NJIT BOARD OF TRUSTEES
Thursday, June 6th, 2013

PUBLIC SESSION MEETING

NJIT

New Jersey's Science & Technology University
Call to Order

1. Notice of Meeting to Public (Statement to be read by the Chair, a requirement of the NJ Open Public Meeting Act)

2. Public Comments

3. Action Items
   A. Approve minutes of the April 16, and May 23, 2013 meeting of the Board of Trustees {Pg. 7}
   B. Resolution to Approve Promotion and Tenure Recommendations for 2013-2014 {Pg. 12}
   C. Resolution to Authorize Expenditure for Electricity and Natural Gas for FY 2014 {Pg. 22}
   D. Resolution to Approve the Nomenclature Change for the M.S. in Pharmaceutical Bioprocessing to the M.S. in Biopharmaceutical Engineering {Pg. 26}
   E. Resolution to Discontinue the Master of Public Health, Joint Program with Rutgers-Newark and UMDNJ {Pg. 29}
   F. Resolution to Approve Gateway Resolution {Pg. 32}

4. Reports
   A. Update on Enrollment {Pg. 127}
   B. Update on Warren Street Village
   C. Report of Gifts and Fund Raising Activities {Pg. 130}
   D. Report on NEXT Campaign {Pg. 132}
   E. Operating Statement Year to Date {Pg. 134}
   F. Schedule of Short Term Investments {Pg. 137}
   G. Budget Hearing July 16, 2013

Announcement of Next Meeting

Chair to read resolution regarding Closed Session to discuss Personnel, Legal, Real Estate and Contract Matters to be held on Thursday, July 25, 2013, 10:00 AM, Eberhardt Hall NJIT Alumni Center Board Room.

Announce next public meeting: Thursday, July 25, 2013, 1:00 PM, Eberhardt Hall NJIT Alumni Center Board Room.

Adjourn Public Meeting
New Jersey Institute of Technology
--innovative, entrepreneurial, engaged

Mission

NJIT is the state’s technological research university, committed to the pursuit of excellence ——

- in undergraduate, graduate, and continuing professional education, preparing students for productive careers and amplifying their potential for lifelong personal and professional growth;

- in the conduct of research with emphasis on applied, interdisciplinary efforts encompassing architecture, the sciences, including the health sciences, engineering, mathematics, transportation and infrastructure systems, information and communications technologies;

- in contributing to economic development through the state’s largest business incubator system, workforce development, joint ventures with government and the business community, and through the development of intellectual property;

- in service to both its urban environment and the broader society of the state and nation by conducting public policy studies, making educational opportunities widely available, and initiating community-building projects.

NJIT prepares its graduates for positions of leadership as professionals and as citizens; provides educational opportunities for a broadly diverse student body; responds to needs of large and small businesses, state and local governmental agencies, and civic organizations; partners with educational institutions at all levels to accomplish its mission; and advances the uses of science, technology, engineering and mathematics (STEM) as a means of improving the quality of life.

Vision

A preeminent engineering, design, science and technology university known for research and education fostering innovation, entrepreneurship, and engagement.
1. Notice of Meeting to Public
BOARD OF TRUSTEES

STATEMENT TO BE READ AT THE OPENING OF EACH
MEETING OF THE BOARD OF TRUSTEES

“NOTICE OF THIS MEETING WAS PROVIDED TO THE PUBLIC
AS REQUIRED BY THE NEW JERSEY PUBLIC MEETING ACT, IN
THE SCHEDULE OF MEETING DATES OF THE BOARD OF
TRUSTEES OF THE NEW JERSEY INSTITUTE OF TECHNOLOGY
WHICH WAS MAILED TO THE STAR LEDGER, THE HERALD NEWS,
AND THE VECTOR ON JULY 19, 2012. THIS SCHEDULE WAS
ALSO MAILED TO THE COUNTY CLERK ON JULY 19, 2012
FOR FILING WITH THAT OFFICE AND POSTING IN SUCH PUBLIC
PLACE AS DESIGNATED BY SAID CLERK.”
2. Public Comments
3A. Approve Minutes of the April 16 and May 23, 2013 Meeting of the Board of Trustees
NEW JERSEY INSTITUTE OF TECHNOLOGY
BOARD OF TRUSTEES
MINUTES OF PUBLIC MEETING (DRAFT)
(April 16, 2013)

The meeting was called to order by Chair-Elect DePalma 12:00 noon, in Eberhardt Hall, NJIT Alumni Center Boardroom, NJIT Campus, Newark, N.J. Also in attendance were Vice Chairs DeCaprio and Slimowicz, and Board Members Beachem, Bone, Cistaro, Dahms, Garcia, Knapp, Raia and Sugla. Absent: Chairperson Wielkopolski. Administrative members in attendance included President Bloom, Treasurer Mauermeyer, Secretary Stern, Interim Provost Deek, Vice Presidents Turner, Dees, Fey, and Sebastian.

1. In accordance with the New Jersey Open Public Meeting Act, Chair-Elect DePalma read the following statement:

   "Notice of this meeting was provided to the public as required by the New Jersey Meeting Act, which was mailed to the Star Ledger, The Herald News and Vector on March 27, 2013. The Schedule was also mailed to the City Clerk of Newark on March 27, 2013, for filing with that office and posting in such public place as designated by said Clerk."

2. BY A MOTION DULY MADE BY MR. KNAPP, SECONDED BY MR. CISTARO AND UNANIMOUSLY APPROVED, the Board moved to convene in Closed Session to discuss matters involving personnel, real estate, contracts and legal issues.

3. The Board returned to public session at 2:40 p.m.

4. BY A MOTION DULY MADE BY MR. BEACHEM, SECONDED BY MR. SUGLA AND UNANIMOUSLY APPROVED, the Board moved to approve the minutes of February 7 and March 6, 2013 meetings of the Board of Trustees.

5. There were no members of the public for the public comments portion of the agenda.

6. Dr. Bloom introduced the Co-Captains and members of the Women's Basketball team, the Captains and members of the Men's Basketball Team, and Leonard Kaplan, our Director of Athletics. Mr. Kaplan introduced the Head Coaches and the players. The Board congratulated the team members and their coaches for their outstanding achievements. Board Member Cistaro read the Resolution to Acknowledge Men's Basketball 2013 Conference Champions and Resolution to Acknowledge Women's Basketball 2013 Conference Tournament.

7. BY A MOTION DULY MADE BY MR. CISTARO, SECONDED BY MS. GARCIA AND UNANIMOUSLY APPROVED, the Board voted to APPROVE RESOLUTION TO ACKNOWLEDGE MEN'S BASKETBALL 2013 CONFERENCE CHAMPIONS and APPROVE RESOLUTION TO ACKNOWLEDGE WOMEN'S BASKETBALL 2013 CONFERENCE TOURNAMENT.
8. BY A MOTION DULY MADE BY MR. BONE, SECONDED BY MS. GARCIA AND UNANIMOUSLY APPROVED, the Board voted to APPROVE RESOLUTION TO ACKNOWLEDGE THE SERVICE OF TRUSTEE ANNE BABINEAU. The Board expressed their gratitude, and plans to present Ms. Babineau with a framed copy of the Resolution at an appropriate time.

9. BY A MOTION DULY MADE BY MR. RAIA, SECONDED BY MR. SUGLA AND UNANIMOUSLY APPROVED, the Board voted to APPROVE RESOLUTION TO APPROVE AUDITORS CONTRACT.

10. President Bloom discussed the Annual Report, and commended Dr. Dees and his staff on the development of the “Moving the Edge” publication. The format highlights multiple researchers and accomplishments of outstanding individuals.

11. Vice President Dees also gave a report on the Status of Comprehensive Campaign and Gifts Reports. He noted that the gift report summary in the Board materials ended at 3/31/13. Highlights of the report include the fact that total giving minus bequests has increased 20%. He was pleased to note that alumni dollars and number of donors is up, and concluded by noting that fundraising for the month of April looks positive.

12. Treasurer Mauermeyer discussed the Operating Statement Year to Date, and the Schedule of Short Term Investments. We are at target overall for tuition and fees for this time of the year. The revenue recognition is now all earned for the fiscal year. On the Supplemental Schedule, we are on target; we look to see that encumbrances close with a net of revenues over expenses. On cash and investments, we are in a favorable cash position, due both to refinancing efforts as well as a culture change to improve receivables. We have worked with student services on that effort.

13. Board Member Bone and Dr. Dees reported on the Marketing and Branding Committee. Board Member Bone noted that the Committee met with the core and extended team, and commended the professional help that we are receiving, from Hawk Partners, CN Communications and Lori Nanton. Phase One is a situation analysis that took place from December 2012 to March 2013. Phase Two consists of marketing planning, starting in April 2013 and going through June of 2013. We are conducting stakeholder interviews. Dr. Dees discussed the overall findings, and the next step is to prioritize strategic objectives and define outcomes. We expect to make a report by the July meeting. One initiative that has begun is the signage effort. This is all part of the marketing/branding campaign. The Board discussed tactical recommendations, including banners and flags for the campus.

14. Chair-Elect DePalma discussed upcoming events including Commencement, and encouraged Board attendance.
15. Chair-Elect DePalma read a resolution regarding Closed Session to discuss Personnel, Real Estate, Contract and Legal Matters to be held on Thursday June 6, 2013 at 10:00 a.m. at Eberhardt Hall Alumni Center Board Room, to discuss personnel, real estate, contract and legal matters. The following resolution was read and approved by all Trustees present.

WHEREAS, there are matters that require consideration by the Board of Trustees that qualify under the Open Public Meetings Act for discussion at a closed session;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees shall have a closed session to discuss matters involving personnel, real estate, contract and legal matters to take place on Thursday June 6, 2013 at 10:00 a.m., Eberhardt Hall, NJIT Alumni Center Board Room.

The next Public Session of the Board will take place on Thursday, June 6, 2013 at 1:00 p.m., Eberhardt Hall Board Room, following the Closed Session of the Board.

The public session adjourned at 3:30 p.m.
NEW JERSEY INSTITUTE OF TECHNOLOGY
BOARD OF TRUSTEES
MINUTES OF SPECIAL MEETING: May 23, 2013
(DRAFT)

1. The special meeting of the Board of Trustees of New Jersey Institute of Technology ("NJIT") was called to order by Chairperson Wielkopolski at 11:40 a.m. Other Trustees in attendance were Chair-Elect DePalma, Vice Chairs DeCaprio and Slimowicz, and Board Members Beachem, Bone, Cistaro, Dahms, Garcia, Raia and Sugla. Absent: Board Member Knapp.

2. Senior Administration in attendance at the Meeting were President Bloom, Treasurer Mauermeyer, Secretary Stern, Interim Provost and Senior Vice President for Academic Affairs Deek, Vice Presidents Dees, Fey, and Sebastian, and Athletics Director Kaplan.

3. In accordance with the Open Public Meetings Act, Chairperson Wielkopolski read the following statement:

   “Notice of this Special Meeting was provided to the public as required by the New Jersey Open Public Meetings Act, which was sent by electronic mail to the Star Ledger, The Herald News, and The Vector and posted electronically on the University website, on May 10, 2013 and sent by regular mail on May 13, 2013. This notice was also mailed to the County Clerk on May 13, 2013 for filing with that office and posting in such public place as designated by said Clerk.”

4. BY A MOTION DULY MADE BY MR. CISTARO, SECONDED BY MS. GARCIA AND UNANIMOUSLY PASSED, the Board voted to convene in Closed Session to discuss real estate, legal and contractual matters concerning the athletic and recreational programs at NJIT.

5. The Board reconvened the Public Meeting Session at 1:45 p.m.

6. The next scheduled Public Session of the Board will take place on Thursday, June 6, 2013, at 1:00 p.m., Eberhardt Hall Board Room, following the Closed Session of the Board.

7. As there were no further matters to act upon, by a motion made by Board Member Dahms, seconded by Chair-Elect DePalma and unanimously approved, the meeting was adjourned at 1:50 p.m.
3B. Resolution to Approve Promotion and Tenure Recommendations for 2013-2014
3C. Resolution to Authorize Expenditure for Electricity and Natural Gas for FY 2014
STATEMENT
RESOLUTION TO AUTHORIZE EXPENDITURES FOR
ELECTRICITY AND NATURAL GAS, FY 2014

There exists a need to purchase electricity and natural gas for the campus from PSE&G, Natural Gas Supply company (currently Amerada Hess) and other electricity and natural gas suppliers and transporters. Shown below is the actual cost for FY 2011, FY 2012 and projections for FY 2013 and FY 2014.

<table>
<thead>
<tr>
<th></th>
<th>FY 2011</th>
<th>FY 2012</th>
<th>FY 2013</th>
<th>FY 2014</th>
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<td>$6,044,036</td>
<td>$6,309,545</td>
<td>$7,123,000</td>
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<tr>
<td>Natural Gas &amp; Electricity</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>($000's)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Sq. Ft. ($000's)</td>
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<td>2,902</td>
<td>2,902</td>
<td>3,116</td>
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<tr>
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<td>$2.08</td>
<td>$2.17</td>
<td>$2.29</td>
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<tr>
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<td>$0.15</td>
<td>$0.16</td>
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<tr>
<td>$/kwh</td>
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<tr>
<td>Cost of Natural Gas $/Therm</td>
<td>$1.21</td>
<td>$1.18</td>
<td>$1.19</td>
<td>$1.18</td>
</tr>
</tbody>
</table>

New and previously implemented energy conservation measures continue to have a positive effect on controlling costs, resulting in savings versus the FY 2013 Budget:

- Cypress Hall new chiller and controls.
- A transportation gas purchasing contract with Hess continued to provide a 35% cost reduction of natural gas, resulting in $300,000 savings in FY 2013.
- GITC design and installation of the new HVAC demand based control strategy for variable speed air handling units and space comfort, and air quality controls.
- Closure of one-half of the floors at the parking deck during the Summer
- Closure of Redwood (partial) and Oak Residence Halls for the Summer
- Installation of energy efficient lighting
- Use of solar energy
- Scheduling of building systems operations based on schedule of actual events.
- New control strategy in the Naimoli, GITC and Campus Center buildings, have increased efficiency resulting in savings of approximately $300,000 annually.
- Installation of the new heat recovery unit in Oak Hall.
- Installation of the new boilers in Kupfrian Hall eliminates heat losses associated with the remnants of the old campus wide steam loop.
- Gymnasium new control system was completed this year and started to deliver savings.

FY 2014 Factors having an impact on utility costs include:

- Addition of 214,000 sq. ft Greek Village buildings
- Continuing uncertainties in the energy markets
- Continuing increase in the use of facilities to accommodate a 24/7 campus occupancy
- PSE&G tariff changes
- Ending of the summer compressed work week.
RESOLUTION TO AUTHORIZE
EXPENDITURES FOR ELECTRICITY
AND NATURAL GAS FOR FY 2014

WHEREAS, there exists a need to purchase electricity and natural gas through Public Service Electric & Gas Company, Amerada Hess and other electricity and natural gas providers; and

WHEREAS, a cost effective combination of suppliers and transporters will be used to provide needed utilities; and

WHEREAS, it is estimated that amounts will not exceed $7,123,000 and

WHEREAS, funds for these utilities have been provided in the FY 2014 budget

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of New Jersey Institute of Technology authorizes the President to execute the necessary contracts to purchase these utilities in an amount not to exceed $7,123,000.
3D. Resolution to Approve the Nomenclature Change for the M.S. in Pharmaceutical Bioprocessing to the M.S. in Biopharmaceutical Engineering
STATEMENT

RESOLUTION TO APPROVE THE NOMENCLATURE CHANGE FOR THE
M.S. IN PHARMACEUTICAL BIOPROCESSING TO THE
M.S. IN BIOPHARMACEUTICAL ENGINEERING

The Pharmaceutical Bioprocessing (PhB) MS Degree Program was developed and approved in 2009 to address the anticipated workforce need in the pharmaceutical and biopharmaceutical drug market. While student enrollment in the Pharmaceutical Engineering (PhEn) program over the years has been significant, student enrollment in the Pharmaceutical Bioprocessing (PhB) program over the years has been below expectations.

The current title does not contain the word “engineering” which is a well-recognized and powerful discipline, while the term “bioprocessing” is generally poorly understood except by Chemical Engineers.

This nomenclature change would make the focus of the program more easily understandable to prospective students, and to employers interested in hiring the students graduating from this program. The degree will be known as the M.S. in Biopharmaceutical Engineering.
RESOLUTION TO APPROVE THE NOMENCLATURE CHANGE FOR THE M.S. IN PHARMACEUTICAL BIOPROCESSING TO THE M.S. IN BIOPHARMACEUTICAL ENGINEERING

WHEREAS, the Board of Trustees has examined materials provided by the President of the University relative to a proposed nomenclature change for the M.S. in Pharmaceutical Bioprocessing to the M.S. in Biopharmaceutical Engineering.

WHEREAS, the Committee on Academic Affairs and the Faculty as a whole have approved this nomenclature change; and

WHEREAS, the Board is satisfied that the proposed nomenclature change requires no additional resources; and

WHEREAS, the Board of Trustees attests to the foregoing;

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees approves the nomenclature change for the M.S. in Pharmaceutical Bioprocessing to the M.S. in Biopharmaceutical Engineering.

June 6, 2013
3E. Resolution to Discontinue the Master of Public Health, Joint Program with Rutgers-Newark and UMDNJ
STATEMENT

RESOLUTION TO DISCONTINUE THE MASTER OF PUBLIC HEALTH, JOINT PROGRAM WITH RUTGERS-NEWARK AND UMDNJ

At the request of UMDNJ, the Memorandum of Understanding between UMDNJ and NJIT pursuant to the Master of Public Health (MPH) program will be terminated as of June 30, 2013. The program is no longer active at NJIT and no NJIT students are enrolled. No UMDNJ students are enrolled in NJIT courses.

June 6, 2013
RESOLUTION TO DISCONTINUE THE MASTER OF PUBLIC HEALTH, JOINT PROGRAM WITH RUTGERS-NEWARK AND UMDNJ

WHEREAS, the Board of Trustees has examined materials provided by the President of the University relative to discontinuing the Master of Public Health, joint program with Rutgers-Newark and UMDNJ.

WHEREAS, the program is no longer viable as the Memorandum of Understanding with joint parties will expire on June 30, 2013; and

WHEREAS, the Fall 2013 preliminary program enrollment indicates there are no majors in the program; and

WHEREAS, no new students have been permitted to matriculate in the program; and

WHEREAS, the Board of Trustees attests to the foregoing;

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees approves that the Master of Public Health be discontinued.

June 6, 2013.
3F. Resolution to Approve Gateway Resolution
To:     NJIT Board of Trustees  
From:   Monique King-Viehland, Dir. of Area Dev. & Pres. of the Campus Gateway Dev., Inc.  
Cc:     Joel Bloom, President  
        Henry Mauermeyer, Senior Vice President of Administration and Treasurer  
Date:   May 30, 2013  
Re:     Gateway Phase II Update & 240 MLK Board Resolution

Per the last Gateway Phase II Update at the Board of Trustee meeting on the 16th, I indicated that I would be preparing formal documents for approval, specifically development agreements and joint venture operating agreements. The attached resolution reflects the submission of those documents for the 240 MLK sub-project of the larger – Phase II MLK Gateway Project.

As a reminder, we bifurcated the two projects, separating the 240 MLK Boulevard sub-project from the larger MLK Gateway sub-project. This left us with two projects – one of which the 240 MLK Boulevard sub-project – is a much more straightforward transaction that does not require significant university contributions except for the site and existing buildings (e.g., no significant cash outlay, long term lease agreements, etc.).

| Participation | 1. Development Agreement between NJIT and JV Developer  
|               | 2. LLC Operating Agreement between Campus Gateway Foundation and the Actors Fund Housing Development Corporation |
| Cash Contributions | Capital Contribution to LLC / CGF must contribute 1% or $1.00. |
| Other Contributions | 1. 240 MLK Property (e.g., Block 43, Lots 30, 38, 39, 40, 41 and 46) $800,000 evidenced by a note at closing payable as follows: Interest accrues from closing date. No interest or principal payments from closing date to the CO issuance date. Interest only payments for 59 months commencing from CO issuance date and balloon payment in month 60.  
|                   | 2. 236 MLK Property (e.g., Block 43, Lots 50 and 51) $100,000 cash at closing. |
| Returns | ➢ Purchase Price. 240 MLK: $800,000 for 240 MLK Property  
|          | ➢ Purchase Price. 236 MLK: $100,000 for 236 MLK Property  
|          | ➢ Project Management Fee. $40,000 cash at closing.  
|          | ➢ Distributions of Available Cash. Determined jointly by the Members; made (i) first, to the Members until each Member receives a return of its capital contributions, (ii) second, to Actors Fund until it receives an IRR to be negotiated, and (iii) the balance, if any, 25% to CGF and 75% to Actors Fund (such percentages to be further negotiated by the parties); and/or  
|          | ➢ Provision for Early Sale Clause. The Parties agree that if, after completion of the 240 MLK Property development, the building is sold within five (5) years after the completion date, the profits of the sale could be subject to an allocation between the Parties, subject to certain conditions to be defined. |
In addition, the project is also structured to create a joint venture between the developer and Campus Gateway Foundation. This is a critical component as it satisfies the "control" provisions of the redevelopment agreement that NJIT signed with the City of Newark indicating that we would maintain oversight of the project. This document is attached as a reference, but does not require board action.

On May 23rd, the Gateway Phase II Committee met and reviewed the development agreement, the LLC operating agreement, NJIT participation structure, etc. The Committee provided suggested revisions, and comments and the documents have been revised to reflect their feedback.

The attached resolution authorizes the execution of the development agreement, however it does not authorize the sale or transfer or any NJIT property and/or assets. The sale or transfer of any NJIT property and/or assets would not occur until after further board action and approval and only after the developer has concluded the necessary due diligence (e.g., environmental work, obtaining necessary approvals, securing financing).

Moreover, prior to the sale of transfer of 236 MLK or 240 MLK properties, a certified appraisal company will complete a restricted use appraisal. A restricted use appraisal is an appraisal of the property that takes into consideration the restrictions on the use of the property based on the redevelopment plan. This will help us get a better set of comparables.

