FTMM Property prior to the closing of title for the purposes of: 1) conducting due diligence investigations; 2) facilitating Purchaser's planning, design, financing and approvals; and 3) allowing Purchaser to commence demolition and infrastructure work, so that Purchaser may commence construction upon the respective closings or as soon as possible thereafter.
- c. Purchaser may terminate this Agreement in full or elect not to close respectively on the Squire Hall Property or the FTMM Property in its sole, absolute and unfettered discretion prior to five o'clock (5:00) p.m. on the last day of the respective due diligence period for each as set forth in Section 1(p)(q)& (r) herein as same may be extended.
- d. Seller, without delay, shall execute all applications as shall be required and shall otherwise cooperate with the Purchaser in connection with obtaining approvals, at no expense or obligation to the Seller.
- e. Purchaser, its agents and Purchaser's prospective assignees, shall provide Seller with proof of the following insurances prior to being provided access to the Squier Hall Property and the FTMM 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 and property damage in the minimum amounts of one million (\$1,000,000.00) dollars per occurrence and three million (\$3,000,000.00) dollars aggregate. Seller and the Army shall be named as additional insureds 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 (\$100,000.00) dollars per occurrence for bodily injury liability and one hundred thousand (\$100,000.00) dollars occupational disease per employee with an aggregate limit of five hundred thousand (\$500,000.00) dollars occupational disease;
- f. The Due Diligence for the Phase II (Squier Hall II) Property shall not encompass or otherwise be affected by the Parties' pursuit of an amendment to the Reuse Plan as contemplated in Section 1 (uu) and Section 6.
- g. Purchaser shall repair any damage caused by its investigations and shall restore the Squier Hall Property and/or the FTMM to substantially the same condition as existed immediately prior to such investigations. Purchaser hereby indemnifies and holds Seller and Army 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 and/or the FTMM Property by Purchaser until Closing, unless such liability is the result of Seller's negligence or intentional acts or omissions.

15. Conditions Precedent to the Squier Hall Closing and the Phase I Squier Hall

Closing.

- a. The Squier Hall Closing is subject to and conditioned upon the following:
 - i. Receipt by Purchaser of All Approvals, or the Squier Hall I Project Approvals or Squier Hall II Project Approvals, respectively, applicable for the Squier Hall Project 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 for the Squier Hall Property, or Phase I (Squier Hall) or Phase II (Squier Hall), respectively, that is acceptable to Purchaser in its sole discretion;
 - iii. Receipt by Purchaser of a form pursuant to Section 7, for the Squier Hall;
 - iv. Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of the Squier Hall Closing, or Phase I (Squier Hall) or Phase II (Squier Hall), respectively, and shall have cured all defaults;

v. Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable and Purchaser's ability to obtain title insurable at regular rates in accordance with Section 13;

vi. Purchaser has not terminated this Agreement in accordance with the terms set forth in this Agreement;

vii. Seller has obtained EDA Board approval of Purchaser as the Redeveloper; and

viii. Seller has adopted the Reuse Plan Amendment allowing for future proposed improvements to the Squier Hall Property pursuant to Section 6(a).

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 the Squier Hall Closing, for Phase I or Phase II, respectively; and

ii. Except for Mandatory Conceptual Review of the Squier Hall Project by FMERA, 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 any Phases of the Squier Hall Closing.

c. To the extent the Parties elect to stagger the closing of title as to the Squier Hall Property, the Seller and Purchaser mutually agree as follows concerning the Conditions Precedent to the Phase I (Squier Hall) Closing:

- i. Purchaser and Seller shall satisfy the conditions set forth generally in (i) through (viii) of Section 15(a) with regard to Phase I (Squier Hall); and
- ii. The Seller and Purchaser mutually agree to Section 15(b) concerning Conditions Precedent to Phase I (Squier Hall) Closing;
- iii. The Phase I (Squier Hall) Closing is not contingent upon the sale, closing upon or approvals for the FTMM Property.

16. Conditions Precedent to the Phase II (Squier Hall) Closing.

a. To the extent the Parties elect to stagger the closing of title as to the Squier Hall Property, the Seller and Purchaser mutually agree as follows concerning the Conditions Precedent to the Phase II (Squier Hall) Closing:

- i. Purchaser and Seller shall satisfy the conditions set forth generally in (i) through (viii) of Section 15(a) with regard to Phase II; and
- ii. The Seller and Purchaser mutually agree to Section 15(b) concerning the Conditions Precedent to the Phase II (Squier Hall) Closing;
- iii. 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 the Phase II (Squier Hall) Closing; and
- iv. The Phase II (Squier Hall) Closing is not contingent upon the sale, closing upon or approvals for the FTMM Property.

