

**The College of New Jersey  
Board of Trustees  
December 19, 2014  
Teleconference Call  
Originating from 201 Paul Loser Hall  
10:00am**

**Public Meeting Minutes**

**Present:** Jorge Caballero, Chair; Treby Williams, Vice Chair; Robert Altman, Secretary; Brad Brewster; Eleanor Horne; Fred Keating; Miles Powell; Albert Stark; Ryan Boyne, Student Trustee; Lynette Harris, Staff Representative; Joseph O'Brien, Staff Representative; Marcia O'Connell, Staff Representative; R. Barbara Gitenstein, President

**Not Present:** Christopher Gibson; Rosie Hymmerling; Susanne Svizeny; David Blake; Brian Markison; Joshua Zietz; Kevin Kim

**I. Announcement of Compliance**

*It is hereby announced and recorded that the requirements of the Open Public Meetings Act as to proper notification as to time and place of meeting have been satisfied.*

**II. New Business**

**A. Report of the Building and Grounds Committee**

1. Resolution Authorizing the President or her Designee to Execute the Ground Lease Amendment No. 1 For the Campus Town Development– Attachment A

It was moved by Mr. Keating, seconded by Ms. Williams, that the resolution be approved. The motion carried unanimously.

2. Resolution Authorizing the President or her Designee To Include a Project Labor Agreement in the Bid Documents for the STEM Phase 1 Project – Attachment B

It was moved by Dr. Altman, seconded by Mr. Keating, that the resolution be approved. The motion carried unanimously.

**III. Adjournment**

The following resolution was moved by Ms. Williams, seconded by Ms. Horne. The motion carried unanimously.

Be It

Resolved: That the next public meeting of The College of New Jersey Board of Trustees will be held on Tuesday, February 24, 2015 at a time and location to be announced.

Be It  
Further  
Resolved: That this meeting be adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Altman", with a long horizontal flourish extending to the right.

Robert Altman  
Secretary

**Resolution Authorizing the President or her Designee  
to Execute the Ground Lease Amendment No. 1  
For the Campus Town Development**

- Whereas:** The President and the Board of Trustees have established strategic initiatives for The College of New Jersey; and
- Whereas:** These strategic initiatives include projects to provide facilities to support the integrated transformation of Academic Affairs and Student Affairs, improve the learning environment, diversify institutional revenue streams and advance the College's identity; and
- Whereas:** The State legislature enacted the "New Jersey Economic Stimulus Act of 2009," P.L. 2009, c. 90, which makes various statutory changes to allow a State college to enter into a contract with a private entity, referred to as a public-private partnership agreement, that requires the private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement or extension of a building, structure, or facility of the institution and requires the State college to retain ownership of the property to be developed; and
- Whereas:** The President and other appropriate officers of the College were authorized to take such actions, prepare such documents and amendments (including the ground lease, letter agreement amendment, and application to the New Jersey Economic Development Authority), affix their signatures on behalf of the College to such documents and amendments, all as may in their judgment be necessary or desirable to accomplish the purposes of the Ground Lease Resolution; and
- Whereas:** PRC Campus Centers, LLC reports that it has achieved tenant commitments for 100% of the available residential units in Campus Town, nine months before the project is slated to be occupied; and
- Whereas:** The College of New Jersey anticipates increased residential demands on its own housing due to new or expanded programs for international students, provisional students, students with substance abuse challenges, transfer students and other groups; and
- Whereas:** The College of New Jersey does not currently have the resources internally to provide for the additional capacity in its on-campus residential facilities; and
- Whereas:** PRC Campus Centers, LLC has proposed constructing two additional buildings within the boundaries of the current Campus Town ground lease site with a residential capacity of between 150 and 166 beds (the "Phase 2 Housing"), taking advantage of the existing site utilities already installed and the contractor currently mobilized and staffed on the site; and

**Whereas:** In addition to the Phase 2 Housing, PRC Campus Centers, LLC proposes to (i) construct a new formal entrance for the College at the site of the current main entrance to the campus at Pennington Road, the design of which shall be subject to the prior approval of College administrators, and (ii) contribute funds for the maintenance of that entrance.

**Therefore,  
Be It  
resolved:** That the College of New Jersey Board of Trustees hereby approves the terms of the proposed ground lease amendment no. 1.

**Be It  
Further  
Resolved:** That the President and other appropriate officers of the College are authorized to take such actions, prepare such documents and amendments, and affix their signatures on behalf of the College to such documents and amendments, all as may in their judgment be necessary or desirable to accomplish the purposes of this resolution.

**AMENDMENT NO. 1  
TO  
GROUND LEASE**

THIS AMENDMENT NO. 1 TO GROUND LEASE (this “**Amendment**”) is entered into as of the \_\_\_ day of December, 2014 by and between:

**THE COLLEGE OF NEW JERSEY (“Landlord”)**, a State college of the State of New Jersey; and

**PRC CAMPUS CENTERS, LLC (“Tenant”)**, a New Jersey limited liability company.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Background.**

1.1. This Amendment amends the Ground Lease made as of the 4<sup>th</sup> day of April, 2014 (the “**Original Ground Lease**”). The term “**Lease**” shall mean the Original Ground Lease as amended by this Amendment. All capitalized terms used but not defined in this Amendment shall have the same meanings that are ascribed to such terms in the Original Ground Lease.

1.2. This Amendment amends the Lease to, inter alia: (a) effectuate Tenant’s utilization of a portion of the Demised Premises to construct and operate two (2) additional residential buildings (the “**Additional New Buildings**”) and the parking and the utility and other infrastructure and improvements to be constructed in connection therewith and the Replacement Water Line (as hereinafter defined) (all of the foregoing, together with the Additional New Buildings, the “**Additional Buildings**”); (b) provide for the Tenant’s design, construction of, and maintenance and repair endowment for, a new entrance to the Landlord’s campus from Pennington Road (the “**New Entrance**” and, collectively with the Additional Buildings, the “**Additional Project**”); and (c) to make certain changes to the Lease in connection with the Additional Project, as well as to effectuate changes to the locations of certain improvements within the Demised Premises, including the addition of a pad site, and to clarify the provisions of Section 6.3.8 of the Original Ground Lease, all as more fully set forth below.

1.3. The New Buildings, as defined in the Original Ground Lease, are sometimes referred to herein as the “**Original New Buildings**”. The phrase “New Buildings” includes both the Original New Buildings and the Additional New Buildings, unless context requires otherwise. The Additional Project is part of the Project and the Additional New Buildings are part of the Residential Component of the Project, except that in connection with construction matters and the timing of completion, the Project, as defined in the Original Ground Lease shall be covered by the terms and deadlines of the Original Ground Lease, and the Additional Project shall be governed by the terms and deadlines set forth in this Amendment.

1.4. The Parking Component of the Project shall include the additional parking for the Additional New Buildings, although completion of the additional parking shall occur in connection with the completion of the Additional Project.

2. **Revised Project Description.**

2.1. Effective as of the date of this Amendment, Exhibit 6.1 (Description of the Project) of the Original Ground Lease is hereby deleted in its entirety, and replaced in its entirety with ***Revised Exhibit 6.1*** in the form attached to this Amendment as **Exhibit A**.

3. **Revised Improvement Location Drawing.**

3.1. Landlord hereby approves that certain revised plan for the location of buildings and improvements, denominated Site Plan North, Campus Town @ TCNJ, prepared by Feinberg & Associates P.C., revised through [December 12, 2014] (the “**Revised Location Drawing**”), attached hereto as **Exhibit B**. The Revised Location Drawing shows the location of the Additional New Buildings, the location of the new pad site, as well as changes to parking spaces and changes to the locations of certain other buildings and improvements.

4. **Approval of the Additional Buildings and of New Entrance.**

4.1. The Additional New Buildings are intended to be substantially similar to building number 3 referenced in the list of plans and specifications attached to the Original Ground Lease as Exhibit 6.2, except that neither of the Additional New Buildings will have retail space on its first floor. One of the Additional New Buildings will be a mirror image of building number 3. The Additional New Buildings will be substantially as depicted on in the floor plans and building elevations attached hereto as **Exhibit C** (the “**Additional Project Conceptual Drawings**”). The Additional Project Conceptual Plans also include the concept plan for the New Entrance. The Additional Project Conceptual Plans are hereby approved by Landlord.

4.2. The number of living and sleeping accommodations for individual students to be provided by the Additional New Buildings will not be less than 150 nor more than 166 beds, as determined by Tenant.

4.3. Accommodations in the Additional New Buildings shall be not be rented (as defined in Section 3.1.3 of the original Ground Lease through relation to the defined term “renting”) to Underclass Students. The term “**Underclass Students**” shall mean students at The College of New Jersey who have completed less than sixteen (16) earned course units, or the equivalent thereof, if the College adopts or implements a standard different than four (4) earned course units per semester. Tenant shall implement and have any managers or contractors administering the Residential Component implement, policies to preclude any such renting; provided, that submission by a student of an unofficial transcript showing completion of at least sixteen (16) earned course units shall be sufficient evidence that such student is not an Underclass Student. If Landlord or Tenant shall have reasonable cause to suspect that an Underclass Student is renting a bed in the Additional New Buildings, each will promptly notify the other thereof, and Landlord and Tenant (or its Residential Component manager) shall expeditiously make a joint determination of whether the student in question is indeed an Underclass Student. If so, Landlord and Tenant shall cooperate to move such student to housing other than in the Additional New Buildings. Tenant shall refund to such student any prepaid rental for periods after such student moves out of the Additional New Buildings. The inadvertent renting of a bed to an Underclass Student shall not be a default under the Lease.