Finally, moving forward with the development of the 240 MLK sub-project creates momentum that will prove helpful as we continue to try to move forward with the larger project – MLK Gateway Project – just across the street. The goal is to bring comparable documents for the MLK Gateway Project to the Board for review and approval in the next 60 – 90 days.
RESOLUTION OF THE NEW JERSEY INSTITUTE OF TECHNOLOGY APPROVING THE SELECTION OF 240 MLK BOULEVARD, LLC AS DEVELOPER FOR 240 MLK BLVD AND THE DEVELOPMENT AGREEMENT BETWEEN NEW JERSEY INSTITUTE OF TECHNOLOGY AND 240 MLK BOULEVARD, LLC

WHEREAS, in or about September, 2007, NJIT, in cooperation with other area stakeholders, created a comprehensive plan for the redevelopment and rehabilitation of approximately 21.5 acres of land located within the City of Newark (the "City") in order to serve as a gateway between the NJIT campus and existing neighborhoods and in order to enhance the quality of life of both NJIT and existing residential communities (the "NJIT Gateway Plan"); and

WHEREAS, on March 31, 2008, the Municipal Council of the City of Newark (the "Municipal Council") adopted Resolution 7R3-B(S) conditionally designating NJIT as the redeveloper for the area described within the NJIT Gateway Plan, subject to the adoption of a redevelopment plan for that area by the City and the negotiation of a redevelopment agreement between the City and NJIT; and

WHEREAS, on September 22, 2008, the Central Planning Board of the City of Newark (the "Central Planning Board") adopted a resolution recommending that the Municipal Council adopt a redevelopment plan for certain portions of the City, including the area described within the NJIT Gateway Plan; and

WHEREAS, on January 21, 2009, the Municipal Council adopted Ordinance 6PSF-a012109 adopting the Broad Street Station Area Redevelopment Plan (the "Redevelopment Plan") in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, on January 21, 2009, the Municipal Council designated NJIT as the redeveloper of the area described within the NJIT Gateway Plan which area is within the area governed by the Redevelopment Plan, and the City and NJIT have entered into a redevelopment agreement dated October 19, 2009, a copy of which is attached hereto as Exhibit A (the "Redevelopment Agreement") for the redevelopment of the area within the NJIT Gateway Plan, which includes the MLK Gateway Sub-Project (as such term is defined in the Redevelopment Agreement); and

WHEREAS, the MLK Gateway Sub-Project is the second of four (4) Sub-Projects to be constructed in phases pursuant to the Redevelopment Agreement; and

WHEREAS, the MLK Gateway Sub-Project relates to certain properties within the City known as Block 43, Lots 30, 38, 39, 40, 41 and 46 as shown on the City's Tax Maps in the University Heights District having a mailing address of 240 Dr. Martin Luther King Jr. Boulevard and currently comprised of the Enterprise Development Center on Dr. Martin Luther King Jr. Boulevard, a surface parking lot on the corner of James Street and Dr. Martin Luther King Jr. Boulevard and a vehicular service corridor along Burnet Street (collectively, the "240 MLK Property"); and

WHEREAS, the Redevelopment Agreement provides that NJIT may carry out the redevelopment of the Redevelopment Area in its own name or through an entity of which NJIT retains control; and
WHEREAS, Campus Gateway Foundation, Inc., a New Jersey not-for-profit corporation formed and controlled by NJIT ("CGF"), and the Actors Fund Housing Development Corporation, Crawford Street Partners and the Hanini Group or a new entity formed by the three aforementioned entities are separately entering into an operating agreement governing the functioning of 240 MLK Boulevard, LLC, a Delaware limited liability company ("JV Developer"), under which agreement CGF will maintain control of JV Developer; and

WHEREAS, NJIT and JV Developer desire to enter into a Development Agreement in order to set forth the terms and conditions under which JV Developer shall carry out the obligations of NJIT with respect to the redevelopment of the 240 MLK Property in accordance with the Redevelopment Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW JERSEY INSTITUTE OF TECHNOLOGY BOARD OF TRUSTEES HEREBY AS FOLLOWS:

1. Approves the selection of the JV Developer as the developer for the 240 MLK Property and the development agreement between NJIT and the JV Developer; and

2. Authorizes the administration to execute the Development Agreement in essentially the form attached as Exhibit A and to perform all acts necessary to implement same; and

3. This Resolution shall take effect immediately upon enactment.
DEVELOPMENT AGREEMENT
BY AND BETWEEN

NEW JERSEY INSTITUTE OF TECHNOLOGY

and

240 MLK BOULEVARD, LLC
as Developer

Dated as of ________, 2013
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THIS DEVELOPMENT AGREEMENT (referred to herein as the "Agreement" or "Development Agreement"), dated as of ________, 2013, by and between NEW JERSEY INSTITUTE OF TECHNOLOGY, a public educational institution in the State of New Jersey, with offices at University Heights, Newark, New Jersey 07102 and its respective successors and assigns ("NJIT"), and 240 MLK BOULEVARD, LLC, a Delaware limited liability company, and its permitted successors and assigns, with offices at c/o Actors Fund Housing Development Corporation, 729 Seventh Avenue, New York, New York 10019 (the "Developer" and, together with NJIT, the "Parties").

RECITALS:

WHEREAS, in or about September, 2007, NJIT, in cooperation with other area stakeholders, created a comprehensive plan for the redevelopment and rehabilitation of approximately 21.5 acres of land located within the City of Newark (the "City") in order to serve as a gateway between the NJIT campus and existing neighborhoods and in order to enhance the quality of life of both NJIT and existing residential communities (the "NJIT Gateway Plan"); and

WHEREAS, on March 31, 2008, the Municipal Council of the City of Newark (the "Municipal Council") adopted Resolution 7R3-B(S) conditionally designating NJIT as the redeveloper for the area described within the NJIT Gateway Plan, subject to the adoption of a redevelopment plan for that area by the City and the negotiation of a redevelopment agreement between the City and NJIT; and

WHEREAS, on September 22, 2008, the Central Planning Board of the City of Newark (the "Central Planning Board") adopted a resolution recommending that the Municipal Council adopt a redevelopment plan for certain portions of the City, including the area described within the NJIT Gateway Plan; and

WHEREAS, on January 21, 2009, the Municipal Council adopted Ordinance 6PSF-a012109 adopting the Broad Street Station Area Redevelopment Plan (the "Redevelopment Plan") in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, on January 21, 2009, the Municipal Council designated NJIT as the redeveloper of the area described within the NJIT Gateway Plan which area is within the area governed by the Redevelopment Plan, and the City and NJIT have entered into a redevelopment agreement dated October 19, 2009, a copy of which is attached hereto as Exhibit A (the "Redevelopment Agreement") for the redevelopment of the area within the NJIT Gateway Plan, which includes the MLK Gateway Sub-Project (as such term is defined in the Redevelopment Agreement); and

WHEREAS, the MLK Gateway Sub-Project is the second of four (4) Sub-Projects to be constructed in phases pursuant to the Redevelopment Agreement; and
WHEREAS, the MLK Gateway Sub-Project relates to certain properties within the City known as Block 43, Lots 30, 38, 39, 40, 41 and 46 as shown on the City’s Tax Maps in the University Heights District having a mailing address of 240 Dr. Martin Luther King Jr. Boulevard and currently comprised of the Enterprise Development Center on Dr. Martin Luther King Jr. Boulevard, a surface parking lot on the corner of James Street and Dr. Martin Luther King Jr. Boulevard and a vehicular service corridor along Burnet Street (collectively, the “240 MLK Property”); and

WHEREAS, the Redevelopment Agreement provides that NJIT may carry out the redevelopment of the Redevelopment Area in its own name or through an entity of which NJIT retains Control; and

WHEREAS, Campus Gateway Foundation, Inc., a New Jersey not-for-profit corporation formed by NJIT (“CGF”) and a to be formed entity controlled by Actors Fund Housing Development Corporation (“Actors Fund JV”) are separately entering into an operating agreement (the “Operating Agreement”) governing the functioning of Developer, under which agreement CGF will maintain control of Developer; and

WHEREAS, NJIT and Developer desire to enter into this Development Agreement in order to set forth the terms and conditions under which NJIT will assign its rights and obligations under the Redevelopment Agreement with respect to the 240 MLK Property to Developer to carry out the obligations of NJIT with respect to the redevelopment of the 240 MLK Property in accordance with the terms hereof and of the Redevelopment Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01 Definitions. In this Development Agreement, unless a different meaning clearly appears from the context:

“240 MLK Property” is defined in the Recitals.

“Actors Fund JV” is defined in the Recitals.

“Affiliate” means with respect to Developer, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common Control with Developer.
“Agreement” means this Development Agreement, as may be amended or supplemented from time to time.

“Applicable Law(s)” means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Development Agreement.

“Approvals and Commitments” is defined in Section 4.02(a) hereof.

“Assignment” is defined in Section 3.09(g) hereof.

“Bond” is defined in Section 2.06(b) hereof.

“Certificate of Completion” means a certificate certifying that Developer has performed its duties and obligations under this Development Agreement with respect to the Project.

“Certificate of Occupancy” means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project Improvements.

“CGF” is defined in the Recitals.

“City” is defined in the recitals hereof.

“City Costs” means all reasonable out-of-pocket costs incurred by the City in connection with the redevelopment of the Property (the “City Costs”) for which NJIT is responsible under the Redevelopment Agreement.

“Claim(s)” means any pending or threatened claim, demand, notice, allegation, order, directive, suit, action, cause of action, judgment, lien, demand for arbitration, proceeding, or investigation by any Person.

“Closing” is defined in Section 3.05 hereof.

“Closing Date” is defined in Section 3.05 hereof.

“Commencement of Construction” means the undertaking by Developer of any actual physical construction of any Project Improvements.
“Comple[en] [ed] or [ion]” means that all work related to the Project Improvements comprising the Project that are required in order that a Certificate of Completion can be issued for the Project has been completed.

“Completion Dates” are those dates set forth herein for performance of obligations by Developer.

“Control” (including the correlative meanings of the terms “controlled by” and “under common control with”), means the ability, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, to direct or cause the direction of the management and policies of a Person (including by being a general partner, a managing member, a manager, an officer or a director of the Person in question).

“Developer Covenants” shall have the meaning ascribed to such term in Section 9.03 hereof.

“Developer Event of Default” means, with respect to Developer, an Event of Default as defined in Section 15.01 hereof.

“Due Diligence Period” is defined in Section 3.06(a) hereof.

“Effective Date” means the date on which this Agreement is fully executed.

“Environmental Law” or “Environmental Laws” means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted; and the rules and regulations promulgated thereunder.

“Estoppel Certificate” is defined in Section 6.06 hereof.

“Event of Default” means the occurrence of any Developer Event of Default or NJIT Event of Default, as the case may be.

“Exhibit(s)” means any exhibit attached hereto which shall be deemed to be a part of this Agreement as if set forth in full in the text hereof.

“Foreclosure” is defined in Section 13.03(b) hereof.

“Governmental Approvals” means all necessary reviews, consents, permits or other approvals of any kind legally required in connection with the development of the Project by any
local, county, state or federal governmental or quasi-governmental entity having jurisdiction over the Project.

"Governmental Authority" means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority over the Project or the Property.

"Hazardous Substance" or "Hazardous Materials" means any substance, chemical or waste that is listed as hazardous or toxic under any applicable federal, state, county or local statute, rule, regulation, ordinance or order.

"Holder(s)" is defined in Section 13.01 hereof.

"Holder Failure" is defined in Section 13.04 hereof.

"HRTC" is defined in Section 4.02(a) hereof.

"Infrastructure Improvements" means, collectively, the On-Site Infrastructure Improvements and the Off-Site Infrastructure Improvements.

"Material Change" means any change in a proposed use within the Project Improvements and, with respect to the Site Plan or Plans, any change in the Site Plan or Plans that would result in any change (a) in the placement, footprint or square footage of any building that would require an amendment to the Site Plan, (b) in the height of any building, (c) in the type of material to be used for the exterior of any building, (d) in the color, or any other change that would result in a change of the exterior appearance of any building, (e) that would negate or eliminate any of the Green Initiatives, (f) in the type of material, or any other change that would alter the placement or appearance of any of the roads, roadways, driveways, parking areas (including the number of parking spaces), walkways, sidewalks, or exterior lighting and fixtures that would require an amendment to the Site Plan, (g) in the placement, grade, or point of connection or hook-up, for any site drainage, drainage outfalls, detention basins, water, storm or sewer service lines that would require an amendment to the Site Plan, (h) that would cause any of the utilities to be built or constructed at or above ground level or grade, and (i) that would otherwise alter the view or appearance of any of the Project Improvements from any and all of the surrounding properties.

"NJDEP" means the New Jersey Department of Environmental Protection, and any successor agency to which its powers are transferred.

"NJIT Event of Default" means, with respect to NJIT, an Event of Default, as such term is defined in Section 15.01 hereof.
“NJIT Indemnified Parties” means NJIT and its officers, elected officials, agents, employees, contractors and consultants.

“NJIT Note” is defined in Section 4.01(b) hereof.

“NJIT’s Cure List” is defined in Section 3.03 hereof.

“Off-Site Infrastructure Improvements” means any improvements outside the Property, to satisfy the requirements of any applicable Governmental Approvals, including, without limitation, (a) all roadways, bridges and off-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the off-site infrastructure improvements, lighting within off-site parking areas, landscaping, fire hydrants and roadways, in each case, (c) water and sewer service lines for the Property, including hook-ups and service laterals for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), and (d) improvements to be undertaken by third-party utility providers (i.e., electric, water, cable, telephone, etc.).

“On-Site Infrastructure Improvements” means any improvements within the Property, excepting the Project Improvements and Remediation, including, without limitation, (a) all roadways, bridges and on-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site parking areas, landscaping, fire hydrants and interior roadways, in each case, (c) water and sewer service lines for the Property, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), (d) improvements to be undertaken by third-party utility providers (i.e., electric, water, cable, telephone, etc.), and (e) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project Improvements and/or Off-Site Infrastructure Improvements.

“Operating Agreement” is defined in the Recitals.

“Party” means each of NJIT and Developer.

“Permitted Exceptions” is defined in Exhibit B hereof.

“Permitted Transfers” is defined in Section 11.04 hereof.

“Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, joint venture, limited liability company, limited liability partnership, professional corporation, trust, cooperative or association, unincorporated association, urban renewal entity, institution, or any other legally recognized entity.
"Planning Board" means the Planning Board of the City.

"Plans" means those plans and specifications as defined in Section 8.02 hereof.

"Preliminary Site Plan" is defined in Section 8.01 hereof.

"Progress Meeting" is defined in Section 7.01 hereof.

"Project" means (a) the Property Acquisition; and (b) the Project Improvements.

"Project Budget" is defined in Section 2.05(a) hereof.

"Project Costs" means all costs of the Project, including, without limitation, the Property Acquisition, the design, permitting and construction of the Project Improvements, and the payment of the City Costs.

"Project Improvements" means, collectively, (a) renovation and rehabilitation of the existing building located on the Property into a multi family residence and gathering place for creativity that will include residential units, cultural amenity spaces (such as rehearsal rooms, galleries and studios that will be available to residents and the neighboring community), gathering spaces (such as roof deck and courtyard garden for residents) and public retail spaces such as a coffee shop; (b) the Infrastructure Improvements; and (c) the Remediation for the Project, if applicable, all as approved by NJIT pursuant to Section 8.02 hereof.

"Property" means the 240 MLK Property, as such definition may be expanded pursuant to Section 3.11 hereof.

"Property Acquisition" means the acquisition of the Property in accordance with Article III of this Agreement.

"Purchase Price" is defined in Section 3.02 hereof.

"Purchase Price Documentation" is defined in Section 4.01(b) hereof.

"Redevelopment Area" is defined in the Recitals.

"Redevelopment Law" is defined in the Recitals.

"Redevelopment Plan" is as defined in the Recitals, together with any amendments thereto.
“Remediation” means the performance and completion of all investigations and remediation required by a Governmental Authority for all Hazardous Substances, known or unknown, on, under or migrating to or from the Property, and the construction of the remedial systems, all in compliance with Applicable Law and Governmental Approvals, and in accordance with Environmental Laws, to address any environmental contamination or environmental damage on the Property.

“Section” means a section or subsection of this Agreement.

“Site Plan” means the Preliminary Site Plan or Final Site Plan, as applicable, depicting those aspects of the Project Improvements required pursuant to the City’s site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

“State” means the State of New Jersey.

“Temporary Certificate of Occupancy” means a temporary Certificate of Occupancy issued with respect to the Project Improvements.

“Term” means that period of time from the Effective Date of this Agreement until the City issues the final Certificate of Occupancy for the Project Improvements.

“Title Insurer” means a reputable title insurance company selected by Developer and licensed to do business within the State of New Jersey, retained to provide title insurance to Developer and to perform or cause to be performed any of a number of related title search services.

“Title Objections” is defined in Section 3.03 hereof.

“Title Review Period” is defined in Section 3.03 hereof.

“Transfer” is defined in Section 11.03 hereof.

“Uncontrollable Circumstance” means the events or conditions set forth below, or any combination thereof, that has (have) had or may reasonably be expected to have a material adverse effect on the rights or obligations of the Parties to this Agreement, provided however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing obligation or complying with any condition required of such Party under the terms of this Agreement:

   (a) An act of God, such as severe natural conditions such as landslide, lightning strike, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic
occurrence, nuclear catastrophe, an act of a public enemy, war, blockade, insurrection, riot, general unrest or general restraint of government and people.

(b) Action or inaction by any Governmental Authority which precludes or delays the Party relying thereon from performing its obligations under this Agreement, provided however, that (i) such action or failure to act shall not be the result of the willful, intentional or grossly negligent action or inaction of the Party relying thereon and/or (ii) such action, inaction, issuance, denial or suspension shall not be the result of the illegal or unlawful actions of the Party relying thereon, shall not constitute an Uncontrollable Circumstance under this paragraph (b).

(c) The suspension, termination, interruption, denial, failure of or delay in the renewal or issuance of any Governmental Approval, provided however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest (up to thirty (30) days following such suspension, termination, interruption or failure of renewal or issuance) shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party.

(d) The damage or destruction of the Project Improvements or any portion thereof or of the Property, unless a result of the willful, intentional or grossly negligent action or inaction of Developer or its contractors.

(e) Delay caused by or arising out of legal action or lawsuits filed in challenge of the issuance, grant or denial of any Governmental Approval, including, but not limited to, local Planning Board approval of Developer’s Site Plans.

(f) Delay caused by or arising out of the inability of any contractor or materials supplier to make timely delivery or materials.

(g) Delay caused by or arising due to strike, labor unrest, national emergency or generally recognized materials shortage, or other delays in the industry.

The Parties acknowledge that the acts, events or conditions set forth in paragraphs (a) through (g) of this definition are intended to be the only acts, events or conditions which may (upon satisfaction of the criteria set forth above) constitute an Uncontrollable Circumstance.

“Utilities” means water, sanitary sewer and storm water provisions, natural gas, electricity, and voice and data transmission facilities.

SECTION 1.02 Interpretation and Construction. In this Development Agreement, unless the context otherwise requires:
(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Development Agreement, refer to this Development Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Development Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Development Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Development Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE II
DESCRIPTION OF PROPERTY AND THE PROJECT IMPROVEMENTS

SECTION 2.01 Property. The Property consists of the surface, subsurface and airspace above the real property described in the definition thereof and upon which the Project Improvements shall be constructed.

SECTION 2.02 Proposed Development.

(a) The Project consists of (i) the Property Acquisition; (ii) construction of the Project Improvements and (iii) the Remediation, if applicable. The Project shall be constructed consistent with this Agreement, the Site Plan, the Plans and all Applicable Laws.

(b) Developer shall make good faith efforts to identify tenants for the Project in order to facilitate Developer’s ability to obtain financing for the Project and shall make good faith efforts to obtain such financing.

SECTION 2.03 Project Improvements. The Project Improvements shall be utilized solely for the purposes set forth in the definition of such term.
SECTION 2.04  **Infrastructure Improvements: Remediation.** Developer shall timely implement the Infrastructure Improvements and Remediation, if any, in order to Complete the Project. Developer shall provide all performance and maintenance bonds as required by the Governmental Approvals.

SECTION 2.05  **Redevelopment Project Schedule.**

(a) Developer shall:

(i) submit a detailed Project timeline that delineates key pre-development and development milestones to NJIT within sixty (60) days of the Effective Date.

(ii) in collaboration with NJIT, submit a complete site plan application to the Planning Board within three (3) months of the Effective Date.

(iii) in collaboration with NJIT, submit complete applications for all Governmental Approvals that are not affected by site plan configuration or density within four (4) months of the Effective Date.

(iv) in collaboration with NJIT, submit complete applications for all other Governmental Approvals that are necessary to Commence Construction of the Project Improvements by no later than four (4) months from the receipt of final, unappealable Planning Board approval.

(v) submit a Project budget ("Project Budget") to NJIT within ____ (____) months of the Effective Date based on the design development drawings and construction drawings which Budget shall include the following:

(A) cap on hard costs to be incurred in connection with the Project in accordance with the scope of Developer’s work.

(B) hard costs shall include, but not be limited to, the direct contractor costs for labor, material, equipment and services including, contractors’ overhead, profit, and bonding.

(C) hard cost estimates shall include cost escalations to the Project construction date.

(D) cap on soft costs to be incurred in connection with the development of the Project and which will form a component of the Project budget.

(E) soft costs shall include, but not be limited to, all architectural, engineering, permitting agency fees, financing, insurance, legal fees, development fees, project management fees, and related Project expenses.
(F) The appropriate amount of contingency to be included in the Project budget.

(G) Developer is responsible for all cost overruns or costs in excess of the Project budget. Cost overruns shall be funded by Developer or addressed through value-engineering or scope reductions, either of which shall be approved by Developer, NJIT and Jones Lang LaSalle Americas, Inc. in their reasonable discretion.

(vi) obtain all construction financing (debt and equity) that are necessary for the timely Completion of the Project within six (6) months after the Effective Date, subject to Developer's right to extend pursuant to Section 4.02(d) hereof.

(vii) subject to Uncontrollable Circumstances, Commence Construction of the Project Improvements by the Closing Date.

(viii) shall obtain a Certificate of Completion for the Project within eighteen (18) months from the date final, non-appealable Governmental Approvals necessary to Commence Construction of the Project Improvements are obtained.

(ix) diligently pursue all Governmental Approvals required for the construction of the Project Improvements and diligently prosecute to Completion all construction of Project Improvements once commenced.

(b) If Developer fails to meet a Completion Date, Developer shall promptly provide notice to NJIT stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for NJIT’s consideration. Compliance with the preceding sentence shall not be deemed a cure of any default by Developer resulting from its failure to meet a Completion Date.

SECTION 2.06 Project Costs; Performance Bond.

(a) Developer hereby expressly represents, covenants, warrants and agrees that all costs associated with the acquisition, development and financing for the Project is the sole responsibility of Developer and all Project Costs shall be borne by Developer. Developer shall provide written notice to NJIT once Developer has obtained financing necessary to Complete the Project, not later than thirty (30) days prior to the Completion Date for the Commencement of Construction of the Project.

(b) Prior to the Commencement of Construction of the Project, Developer shall obtain a bond or other security acceptable to NJIT (the “Bond”) in the amount of One Million Dollars ($1,000,000) issued by an insurance or surety company authorized to conduct business in the State, rated A or better by A.M. Best and listed in the most current U.S. Treasury Circular 570. The Bond must name NJIT as an obligee, and Developer shall deliver a copy of
the Bond to NJIT before the Commencement of Construction. If an Event of Default occurs and this Agreement is terminated, NJIT may use the Bond to complete construction or to remove any structure on the Property, subject to any mortgagee’s right to cure as set forth herein.

ARTICLE III
ACQUISITION OF 240 MLK PROPERTY

SECTION 3.01 Conveyance of 240 MLK Property to Developer. Provided Developer is in compliance with this Agreement, NJIT shall convey to Developer title to the 240 MLK Property on the Closing Date by bargain and sale deed with covenants as to grantor’s acts (the “Deed”). NJIT shall provide Developer with a standard affidavit of title and other documentation reasonably requested by the Title Insurer. The Deed shall include all provisions required by Section 9 of the Redevelopment Law.

SECTION 3.02 Purchase Price for the 240 MLK Property. The purchase price for the 240 MLK Property shall be EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS ($800,000.00), (the “Purchase Price”), which shall be paid on the Closing Date.

SECTION 3.03 Title Review. Developer shall have sixty (60) days from the Effective Date (the “Title Review Period”) to procure, at its option, a current title report and/or survey of the 240 MLK Property. Upon receipt of the title report and/or survey, Developer shall provide NJIT with a list of objections to such matters (“Title Objections”). Within thirty (30) days after receipt of the Title Objections, NJIT shall provide written notice of the Title Objections that NJIT will cure, remove or otherwise address at or prior to the Closing Date (“NJIT’s Cure List”); provided, however, a failure by NJIT to respond shall be deemed notification by NJIT that it will take no action as to any of the Title Objections. Within thirty (30) days after receipt of NJIT’s Cure List, Developer shall either (a) agree to accept the 240 MLK Property subject to the Title Objections that are not identified in NJIT’s Cure List, in which case such Title Objections shall become Permitted Exceptions, or (b) terminate this Agreement.

SECTION 3.04 Acceptable Title. Title to the 240 MLK Property shall be good and marketable and insurable at regular rates and without special premium by a reputable Title Insurer doing business within the State, free from all licenses, leases and tenancies, subject only to the Permitted Exceptions. Developer will be responsible for premiums incurred for any title insurance policy or policies, obtained or requested by Developer, insuring its interest in the 240 MLK Property, unless such premium or charge results from NJIT’s failure to cure a Title Objection.

