



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: September 12, 2008

SUBJECT: Agenda for Special Board Meeting of the Authority September 15, 2008

1. **Notice of Public Meeting**
2. **Roll Call**
3. **MEPT Journal Square Urban Renewal, LLC**
4. **Technology Business Tax Certificate Transfer Program - Amendment**
5. **Public Comment**
6. **Adjournment**



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: September 15, 2008

SUBJECT: MEPT Journal Square Urban Renewal, LLC
P19569
Journal Square
Jersey City, Hudson County, New Jersey

Modification Request:

On May 13, 2008 and as modified on August 12, 2008, the Members of the Board approved a \$15,522,500 loan utilizing New Markets Tax Credits ("NMTC") from NJCDE-3 to MEPT Journal Square Urban Renewal, LLC ("MEPT", "borrower" or the "Company"). In order to comply with the federal mandated timeframes that govern funding NMTC projects, modification to the original approval is required. This request is to modify the Authority's NMTC loan approval as follows: 1] to pre-approve the release of a portion of the mortgage serving as the project collateral, 2] to permit the borrower to prepay the NMTC loan under certain circumstances described hereafter and 3] to delegate to staff (with CEO signature and as reviewed by counsel) the right to close the NMTC loan on terms that differ from the original approval, as amended, provided that staff determines that such terms are fiscally prudent, are within Authority underwriting guidelines, and do not involve a change to the interest rate, identity of the borrower, term or amount of the loan, or collateral for loan, subject to an agreement with the borrower of the Authority's right to call the loan (with 12 months notice) should the Board not approve said differing terms post closing.

Background:

MEPT is a recently formed single purpose entity, which will serve as the borrower for a new project in Jersey City. MEPT is owned by three entities; New Tower Trust Company Multi-Employer Property Trust (NewTower) with a 65.625% interest, Journal Square Development Urban Renewal, LLC (JSDUR) with a 21.875% interest and Becker Development, LLC (Becker) with a 12.5% interest. NewTower, JSDUR and Becker collectively are referred to as the development team.

The project entails a 1.5-acre site (adjacent to the PATH station at Journal Square in Jersey City) consisting of new construction over two phases resulting in a parking garage with 783 spaces (available to the public), 156,196 gross square feet of retail and 1,503 units of rental apartments. Phase one will include a five-story parking, two-story retail and sixty-story residential tower (total project costs of \$500 million). Note that the NJEDA NMTC assistance is specifically dedicated for the parking and retail portion of Phase one (project costs of approximately \$107 million) and a specific condominium unit has been formed for this purpose. Phase two will consist of a forty-story residential tower, which will be on top of the retail and parking podium and next to the first residential tower (and will be subject to the economic environment upon completion of Phase one in approximately 18 months).

While the development team continues to forge ahead with the project with the support of Jersey City, the negotiation of the PILOT with the city and the construction contract have taken longer than expected. As a result, it has impacted our ability to close this loan by September 28, 2008 (which was determined by the loan pool closing with our investor, US Bank) so as to avoid significant penalties. Based on the progress on our originally stipulated

closing conditions at this juncture, we are confident that ultimately these will be delivered within the next 90 days and hence seek to proceed to close by September 28, 2008 as the risk is deemed to be essentially similar as the economic merits and strengths of the project remain sound.

The Authority's outside counsel has determined that this modification that permits this loan to close will result in the Authority/CDE-3 satisfying the "substantially all" requirements under NMTC rules with respect to loan pool established in connection with the September 2007 US Bank investment.

Specifically MEPT seeks the following (which deviates from the most recent approval by the Members of the Authority for this project):

1. Authority approval of a partial release of the mortgage and security interest such that only Condominium Unit C (parking lot and retail structure) will serve as our primary collateral for the NMTC loan. It is intended that the condominium units will be separated into the following after the closing of the loan: two residential units and one commercial unit (Condominium Unit C). Once the condominium units are formed and adequate documentation is provided, the release of all but Unit C would occur.