4.4. The design and construction of the Additional Buildings will include: (a) the construction of all surface and subsurface utilities required to service the Additional New Buildings; (b) the construction of all roadways and walkways required to access the Additional

New Buildings; (c) the relocation and reconstruction of all existing utility lines (other than the Replacement Water Line, as defined below and addressed by Section 4.5), infrastructure or other improvements (whether or not serving the Additional Buildings or the Project) on the Demised Premises, so that none of the same run under any of the Additional New Buildings; and (d) subject to the provisions of Section 4.5 below, the replacement, with a water line of the same diameter, of a portion of the existing domestic water line serving Landlord's campus (the "**Water Line**") from the R.O.W adjacent to NJ Route 31 across the Demised Premises in the direction of Landlord's college campus to the R.O.W. of Metzger Drive, so that it does not run under any Additional New Buildings. The portion of the Water Line to be replaced is referred to as the "**Replacement Water Line**"). Landlord represents that, except for the possibility of a fire protection water line, a storm sewer line, and a telephone/data line which may be in the vicinity of the footprint of the Additional New Buildings, Landlord is not aware of other existing utility lines or infrastructure in the vicinity of the footprint of the Additional New Buildings.

4.5 Tenant agrees to construct the Replacement Water Line. Tenant shall coordinate the timing of the installation of the Replacement Water Line, and of any activities that will interrupt water service, with Landlord. Tenant shall provide Landlord with at least ninety (90) days prior notice of the commencement of work on the construction of the Replacement Water Line. Landlord can review, comment and approve the final plans for the Replacement Water Line, which approval shall not be unreasonably withheld, delayed or conditioned. Tenant shall construct the Replacement Water Line either around the Additional New Buildings (to the north or to the south) or between the Additional New Buildings. Tenant will use reasonable efforts to have the contractor constructing the Replacement Water Line include a warranty, and will assign any such warranty to Landlord on completion of the Replacement Water Line. Trenton State College Corporation shall, by separate agreement with Tenant, pay the proportionate share of the cost of constructing the portion of the Replacement Water Line (including connections) from the R.O.W. adjacent to NJ Route 31 to the westerly side of the footprint of the Additional New Buildings. Tenant shall pay for the proportionate share of the cost of installing the portion of the Replacement Water Line (including connections) from the westerly side of the footprint of the Additional New Buildings to westerly R.O.W. of Metzger Drive (it is anticipated that the point of connection shall occur outside of any paved or improved right of way). The agreement with Trenton State College Corporation shall provide for payment to be made within fifteen (15) days after receipt of Tenant's invoice (together with customary back-up documentation of such costs) upon Substantial Completion of the Replacement Water Line.

4.6. The Final Plans for the Additional Buildings shall be consistent with the Additional Project Conceptual Drawings and incorporate the same materials as used in the Original New Buildings. The Final Plans the Additional Buildings shall be subject to the approval of Landlord, in accordance with Article 6 of the Lease. The Final Plans for the Additional Buildings will be diligently prepared by Tenant, and provided to Landlord promptly upon such Final Plans being completed. The Final Plans for the Additional Buildings will be promptly reviewed by Landlord in accordance with the provisions of Article 6 of the Lease. Landlord's approval of such Final Plans will not be unreasonably withheld, conditioned or delayed.

4.7. The final plans for the New Entrance shall be consistent with the Additional Project Conceptual Drawings for the New Entrance. The final design of and plans and specifications for the New Entrance shall be subject to the approval of Landlord in accordance with Article 6 of the Lease. The final plans for the New Entrance will be provided to Landlord

promptly upon such final plans being completed. The final plans for the New Entrance will be promptly reviewed by Landlord in accordance with the provisions of Article 6 of the Lease. Landlord's approval of such final plans will not be unreasonably withheld, conditioned or delayed. Tenant shall, at Tenant's cost, construct the New Entrance in accordance with the final plans so approved by Landlord; provided, that the total cost for the design of the New Entrance and for the materials, labor and other direct construction costs to construct the New Entrance (including direct physical improvements and landscaping, but excluding any costs associated with drainage for other than the roadway itself) shall not exceed Two Hundred Thousand Dollars (\$200,000) (the "**New Entrance Cost Cap**"). Tenant will obtain three (3) bids from each of the subcontractors/trades for the construction of the New Entrance, and will share such bids with Landlord. If the bid for the New Entrance that the Tenant proposes to accept exceed the New Entrance Cost Cap, Landlord may, by notice to Tenant, which shall be given within thirty (30) days of the delivery of the bid(s) to Landlord, elect to pay such excess cost, or the parties shall revise the final plans for the New Entrance so that the cost does not exceed the New Entrance Cost Cap. If Landlord elects to pay the excess cost, Landlord shall do so within fifteen (15) days after receipt of Tenant's invoice (together with customary back-up documentation of such costs) upon Substantial Completion of the New Entrance. Tenant will provide Landlord with at least ninety (90) days prior notice of the commencement of construction work on the New Entrance.

4.8. Landlord hereby grants to Tenant a temporary license, without cost to Tenant, to enter onto areas of Landlord's property to construct the New Entrance, the Replacement Water Line and other portions of the construction of the Additional Project which are required to be performed on Landlord's property. Other than the New Entrance, which is to be governed by the approved final plans, all areas disturbed on Landlord's property by Tenant in the performance of the Additional Project will be graded and seeded, and the property returned to its original condition, in so far as possible.

## 5. **Commencement and Completion; Term.**

5.1. Tenant shall be entitled to commence the non-vertical construction aspects of the Additional Project, weather permitting, when and to the extent allowed to do so by NJEDA, NJDCA and such other agencies as shall have applicable jurisdiction of such aspects of the Additional Project. Tenant shall not commence vertical construction of the Additional Project until the satisfaction of the conditions precedent set forth in Section 7.1 below. Commencement of foundation construction shall occur no later than March 1, 2016. After commencement of foundation construction, Tenant shall diligently and continuously pursue construction of the Additional Project such that construction of the Additional Project is Substantially Complete by no later than August 1, 2018.

5.2. If Tenant has not commenced foundation construction of the Additional New Buildings in accordance with this Amendment by March 1, 2016, then except for Articles 10, 11 and 12 of this Amendment as pertains to Section 6.3.8 of the Original Ground Lease, the balance of this Amendment shall be of no further force or effect; provided that no termination of this Amendment under this Section shall serve to shift responsibility for costs or obligations which a party may have incurred in relation to the provisions of this Amendment prior to such termination.

5.3. In recognition that commencement of construction of the Additional Project will occur later than the commencement of construction of the portion of the Project currently under

construction, the parties have agreed that Section 2.1 of the Original Ground Lease is deleted in its entirety and the following Section 2.1 is substituted therefor:

“Section 2.1. The term during which Tenant shall be entitled to possess, use and occupy the Demised Premises pursuant to this Lease (the “**Term**”) commenced on April 4, 2014 (the “**Commencement Date**”) and shall terminate and expire on the earlier to occur of: (a) the last day of the month which is fifty (50) years from the month in which the initial certificate of occupancy or temporary certificate of occupancy for the first of the Additional New Buildings is issued; and (b) 12:01 P.M. Eastern Time on July 31, 2067 (the “**Scheduled Expiration of Term**”), unless (in either case (a) or (b)) the Term shall sooner terminate as hereinafter provided, in which case the Term shall terminate and expire on the date of such earlier termination or expiration. (The date on which the Term shall terminate or expire pursuant to the preceding sentence is hereinafter referred to as the “**Expiration Date**”.)

6. **Parking Expansion Area.**

6.1 Landlord and Tenant hereby agree that as a result of the construction of the Additional Project, the Parking Expansion Area shown on Exhibit 6.9 of the Original Ground Lease is no longer available for further parking expansion.

7. **Conditions Precedent; Deliveries.**

7.1. The effectiveness of this Amendment shall be subject to: (a) written approval of NJEDA; (b) written approval of Tenant’s lender, including to the execution and delivery of the Kaye Guaranty required below, if applicable; and (c) all Governmental Approvals required for the construction of the Additional Project.

7.2. After completion of the Final Plans for the Additional Project, Tenant shall, at its sole cost, promptly commence and diligently pursue the issuance of all required approvals and consents. Landlord shall, to the extent required, join in any applications for the same.

7.3. Tenant is in the process of replacing the NJEDA-Required Security with a bond in the amount of \$10,000,000 as required by NJEDA, which Tenant represents will cover the Project, including the Additional Project, for payments due to contractor(s) (the “**New Bond**”). Subject to the final written approval by NJEDA of the New Bond, within ten (10) days after the delivery of the New Bond, Landlord agrees to surrender and return to the issuer the letter of credit being held by Landlord as the NJEDA-Required Security. In addition, within ten (10) days of Tenant providing evidence that the conditions for the release of the Demolition Security as set forth in the Ground Lease have occurred, Landlord agrees to surrender and return to the issuer the Demolition Security letter of credit. Landlord shall cooperate with Tenant in arranging for the cancellation of the letters of credit, as may be appropriate.

7.4. Tenant will deliver, or cause to be delivered, to Landlord, the following:

(a) Contemporaneously with the execution and delivery of this Amendment, the Kaye Guaranty shall be amended and restated to include the Additional Project. The amended and restated Kaye Guaranty is in the form of **Exhibit D**.

(b) Within fifteen (15) days after the commencement of vertical construction of the Additional Project, Tenant (or a person designated by Tenant) will provide an endowment for the maintenance of the New Entrance in the amount of Thirty Thousand Dollars (\$30,000.00) to Landlord (or, at the direction of Landlord, to The College of New Jersey Foundation).

7.5 Tenant will advise the Township of Ewing about the Additional Project in a written notice to be jointly approved by Landlord and Tenant and to be delivered to the Township not later than March 31, 2015.

8. **Planning, Permitting and Construction of the Additional Project.**

8.1. The Additional Project shall be constructed by Tenant, at its sole cost, in accordance with this Amendment and with Article 6 of the Original Ground Lease and not as an addition under Article 12 of the Original Ground Lease.

8.2. No aspect of the planning, permitting or construction of any portion or phase of the Additional Project shall modify or alter, or shall delay or otherwise adversely affect, the time for commencement, construction or completion by Tenant, in accordance with the Original Ground Lease and other approved plans, specification and construction and implementation documents any portion or phase of the Project as described in the Original Ground Lease.

9. **Additional Covenants of Tenant.**

9.1. After completion of the Final Plans for the Additional Project, Tenant shall, at its sole cost, promptly commence and diligently pursue the additional financing required to allow Tenant to construct the Additional Project in accordance with the time frames set forth in this Amendment. Tenant shall not commence vertical construction unless Tenant has closed upon financing reasonably sufficient, in the view of Tenant, to allow Tenant to complete the Additional New Buildings. Tenant shall not commence vertical construction if Tenant has received and notice of default from Tenant's existing lender and such notice has not been withdrawn.