17. Conditions Precedent to FTMM Closing.

a. The FTMM Closing is subject to and conditioned upon the following:

- i.** Receipt by Purchaser of a Final Remediation Document for the FTMM Property that demonstrates that any area of concern or Hazardous Substance at the Property has been remediated in accordance with all applicable Environmental Laws
- ii.** Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of the FTMM Closing and shall have cured all defaults;
- iii.** Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable and Purchaser's ability to obtain title insurable at regular rates in accordance with Section 13;
- iv.** Purchaser has not terminated this Agreement in accordance with the terms set forth in this Agreement;
- v.** Seller has obtained EDA Board approval of Purchaser as the Redeveloper;
and

b. The Seller and Purchaser mutually agree as follows concerning the Conditions Precedent to FTMM Closing:

- i.** Purchaser and Seller shall satisfy the conditions set forth generally in (i) through (vi) of Section 17(a); and

- ii. Each Party shall use its best efforts to perform all conditions required by this Agreement diligently prior to or as of FTMM Closing and each Party shall have cured any of its respective defaults prior to FTMM Closing; and
- iii. Except for Mandatory Conceptual Review of the Project by FMERA, 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 FTMM Closing.
- iii. The Parties agree that the Purchaser may terminate this Agreement with respect to the FTMM Property in its sole discretion in the event that a FOST for the FTMM Property is not received within five (5) years of the execution of this Agreement.

18. Time and Place of the Squier Hall Closing and the FTMM Closing.

- a. Closing on the Squier Hall Property shall occur within forty-five (45) days after Purchaser's receipt of the Squier Hall Approvals or twenty (20) days after all title and environmental obligations are satisfied including the delivery of the Final Remediation Document for the Squier Hall Property, whichever is later.
- b. In the event, however, that the Squier Hall Property is delivered in phases then
 - (a) the closing on the Phase I (Squier Hall) property shall occur within forty-five (45) days after receipt of Phase I Approvals; and thereafter
 - (b) the closing on the Phase II (Squier Hall) property shall occur within forty-five (45) days after Purchaser's receipt of Squier Hall Phase II Approvals or twenty (20)

days after all title and environmental obligations are satisfied including the delivery of the Final Remediation Document for Phase II (Squier Hall), whichever is later. The Purchaser shall not be required to close title on the Phase I or II (Squier Hall) property until the Reuse Plan Amendment is adopted as set forth in Section 1(xx).

- c. Closing on the FTMM Property shall occur within forty-five (45) days of the end of the Due Diligence for the Phase III (FTMM) Property or ten (10) days after all title and environmental obligations are satisfied including the delivery of the Final Remediation Document, whichever is later.
- d. The Squier Hall Closing and the FTMM Closing will be held at the offices of Purchaser's Settlement Agent or Lender's Counsel, or such other place as may be mutually convenient to the parties.
- e. 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.
- f. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and to Purchaser's Title Company:
 - i. Quitclaim deed;
 - ii. Affidavit of Title reasonably satisfactory to the Title Company;
 - iii. Entity resolution;
 - iv. Paid receipt of Real Estate Broker's commission;

- v. Tax and utility bills, if any;
 - vi. Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA);
 - vii. Bill of Sale for any Personalty;
 - viii. IRS Form 1099;
 - ix. 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; and
 - x. Those originally executed Releases as set forth in **Exhibits G and H** which are to be held in escrow and not released or recorded until those conditions as set forth herein are fulfilled.
- g. At the Squier Hall Closing, Purchaser shall pay the balance of the Squier Hall Property's purchase price (after application of a credit for the Deposit and all accrued interest) to the Seller, and deliver a Title Closing Statement. 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.
- h. At the FTMM Closing Purchaser shall pay the balance of the Purchase Price of \$300,000.00 to the Seller, and deliver a Letter Closing Statement.

19. Transfer of Ownership.

At the Squier Hall Closing for each respective phase, the Seller shall transfer ownership of the Squier Hall Property to the Purchaser via a properly executed quitclaim deed for each

subparcel to the Purchaser or an Affiliate pursuant to Section 33. The quitclaim deed(s) shall be in a form reasonably acceptable to Purchaser and the Title Company. If Purchaser elects to receive separate deeds for each subparcel, the quitclaim deeds between the Parties shall include a metes and bounds description of the Squier Hall Property that, at Purchaser's election, shall be based upon the survey to be prepared by the Purchaser, at Purchaser's sole cost and expense. The quitclaim deed(s) 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 attached at **Exhibit A** and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24.

At the FTMM Closing, the Seller shall transfer ownership of the FTMM Property to the Purchaser via a properly executed quitclaim deed for each subparcel Purchaser or an Affiliate pursuant to Section 33. The quitclaim deed(s) shall be in a form reasonably acceptable to Purchaser and the Title Company. If Purchaser elects to receive separate deeds for each subparcel, the quitclaim deeds between the Parties shall include a metes and bounds description of the FTMM Property that, at Purchaser's election, shall be based upon the survey to be prepared by the Purchaser, at Purchaser's sole cost and expense. The quitclaim deeds 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 attached at **Exhibit A** and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24.

20. 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. In accordance with Section 56(a) below, all personal property and fixtures remaining on the Property after the Closing 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.