SECTION 3.05 Closing. The closing of title to the 240 MLK Property hereunder (the “Closing”) shall occur within ninety (90) days following Developer’s receipt of all Approvals and Commitments required for the Project (the “Closing Date”) and shall take place at the office of NJIT’s counsel, Windels Marx Lane & Mittendorf, LLP, 120 Albany Street Plaza, New Brunswick, New Jersey 08901.
SECTION 3.06 Due Diligence; As-Is Condition.

(a) Developer shall have one hundred eighty (180) days from the Effective Date (the “Due Diligence Period”) and at any time thereafter while this Development Agreement remains in effect, to perform or cause to be performed any and all tests, inspections and investigations of the 240 MLK Property, at its sole cost and expense, including, but not limited to, measurements, surveys, engineering studies, utilities investigations, soil and sub-surface tests and analysis, environmental surveys and testing, wetlands delineation, drainage analysis and traffic studies. Such investigations shall be carried out by a qualified professional pursuant to accepted industry protocol. Developer may terminate this Development Agreement for any reason prior to the end of the Due Diligence Period by providing written notice to NJIT. Entry by Developer onto the 240 MLK Property during the Due Diligence Period shall be carried out pursuant to the Access Agreement to be entered into between NJIT and Developer, in the form attached hereto as Exhibit C. Prior to each testing (soil, sub-surface or environmental) on the 240 MLK Property, Developer shall notify NJIT at least two (2) days in advance of such testing so that NJIT may schedule to have a representative present at each such testing. Developer agrees to retain only a non-licensed site remediation professional to perform environmental surveys and testing on the 240 MLK Property.

(b) Within five (5) days after the Effective Date, NJIT shall, to the extent that it has not already done so, provide Developer with a copy of any documents in NJIT’s possession or control that relate to the 240 MLK Property including, but not limited to, environmental assessments and studies; architectural, mechanical, structural, and heating, ventilation and air conditioning inspections and plans; surveys; information as to any underground storage tanks located upon the 240 MLK Property; notices of any actual or proposed real estate taxes or assessments; any notices received by NJIT from any Governmental Authority.

(c) Developer acknowledges that it has had or will have sufficient opportunity to inspect the 240 MLK Property. Upon conveyance of the 240 MLK Property as described in this Article III, Developer shall acquire the 240 MLK Property in its “AS-IS” condition on the Closing Date by acceptance of the Deed, and, as such, Developer shall assume any and all obligations and liabilities with respect to the condition of the 240 MLK Property, excluding, however, the presence of any Hazardous Materials in, on or under the 240 MLK Property arising from discharges or contamination that occurred during NJIT’s ownership of the 240 MLK Property and that were not discovered during the Due Diligence Period.

SECTION 3.07 No Warranty. Developer acknowledges that neither NJIT nor any of its agents, representatives, employees or officers have made any representations or warranties, expressed or implied, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Developer has not relied on any representations or warranties (except those representations, if any, expressly set forth in this Agreement) as to (a) the 240 MLK Property’s fitness for use for any particular purpose, condition, durability thereof, or that it will be suitable for Developer’s purposes; (b) the current or future real estate tax liability, assessment or valuation of the 240 MLK Property; (c) the potential qualification of the
240 MLK Property for any and all benefits conferred by federal, state or municipal laws, whether for special real estate tax treatment, insurance or any other benefits; (d) the compliance of the 240 MLK Property, in its current or future state, with applicable zoning ordinances and the ability to obtain a variance in respect of the 240 MLK Property's non-compliance, if any, with said zoning ordinances; (e) the current or future use of the 240 MLK Property, including but not limited to the use of the 240 MLK Property for any commercial, retail or residential purpose, or any combination thereof; (f) the physical condition, including, but not limited to, the environmental condition, of the 240 MLK Property; and (g) the ability to obtain federal, state, county or municipal approvals for construction or alteration of any improvement on the 240 MLK Property. NJIT DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY.

SECTION 3.08  No Reliance. Developer acknowledges and represents that Developer is entering into this Agreement at Developer's sole risk. Developer acknowledges that NJIT has and will continue to afford Developer the opportunity to investigate, examine and inspect the 240 MLK Property (including, but not limited to, its physical condition and any environmental concerns) in accordance with the terms of this Agreement. Developer may elect to purchase the 240 MLK Property, or any portion thereof, without making any such investigation, examination or inspection. Developer acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same.

SECTION 3.09  Conditions Precedent to the NJIT’s Obligations to Convey 240 MLK Property. NJIT's obligations to convey the 240 MLK Property to Developer shall be subject, without limitation, to the satisfaction, on the Closing Date, of each of the following conditions (any one or more of which may be waived by NJIT):

(a) All of the representations and warranties of Developer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date.

(b) No Developer Event of Default shall have occurred and remain outstanding.

(c) As of the Closing Date, there have been no State, local or other municipal code changes between the last day of the Due Diligence Period and the Closing Date, which would materially and adversely affect Developer's ability to develop the Project as currently contemplated.

(d) All Approvals and Commitments have been secured.

(e) All Project financing is closing simultaneously with the conveyance of the 240 MLK Property by NJIT to Developer.
(f) Developer pays a $40,000 non-refundable management fee to NJIT in consideration of work performed in the pre-development and planning stages of the Project.

(g) Developer executes an assignment and assumption agreement ("Assignment") pursuant to which Developer agrees to comply with and assumes all of the rights and obligations of the Redeveloper under the Redevelopment Agreement with respect to the MLK Gateway Sub-Project in accordance with Section 6.2 of the Redevelopment Agreement; provided, however, in the event that any terms of the Redevelopment Agreement are less restrictive than the terms of this Development Agreement, then the terms of this Development Agreement shall govern and apply.

(h) Actors Fund JV executes and delivers to NJIT a release and indemnification in the form attached hereto as Exhibit D.

SECTION 3.10 Closing Costs. Developer shall pay all transfer taxes, if applicable, and all reasonable customary closing costs for Developer including, without limitation, attorneys’ fees, recording fees, assessments, insurance, survey fees, title search fees, title insurance, inspection and due diligence fees, escrow fees, and transfer fees, if applicable.

SECTION 3.11 Other Properties.

(a) If Developer enters into a contract to acquire title to that certain property situated near the 240 MLK Property which property is within the area described in the NJIT Gateway Plan and located at 236 Dr. Martin Luther King Jr. Boulevard in the City, known as Block 43, Lot 48 on the City’s Tax Maps (the “236 Parcel”), then Developer shall have the option to acquire from NJIT title to the property known as Block 43, Lots 50 and 51 on the City’s Tax Maps (the “50/51 Parcels”), pursuant to a purchase and sale agreement to be entered into between NJIT and Developer on terms substantially similar to those set forth herein, for a purchase price of $100,000, to be paid upon transfer of title. In the event that Developer acquires the 236 Parcel and the 50/51 Parcels, such parcels shall be added to the Project and shall be deemed to be part of the Property as defined herein, provided, however, that NJIT shall have no obligations, responsibilities or liability hereunder or otherwise with respect to the 236 Parcel.

(b) If Developer decides to acquire any other contiguous properties to enhance the Project, Developer shall be solely responsible for negotiating with the respective property owner(s) to acquire such sites. Developer agrees that Developer’s acquisition of other properties including, the 236 Parcel and the 50/51 Parcels, shall not cause a delay in the Project Schedule. Developer shall confer with NJIT in the event that such an acquisition may result in a delay in the Project Schedule, in which event, the Parties shall work cooperatively to adjust the timetable as may be reasonably appropriate to accommodate such an acquisition.

(c) All modifications to the Site Plan, the Plans and the Project Budget as a result of Developer acquiring the 236 Parcel and/or the 50/51 Parcels shall be subject to NJIT’s review and approval rights pursuant to Section 8.02 hereof. Once approved by NJIT, the
definition of Project Improvements shall be deemed to include the approved modifications to the Project.

ARTICLE IV
FINANCIAL OBLIGATIONS

SECTION 4.01 Purchase Price Financing.

(a) On the Closing Date, Developer will execute and deliver to NJIT a promissory note (the "NJIT Note") payable by Developer to NJIT in the amount of the Purchase Price (i.e., $800,000) to evidence Developer's obligation to pay the Purchase Price to NJIT as described below.

(b) Repayment of the NJIT Note shall be secured by (i) a mortgage and security agreement executed and delivered by Developer in favor of NJIT encumbering the Project; (ii) an assignment of rents and leases by Developer to NJIT; (iii) a collateral assignment of development and construction documents by Developer to NJIT; and (iv) such other documents that NJIT requires to be executed and delivered in connection therewith (collectively, the "Purchase Price Documentation").

(c) Developer shall pay all costs incurred by NJIT in documenting the Purchase Price Documentation, including reasonable legal fees and costs. Developer shall provide a mortgagee's title insurance policy to NJIT insuring the lien priority of the mortgage.

(d) If Developer obtains third-party financing for the Project for which a first mortgage is required, NJIT shall subordinate its mortgage lien to such first mortgage lien.

(e) The NJIT Note shall provide, among other things, the following:

(i) Interest shall accrue at a rate of four percent (4%) per annum from the Closing Date through the maturity date of the NJIT Note and shall be calculated based on a 365 day calendar year.

(ii) During the period commencing from the Closing Date through the date on which the Certificate of Occupancy for the 240 MLK Property has been issued (the "CO Issuance Date"), Developer will not be required to make any principal or interest payments. All interest accruing during said period shall be added to the principal balance of the NJIT Note on the CO Issuance Date.

(iii) From and after the CO Issuance Date, Developer shall make fifty-nine (59) monthly payments of interest only to NJIT commencing thirty (30) days from the CO Issuance Date and continuing on the same day of each month thereafter until the date that is sixty (60) months from the CO Issuance Date, at which time the outstanding principal balance of the
NJIT Note, together with any and all accrued and unpaid interest thereon shall be due and payable in full.

(f) Developer shall pay for all costs and expenses for the closing of title on the 240 MLK Property including, the recording of NJIT’s mortgage and assignment of rents and leases that will encumber the Property.

SECTION 4.02 Approvals and Commitments.

(a) Developer shall use best efforts to secure (i) the requisite equity and debt financing commitments in an aggregate amount necessary to commence and Complete the Project and (ii) all Governmental Approvals to construct the Project Improvements in accordance with this Agreement, the Site Plan, the Plans and all Applicable Laws (collectively, the “Approvals and Commitments”). Notwithstanding the foregoing, nothing in this Agreement shall require Developer to agree to Project financing unacceptable to Developer. If Developer’s inability to obtain financing results in a failure by Developer to meet Completion Dates or in other Events of Default, NJIT shall have all of its remedies as set forth herein.

(b) Developer shall, at its own cost and expense, (i) timely apply for the Approvals and Commitments, (ii) diligently and promptly submit all necessary and appropriate information required for the Approvals and Commitments applications, and (iii) use commercially reasonable efforts to obtain and close the Approvals and Commitments.

(c) NJIT agrees to cooperate with Developer, at no cost to NJIT, in connection with Developer’s efforts to obtain all Approvals and Commitments (and any amendments thereof); provided, however, the obtaining of the Approvals and Commitments shall remain the sole responsibility of Developer.

(d) In the event that Developer, despite using commercially reasonable efforts, is unable to obtain, subject to Uncontrollable Circumstances, any or all of the Approvals and Commitments necessary to proceed with the Project within six (6) months after the Effective Date, either Party may terminate this Development Agreement by sending written notice of such termination to the other Party; provided, however, Developer may have an additional six (6) months to obtain the Approvals and Commitments so long as Developer notifies NJIT in writing prior to the end of said six-month period.

(e) Developer agrees that there shall be no delay in the Project Schedule due to Developer’s procurement of public subsidies for financing the Project.

SECTION 4.03 Governmental Approval Fees. Developer shall pay all fees, including without limitation, any and all application and permit fees, required by the City (in accordance with standard fees provided in the City’s ordinances) and any other Governmental Authority for the acquisition, development and construction of the Project.
SECTION 4.04 Affordable Housing Fees. To the extent an obligation to do so arises from the development of the Project, Developer shall comply with all State statutes and regulations regarding payment of fees for affordable housing and municipal ordinances adopted to implement such State statutes and regulations.

ARTICLE V
ENVIRONMENTAL MATTERS

SECTION 5.01 Environmental Compliance. Developer shall bear all costs for Remediation of the Property required as a result of Developer's (or its agents or contractors) act or omission; provided, however, if the cost for such Remediation is reasonably estimated to exceed $1,000,000, Developer may terminate this Agreement. In the event such termination occurs following the conveyance of the Property, NJIT shall have the right to reacquire all or a portion of the Property from Developer by refunding the applicable purchase price amount paid to date thereafter. Developer shall prepare and submit all applications and documentation required to comply with the requirements of all Environmental Laws. Developer shall also use its best efforts to obtain all environmental approvals for the Remediation of the Property.

SECTION 5.02 Developer Release and Indemnification of NJIT. To the fullest extent permitted by law, Developer unconditionally releases NJIT Indemnified Parties from all claims and losses, now or in the future, known or unknown, arising from the Property or NJIT's ownership of the Property, whether based on existing laws, including, but not limited to, Environmental Laws, or future laws or regulations. Without limitation on any obligation to defend and indemnify under this Article, and without limitation to such obligation which Developer may have as a matter of law, Developer shall indemnify, defend, release and hold NJIT Indemnified Parties harmless against (a) all Claims or alleged Claims and response costs and fines and penalties against NJIT Indemnified Parties or Developer by any Governmental Authority or third party which concern the presence of Hazardous Materials which become present on or within the Property, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Materials become present on or within the Property, whether prior to or after the Effective Date, (b) all Claims or alleged Claims against NJIT Indemnified Parties by any Governmental Authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Materials which become present on or within the Property or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Materials become present on or within the Property, whether prior to or after the Effective Date, and (c) all Claims or alleged Claims of bodily injury or property damage asserted against NJIT Indemnified Parties by third parties which are related to the presence of Hazardous Materials which become present on or within the Property, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Property whether prior to or after the Effective Date. This indemnity shall survive delivery of the Deed or any termination of this Agreement and shall in no way prevent or otherwise limit Developer's rights to seek relief from the Responsible Party(ies), as such term is defined by the applicable NJDEP regulations, other than NJIT Indemnified Parties.
Notwithstanding any of the foregoing to the contrary, Developer’s indemnity obligation shall not apply to Claims arising from discharge of or contamination by Hazardous Materials that occurred during NJIT’s ownership of the Property.

SECTION 5.03    Environmental Insurance. If Developer obtains, or is required by any Governmental Authority or Holder to obtain, any environmental insurance policy, NJIT shall be named as an additional beneficiary on such policy.

ARTICLE VI
CONSTRUCTION OF PROJECT IMPROVEMENTS

SECTION 6.01    Construction of Project Improvements. Developer shall construct or cause to be constructed the Project Improvements in accordance with this Agreement, the Redevelopment Plan and all Applicable Law.

SECTION 6.02    Relocation of Utilities. Developer acknowledges that utility providers may have certain rights with respect to the Property and may own certain facilities located therein. Developer shall negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefor to construct the Project Improvements. Upon Developer’s request, NJIT shall cooperate in facilitating the installation and/or relocation of any such affected utilities.

SECTION 6.03    Early Access. Developer shall have the right to obtain access to the Property prior to Closing to initiate site work, including Infrastructure Improvements and Remediation, at Developer’s sole cost and expense. In the event that Closing does not occur (except as a result of an Event of Default by NJIT), Developer shall not be entitled to any reimbursement for costs expended in connection therewith. Such early access shall only be permitted pursuant to an access agreement to be agreed upon between and executed by the Parties.

SECTION 6.04    Community Initiatives. Reaffirming Developer’s obligations under the Assignment, Developer shall comply with the requirements of “Redeveloper” set forth in Article IX of the Redevelopment Agreement.

SECTION 6.05    Maintenance of Property. Following commencement of physical construction of the Project Improvements, Developer will maintain all areas of the Property in conformance with the City Code.

SECTION 6.06    Estoppel Certificates. Within fourteen (14) days following written request therefor by a Party hereto, or by any Holder, purchaser, tenant or other party having an interest in the Property, the other Party shall issue a signed certificate (“Estoppel Certificate”) either stating that this Development Agreement is in full force and effect and that there is no Event of Default under this Development Agreement, or stating the nature of the Event of Default, if any. If there is such an Event of Default, the Estoppel Certificate shall also
state the manner in which such Event of Default may be cured. No more than a reasonable number of Estoppel Certificates may be requested per year.

SECTION 6.07 Standards of Construction. The Project Improvements shall be constructed in a good and workmanlike manner and in accordance with the Governmental Approvals.

SECTION 6.08 Payment of Project Costs. Developer shall pay all costs and expenses in connection with work on and services performed in connection with the Project Improvements.

SECTION 6.09 Liens. Developer shall indemnify and hold NJIT harmless from all liens, or claims or rights to enforce liens, against the Property, or the improvements arising out of any activities or work performed by (or on behalf of) Developer or labor or materials furnished to Developer under this Development Agreement. Without limitation, in all events, not less than ten (10) days prior to the date on which Developer might be divested of any interest in the Property, or portion thereof, as a result of any such lien, Developer shall cause any such lien to be lifted and removed, by bonding or other action and shall provide NJIT with acceptable evidence that title is free and clear of such lien.

SECTION 6.10 Cooperation. The Parties shall fully cooperate with each other as necessary to effectuate the Project Improvements. Such cooperation shall also include attending community meetings and entering into additional agreements that may be required; provided however, that such actions and/or agreements shall not result in a material increase or decrease in NJIT’s and Developer’s respective obligations hereunder.

SECTION 6.11 Historic. The Project is located in the James Street National Historic District. Developer plans to apply for HRTC to finance a portion of the cost of constructing the Project Improvements. Developer shall follow the design guidelines of the National Park Service and will be required to submit its design plans to the City’s Historic Commission. Developer shall confer with NJIT with regard to any design requirement or issues that arise as a result of the application of such guidelines.

ARTICLE VII
PROJECT OVERSIGHT

SECTION 7.01 Progress Meetings. The Parties shall establish an oversight committee comprised of at least one (1) representative from NJIT and the managing member of Developer to attend progress meetings ("Progress Meetings") to monitor the overall development process of the Project including, the status of the Governmental Approvals and the Project Improvements and keep all Parties apprised of all material aspects of and developments in the Project. The chairman of the oversight committee shall be a representative of NJIT. Progress Meetings shall be held on the NJIT campus at least monthly unless otherwise decided by the oversight committee, and at such other times as may be determined by the chairman of the
oversight committee, upon at least five (5) business days' prior written (including email) notice to all Parties. The oversight committee shall coordinate regarding all meetings with and presentations to Governmental Authorities in order to ensure that NJIT and Developer have a unified and consistent message.

SECTION 7.02 Access to Property. Upon twenty-four (24) hours advance notice to Developer, NJIT and its authorized representatives shall have the right to enter the Property to inspect the Project Improvements and any and all work in progress. In no event shall NJIT's inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right NJIT has under this Development Agreement. NJIT acknowledges that the Property will be an active construction site and that Developer shall not be liable or responsible to NJIT, its employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that Developer violates the standard of due care owed to invitees.

ARTICLE VIII
APPLICATIONS FOR GOVERNMENTAL APPROVALS

SECTION 8.01 Copies to NJIT. Developer shall provide NJIT with a copy of each application for Governmental Approvals submitted to Governmental Authorities at the same time Developer submits those applications to such Governmental Authorities.

SECTION 8.02 NJIT Review.

(a) Prior to Developer's submission of a preliminary site plan/subdivision application ("Preliminary Site Plan") to the Planning Board for the construction of the Project, Developer shall submit to NJIT concept plans for the Project ("Plans") for its review and for confirmation that the Plans substantially conform to Actors Fund JV's October 19, 2012 proposal to NJIT, as supplemented. The Plans shall include the following information:

(i) Location of buildings, parking areas, driveways, site features. The uses for the ground floor/sub-grade level must be coordinated with the ground floor/street level uses for the Redevelopment Plan.

(ii) A plan and colorized renderings showing the elevations of the building(s), the exterior treatment of the building(s) including color, type and texture of material(s) to be used, and a sample of the actual construction materials being used on all facades.

(iii) A signage plan.

(iv) A plan estimating the timing of any soil or environmental remediation and/or engineering and institutional controls (if any, and subject to NJDEP requirements), final site preparations, foundations, construction, landscaping, installation of
drives, sidewalks, and completion of construction, and any information and data necessary to
enable scheduling of any public improvements required.

(v) A status report on Governmental Approvals.

(vi) Such other plans as NJIT may from time to time reasonably require
to promote the orderly construction of the Project.

(b) If NJIT determines that the Plans require revision, the revised Plans shall
be submitted to NJIT, which shall have a period of thirty (30) days after receipt thereof to
approve the revised Plans or to furnish to Developer in writing notice of any changes or of any
modifications required to be made along with the reason(s) therefor. Upon reasonable request of
NJIT, Developer shall consent to an additional thirty (30) day period to review the Plans, or any
revisions thereof. If changes or modifications shall be required by NJIT, Developer shall
incorporate such changes and modifications and furnish the revisions to NJIT for approval within
sixty (60) days after receipt of written notice thereof. Developer agrees that the Preliminary Site
Plan shall not be filed with the Planning Board without NJIT's prior written approval of the
Plans. In the event that NJIT shall fail to notify Developer within forty-five (45) days of its
receipt of the Plans, or revisions thereof, then NJIT shall be deemed to have not accepted such
Plans. In performing its review of the Plans, or revisions thereof, NJIT shall not unreasonably
withhold its approval of same, nor shall it unreasonably withhold its consent to Developer's
request for additional time to submit any revisions to its Plans. NJIT shall have the specific right
to approve the uses of the Property as being in conformance with the definition of Project
Improvements.

SECTION 8.03 Change in Plans. If at any time there shall be any Material
Change to the Plans, for any reason whatsoever, including without limitation, any Material
Change as may be requested or desired by Developer, or otherwise required by any
Governmental Authority, or any contractor or sub-contractor, Developer shall promptly notify
NJIT of same. NJIT shall have the right to review such Material Change as set forth in Section
8.02 or to waive such right. NJIT shall have thirty (30) days to approve or disapprove of any
such Material Change, or to waive the right to same, otherwise such Material Change shall
automatically be deemed disapproved by NJIT.

SECTION 8.04 Effect of Review of Plans. The review of the Plans by NJIT shall
not constitute a representation, warranty or guaranty by NJIT as to the substance or quality of the
documents, work or other matter reviewed, approved or accepted. Developer acknowledges that
NJIT has relied on Article XIV hereof, along with its rights to review and approve the Plans, in
entering into its obligations under this Development Agreement.

SECTION 8.05 Cooperation. Developer and NJIT shall cooperate, collaborate
and use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals;
including with respect to support activities that are necessary or advisable to be carried out in
connection therewith; provided, however, that responsibility for obtaining Governmental
Approvals shall remain with Developer as set forth herein.
SECTION 8.06  Notice of Commencement. At least ten (10) days prior to the date that Developer expects to commence construction of the Project Improvements, Developer shall notify NJIT of the estimated date that construction will commence.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

SECTION 9.01  Representations and Warranties by Developer. In addition to, but not limited by, any and all other representations and warranties of Developer contained in this Agreement, Developer hereby represents and warrants the following to NJIT for the purpose of inducing NJIT to enter into this Development Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a)  Developer is a limited liability company organized under the laws of the State of Delaware, is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Development Agreement.

(b)  Developer has the power, right and authority to enter into this Development Agreement and the instruments and documents referenced herein to which Developer is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(c)  This Development Agreement has been duly authorized, executed and delivered by Developer and is valid and legally binding upon Developer and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which Developer is a party.

(d)  No receiver, liquidator, custodian or trustee of Developer has been appointed as of the Effective Date, and no petition to reorganize Developer pursuant to the United States Bankruptcy Code or any similar statute that is applicable to Developer has been filed as of the Effective Date.

(e)  No adjudication of bankruptcy of Developer or a filing for voluntary bankruptcy by Developer under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to Developer has been filed.

(f)  No indictment has been returned against any partner, member or officer of Developer with respect to any transaction contemplated by the terms of this Development Agreement.