9.2. With respect to the Bookstore Lease and the Fitness Center Lease, the Retail Component's share of shared Common Area Maintenance costs shall be 29% upon the completion of the Additional New Buildings. Nothing herein shall obligate Tenant to amend any of the leases for the Retail Component.

9.3 The New Entrance shall be constructed by Tenant in a good and workmanlike manner, and free of all defects. The New Entrance shall be warranted by Tenant against defects in materials and workmanship for a period of two (2) years on hardscape materials and a period of one (1) year on trees and plantings. Nothing in this Amendment shall constitute authority of Tenant to create any lien against any real property of Landlord. The New Entrance shall at all times be the property of and shall be maintained by Landlord.

9.4 Tenant shall maintain, and shall cause its contractors and subcontractors to maintain, for the construction of the Additional Project and for all construction work being conducted on Landlord's property outside of the Demised Premises as herein provided, the insurance required for construction activities pursuant to Article 13 of the Lease; provided, that, the foregoing shall not impose any obligation to carry duplicative or additional insurance coverage.

10. **Revised Section 6.3.8 of the Original Ground Lease.**

10.1. Section 6.3.8 of the Original Ground Lease is hereby deleted in its entirety and replaced in its entirety by the following new Section 6.3.8:

“6.3.8. Except as set forth in the Final Plans (as same may be amended in accordance therewith) and the Tenant Drainage Line (as defined below), storm water infrastructure for the Project shall be constructed and maintained separately from existing or future storm water infrastructure for the College except to the extent that engineering requirements (and not cost savings) reasonably require such systems to be integrated. In such latter event, all work shall be carried out by Tenant following the reasonable approval of Landlord with respect to storm water projects (other than as set forth in the Final Plans and for the Tenant Drainage Line), and all costs of construction and maintenance shall be borne by Tenant. Any failure by Tenant to carry out necessary work may carried out by Landlord, with the cost of same to be deemed Additional Rent payable under this Lease. Landlord has acquired ownership of the land necessary for Tenant to install, repair, replace, maintain and operate a storm water drainage line, including the detention/retention basin and related facilities (“**Tenant Drainage Line**”), the approximate location of which is shown on Exhibit 6.3.8 hereof, and Landlord hereby grants to Tenant, for the Term, as appurtenant to the Demised Premises, the right to install, repair, replace, maintain and operate the Tenant Drainage Line in such location; provided, that: (a) the Tenant Drainage Line shall accept storm water runoff that currently drains into existing inlets on that portion of Metzger Drive that runs along the Land; (b) during construction and maintenance of the Tenant Drainage Line, there shall be no total block of access to or from any road on the College’s Campus and any partial block of access shall be coordinated in advance with Landlord; (c) Tenant shall provide Landlord with engineering documentation verifying that the Tenant Drainage Line is designed such that peak drainage flows during a ten-year storm event are reduced to seventy-five percent (75%) of the pre-construction peak flows, or as may otherwise be required by New Jersey review agencies having jurisdiction over storm water management facilities; (d) Tenant shall be entitled to construct the detention basin portion of the Tenant Drainage Line in accordance with the drawing attached to Amendment No. 1 to this Lease as **Exhibit E** and (e) Tenant shall be responsible for obtaining all necessary permits and approvals for the Tenant Drainage Line. All of the foregoing shall be at Tenant’s expense, and Tenant shall reimburse to Landlord any reasonable out-of-pocket costs therefor incurred by Landlord, within thirty (30) days after each demand therefor.”

11. **Amendment to Recorded Instruments.**

11.1. At the request of either party, Landlord and Tenant shall enter into an amendment to any memorandum of lease previously entered into between the parties to reflect the execution and delivery of this Amendment.

12. **Ratification of Lease.**

12.1. Landlord and Tenant hereby acknowledge and agree that, except as provided in this Amendment, the Lease has not been modified, amended, canceled, terminated, released, superseded or otherwise rendered null and void. The Original Ground Lease as hereby amended is hereby ratified and confirmed by the parties hereto, and every provision, covenant, condition, obligation, right, term and power contained in and under the Original Ground Lease, as amended herein, shall continue in full force and effect.

12.2. In the event of any conflict between the terms and conditions of this Amendment and those of the Original Ground Lease with respect to the Additional Project, the terms and conditions of this Amendment shall govern and control. The terms of the Original Ground Lease shall, except with respect to amended Section 6.3.8, in all respects control the Original Project.

**Signatures to follow on next page**

IN WITNESS WHEREOF, this Amendment has been executed and delivered as of the date first above written.

**LANDLORD:**

**THE COLLEGE OF NEW JERSEY**

By: \_\_\_\_\_  
Name: Curt Heuring  
Title: Vice President for Administration

**TENANT:**

**PRC CAMPUS CENTERS, LLC**

By: \_\_\_\_\_  
Name: Kenneth T. Koehler  
Title: President

## EXHIBIT A

### REVISED EXHIBIT 6.1 Description of the Project

[Page 1 of 3]

The *Campus Town Development*, as currently configured, will consist of the following major components:

A. **Residential Component:** Approximately **276,740± gross (199,068 leasable) square feet** [approximately **199,068 square feet of leasable space**], comprised of **184± dwelling units** with the following features:

- **129± Four Bedroom** units to accommodate four (4) persons each.
- **41± Two Bedroom** Apartments to accommodate two (2) persons each.
- **14 ± One Bedroom/Studio/Efficiency** Apartments to accommodate one (1) person each.

The maximum total number of beds for all tenants shall not exceed **612**

- **184± Kitchens.**
- **338± Bathrooms.**
- **16% of students** will have **private bathrooms.**
- **84% of students** will have **shared bathrooms.**
- **Each unit** to be furnished with a **washer and dryer.**
- **Each unit** to be furnished with **separate temperature controls.**
- **Each unit** to be furnished with **smoke free and fire retardant furniture.**
- **All construction** will consist of **masonry (EXTERIOR) walls, concrete screed floors and steel studs.**
- **Wi-Fi accessibility in all units.**

B. **Retail Component:** Approximately **84,855± square feet (80,170 net leasable square feet)**, comprised of the following:

- **Hybrid College Bookstore – commercial merchandise concept**, consisting of approximately **14,639± square feet** on one floor (the “Bookstore” – Barnes & Noble operated).
- **Student Fitness & Activity Center**, consisting of approximately **11,500± square feet** (the “Fitness Center”).
- **Satellite Campus Police Substation**, comprising **433± square feet.**
- **Maintenance building**, comprising **1,800± square feet.**
- **Residential Leasing Office**, comprising **1280± square feet.**
- **Free-standing Building Pad** comprising up to **4,500± square feet.**
- **Additional separate free-standing Pad** (in the south westerly sector), comprising up to **2,362± square feet.**
- **Breezeway in Building #6**, consisting of **972± square feet.** (may be converted to additional retail space)
- **Additional retail shops, stores and restaurants**, consisting of approximately **47,395± square feet.**

[The foregoing notwithstanding, the Building Pad site may be developed as a 4,100 SF or 4,300 SF facility].

**Revised Exhibit 6.1**

[Page 2 of 3]

**Description of the Project**

[Continued]

C. **Parking Component**: 551± automobile parking spaces, to be allocated as follows, i.e., the “Parking Component”:

- 291± parking spaces allocated exclusively to the **Residential Component**.
- 260± parking spaces allocated exclusively to support the **Retail Component**.

The Parking Component shall be comprised of several parking areas interspersed throughout the Project with the largest concentration of parking areas to be located at the northern and southern extremes of the Project.

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The *Campus Town Development*, which encompasses the entire 13± acre site, shall be comprised of eleven to twelve buildings and two main parking zones. As currently configured, the Development shall consist of eleven (11) buildings; seven (7) of which shall be mixed-use, with ground floor retail space and two or three levels of apartments above. Two (2) buildings are to be either retail or forming part of the Retail Component. Two (2) buildings are intended to be strictly residential. In addition to the eleven buildings, a 12<sup>th</sup> site, a single story separate pad site, may be situated at or near the south westerly sector of the Project, and will form part of the Retail Component.

Subject to the constraints of site width and area and other concerns, such as traffic flow, storm drainage and retail placements, the Tenant (Private Partner) will strive to implement a two-zone parking strategy to achieve a balanced distribution of cars at either end of the Project, with additional parking interspersed throughout the development site. Control points at the dedicated northern residential lot, as well as in the southern parking area, will prevent retail visitors to the Project from gaining access to student parking areas. Remotely readable parking identifiers, issued to students with cars, shall be intended to deter such students from parking in areas reserved for retail patrons.

In addition to the College Bookstore and the College Fitness & Activity Center, a large sit-down restaurant (which will function as an additional quasi-anchor in a project of this type and size) shall be centrally located near the principal public entrance to the Project, which, together with other smaller food and beverage establishments, will naturally lead customers past other shops located at either end of the Project. *Al fresco* dining, overlooking open space, will be an available option for some restaurants.

The Project shall be configured to create a different massing character along Metzger Drive as compared with Pennington Road. In an attempt to make the Project as spatially porous as possible, buildings will be positioned and oriented along both Pennington Road and Metzger Drive so as to provide for several passageways that cut through between buildings and lead into the interior of the Project. Furthermore, the centrally positioned buildings along Metzger Drive shall be situated so as to provide for a central plaza area, with the major entry/gateway occurring on an axis with Loser Hall.

**Revised Exhibit 6.1**  
**[Page 3 of 3]**

**Description of the Project**  
**[Continued]**

In an effort to create large, communal exterior gathering spaces within the Project, Tenant has chosen to align most of the ground floor retail space under the footprints of the residential blocks above. This shall allow an exterior spatial configuration that is akin to a campus quad arrangement. These spaces are designed to be planted and green, or paved in a variety of ways to form plazas in select areas. As a focal point for the Project, a strong vertical element, in the form of a tower, will be strategically located. Absorbed into the residential configuration, this element shall be directly aligned with the center of Loser Hall. The tower will serve as a terminus for this primary east/west axis within the campus, as well as a focal point for the Project, itself, and a potential marker for the College along Pennington Road. The area around the tower is being conceived as an open plaza, with a portion of it slightly sunken to create a natural seating area and focal point.