21. Physical Condition of the Property.

The Squier Hall Property and the FTMM Property are each being sold “as is”, subject to the issuance of the respective Final Remediation Documents. The Seller does not make any claims or promises about the condition or value of all or any portion of the Squier Hall Property or the FTMM Property included in this sale, except to the extent the Final Remediation Documents were issued. The Purchaser shall inspect the Squier Hall Property and the FTMM Property and relies on this inspection and any rights, if any, which may be provided for elsewhere in this Agreement. Until the Squier Hall Closing, the Seller agrees to maintain the grounds and secure, but not maintain, the building and improvements. Until the FTMM Closing, the Seller agrees to maintain the grounds and secure, but not maintain, the building and improvements.

22. Acknowledgment and Covenants Regarding FOST.

Purchaser and Seller agree and acknowledge that the Army is responsible for the environmental investigation and remediation of the Squier Hall Property and FTMM Property and obtaining the Final Remediation Document, as required by applicable law.

The Purchaser acknowledges that it has received the FOST for Phase I of the Squier Hall Property. If, during the Approval Period for the Squier Hall Project, Purchaser determines that any CERCLA Covenants or restrictions imposed by the Phase I or Phase II (Squier Hall) FOST or Quitclaim Deed will prevent or unreasonably interfere with the use of the Squier Hall Property or Squier Hall Project as contemplated by this Agreement, then Purchaser may terminate this Agreement and receive a refund of all Deposits. The Purchaser and Seller agree that to the extent that the notices, covenants, access provisions, deed provisions and environmental protection provisions concerning the Squier Hall Property found in the Phase I or Phase II (Squier Hall) 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 the Squier Hall 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.

Further to Section 1(s), in the event of the termination of the Agreement as to the FTMM Property, KKF shall grant a permanent access easement to Seller for access to the FTMM Property for the maintenance and for other such use and/or disposition of the FTMM Property as FMERA may determine to ensure that the landfills are not and do not become landlocked.

23. Risk of Loss.

Seller shall be responsible for all losses and damages to the Squier Hall Property or the FTMM Property by fire, windstorm, casualty or other cause, and for all damages or injuries to persons or property occurring thereon or relating thereto (except as may be caused by acts of the Purchaser or its officers, employees, agents, contractors, licensees or sub lessees) prior respectively to the Squier Hall Closing and the FTMM Closing. Notwithstanding the foregoing, Seller shall have no obligation to repair, replace or demolish any portion of the Squier Hall Property or the FTMM Property that is damaged or destroyed prior to their respective closings, but Seller shall take reasonably appropriate measures to ensure that the Squier Hall Property and the FTMM Property are each secure. Seller and Purchaser agree that any damage or destruction to the Squier Property and/or the FTMM 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 building, structures, fixtures or improvements located on, under or above the Squier Property and the FTMM Property that might occur prior to the respective closings. Notwithstanding the above, in the event that an environmental contamination caused by a third-party unrelated to Purchaser occurs prior to closing but after due diligence, Purchaser may seek to present to

the Board the circumstances of the event and request a reduction in purchase price provided that any decision on a reduction of purchase price will be at the sole discretion of the Board.

24. Environmental Matters.

a. Purchaser and Seller acknowledge that pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Army will retain responsibility for any Army caused environmental contamination (other than mold, asbestos containing materials, lead-based paint and commercially-applied pesticides and termiticides) that may be present on the Squier Hall or FTMM Properties as of the date of the respective Army Quitclaim Deeds and as otherwise set forth in the RFOTP. The Parties acknowledge that the quitclaim deeds between Seller and the Purchaser shall contain certain covenants required by CERCLA (the "CERCLA Covenants") which covenants are contained in the Army Quitclaim Deed.

The Seller shall not bear any responsibility or liability to the Purchaser or its successors or assigns for the presence of mold, asbestos containing materials, lead-based paint or commercially applied pesticides and termiticides on the Squier Hall Property as of or after the Squier Hall Closing. Purchaser shall be solely responsible for the proper disposal of any mold, asbestos containing materials, lead-based paint or commercially applied pesticides encountered during the renovation or demolition of the building and improvements on the Squier Hall Property, which it shall have the right to evaluate during the Due Diligence Period.

b. If Seller receives notice from any Person at any time prior to the Squier Hall Closing that any Discharge of a Hazardous Substance has occurred on the Squier Hall

Property which has not already been documented in the Phase I or Phase II (Squier Hall) FOST, then Seller shall provide Purchaser with notice of the Discharge on the Squier Hall 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 Seller to terminate this Agreement and receive a full refund of all Deposits. If Purchaser fails to terminate this Agreement within thirty (30) 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 Squier Hall Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at the Squier Hall 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:

- i. terminate this Agreement and recover all Deposits; or

ii. delay Squier Hall 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.

d. If Seller receives notice from any Person at any time prior to the FTMM Closing that any Discharge of a Hazardous Substance has occurred on the FTMM Property which has not already been documented in the Phase III (FTMM) FOST, then Seller shall provide Purchaser with notice of the Discharge on the FTMM 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 Seller to terminate this Agreement and receive a full refund of all Deposits. If Purchaser fails to terminate this Agreement within thirty (30) 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 FTMM Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at the FTMM Closing.

e. 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 FTMM Closing, then Purchaser may:

- i. terminate this Agreement as to the FTMM Property; or
- ii. delay FTMM 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.

