

**PURCHASE AND SALE AND
DEVELOPMENT AGREEMENT**

THIS PURCHASE AND SALE AND DEVELOPMENT AGREEMENT

(“Agreement”) made this ____ day of _____, 2017, (“Effective Date”) by and between the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, an instrumentality of the State of New Jersey, whose address is 36 West State Street, P.O. Box 990, Trenton, New Jersey, 08625 (“**NJEDA**” or the “**Seller**”), and _____ whose address is _____ (“**Purchaser**”). In this Agreement, Seller and Purchaser are collectively referred to as the “Parties.”

WHEREAS, on behalf of New Jersey Division of Property Management and Construction (“**DPMC**”) within Department of Treasury (“**Treasury**”), **NJEDA** issued a Request for Qualifications (“**RFQ**”) to qualify eligible respondents to participate in a sealed bid process to purchase and develop the former Riverfront Prison site which consists of approximately 24.26 acres of land in Camden, New Jersey and known as Block 79, Lot 13 on the City of Camden Tax Map (“**Property**”) shown on **Exhibit A** attached hereto;

WHEREAS, the **Property** has been subdivided into four (4) parcels (i.e. Lot 1, Lot 2, Lot 3 and Lot 4) as shown on **Exhibit A** attached hereto;

WHEREAS, Lot 1 and Lot 2 are herein known as the “**Project Parcels**”, and Lot 3 and Lot 4 are herein known as the “**Public Dedication Parcels**”;

WHEREAS, **NJEDA**, at no cost to the **Purchaser**, is currently improving Lot 3 with park improvements and Lot 4 with roadway improvements;

WHEREAS, Seller seeks to convey the **Property** to **Purchaser** in two (2) separate closings with the initial closing (the “**Initial Closing**”) covering Lot 3 and Lot 4 occurring soon after the park improvements and the roadway improvements are completed and within thirty (30) days of the **Effective Date**, and the subsequent closing (the “**Subsequent**

Closing”) occurring when the Purchaser pays the purchase price (defined in Section 2 below) and is ready to commence development of the Project Parcels;

WHEREAS, Treasury is currently the owner of the Property and, pursuant to Public Law 2013, chapter 22, the New Jersey State Legislature authorized Treasury to convey the Property to NJEDA, which transfers of title shall occur simultaneously with the Initial Closing or the Subsequent Closing, as applicable;

WHEREAS, Seller selected the Purchaser based upon the following factors concerning the Purchaser’s proposed Project that are material to Seller’s selection of the Purchaser: i) Purchase Price; ii) compliance with Political Campaign Contribution restrictions; (iii) financial ability to complete the purchase and development of the Project Parcels; (iv) relevant experience developing urban and/or waterfront sites; (v) suitability of Purchaser’s development concept; and (vi) creation of new full-time jobs; and

WHEREAS, Seller and Purchaser have reached an agreement for the sale of the Public Dedication Parcels and the sale and development of the Project Parcels.

NOW, THEREFORE, for and in consideration of the sum of \$ _____ and other covenants contained herein, the Seller agrees to convey to the Purchaser and Purchaser agrees to purchase from Seller, free from all encumbrances, except as this Agreement may otherwise provide, the Property described in Paragraph 1.

1. Property to be Conveyed. That certain lot, tract or parcel of land together with any improvements thereon contained and appurtenances thereto appertaining, situate, lying and being in the City of Camden, County of Camden, State of New Jersey and more particularly described by the metes and bounds descriptions attached to this Agreement as **Exhibit B-1** and **Exhibit B-2**. The Project Parcels are described by the metes and bounds description attached to this Agreement as **Exhibit B-1** and the Public Dedication Parcels are described by the metes and bounds description attached to this Agreement as **Exhibit B-2**.
2. Purchase Price. The purchase price is _____ dollars (\$____) which shall be paid by Purchaser to Seller as follows:
 - 2.1. upon execution of this Agreement, the sum of _____ dollars (\$____) (the “Deposit”) to be held by the Title Company (defined in

Paragraph 17.2 below) in an interest-bearing account, with interest following principal, and disbursed, together with accrued interest, in accordance with the terms of this Agreement; **(Ten Percent (10%) of purchase price)**

2.2. within three (3) business days after the end of the Due Diligence Period, (defined in Paragraph 4 below) Purchaser shall deliver an additional _____ dollars (\$ _____) to the Title Company, which sum shall also constitute part of the Deposit; **(Five Percent (5%) of purchase price)**

2.3. at the Subsequent Closing, Purchaser shall deliver the balance of the purchase price, subject to the adjustments as set forth in Section 20 below.

3. Development of the Project Parcels. The Purchaser intends to develop the Project Parcels as approximately _____ square feet of building space to conduct _____ use (the "Project"). The Project is further described in Section 8 of this Agreement.