The architectural “language” of the Project shall take its cues from the existing College campus context. Brick veneer with cast stone trim, pitched architectural shingle roofs, and light-colored window frames will be the constant that ties the Project back to the College. A base of light-colored masonry material (pre-cast concrete, perhaps) will be used at ground level where all of the retail components will be housed. The ultimate objective is to create a Project that is cohesive unto itself, sympathetic to the College campus context, as well as the neighborhood along Pennington Road, and varied enough in its image to be rich in massing and texture.

---

**EXHIBIT B**

***REVISED SITE LOCATION DRAWING***



PARKING	
PROPOSED	
STUDENT (NORTH LOT)	204 SPACES
STUDENT (BUILDING 4)	10 SPACES
STUDENT (SOUTH LOT)	11 SPACES
<b>SUBTOTAL:</b>	<b>215 SPACES</b>
RETAIL (SOUTH LOT)	50 SPACES
RETAIL (NORTH LOT/FANBURN HANTZ)	41 SPACES
RETAIL (CENTRAL LOT/STREET AND TRAIL)	6 SPACES
<b>SUBTOTAL:</b>	<b>200 SPACES</b>
<b>TOTAL:</b>	<b>581 SPACES</b>

NORTH

SITE PLAN NORTH

SCALE: 1" = 60'-0"

**PRC Campus Centers, LLC.**

The College of New Jersey

**SITE PLAN NORTH**

◇ **CAMPUS TOWN @ TCNJ NJ** ◇

EWING, NEW JERSEY

SCALE: 1" = 60'-0"

1" = 60'-0"

0 60 120 180 240

PP-1

APRIL 16, 2014  
 DECEMBER 2, 2014 REV 3:00 PM  
 DECEMBER 2, 2014  
 DECEMBER 2, 2014

**FEINBERG ASSOCIATES P.C.**

ARCHITECTURE/SITE DESIGN/INTERIOR DESIGN

One Echelon Plaza - 227 Laurel Road - Suite 201 - Voorhees, NJ 08043  
 Tel: 856.782.7100 - Fax: 856.782.7101  
 www.feinbergdesign.com

**EXHIBIT C**

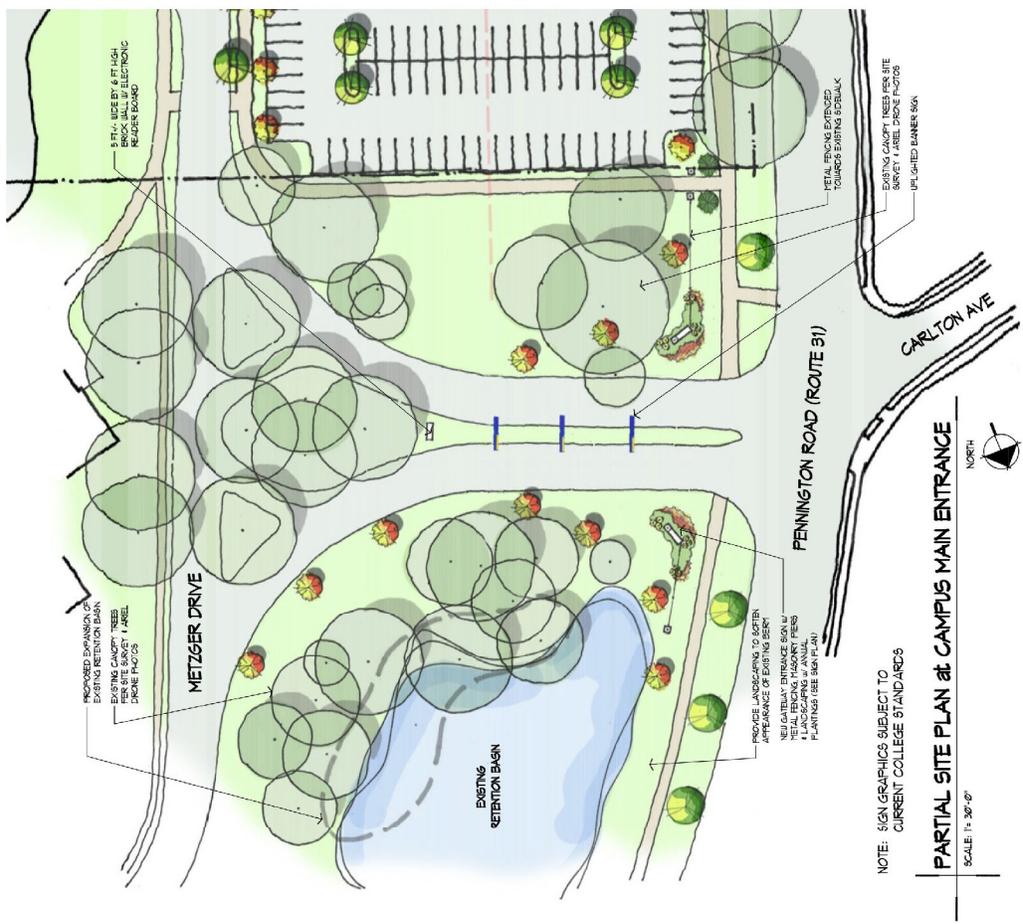
***ADDITIONAL PROJECT CONCEPTUAL DRAWINGS***



**SIGN PLAN**  
SCALE: NTS



**UPLIGHTED BANNER SIGN**  
SCALE: NTS (SIMILAR)



**PARTIAL SITE PLAN at CAMPUS MAIN ENTRANCE**  
SCALE: 1" = 30'-0"

NOTE: SIGN GRAPHICS SUBJECT TO CURRENT COLLEGE STANDARDS

# PRC Campus Centers, LLC.



The College of New Jersey

# ROUTE 31 at CAMPUS MAIN ENTRANCE

## CAMPUS TOWN @ TCNJ NJ

EWING, NEW JERSEY

SCALE: AS NOTED  
#183  
OCTOBER 6, 2014  
NOVEMBER 26, 2014  
NOVEMBER 16, 2014 REV 1.000 PM

**SPN-3**

**FEINBERG & ASSOCIATES P.C.**  
ARCHITECTURE / SITE DESIGN / INTERIOR DESIGN  
One Echelon Plaza • 227 Laurel Road • Suite 201 • Voorhees, NJ 08043  
Tel: 609.762.0100 • Fax: 609.762.0656  
www.feinbergpa.com



**MAIN ENTRANCE**

SCALE 1/8" = 1'-0"

SCALE: AS NOTED  
 105  
 NOVEMBER 18, 2014  
 NOVEMBER 18, 2014  
 NOVEMBER 26, 2014  
 NOVEMBER 26, 2014 REV 1:00 PM

**SPN-5**

**FEINBERG & ASSOCIATES P.C.**

ARCHITECTURE / SITE DESIGN / INTERIOR DESIGN  
 One Echelon Plaza • 227 Laurel Road • Suite 201 • Voorhees, NJ 08043  
 Tel: 652.762.0100 • Fax: 652.762.8656  
 www.feinbergdesign.com

**PRC Campus Centers, LLC.**



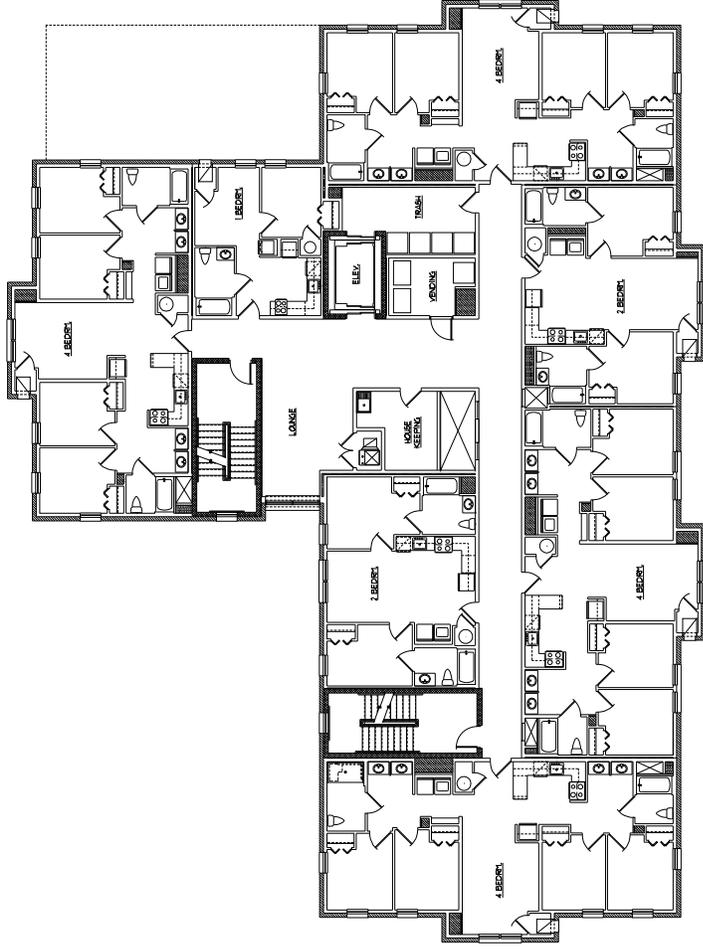
The College of New Jersey

**ROUTE 31 at CAMPUS MAIN ENTRANCE**



EWING, NEW JERSEY





OVERALL SECOND THRU FOURTH FLOOR PLANS (BLDG. #8)

SCALE: 1/8"=1'-0"