25. Termination of Agreement.

If this Agreement is legally terminated for failure of a Condition Precedent to Close under Sections 15, 16, or 17, or other provision herein, the Purchaser and the Seller shall be free of liability to each other, except (subject to the terms of Section 12 herein) for the return of the Deposit with all accrued interest that may be owed and any obligations that specifically survive termination of the Agreement Board.

26. Default by Seller.

- a. If Seller shall be unable or fails to convey any phase of the Squier Hall 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), 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 26 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 Squier Hall Closing and/or the FTMM 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 26. The terms of this Section 26 shall survive the Squier Hall Closing and the FTMM 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 ninety (90) days advance written notice of such default and Seller shall have the right to cure such default within said ninety (90) day period. In the event that the default is due to Seller's unwillingness to close despite all Conditions Precedent having been met, and Seller does not cure the default and Purchaser elects to terminate the Agreement, Purchaser shall be entitled to recover actual costs incurred during Due Diligence, not to exceed one hundred thousand (\$100,000.00).

27. 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 ninety (90) days (if such default cannot be reasonably cured within ninety (90) days, then such obligation to cure shall be extended

for such time as is minimally necessary to undertake such cure), 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)** made a general assignment for the benefit of creditors; or **2)** 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 ninety (90) days after written demand by the Seller.

iv. The Purchaser shall place any unauthorized encumbrance or lien on the Property prior to any of the respective closings, or shall suffer any levy or attachment to be made on the Squier Hall and/or the FTMM Property prior to any of the respective closings, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Squier Hall and/or the FTMM Property prior to any of the respective closings 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 ninety (90) 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 any of the respective closings (where no default by Seller has occurred under the Agreement and all Conditions Precedent to any of the respective closings 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 12b 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 ninety (90) days advance written notice of such default and Purchaser

shall have the right to cure such default within ninety (90) of receipt of written notice of the default.

28. Adjustments at Closing/Assessments for Municipal Improvements.

a. The Purchaser and Seller agree to adjust the following expenses as of the respective closing dates: water charges, sewer charges, and taxes. The Purchaser or the Seller may require that any person with a valid claim or right affecting the applicable property be paid from the proceeds of this sale.

b. 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 respective improvement is not completed before the date of Squier Hall or the FTMM 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).

29. Possession.

At the Squier Hall Closing, the Purchaser will be given possession of the Squier Hall Property subject to the Army's right of access to the Property pursuant to the Army Quitclaim Deeds. The delivery of the quitclaim deed for the Squier Hall Property by Seller to Purchaser and possession of the Squier Hall Property from Seller to Purchaser and the acceptance of possession of the Squier Hall Property by Purchaser shall be deemed full performance by Seller of its obligations under this Agreement, except for any duties that expressly survive the Squier Hall Closing as provided herein.

At the FTMM Closing, the Purchaser will be given possession of the FTMM Property subject to the Army's right of access to the Property pursuant to the Army Quitclaim Deeds. The delivery of the quitclaim deed for the Property by Seller to Purchaser and possession of the Property from Seller to Purchaser and the acceptance of possession of the FTMM Property by Purchaser shall be deemed full performance by Seller of its obligations under this Agreement, except for any duties that expressly survive the FTMM Closing as provided herein.

30. 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.

31. Assignment of Permits and Approvals.

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 Squier Hall Project on the Squier Hall 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 each respective closing Seller shall assign any permits or approvals related to the respective Squier Hall Project to the Purchaser.

b. Seller shall join Purchaser in filing and recording a subdivision plat or plats in the County Clerk's office, which facilitates the dedication of streets, rights-of-way, and any easements, to the extent reasonably necessary, prior to the respective closings provided that the cost and expense for same is paid solely by the Purchaser. Immediately prior to the respective Squier Hall Closing and the FTMM Closing, Purchaser shall post the necessary performance guarantees and inspection fees required to permit the filing of the subdivision plat with the County Clerk's Office.

32. Parties Liable.

This Agreement is binding upon the Parties and all who succeed to their rights and responsibilities.

33. 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 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 the 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 Squier Hall Property and Project or the FTMM Property being assigned;

- v. the assignment will not delay the Completion of the Squier Project;
- 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 of the Purchaser that is an urban renewal or other single-asset entity created to undertake a particular portion of the Purchaser's Project without first obtaining the Seller's consent provided that the Affiliate or urban renewal or other single-asset 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 or other single-asset entity provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement.

34. Successors and Assigns.

This Agreement shall inure to the benefit of and shall bind the Parties, their successors and assigns.

35. 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 or the FTMM Property to anyone else.