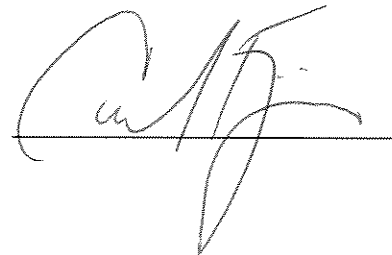
2. Approval by the Authority to permit the Borrower to prepay its NMTC loan in full without any payment of penalty, premium or recapture tax credit liability, plus release of all guarantors of the loan, in certain limited circumstances. Such circumstances consist of the failure of the EDA board or CDE-3 board to approve a request by the Borrower for: a) additional financing, b) the granting of additional liens, c) the sale, assignment or transfer of collateral, d) assignment of a membership interest and e) assignment by NewTower (guarantor of the loan) of its membership interest in Borrower to a newly formed entity which would qualify as a real estate investment trust.

Said board approvals must be provided within 60 days from the Borrower's written request, failing which the Borrower would have the right to pre-pay the NMTC loan in full without penalty and the guarantors would be released from their obligations. In such event, NJEDA and CDE-3 would have 12 months to redeploy these funds into another qualified project.

3. Delegation to staff (with CEO signature and as reviewed by counsel) the right to close the loan on terms that differ from the original approval, as amended, provided that staff determines that such terms are fiscally prudent, are within Authority underwriting guidelines, and do not involve a change to the interest rate, identify of borrower of the Authority's right to call the loan (with 12 months notice) should the Board not approve said differing terms post closing.

Recommendation:

Approval of the modification is recommended, as the project continues to progress well and the proposed changes do not materially alter the credit risk to the Authority and serve to meet the timing requirements for our NMTC loan pool closing as required under NMTC regulations. It is noted that the maximum potential recapture exposure on the loan pool equates to an approximate \$12 million risk to the Authority should the NJCDE-3 fail to deploy substantially all of the loan pool funds. This approval is subject to final approval by the NJCDE-3 at a meeting to be held on September 15, 2008.

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

Prepared by: Michael A. Conte, Senior Credit Underwriter



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: September 15, 2008 Special Board Meeting

SUBJECT: Technology Business Tax Certificate Transfer Program - Amendment

SUMMARY

At the September 9, 2008 Board Meeting, the Members of the Authority approved 89 benefit requests, denied 41 benefit requests, and held one project pending a determination of staff's recommendation on a legal issue.

The applicant having the legal issue, CMWare, Inc., has withdrawn its application to the program.

Additionally, due to a clerical error, 4 applicants (Alfacell Corporation, Alphion Corporation, Palatin Technologies and Pharmos Corporation) were presented as having requested to sell Returning benefits only (a re-approval of benefits approved in a prior year but not sold due to the \$60M annual Program limit). These 4 applicants also applied for approval of newly generated benefits (Recertification).

Based on evaluations by the Authority and by the Commission on Science and Technology, the attached revised list identifies the approval/disapproval (along with the reason for all disapprovals) recommendations for these 4 applicants (shown in bold and underlined).

RECOMMENDATION:

Based on the above, approval is recommended for 2 of the 4 benefit requests (Alfacell Corporation and Alphion Corporation) which have been evaluated according to the criteria established by the Members of the Board and met the criteria for approval. Disapproval is recommended for 2 of the 4 benefit requests (Palatin Technologies and Pharmos Corporation) that failed any of the threshold criteria. As noted above, the CMWare project was withdrawn.