BLDG. #9 - REVERSE HAND

SCALE: 1/8"=1'-0"  
 199  
 SEPTEMBER 8, 2004  
 SEPTEMBER 17, 2004  
 OCTOBER 6, 2004  
 OCTOBER 31, 2004

A-2

**PRC Campus Centers, LLC.**

The College of New Jersey

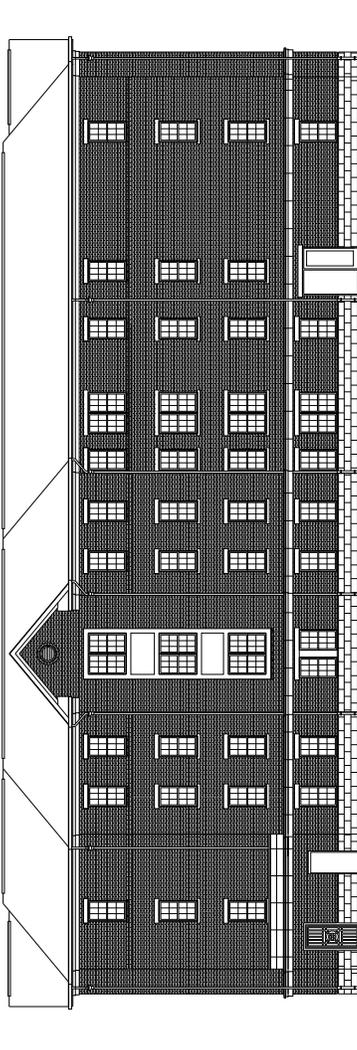
◆ **CAMPUS TOWN @ TCNJ** ◆

EWING, NEW JERSEY

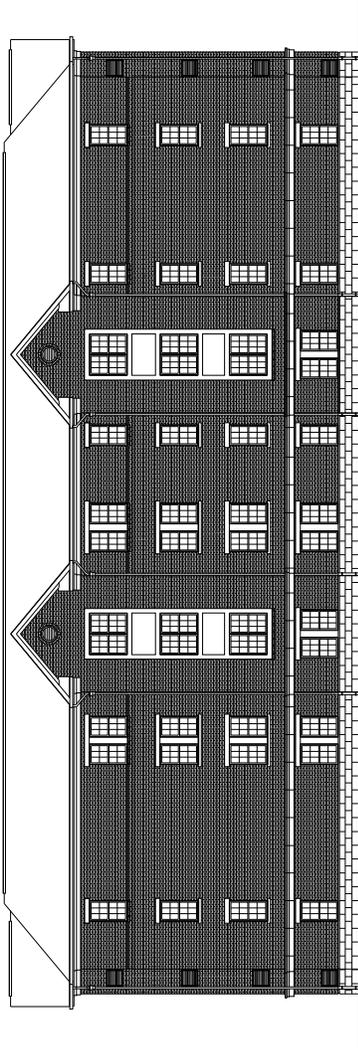
**FEINBERG ASSOCIATES P.C.**

ARCHITECTURE/SITE DESIGN/INTERIOR DESIGN

One Echelon Plaza - 227 Laurel Road - Suite 201 - Voorhees, NJ 08043  
 Tel: 609.762.0100 - Fax: 609.762.8656  
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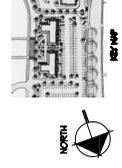
**EAST ELEVATION - METZGER DRIVE (BLDG. #8)**  
SCALE: 1/8"=1'-0"  
BLDG. #9 - REVERSE HAND



**WEST ELEVATION - PENNINGTON ROAD (BLDG. #8)**  
SCALE: 1/8"=1'-0"  
BLDG. #9 - REVERSE HAND

**PRC Campus Centers, LLC.**  
The College of New Jersey

**BUILDINGS 8 & 9**  
◇ **CAMPUS TOWN @ TCNJ** ◇  
EWING, NEW JERSEY



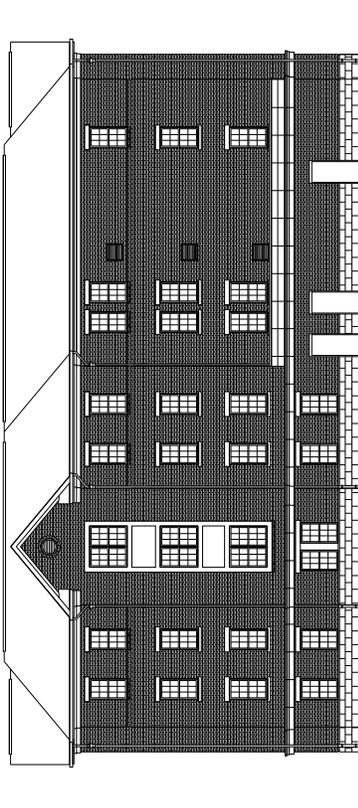
**A-3**

SCALE: 1/8"=1'-0"  
MAY 19, 2024  
JULY 18, 2024  
OCTOBER 8, 2024  
OCTOBER 14, 2024  
NOVEMBER 4, 2024

**FEINBERG ASSOCIATES P.C.**  
ARCHITECTURE/SITE DESIGN/INTERIOR DESIGN  
One Echelon Plaza - 227 Laurel Road - Suite 201 - Voorhees, NJ 08043  
Tel: 656.762.0100 - Fax: 656.762.8656  
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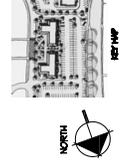
**NORTH ELEVATION (BLDG. #8)**  
SCALE: 1/8"=1'-0"  
BLDG. #8 - REVERSE HAND



**SOUTH ELEVATION (BLDG. #8)**  
SCALE: 1/8"=1'-0"  
BLDG. #8 - REVERSE HAND

**PRC Campus Centers, LLC.**  
The College of New Jersey

**BUILDINGS 8 & 9**  
◇ **CAMPUS TOWN @ TCNJ**   
EWING, NEW JERSEY



**A-4**

SCALE: 1/8"=1'-0"  
185  
MAY 19, 2014  
JULY 1, 2014  
OCTOBER 8, 2014  
OCTOBER 14, 2014  
NOVEMBER 4, 2014

**FEINBERG ASSOCIATES P.C.**  
ARCHITECTURE/SITE DESIGN/INTERIOR DESIGN  
One Echelon Plaza - 227 Laurel Road - Suite 201 - Voorhees, NJ 08043  
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www.feinbergdesign.com

**EXHIBIT D**

***AMENDED AND RESTATED KAYE GUARANTY***

AMENDED AND RESTATED GUARANTY OF COMPLETION

This AMENDED AND RESTATED GUARANTY OF COMPLETION (this “**Guaranty**”), dated as of \_\_\_\_\_, 201\_ (the “**date of this Guaranty**” or the “**date hereof**”), made and given by ROBERT M. KAYE, an individual with an office c/o PRC Campus Centers, LLC, 40 Monmouth Park Highway, West Long Branch, New Jersey 07764 (“**Guarantor**”), to and for the benefit of THE COLLEGE OF NEW JERSEY, a State college of the State of New Jersey, having an address at P.O. Box 7718, Ewing, New Jersey 08628-0718, Attention: Curt Heuring, Vice President for Administration (“**Landlord**”),

W I T N E S S E T H:

WHEREAS:

A. PRC CAMPUS CENTERS, LLC (“**Tenant**”), a New Jersey limited liability company, is the tenant under that certain Ground Lease dated April 4, 2014 between Landlord and Tenant (the “**Original Lease**”).

B. Guarantor is the guarantor under that certain Guaranty of Completion dated April 4, 2014 made by Guarantor to and for the benefit of Landlord (the “**Original Guaranty**”). Guarantor is, directly or indirectly, the majority owner in Tenant and the sole Controlling Person of Tenant (as defined in the Original Lease).

C. Tenant is in the process of constructing the Project (as defined in the Original Lease) in accordance with the terms and conditions of the Original Lease, including Article 6 of the Lease.

D. Contemporaneously herewith, Landlord and Tenant are entering into Amendment No. 1 to Ground Lease (the “**Amendment**”) to, inter alia, amend the Original Lease to provide for the construction by Tenant of the Additional Project (as defined in the Amendment). The Original Lease, together with the Amendment, are referred to in this Guaranty as the “**Lease**”. Upon the execution and delivery of the Amendment, the term “Project” includes both the Project, as contemplated by the Original Lease, and the Additional Project.

E. Section 7.4 of the Amendment requires the execution and delivery of this Guaranty contemporaneously with the execution and delivery of the Amendment by Landlord and Tenant.

F. Guarantor will derive substantial direct and indirect benefit from the execution and delivery of the Amendment and from the transactions contemplated by the Lease.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Guarantor hereby amends and restates the Original Guaranty in its entirety, and does hereby agree with Landlord as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Lease.

(b) Without limitation to the foregoing, the words “**including**”, “**include**”, “**inclusive**” and the like appearing herein shall be construed as if they were followed by the phrase “without limitation” except only where expressly provided otherwise.

2. Guaranty. Subject to the terms of Section 3 below, Guarantor unconditionally guarantees to Landlord each of the following (collectively, the “**Guaranteed Obligations**”):

(a) The completion of the Project in accordance with the requirements of the Lease, including (i) Guarantor obtaining or otherwise providing or making available any and all funds necessary to pay for the initial construction, equipping and completion of the Project, including the payment of all architects, engineers, contractors, subcontractors, suppliers and materialmen in connection therewith, and (ii) construction of the Project substantially in accordance with the Final Plans (as same shall be modified in accordance with the Lease), free and clear of all mechanics and other liens arising from or relating to the initial construction, equipping and completion of the Project (the “**Construction Obligations**”), except for Leasehold Mortgages, pledges and security agreements permitted by the Lease;

(b) If the claims of any unpaid architects, engineers, contractors, subcontractors, suppliers or materialmen are not paid or bonded, Guarantor shall indemnify and hold Landlord harmless against such claims;

(c) Guarantor shall pay or reimburse Landlord as set forth in Section 4(b) below for all costs and expenses incurred by Landlord (including all reasonable attorneys’ fees and disbursements) which may be paid or incurred by Landlord in connection with the enforcement of this Guaranty.

3. Landlord’s Agreement. By accepting this Guaranty, Landlord agrees as follows:

(a) Landlord shall promptly notify Guarantor if Landlord alleges that Tenant shall have failed to timely perform any of the Construction Obligations.

(b) If Landlord shall not have previously terminated the Lease as a result of a Material Event of Default under the Lease, Landlord agrees to forebear from the termination of the Lease as a result of any Material Event of Default under the Lease (except for the failure by Tenant to achieve Substantial Completion of the Project on or before the deadline set forth in subsection 6.7.2 of the Lease) during the period that Guarantor shall be performing his obligations under this Guaranty, and shall not have the right to terminate the Lease if Guarantor’s performance cures the alleged default.

