

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made this ____ day of _____ 2009, by and between NEW JERSEY INSTITUTE OF TECHNOLOGY (“NJIT”), a body corporate and politic of the State of New Jersey, with an address of University Heights, Newark, New Jersey 07102, and JONES LANG LASALLE INCORPORATED (“JLL”), a Maryland corporation, with an address of 153 E. 53rd Street, 33rd Floor, New York, New York 10022 (collectively “The Parties”).

RECITALS

WHEREAS, on March 31, 2008, by Resolution No. 7R3-B(S), the Municipal Council of the City of Newark pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., designated NJIT as the Redeveloper of the properties known as Block 43, Lots 1, 4, 10, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 48, 50, 51, 52, 60, 61; Block 2857, Lots 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30; Block 2858, Lots 1, 2, 10, 12, 14, 15, 16, 18, 20, 23, 43, 45, 50; Block 372, Lots 1, 5, 6, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22, 24; Block 384, Lot 1; Block 2828, Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61; Block 2830, Lot 1; Block 2831, Lots 3, 5, 6, 13, 18; Block 389, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 32, 33, 34, 35, 36, 46, 47, 48, 49, 51, 53; Block 40, Lots 1, 2, 3.01, 3.02, 4.01, 4.02, 5, 6, 7.01, 7.02, 8.01, 8.02, 9, 10.01, 10.02, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 25, 32, 35, 36, 37, 38, 42, 47, 48, 52.01, 52.02, 53; Block 41, Lots 1, 3, 32, 33, 34, 35, 36, 62, 65, 66, 69, 70, 72; and Block 42, Lot 44 in the City of Newark, New Jersey (the “Redevelopment Area”); and

WHEREAS, on April 3, 2009, the parties entered into that certain Memorandum of Understanding pursuant to which the parties reached an understanding as to JLL’s potential role in the redevelopment of the Redevelopment Area; and

WHEREAS, NJIT has negotiated that certain Redevelopment Agreement (the “Redevelopment Agreement”) for the redevelopment of the Redevelopment Area with the City of Newark, a copy of which is attached hereto as Exhibit A; and

WHEREAS, pursuant to the Redevelopment Agreement, the redevelopment of the Redevelopment Area is to be performed in accordance with that certain NJIT Gateway Phasing Plan (the “Phasing Plan”); a copy of which is attached hereto as Exhibit B; and

WHEREAS, the parties desire to memorialize JLL’s role in the redevelopment of the Redevelopment Area, among other things, upon and subject to the terms and conditions contained herein; and

WHEREAS, further separate agreements (“Assignment Agreements”) will be drafted and agreed upon detailing the specific terms of the assignment to JLL of each individual Phase or Sub-Phase of the project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties agree as follows:

1. Payments.

- a. Upon execution of this Agreement, JLL shall pay the sum of \$50,000.00 by certified check or wire transfer to NJIT (“Initial Reimbursement”), which sum shall be nonrefundable to JLL.
- b. Upon funding of construction financing of f Phase 1, as set forth in the Phasing Plan, JLL shall pay the sum of \$89,000.00 by certified check or wire transfer to NJIT (“Phase 1 Reimbursement”), which sum shall be nonrefundable to JLL. The Phase 1 Reimbursement shall be due upon funding of construction financing, but no later than November 1, 2010. Jones Lang LaSalle shall not earn a fee until the Phase 1 Reimbursement has been made.
- c. Upon funding of construction financing of Phase 2, as set forth in the Phasing Plan, JLL shall pay the sum of \$60,800.00 by certified check or wire transfer to NJIT (“Phase 2 Reimbursement”), which sum shall be nonrefundable to JLL. The Phase 2 Reimbursement shall be due upon funding of construction financing, but no later than November 1, 2012. Jones Lang LaSalle shall not earn a fee until the Phase 2 Reimbursement has been made.
- d. Upon funding of construction financing of Phase 3, as set forth in the Phasing Plan, JLL shall pay the sum of \$50,200.00 by certified check or wire transfer to NJIT (“Phase 3 Reimbursement”), which sum shall be nonrefundable to JLL. The Phase 3 Reimbursement shall be due upon funding of construction financing, but no later than November 1, 2014. Jones Lang LaSalle shall not earn a fee until the Phase 3 Reimbursement has been made.
- e. A failure to tender any sums due pursuant to this Agreement shall be considered an Event of Default.
- f. JLL recognizes and covenants that contained in each separate agreement for each Phase or Sub-Phase shall be a method of compensation due and owing to NJIT in addition to the Initial Reimbursement, Phase 1 Reimbursement, Phase 2 Reimbursement and Phase 3 Reimbursement, which shall be based upon the defined roles, responsibilities and equity/land participation as set forth in each Assignment Agreement (“Additional Compensation”). Agreement on the amount and manner of the Additional Compensation shall be a condition to any assignment to JLL by NJIT.