B: RECERTIFICATION APPLICATIONS

	RECOMMENDED FOR APPROVAL	RECOMMENDED FOR DISAPPROVAL	REASON(S)
1	Advanced Cerametrics, Inc	American Beryllia, Inc.	10, 11
2	Akers Biosciences, Inc.	Bioarray Solutions	5, 8, 14
3	<u>Alfacell Corporation</u>	Bullrun Financial, Inc.	8
4	<u>Alphion Corporation</u>	Coates International, LTD.	8
5	Antenna Software, Inc.	Elusys Therapeutics, Inc.	6
6	Arkados Inc.	Epv Solar, Inc.	7
7	Bigstring Corporation	Exclaim, Inc. (formerly DotPhoto)	6
8	ClassLink, Inc.	ExSar Corporation	8
9	Connotate Technologies	Globalprint Systems, Inc.	8
10	Conolog, Corporation	iVoice Technology, Inc.	8
11	Corente, Inc.	Kirusa, Inc.	7, 19
12	Dynamic Mobile Data	Knite Inc	13, 19
13	Ei3 Corporation	Lamina	5, 16
14	Immunogenetics (IGI), Inc.	Lumeta Corporation	6, 8
15	Juvent Medical, Inc.	Magnolia	6
16	Lux Biosciences, Inc.	NetForensics	5, 6, 8
17	Milestone Scientific	New Jersey Microsystems	6, 8
18	Nofire Technologies, Inc.	NovaDel Pharma, Inc.	6, 8
19	NuVim, Inc.	Orthocon, Inc.	13
20	Pharmacopeia, Inc.	<u>Palatin Technologies</u>	6
21	Princeton Lightwave	<u>Pharmos Corporation</u>	6
22	Provid Pharmaceuticals, Inc	Phytomedics, Inc.	8
23	PTC Therapeutics	Princeton Optronics	2, 5, 7
24	Pure Energy Corporation	StrikeForce Technologies, Inc.	6
25	SightLogix Inc	Synthemed, Inc.	8
26	Signum, Biosciences, Inc.	Tetragenex Pharmaceuticals Inc.	6
27	Songbird Hearing, Inc.	Transave, Inc.	8
28	Speech Switch, Inc.	VioQuest Pharmaceuticals, Inc.	5, 6
29	TYRX Pharma, Inc,	Vpisystems Corporation	17
30	WellGen, Inc.	VYTERIS	6, 8
31		X-Cell Medical, Inc.	6, 13
	WITHDRAWN APPLICATION		
1	CMWare, Inc.		

CODE TO REASONS FOR DISAPPROVAL RECOMMENDATIONS

- 1 = Applicant was deemed not to be a Technology/Biotechnology company by NJCS&T.
- 2 = Applicant had positive Net Income in either of the last 2 years.
- 3 = Parent company had positive Net Income in either of the last 2 years.
- 4 = Applicant had Operating Revenues in excess of 110% of Operating Expenses in either of last 2 years.
- 5 = Applicant failed to provide required documentation demonstrating that 75% or more of its U.S. employees work in NJ.
- 6 = Applicant failed to demonstrate that permanent full-time jobs will be created in NJ.
- 7 = Applicant failed to demonstrate that it has insufficient resources to operate in the short term.
- 8 = Applicant failed to demonstrate that it will experience a positive trend in its net income.
- 9 = Applicant failed to demonstrate that it has Protected Proprietary Intellectual Property (PPIP).
- 10 = Applicant failed to provide adequate documentation supporting its rights to PPIP.
- 11 = Applicant failed to demonstrate that its technology is Scientifically and Technologically Viable.
- 12 = Applicant failed to demonstrate that its technology provides it with a Competitive Advantage.
- 13 = Applicant failed to provide the required independent CPA prepared Financial Statements.
- 14 = Applicant failed to demonstrate that it has fewer than 225 employees in the U.S.
- 15 = Applicant failed to provide all 3 of the most recent 3 years' Financial Statements.
- 16 = Applicant is not currently operating as a Technology/Biotechnology Company.
- 17 = Applicant failed to provide the required independent CPA prepared Financial Statements of its parent.
- 18 = Applicant failed to demonstrate that 75% or more of its U.S. employees work in NJ at application.
- 19 = Applicant failed to submit application by the June 30 Statutory deadline.