(c) Landlord shall accept performance by Guarantor as performance by Tenant for purposes of curing any Events of Default under the Lease.

4. Landlord's Rights.

(a) This Guaranty and the Guaranteed Obligations shall not in any manner be deemed to impair or release Tenant's obligations under the Lease or (subject to the provisions of Section 3 of this Guaranty) otherwise impair or derogate from Landlord's ability to enforce its rights under the Lease.

(b) Any payment or reimbursement demanded under this Guaranty shall be due not later than ten (10) days following the giving of a written demand therefor from Landlord to Guarantor in accordance with the notice requirements set forth in Section 14 below.

(c) Nothing contained in this Guaranty shall be construed as imposing any obligation on Landlord to perform, continue, construct, equip or complete the Project or any part thereof (whether or not Landlord shall commence or attempt to perform any of the same).

5. Continuous Guaranty.

(a) Guarantor acknowledges and agrees that this Guaranty is a continuing guaranty and that the Guaranteed Obligations are and shall at all times continue to be primary and unconditional.

(b) The liability of Guarantor hereunder shall not be affected, released, terminated, discharged or impaired, in whole or in part, by, and Landlord may proceed to exercise any right or remedy hereunder irrespective of, any or all of the following:

(i) any lack of genuineness, regularity, validity, legality or enforceability, or the voidability, of the Lease or any other agreement between Landlord and Tenant relating thereto, so long as Tenant shall, notwithstanding the foregoing, still be able to receive the benefit of its bargain (including as the result of any enforceable reaffirmation by Landlord of the Lease or such agreement);

(ii) any enforcement or exercise by Landlord of any of its rights or remedies under the Lease or applicable law, including any action by Landlord against Tenant or any security available to Landlord;

(iii) any failure of Landlord to exercise or to exhaust any right or remedy or to take any action against Tenant or any security available to Landlord;

(iv) any amendment or modification of the terms of the Lease;

(v) any change, or any extension of time, agreed to by Landlord and Tenant, or proposed by one of them and accepted by the other, or that arises under the provisions of the Lease, in the time, manner or place of payment or performance, of all or any of the Guaranteed Obligations or of any other terms of the Lease, whether in whole or in part;

(vi) any amendment or waiver of, or any assertion or enforcement or failure or refusal to assert or enforce, or any consent or indulgence

granted by Landlord with respect to a departure from, any term of the Lease, including any waiver by Landlord of any default of Tenant, or the making of any other arrangement with, or the accepting of any compensation or settlement from, Tenant;

(vii) any dealings or transactions between Landlord and Tenant, whether or not Guarantor shall be a party to or cognizant of the same;

(viii) the insolvency of, or voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting, Tenant or any of its assets;

(ix) any exchange, surrender or release, in whole or in part, of any security which may be held by Landlord at any time for or under the Lease or in respect of the Guaranteed Obligations;

(x) any other guaranty now or hereafter executed by Guarantor or any other guarantor or the release of any other guarantor from liability for the payment, performance or observance of any of the Guaranteed Obligations or any of the terms of the Lease on the part of Tenant to be paid, performed or observed, as applicable, whether by operation of law or otherwise;

(xi) any rights, powers or privileges Landlord may now or hereafter have against any person or collateral in respect of the Guaranteed Obligations;

(xii) Landlord's consent to any assignment or successive assignments of the Lease by Tenant;

(xiii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Tenant in respect of the Guaranteed Obligations or any portion thereof, except actual payment and performance thereof by Tenant to the extent thereof, or of Guarantor in respect of this Guaranty, or vary the risk of Guarantor, or might otherwise constitute a legal or equitable discharge or defense available to a surety or guarantor, whether similar or dissimilar to the foregoing, except the satisfactory payment and performance of the Guaranteed Obligations in accordance with the terms of this Guaranty;

(xiv) any notice of the creation, renewal or extension of the Guaranteed Obligations or notice of or proof of reliance by Landlord upon this Guaranty or acceptance of the Guaranty; or

(xv) any change which may arise by reason of the reorganization, restructuring, termination or dissolution of Tenant, or any other person,

whether any of the foregoing may occur before or after any default by Tenant under the Lease, and with or without further notice to or assent from Guarantor. Notwithstanding the preceding provisions of this Section 5(b) to the contrary, Guarantor's obligations and liabilities under this Guaranty shall not be increased by any of the actions described in clauses (iv), (v) (other than any change or extension of time that arises under the provisions of the Lease), (vi), (vii), (xii) or

(xv) of this Section 5(b) unless such actions are taken, entered into or are consented to in writing by Guarantor, PRC Campus Centers, LLC or any of their Affiliates.

(c) Notwithstanding any such payments received or collected by Landlord in connection with the Guaranteed Obligations, Guarantor shall remain liable for payment and performance of the balance of the Guaranteed Obligations until the Guaranteed Obligations are paid and performed in full. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment or performance of the Guaranteed Obligations, or any portion thereof, is rescinded or otherwise returned or surrendered by Landlord upon the insolvency, bankruptcy or reorganization of Tenant or otherwise, all as though such payment had not been made.

(d) Guarantor hereby waives (and agrees not to assert or take advantage of) any of the following: (A) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Guaranteed Obligations; (B) any defense that may arise by reason of the incapacity or lack of authority of Tenant or Guarantor or the incapacity, lack of authority, death or disability of any other person, or the failure of Landlord to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of Tenant or Guarantor or any other person; (C) any defense based upon (i) the failure of Landlord to give notice of the existence, creation or incurring of any new or additional monetary or non-monetary or of any action or non-action on the part of any other person whomsoever, in connection with any obligations hereby guaranteed; (ii) any election of remedies by Landlord which destroys or otherwise impairs any subrogation rights of Guarantor or the right of Guarantor to proceed against Tenant or any other person for reimbursement; (iii) any defense based upon failure of Landlord to commence an action against Tenant or any other person or the Demised Premises or Tenant's interest therein or in the Ground Lease; or (iv) a lack of due diligence by Landlord in collection, protection or realization upon any security for the Lease; (D) any duty on the part of Landlord to disclose to Guarantor or any other person any facts it may now or hereafter know regarding Tenant or any other person or the Demised Premises; (E) acceptance or notice of acceptance of this Guaranty by Landlord; (F) notice of presentment and demand for payment or performance of any of the Guaranteed Obligations; (G) protest and notice of dishonor or of default to Guarantor or to any other person with respect to the Guaranteed Obligations; (H) any and all other notices whatsoever to which Guarantor might otherwise be entitled and (I) any defense based on lack of due diligence by Landlord in collection, protection or realization upon any security for the Lease.

(e) If Guarantor shall fail to perform the Guaranteed Obligations in accordance with the terms hereof, Landlord may, but shall not be obligated to, take such action personally or by its agents or attorneys, without any notice, demand, presentment or protest (each and all of which are hereby waived), as Landlord deems necessary or advisable to protect and enforce Landlord's rights and remedies hereunder, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Landlord, in its sole discretion, may determine, without impairing or otherwise affecting its other rights or remedies hereunder, at law or in equity:

(i) perform or cause the performance of the Project substantially in conformity with the applicable Final Plans, with such modifications

thereto as Landlord may deem necessary or convenient, provided that Guarantor's obligations and liabilities under this Guaranty shall not be increased by any such modifications unless such modifications are made or consented to in writing by Guarantor, PRC Campus Centers, LLC or any of their Affiliates;

(ii) pay, remove, release, discharge, bond or settle or cause the payment, removal, release, discharge, bonding or settlement of any mechanic's or other lien, claim or demand, the removal, release, discharge, bonding, settlement or payment of which is guaranteed hereunder; and

(iii) cause compliance with all Laws which must be complied with in connection with the Project.

If Landlord shall perform any of the acts described in this Section 5(e), Guarantor shall reimburse Landlord in accordance with Section 4(b) above for the amount of the sums paid and costs and expenses incurred by Landlord in connection therewith, including reasonable attorneys' fees and disbursements, subject to the proviso in the preceding clause 5(e)(i).

(f) Landlord may proceed to protect and enforce any or all of its rights under this Guaranty by suit in equity or action at law, whether for specific performance of any covenants or agreements contained in this Guaranty or otherwise, or to take any action authorized or permitted under applicable Law, and shall be entitled to require and enforce the performance of all acts and things required to be performed hereunder by Guarantor. Each and every remedy of Landlord shall, to the extent permitted by Law, be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

## 6. Dealing with Tenant and Others.

(a) It is agreed that Landlord, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guaranteed Obligations, may:

(i) grant time, renewals, extensions, indulgences, releases and discharges to Tenant and any other person guaranteeing payment or performance of or otherwise liable with respect to the Guaranteed Obligations or any portion thereof (each such person, an "**Obligor**");

(ii) take or abstain from taking security or collateral from Tenant or any Obligor or from perfecting security or collateral of Tenant or any Obligor;

(iii) accept compromises from Tenant or any Obligor;

(iv) apply all monies at any time received from Tenant or any Obligor upon such part of the Guaranteed Obligations as Landlord may see fit; or

(v) otherwise deal with Tenant or any Obligor as Landlord may see fit.

(b) Landlord shall not be bound or obliged to exhaust recourse against Tenant or any Obligor or any security, guarantee, indemnity, mortgage or collateral it may hold or take any other action before being entitled to payment or performance from Guarantor hereunder, and Guarantor waives any right to require that an action be brought against Tenant or any other person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Landlord in favor of Tenant or any other person.

(c) No exculpatory or similar provision, if any, of the Lease, which limits, or relieves Tenant from any personal or direct liability under the Lease shall limit or relieve Guarantor from any such liability arising pursuant to this Guaranty.

(d) Any account settled by or between Landlord and Tenant shall be accepted by Guarantor as conclusive evidence that the balance or amount thereby appearing due to Landlord is so due.