4. Environmental Due Diligence Period.

4.1 Purchaser shall have a period of ninety (90) days from the Effective Date of this Agreement (the "Due Diligence Period") to examine, inspect and investigate the environmental condition of the Property to determine, in Purchaser's sole and absolute judgment and discretion, whether the Property's environmental condition is acceptable to Purchaser. Purchaser shall work diligently to complete its due diligence review of the Property within the Due Diligence Period. For a non-refundable payment of Twenty-Five Thousand dollars (\$25,000.00) ("Due Diligence Extension Payments") for each [forty-five (45)] day extension of the Environmental Due Diligence Period and provided that Purchaser continues to work diligently to complete its environmental examination and inspection of the Property, the Seller will grant up to two (2) extensions, for [forty-five (45)] days each, of the Environmental Due Diligence Period. Due Diligence Extension Payment(s) shall be made to the Seller. If Closing occurs, Due Diligence Extension Payment(s) paid to Seller by Purchaser will be credited against the Purchase Price. In the event that the Purchaser is awaiting test results or additional testing is required, Purchaser may extend the Due Diligence Period for an additional thirty

- (30) days by giving Seller written notice of election to extend the Due Diligence Period prior to the end of the Diligence Period.
- 4.2 Subject to Paragraph 4.3 below, the Seller hereby grants to Purchaser and its duly authorized representatives access to the Property to examine, survey and undertake any tests necessary concerning the environmental condition of the Property at any reasonable time during the Due Diligence Period.
- 4.3 On or before the end of the Due Diligence Period, Purchaser shall provide to Seller, at no cost to Seller, copies of any and all site investigation reports obtained by Purchaser including but not limited to environmental reports and testing results.
- 4.4 Within ten (10) business days of the Effective Date of this Agreement, Seller shall deliver to Purchaser a copy of any documents in Seller's possession or control which have not previously been made available to Purchaser and relate to the environmental condition of the Property, including but not limited to: (i) environmental assessments, and (ii) technical studies. Purchaser hereby acknowledges that it has reviewed the environmental information and reports made available by Seller during the RFQ process.
- 4.5 Notwithstanding anything to the contrary in this Agreement, Purchaser may terminate this Agreement in the event Purchaser determines that the environmental condition of the Property is not acceptable to Purchaser by giving written notice to Seller on or before the last day of the Due Diligence Period (the "Due Diligence Termination Notice") and, in such event, the Deposit and any interest accrued thereon shall be returned to Purchaser and neither party shall have any rights or obligations hereunder, except pursuant to any provisions which by their terms survive any termination of this Agreement. If Purchaser does not give the Due Diligence Termination Notice on or before the expiration of the Due Diligence Period, Purchaser shall be deemed to have waived the right to terminate this Agreement pursuant to this Paragraph 4.5.
- 4.6 To the extent that the Purchaser damages or disturbs the Property in connection with any such inspections or investigations, the Purchaser shall return the Property to the same condition that it was in immediately prior to such damage or

disturbance. The Purchaser shall indemnify, defend and hold harmless Treasury, NJEDA and the City of Camden from and against any and all liabilities, losses, claims, demands, costs, expenses (including reasonable attorney's fees and litigation costs), liens and judgments of any nature arising from or in connection with any injury to, or death of, any person, or loss or damage to property caused by Purchaser's entry onto the Property or any activities conducted on the Property by Purchaser's representatives, agents or contractors. During the Due Diligence Period and thereafter until the Closing or the earlier termination of this Agreement, the Purchaser shall maintain public liability and property damage insurance insuring against any liability arising out of entry on to or inspections of the Property by Purchaser or its representatives, agents or contractors, which insurance shall (a) be in the amount of One Million Dollars (\$1,000,000.00) combined single limit for injury to or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence; and (b) name Treasury and NJEDA as additional insured. The provisions of this Section 4.6 shall survive the termination or Closing under this Agreement.

5. Permit and Approval Period. The Purchaser shall have one hundred eighty (180) days, commencing with the end of the Due Diligence Period, to receive all necessary State, County, and municipal permits and approvals needed for the construction and use and occupancy of the Project (the "Permit and Approval Period") on the Project Parcels. Purchaser shall work diligently to obtain such permits and approvals. For a non-refundable payment of Twenty-Five Thousand dollars (\$25,000.00) ("Approval Period Extension Payments") for each forty-five (45) day extension of the Permit and Approval Period and provided that Purchaser continues to work diligently to obtain such permits and approvals, the Seller will grant up to two (2) extensions, for forty-five (45) days each, of the Permit and Approval Period. Approval Period Extension Payment(s) shall be made to the Seller. If Closing occurs, Approval Period Extension Payment(s) paid to Seller by Purchaser will be credited against the Purchase Price. If the Purchaser does not provide written notice to Seller that Purchaser has obtained all the necessary permits and approvals within the Permit and Approval Period (including

any applicable extensions of the Permit and Approval Period), the Seller may terminate this Agreement and, in such event, the Seller shall be entitled to keep the Deposit, any interest accrued thereon and any Extension Payment(s) paid by Purchaser. Upon such termination by Seller, neither party shall have any rights or obligations hereunder, except pursuant to any provisions which by their terms survive any termination of this Agreement.