2. Agreement to Assign. Pursuant to Section 6.3 of the Redevelopment Agreement, NJIT has the conditional right to transfer its redevelopment rights under the Redevelopment Agreement to JLL. NJIT shall assign all or a portion of its rights under the Redevelopment Agreement to JLL upon and subject to the following conditions, and as limited by applicable law, the Redevelopment Agreement and this Agreement:
 - a. JLL shall provide NJIT with proof satisfactory to NJIT in its sole and absolute discretion that JLL has the financial ability to perform the obligations being assigned to it by posting of a completion bond, performance bond, letter of credit or other financial assurance satisfactory to NJIT; and
 - b. To the extent feasible, JLL shall demonstrate to NJIT's satisfaction that it has title to or control of the properties included within the portion of the Redevelopment Area that is to be assigned to JLL, or that JLL has the ability to obtain title or control; and
 - c. JLL shall provide NJIT with a detailed concept plan for the redevelopment of the each Phase or portion thereof that is to be assigned to JLL, which plan is satisfactory to NJIT in its sole and reasonable discretion.
 - d. If required by NJIT in its reasonable discretion, JLL shall provide a Subcontractor that has the expertise and ability to cause a particular Phase or Sub-Phase to be constructed.
 - e. NJIT agrees, in its sole and reasonable discretion, on the amount of Additional Compensation to be paid in conjunction with each Assignment Agreement.
3. Redevelopment Agreement. JLL acknowledges that it has participated in the negotiation of the Redevelopment Agreement and that it has reviewed and accepts the Redevelopment Agreement in all respects and makes no reliance upon any representation or promise by anyone as to its contents. In the event NJIT assigns to JLL, and JLL does assume the obligation to perform all of NJIT's obligations under the Redevelopment Agreement for a property or properties within the Redevelopment Area, then JLL shall undertake and perform each and every obligation of NJIT under the Redevelopment Agreement assigned to JLL, at JLL's sole cost and expense, as is necessary to implement the completion of the Project (as such term is defined in the Redevelopment Agreement) including, but not limited to:
 - a. Be responsible for Acquiring or Controlling in accordance with those definitions set forth in the Redevelopment Agreement, at its sole cost and expense, all properties contained in that portion of the Redevelopment Area assigned to JLL and for which JLL has assumed obligation, and complete each phase of the Redevelopment assigned to JLL in accordance with the Phasing Plan, as may be modified upon the written agreement of the Parties;

- b. Comply with all applicable federal, state, county and municipal construction codes, statutes, laws, ordinances and regulations;
- c. Ensure that all workmanship shall be of the highest quality and shall be performed by persons well-qualified at their respective trades; and
- d. Take all steps, generally, to implement the terms and to satisfy the conditions of the Redevelopment Agreement.

4. NJIT Oversight.

- a. Prior to its entry into any contract or subcontract with any architect, engineer, general contractor and major subcontractor, which, for purposes hereof, shall be a subcontractor whose subcontract is in excess of \$750,000.00 (each a “Contract Party”), JLL shall submit the proposed contract or subcontract agreement to NJIT for its review and approval. Such approval shall not be unreasonably withheld, conditioned or delayed and shall be within five (5) business days of submission. JLL shall provide to NJIT with copies of all executed contract and subcontract agreements, purchase orders and other documents related to the work.
 - i. This Section 4(a) may be adjusted or modified prior to each Phase or Sub-Phase as agreed to by the Parties in writing.
- b. Prior to commencing any construction work or acquiring any property in the Redevelopment Area, JLL shall submit a comprehensive project budget to NJIT for its review and approval, which approval shall not be unreasonably withheld conditioned or delayed. JLL shall provide immediate written notice to NJIT should the actual project budget as a whole be exceeded by five percent (5%) or more.
- c. Prior to JLL’s or NJIT’s submission of any plans, drawings, contracts, reports, correspondence or other materials (collectively, the “Submissions”) to the City of Newark (the “City”), JLL or NJIT shall first provide copies of the Submissions to the other party for its review and approval, and either party shall not submit any Submission to the City, without NJIT’s consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- d. JLL and NJIT shall provide each other with not fewer than three (3) business days advance written notice of any meetings or conferences with the City, and either party shall have the right and option to participate in any such meetings or conferences.