(g)  There is no pending or, to Developer’s actual knowledge, threatened litigation that would prevent Developer from performing its duties and obligations hereunder.
(h) There are no suits, other proceedings or investigations pending or, to Developer’s actual knowledge, threatened against Developer that would have a material adverse effect on the financial condition of Developer.

(i) All materials and documentation submitted by Developer and its agents to NJIT and its agents were, at the time of such submission, and as of the Effective Date, materially accurate, and Developer shall continue to inform NJIT of any material and adverse changes in the documentation submitted. Developer acknowledges that the facts and representations contained in the information submitted by Developer are a material factor in the decision of NJIT to enter into this Development Agreement.

(j) Developer is technically capable of acquiring the Property and, subject to receipt of Project financing, of developing, designing, and constructing the Project Improvements.

(k) The cost and financing of the Project is the responsibility of Developer. Absent an agreement to the contrary, NJIT shall not be responsible for any cost whatsoever in respect to same.

SECTION 9.02 Delivery of Documents by Developer. Developer shall deliver the following fully executed documents simultaneously with the execution of this Development Agreement, and NJIT hereby acknowledges the receipt of such documents:

(a) Certified copies of the certificate of formation, operating agreement and certificate of good standing of Developer.

SECTION 9.03 Developer Covenants. In addition to, but not limited by, any and all other covenants and agreements of Developer contained in this Development Agreement, Developer covenants and agrees to the following for the purpose of inducing NJIT to enter into this Development Agreement and to consummate the transactions contemplated hereby (collectively, “Developer Covenants”):

(a) Upon completion of the development and construction of the Project Improvements, Developer shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(b) Developer shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall Developer itself, or any Person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.
(c) Developer shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(d) Developer shall promptly notify NJIT of any material change in its financial condition from the information provided to NJIT by Developer indicating Developer's financial capability to develop and construct the Project Improvements.

(e) Developer shall not use the Property or any Project Improvements in a manner that is inconsistent with this Development Agreement including the uses described in the definition of Project Improvements, and the Governmental Approvals.

(f) Prior to the issuance of a Certificate of Completion, Developer shall not use the Property, Project Improvements or any part thereof as collateral for an unrelated transaction.

(g) Developer shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Property and/or the Project Improvements, or any other of its property located within the City, before the same shall become in default.

(h) Developer hereby waives and relinquishes any and all statutory, contractual, common law or other claim, right or claim of right, action, or cause of action it may otherwise have, at law, in equity, or otherwise, to challenge, bring suit or any other legal action, or otherwise use as a defense, in any and all legal, administrative, judicial or other proceedings, including without limitation, any condemnation proceeding, or before any Governmental Authority, or arbitration board or panel, or otherwise, with respect to any and all of the following: (i) the determination, decision, finding, conclusion or action, official or otherwise, by the City that the Property is an area in need of redevelopment pursuant to, and in accordance with, the Redevelopment Law, and (ii) that the Property is properly, appropriately, and for all purposes, legally, included within the Redevelopment Area.

SECTION 9.04 Recording, Project Covenants. Upon the acquisition of the Property, or portion thereof, Developer shall file and record against the Property, or portion thereof, at Developer's cost and expense, an agreed-upon form of Memorandum of Development Agreement in the Office of the Essex County Register, which Memorandum shall, among other things, disclose the existence of the above covenants and all restrictions on Transfers, their running with the Property, and other information as required by law. Developer shall deliver to NJIT a copy of such filed and recorded Memorandum.

SECTION 9.05 Effect and Duration of the Covenants. The agreements and covenants in this Development Agreement shall run with the Property, except Sections 9.03(a), (d) and (f), which shall expire upon Completion of the Project. Until such time, the covenants
shall, except as otherwise specifically provided in this Development Agreement, be binding on Developer, its successors and assigns and every successor in interest therein, and any other party in possession or occupancy of the Project Improvements, or any part thereof, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, NJIT, its successors and assigns.

SECTION 9.06 Enforcement of Covenants by NJIT. In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that NJIT and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Development Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of NJIT for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether NJIT has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. NJIT shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including, without limitation, all other rights as more specifically set forth in Article XIV and Article XV hereof. This Section is not intended to confer standing to sue on any party other than NJIT.

SECTION 9.07 Confidentiality.

(a) The Parties acknowledge that this Development Agreement and any ensuing discussions and related agreements will address proprietary information regarding Developer which is confidential (the “Confidential Information”) and each Party shall, and shall require its agents, consultants or third-party representatives to, not disclose or permit the disclosure of any Confidential Information. Notwithstanding the above, the Parties and each of their agents, consultants or third-party representatives shall not be bound to maintain the Confidential Information: (i) already in the public domain prior to the execution of this Agreement, (ii) as required by an "Order", described below, or (iii) as required to be disclosed by statute.

(b) In the event that a Party or a Party's agent, consultant or third-party representative receives a subpoena or court or administrative order requiring the disclosure of any of the Confidential Information deemed by this Agreement to be confidential or proprietary, or otherwise believe that such disclosure is required by Laws, (hereinafter an “Order”), such Party shall, and shall cause its agents, consultants or third-party representatives to, give immediate written notice to the other Party. Such other Party may interpose all objections it may have to the disclosure of any such Confidential Information at such other Party’s sole cost and expense. Each Party shall, and shall cause its agents, consultants or third-party representatives to, abide by the decision of the judicial or administrative body regarding the disclosure of such Confidential Information. The provisions of this Section 9.07 shall survive the termination this
Agreement and shall continue until a specific written release is given to a Party by the other Party.

(c) The Parties shall agree to decide on the content of a press release or other public communication announcing the Project prior to the release thereof.

SECTION 9.08 Operations. Upon Completion of the Project, Developer shall operate and maintain the Project in a first-class manner and quality for the uses established that is consistent with the operation and maintenance of other first-class buildings of its type in Essex County, New Jersey including, but not limited to, façade maintenance, waste disposal and street-front maintenance. Security for the Property shall be as customary for similar projects in Newark, New Jersey. Developer shall renovate and upgrade the structure, furnishings, fixtures, equipment and personal property of the Project when required to maintain the foregoing required quality and standards. Developer shall maintain and update, on an annual basis, a written renovation and upgrade program to comply with the preceding sentence and shall perform the same. Developer shall be required to deliver a copy of such program to NJIT, and Developer shall consult with NJIT to discuss such renovation and upgrade plan. Developer shall establish and maintain a commercially reasonable amount of funds as a reserve account to pay for the costs of renovations, replacements and upgrades of the Project and the fixtures, furniture, furnishings and equipment therein. The provisions of this Section 9.08 shall survive the termination of this Agreement and shall be referenced in the Memorandum of Development Agreement recorded pursuant to Section 9.04 hereof.

SECTION 9.09 Leasing. Developer shall be responsible for the marketing and leasing activities associated with the Project which activities shall be conducted by Developer from December 1, 2013 through April 30, 2015.

ARTICLE X
CERTIFICATES OF OCCUPANCY AND COMPLETION

SECTION 10.01 Certificate of Occupancy. Upon completion of any Project Improvements, Developer shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for such Project Improvements. Notwithstanding the issuance of a temporary Certificate of Occupancy, Developer shall not be entitled to receive a Certificate of Completion for the Project until the permanent Certificate of Occupancy is issued. As such, until such permanent Certificate is issued, the provisions of this Development Agreement remain in full force and effect as to such Project Improvements.

SECTION 10.02 Certificate of Completion. The completion of the Project shall be evidenced by a certificate of NJIT in recordable form ("Certificate of Completion") accepting the terms of a certificate of Developer stating that: (a) the applicable Project Improvements have been completed (excluding any normal and customary tenant improvements) in accordance with the all Governmental Approvals and Applicable Laws and that all labor, services, materials and supplies used in connection therewith have been paid for or adequate security has been posted in connection therewith; (b) a Certificate of Occupancy, if required, and any other permissions
required, if any, of Governmental Authority for the occupancy and use of all portions of the applicable Project Improvements (excluding vacant portions of any building) for the purposes contemplated by this Development Agreement have been obtained and, (c) no ongoing defaults by Developer exist under this Agreement.

ARTICLE XI
TRANSFERS

SECTION 11.01 Prohibition Against Speculative Development. Developer covenants that its undertakings pursuant to this Development Agreement shall be for the purpose of redevelopment of the Property and not for speculation in land holding.

SECTION 11.02 Prohibition Against Transfers. Developer recognizes that, in view of (i) the importance of the redevelopment to the general welfare of the community; (ii) the public assistance to be made available by law and the City for the purpose of making such redevelopment possible; and (iii) the fact that a change in ownership or control of Developer, or any other act or transaction involving or resulting in a change in ownership or control of Developer to the degree thereof, is for practical purposes a transfer or disposition of the property interest then owned by Developer, the qualifications and identity of Developer and its principals are of particular concern to NJIT, no voluntary or involuntary successor in interest of Developer shall acquire any interest in or rights or powers under this Development Agreement except as expressly set forth herein.

SECTION 11.03 Retention of Title to Property: Developer to Maintain its Existence. Except where expressly permitted hereunder, during the term of this Development Agreement, Developer shall not, prior to the issuance of the Certificate of Completion: (a) effect or permit any change, directly or indirectly, in the ownership or control of the Property, Project Improvements, or any portion thereof, (b) assign or attempt to assign this Development Agreement or any rights herein, or (c) make any total or partial sale, transfer, or conveyance of the whole or any part of its interest in the Property or Project Improvements (individually and collectively, a "Transfer").

SECTION 11.04 Permitted Transfers. Developer, without violating the provisions of Section 11.02 or Section 11.03 hereof, may effect the following Transfers ("Permitted Transfers"), without the necessity of further action by NJIT; provided that the requirements set forth in Section 11.05 have been satisfied:

(a) security for, and only for, the financing necessary to enable Developer to perform its obligations under this Development Agreement with respect to the Completion of the Project Improvements and any other purpose authorized by this Development Agreement;

(b) a mortgage or mortgages and other liens and encumbrances (including mechanic’s liens) for the purposes of financing the acquisition, development, construction and marketing of the Project;
(c) utility and other development easements;

(d) an assignment of this Agreement to an urban renewal entity formed by Developer and Controlled by NJIT;

(e) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(f) any lease, option agreement or contract of sale for all or any portion of the Property and/or Project Improvements provided that the conveyance contemplated thereby occurs following the issuance of a Certificate of Completion;

(g) any contract or agreement with respect to any of the foregoing exceptions.

SECTION 11.05 Notice of Permitted Transfers. Except as further set forth below, with respect to any Permitted Transfers, Developer shall provide to NJIT written notice thereof no more than twenty (20) days following such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. In connection with a Permitted Transfer involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, at closing thereon, Developer shall cause the transferee to execute such documentation as is reasonably requested by NJIT in order to assure that the transferee has assumed all of Developer’s obligations under this Development Agreement as to the Property and/or Project Improvements, or any portion thereof (if Developer’s right, title and interest in the Property and/or Project Improvements is being transferred). Developer shall exercise its best efforts with respect to the provisions of any documentation relating to the Permitted Transfer as NJIT may reasonably request. With respect to Permitted Transfers involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, Developer shall provide to NJIT written notice thereof no less than twenty (20) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee.

SECTION 11.06 Transfers Void. Any transfer by Developer in violation of this Development Agreement shall be a Developer Event of Default and shall be null and void ab initio. Such default shall entitle NJIT to seek all remedies available under the terms hereof, including termination of this Development Agreement, and NJIT may also seek equitable relief to cause the reversal of the transfer. In the absence of NJIT’s written consent, no non-Permitted Transfer shall be deemed to relieve Developer from any obligations under this Development Agreement. In the event of any attempted transfer in violation of the restrictions in this Article XI, NJIT shall be entitled to the ex parte issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of NJIT in connection with any such legal action.
ARTICLE XII
INDEMNIFICATION; INSURANCE

SECTION 12.01  Developer Indemnification. Until a date twelve (12) months following the later of (i) indefeasible payment in full of the NJIT Note or (ii) issuance of the final Certificate of Completion for the Project:

(a)  Developer covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold NJIT Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Property and/or the Project Improvements, including but not limited to, (i) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Property and/or Project Improvements and which results, wholly or partially, from any negligence or willful misconduct of Developer, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from gross negligence or willful misconduct of NJIT, its employees, representatives or agents, or (ii) any lawsuit or other proceeding commenced by any person or entity, because of action(s) or omissions taken by Developer, its contractors, employees, agents, representatives and elected or appointed officials in connection with the Property and/or Project Improvements or this Development Agreement, or (iii) the Prevailing Wage Act being deemed applicable to this Development Agreement; and

(b)  Developer shall defend, indemnify and hold harmless NJIT Indemnified Parties and its officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by Developer of its obligations under the Development Agreement; (ii) any bodily injury or property damage that may occur on the Property during the term of the Development Agreement, provided however, that such indemnity shall not include the actions or inactions of third-parties over whom Developer does not exercise control, as long as Developer maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

(c)  When a NJIT Indemnified Party claims to be entitled to receive indemnification by Developer, NJIT Indemnified Party shall give prompt notice of such situation to Developer. Failure to give prompt notice to Developer shall not relieve Developer of any liability to indemnify NJIT Indemnified Party, unless such failure materially impairs Developer's ability to defend such party. Upon receipt of such notice, Developer shall, if applicable, resist and defend any action or proceeding on behalf of NJIT Indemnified Party, including the employment of counsel reasonably acceptable to NJIT Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. NJIT Indemnified Parties shall
have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized by Developer, which authorization shall not be unreasonably withheld or delayed. Developer shall not be liable for the settlement of any such action effected without its consent, but if settled with the consent of Developer or if there is a final judgment against NJIT Indemnified Party in any such action, Developer agrees to indemnify and hold harmless NJIT Indemnified Party from and against any loss or liability by reason of such settlement or judgment if NJIT Indemnified Party is entitled to indemnification hereunder. Developer may settle any such action on terms it deems appropriate provided that a full release of NJIT Indemnified Party is obtained and no admission of liability by NJIT Indemnified Party is required.

SECTION 12.02 Insurance Required.

(a) At all times during the construction of the Project, Developer shall maintain commercial general liability insurance, insuring NJIT against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage on all property in the Property or related to the construction thereon, in the amount of at least One Million Dollars ($1,000,000.00) primary and Fifteen Million Dollars ($15,000,000.00) excess combined single limit coverage. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, including, but not limited to, claims of subcontractors, however occasioned, occurring during the policy term, shall be endorsed to add NJIT as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by NJIT shall be excess insurance only. Such coverage shall be endorsed to waive the insurer’s rights of subrogation against NJIT.

(b) At all times during the construction of the Project, Developer shall maintain Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability in the amount of at least One Million Dollars ($1,000,000.00) primary and Fifteen Million Dollars ($15,000,000.00) excess combined single limit coverage.

(c) Prior to the commencement of the construction of those Project Improvements, Developer shall furnish or cause to be furnished to NJIT duplicate originals of Builder’s Risk Insurance for the benefit of Developer (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the applicable Project Improvements, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(d) Upon request, Developer shall also furnish or cause to be furnished to NJIT evidence satisfactory to NJIT that Developer and any contractor with whom it has
contracted for the construction of the Project Improvements carries workers’ compensation insurance as required by law, and an employer’s liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for NJIT.

(e) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least A in Best’s Insurance Guide or such lesser rated provider that is proposed by Developer and is reasonably acceptable to NJIT.

(f) All insurance policies required by this Section shall be non-assignable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by NJIT, (ii) the policies cannot be canceled or materially changed except after thirty (30) days prior written notice by the insurer to NJIT, and (iii) NJIT shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to NJIT and shall contain cross liability endorsements. Satisfactory evidence of such insurance shall be provided to NJIT prior to the Commencement of Construction.

(g) Developer’s obligation to maintain insurance pursuant to, and in accordance with, this Section 12.02 shall terminate upon issuance of a Certificate of Completion with respect to the Project as set forth in this Section 12.02.

ARTICLE XIII
MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

SECTION 13.01 Mortgage Financing. Developer, or its successor in interest, shall notify NJIT in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Property and/or Project Improvements, or any part thereof (the mortgagee thereunder, a "Holder", it being hereby expressly acknowledged that under no circumstances shall an Affiliate be deemed a Holder hereunder) and, in any event, Developer shall promptly notify NJIT of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Property and/or the Project Improvements, whether by voluntary act of Developer or otherwise, upon obtaining knowledge or notice of same. Developer shall provide NJIT with written notice that Developer has obtained financing for the Project within fifteen (15) days after Developer’s acceptance of the financing commitment.

SECTION 13.02 Forbearance. If any Holder is required to foreclose against any lien it has with respect to the Property and/or Project Improvements (as a result of a default by Developer under any agreements executed by Developer), NJIT agrees to forbear from the enforcement of any remedies provided under this Development Agreement that it may have against Developer in order to permit such Holder to assume the obligations of Developer under this Development Agreement, provided however, that NJIT shall not be obligated to forbear from the exercise of any remedies available to it hereunder (a) for more than ______ (___) days from receipt of notice of foreclosure by any Holder, or (b) if such forbearance will result (or may

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result, in the reasonable judgment of NJIT) in a waiver of NJIT’s rights under this Development Agreement or a material and adverse effect on NJIT’s rights or performance obligations hereunder or any material increase in NJIT’s financial obligations hereunder.

SECTION 13.03 No Guarantee of Construction or Completion by Holder.

(a) A Holder shall in no manner be obligated by the provisions of this Development Agreement to construct or Complete the Project Improvements, or to guarantee such construction or Completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Nothing contained in this Development Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of the Project Improvements (beyond the extent necessary to conserve or protect the Holder’s security, including the improvements or construction already made) without the Holder first having expressly assumed Developer’s obligations to NJIT with respect to the Project Improvements by written agreement reasonably satisfactory to NJIT.

(b) If a Holder forecloses its mortgage secured by the Property or Project Improvements, or takes title (in its name or the name of an Affiliate) to the Property or Project Improvements by deed-in-lieu of foreclosure or similar transaction (collectively a “Foreclosure”), the Holder or its Affiliate shall have the option to either (i) sell the Property or Project Improvements, as applicable, to a responsible Person reasonably acceptable to NJIT, which Person shall expressly assume the obligations of Developer under this Development Agreement, and/or (ii) itself, or its Affiliate, expressly assume the obligations of Developer under this Development Agreement. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Development Agreement, NJIT shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to NJIT pursuant to the terms of this Development Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of Developer as to the parcel affected by such Foreclosure or sale, in that event must agree to Complete the Project Improvements as per this Development Agreement, but subject to reasonable extensions, and shall submit evidence reasonably satisfactory to NJIT that it has the qualifications and financial ability to perform such obligations. Any such Holder, or other entity assuming such obligations of Developer, properly Completing the Project Improvements shall be entitled, upon written request made to NJIT, to a Certificate of Completion. Nothing in this Development Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of Developer, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Development Agreement. The Holder or such other entity that assumes the obligations of Developer shall be entitled to develop the Property or Project Improvements in accordance herewith.

SECTION 13.04 Rights under Redevelopment Agreement. Nothing contained in this Article XIII shall be deemed to affect the City’s rights under the Redevelopment Agreement nor be deemed to make any representations that would affect the City’s rights under the Redevelopment Agreement.
SECTION 13.05  Memorandum. The Memorandum of Development Agreement to be recorded pursuant to Section 9.04 shall reference this Article XIII.

ARTICLE XIV
ADDITIONAL TERMINATION RIGHTS

SECTION 14.01  Additional Termination Rights of NJIT.

(a) Notwithstanding any other provision of this Development Agreement, including, but not limited to Section 2.05, this Development Agreement shall terminate upon notice by NJIT to Developer of its decision to so terminate, whether or not an Event of Default by Developer has occurred or is ongoing and/or whether or not an Uncontrollable Circumstance has occurred or is ongoing and/or whether or not Completion Dates have been extended as result of an Uncontrollable Circumstance, if:

(i) On or before a date two-and-one-half (2 ½) years from the Effective Date, Developer has not Commenced Construction of the Project Improvements; or

(ii) A Certificate of Completion for the Project has not been issued within a date five (5) years from the Effective Date; or

(iii) Developer experiences a substantial change in its financial condition which NJIT determines, in its sole and reasonable judgment, would significantly impair Developer’s ability to Complete the Project Improvements.

(b) Nothing in this Section 14.01 shall prevent NJIT from declaring that an Event of Default by Developer hereunder has occurred nor from pursuing any of its other remedies hereunder. Further, nothing contained in this Article XIV or in Article XV shall require the acceptance of any property by NJIT through the means of reverter or reversion.

(c) Nothing contained in this Article XIV shall be deemed to affect the City’s rights under the Redevelopment Agreement nor be deemed to make any representations that would affect the City’s rights under the Redevelopment Agreement.

ARTICLE XV
EVENTS OF DEFAULT AND REMEDIES

SECTION 15.01  Events of Default. Any one or more of the following shall constitute an event of default (“Event of Default”) hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of Developer or NJIT to observe and perform any covenant, condition or agreement under this Development Agreement, and continuance of such failure for a
period of thirty (30) days, after receipt by the defaulting Party of written notice from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied, provided however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred fifty (150) days after such written notice (extendable in the sole discretion of NJIT).

(b) (i) Developer shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of Developer and shall not have been stayed or dismissed for ninety (90) consecutive days; (iii) Developer (A) has made a general assignment for the benefit of creditors, or (B) 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; (iv) Developer has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) Developer shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against Developer and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of Developer under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of Developer by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Developer 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 (ix) Developer shall have suspended the transaction of its usual business.

(c) The filing of a complaint in Foreclosure against Developer that is not stayed or dismissed for ninety (90) consecutive days or the issuance of a deed in lieu of Foreclosure for any financing in connection with the Project.

(d) Developer shall be in default of the Purchase Price Documentation.

(e) Developer substantially abandons or suspends construction of any Project Improvements, for a period in excess of ninety (90) days not resulting from the occurrence of Uncontrollable Circumstance. On a maximum of two occasions, if, following such ninety (90) day period, Developer recommences construction prior to notice of termination being given by NJIT, NJIT shall not have the right to terminate in connection with such suspension of construction.

(f) There is a Transfer in violation of this Development Agreement.

SECTION 15.02 Uncontrollable Circumstance. Except as otherwise set forth in this Agreement, including Article XIV hereof, an Event of Default shall not be deemed to have occurred where delays or failure to perform are the result of an Uncontrollable Circumstance. Completion Dates shall be extended for the period of delay resulting from the occurrence of an
Uncontrollable Circumstance. Developer shall provide NJIT with prompt notice of the occurrence of an Uncontrollable Circumstance of which Developer becomes aware.

SECTION 15.03 Remedies Upon Event of Default by Developer Prior to Closing. If an Event of Default by Developer occurs prior to Closing, then NJIT may, in its sole and absolute discretion, upon sixty (60) days' prior notice to Developer, terminate this Development Agreement. Upon such termination, Developer shall reimburse NJIT for any fees and costs incurred by NJIT prior to the date of such termination. On a maximum of two occasions, Developer may negate such notice of termination if Developer commences to cure such Event of Default prior to the expiration of such sixty (60) day period and diligently pursues such cure to completion within one hundred twenty (120) days of such notice.

SECTION 15.04 Remedies Upon Event of Default by Developer Following Closing. If an Event of Default by Developer occurs following Closing, then NJIT may, in its sole and absolute discretion, upon sixty (60) days' prior notice to Developer and any Holder, terminate this Development Agreement.

SECTION 15.05 Disposition of Property Upon Termination of Development Agreement.

(a) In the event that, subsequent to the acquisition of the Property, and prior to the issuance of the Certificate of Completion for the Project, (i) an Event of Default by Developer occurs and NJIT terminates this Development Agreement and/or (ii) NJIT terminates this Development Agreement pursuant to Section 14.01 hereof, then, provided NJIT does not waive same, title to that the Property shall revert to NJIT or its designee pursuant to reverter clauses in such conveyance documents without any further act on NJIT's part and, the estate conveyed by NJIT by the Deed to Developer shall immediately terminate and revert in NJIT with no payments or reimbursements to Developer. It is the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property, or any portion thereof, by NJIT to Developer shall be made in fee simple determinable to the effect that upon the occurrence of an Event of Default by Developer prior to the issuance of a Certificate of Completion for the Project, all the rights and interests in and to the Property shall revert to NJIT without further action, with no payments or reimbursements to Developer. However, any reversion of title as a result thereof in NJIT shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way (A) the lien of any mortgage authorized by this Agreement; and (B) any rights or interests provided in this Agreement for the protection of Holders.