6. Financing Period. The Purchaser shall have one hundred eighty (180) days from the end of the Permit and Approval Period, to secure financing, on terms and conditions acceptable to the Purchaser in its sole discretion, for the purchase of the Property (the “Financing Period”). For the non-refundable payment of Twenty-Five Thousand dollars (\$25,000.00) (“Financing Period Extension Payments”) for each [forty-five (45) day extension of the Financing Period and provided that Purchaser continues to work diligently to obtain financing, the Seller will grant up to two (2) extensions, for [forty-five (45) days each, of the Financing Period. Financing Period Extension Payment(s) shall be made to the Seller. If Closing occurs, Financing Period Extension Payment(s) paid to Seller by Purchaser will be credited against the Purchase Price. If the Purchaser does not obtain such financing within the Financing Period, either party may terminate this Agreement by giving written notice to the other party and, in such event, the Deposit and interest accrued thereon shall be returned to the Purchaser and neither party shall have any rights or obligations hereunder, except pursuant to any provisions which by their express terms survive any termination of this Agreement.
7. Public Dedication Parcels. Purchaser covenants to dedicate and convey the Public Dedication Parcels to the City of Camden at no cost to the City of Camden within thirty (30) days of the Initial Closing.
8. Development Project, Capital Investment, Liquidated Damages.
 - 8.1 Purchaser represents and covenants that it is purchasing the Property with the intent to construct _____ square foot _____ of building space and related site improvements (the “Project”) on the Project Parcels. The Project is further described and depicted in the RFQ and Purchaser’s proposal in response to the RFQ

as modified or revised in Purchaser's response to the Request for Bids, if applicable, attached hereto as **Exhibit C**.

8.2 Purchaser shall at its sole cost and expense diligently seek to obtain All Permits and Approvals for the Project within the Permit and Approvals Period.

8.3 Purchaser covenants: (a) to commence the installation of building and construction materials for the Project within thirty (30) days of the Subsequent Closing; and (b) to complete construction of the Project within _____ (___) days of the Subsequent Closing as outlined in the Purchaser's schedule submitted in response to the RFQ.

8.4 Purchaser plans to make capital investment of approximately \$ _____ for the entire Project.

9. Job Creation.

9.1 Purchaser covenants that, subject to the receipt of All Permits and Approvals and closing title with Seller, Purchaser is responsible for creating and/or relocating a minimum of _____ jobs to the Project Parcels within _____ (___) years of the Subsequent Closing. The Purchaser will notify the Seller in writing on a monthly basis commencing on the issuance of a Certificate of Occupancy for the Project with the number of jobs located in the past month.

9.2 To the extent the Purchaser fails to achieve, either directly or indirectly through Purchaser's tenants, the creation and/or relocation of a minimum of _____ jobs total on the Project Parcels within three (3) years of the Subsequent Closing, then on that date it shall be liable to pay to the Seller \$1,500.00 for each job not created. It is agreed and understood that Purchaser's obligation to create _____ jobs within three (3) years of the Subsequent Closing is a one-time obligation and that "jobs" created shall be "full time jobs" as defined in the RFQ. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice of Purchaser's failure to comply with this Section. Purchaser's total obligation for not creating any new jobs shall not exceed \$ _____ (i.e. \$1,500.00 multiplied by the number of jobs).

9.3 Notwithstanding the foregoing, in the event that the Project is not completed as contemplated in Paragraph 8.3 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 Project, then in such event, Purchaser shall be entitled to an extension of the time to create and/or relocate _____ jobs, without penalty for a term as reasonably agreed upon by Seller.

9.4 At the Subsequent Closing, Purchaser shall secure its obligation to create a minimum of ____ new or relocated jobs at the Project Parcels or pay up to \$_____ (i.e. \$1,500.00 multiplied by the number of jobs), through the granting of a promissory note from the principal shareholders of the Purchaser. It is agreed and understood that upon verification by the Seller of Purchaser's creation of ____ jobs at the Project Parcels 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.

9.5 Each and every one of the foregoing representations and covenants contained in this Section 9 shall survive the Subsequent Closing, shall run with the land, and shall be a continuing obligation.

10. Performance Bond - Failure to Develop Project.

10.1 It shall be a default under this Agreement for Purchaser to fail to commence or complete the Project timely, as required in Section 8 of this Agreement. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with sixty (60) days advance written notice of Seller's intent to declare a default under Section 8 of this Agreement.