- e. JLL and NJIT shall provide each other with copies of all correspondence or notices received from the City within five (5) business days of JLL's receipt thereof.
 - f. JLL shall provide NJIT with monthly written reports with all pertinent information regarding the project, including but not limited to budget line items, status of land acquisitions, and progress of any construction or renovations. The information required in the monthly reports shall be set forth in the agreement for the particular Phase or Sub-Phase.
5. Indemnification. JLL agrees to and hereby does indemnify, protect, defend and hold NJIT, its officers, directors, board members, members, heirs, successors, administrators, assigns and legal representatives, as applicable, harmless from any and all claims, damages, losses, suits, proceedings, costs and expenses (including, without limitation, reasonable attorneys' fees), both known or unknown, present and future, at law or in equity, arising out of, by virtue of or in any way related to the breach by JLL of (or JLL's failure to timely perform) any or all of the obligations imposed on the part of the Redeveloper (as defined in the Redevelopment Agreement) to be performed under the terms of the Redevelopment Agreement assigned to JLL from and after the date hereof.
6. Representations. JLL represents and warrants the following to NJIT, as an inducement to NJIT to enter into this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the redevelopment:
- a. that it is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to perform all obligations hereunder and under the Redevelopment Agreement;
 - b. that it is able to perform its obligations hereunder and under the Redevelopment Agreement;
 - c. that it is authorized to do business in the State of New Jersey and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the project; and
 - d. that it possesses experience and expertise in the design of projects of the size, complexity, and nature of the project, and that it will perform its services with care, skill and diligence;
 - e. that it is a corporation duly organized and validly existing under the laws of the State of Maryland, is in good standing, has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated and the execution and delivery hereof and the performance by JLL of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which JLL is a party or by which it is bound;

- f. that the execution, delivery and performance of this Agreement by JLL and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provision of law, statute, rule or regulation to which JLL is subject or violate any judgment, order, writ, injunction or decree of any court applicable to JLL;
 - g. that no consent, authorization, license, permit, registration or approval of, or exemption or other action by, any governmental or public body, commission or authority is required in connection with the execution, delivery and performance by JLL of this Agreement; and
- 7. Limitation on NJIT's Representations, Warranties, Covenants and Agreements. NJIT DOES NOT MAKE ANY CLAIMS OR PROMISES ABOUT THE CONDITION OR VALUE OF ANY PROPERTIES OR BUILDING INCLUDED IN THE REDEVELOPMENT AREA OR THE TITLE THERETO. JLL ACKNOWLEDGES AND AGREES THAT NJIT IS NOT LIABLE FOR OR BOUND BY, AND JLL HAS NOT RELIED UPON, ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR ANY OTHER INFORMATION RESPECTING THE PROPERTY OR BUILDING INCLUDED IN THE REDEVELOPMENT AREA FURNISHED BY NJIT OR ANY EMPLOYEE, PARTNER, ATTORNEY, AGENT, CONSULTANT OR OTHER PERSON REPRESENTING OR PURPORTEDLY REPRESENTING NJIT.
- 8. Contracts. All contracts JLL enters into with any party in furtherance of this Agreement shall be in compliance with the terms of the Redevelopment Agreement. Each contract or subcontract that JLL shall enter into with any architect, engineer, developer, general contractor and major subcontractor, which, for purposes hereof, shall be a Subcontractor whose subcontract is in excess of \$750,000.00 (each a "Subcontractor"), for all or any portion of the work shall include and shall be deemed to include, the following:
 - a. An agreement that, if JLL is in default of its obligations under this Agreement, Assignment Agreement or subcontract, then NJIT shall be a third-party beneficiary of all Assignment Agreements, contracts or subcontract agreements flowing from this Agreement, entitled to enforce any rights thereunder for its benefit, and that NJIT shall have the same rights and remedies against the Subcontractor as JLL may have, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by NJIT resulting from any breach of representations and warranties expressed or implied, if any, arising out of the contract or subcontract agreement and any error, omission, or negligence of the Subcontractor in the performance of any of its obligations under the agreement;
 - i. This Section 8(a) may be waived by NJIT in its sole and reasonable discretion.

- b. A requirement that the Subcontractor promptly disclose to JLL and NJIT any defect, omission, error, or deficiency in the contract documents, instruments of service or in the work of which it has, or should have had, knowledge;
- c. Each contract and subcontract agreement shall specifically provide that NJIT shall only be responsible to the Subcontractor for those obligations of JLL that accrue subsequent to NJIT's exercise of any of its rights hereunder; and

9. Completion Bond. If required by either NJIT or the City, JLL shall provide a completion or other bond for any Phase or portion thereof in the amount of one hundred percent (100%) of the cost to complete all work, which bond shall be

- a. made payable to both NJIT and the City;
- b. be issued by a surety company licensed to do business in New Jersey;
- c. remain in effect for a period prior to a final, permanent and unconditional certificate of occupancy.; and
- d. be issued by a surety having a "Best Rating" of "A" or better as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty" and a "Best Financial Strength Category" of "Class V" or better.