7. Subrogation. The following shall apply only until such time as all the Guaranteed Obligations shall have been irrevocably paid in full in cash (to the extent the same are monetary obligations) and performed in full (to the extent the same are not monetary obligations), subject to the provisions of Section 7(d) hereof:

(a) Guarantor hereby waives, and shall not exercise, any right of subrogation and any other claims that it may now or hereafter acquire against Tenant with respect to or that arise from payments or performance made to or for Landlord or costs and expenses incurred by Guarantor hereunder. In the case of the liquidation, winding-up or bankruptcy of Tenant (whether voluntary or involuntary) or if Tenant shall make an arrangement or composition with its creditors, Landlord shall have the right to rank first for its full claim with respect to the Guaranteed Obligations and to receive all payments in respect thereof until its claim has been paid in full, and Guarantor shall continue to be liable to Landlord for any balance of the Guaranteed Obligations. Guarantor, to the extent permitted by law, irrevocably releases and waives any subrogation rights or right of contribution or indemnity (whether arising by operation of law, contract or otherwise) Guarantor may have against Tenant or any person constituting Tenant if and to the extent any such right or rights would give rise to a claim under the U.S. Bankruptcy Code that payments to Landlord with respect to the Guaranteed Obligations constitute a preference in favor of Guarantor or a claim under the Bankruptcy Code that any such preference is recoverable from Landlord. References herein to "subrogation" shall also include any right of reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Landlord against Tenant, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from either against Tenant, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right.

(b) If any amount shall be paid to Guarantor in violation of the preceding Section 7(a), such amount shall be held in trust for the benefit of Landlord and shall forthwith be paid to Landlord to be credited and applied to all amounts payable under this Guaranty in accordance with the terms of the Lease and the Guaranty Documents, or to be held as collateral for any amounts payable under this Guaranty thereafter arising. Guarantor acknowledges that it has and will receive direct and indirect benefits from the performance of the

Guarantied Obligations and that the waiver set forth in this Section 7 is knowingly made in contemplation of such benefits.

(c) All indebtedness, liabilities and obligations of Tenant to Guarantor, whether secured or unsecured and whether or not evidenced by any instrument, now existing or hereafter created or incurred, are and shall be subordinate and junior in right of payment and performance to the Guarantied Obligations.

(d) Notwithstanding the preceding provisions of this Section 7 to the contrary, if one or some of the buildings constituting the New Buildings are completed and fully paid for by Tenant (subject to the Leasehold Mortgages and other indebtedness permitted under the Lease) while the remainder of the Project remains under construction, and for so long as there is no Event of Default, this Section 7 shall not be construed to limit or prohibit the receipt by Guarantor of distributions by Tenant of all or a portion of Tenant's net operating income from such completed buildings, subject to any and all relevant provisions of the Lease.

8. Representations and Warranties. Guarantor hereby represents and warrants to Landlord that:

(a) Guarantor is not insolvent (as such term is defined in the debtor/creditor laws of the State of New Jersey);

(b) the execution, delivery and performance of this Guaranty will not (i) make Guarantor insolvent, (ii) violate any provision of any requirement of law or, subject to the written approval of Tenant's lender as referred to in Section 7.1(a) of the Amendment ("**Lender Approval**"), contractual obligation of Guarantor or (iii) result in or require the creation or imposition of any lien on any of the properties or revenues of Guarantor (whether pursuant to any requirement of law or contractual obligation of Guarantor or otherwise);

(c) subject to the Lender Approval, the execution and delivery hereof and the performance by Guarantor of his obligations hereunder does not and will not contravene, violate or conflict with, or result in a breach of or default under, any indenture, mortgage, deed of trust, ground lease, contract, assignment, agreement or other instrument to which Guarantor or the assets of Guarantor are subject;

(d) subject to the Lender Approval, no consent of any other party (including any partner, or any creditor of Guarantor or Tenant, other than Tenant's lender) to this Guaranty is required that has not been obtained by Guarantor;

(e) Guarantor has executed this Guaranty individually, and not on behalf of Tenant or any other person or as an officer or agent of any person;

(f) this Guaranty has been duly executed and delivered by Guarantor and is the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, moratorium, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) subject to the Lender Approval, there are no conditions precedent to the effectiveness of this Guaranty that have not been either satisfied or waived;

(h) Guarantor has, independently and without reliance upon the Landlord and based on such documents and information as he has deemed appropriate, done his own credit analysis and may his own decision to enter into this Guaranty.

(i) Guarantor has received, reviewed and understands the Lease, the Final Plans and all other Project documents; and

(j) there are no actions, suits or proceedings pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor, which will or may have a material adverse impact upon Guarantor's ability to pay or perform his obligations hereunder, or involving the validity or enforceability of this Guaranty, at law or in equity; and Guarantor is not in default under any order, writ, injunction, decree or demand of any court or any administrative body having jurisdiction over Guarantor.

9. Waivers. Guarantor expressly waives the following:

(a) notice of acceptance of this Guaranty;

(b) notice of any change in the financial condition of Tenant;

(c) promptness, diligence, presentment and demand for payment or performance of any of the Guaranteed Obligations;

(d) protest, notice of dishonor, notice of default and any other notice with respect to any of the Guaranteed Obligations and/or this Guaranty;

(e) any demand for payment or performance under this Guaranty;

(f) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior full payment and performance by Tenant of the Guaranteed Obligations which Guarantor is called upon to pay or perform under this Guaranty; and

(g) any right or claim of right to cause a marshaling of the assets of Tenant or to cause Landlord to proceed against Tenant and/or any collateral or security held by Landlord at any time or in any particular order.

10. Additional Guaranties. This Guaranty is in addition and without prejudice to any guaranties (including guaranties whether or not in the same form as this instrument) and indemnities of any kind now or hereafter held by Landlord. Landlord shall not be obligated to proceed under any other guaranty or security with respect to all or any portion of the Guaranteed Obligations before being entitled to payment from Guarantor under this Guaranty.

11. Bankruptcy of Tenant. Notwithstanding anything to the contrary herein, Guarantor's liability shall extend to all amounts or other obligations which constitute part of the

Guaranteed Obligations and would be owed by, or required to be performed by, Tenant under the Lease but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving Tenant. Without limiting the foregoing, neither Guarantor's obligation to make payment or otherwise perform in accordance with this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed, stayed, released or limited in any manner by any impairment, modification, change, release, limitation or stay of the liability of Tenant or its estate in bankruptcy or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the United States bankruptcy laws or other statute or from the decision of any court interpreting any of the same.

12. Currency of Payments. Any and all amounts required to be paid by Guarantor hereunder shall be paid in lawful money of the United States of America and in immediately available funds to Landlord. Guarantor agrees that whenever, at any time, or from time to time, he shall make any payment to Landlord on account of his liability hereunder, he will notify Landlord in writing that such payment is made under this Guaranty for that purpose.

13. **GOVERNING LAW.** **THIS INSTRUMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS.**

14. Notices. All Notices required or which Landlord or Guarantor desires to give hereunder to the other shall be in writing and shall be made in the manner set forth in the Lease, provided that all Notices to Guarantor shall be addressed to Guarantor at his address first set forth above and copies thereof shall be given to the same persons who are to receive copies of Notices to Tenant as set forth in the Lease. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in the Lease or to require giving of notice or demand to or upon any person in any situation or for any reason except as may otherwise be specifically provided for in this Guaranty or the Lease.

15. No Waiver, Remedies.

(a) No failure on the part of Landlord to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

(b) The remedies herein provided are cumulative and not exclusive of any remedies provided by law and are independent of Tenant's obligations under the Lease, and a separate action or actions may be brought and prosecuted against the Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Tenant or whether Tenant is joined in any such action or actions. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor either in the same action, if any, brought against Tenant or in separate actions, as often as Landlord, in its sole discretion, may deem advisable. Guarantor hereby authorizes and empowers Landlord in its sole discretion to exercise any right or remedy which Landlord may have, including all rights and remedies under the Lease, at law or in equity.

If the Guaranteed Obligations are partially paid or performed by reason of such election of Landlord to pursue any of the remedies available to Landlord, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire unpaid balance or portion of the Guaranteed Obligations, even though any rights which Guarantor may have against Tenant, or any other person, may be destroyed or diminished by the exercise of any such remedy.

16. Certificates. Guarantor agrees that he will, at any time and from time to time (but not more than four (4) times per year unless the estoppel is requested by a lender, a rating agency in connection with loans or debt of Landlord or a governmental agency), within fifteen (15) days following each request by Landlord, execute and deliver to Landlord or to any other person designated by Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if modified, that the same is in full force and effect as modified and stating such modifications) and constitutes a binding obligation of Guarantor and (if requested by Landlord) attaching and certifying to a true copy of this Guaranty and any such modifications.

17. Benefit and Binding Nature. This Guaranty is a continuing guaranty of payment and performance and shall (a) remain in full force and effect until irrevocable payment and performance in full of the Guaranteed Obligations, (b) be binding upon Guarantor, his personal representatives, estate, executors, administrators, heirs, distributees and successors and assigns, and (c) inure to the benefit of and be enforceable by Landlord and its respective successors and assigns. References in this Guaranty to "Tenant" shall include the successors and assigns of Tenant under the Lease or any new lease of the Demised Premises pursuant to Section 21.5 of the Lease, and references in this Guaranty to "Lease" shall include any such new lease.

18. **WAIVER OF TRIAL BY JURY. GUARANTOR AND LANDLORD BY ACCEPTANCE OF THIS GUARANTY EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY OR THE LEASE OR THE VALIDITY, PROTECTION, INTERPRETATION, ADMINISTRATION, COLLECTION OR ENFORCEMENT HEREOF OR THEREOF, OR ANY CLAIM OR DISPUTE HEREUNDER OR THEREUNDER.**

19. Jurisdiction. Guarantor initially and irrevocably designates The PRC Group, LLC, with offices on the date hereof at 40 Monmouth Park Highway, West Long Branch, New Jersey 07764, Attention: Corporate Counsel, to receive for and on behalf of Guarantor service of process with respect to this Guaranty. Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of any State or Federal court of competent jurisdiction sitting in the State of New Jersey in any action or proceeding arising out of or relating to this Guaranty or the Lease, and Guarantor hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such court. Guarantor hereby irrevocably waives, to the fullest extent Guarantor may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

20. Termination. This Guaranty shall terminate upon the occurrence of both (a) Final Completion of the New Buildings in accordance with the Lease, and (b) the indefeasible payment and performance in full of all of the Guaranteed Obligations, if any, due and owing to Landlord (without any offset, defense or counterclaim) pursuant to the terms, conditions and provisions of this Guaranty, provided that any claims under this Guaranty first made by Landlord by notice to Guarantor given more than six (6) months after such Final Completion shall be deemed waived. Guarantor shall have no obligation with respect to the Additional Project if the provisions of Section 5.2 of the Amendment shall be triggered, rendering the balance of the Amendment (other than Articles 10, 11 and 12 of the Amendment) of no further force or effect (the “**Additional Project Termination**”); provided, however, that the Guaranteed Obligations include the costs, if any, incurred by Landlord, to demolish any Additional Project improvements made prior to the Additional Project Termination, if applicable.