10.2 Prior to the Subsequent Closing, Purchaser shall secure its obligation to complete the Project, through the purchase of a performance bond for the benefit of Seller, underwritten by a surety or financial institution, and in a form, acceptable to Seller in the amount of \$_____. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with sixty (60) days advance written notice of Seller's intent to declare a default under this Section 10 and the Purchaser shall have the opportunity to cure within said notice period. Seller's right to make

a demand to draw on the completion bond shall survive the Subsequent Closing, and shall run with the land, and shall be a continuing obligation.

10.3 Each and every one of the foregoing representations and covenants contained in Section 8 and this Section 10 shall survive the Subsequent Closing, shall run with the land, and shall be a continuing obligation.

11. Declaration of Covenants.

11.1 Prior to the Subsequent Closing, Seller shall provide the Purchaser with a declaration of covenants and restrictions (the “Declaration”) upon the Project Parcels for review and approval by the Purchaser, which approval shall not be unreasonably withheld. The Declaration shall run with the land and shall contain the following and which shall expire upon the issuance of a Certificate of Completion issued by the City of Camden Redevelopment Agency. The Declaration shall indicate or otherwise contain:

a.) Purchaser will commence and complete the Project within the period of time established in this Agreement; and

b.) Other than to individual tenants who intend to use the building(s) at the Project Parcels, Purchaser will not sell, lease or transfer the Project Parcels, the Project or this Agreement prior to the Completion of the Project without the written consent of Seller.

11.2 Promptly after the Subsequent Closing, the Title Company (defined in Paragraph 17.2 below) shall record the Declaration and provide a copy of the recorded Declaration to Purchaser and Seller within one hundred eighty (180) days of Closing.

11.3 Upon completion of the Project, Seller shall execute and deliver to Purchaser a Release of the Declaration.

12. Prevailing Wage. Purchaser hereby acknowledges and confirms that each worker who is involved in the demolition or construction of the Project shall be paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to the Prevailing Wage Act (P.L. 1963, c.150; also designated as N.J.S.A. 34:11-56.25 et seq.). This prevailing

wage obligation shall survive Closing and shall continue until construction of the Project is completed.

13. Affirmative Action/Anti-discrimination.

13.1 Purchaser hereby acknowledges and confirms that all work related to the Project shall be subject to and comply with the Affirmative Action requirements of the Seller as more fully set forth in **Exhibit D** attached to this Agreement.

13.2 Every contract for the construction, alteration or repair of the Project or for the acquisition of materials, equipment, supplies or services for the Project shall contain provisions by which the contractor agrees that: i) In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under the contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates; and ii) no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under the contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex.

14. Access to and Use of the Project Parcels. Until the Subsequent Closing Date, the Parties agree that Seller may grant to the Parking Authority of the City of Camden (“the PACC”) access to operate and maintain a public parking lot(s) on the Project Parcels, for the purposes of providing parking to the residents and visitors of the City of Camden (e.g., event parking; parking for Rutgers University).

15. Conditions Precedent to Initial Closing. The Initial Closing is subject to and conditioned upon the following:

- 15.1 NJEDA has completed the park and road improvements on the Property shown on **Exhibit E** attached to this Agreement;
 - 15.2 Approval of the terms and conditions of this Agreement by the New Jersey State House Commission;
 - 15.3 Treasury simultaneously conveying the Public Dedication Parcels to Seller;
 - 15.4 Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 17; and
 - 15.5 This Agreement has not been terminated in accordance with the terms set forth in this Agreement.
16. Conditions Precedent to Subsequent Closing. The Subsequent Closing is subject to and conditioned upon the following:
 - 16.1 Designation by the City of Camden Redevelopment Agency (“CRA”) of Purchaser as the developer for the Property and Purchaser and CRA entering into a Redevelopment Agreement for the Project.
 - 16.2 The receipt by Purchaser of All Permits and Approvals for the Project within the timeframes set forth herein.
 - 16.3 The receipt by Seller of a reasonably acceptable form of a declaration of covenants and restrictions upon the Property pursuant to Section 11 of this Agreement for review and approval by the Purchaser prior to Closing.
 - 16.4 Purchaser has conveyed the Public Dedication Parcels to the City of Camden at no cost to the City of Camden.
 - 16.5 Approval of the terms and conditions of this Agreement by the New Jersey State House Commission;
 - 16.6 Treasury simultaneously conveying the Project Parcels to Seller;
 - 16.7 Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 17; and
 - 16.8 This Agreement has not been terminated in accordance with the terms set forth in this Agreement.
 17. Title to Property.