36. Governing Law.

a. This Agreement shall be governed, interpreted, 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 26 (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.

37. 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.

38. 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.

39. 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.

40. 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).

41. 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.

42. Time Periods.

All time periods contained in this Agreement shall expire at five o'clock (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.

43. Publication.

Purchaser and Seller agree:

- a. 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
- b. that Purchaser shall not issue any announcement or statement without the express written approval of Seller as to the text of the announcement.

44. Recording or Notice of Pendency.

- a. Purchaser shall not record nor attempt to record this Agreement; however, Purchaser may record the following:
 - i. a memorandum or “short form” of this Agreement;
 - ii. a Notice of Settlement; or
 - iii. 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.
- b. 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 44 shall survive the termination of the Agreement.

45. Authority Representations of Purchaser and Seller.

Purchaser and Seller hereby represent to each other on and as of the Effective Date 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.

46. Lis Pendens.

Unless Seller defaults, Purchaser hereby waives any right or privilege to place a *lis pendens* upon the Squier Hall Property, the FTMM 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 for Purchaser's failure to comply with the terms hereof. This Section shall survive the termination of this Agreement.

47. 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 August 29, 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.

48. Notices.

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: Florio Perrucci Steinhardt & Cappelli, LLC
218 Route 17 North, Suite 410
Rochelle Park, NJ 07662
Attention: Reginald Jenkins, Jr., Esq.

And to: KKF University Enterprises, LLC
40 Monmouth Parkway, P.O. Box 70
West Long Branch, New Jersey 07764
Attention: _____

With a copy to: Archer & Greiner, PC
Riverview Plaza
10 Highway 35
Red Bank, New Jersey 07701-5902
Attn: Michael P. Supko, Esq.

- a. 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).

b. 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.

c. 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.

49. Brokerage Commissions.

FMERA's broker as of the date of its Request for Offers to Purchase was 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 Squier Hall Property or the FTMM Property. In no event shall Seller be responsible for any commission to a broker other than Cushman & Wakefield arising from this transaction. The provisions of this Section shall survive the respective closings and/or any termination of this Agreement.

50. 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.

51. 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.

52. Recitals.

The Recitals are incorporated herein as if restated at length.

53. Right of Entry.

a. Provided that Purchaser has not terminated this Agreement or is in default hereunder, at any time subsequent to Purchaser's completion of Due Diligence, Purchaser may request that Seller or the Army, as the case may be, grant Purchaser a license to use and enter the Squier Hall Property and the FTMM Property prior to Squier Hall and FTMM Closings for the purposes of initiating demolition, renovation or construction of the Improvements. The license will be for one (\$1.00) dollar and will be on an absolutely triple net basis.

b. The parties agree that the license for right of entry is not intended and will not create a leasehold interest in the Squier Hall Property or the FTMM Property, and that Purchaser will be precluded from sub-licensing or sub-leasing the Property during the license term. The respective license will terminate upon Squier Hall and FTMM Closings or earlier termination of this Agreement.

c. Seller will not, under any circumstance, reimburse the Purchaser for undertaking any improvements to the property and seller will own any fixtures that the Purchaser installs until title closing occurs.

d. Purchaser agrees that any work undertaken by Purchaser and its consultants and/or contractors will comply with all applicable permits, approvals, ordinances, statutes, regulations, building codes and other applicable laws, including but not limited to prevailing wage obligations.

e. Purchaser covenants and agrees to, at all times, indemnify, protect and save harmless FMERA and the Army from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges, which FMERA or the Improvements may directly or indirectly suffer, sustain or be subject to by reason or on account of Sellers entry upon the Premises or the conduction of the Activities by Purchaser, its contractors, subcontractors, agents, officers, employees or invitees. In addition, Purchaser shall require its respective contractors, consultants, agents, and representatives to defend, indemnify, and hold harmless FMERA from and against any and all claims, actions, suits, complaints, and proceedings, including but not limited to any attorney's fees, costs of defense,

judgments and damages which arise from or are in any way connected with the contractors', consultants', agents', or representatives' entrance upon the Property.

f. All consultants, agents, assignees, contractors, subcontractors, officers, or employees of Purchaser shall be covered by adequate Workers' Compensation.

g. Purchaser agrees that any claims asserted against FMERA based in contract law in connection with this permit shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and that any claims asserted against FMERA based in tort law in connection with this permit shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

h. Purchaser agrees that it:

i. will not create any condition during its use and occupancy of the Property, which violates any municipal, state or other regulatory agency or is dangerous.

ii. will not permit the creation of any liens affecting the Squier Hall and/or FTMM Property during the pendency of this Agreement and shall promptly pay and discharge any claims or liabilities which may become a lien against the properties.

iii. will maintain in force and effect, insurance for liability and property damage in the minimum amounts of one million (\$1,000,000.00) dollars per occurrence and three million (\$3,000,000.00) dollar aggregate naming FMERA as an additional insured and provide proof of same to FMERA prior to entry on the Property.