10. Inspections. NJIT shall have the right to be present for all substantial completion and final inspections of the construction work, and JLL shall give written notice to NJIT of the scheduling of all inspections not fewer than three (3) business days in advance of same.

11. Notices. Any communication required or permitted to be given or delivered hereunder shall be in writing and shall be effective (i) three days after mailing if sent by first class certified mail, postage prepaid, or (ii) one day after deposit if sent by recognized overnight delivery service, in each instance addressed to the party intended at the address set forth on the first page of this Agreement (or such other address as the parties may direct by written notice to the other party) with copies to their respective attorneys as follows:

NJIT'S ATTORNEY:

Peter J. Wolfson, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
PO Box 1997
Morristown, NJ 07962

JLL'S ATTORNEY:

12. Default.
 - a. JLL's Remedies. If NJIT defaults under this Agreement, or intentionally or materially breaches any obligation, representation or warranty contained herein, JLL shall provide written notice thereof to NJIT, and if NJIT shall not rectify same within thirty (30) days following NJIT's receipt of JLL's notice, then JLL's sole remedy will be to terminate this Agreement upon written notice to NJIT.
 - b. NJIT's Remedies. If JLL defaults under this Agreement, or intentionally or materially breaches any obligation, representation or warranty contained or assumed by it herein, NJIT shall have the right in its sole and absolute discretion to: (i) terminate this Agreement and revoke any assignment made hereunder, or (ii) exercise all remedies available to NJIT at law and in equity against JLL, including but not limited to specific performance.
13. Captions. The captions and other headings contained in this Agreement as to the contents of particular articles, sections, paragraphs or other subdivisions contained herein are inserted for convenience of reference only and are in no way to be construed as part of this Agreement or as limitations on the scope of the particular articles, sections, paragraphs or other subdivisions to which they refer and shall not affect the interpretation or meaning of this Agreement.
14. Governing Law. This Agreement shall be controlled, construed and enforced in accordance with and will be governed by the laws of the State of New Jersey.
15. Entire Agreement. This Agreement and any Exhibits annexed (or to be annexed) hereto embody the entire agreement between the parties in connection with this transaction, and there are no oral or parol agreements, representations, or inducements existing between the parties relating to this transaction that are not expressly set forth herein and covered hereby. This Agreement may not be modified except by a written agreement executed by all parties.
16. Brokerage. Each party represents to the other that no broker was involved in bringing the parties to this Agreement. NJIT and JLL shall each indemnify and hold harmless the other against any and all claims, demands, causes of action, losses, costs and expenses (including legal fees and expenses) resulting from any inaccuracy of the foregoing representation caused by the indemnifying party. In the event a claim for a commission is made, the party having substantively initiated that claimant's involvement shall indemnify and hold the other party harmless against said claim, also reimbursing the cost of a defense.

17. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or other electronic means shall be binding and enforceable for all purposes.
18. Parity. This Agreement shall be construed on a parity basis. The Agreement is the result of negotiation between NJIT and JLL, and the identity of the draftsman shall not be utilized in the interpretation of any provision of this Agreement.
19. Authority. The officers executing this Agreement on behalf of any corporation or other form of entity represent that they have been duly authorized to execute this Agreement pursuant to a validly adopted resolution or consent.
20. Assignment. This Agreement may not be assigned by either NJIT or JLL without the written consent of the other party, except if the Assignment in part or in whole is to a Special Purpose Entity formed specifically for the project and JLL remains primarily liable to NJIT for all obligations pursuant to this Agreement.
21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, legal representatives, administrators, successors, and assigns.
22. Attorneys' Fees. In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, without limitation, the obligation to pay costs of defense in the form of court costs and reasonable attorneys' and paralegal fees and disbursements.
23. Financing Contingency. With the exception of Section 1, performance by JLL of its obligations hereunder is not subject to any financing contingency. Notwithstanding same, JLL can in its sole discretion obtain financing, and NJIT shall reasonably cooperate in providing any documentation customarily and reasonably required by JLL's lender.
24. Costs and Expenses. Each party shall bear its own legal fees and other costs and expenses with respect to this transaction, except as otherwise provided herein or as otherwise agreed in writing by the parties
25. Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof

[The signatures of the parties appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

Witness/Attest:

NJIT:

New Jersey Institute of Technology

By: _____

Witness/Attest:

JLL:

Jones Lang LaSalle Incorporated

By: _____