- 17.1 Seller shall give good and marketable record title, insurable at regular rates, subject only to Permitted Encumbrances and encumbrances, restrictions and conditions of title acceptable to Purchaser. If the Seller is unable to give such title to the Purchaser, Purchaser shall have the right to terminate this Agreement. Any such termination pursuant to this Section 17 shall be effective upon the delivery of a Notice of Termination to the Seller by Purchase and shall not entitle the Seller to any claim for damage, restitution or other relief against the Purchaser.
- 17.2 Within sixty (60) days after the Effective Date, Purchaser shall deliver to Seller a preliminary title report and title insurance commitment (the "Title Binder") issued by a title insurance company (the "Title Company") licensed in the State of New Jersey. The Title Binder and shall include true and complete copies of all documents noted as exceptions therein.
- 17.3 "Permitted Encumbrances" means any and all (a) matters of public record as of the effective date of the Title Binder, other than such mortgages and other monetary liens as Seller may satisfy at the Closing; (b) matters that would be revealed by a physical inspection, or a complete and accurate survey of the Property; (c) rights-of-way and easements that do not materially interfere with Purchaser's intended use of the Property as set forth in Section 3 of this Agreement; (d) rights of the public and adjoining owners in highways, streets, roads and lanes bounding the Property; (e) retaining walls and other walls, bushes, trees, hedges, fences and the like extending from or onto the Property, and any portion of the Property lying in the bed of any public street; (f) rights and easements relating to the construction, operation, and maintenance of utility lines, wires, cables, pipes, poles, distribution boxes and other such equipment in, on, over, or under the Property; (g) zoning and other governmental restrictions; (h) City of Camden Redevelopment Plan; (i) matters common to any plat or subdivision in which the Property is located; (j) taxes, assessments and other public charges not due as of the Closing Date; (k) Standard conditions and exceptions to title insurance contained in the currently effective ALTA Owner's Standard Form B Title Insurance Policy; and (l) the exceptions to title listed on **Exhibit F** attached hereto and made a part hereof.

- 17.4 If anything in the Title Binder constitutes a title defect, then Purchaser shall give notice thereof to Seller, specifying in detail such title defect(s), before 5 p.m. on the date which shall be twenty-one (21) days following the end of the Due Diligence Period (time being of the essence with respect to said time and date) or Purchaser shall be deemed to have waived all objections based upon such title defect(s). Seller shall have the option, in its sole discretion, to either cure, satisfy and/or discharge such title defect(s), or not cure, satisfy and/or discharge same. If Seller elects not to cure, satisfy or discharge same, Purchaser's sole right shall be to terminate this Agreement on written notice to Seller within ten (10) business days after Seller shall notify Purchaser that it is unable or does not elect to cure, satisfy or discharge same, in which event this Agreement shall terminate and neither party shall have any further rights or liabilities hereunder thereafter (except for return of the Deposit and interest to Purchaser and provisions that expressly survive termination of this Agreement); provided, however, that if Purchaser does not so terminate this Agreement, Purchaser shall accept title subject to such title defect(s) without reduction or abatement of the Purchase Price. It is distinctly understood and agreed that Seller shall not be required to bring any action or proceeding, take any steps, or otherwise incur any expense to remove or cure any title defect(s) or otherwise render title to the Property marketable.
- 17.5 If Seller, in its absolute discretion, decides to cure, satisfy and/or discharge any title defect(s), Seller shall be entitled to a reasonable adjournment of the Closing to do so. Without limiting the foregoing, if Seller, in its absolute discretion, decides to cure one or more liens or encumbrances, then, Seller may use any portion of the Purchase Price to satisfy same, or Seller may deposit with the Title Company sufficient monies or other assurances acceptable to the Title Company to insure the issuance of title insurance to Purchaser either free of any such liens or encumbrances, or with insurance against enforcement of same out of the Property, provided, that there is no additional premium cost to Purchaser as a result thereof, or if there is an additional cost, Seller agrees to pay same. In addition to the foregoing, the existence of any judgments against Seller shall not be deemed title

defects if the Title Company insures against enforcement of same out of the Property.

- 17.6 Purchaser, at Purchaser's sole cost and expense, shall obtain the Title Binder. If Purchaser elects to obtain a survey and/or title insurance for the property, such survey and title insurance shall be obtained at Purchaser's sole cost and expense.
18. The Closing. The consummation of each transaction contemplated by this Agreement (the "Closing") shall take place within thirty (30) days after the satisfaction of all of the corresponding Conditions Precedent to Closing at the offices of Purchaser, at 10 a.m. (the "Closing Date"). The following shall take place at each Closing:
- 18.1 Seller shall deliver to Purchaser a Bargain and Sale Deed with Covenants against Grantor's Acts (the "Deed") for the Public Dedication Parcels or the Project Parcels, as applicable, in proper form for recording, such Deed to be made subject to the title matters as to which conveyance is to be accepted by Purchaser hereunder and all other matters of public record;
- 18.2 Seller shall deliver an Incumbency Certificate and Foreign Investment in Real Property Tax Act form to the Purchaser and the Title Company reasonably satisfactory in form and content to the Title Company;
- 18.3 the Title Company shall issue a title insurance policy showing the transfer of title to Purchaser;
- 18.4 Purchaser shall deliver the balance of the purchase price, subject to the adjustments as set forth in Section 20 below (applicable only to the Subsequent Closing);
- 18.5 The parties shall execute and deliver to each other a Closing Statement;
- 18.6 Purchaser shall deliver to Seller a copy of a fully executed construction contract for the development and construction of the Project (applicable only to the Subsequent Closing);
- 18.7 Purchaser shall deliver to Seller a copy of its legally binding commitment(s) to provide construction financing for the full cost of developing and constructing the Project (applicable only to the Subsequent Closing);