54. Utilities and Easements.

a. Except as otherwise expressly agreed to, Purchaser shall be responsible for replacement, repair, maintenance and/or relocation of all utilities within the Squier Hall Property and the FTMM Property, subject to Seller's review and approval, which approval shall not be unreasonably withheld.

b. Purchaser is responsible for establishing service connections and accounts with Jersey Central Power & Light Company (JCP&L), New Jersey American Water Company ("NJAW"), the Two Rivers Water Reclamation Authority ("TRWR") and New Jersey Natural Gas Company ("NJNG"), or any other utility provider for Purchaser's Intended Use. Seller shall be responsible for the following regarding utility connections to the Property:

(i) Electric: Until JCP&L or another electric utility provider accepts responsibility for the electrical connection, Seller shall be responsible to provide 24/7 electrical service to facilitate Purchaser's Intended Use.

(ii) Gas: Seller shall not be responsible for providing a gas line connection sufficient to service the Squier Hall Project and future contemplated development of student housing and academic buildings.

(iii) Sewer: Seller shall provide a sanitary sewer connection on Sherrill Avenue as set forth in the sewer main installation agreement.

(iv) Water: Seller shall provide an appropriately-sized line for water service to the Squier Hall Property for potable water to service the Squier Hall Project and future contemplated development of student housing and academic buildings.

c. In addition to the foregoing, as stipulated in Seller's Request for Offers to Purchase, Purchaser is further responsible for connecting a new sewer main from Officer Housing along Sherrill Avenue and out to the pump station west of the Squier Hall Property, a distance of approximately 2,200 linear feet, at Purchaser's sole cost

and expense. However, as an expedient, the RPM Development Group ("RPM") has agreed to construct the aforementioned sewer line in connection with its adjacent North Post Office Housing development project. RPM shall invoice the Seller for the proposed sewer main installation and connection. KKF agrees to reimburse the Seller for the invoiced costs of the sewer installation within thirty (30) days of its receipt of the RPM invoice. Purchaser and Seller acknowledge that the current cost estimate for the proposed sewer installation is \$491,207.57. Purchaser shall only be responsible to reimburse Seller up to \$500,000.00. Purchaser shall reimburse in two installments as follows (a) 1/2 to be paid 60 days after Closing and (b) 1/2 to be paid 120 days after Closing.

55. Cooperation.

a. Purchaser and Seller agree to cooperate with each other and to that end agree, when necessary, to consent to the filing of applications and to execute other documents, declarations and or maps required to be signed by either of the parties and returned within seven (7) calendar days of delivery to the other Party. This time period is deemed to be a reasonable opportunity to review any document required in connection with this Agreement. The parties will otherwise cooperate with, assist and support each other in connection with any application for Approvals.

b. Seller agrees to reasonably cooperate with Purchaser and use diligent and commercially reasonable efforts to obtain any required Seller signatures or consents in a commercially reasonable manner in connection with Purchaser's efforts to obtain the Approvals for the development of the Project on the Property. Any land use

applications which are consistent with the Concept Plan that Purchaser requests Seller to execute, shall be returned by Seller to Purchaser signed within ten (10) days of the date that Purchaser submits them to Seller (other than as to the mandatory conceptual review and any requested amendments to the Plan that require approval of Seller's Board). With respect to all other requests for signatures or consents, (such as mandatory review and any requested amendments to the Plan that require approval of Seller's Board), Seller shall obtain same, where applicable, from its Executive Director, within one week or presentation; from Seller's Real Estate Committee, within thirty (30) days from presentment; and for items requiring approval from Seller's Board, within forty-five (45) days from presentation by Purchaser, subject to the Governor's ten (10) day veto period. Where required by law, Seller will sign as owner or applicant on applications made by Purchaser so as not to cause a delay or disruption in Purchaser's efforts to pursue and obtain the Approvals. At the Squier Hall and FTMM Closings, Seller shall assign any permits or approval related to the Project to Purchaser.

56. Miscellaneous

a. Consistent with Federal Base Realignment and Closure ("BRAC") law, Seller will sell furniture, fixtures and equipment ("FF&E") located within the Property. Any FF&E remaining on the Property after the sublease or closing with KKF will be included in the sale in "as-is" "where-is" condition. These conditions shall survive the Closing of title.

b. [RESERVED.]