(b) Nothing contained in this Section 15.05 shall require the acceptance of any property by NJIT through the means of reverter or reversion.

SECTION 15.06 Selection of Replacement Developer.
(a) In the event that NJIT terminates this Agreement, NJIT shall use reasonable efforts to select a replacement redeveloper for the Property (subject to such permitted mortgage liens as may exist against the Project Improvements and the rights of a Holder as set forth in Article XIII hereof). Such replacement developer shall be selected as soon and in such manner as NJIT shall find feasible and consistent with the objectives of State law and of the Redevelopment Plan, and shall be a qualified and responsible party or parties as determined by NJIT, who will assume the obligation of Completing the Project or such other improvements in Developer’s stead as shall be satisfactory to NJIT and in accordance with the uses specified in this Development Agreement and the Redevelopment Plan. Upon such selection by NJIT, Developer shall deliver to such replacement developer assignments of all other rights and agreements pertaining to the Project. Developer shall provide to NJIT copies of any and all plans, specifications, studies, reports, contracts, bonds, policies and all other documentation with respect to the Project and to the extent requested by NJIT, execute such agreements, documents and instruments necessary to, among other things, assign and convey Developer’s rights thereunder to NJIT or its designee. Developer will also execute any easements or covenants that may be required in order for the replacement redeveloper to reasonably develop and operate the Project for which it is responsible.

(b) Prior to the selection of the replacement redeveloper, NJIT shall obtain an appraisal of the value of the Project Improvements and the Property to be conveyed to the replacement redeveloper. NJIT shall use reasonable efforts, taking into account all issues that may be related to the development of the Property to be conveyed, to negotiate a purchase price with the replacement redeveloper that reflects the value determined by the appraisal. Any proceeds resulting from the selection of the replacement developer under this Section shall be applied:

(i) First, to all reasonable costs and expenses incurred by NJIT, including but not limited to legal fees, appraisal fees and related expenses incurred by NJIT in connection with the Project Improvements and the Property; all taxes, payments in lieu of taxes, assessments, and water and sewer charges owed by Developer as of such date, if any, with respect to the applicable Project Improvements and Property or any part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the applicable Project Improvements or Property at the time of NJIT’s reacquisition of the Project Improvements, or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; all principal and interest due under the NJIT Note; and any expenditures made or obligations incurred with respect to the Completion of the applicable Project Improvements or Property, or any part thereof, on the uncompleted portion or any part thereof; and any amounts otherwise owed to the NJIT by Developer and its successors or transferees in accordance with the terms of this Development Agreement; and

(ii) Second, to reimburse Developer, its successor or transferee, up to the amount equal to Developer’s actual costs associated with the Property and Project Improvements being conveyed to the replacement redeveloper, including site acquisition, engineering, planning, site improvement, and other development costs paid for by Developer. Notwithstanding the results of the aforementioned appraisal, in no event shall Developer be
entitled to receive a reimbursement for its costs with respect to the Project Improvements and Property in excess of what Developer expended. Any balance remaining after such reimbursements shall be retained by NJIT.

SECTION 15.07 Remedies Upon Events of Default by NJIT. In the event that an Event of Default by NJIT occurs, then Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of NJIT, as applicable, under this Development Agreement, including the seeking of damages (including reasonable counsel fees and costs). Further, but subject to any cure provisions afforded NJIT hereunder, Developer shall have the right, in its sole and absolute discretion, upon sixty (60) days’ notice to NJIT, to terminate this Development Agreement. On a maximum of two occasions, NJIT may negate such notice of termination if NJIT commences to cure such Event of Default prior to the expiration of such sixty (60) day period and diligently pursues such cure to completion within one hundred twenty (120) days of such notice.

SECTION 15.08 Specific Performance. Except where remedies are otherwise limited by this Agreement, if an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Development Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to NJIT or Developer and that money damages may not provide an adequate remedy thereto.

SECTION 15.09 Failure or Delay. Except as otherwise expressly provided in this Development Agreement, the failure or delay by either Party in asserting any of its rights or remedies shall not operate as a waiver of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 15.10 Remedies Cumulative. No remedy conferred by any of the provisions of this Development Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a Party be entitled to recover more than its actual damages.

SECTION 15.11 Continuance of Obligations. The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Development Agreement unless this Development Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.
SECTION 15.12  **Litigation Costs.** In the event that a Party to this Development Agreement successfully pursues an action to enforce any remedy provided in this Article, that Party shall be entitled to payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

SECTION 15.13  **Mitigation.** The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder.

SECTION 15.14  **Documents to be Delivered Upon Termination.** In the event this Development Agreement is terminated for any reason, except as a result of the default of NJIT, Developer shall deliver to NJIT, within sixty (60) days after such termination, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by Developer and third parties with respect to the Property and the Project Improvements and all documents, reports, permits and approvals obtained by Developer relating to the Property and the Project Improvements.

SECTION 15.15  **Agreement Not to Develop Upon Termination.** Subject to the rights of any Holders, in the event this Development Agreement is terminated as a result of a Developer Event of Default, then, in order to give NJIT the opportunity to select a replacement Developer and address any additional issues resulting from such termination, Developer agrees that, for a period of one (1) year following such termination, in the event that Developer still owns or controls the Property (or any part thereof), it shall take no further steps to construct the Project Improvements or to develop the Property, except as may be agreed to by NJIT, in its sole discretion, notwithstanding the fact that Developer may be in possession of Governmental Approvals required for such development.

SECTION 15.16  **Rights under Redevelopment Agreement.** Nothing contained in this Article XV shall be deemed to affect the City’s rights under the Redevelopment Agreement nor be deemed to make any representations that would affect the City’s rights under the Redevelopment Agreement.

ARTICLE XVI
MISCELLANEOUS

SECTION 16.01  **Notices.** Formal notices, demands and communications between NJIT and Developer shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice.
Copies of all notices, demands and communications shall be sent as follows:

If to NJIT:

New Jersey Institute of Technology
University Heights
Newark, New Jersey 07102
Attn: Holly Stern, General Counsel

with copy to:

Charles B. Liebling, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza, Sixth Floor
New Brunswick, New Jersey 08901

If to Developer:

240 MLK Boulevard, LLC
c/o Actors Fund Housing Development Corporation
729 Seventh Avenue
New York, New York 10019
Attn: _____________________, ______________

with copy to:

___________________________
___________________________

Attn: _____________________, Esq.

SECTION 16.02  Conflict of Interest. No member, official or employee of NJIT shall have any direct or indirect interest in this Development Agreement, nor participate in any decision relating to this Development Agreement which is prohibited by law.

SECTION 16.03  No Consideration For Development Agreement. Developer warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Development Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Developer further warrants it has not paid or incurred any obligation to pay any officer or official of NJIT, any money or other consideration for or in connection with this Development Agreement.

SECTION 16.04  Non-Liability of Officials and Employees of NJIT. No member, official, employee agent or consultant of NJIT shall be personally liable to Developer, or any
successor in interest, in the event of any default or breach by NJIT, or for any amount which may become due to Developer or its successor, or on any obligation under the terms of this Development Agreement.

SECTION 16.05 Non-Liability of Officials and Employee of Developer. No member, officer, shareholder, director, partner or employee of Developer shall be personally liable to NJIT, or any successor in interest, in the event of any default or breach by Developer or for any amount which may become due to NJIT, or their successors, on any obligation under the terms of this Development Agreement.

SECTION 16.06 No Brokerage Commissions. NJIT and Developer each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Development Agreement as broker, agent, or otherwise acting on behalf of either NJIT or Developer, and NJIT and Developer shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying Party.

SECTION 16.07 Provisions Not Merged With Deeds. To the extent that the provisions of this Development Agreement are intended to bind Developer’s assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Property from Developer or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Development Agreement.

SECTION 16.08 Successors and Assigns. This Development Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

SECTION 16.09 Titles of Articles and Sections. The titles of the several Articles and Sections of this Development Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 16.10 Severability. If any term or provision of this Development Agreement or the application thereof shall be held to be invalid or unenforceable, the remainder of this Development Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Development Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 16.11 Modification. No modification, waiver, amendment, discharge, or change of this Development Agreement, shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.
SECTION 16.12 Counterparts. This Development Agreement may be executed in one or more counterparts and when each Party has executed and delivered at least one counterpart, this Development Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

SECTION 16.13 Prior Agreements Superseded. This Development Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

SECTION 16.14 Drafting Ambiguities: Interpretation. In interpreting any provision of this Development Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Development Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Development Agreement and have contributed to the final form of same.

SECTION 16.15 Governing Law. This Development Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. Any action or proceeding brought by Developer arising out of this Development Agreement shall be brought solely in a court of competent jurisdiction located in the County of Essex, State of New Jersey, or in a United States District Court in New Jersey. Developer hereby waives any right to seek removal of any action or proceeding. If NJIT commences such an action in a court located in the County of Essex, State of New Jersey, or any United States District Court in New Jersey, Developer hereby waives any right to seek removal of any action or proceeding. Additionally, Developer agrees to submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of forum non conveniens. Without limiting other methods of obtaining jurisdiction, Developer agrees that personal jurisdiction over it and any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon Developer by registered mail to or by personal service at the last known address of Developer pursuant to the notice section set forth in this Development Agreement.

SECTION 16.16 Redevelopment Agreement. In the event that a term or condition set forth in this Development Agreement is less restrictive than in the Redevelopment Agreement, the Redevelopment Agreement shall govern and apply with respect to obligations thereunder assigned to Developer pursuant to the Assignment.

SECTION 16.17 Operating Agreement. Nothing contained in this Development Agreement shall limit any of the rights and remedies available to CGF pursuant to the terms of the Operating Agreement including, without limitation, any and all rights of CGF to (i) consent or withhold consent with respect to any Major Decisions (as defined in the Operating
Agreement) or (ii) remove Actors Fund Housing Development Corporation as the managing member of the Developer.

[SIGNATURES APPEAR ON SUCCESSIVE PAGE]
IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed, all as of the date first above written.

WITNESS/ATTEST: 

__________________________
Name:

DEVELOPER:

240 MLK BOULEVARD, LLC

By: ________________________
Name: ______________________
Title: ______________________

WITNESS/ATTEST: 

__________________________
Name:

NEW JERSEY INSTITUTE OF TECHNOLOGY

By: ________________________
Name: ______________________
Title: ______________________
STATE OF NEW JERSEY
:
COUNTY OF ___________
:

On this, the _____ day of __________________, 2013, before me, the subscriber, personally appeared ____________________, who I am satisfied is the person who executed the foregoing instrument as the _______________ of ____________________, LLC, a _______________ limited liability company, the entity named in the foregoing instrument, and who acknowledged that he/she, in such capacity, being authorized to do so, executed the foregoing instrument as such entity’s voluntary act and deed for the purposes therein contained by signing on behalf of said limited liability company.

__________________________
Notary Public
Commission Expiration: ________________

STATE OF NEW JERSEY
:
COUNTY OF ESSEX
:

On this, the _____ day of __________________, 2013, before me, the subscriber, personally appeared ____________________, who I am satisfied is the person who executed the foregoing instrument as the _______________ of New Jersey Institute of Technology, the educational institution named in the foregoing instrument, and who acknowledged that he/she, in such capacity, being authorized to do so, executed the foregoing instrument as such entity’s voluntary act and deed for the purposes therein contained by signing on behalf of said educational institution.

__________________________
Notary Public
Commission Expiration: ________________
EXHIBIT A
REDEVELOPMENT AGREEMENT
EXHIBIT B
PERMITTED EXCEPTIONS

1. Zoning regulations and other ordinances of the City which now or hereafter affect the Property.

2. Any easements of record that do not unreasonably restrict Developer’s intended use of the Property.

3. Any covenants, restrictions, reservations, or agreements of record which are not currently violated and do not unreasonably restrict Developer’s intended use of the Property.

4. Possible additional taxes and assessments for the year of sale imposed by the City due to the construction of improvements.

5. Those matters that become “Permitted Exceptions” pursuant to Section 3.03 of this Agreement.

6. All exceptions shown on NJIT’s title insurance policy for the Property attached hereto. (Issued by _____________, Policy No. _____________, ________, 20__) [NJIT TO CONFIRM]
EXHIBIT C

ACCESS AGREEMENT

This Access Agreement (the "Agreement") is dated as of this ___ day of ________, 2013 ("Effective Date") between ____________________, LLC, a ___________ limited liability company, with offices at c/o Actors Fund Housing Development Corporation, 729 Seventh Avenue, New York, New York 10019 ("Developer") and NEW JERSEY INSTITUTE OF TECHNOLOGY, an educational institution in the State of New Jersey with offices at University Heights, Newark, New Jersey 07102 and its respective successors and assigns ("NJIT", and all of the parties to this Agreement shall be collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, Developer and NJIT have entered into a Development Agreement dated ______________, 2013 ("Development Agreement") with respect to certain real property commonly known as Block 43, Lots 30, 38, 39, 40, 41 and 46 on the City's Tax Maps (the "Property"), which Property is owned by NJIT; and

WHEREAS, Developer has requested entry to the Property for itself and its contractors to perform environmental, geotechnical, permitting, and other due diligence activities as authorized and in accordance with the terms of the Development Agreement; and

WHEREAS the Parties wish to agree upon certain terms and conditions with respect to the work described above.

NOW, THEREFORE, in consideration of the foregoing premises, which are incorporated herein, and in further consideration of the mutual promises and representations stated herein, the Parties agree as follows:

1. Grant of License. NJIT hereby grants a nonexclusive, revocable license from the date of this Agreement to Developer, its employees, agents, and contractors to enter the Property at reasonable times and upon twenty-four (24) hours prior written (including e-mail) or telephone notice to NJIT to conduct activities relating to a due diligence investigation including, environmental, geotechnical, permitting, and similar issues, in accordance with the Development Agreement, but only upon the terms and conditions set forth in this Agreement (the "Work"). This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Work upon the Property and not as a grant of easement, an interest in the Property, or evidence of an intent to enter into or negotiate any other agreement.

2. Compliance with Laws. Developer, at its sole expense, agrees to conduct the Work in accordance with all applicable federal, state, and local statutes, regulations, ordinances, directives, orders, guidelines, and standards (collectively, "Laws"). The Work shall be performed in a good and workmanlike manner. Developer shall take, and shall require its
contractors to take, reasonable precautions to minimize damage to the Property from the Work and shall perform the Work as expeditiously as reasonably possible. Neither Developer or Developer's contractors shall store any contaminants on the Premises except temporarily while the Work is being actively performed. All Hazardous Substances (as defined in the Development Agreement) generated as a result of the Work, including without limitation any drummed soils or liquids, shall be removed from the Property within ten (10) business days.

After the earlier of the completion of the Work or termination of this Agreement, Developer shall expeditiously remove all equipment both above and below ground brought to the Property in connection with the Work and repair or restore those portions of the Property and any personal property located at the Property impacted by the Work to as close to its condition existing immediately prior to the time the Work began as is reasonably possible. The provisions of this Section 2 shall survive the termination of the Agreement.

3. **Termination.** This Agreement shall terminate upon the earlier of: a) the closing upon the Property; or b) the termination of the Development Agreement.

4. **Mutual Cooperation.** Developer agrees to coordinate its activities with NJIT to minimize any inconvenience to or interruption of NJIT's current or future operations at the Property.

5. **Permits.** Developer, with the reasonable cooperation of NJIT, but at no expense to NJIT, shall obtain any and all permits that may be required in connection with the Work.

6. **Work Reports.** Developer will provide NJIT with monthly reports describing the current status of the Work and the Work activities anticipated for the next month. Developer shall also provide NJIT with copies of all documents and information that Developer or Developer's contractors possess currently or in the future: (a) generated as a result of or in preparation for the Work or reflecting the condition of the Property, including without limitation, environmental and geotechnical data, and survey results, and (b), subject to the confidentiality provisions of Section 8, all correspondence, reports or other documents received from or sent to the New Jersey Department of Environmental Protection, any other governmental entity (collectively, "Agency"), or any third party regarding the Work or the Property. Developer shall send these copies within five business days of Developer's possession or control of such documents.

7. **Contractor's Equipment.** Developer releases, and shall require its contractors to release, NJIT for loss of or damage to property and equipment of Developer and Developer's contractors while such property or equipment is in or on the Property, except where such loss of or damage to property and equipment results from NJIT's gross negligence or willful misconduct.

8. **Confidentiality.** Developer shall, and shall require its contractors to, treat as confidential and proprietary and shall not disclose or permit the disclosure to an Agency or other third party during or subsequent to the term of this Agreement, except with the prior written consent of NJIT, any information of any description whatsoever, including any technical data and reports, derived from or produced to Developer or Developer's contractors in connection
with the Work. Notwithstanding the above, Developer and Developer's contractors shall not be bound to maintain the confidentiality of information: (a) already in the public domain prior to the execution of this Agreement, (b) as required by an "Order", described below, or (c) as required to be disclosed by statute.

In the event that Developer or Developer's contractors receive a subpoena or court or administrative order requiring the disclosure of any of the information deemed by this Agreement to be confidential or proprietary, or otherwise believe that such disclosure is required by Laws, (hereinafter an "Order"), Developer shall, and shall cause its contractors to, give immediate written notice to NJIT. NJIT may interpose all objections it may have to the disclosure of any information at NJIT's sole cost and expense. Developer shall, and shall cause its contractors to, abide by the decision of the judicial or administrative body regarding the disclosure of such information. The provisions of this Section 8 shall survive the termination this Agreement and shall continue until a specific written release is given to Developer by NJIT.

9. **Insurance.** Developer shall obtain, at its sole cost and expense, and maintain at all times during the term of this Agreement: (a) commercial general liability insurance (including personal injury liability coverage) with a minimum per occurrence limit of at least $1,000,000.00 and general aggregate limit of $2,000,000.00; (b) automobile liability insurance covering owned, hired and non-owned vehicles, providing coverage of $1,000,000.00 combined single limit for bodily injury and property damage; (c) excess umbrella liability insurance coverage insuring losses in excess of the insurance required under (a) and (b), up to a total limit of $5,000,000.00 on an occurrence basis; (d) worker's compensation insurance maintained in accordance with statutory requirements; and (e) if applicable with respect to any Developer activity, contractor's pollution liability insurance providing coverage of not less than $1,000,000.00. All commercial general liability insurance maintained by Developer hereunder shall have the following endorsements: (i) products and completed operations coverage, (ii) contractual liability, (iii) broad form property damage and personal injury, and (iv) underground explosion and collapse coverage. NJIT shall be named as an additional insured (except workers compensation) on all policies, and such policies shall be considered primary insurance without recourse and non-contributing to any similar insurance carried by NJIT. All insurance certificates obtained by Developer shall contain a provision that coverage afforded under the policies evidenced by such certificates will not be cancelled or materially changed without at least thirty (30) days' prior written notice to NJIT. All liability insurance required to be carried by Developer shall contain broad form contractual liability insurance coverage insuring Developer's indemnity obligations to NJIT under this Agreement. All policies carried by Developer shall include a waiver of subrogation endorsement.

10. **Indemnity.** Except to the extent that any of the following arise from the gross negligence or willful misconduct of any of NJIT, and the employees, agents, independent contractors and representatives of NJIT (the "NJIT Parties"), Developer shall indemnify, defend and hold harmless NJIT Parties from and against any and all liabilities, obligations, losses, damages, demands, fines, penalties, actions, causes of action, lawsuits, costs, expenses, disbursements, orders, judgments, and decrees, including, without limitation, fees and expenses of attorneys and consultants, suffered, incurred, or sustained by or asserted against NJIT Parties arising out of or resulting from Developer's performance of the Work.
11. **Attendance.** A representative of NJIT may, at its option, be present during the conduct of any Work at the Property. Prior to the commencement of the Work, NJIT shall give Developer reasonable prior written notice of the time and place of such entry, in order to permit a representative of Developer to accompany such NJIT Party.

12. **No LSRP.** In no event shall any of the Work be performed by or under the supervision of a Licensed Site Remediation Professional.

13. **Default.**

(a) If Developer shall fail to perform or observe any agreement or condition under this Agreement beyond any applicable cure and/or grace period contained in this Agreement, and if Developer shall fail to cure said default within ten (10) business days after written notice of said default from NJIT (or such longer period (not to exceed thirty (30) days) if said default is not of a nature that can be cured within said ten (10) business day period, provided Developer has commenced the cure of such default within said ten (10) business day period and thereafter prosecutes the curing of said default with due diligence), then NJIT may immediately, or at any time thereafter, and without further notice, terminate this Agreement, and Developer shall forthwith quit the Property.

(b) If after ten (10) days following the expiration, termination or cancellation of this Agreement, Developer has failed to remove any property brought upon the Property by Developer, then NJIT may notify Developer to remove said property at Developer’s own cost and expense. If NJIT elects to notify Developer to remove said property and Developer fails to do so within the period set forth in NJIT’s notice, then, upon such failure, NJIT may, in addition to any other remedies available to it, remove said property as the duly authorized agent of Developer, and store the same in the name and at the expense of Developer or those claiming through or under Developer under any usual or proper form of warehouse receipt, whether or not authorizing the sale of said property for non-payment of storage charges, and without in any way being liable for conversion or negligence of any person in caring for said property while in storage. In such event, Developer agrees to pay to NJIT upon demand, all removal and storage costs incurred by NJIT.

13. **Notices.** Any demand, notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by telecopy (with hard copy and a transmission confirmation sent by a recognized overnight national courier service (such as Federal Express) for next business day delivery) or by certified mail, return receipt requested, first-class postage prepaid to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the other):

If to NJIT:

New Jersey Institute of Technology  
University Heights  
Newark, New Jersey 07102  
Attn: Holly Stern, General Counsel
with copy to:

Charles B. Liebling, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza, Sixth Floor
New Brunswick, New Jersey 08901

If to Developer:

__________________________, LLC

c/o Actors Fund Housing Development Corporation
729 Seventh Avenue
New York, New York 10019
Attn: ___________________, ______________

with copy to:

__________________________

__________________________

Attn: ___________________, Esq.

Any notice delivered to a party’s designated address by (a) personal delivery, (b) recognized overnight national courier service, (c) certified mail, return receipt requested, shall be deemed to have been received by such party at the time the notice is delivered to such party or (d) telecopy (with provision for assurance of receipt in a manner typical with respect to communications of that type). Confirmation by the courier delivering any notice given pursuant to this Section shall be conclusive evidence of receipt of such notice. Each party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service. Any notice given by an attorney for a party shall be effective for all purposes.

14. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey.

15. Successors and Assigns. Neither NJIT nor Developer shall assign this Agreement or any interest therein without the consent of the other.

16. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision hereof shall be valid and be enforced to the fullest extent permitted by law.
17. Entire Agreement. This Agreement represents the entire agreement between NJIT and Developer and supersedes all prior discussions, representations and agreements between the parties hereto. This Agreement may not be revised or amended except by a written instrument signed by the parties hereto.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all which when taken together shall constitute one and the same agreement. Facsimile and pdf signatures shall have the same effect as original signatures.

[balance of page intentionally left blank]
IN WITNESS WHEREOF, Developer and NJIT have executed this Access Agreement as of the date set forth above.

DEVELOPER:

__________________________, LLC

By: ______________________
Name: ____________________
Title: _____________________

WITNESS/ATTEST:

Name: ____________________

WITNESS/ATTEST:

NEW JERSEY INSTITUTE OF TECHNOLOGY

By: ______________________
Name: ____________________
Title: _____________________
EXHIBIT D

RELEASE AND INDEMNIFICATION OF NJIT BY ACTORS FUND

Model language on Section 5.02
LIMITED LIABILITY COMPANY AGREEMENT

240 MLK BOULEVARD, LLC

Members
[MANAGING MEMBER, LLC]

CAMPUS GATEWAY FOUNDATION, INC.