- 18.8 The parties shall execute and deliver to each other any other instruments required to be delivered under any provision of this Agreement, or reasonably requested by the attorney for either party or the Title Company in connection with this transaction; and
- 18.9 Seller shall give possession of the Public Dedication Parcels or the Project Parcels, as applicable, to the Purchaser.
19. Condition of Property/Environmental Matters.
- 19.1 Purchaser shall accept the Property in its "as is" condition as of the Closing Date. Treasury and NJEDA make no representation or warranty whatsoever, whether express, implied or statutory, of any kind, with respect to the Property and hereby disclaims any such warranty, including but not limited to, merchantability and fitness for a particular purpose.
- 19.2 Purchaser hereby, for all purposes and forever, releases Treasury and Seller from any and all claims that presently exist or might arise in the future relative to the condition of the Property, including but not limited to environmental matters and underground storage tanks. Purchaser shall not, under any circumstances, bring or implead, cross-claim or otherwise interpose any claim, action or lawsuit against Treasury or Seller or any of its parents, subsidiaries, affiliates, shareholders, officers, directors, partners, members, other principals, agents or employees if such claim, action or lawsuit arises out of, is the result of, or is in any way connected to: (i) the existence of any underground or above-ground storage tanks at the Property or the registration or lack of registration thereof; (ii) the presence of any hazardous substances, hazardous wastes, petroleum or petroleum by-products (collectively "Hazardous Materials") at the Property; or (iii) the exposure of any person or persons to such Hazardous Materials, whether such claim, action or lawsuit arises under common law or by virtue of any local, state or federal statute, rule, ordinance, regulation and/or the like including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. section 2601 et seq.), the

Federal Insecticide Fungicide and Rodenticide Control Act (7 U.S.C. section 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. section 11001 et seq.), the Clean Water Act (33 U.S.C. section 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. section 300f et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616, Nov. 9, 1984), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Clean Air Act (42 U.S.C. section 7401 et seq.), the Industrial Site Recovery Act (N.J.S.A. 13:1K-6, et seq.), the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.), the Spill Compensation and Control Act (N.J.S.A. 58:10A-23.11 et seq.), and the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.). This provision shall survive the Closing or any termination of this Agreement.

19.3 Purchaser shall indemnify and hold Treasury and NJEDA harmless from and against any and all costs or damages, including, without limitation, reasonable attorneys' fees and experts' fees, incurred or suffered by Treasury or NJEDA as a result of Purchaser's purchase, use, sale or lease of the Property, or as a result of the exposure to Hazardous Materials of any of the following: Purchaser; any of Purchaser's tenants, employees, agents, servants, licensees, invitees, contractors, sub-contractors, concessionaires; or any third party whose exposure occurs as a result of or in connection with Purchaser's purchase, use, sale or lease of the Property. Such indemnification and hold harmless provision shall survive the Closing or any termination of this Agreement.

19.4 Purchaser acknowledges and agrees that Treasury and NJEDA have made no representations with respect to the present or prior existence of underground storage tanks at the Property and Purchaser agrees to take the Property with such underground storage tanks as may exist as of the date hereof in their "as is, where is" condition, and Purchaser, at its sole cost and expense, shall comply with all laws and regulations relating to the ownership, operation, maintenance and registration

- of such tanks, including, but not limited to, any required soil and/or ground water remediation.
20. Adjustments at Closing. Seller and Purchaser acknowledge that the Property is currently exempt from local real estate taxes. The following adjustments are to be made at the Closing as of the close of business on the Closing Date:
- 20.1 Parking lot revenue adjustments
 - 20.2 any other items which shall be appropriate for adjustment.
21. Representations and Warranties of Purchaser. For the purpose of inducing Seller to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Purchaser represents and warrants to Seller as follows:
- 21.1 Purchaser warrants that no person has been employed, directly or indirectly to solicit or secure this Agreement in violation of N.J.S.A. 52:34-15 et seq.
 - 21.2 Purchaser acknowledges that all legal and/or environmental due diligence work undertaken by Purchaser in preparation for or completion of these transactions shall be performed by Purchaser's attorneys and/or consultants at Purchaser's sole expense.
 - 21.3 Each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction contemplated hereby on behalf of Purchaser has due and proper authority to execute and deliver same. Purchaser has the full right, power and authority to purchase the Property as provided herein and to carry out its obligations hereunder without the joinder or consent of any other person or entity and Purchaser has due and proper authority to execute and deliver all documents related to the consummation of the transactions.
22. Standards Prohibiting Conflicts of Interest. The following prohibitions shall apply to all contracts made with NJEDA.
- (a) Purchaser has not and shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any Board member, officer or employee of the State