[Execution pages follow]

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:

KKF UNIVERSITY
ENTERPRISES, LLC

Purchaser

By: _____

BOARD MEMORANDUM



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: October 11, 2018
SUBJECT: Projects Approved Under Delegated Authority –
For Informational Purposes Only

The following projects were approved under Delegated Authority in September 2018:

Premier Lender Program:

- 1) 145 Cedar Limited Liability Company (45194), located in Englewood City, Bergen County, is a recently formed real estate holding company formed to purchase the project property. The operating company, Integrated Dental Systems, LLC was founded in 2013 as a wholesaler of dental implants and associated products sold to dental practices in the US. ConnectOne Bank approved a \$1,845,000 bank loan with a 16.67% (\$307,500) Authority participation. Proceeds will be use to purchase the project property for relocation and expansion. Currently, the Company has 38 employees and plans to create 10 additional jobs over the next two years.
- 2) Jaan Holdings LLC (P45217), located in Rahway City, Union County, is a real estate holding company formed in 2018 to purchase the project property. The operating company, Sunrise Pharmaceutical Inc. was formed in 2007 as a manufacturer and marketer of generic drugs for customers such as Walgreens, Rite Aid, and CVS. Provident Bank approved a \$2,340,000 bank loan contingent upon a 50% (\$1,170,000) Authority participation. Proceeds will be used to purchase the project property for warehousing and distribution. The Company currently has 50 employees and plans to create 50 new jobs within the next two years.

Small Business Fund Program:

- 1) All That Dance Studio (“ATDS”) (P45191), located in Hopewell Township, Cumberland County, is a not for profit organization. Founded in 2001, ATDS offers a diversified dance program primarily for children featuring an array of classes including ballet, pointe, tap, jazz, modern, contemporary, African dance and musical theatre. The Company was approved for a \$132,750 direct loan to purchase the project property. Century Savings Bank is also providing a \$132,750 loan towards the purchase of the property. The Company currently has two employees and plans to create two new positions over the next two years.

A handwritten signature in blue ink, appearing to be "RS", is located at the bottom right of the page.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: October 11, 2018

SUBJECT: Incentives Modifications – 3rd Quarter 2018
(For Informational Purposes Only)

Since 2001, and most recently in June 2014, the Members have approved delegations to staff for post-closing incentive modifications that are administrative and do not materially change the original approvals of these grants.

Attached is a list of the incentive modifications and Salem/UEZ renewal extensions that were approved in the 3rd quarter ending September 30, 2018.

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

Prepared by: M. Maurio

**ACTIONS APPROVED UNDER DELEGATED AUTHORITY
THIRD QUARTER ENDING SEPTEMBER 30, 2018**

BUSINESS EMPLOYMENT INCENTIVE GRANT PROGRAM

Applicant	Modification Action	Approved Award
Rose Brand Wipers, Inc.	Consent to add a PEO to the grant agreement.	\$900,589

GROW NEW JERSEY ASSISTANCE PROGRAM

Applicant	Modification Action	Approved Amount
B Positive National Blood Services, LLC and affiliate B Positive National Blood Services	Consent to approve first six-month extension of the certification deadline from September 10, 2018 to March 10, 2019.	\$3,575,000
GoEMerchant, LLC	Consent to add an affiliate to the Grow NJ Agreement.	\$2,909,440
Independent Chemical Corporation	Consent to add two affiliates to the Grow NJ Agreement.	\$4,785,000
Jaguar Land Rover North America, LLC	Consent to approve first six-month extension of the certification deadline from July 9, 2018 to January 9, 2019.	\$26,605,000
LTC Consulting Services, LLC	Consent to re-instate On Site Solar Generation bonus to the Grow NJ award resulting in the award being adjusted from \$11,190,000 to \$11,656,250.	\$11,656,250
Nestle HealthCare Nutrition, Inc. and Nestle Nutrition R&D Centers, Inc.	Consent to approve the first six-month extension of the certification deadline from July 9, 2018 to January 9, 2019.	\$14,455,000
ResinTech, Inc.	Consent to approve first six-month extension of the certification deadline from October 14, 2019 to April 14, 2020.	\$138,817,600
World Business Lenders, LLC and WBL Funding, LLC	Consent to add an affiliate to the Grow NJ Agreement.	\$16,875,000
Yellowstone Capital LLC	Consent to approve the first six-month extension of the certification deadline from September 10, 2018 to March 10, 2019.	\$3,375,000

SALEM/UEZ ENERGY SALES TAX EXEMPTION RENEWALS

Applicant	Extend to Date	Location	#/% Employees	Benefit
Church & Dwight Co., Inc.	September 4, 2019	Lakewood, NJ	328/100%	\$88,156
Renaissance Lakewood LLC	August 11, 2019	Lakewood, NJ	493/60%	\$154,219



TO: Members of the Authority


FROM: Tim Sullivan
Chief Executive Officer

DATE: October 11, 2018

SUBJECT: Hazardous Discharge Site Remediation Fund - Delegated Authority
Third Quarter 2018 Approvals (For Informational Purposes Only)

Pursuant to delegations approved by the Board in May 2006, staff may approve new grants under the Hazardous Discharge Site Remediation Fund (HDSRF) up to \$100,000 and supplemental awards for existing grants (of any size) up to an aggregate of \$100,000, provided that the aggregate amount of the supplemental awards does not exceed \$100,000.

Attached is a summary of the Delegated Authority approvals ending September 30, 2018 for the third quarter. Three grants were approved totaling \$160,655.