Date
As of June ____, 2013
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EXHIBITS

EXHIBIT A Definitions
LIMITED LIABILITY COMPANY AGREEMENT
of
240 MLK BOULEVARD, LLC

Introduction

This LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") is made as of June ____, 2013 (the “Effective Date”), by and between [MANAGING MEMBER, LLC], a [___________] limited liability company (“MM LLC”), and CAMPUS GATEWAY FOUNDATION, INC., a New Jersey not-for-profit corporation (“CGF”), each as a Member. The address and principal place of business and telephone and facsimile numbers of each Member are set forth in Section 11.1. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Members agree to the following terms and conditions.

Terms and Conditions

ARTICLE 1

FORMATION AND OTHER ORGANIZATION MATTERS

Section 1.1 Formation. The Company was formed as a limited liability company on June ____, 2013 by the filing of its Certificate of Formation with the Delaware Secretary of State pursuant to the Delaware Act.

Section 1.2 Basic Rights of Members. The Members hereby enter into this Agreement to set forth certain rights and obligations of the Members, the procedures for managing and operating the Company and related matters. The Members intend and agree that this Agreement is for all purposes the “limited liability company agreement” of the Company as defined in the Delaware Act. Except to the extent stated in this Agreement, (a) the rights and obligations (i) of the Company and its Members and (ii) among the Members and (b) the management, operation, termination and dissolution of the Company shall be governed by the provisions of the Delaware Act.

Section 1.3 Name. The business of the Company shall be conducted under the name “240 MLK BOULEVARD, LLC” or such other name as the Members may hereafter determine.

Section 1.4 Term. The existence of the Company commenced on the date of filing its Certificate of Formation and shall continue until terminated or dissolved pursuant to the terms of this Agreement.

Section 1.5 Business. The business of the Company is solely to (a) acquire, own, hold, manage, operate, develop and construct the 240 MLK Property (as defined in the Development Agreement) pursuant to the terms of the Development Agreement, (b) borrow money and issue evidence of indebtedness to finance the activities set forth in clause (a) above and (c) do any and all other acts or things that may be incidental or necessary to carry on the business of the Company as described in clause (a) above. The Company is not authorized to and shall not engage in any business other than as described in this Section 1.5.
Section 1.6 Place of Business; Registered Office and Agent Principal. The principal place of business of the Company shall be located at c/o Actors Fund Housing Development Corporation, 729 Seventh Avenue, New York, New York 10019 or at such other location as shall be designated by the Members. The registered office of the Company in the State of Delaware shall be c/o Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 and the registered agent for service of process on the Company at its registered office shall be Corporation Trust Company.

Section 1.7 Certain Definitions. Certain capitalized and uncapitalized words and phrases used in this Agreement are defined in Exhibit A and shall have the meanings set forth therein.

ARTICLE 2

CONTRIBUTIONS BY MEMBERS; FINANCING

Section 2.1 Company Funding.

(a) Each Member of the Company has made or will, upon execution of this Agreement, make a capital contribution to the Company in the amount set forth on Schedule 1 attached hereto.

(b) The Members recognize that the Company will require additional funds to pay Company Costs, including without limitation, any amounts required to be funded by the Company pursuant to the terms of the Project Budget and the Development Agreement. If the Company does not have sufficient funds to pay Company Costs, MM LLC shall have the obligation to make additional capital contributions to fund such Company Costs. CGF shall have the right to require that MM LLC make additional capital contributions by providing Notice to MM LLC of such request along with a detailed description of the need for such funds and proposed use of such funds. The failure of MM LLC to fund any such requested additional capital contribution within five (5) Business Days of its receipt of any such Notice from CGF shall be a material breach of the terms of this Agreement and CGF shall have the right to exercise any of its rights or remedies hereunder or pursuant to applicable law. CGF shall have no obligation to fund any amounts to the Company, either as loan or an additional capital contribution, in excess of those referred to in Section 2.1(a).

Section 2.2 Return of or on Capital Contributions. Except as expressly provided in this Agreement, (a) no Member shall receive any return or distribution of its capital contributions, (b) no Member shall receive any interest or other return on or with respect to its capital contributions and (c) no Member shall be entitled to withdraw any part of its capital contributions.

Section 2.3 No Deficit Restoration. No Member shall have any obligation to restore any deficit in its Capital Account. No allocation to any Member of any loss or deduction, whether attributable to depreciation or otherwise, shall create any obligation of that Member to the Company or any other Member, even if the allocation reduces such Member's Capital Account or creates or increases a deficit in its Capital Account. The Members intend and agree that no Member shall be obligated to pay any deficit in its Capital Account to or for the account of the Company or any creditor of the Company.

Section 2.4 No Further Capital Contribution Requirements. Except as stated in this Agreement or as otherwise agreed by all of the Members, no Member shall be required to make any additional capital contribution to the Company.
ARTICLE 3

DISTRIBUTIONS TO MEMBERS

Section 3.1 Distributions of Available Cash.

(a) Distributions of Available Cash shall be made to Members at such times as determined by the Members pursuant to Section 4.2(a)(16) below.

(b) All distributions of Available Cash shall be made in the order of priority shown in subsection (c) of this Section 3.1. The Members identified at each level of priority shall (1) receive distributions at the same time without preference or priority of one Member over another until all Members at that level have received the full amount to which they are entitled and before any distributions are made or paid to any Members for amounts in a lower level of priority and (2) if distributions at a priority level described in subsection (c)(i) are not sufficient to pay each Member the full amount to which it is entitled, distributions shall be made to each Member on a pro rata basis in the same ratio that its capital contributions to the Company bears to all capital contributions made by all Members referred to in that priority level.

(c) Distributions of Available Cash shall be distributed to the Members in the following order of priority:

(i) First, to all Members until each Member has been paid in full an amount equal to all capital contributions it made pursuant to Section 2.1;

(ii) Second, to MM LLC until it has achieved an IRR of [_____] percent, including all distributions received by MM LLC under this Section 3.1 and Section 8.2; and

(iii) the balance, if any, 75% to MM LLC and 25% to CGF.

[SECTION 3.1(C) PROVIDES CGF WITH A SHARE OF OPERATING CASH AND NET PROCEEDS FROM A SALE OF THE PROPERTY FOLLOWING THE RETURN OF MM LLC’S CAPITAL AND AN IRR. ACTORS FUND HAS PROPOSED THAT CGF ONLY SHARE IN A PORTION OF NET PROCEEDS FROM A SALE WHICH OCCURS WITHIN 5 YEARS OF OBTAINING A CERTIFICATE OF OCCUPANCY. A COMPROMISE POSITION WOULD BE CGF ONLY RECEIVING A SHARE OF NET PROCEEDS FROM A SALE WHICH OCCURS WITHIN 10 YEARS (OR SOME PERIOD OF TIME LONGER THAN 5 YEARS) FROM THE DATE THE CERTIFICATE OF OCCUPANCY IS OBTAINED.]

ARTICLE 4

POWERS, RIGHTS AND DUTIES OF MEMBERS.

Section 4.1 Role of Managing Member.
(a) Except as otherwise provided herein, the Managing Member shall manage, conduct and make all decisions regarding the operations and affairs of the Company and the 240 MLK Property; provided that, all such actions taken by the Managing Member on behalf of the Company shall only be taken in accordance with the terms of the Project Budget and the Development Agreement. MM LLC is hereby appointed as the initial Managing Member. In dealing with the Managing Member acting on behalf of the Company, no Person shall be required to inquire into the authority of the Managing Member to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Managing Member as set forth in this Agreement or in any power of attorney, resolution or other document delivered by the Managing Member. The Managing Member shall not be reimbursed by the Company for any salary and employee benefits paid to its employees or any overhead expenses incurred to comply with its obligations pursuant to this Agreement and no such costs or expenses shall be treated or deemed to be a capital contribution or a loan to the Company by the Managing Member, unless that treatment has been expressly authorized by CGF.

(b) The Managing Member agrees that, in addition to any obligations and responsibilities set forth elsewhere in this Agreement, the Managing Member shall be responsible to carry out and implement, in each case pursuant to and in accordance with the terms of this Agreement, the following items in a commercially reasonable manner and time:

1. causing the Company to comply with the provisions of (i) the Development Agreement, (ii) the Redevelopment Agreement (as defined in the Development Agreement), (iii) any loan agreement, promissory note, mortgage, deed of trust or other written agreement or document evidencing any Company Financing (the "Loan Documents") and (iv) any tenant leases, property management or service agreements covering the 240 MLK Property, and other material agreements and contracts binding on the Company or the 240 MLK Property;

2. coordinate, supervise and cause the development and construction of the 240 MLK Property on a timely basis;

3. use best efforts to cause the Company to obtain financing required to acquire the 240 MLK Property and fund the development and construction of the 240 MLK Property;

4. causing the Company to comply with all environmental, health and safety, antidiscrimination, zoning and other legal requirements applicable to the Company or the Property;

5. notification to CGF of any non-compliance, default or breach under any contract binding upon or affecting the Company or the 240 MLK Property by the Company or the other Person(s) who are parties to such contract;

6. delivery (within a reasonable period of time) to CGF of (i) all requests by the Company for draw requests or advances under any credit facility, (ii) all operating, financial and other reports and statements and all other documents and notices (including all requests for lender approval or consent with regard to actions requiring such approval or consent under any Loan Documents) sent by or on behalf of the Company or the Managing Member to any lender and (iii) notices of default and all other notices, demands, requests, documents and other written communications received by the Company or the Managing
Member from any lender to the Company or any Person or agent acting on behalf of any lender;

(7) notification to CGF of any insurance carrier who insures the Company or the 240 MLK Property regarding any occurrence, claim or potential claim that may be covered by insurance;

(8) obtaining and maintaining insurance for the Company and the 240 MLK Property as described in the Project Budget; and

(9) notification to CGF of any lawsuit, arbitration or other legal or equitable proceeding that has been commenced or threatened against the Company, the MM LLC or any Member.

Section 4.2 Major Decisions. (a) All Major Decisions shall require the prior written approval of each Member, which approval process shall be governed by the terms of Section 4.2(b). The Managing Member shall have no right or power to make any commitment or engage in any undertaking on behalf of the Company in respect of a Major Decision unless or until the same has been approved in writing in accordance with the preceding sentence. The term “Major Decision” as used in this Agreement means any decision with respect to the following matters:

(1) Approval of the terms and conditions of any Company Financing;

(2) Approval of the terms and conditions of any modification, amendment or refinancing of any Company Financing;

(3) adoption of the Project Budget, any amendment or modification thereof or expanding funds in a manner that is inconsistent or not reflected in Project Budget;

(4) taking any action that is inconsistent with the terms of the Development Agreement;

(5) approval of the appointment or termination of any third-party professionals or consultants engaged by the Company, on behalf of the Company, and the approval of the terms and conditions of any agreement between such third-party professionals or consultants and the Company;

(6) approval of any contract or agreement between the Company and a Member or any Affiliate of a Member;

(7) approval of the terms and conditions of any material contract or agreement to which the Company is a party and any amendment, supplement, waiver or termination of such contract or agreement;

(8) any lease of all or a portion of the 240 MLK Property that does not comply with applicable leasing guidelines as agreed to by the Members;

(9) issuance or sale of additional Membership Interests or admission of a new member in the Company;
(10) commencing or threatening any legal proceeding or litigation of any type on behalf of the Company or settling, compromising or taking any other material action with respect to any litigation or legal proceeding of any type by, against or involving the Company;

(11) filing or commencement of any Bankruptcy by or on behalf of the Company;

(12) the acquisition of any parcel of real property, including without limitation, the 236 Parcel (as defined in the Development Agreement) or the 50/51 Parcel (as defined in the Development Agreement), except that the acquisition of the 240 MLK Property shall not constitute a Major Decision if the 240 MLK Property is acquired in accordance with the terms of the Development Agreement;

(13) approval of (i) the sale or other disposition of any portion of the 240 MLK Property, (ii) the sale or other disposition of all or substantially all of the Company's assets, (iii) the merger or consolidation of the Company or (iv) the liquidation or dissolution of the Company;

(14) the Company's acquisition of shares of capital stock of or other equity interests in any Person;

(15) formation by the Company of any corporation, partnership, limited liability company or other legal entity;

(16) creation of any lien, charge, encumbrance or mortgage on the 240 MLK Property;

(17) distribution of any Available Cash and the making of Reserve Additions;

(18) approval of any action described in this Agreement that refers to action by "the Members" or contains language comparable to that phrase; and

(19) taking any action that is not in the ordinary course of business of the Company, whether or not described above and.

(b) Each Member may propose to adopt, modify or revoke a Major Decision at any time by delivering written Notice to the other Members describing the proposal. Each Member shall promptly consider and evaluate each proposal to adopt, modify or revoke a Major Decision and shall promptly give its decision (set forth in writing). The Members expressly acknowledge that any approval of a proposed Major Decision is subject to the standards stated in Section 5.2(b). If a Member disapproves a Major Decision, it shall briefly state in a written Notice to the other Members the specific reasons for its disapproval and, to the extent appropriate, the changes in the proposed Major Decision that would make it acceptable. No Major Decision shall be deemed approved unless or until such Major Decision has been approved in writing by the all of the Members.

Section 4.3 Removal of Managing Member.
(a) Subject to the notice and cure rights described in subsection (b) below, CGF shall have the right to remove MM LLC as the Managing Member for cause by delivering to it a written Notice of removal and stating the grounds for removal, which must be based upon or related to one or more of the following (each, a “Removal Event”):

(1) the breach of any provision of this Agreement or the Development Agreement;

(2) any fraud, gross negligence or willful misconduct by the Managing Member in its performance of duties, obligations or covenants under this Agreement;

(3) any material violation of law (whether willful, negligent or unintentional) by the Managing Member or any of its Affiliates in connection with the Company or the 240 MLK Property;

(4) the Managing Member causes or permits the Company to sign any document, make any payment or take any other action that requires the approval of a Major Decision without obtaining such approval in accordance with Section 4.2;

(5) the Bankruptcy or dissolution of MM LLC;

(6) the failure of Actors Fund Housing Development Corporation or an Affiliate thereof (“Actors Fund”) to (x) be actively involved in the management, development, operation and construction of the 240 MLK Property, (y) own at least [__]% of the outstanding equity interests of MM LLC and Control MM LLC; or

(7) all or a portion of the Membership Interests of MM LLC is Transferred in violation of Article 6.

(b) If (1) the cause or grounds for removal under subsection (a) (1) or (2) is based solely upon an unintentional breach of this Agreement, negligence or an unintentional violation of law, (2) can be cured within thirty (30) days after the date of receipt by the Managing Member of the Notice of removal and (3) the Managing Member gives CGF a written undertaking to cure such matter within such 30-day period, then the Managing Member shall have such 30-day period in which to cure the cause or grounds for removal. The costs and expenses of any such cure (1) shall be paid solely, fully and directly by the Managing Member and not by the Company or any other Member and (2) shall not be treated as an additional Capital Contribution or loan to the Company or any other Member.

(c) If the cause or grounds for removal of the Managing Member is not cured within the time period permitted in subsection (b) above or is not otherwise afforded any Notice, grace or cure period with respect to such action or occurrence, MM LLC shall automatically be removed as the Managing Member and shall be replaced in that capacity by CGF or its designee. Without limiting the foregoing, upon the removal of MM LLC as the Managing Member, the Company shall have the right (at the direction of CGF) to redeem MM LLC’s Membership Interest at the Valuation Price (as defined below), which shall be paid by the Company as set forth in Section 4.3(d) below. Following such redemption, MM LLC shall be deemed to have withdrawn as a Member and shall no longer have rights as a Member hereunder or under the Act, except that its
obligations under Section 4.4 below shall survive the redemption of its Membership Interest by the Company pursuant to this Section 4.3(c). If CGF elects not to request the redemption of MM LLC’s Membership Interest pursuant to the preceding sentence following the removal of MM LLC as the Managing Member, MM LLC’s Membership Interest shall automatically become a non-managing Membership Interest and it shall no longer have the authority to vote on or approve any matter regarding the Company or the 240 MLK Property, including without limitation, any Major Decision; provided that, MM LLC shall continue to receive distributions of Available Cash to which it is entitled to hereunder. CGF on its own behalf or on behalf of Company shall have the right in its sole and absolute discretion to terminate and replace any property/construction/development manager, leasing agent or any other Person who has previously been retained by the Company to perform services with respect to the 240 MLK Property or the Company and who is Affiliated with MM LLC if MM LLC is removed as the Managing Member.

(d) The “Valuation Price” shall mean the fair market value of MM LLC’s Membership Interest determined by an independent appraisal firm, which firm shall be selected by both Members of the Company. In the event MM LLC disagrees with the Valuation Price, MM LLC may select a second independent appraisal firm to determine the Valuation Price. The average of the two prices determined by the two independent appraisal firms shall be deemed to be the Valuation Price. The fair market value shall be determined as of a date that is within 30 days of the date as of which the determination is to be made. Each appraisal firm shall use such generally accepted valuation method or methods and assumptions in determining the Valuation Price (including, without limitation, book value, multiples of earnings or cash flow) as it considers appropriate. The fees and expenses of the first independent appraisal firm engaged by the Company shall be paid by the Company. The fees of the second independent appraisal firm engaged by MM LLC shall be paid by MM LLC. Within 60 days after the giving of the notice of election to purchase the Membership Interests as described above, the Company shall pay the Valuation Price for the Membership Interest of MM LLC, and MM LLC shall execute and deliver to the Company and CGF any and all transfer documents and take any and all other actions reasonably requested by CGF to effectuate the redemption of MM LLC’s Membership Interest. The Valuation Price may be paid either in a single lump sum in cash or by delivering to MM LLC a promissory note for the full Valuation Price, which promissory note shall be for a term of five (5) years and shall bear an initial interest rate equal to the prime rate of JPMorgan Chase Bank, N.A., or its successor, on the date of the purchase. Principal and interest shall be payable in equal quarterly installments.

Section 4.4 Indemnification.

(a) The Company as Indemnitor shall, subject to the limitations stated below and those set forth in Section 4.4(c), indemnify, defend and hold harmless each Member and its Affiliates as Indemnitees to the fullest extent permitted by applicable law against all Losses of those Indemnitees caused by, resulting from or arising out of the participation by any Indemnitee in the activities of the Company as Members. The Indemnitor shall be required to indemnify the Indemnitee pursuant to this Section only if (1) the Indemnitee acted in good faith, in a manner required or permitted by the terms of this Agreement and (2) with respect to any criminal action or proceeding, the Indemnitee did not have reasonable cause to believe that its conduct was unlawful. The termination of a lawsuit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that an Indemnitee did not meet those standards. Any indemnification by the Company permitted under this Section shall be made solely out of the assets of the Company. No Member shall be obligated to make any
Capital Contributions or loans to the Company to enable the Company to provide such indemnification.

(b) Each Member as Indemnitee shall indemnify, defend and hold harmless the Company and each other Member and its Affiliates as Indemnitees to the fullest extent permitted by applicable law against all Losses of those Indemnitees caused by, resulting from or arising out of (1) the violation, default or breach by the Indemnitee of this Agreement or (2) the fraud, intentional violation of law, willful or intentional misconduct or gross negligence of the Indemnitee or any of its Affiliates.

(c) No Indemnitee shall be obligated to indemnify an Indemnitee pursuant to this Article to the extent that (1) the Indemnitee has committed by way of action or omission any fraud, intentional violation of law, gross negligence, or willful misconduct with regard to the matter for which indemnification is sought, (2) the Loss to the Indemnitee was caused by, resulted from or arose out of a breach, default or violation by the Indemnitee of this Agreement or (3) the Loss to the Indemnitee was caused by or resulted from or arose out of any of its Affiliates taking any action or causing any event described in clauses (1) or (2) above.

(d) If a claim or assertion of liability is made against a possible Indemnitee that, if prevailed upon, may result in that Indemnitee being entitled to indemnification pursuant to this Section 4.4 (a “Claim”), the Indemnitee will upon learning of the Claim give to the Indemnitee immediate written Notice of the Claim and request the Indemnitee defend the Claim at the Indemnitee’s sole cost and expense with counsel reasonably acceptable to the Indemnitee. Failure to so notify the Indemnitee will not relieve the Indemnitee of any liability that the Indemnitee may have to such Indemnitee, except to the extent that such failure actually prejudices the Indemnitee’s legal position. The Indemnitee shall have the obligation to defend the Indemnitee against the Claim if such Indemnitee is entitled to indemnification pursuant to this Section 4.5. The Indemnitee shall give written Notice within five (5) Business Days to the Indemnitee of acceptance or rejection of the defense of the Claim and the name of the counsel selected by the Indemnitee to defend the Claim. If the Indemnitee refuses or fails for any reason to defend an Indemnitee in violation of this Section, or places qualifications or conditions on the acceptance of the obligation to defend such Claim, the Indemnitee (1) shall have the right to defend the Claim with legal counsel it selects and (2) after any final non-appealable judgment or binding settlement or dismissal, shall be paid or reimbursed the full amount to which the Indemnitee is entitled before any distributions are made pursuant to Section 3.1(c) hereof.

(e) The Members may cause the Company to purchase and maintain insurance on behalf of any Indemnitee, including without limitation, directors and officers liability insurance. If insurance is obtained for any Indemnitee, it shall be obtained on the same basis for all other Indemnitees who have comparable risks.

(f) The indemnification obligations under this Article shall survive the Transfer of Membership Interests by any Member or the dissolution of the Company.

Section 4.5 Noncompetition. From the date hereof until the Certificate of Completion is issued pursuant to the terms of the Development Agreement, MM LLC shall not, and shall not cause or permit any of (x) its Affiliates or (y) its equity owners or their respective Affiliates, directly or indirectly, (1) to purchase, build, develop, own, manage (including acting as property manager or
leasing agent), operate or control or (2) to own or control any beneficial or equity interests in any owner, member, manager or constituent partner or shareholder of any project or property comparable to the 240 MLK Property within the City of Newark unless any such activity has been approved in advance and in writing by the CGF.

Section 4.6 Other Activities. Subject to Section 4.5, Affiliates of the Members may have other business interests and may engage in other activities in addition to those relating to the Company. Each Member recognizes that Affiliates of the Members have an interest in investing in, owning, operating, transferring, leasing and otherwise using real property and interests therein, and engaging in any and all related or incidental activities and that each will make other investments consistent with such interests and the requirements of any agreement to which they or their Affiliates are a party. Except for the non-competition restriction stated in Section 4.5 and except to the extent stated in another agreement to which a Member is a party or by which it is bound: (1) neither the Company nor any Member shall have any right by virtue of this Agreement or the relationship created hereby in or to any other ventures or activities in which the other Member or Affiliates of the other Member are involved or to the income or proceeds derived from those ventures or activities; (2) the pursuit of other ventures and activities by the other Member or Affiliates of the other Member, even if competitive with the business of the Company, is hereby consented to by all Members and shall not be deemed wrongful or improper under this Agreement or applicable law; and (3) no Affiliate of a Member shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and each such Affiliate shall have the right to take for its own account, or to recommend to others, any such particular investment opportunity.

ARTICLE 5

STATUS OF MEMBERS

Section 5.1 Liability of Members. No Member shall have any personal liability whatsoever, whether to the Company, to the other Members or to the creditors of the Company, for the debts of the Company or any of its losses. The foregoing shall not, however, limit the personal liability of a Member for its obligations to the Company under this Agreement or to the Company or any other Member under any other agreement to which such Member may be a party. No Member or Affiliate thereof shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any action taken or failure to act on behalf of the Company within the scope of the authority conferred on such Member by this Agreement or by law unless such action or omission was performed or omitted in bad faith or constituted gross negligence, willful misconduct or a breach of its fiduciary duties of loyalty, good faith or fair dealing.