or the Seller, or special State officer or employee as defined in N.J.S.A. 52:13D-13b and e, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13f of any such Board member, officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

(b) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by a Board member, officer or employee of the Seller from Purchaser shall be reported in writing forthwith by the Purchaser to the State Attorney General.

(c) Purchaser may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement express or implied, or sell any interest in such Purchaser to any Board member, officer or employee of the Seller or special State officer or employee, or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Seller or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.

(d) Purchaser has not and shall not influence, or attempt to influence or cause to be influenced any Board member, officer or employee of the Seller in his official capacity in any manner which might tend to impair the objectivity or independence or judgment of said Board member, officer or employee.

(e) Purchaser has not and shall not cause or influence, or attempt to cause or influence, any Board member, officer or employee of the Seller to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Purchaser or any other person.

(f) It is agreed and understood that the Seller reserves the right to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect or would be contrary to the best interest of the Seller.

23. Representations and Warranties of Seller. For the purpose of inducing Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Seller represents and warrants to Purchaser as follows: each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction contemplated hereby on behalf of Seller has due and proper authority to execute and deliver same. Seller has the full right, power and authority to sell and convey the Property to Purchaser as provided herein and to carry out its obligations hereunder without the joinder or consent of any other person or entity and Seller has due and proper authority to execute and deliver all documents related to the consummation of the transactions.
24. Default by Seller. If Seller defaults under this Agreement, including if Seller shall be unable or fail to convey the Property in accordance with the terms of this Agreement, then Purchaser may elect to terminate this Agreement because of Seller's default, and in such event, the Deposit shall be returned to Purchaser and this Agreement shall be null and void and neither party shall have any further rights or obligations hereunder, except any rights or obligations that specifically survive the termination of this Agreement. Purchaser acknowledges that the remedies set forth in this Section 24 are Purchaser's exclusive remedies in the event of any breach of or default under this Agreement by Seller or the inability or unwillingness of Seller to consummate the Closing as provided in this Agreement.
25. Default by Purchaser.
- 25.1 The following occurrences shall be a default by Purchaser of the terms of this Agreement:
- (a) Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement hereunder, and continuance of such failure for a period of sixty (60) days, after receipt of written notice from the Seller specifying the nature of such failure and requesting that such failure be remedied.
 - (b) Purchaser shall have (i) applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; or

(ii) a custodian shall have been legally appointed with or without consent of Purchaser; or (iii) Purchaser has (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or (iv) Purchaser has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) 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 (vi) an Order for Relief shall have been entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code; or (vii) an Order, judgment or decree shall have been entered, without the application, approval or consent of Purchaser, 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 (viii) Purchaser shall have suspended the transaction of its usual business.

(c) Purchaser has abandoned, or substantially suspended, any work on the Approvals and the aforementioned abandonment or substantial suspension of work shall not be cured by the Purchaser within sixty (60) days after receiving written demand from the Seller.

25.2 If an occurrence of default by Purchaser occurs, then Seller, as its sole and exclusive remedy, may terminate this Agreement by giving notice thereof to Purchaser and the Title Company, whereupon the Seller shall be entitled to receive the Deposit as liquidated damages and not as a penalty.

26. Risk of Loss. The risk of loss or damage to the Property by fire or otherwise until Closing of title is assumed by Seller.

27. Condemnation. In the event that the entire Property or a substantial part thereof shall have been taken by eminent domain or shall be in the process of being so taken, on the Closing Date, either party shall have the option to terminate this Agreement on written notice to the other party, whereupon this Agreement shall terminate and neither party shall have any further rights or liabilities hereunder thereafter (except for return of the

Deposit and interest to Purchaser and provisions that expressly survive termination of this Agreement). In the event any such taking shall not include a substantial part of the Property or in the event that neither party shall terminate this Agreement pursuant to the preceding sentence, Purchaser shall accept the Property in the condition in which it is left following such taking, with an abatement of the purchase price measured by the proceeds of any condemnation award allowed. In the event the award has not been made or collected by Seller at the time of Closing, Seller shall assign to Purchaser at Closing all rights of Seller in the collection of such award and Purchaser shall accept the Property without abatement of the purchase price. As employed herein, the term "a substantial part of the Property" shall be deemed to mean a part of the Property consisting of 10% or more of the total area of the Property.