Tim Sullivan

Prepared by: Kathy Junghans

PROJECT	APPLICANT	DESCRIPTION	GRANT AMOUNT	AWARDED TO DATE
45019	Sandyston Township (Tri-State Steel)	Initial grant for Site Investigation	\$33,028	\$33,028
45047	Christophe Lackey	Initial grant for Remedial Action	\$29,283	\$29,283
45020	Camden Sophisticated Sisters Drill	Supplemental grant for Remedial Investigation	\$98,344	\$98,344
3 Grants		Total Delegated Authority for HDSRF Applications	\$160,655	\$160,655

*Includes cumulative awards to date (initial & supplemental). Supplemental grant awards do not exceed \$100,000 the delegation permitted



TO: Members of the Authority
FROM: Tim Sullivan
 Chief Executive Officer
DATE: October 11, 2018
SUBJECT: Petroleum Underground Storage Tank Program - Delegated Authority Approvals
 (For Informational Purposes Only)

Pursuant to the delegations approved by the Board in May 2006, staff may approve new grants under the Hazardous Discharge Site Remediation Fund (HDSRF) and Petroleum Underground Storage Tank Program (PUST) up to \$100,000 and may approve supplemental awards for existing grants (of any size) up to an aggregate of \$100,000, provided that the aggregate amount of the supplemental awards do not exceed \$100,000.

The Petroleum Underground Storage Tank Program legislation was amended to allow funding for the removal/closure and replacement of non-leaking residential underground storage tanks (UST's) and non-leaking non-residential UST's up to 2,000 gallons for eligible not for profit applicants. The limits allowed under the amended legislation is equivalent to the New Jersey Department of Environmental Protection cost guide.

Below is a summary of the Delegated Authority approvals processed by Finance & Development for the period July 01, 2018 to September 30, 2018

Summary:	# of Grants	\$ Amount
Leaking tank grants awarded	10	\$230,315
Non-leaking tank grants awarded	0	\$0

Applicant	Description	Grant Amount	Awarded to Date
Bognar, Steven (P44961)	Supplemental grant for site remediation	\$44,687	\$175,140*
Brescia, Marie K. (P44473)	Initial grant for upgrade, closure and remediation	\$15,609	\$15,609
Conser, Howard and Diane (P42643)	Initial grant for upgrade, closure and remediation	\$19,517	\$19,517
Glembocki, Thomas and Pamela (P44966)	Supplemental grant for site remediation	\$8,045	\$24,258
Groeger, Julie (P43670)	Initial grant for upgrade, closure and remediation	\$8,516	\$8,516
Hamaid, Edward and Joan (P43658)	Initial grant for upgrade, closure and remediation	\$55,530	\$55,530
Symanski, Joseph (P45045)	Supplemental grant for site remediation	\$17,731	\$53,267
Torres, Juan (P44523)	Initial grant for upgrade, closure and remediation	\$10,742	\$10,742
Wood, Virginia (P45009)	Supplemental grant for site remediation	\$11,841	\$67,909
Zgodny, Melvin (P44870)	Supplemental grant for site	\$38,097	\$114,687*

Applicant	Description	Grant Amount	Awarded to Date
	remediation		
10 Grants	Total Delegated Authority funding for Leaking applications.	\$230,315	

*This amount includes grants approved previously by the Board and this award does not exceed the \$100,000 aggregate supplemental limit for staff delegation.



Tim Sullivan

Prepared by: Wendy Wisniewski, Finance Officer



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: October 11, 2018

SUBJECT: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/ Licenses for Third Quarter 2018- *For Informational Purposes Only*

The following approvals were made pursuant to Delegated Authority for Leases and ROE/ Licenses in July, August and September 2018:

LEASES / CCIT GRANTS

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>S.F.</u>	<u>CCIT GRANT</u>
PDS Biotechnology	CCIT	Lease Holdover	Month to Month	1,975sf	N/A
Kamat Pharmatech	CCIT	Lease Holdover	Month to Month	2,000sf	N/A
Bellerophon Therapeutics	CCIT	Lease Holdover	Month to Month	1600sf	N/A
Aucta Pharmaceuticals	CCIT	Lease Holdover	Month to Month	3,250 sf	N/A
Angex Pharmaceuticals	CCIT	Lease Extension	One Year	1,125 sf	N/A
NJ Biopharmaceuticals	CCIT	New Tenant And Lease Amendment	One Year 11 Months	1,000 sf 1,125 sf Additional small office	N/A
Pharmanest d.b.a. Genesis Imaging Services	CCIT	New Tenant	One Year	800 sf	N/A
Innovera Pharmaceuticals	CCIT	Lease Amendment & Lease Extension	13 months	1,900 sf Additional large lab	N/A

Adlai Nortye USA	BDC	New Tenant and First Lease Amendment	3 years September 1, 2018 to July 14, 2021	3,090 sf 6,163 added additional 3,073 sf of space	N/A
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RIGHT OF ENTRY/LICENSES/EXTENSIONS

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>

MISCELLANEOUS

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>

 Tim Sullivan
 Chief Executive Officer

Prepared by: Donna T. Sullivan