Section 5.2 Relationship of Members. Each Member agrees that, to the fullest extent permitted by Section 18-1101 and other provisions of the Delaware Act and except to the extent expressly stated in this Agreement:

(a) The Managing Member shall have the same fiduciary duty, responsibility and obligation to the Company and to each other Member of loyalty, care, good faith and fair dealing as are imposed on a general partner in general partnership formed under Delaware law.
(b) No Member, other than the Managing Member, shall have any fiduciary or other implied duty, responsibility or obligation of loyalty, care, good faith or fair dealing to the Company or any other Member.

(c) Any consent, approval of a Major Decision, determination or other action by a Member shall be given, taken, or withheld in the reasonable discretion of that Member unless stated to the contrary.

Section 5.3 Relationship with NJIT. MM LLC hereby acknowledges that (i) nothing contained in this Agreement or in the relationship between MM LLC and CGF shall be deemed to constitute a partnership, joint venture or any other relationship between the Company or MM LLC and New Jersey Institute of Technology ("NJIT") and (ii) NJIT shall have no obligations or liabilities hereunder and MM LLC and the Company shall have no recourse against NJIT for any acts or omissions by CGF in connection with CGF's obligations hereunder. MM LLC shall execute a separate confirmation of same for delivery to NJIT simultaneous with the execution of this Agreement.

ARTICLE 6

TRANSFER OF MEMBERSHIP INTERESTS

Section 6.1 Transfers. No direct or indirect Transfer of all or part of a Membership Interest in the Company shall be made or become effective without the prior written consent of the other Member, except that each Member shall be entitled to Transfer all or any portion of its Membership Interest to an Affiliate of such Member without obtaining the prior written consent of the other Member. Any Transfer in violation of this Article shall be invalid, ineffective and not enforceable for any purpose. No authorization, consent or waiver applicable to one Transfer shall apply or be deemed to apply to any other Transfer or requested Transfer.

Section 6.2 Transfer of Entire Interest. Upon the Transfer of its entire Membership Interest in the Company and the admission of such Member's transferee(s) as a substitute Member pursuant to Section 6.4, a Member shall be deemed to have withdrawn from the Company.

Section 6.3 Effect of Assignment; Documents. In the event of any Transfer permitted hereunder, the Company shall not be dissolved or wound up, but shall continue. No such sale, assignment or transfer shall relieve the assignor from any of its obligations under this Agreement accruing prior to such sale, assignment or transfer. Notwithstanding the foregoing, as a condition to any Transfer by a Member of its Membership Interest, the transferee or assignee must execute this Agreement and agree to be bound by all of its terms and provisions.

Section 6.4 Substitute Member. The transferee of a Membership Interest shall be admitted to the Company as a substitute Member, but only if such Transfer is made in compliance with this Article 6. Unless a transferee of a Membership Interest is admitted as a substitute Member under this Section 6.5, it shall have none of the powers of a Member hereunder and if the Company is required to reorganize such Transfer, the transferee shall only have the right to receive distributions of Available Cash to which the transferring member was entitled prior to such Transfer.
Section 6.5 Further Requirements. In addition to the other requirements of this Article 6, and unless waived or modified in whole or in part by the non-transferring Member, no Transfer of all or any portion of a Membership Interest may be made unless the following conditions are met:

(a) The delivery to the Company of a fully executed copy of all transfer documents relating to the Transfer, including (1) an instrument of transfer, and (2) the agreement in writing of the transferee to (x) be bound by the terms of this Agreement, including the making of all of the representations and warranties hereunder and (y) pay all actual out-of-pocket costs and expenses incident to the Transfer, including without limitation, any incurred by the Company or the non-transferring Member.

(b) The representation of the transferring Member and the transferee, and the delivery of an opinion of counsel reasonably acceptable to the non-transferring Members, that (1) the Transfer will not cause the Company to be treated as an association taxable as a corporation for Federal income tax purposes, (2) the Transfer will not cause the Company to be treated as a "publicly traded Company" within the meaning of Section 7704 of the Code, (3) the Transfer will not violate the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended or any other applicable Federal or state securities laws, rules or regulations and (4) the transferee is either non-U.S. investor or a U.S. "accredited investor" within the meaning of Rule 501 of Regulation D adopted by the Securities and Exchange Commission.

[PARTIES TO DISCUSS CGF'S PUT RIGHT AND A CALL RIGHT IN FAVOR OF MM LLC. ACTORS FUND'S PROPOSAL IS THAT CGF MAY PUT ITS INTEREST TO ACTORS FUND OR ACTORS FUND MAY CALL CGF'S INTEREST FOR $1 AT ANY TIME AFTER THE EXPIRATION OF THE PERIOD DURING WHICH CGF WILL RECEIVE A SHARE OF NET PROCEEDS IF THE PROPERTY IS SOLD. THE RESOLUTION OF THIS ISSUE WILL DEPEND ON THE RESOLUTION OF CGF'S SHARE OF OPERATING CASH AND/OR NET PROCEEDS FROM A SALE OF THE PROPERTY.]

ARTICLE 7
CERTAIN REMEDIES

Section 7.1 Litigation Without Termination. Each Member shall be entitled to maintain, on its own behalf or on behalf of the Company, any action or proceeding against any other Member or the Company (including, any action for damages, specific performance or declaratory relief) for or by reason of the breach by such party of this Agreement or any other agreement entered into in connection with this Agreement, notwithstanding the fact that any or all of the parties to such proceeding may then be Members in the Company, and without dissolving the Company as a limited liability company.

Section 7.2 Attorneys' Fees. If the Company or any Member obtains a judgment or arbitration decision against any other Member by reason of breach of this Agreement or failure to comply with the provisions hereof, a reasonable attorneys' fee as fixed by the court or arbitrator shall be included in such judgment or arbitration decision.
Section 7.3 Cumulative Remedies. Except to the extent expressly stated in this Agreement, (a) no remedy conferred upon the Company or any Party pursuant to this Agreement is intended to be exclusive of any other remedy available under this Agreement or applicable law and (b) each remedy shall be cumulative and shall be in addition to every other remedy available under this Agreement or applicable law now or in the future.

Section 7.4 No Waiver. No waiver by a Party or the Company of any default, breach or violation of this Agreement shall be deemed to be a waiver of any other default, breach or violation of any kind or nature, whether or not similar to the default, breach or violation that has been waived or failure to enforce a particular provision in one instance shall not be deemed a waiver or modification of rights or preclude the enforcement thereafter. No acceptance of payment or performance by a Party or the Company after any such default, breach or violation shall be deemed to be a waiver of any default, breach or violation of this Agreement, whether or not such Party or the Company knows of such default, breach or violation at the time it accepts such payment or performance. Subject to any applicable statutes of limitation, no failure or delay on the part of a Party or the Company to exercise any right it may have under this Agreement shall prevent its exercise by such Party or the Company, and no such failure or delay shall operate as a waiver of any default, breach or violation of this Agreement.

ARTICLE 8

DISSOLUTION OF COMPANY

Section 8.1 Events Resulting in Dissolution. The Company shall dissolve pursuant to the Delaware Act only if one or more of the following events occurs:

(a) The sale of all or substantially all of the assets of the Company, provided, however, that if such sale is made on the terms that the Company takes a note or other indebtedness of the purchaser for part of the purchase price, no dissolution shall occur until such time as the Company ceases to be the holder of such note or indebtedness or such note or the indebtedness evidenced by such note has been paid in full;

(b) The unanimous agreement in writing by the Members to dissolve the Company;

(c) The voluntary or involuntary dissolution of all of the Members; or

(d) Any judicial dissolution under Section 18-802 of the Delaware Act or any event that requires the Company’s dissolution under the Delaware Act.

Section 8.2 Procedure.

(a) Upon the dissolution of the Company, the Managing Member shall wind up the affairs of the Company. The Members shall continue to receive allocations of Net Income and Net Losses and distributions of Available Cash during the period of liquidation of the Company in the same manner and proportion as though the Company had not dissolved. The Members shall jointly determine the time, manner and terms of any sale or sales of the assets of the Company by the Company pursuant to such liquidation, having due regard for the relevant market and general financial and economic conditions.
(b) Following the payment of all debts and liabilities of the Company and all expenses of liquidation, and subject to the rights of the Members to set up such cash reserves in an amount and for so long as it may deem reasonably necessary as determined by the Members in good faith for the payment of contingent or unforeseen obligations of the Company (including indemnification obligations), which will continue after the sale of the 240 MLK Property and any other assets of the Company, the proceeds of the liquidation and any other funds of the Company shall be distributed in accordance with Section 3.1. Any cash reserves referred to in this Section shall be released and distributed as soon as practicable after the date that corresponding liabilities reserved against are satisfied, discharged or otherwise terminated.

(c) Within a reasonable time following the completion of the liquidation of the assets of the Company by the Company, the Managing Member shall deliver to CGF a statement prepared by the Accountants, which shall set forth the assets and liabilities of the Company as of the date of complete liquidation and each Member’s portion of distributions payable pursuant to this Agreement.

(d) Upon the completion of the liquidation of the Company and the distribution of all Company funds, the Company shall terminate and the Managing Member shall have the authority to execute and record a certificate of cancellation of the Company as well as any and all other documents required to complete the dissolution and termination of the Company.

ARTICLE 9

FINANCIAL AND TAX MATTERS

Section 9.1 Books and Records. The Managing Member shall maintain or cause to be maintained, at the expense of the Company and in a manner customary and consistent with generally accepted accounting principles, practices and procedures, office records, books and accounts (which shall be and remain the property of the Company) with respect to the operations of the Company. All records, books and accounts shall be prepared and maintained by the Managing Member at the principal place of business of the Company. Each Member or its duly authorized representative shall have the right to inspect, examine, copy and audit all records, books and accounts at the Company’s office during reasonable business hours.

Section 9.2 Reports.

(a) The Managing Manager shall prepare:

(1) monthly reports (each, a “Monthly Statement”) for the Company (1) outlining in reasonable detail the status of implementation of all Major Decisions, and (2) itemizing in reasonable detail all revenues and expenses of the Company which arose or were paid or received during the preceding calendar month, and (3) copies of all reports prepared or filed pursuant to the Loan Documents;

(2) quarterly reports (each, a “Quarterly Transaction Report”) for the Company describing the progress of any construction, renovation, repair or other activities with respect to the 240 MLK Property and, other material transactions occurring during the prior quarter and other material aspects of the operations of the Company for the prior quarter. The Managing Member shall deliver each Monthly Statement and Quarterly Transaction Report to CGF within twenty-five (25) days after the end of the relevant period.
Each Monthly Statement and Quarterly Transaction Report shall be designed so as to clearly and efficiently communicate to CGF all relevant information in such form, format and media as CGF may reasonably request.

(b) As soon as practicable (but in no event later than ninety (90) days after the end of each Fiscal Year during the term of this Agreement), the Managing Member shall, arrange for and furnish to CGF annual financial statements for such Fiscal Year accurately reflecting the financial condition and the results of operation of the Property, including statements and calculations of Available Cash and Company Costs, all prepared in accordance with GAAP and the applicable provisions of this Agreement and, if required by CGF or by the Loan Documents, audited and certified by the Accountants.

(c) The Managing Member shall send to CGF all financial or other reports or written data sent to a lender of the Company pursuant to the Loan Documents.

(d) The Managing Member on behalf of the Company shall provide all information reasonably requested by CGF related to the business and operation of the Company or the Property.

Section 9.3 Taxation as Partnership. The Members intend and hereby agree that the Company shall be taxed as a partnership and that the Members shall be taxed as partners for federal, state, local and foreign income tax purposes. No Member shall take any action that will result in the Company being taxed as a corporation. The “tax matters partner” shall prepare and file with the IRS and other necessary tax authorities all documents necessary, if any, to confirm and maintain the Company’s income tax treatment as a partnership. This election is made solely for income tax purposes and the Company, its Members and their Affiliates shall not be treated or deemed to be partners or a partnership for any other purpose.

Section 9.4 Tax Allocations. All items of taxable income, gains, losses, deductions, credits and Net Income and Net Losses of the Company shall be allocated to the Members in accordance with their respective Percentage Interests, after taxable income and gains, as well as Net Income, have each (i.e., (i) taxable income and gains and (ii) Net Income) have been allocated to the Members in amounts equal to the distributions each Member has received pursuant to Section 3.1(c)(ii) and (iii), directly or through Section 8.2, and in the order that such distributions were received by each Member.

Section 9.5 Tax Matters Partner. The Managing Member is hereby designated as the “tax matters partner” for the Company, as that term is defined in Section 6231(a)(7) of the Code and corresponding provisions of applicable state law, and shall have all the rights and powers of the “tax matters partner” pursuant to those provisions. Consistent with the requirements of the Code and the Treasury Regulations, the Managing Member shall take commercially reasonable measures to inform the other Members of any material decision or action it takes as “tax matters partner.”

Section 9.6 Tax Elections. The Members shall make any determination whether the Company shall make available tax elections (including any election pursuant to Section 754 of the Code relating to certain adjustments to the basis of the Company’s assets) for federal, state or local income tax purposes. The Members shall determine any issue regarding or affecting the reporting or characterization for tax purposes of items of income, gain, loss or deduction of the Company.
Section 9.7  Tax Returns. All U.S. Federal, state and local income tax returns shall be prepared by the Accountants under the direction of the Managing Member. The Managing Member shall cause the Company’s accountants to submit drafts of all tax returns (including all related schedules and exhibits and upon request, copies of all supporting workpapers) to the Members, together with a request for comments on their contents, at least thirty (30) days prior to the required filing date. All tax returns shall be subject to the final approval of each Member and the Managing Member shall timely file or cause to be timely filed all such tax returns required to be timely filed by or on behalf of the Company. All costs and expenses associated with the preparation and filing of tax returns and other tax work required or permitted by this Article shall be Company Costs and shall be paid or reimbursed by the Company.

Section 9.8  Tax Audits. All tax audits and tax litigation shall be conducted under the joint direction of the Members.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

Section 10.1  Representations Warranties of the Members. Each Member hereby represents and warrants to each other Member that:

(a)  This Agreement has been duly executed and delivered by such Member and constitutes the valid and binding obligation of such Member, enforceable against such Member in accordance with its terms.

(b)  Neither the execution and delivery of this Agreement nor compliance with its terms will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien upon any property or assets of such Member pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness, agreement or other instrument to which such Member may be party or by which such Member or any of such Member’s properties or assets may be bound, or violate any provision of law or any applicable order, writ, injunction, judgment or decree of any court, or any order or other public regulation of any governmental commission, bureau or administrative agency.

(c)  No order, permission, consent, approval, license, authorization, registration or validation of, or filing with, any governmental agency, commission, board or public authority is required to authorize, or is required in connection with the execution, delivery and performance by such Member of this Agreement or the taking of any action contemplated by this Agreement.

(d)  Without implying that the Membership Interests are “securities” within the meaning of applicable securities laws, such Member is acquiring such Member’s Membership Interest for investment purposes and not with a view to the distribution of that Membership Interest in violation of any federal or state securities laws.

Section 10.2  Representations Warranties of MM LLC. MM LLC hereby represents and warrants to CGF that Actors Fund owns [___]% of the outstanding equity interests of MM LLC and Controls MM LLC.
ARTICLE 11

MISCELLANEOUS

Section 11.1   Notices.

(a) All notices, consents, requests for approval, demands, waivers or other communications (collectively referred to as a “Notice”) required to be sent or otherwise applicable under this Agreement shall be in writing and shall be sent to each applicable Party, its or their legal counsel at the addresses set forth below. A Notice that complies with the requirements of this Section shall be deemed to have been duly given and received: (1) when delivered personally; (2) one (1) Business Day after being delivered to a reputable overnight courier service, marked for next day delivery and with delivery charges prepaid by the sender; or (3) on the first Business Day after receipt, if delivered by facsimile transmission to the facsimile number of the addressee shown below or by email transmission to the email address of the addressee shown below, if the Notice is also sent by any means described in clause (1) or (2) above.

(b) The addresses for notice are:

To the Company:

240 MLK LLC
c/o Actors Fund Housing Development Corporation
729 Seventh Avenue
New York, New York 10019
Attention: [ ]
Telephone: [ ]
Facsimile: [ ]
Email: [ ]

with a copy to:

[ ]
[ ]
Attention: [ ]
Telephone: [ ]
Facsimile: [ ]
Email: [ ]

To CGF:

Campus Gateway Foundation, Inc.
[ ]
[ ]
Attention: [ ]
Telephone: [ ]
Facsimile: [ ]
Email: [ ]

with a copy to:

Windels Marx Lane & Mittendorf, LLP
120 Albany Street
New Brunswick, New Jersey 08901
Attention: Anthony R. Coscia, Esq.
Telephone: 732-846-2120
Facsimile: 723-846-8877
Email: acoscia@windelsmarx.com

To MM LLC:

with a copy to:
Section 11.2 Entire Agreement. This Agreement, together with all Exhibits and Schedules, constitutes the entire agreement among the Parties pertaining to its subject matter. This Agreement supersedes any prior agreement or understanding among the Parties with respect to its subject matter, but shall not amend, modify, supersede or in any way affect any other agreement or understanding among the Members or their Affiliates that do not relate to the subject matter of this Agreement.

Section 11.3 Amendments. No provision of this Agreement may be amended, supplemented or waived except in a written instrument signed by all the Members. MM LLC hereby acknowledges that CGF will be applying for 501(c)(3) status following the date of this Agreement. MM LLC hereby agrees to execute any and all amendments to this Agreement which are reasonably requested by CGF to protect CGF’s 501(c)(3) status and to avoid CGF recognizing any unrelated business taxable income under the Code in connection with this Agreement.

Section 11.4 Governing Law. This Agreement and the rights of the Parties shall be governed by, interpreted and enforced in accordance with the internal laws of the State of Delaware without regard to principles of conflicts of laws.

Section 11.5 Jurisdiction; Choice of Forum. Each Party hereby irrevocably (a) submits to the exclusive jurisdiction of any New Jersey state or federal court, in any action or proceeding arising out of or relating to this Agreement, the relations between the Parties and any matter, action or transaction described in this Agreement, (b) agrees that any such courts shall have exclusive jurisdiction over such actions or proceedings, (c) waives the defense of inconvenient forum to the maintenance and continuation of such action or proceeding, (d) consents to the service of any and all process in any such action or proceeding by the mailing of copies (certified mail, return receipt requested and postage prepaid) of such process to them at their addresses specified in Section 11.1 and (e) agrees that a final and non-appealable judgment rendered by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 11.6 WAIVER OF JURY TRIAL. EACH MEMBER FOR ITSELF AND ON BEHALF OF ITS AFFILIATES, HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, LAWSUIT OR PROCEEDING RELATING TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION DESCRIBED IN THIS AGREEMENT OR DISPUTE BETWEEN THE PARTIES (INCLUDING DISPUTES WHICH ALSO INVOLVE OTHER PERSONS).

Section 11.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Members and their successors and assigns.
Section 11.8  Captions. Captions contained in this Agreement in no way define, limit or extend the scope or intent of this Agreement.

Section 11.9  Severability. If any provision of this Agreement or the application of such provision to any Party or circumstance shall be held invalid or unenforceable, the remainder of this Agreement or the application of that provision to another Party or circumstance shall not be affected thereby.

Section 11.10  Facsimile/Email Signature. Any Party may deliver its signature to this Agreement or any Notice or other document described in this Agreement or relating to the Company by facsimile or email transmission to the proper recipient. Any document signed by a Party by facsimile or email transmission and reasonably believed by the recipient to have been sent by or on behalf of that Party shall (a) be binding upon and fully enforceable against that Party as though it had delivered a manually-signed counterpart to the recipient, (b) be accepted by any Court as equivalent to a manually-signed counterpart for purposes of any evidentiary rule and (c) no Party will object to the effectiveness or validity of such facsimile signature.

Section 11.11  No Partition. Each Member hereby irrevocably waives any and all right that it may have to maintain any action for partition of all or any portion of the Company’s assets.

Section 11.12  Counterparts. This Agreement may be executed in several counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes and all counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart and photocopies may be used.

[Signature page to follow]
IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by a duly authorized officer, all as of the day and year first above written.

**MM LLC:**

[MANAGING MEMBER, LLC]

By: Actors Fund Housing Development Corporation, a [__________], its managing member

By: _______________________
Name: _____________________
Title: _____________________

**CGF:**

CAMPUSS GATEWAY FOUNDATION, INC.,
a New Jersey not-for-profit corporation

By: _______________________
Name: _____________________
Title: _____________________
## SCHEDULE 1

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Exhibit A

DEFINITIONS

"Accountants" means the approved firm of independent certified public accountants engaged from time to time by the Company for purposes of reviewing or auditing the Company's financial statements and performing such other duties requested by the Members including the preparation of required tax returns.

"Affiliate" means any Person Controlling, Controlled by or under Common Control with a specified Person.

"Available Cash" means all cash, funds, revenues and proceeds of the Company, including without limitation, the net proceeds from any (x) financing or refinancing of the 240 MLK Property or (y) any sale, disposition, taking or loss (including the proceeds from any conveyance in lieu thereof or title or casualty insurance policies), on hand and available for distribution from time to time after: (1) payment of all Company Costs that are due and payable as of such date, (2) provision for the payment of all Company Costs that the Company is obligated to pay within ninety (90) days of such date, (3) provision for any required Reserve Additions, and (4) provision for payment of such other amounts as the Members shall determine is necessary.

"Bankruptcy" means with respect to any Person, the occurrence of any of the following events: (i) the making by such Person of an assignment for the benefit of creditors; (ii) the filing (A) by such Person of a voluntary petition in bankruptcy or (B) of an involuntary petition in bankruptcy against such person and the failure of such Person to cause such involuntary petition to be discharged within ninety (90) days of such involuntary filing; (iii) adjudication of such Person as bankrupt or insolvent or the issuance of a decree of bankruptcy or insolvency against such Person; (iv) the filing by such Person of a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief; (v) the filing by such Person of an answer or other pleading admitting or failing to contest material allegations of a petition filed in any proceeding of the type described in this definition; or (v) the seeking, consent to or acquiescence in, by such Person, the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of his properties.

"Business Day" means Monday through Friday of each week, unless such day is a legal holiday recognized as such by the State of New Jersey.

"Capital Account" means, with respect to each Member, the account established and maintained for the Member on the books of the Company in compliance with Regulation §§ 1.704-1(b)(2)(iv) and 1.704-2, as amended. Subject to the preceding sentence, each Member’s Capital Account will initially equal the amount of cash and fair market value of property (as of the date of its contribution, net of liabilities secured by the property that the Company is considered to assume or take subject to under Code Section 752) contributed by such Member to the Company, and throughout the term of the Company will be (i) increased by the amount of (A) Net Income and gains allocated to such Member, and (B) the amount of any cash and the fair market value of any property (as of the date of its contribution, net of liabilities secured by the property that the Company is considered to assume or take subject to under Code Section 752) subsequently contributed by such Member to the Company, and (ii) decreased by the amount of (A) Net Losses
and deductions allocated to such Member, and (B) the amount of distributions in cash and the value of distributions of property (as of the date of its distribution, net of liabilities secured by the property that the Member is considered to assume or take subject to under Code Section 752) distributed to such Member.

Whenever the Company would be permitted to adjust the Capital Accounts of the Members pursuant to Regulation §1.704-1(b)(2)(iv)(f) to reflect revaluations of the assets of the Company, the Company may (as determined by the Members) so adjust the Capital Accounts of the Members. In the event that the Capital Accounts of the Members are adjusted pursuant to Regulation §1.704-1(b)(2)(iv)(f) to reflect revaluations of the assets of the Company, (i) the Capital Accounts of the Members shall be adjusted in accordance with Regulation §1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to such property, (ii) the Members distribute shares of depreciation, depletion, amortization and gain or loss, as computed for tax purposes, with respect to such property shall be determined so as to take account of the variation between the adjusted tax basis and book value of such property in the same manner as under Code Section 704(c), and (iii) the amount of upward and/or downward adjustments to the book value of the assets of the Company shall be treated as income, gain, deduction and/or loss for purposes of applying the allocation provisions this Agreement. In the event that Code Section 704(c) applies to the assets of the Company, the Capital Accounts of the Members shall be adjusted in accordance with Regulation §1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain and loss, as computed for book purposes, with respect to such assets of the Company. Any elections to be made in connection with Code Section 704(c) and the Regulations promulgated thereunder shall be made by the Members.