28. Assignment. It is expressly understood that this Agreement may not be assigned by Purchaser and any purported assignment shall be void.
29. Brokerage. Seller represents that it has not dealt with any broker or salesman in connection with this transaction. Purchaser represents that it has not dealt with any broker or salesman in connection with this transaction other than Seller's Broker. The provisions of this Paragraph shall survive the Closing or any termination of this Agreement.
30. 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.
31. 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 NJEDA) nor shall the State or any political subdivision thereof (other than NJEDA) 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 NJEDA).

32. 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.

33. Binding Agreement. This Agreement shall bind not only the Seller and Purchaser but also their heirs, executors, administrators, successors and assigns.

34. Entire Agreement. It is understood and agreed that all understandings and agreements between the parties are merged in this Agreement which alone fully and completely expresses their agreement. This Agreement may not be changed, altered or canceled orally, but only in writing signed by the parties.

35. Notices. All notices which must be given under this Agreement are to be given either by:

35.1 personal service;

35.2 certified mail, return receipt requested, addressed to the other party at its address specified above.

35.3 overnight delivery service (e.g., UPS, FedEx, USPS Next Day Mail)

35.4 e-mail transmission of copy of signed letter, with original by regular mail to follow:

If to Purchaser at [insert e-mail address], Attention: [insert name and title].

If to Seller at: dsullivan@njeda.com, Attention: Donna Sullivan, Director, Real Estate Division.

36. Miscellaneous.

36.1 New Jersey Law. This Agreement will be governed by and construed under the laws of the State of New Jersey. Any and all claims against the Seller based on contract law shall be made in accordance with and subject to the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). Any and all claims against the Seller based on tort law shall be made in accordance with and subject to the provisions of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.).

36.2 Severability. If any of the provisions of this Agreement will be deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and every provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

36.3 Interpretive Presumptions. Seller and Purchaser waive any statutory or common law presumption which would serve to have this document construed in favor of and/or against either party as the drafter.

36.4 Registration and/or Recordation. Purchaser agrees that it will not register, record or file this Agreement or any memorandum thereof. Seller shall have the option to declare this Agreement null and void if this Agreement shall be registered, recorded or filed without Seller's consent.

36.5 Effectiveness of Agreement. The submission of this Agreement for examination does not constitute an offer or option to purchase the Property, and this Agreement shall become effective as an Agreement only upon execution and delivery thereof by both the Seller and Purchaser.

36.6 Required Project Approvals. Purchaser covenants that use of the Property shall adhere to any and all applicable laws, regulations, ordinances and requirements including but not limited to those of the City of Camden. Purchaser shall be responsible to obtain any and all demolition permits, building permits, zoning variances, licenses, permits, and variances needed to develop, construct or operate the Project.

36.7 Title and Headings. Titles and headings are included for convenience only and shall not be used to interpret this Agreement.

36.8 Time Periods. If any time period or date ends on a day or time which is a weekend or legal holiday, such period shall be extended to the same time on the next business day.

37. Political Campaign Contributions

37.1 For the purpose of this Section 37, the following shall be defined as follows:

a) “Contribution” means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act” P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed “reportable” under these laws.

b) “Business Entity” means:

i. a for-profit entity as follows:

A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;

B. in the case of a general partnership: the partnership and any partner;

C. in the case of a limited partnership: the limited partnership and any partner;

D. in the case of a professional corporation: the professional corporation any shareholder or officer;

E. in the case of a limited liability company: the limited liability company and any member;

F. in the case of a limited liability partnership: the limited liability partnership and any partner;

G. in the case of a sole proprietorship: the proprietor; and

H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

ii. any subsidiary directly or indirectly controlled by the business entity;

iii. any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

iv. with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, PL 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").

c) PL 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).

37.2 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.

37.3 Purchaser hereby certifies to NJEDA 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 NJEDA pursuant to P.L. 2005, c. 51. Purchaser hereby further certifies to NJEDA that any and all certifications and disclosures delivered to NJEDA 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, NJEDA shall have the right to declare this Agreement to be in default.

37.4 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 termination of this Agreement. The provisions of this Section 37.4 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, NJEDA shall have the right to declare this Agreement to be in default.

37.5 In addition to any other Event of Default specified in the Contract Documents, NJEDA 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 NJEDA in connection with this Agreement.

The Seller and Purchaser have signed this Purchase and Sale and Development Agreement as of the date first written above.

Attest:

**NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY,
Seller**

Donna T. Sullivan, Director
Real Estate Division

Maureen Hassett, SVP
Governance, Communications &
Strategic Initiatives

Attest:

Purchaser

Name:
Title:

[insert name]
[insert title]