“Code” means the Internal Revenue Code of 1986, as amended from time to time (or any succeeding law).

“Company” means the limited liability company formed pursuant to this Agreement.

“Company Costs” means all of the costs and expenditures of any kind and payments thereof made or to be made by the Company with respect to its operations and maintenance, including without limitation, all amounts to be funded by the Company (i) to purchase the real property constituting the 240 MLK Property and (ii) pursuant to the Project Budget in connection with the development and construction of the 240 MLK Property.

“Company Financing” means any indebtedness for money borrowed by the Company.

“Control”, “Controlling” and “Controlled by” means the ability, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, to direct or cause the direction of the management and policies of a Person (including by being a general partner, a managing member, a manager, an officer or a director of the Person in question).

“Delaware Act” means the Delaware Limited Liability Company Act, as it may be amended from time to time, and any successor to that Act.

“Development Agreement” means that certain Development Agreement, dated as of [_________], 2013, between the Company and NJIT.
“Fiscal Year” of the Company means the 12-month period ending December 31 of each year; provided that the initial Fiscal Year shall be the period beginning on the Effective Date and ending on December 31 of the same year and the last Fiscal Year shall be the period beginning on January 1 of the calendar year in which the final liquidation, dissolution and termination of the Company is completed and ending on the date that such final liquidation, dissolution and termination is completed. To the extent any computation or other provision of the Agreement provides for an action to be taken on a Fiscal Year basis, an appropriate proration or other adjustment shall be made in respect of the initial and final Fiscal Years to reflect that such periods are less than full calendar year periods.

“Indemnitee” means either the Company, a Member or other Person that an Indemnitor is obligated to indemnify, defend and hold harmless pursuant to Section 4.4 as well as all present and former directors, officers, shareholders, partners, members, employees, agents (including accountants, attorneys and other professional advisers) and other Affiliates of the specified Indemnitee.

“Indemnitor” means either the Company, or a Member, obligated to indemnify, defend and hold harmless an Indemnitee pursuant to Section 4.4.

“IRR” means the discount rate, which shall be compounded monthly and expressed as a percentage based on a year of 365 or 366 days, as the actual case may be, at which the net present value, as of the date a named Member makes each capital contribution to the Company pursuant to the Agreement, of the sum of all future distributions to that Member pursuant to Section 3.1(c) of this Agreement with respect to that capital contribution equals the amount of that capital contribution. A Member shall be deemed to have received a specified IRR, compounded monthly, with respect to a capital contribution it made to the Company upon its receipt of a cumulative amount of distributions pursuant to Section 3.1(c) that causes (1) the net present value of the aggregate of all distributions pursuant to Section 3.1(c) to that Member with respect to that capital contribution, discounted at the specified annual IRR compounded monthly, from the date of each such distribution back to the date on which such capital contribution was made (or deemed to be made pursuant to this Agreement), reduced by (2) the amount of such capital contribution, to equal zero.

“IRS” means the U.S. Internal Revenue Service or any successor agency or department with primary responsibility for adopting, interpreting and enforcing provisions of the Code.

“Losses” means the dollar amounts of all costs, claims, suits, actions, losses, liabilities, obligations, reasonable fees and expenses of any kind or nature, including costs and expenses of accountants, attorneys and other professionals, judgments, fines, penalties, settlements and all other costs and expenses of any nature or type actually paid or incurred by a specified Person.

“Managing Member” means, initially, MM LLC and any successor thereof.

“Members” means MM LLC and CGF and any of their Affiliates which own Membership Interests (if any) and their permitted successors in its or their capacities as members in the Company.

“Membership Interest” means the interest of a Member in the Company, including
such Member’s right: (1) to a distributive share of the assets or property of the Company as set forth in Articles 3 and 8; (2) to allocations of items of income, gain, loss, deduction and credit of the Company as set forth in Section 9.4 of this Agreement; and (3) to participate in the management and operation of the Company in accordance with the terms set forth in Article 4 and elsewhere in this Agreement.

"Net Income" and "Net Losses" mean for purposes of the tax provisions in Section 9.4, the income or losses of the Company as determined in accordance with the method of accounting followed by the Company for federal income tax purposes, including for all purposes: (1) any income exempt from tax; (2) any expenditures of the Company which are described in Section 705(a)(2)(B) of the Code or are treated as Section 705(a)(2)(B) expenditures under Treasury Regulation § 1.704-1(b)(2)(iv)(i); and (3) any adjustments to the book value of any Company asset pursuant to the Treasury Regulations; provided, however, if any property is carried on the books of the Company at a value that differs from that property’s adjusted basis for tax purposes, then any gain, loss, depreciation and amortization with respect to such property shall be computed with reference to the book value of such property, consistently with the requirement of Treasury Regulation § 1.704-1(b)(2)(iv)(g).

"Parties" means the Members who have signed the Agreement.

"Percentage Interest" means the percentage interest of each Member in certain allocations as set forth in this Agreement. The Percentage Interests of the Members are as follows: 99% to MM LLC and 1% to CGF.

"Person" means an individual or a general partnership, limited partnership, corporation, professional corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative or association or any other legally-recognized entity.

"Project Budget" has the meaning set forth in the Development Agreement.

"Regulations" means the Income Tax Regulations and Procedures and Administration Regulations promulgated under the Code, as amended from time to time.

"Reserve Additions" for any period means all cash reserves reasonably determined, established and approved during that period by the Members for anticipated future Company Costs.

"Transfer" and related usages of that term means any sale, transfer, assignment, pledge, hypothecation or other disposal, whether voluntarily or by operation of law, of all or any part of a Membership Interest (including economic interests) or any direct or indirect ownership interest in a Member in any manner, whether directly or indirectly, by Transfer of all or a portion of any type of equity, profits, distribution or other ownership interest, and shall include the ability to approve or have any right to vote on, consent to or veto any decision or matter set forth in this Agreement and a right to receive any share or portion of payments of dividends, distributions or profits.

"Treasury Regulations" means the Income Tax Regulations and Procedures and Administration Regulations promulgated under the Code, as amended from time to time.
4A. Update on Enrollment
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<td>0</td>
<td>25</td>
<td>5744</td>
<td>5523</td>
<td>221</td>
</tr>
<tr>
<td>Part-time</td>
<td>636</td>
<td>75</td>
<td>135</td>
<td>90</td>
<td>0</td>
<td>0</td>
<td>750</td>
<td>1686</td>
<td>1598</td>
<td>88</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>4745</strong></td>
<td><strong>1045</strong></td>
<td><strong>675</strong></td>
<td><strong>190</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
<td><strong>775</strong></td>
<td><strong>7430</strong></td>
<td><strong>7121</strong></td>
<td><strong>309</strong></td>
</tr>
<tr>
<td><strong>Graduates</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time</td>
<td>671</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>571</td>
<td>50</td>
<td>25</td>
<td>1327</td>
<td>1396</td>
<td>-69</td>
</tr>
<tr>
<td>Part-time</td>
<td>829</td>
<td>0</td>
<td>0</td>
<td>55</td>
<td>254</td>
<td>15</td>
<td>235</td>
<td>1388</td>
<td>1426</td>
<td>-38</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>1500</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
<td><strong>65</strong></td>
<td><strong>825</strong></td>
<td><strong>65</strong></td>
<td><strong>260</strong></td>
<td><strong>2715</strong></td>
<td><strong>2822</strong></td>
<td><strong>-107</strong></td>
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<tr>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>6245</strong></td>
<td><strong>1045</strong></td>
<td><strong>675</strong></td>
<td><strong>255</strong></td>
<td><strong>825</strong></td>
<td><strong>65</strong></td>
<td><strong>1035</strong></td>
<td><strong>10145</strong></td>
<td><strong>9943</strong></td>
<td><strong>202</strong></td>
</tr>
</tbody>
</table>

**2012 Fall**

|                        | 6025                           | 1045                             | 672                               | 252                         | 846                  | 65                    | 1038                         | 9943                           |

**Difference**

|                        | 220                            | 0                                | 3                                 | 3                           | -21                  | 0                     | -3                           | 202                            |
4B. Update on Warren Street Village
4C. Report of Gifts and Fund Raising Activities

### Comparison of Total Giving Year to Date:

<table>
<thead>
<tr>
<th>Category</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Sources:</td>
<td>$4,844,244</td>
<td>$7,987,479</td>
<td>$5,734,368</td>
</tr>
<tr>
<td>All Sources without Gifts in Kind:</td>
<td>$4,374,880</td>
<td>$7,357,140</td>
<td>$5,514,562</td>
</tr>
<tr>
<td>Matching Gifts:</td>
<td>$93,355</td>
<td>$117,268</td>
<td>$139,232</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>$ Giving</th>
<th>%</th>
<th>#</th>
<th>$ Giving</th>
<th>%</th>
<th>#</th>
<th>$ Giving</th>
<th>%</th>
<th>#</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alum</td>
<td>$1,710,777¹</td>
<td>34.88</td>
<td>3,170</td>
<td>$1,346,952²</td>
<td>16.84</td>
<td>3,233</td>
<td>$2,957,631³</td>
<td>50.64</td>
<td>3,445</td>
</tr>
<tr>
<td>Corp</td>
<td>$1,998,257⁴</td>
<td>40.75</td>
<td>258</td>
<td>$1,944,223⁵</td>
<td>24.31</td>
<td>229</td>
<td>$1,878,303⁶</td>
<td>32.16</td>
<td>212</td>
</tr>
<tr>
<td>Friends</td>
<td>$278,977</td>
<td>5.69</td>
<td>572</td>
<td>$4,039,457⁹</td>
<td>50.51</td>
<td>574</td>
<td>$466,045</td>
<td>7.98</td>
<td>642</td>
</tr>
<tr>
<td>Other</td>
<td>$201,243</td>
<td>4.10</td>
<td>17</td>
<td>$176,799</td>
<td>2.21</td>
<td>15</td>
<td>$283,282¹⁰</td>
<td>4.85</td>
<td>19</td>
</tr>
<tr>
<td>Totals:</td>
<td>$4,904,244</td>
<td>100.00</td>
<td>4,029</td>
<td>$7,997,792</td>
<td>100.00</td>
<td>4,064</td>
<td>$5,840,508</td>
<td>100.00</td>
<td>4,340</td>
</tr>
</tbody>
</table>

### Year End Total Comparison to 2007 Base Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Dollars</th>
<th>% of FY 07 Funds Raised</th>
<th>% of Year Elapsed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$8,205,293</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>2008</td>
<td>$13,324,197</td>
<td>163%</td>
<td>100%</td>
</tr>
<tr>
<td>2009</td>
<td>$9,391,314</td>
<td>114%</td>
<td>100%</td>
</tr>
<tr>
<td>2010</td>
<td>$7,882,525</td>
<td>96%</td>
<td>100%</td>
</tr>
<tr>
<td>2011</td>
<td>$6,604,795</td>
<td>80%</td>
<td>100%</td>
</tr>
<tr>
<td>2012</td>
<td>$8,532,797</td>
<td>104%</td>
<td>100%</td>
</tr>
<tr>
<td>2013</td>
<td>$5,840,508</td>
<td>71%</td>
<td>83%</td>
</tr>
</tbody>
</table>

¹ Alumni – Adams Bequest $613K, Reif Bequest $175K, Naimoli $11K
² Alumni – Auld Bequest $178K, Naimoli $110K
³ Alumni – Naimoli $953K, Kaiser Bequest $900K
⁴ Corporation – Anonymous $384K, Pepsi $180K
⁵ Corporation – Northeast Precast GIK $512K, Pepsi $180K, ExxonMobil Foundation $127K
⁶ Corporation – ExxonMobil Foundation $142K, ExxonMobil Corp $129K, Pepsi $101K, ADP $100K, Berger Group $100K
⁷ Foundation – Ridgefield/Leir $375K, Coulter Foundation $180K
⁸ Foundation – Coulter Foundation $323K
⁹ Friends – Hartmann Bequest $3.6M
¹⁰ Other – Kametsky Donor Advised Fund $100K
4D. Report on NEXT Campaign
STATUS OF COMPREHENSIVE CAMPAIGN
Updated May 15, 2013

Campaign Purpose:
The purpose of NJIT NEXT, the Campaign for New Jersey Institute of Technology, is to ensure the continued transformation of the university. The goals of this $150 million comprehensive campaign are to endow new scholarships and fellowships, recruit and retain top faculty and to develop the next-generation campus.

Gift Summary:

<table>
<thead>
<tr>
<th></th>
<th>6/30/2010</th>
<th>6/30/2011</th>
<th>6/30/2012</th>
<th>05/01/2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gifts</td>
<td>$19,363,236</td>
<td>$22,283,259</td>
<td>$25,797,296</td>
<td>$28,653,647</td>
</tr>
<tr>
<td>Pledges</td>
<td>$11,894,438</td>
<td>$16,330,000</td>
<td>$21,473,158</td>
<td>$31,202,601</td>
</tr>
<tr>
<td>Cash in Hand</td>
<td>$24,083,859</td>
<td>$29,777,029</td>
<td>$40,343,685</td>
<td>$46,084,171</td>
</tr>
<tr>
<td># Donors</td>
<td>10,791</td>
<td>12,213</td>
<td>13,574</td>
<td>15,122</td>
</tr>
<tr>
<td>Grants*</td>
<td>$28,277,857</td>
<td>$38,694,474</td>
<td>$43,207,895</td>
<td>$48,728,732</td>
</tr>
<tr>
<td>Comprehensive Campaign Total</td>
<td>$59,535,531</td>
<td>$77,307,734</td>
<td>$90,478,349</td>
<td>$108,584,980</td>
</tr>
</tbody>
</table>

* These grants are for initiatives and programs throughout the university that are consistent with the goals and funding priorities of the NJIT NEXT Campaign.

Actions Summary:

<table>
<thead>
<tr>
<th></th>
<th>FY 2010</th>
<th>FY 2011</th>
<th>FY 2012</th>
<th>FY 2013 Year to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALL UA Actions</td>
<td>4,532</td>
<td>6,578</td>
<td>5,571</td>
<td>4,764</td>
</tr>
<tr>
<td>Campaign Visits</td>
<td>1,075</td>
<td>1,100</td>
<td>1,222</td>
<td>1,557</td>
</tr>
</tbody>
</table>

(representing ALL UA Engagement and Solicitation actions)

Recent Highlights:

A. Gift Report
   • Secured confirmation of Michaud estate gift for more than $3 million to be received in advance of June 30, 2013

B. Activities
   • University Advancement campaign visits have increased by 69% this Fiscal Year
   • 3 out of 5 visits to Boston in late April produced major gifts

C. Upcoming Events
   • May 17-19th Alumni Weekend (Newark, NJ)
   • May 20th Commencement and Golden Highlanders Luncheon (Newark, NJ)
   • May 30th - 31st Briar’s Creek Golf Outing (Johns Island, SC)
   • June 4th NJIT NEXT Plainfield CC Invitational (Plainfield, NJ)
   • June 9th Northern California Regional Club Brunch at Hiller Aviation Museum (San Carlos, CA)
   • June 15th Southern California Regional Club Brunch on the USS Midway (San Diego, CA)
   • June 23rd Philadelphia/South Jersey Regional Club Baseball Game (Philadelphia, PA)
   • August 18th DC Metro Alumni Club Picnic at Fort Hunt Park (Alexandria, VA)
   • September 18th Warren Street Village Ribbon Cutting and Convocation (Newark, NJ)
4E. Operating Statement
Year to Date
# New Jersey Institute Of Technology
Statement of Current Fund Revenues and Expenditures
For the Ten Months Ended April 30, 2013
(Dollars In Thousands)

## Restricted Funds

<table>
<thead>
<tr>
<th>FY2013</th>
<th>FY2013 YTD</th>
<th>FY2013 84% of Budget</th>
<th>FY2012 84% of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget</td>
<td>YTD</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$115,360</td>
<td>$87,013</td>
<td>75%</td>
<td>85%</td>
</tr>
</tbody>
</table>

### Revenues

- **Education and General**
  - Tuition and Fees
    - FY2013: $143,340
    - FY2012: $143,966
  - Appropriations, Contracts, Gifts
    - FY2013: $67,646
    - FY2012: $58,003
  - Other sources
    - FY2013: $12,943
    - FY2012: $9,745
  - Allocated Balances
    - FY2013: $3,615
    - FY2012: $3,013

- **Total**
  - FY2013: 227,544
  - FY2012: 214,727
  - 84% of Budget: 94% 95%

- **Auxiliary Enterprises**
  - FY2013: 16,147
  - FY2012: 15,729
  - 97% 99%

- **Total Revenues**
  - FY2013: 243,691
  - FY2012: 230,456
  - 95% 95%

## Unrestricted Funds

<table>
<thead>
<tr>
<th>FY2013</th>
<th>FY2013 YTD</th>
<th>FY2013 84% of Budget</th>
<th>FY2012 84% of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget</td>
<td>YTD</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$115,360</td>
<td>$87,013</td>
<td>75%</td>
<td>85%</td>
</tr>
</tbody>
</table>

### Expenditures

- **Educational and General**
  - Instruction
    - FY2013: 84,664
    - FY2012: 75,364
  - Research
    - FY2013: 8,320
    - FY2012: 7,374
  - Public Service
    - FY2013: 3,049
    - FY2012: 2,126
  - Academic Support
    - FY2013: 22,179
    - FY2012: 17,241
  - Student Services
    - FY2013: 16,156
    - FY2012: 12,877
  - Institutional Support
    - FY2013: 36,269
    - FY2012: 26,962
  - Operation and Maintenance of Physical Plant
    - FY2013: 13,319
    - FY2012: 10,700
  - Financial Aid to Students
    - FY2013: 22,174
    - FY2012: 22,353

- **Total Educational and General**
  - FY2013: 206,130
  - FY2012: 174,997
  - 85% 83%

- **Transfers**
  - FY2013: 21,414
  - FY2012: 17,408
  - 81% 85%

- **Total**
  - FY2013: 227,544
  - FY2012: 192,405
  - 85% 83%

- **Auxiliary Enterprises**
  - FY2013: 10,487
  - FY2012: 9,009
  - 86% 86%

- **Auxiliary Transfers**
  - FY2013: 5,660
  - FY2012: 4,718
  - 83% 83%

- **Total Auxiliary**
  - FY2013: 16,147
  - FY2012: 13,727
  - 85% 85%

- **Total Expenditures & Transfers**
  - FY2013: 243,691
  - FY2012: 206,132
  - 85% 84%

- **Excess Of Revenues Over Expenditures And Transfers**
  - FY2013: $0
  - FY2012: $24,324
## New Jersey Institute Of Technology
### Expense Report
**For the Ten Months Ended April 30, 2013**
*(Dollars In Thousands)*

<table>
<thead>
<tr>
<th></th>
<th>Current Month</th>
<th>FY2013 YTD</th>
<th>FY2013 Budget</th>
<th>84% of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Academic</strong></td>
<td></td>
<td></td>
<td></td>
<td>Actual Year to Date</td>
</tr>
<tr>
<td>Salaries &amp; Fringe Benefits</td>
<td>$9,234</td>
<td>$102,983</td>
<td>$115,344</td>
<td>89%</td>
</tr>
<tr>
<td>Equipment Purchases</td>
<td>30</td>
<td>1,567</td>
<td>4,132</td>
<td>38%</td>
</tr>
<tr>
<td>Financial Aid to Students</td>
<td>(6)</td>
<td>22,353</td>
<td>22,174</td>
<td>101%</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>10,232</strong></td>
<td><strong>137,335</strong></td>
<td><strong>156,542</strong></td>
</tr>
</tbody>
</table>

| **Support**                    |               |            |               |               |
| Salaries & Fringe Benefits     | 2,313         | 27,401     | 33,622        | 81%           | 99%        | 98%          |
| Equipment Purchases            | 6             | 483        | 550           | 88%           | 97%        | 113%         |
| Utilities                      | 810           | 5,803      | 8,179         | 71%           | 85%        | 91%          |
|                                | **Total**     | **3,858**  | **37,662**    | **49,588**    | 76%        | 91%          | 94%          |

| **Other Operating Expenses**   |               |            |               |               |
| Materials & Supplies           | 79            | 729        | 1,300         | 55%           | 67%        | 81%          |
| Travel & Development           | 67            | 536        | 600           |               |            |              |
| Other General Operating        | 583           | 2,710      | 5,337         |               |            |              |
|                                | **Total**     | **729**    | **3,975**     | **7,237**     | 55%        | 67%          | 81%          |

| **Total Support**              | **3,858**     | **37,662** | **49,588**    |               |
| Transfers                      | 1,758         | 17,408     | 21,414        | 81%           | 103%       | 97%          |

| **Total Academic, Support & Transfers** | **15,848** | **192,405** | **227,544** | 85%     | 95%     | 96%     |
| Auxiliary Enterprises           | 663          | 9,009      | 10,487       | 86%     | 98%     | 99%     |
| Auxiliary Transfers             | 472          | 4,718      | 5,660        | 83%     | 100%    | 100%    |
| Total Auxiliary Expenses        | **1,135**    | **13,727** | **16,147**   |          |         |         |

| **Total Unrestricted Expenses** | **16,983** | **206,132** | **243,691** | 85%     | 95%     | 96%     |
| Restricted Expenses             | 5,385       | 87,013     | 115,360      | 75%     | 109%    | 93%     |

| **Total Expenses And Transfers** | **$22,368** | **$293,145** | **$359,051** | 82%     | 99%     | 95%     |

---

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4F. Schedule of Short Term Investments
CASH AND CASH EQUIVALENTS AND INVESTMENTS
AS OF APRIL 30, 2013
(Dollars in thousands)

<table>
<thead>
<tr>
<th></th>
<th>Wells Fargo</th>
<th>JPMorgan Chase</th>
<th>City National Bank</th>
<th>4/30/2013 Total</th>
<th>4/30/2012 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>$56,459</td>
<td>$2,290</td>
<td>$273</td>
<td>$59,022</td>
<td>$47,051</td>
</tr>
<tr>
<td></td>
<td>56,459</td>
<td>2,290</td>
<td>273</td>
<td>59,022</td>
<td>47,051</td>
</tr>
<tr>
<td>Investments:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Treasury and government agency bonds</td>
<td>5,778</td>
<td>-</td>
<td>-</td>
<td>5,778</td>
<td>8,039</td>
</tr>
<tr>
<td>Mutual equity funds</td>
<td>3,088</td>
<td>-</td>
<td>-</td>
<td>3,088</td>
<td>-</td>
</tr>
<tr>
<td>Mutual bond funds</td>
<td>5,253</td>
<td>-</td>
<td>-</td>
<td>5,253</td>
<td>5,187</td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>2,433</td>
<td>-</td>
<td>-</td>
<td>2,433</td>
<td>-</td>
</tr>
<tr>
<td>Certificate of deposit</td>
<td>-</td>
<td>-</td>
<td>500</td>
<td>500</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>16,562</td>
<td>-</td>
<td>500</td>
<td>17,062</td>
<td>13,726</td>
</tr>
<tr>
<td>Total</td>
<td>$73,021</td>
<td>$2,290</td>
<td>$773</td>
<td>$76,084</td>
<td>$60,777</td>
</tr>
</tbody>
</table>
4G. Budget Hearing July 16, 2013
Chairperson’s Closing Statement
RESOLUTION RE: CLOSED SESSION TO DISCUSS PERSONNEL MATTERS, REAL ESTATE AND CONTRACT MATTERS.

WHEREAS, THERE ARE MATTERS THAT REQUIRE CONSIDERATION BY THE BOARD OF TRUSTEES THAT QUALIFY UNDER THE OPEN PUBLIC MEETINGS ACT FOR DISCUSSION AT A CLOSED SESSION.

NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD OF TRUSTEES SHALL HAVE A CLOSED SESSION TO DISCUSS MATTERS INVOLVING PERSONNEL, REAL ESTATE AND CONTRACTS TO TAKE PLACE ON JULY 25, AT 10:00 AM, EBERHARDT HALL NJIT ALUMNI CENTER BOARD ROOM.