21. Guaranty of Payment. This is a guaranty of payment and not of collection, and upon any default of Tenant with respect to the Guaranteed Obligations, Landlord may, at its option, proceed directly and at once, upon written notice, against Guarantor to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against Tenant or any other person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any security for the Lease.

22. Miscellaneous.

(a) If at any time Guarantor shall consist of more than one person or party, the obligations and liabilities of each person or party shall be JOINT AND SEVERAL, and Lender may enforce this Guaranty in full from time to time against any one or combination or all of such persons or parties.

(b) The headings used in this Guaranty are for convenience only and are not to be considered in connection with the interpretation or construction of this Guaranty.

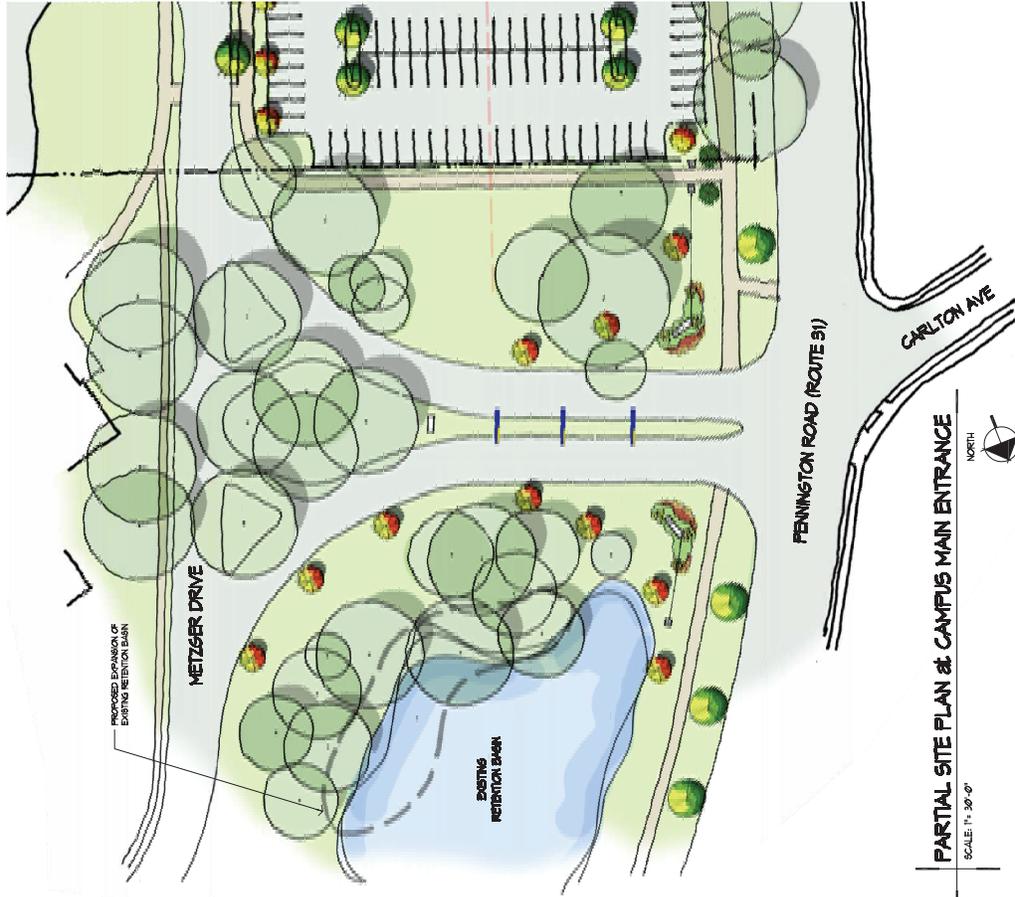
(c) Any amendments to, revisions of, or waivers of any provisions of this Guaranty must be in writing to be effective. This Guaranty may not be changed orally, and no obligation of Guarantor can be released or waived by Landlord or any officer or agent of Landlord, except by a writing signed by a duly authorized officer of Landlord.

*[Signature on next page.]*



**EXHIBIT E**

***DETENTION BASIN DRAWING***



PARTIAL SITE PLAN @ CAMPUS MAIN ENTRANCE  
 SCALE: 1" = 30'-0"

SCALE: AS NOTED  
 11/23/13  
 DECEMBER 15, 2014

PP-2

PRC Campus Centers, LLC.

The College of New Jersey

SITE PLAN NORTH  
 PROPOSED EXPANSION OF EXISTING DETENTION BASIN  
 ◇ CAMPUS TOWN @ TCNJ NJ ◇  
 EWING, NEW JERSEY

FEINBERG ASSOCIATES P.C.  
 ARCHITECTURE/SITE DESIGN/INTERIOR DESIGN  
 One Edison Plaza - 227 Laurel Road - Suite 201 - North Plainfield, NJ 08063  
 Tel: 908.732.0100 - Fax: 908.732.9656  
 www.feinbergpa.com

**Resolution Authorizing the President or her Designee  
to Include a Project Labor Agreement in the  
Bid Documents for the STEM Phase 1 Project**

- Whereas:** In 2013, The College of New Jersey applied for and received \$40,000,000 from the Building Our Future general obligation bond for the construction and renovation of the College's Science, Technology, Engineering and Mathematics (STEM) complex;
- Whereas:** The College completed Programming, Schematic Design, Design Development and Construction Documents for Phase 1 of the STEM complex (Project) and the Project is slated to go to bid in February 2015;
- Whereas:** A Project Labor Agreement (PLA), is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project; and
- Whereas:** The majority of other New Jersey Association of State College and University (NJASCU) institutions utilize PLAs on their general obligation bond projects and this is generally recognized as a best practice; and
- Whereas:** The College has negotiated with the Mercer / Burlington County Building and Construction Trades Council (Council) to customize a PLA to mitigate the potential disadvantages while preserving the potential benefits of a PLA; and
- Whereas:** The negotiated PLA is in furtherance of the interests set forth in NJ Statute 52: 38-5, in that, among other things, it advances the owner's interests in cost, efficiency, quality, timeliness, skilled labor force, and safety; guarantees against strikes, lock-outs, or other similar actions; set forth effective, immediate, and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work; is made binding on all contractors and subcontractors on the public works project through the inclusion of appropriate bid specifications in all relevant bid documents; and requires that each contractor and subcontractor working on the public works project have an apprenticeship program;
- Whereas:** The Council has made significant and material concessions in exchange for TCNJ agreeing that a PLA should be utilized by contractors on the Project;
- Whereas:** The Vice President for Administration and General Counsel have recommended to the President that a PLA be utilized on the Project; and
- Whereas:** The President is recommending to the Board of Trustees that a PLA be utilized on the Project.
- Therefore, Be It Resolved:** That the College of New Jersey Board of Trustees hereby approves the proposed PLA generally in the form and including the terms in the document attached hereto, authorizes the College to include the PLA in the Project bid documents requiring the selected contractor and subcontractors on the Project to abide by the terms of the PLA; and

**Be It  
Further  
Resolved:** That, the President and other appropriate officers of the College are authorized to take such actions, prepare such documents and amendments, and affix their signatures on behalf of the College to such documents and amendments, all as may in their judgment be necessary or desirable to accomplish the purposes of this resolution.

# PROJECT LABOR AGREEMENT

The College of New Jersey – STEM Complex Phase I

## ARTICLE 1 - PREAMBLE

**WHEREAS**, \_\_\_\_\_, on behalf of itself, and reflecting the objectives of The College of New Jersey (“TCNJ”), as Owner, desires to provide for the efficient, safe, quality, and timely completion of Phase I of the STEM Complex (“Project”) on the TCNJ campus, in a manner designed to afford lower reasonable costs to TCNJ and the public it represents, and the advancement of public policy objectives;

**WHEREAS**, this Project Labor Agreement will foster the achievement of these goals, inter alia, by:

- (1) ensuring a reliable source of skilled and experienced labor;
- (2) standardizing the terms and conditions governing the employment of labor on the Project;
- (3) permitting wide flexibility in work scheduling and shift hours and times; from those which otherwise might obtain;
- (4) receiving negotiated adjustments as to work rules and staffing requirements from those which otherwise might obtain;
- (5) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;
- (6) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes, and promoting labor harmony and peace for the duration of the Project;

(7) furthering public policy objectives as to improved employment opportunities for minorities, women and the economically disadvantaged in the construction industry;

(8) expediting the construction process; and

**WHEREAS**, the signatory Unions desire the stability, security and work opportunities afforded by a Project Labor Agreement; and

**WHEREAS**, the Parties desire to maximize Project safety conditions for both workers and the public,

**NOW, THEREFORE**, the Parties enter into this Agreement:

## **SECTION 1. PARTIES TO THE AGREEMENT**

This is a Project Labor Agreement ("Agreement") entered into by and between [Name of General Contractor] ("General Contractor") and its successors and assigns, and the Mercer/Burlington County Building and Construction Trades Council, AFL-CIO ("BTC"), on behalf of itself and its affiliates and members, in connection with the Project. For the sake of clarity, this Agreement shall pertain only to Phase I of the STEM Complex project.

## **ARTICLE 2 - GENERAL CONDITIONS**

### **SECTION 1. DEFINITIONS**

Throughout this Agreement, the signatory Unions and the BTC are referred to singularly and collectively as "the Union(s)" where specific reference is made to "Local Unions" that phrase is sometimes used; the term "Contractor(s)" shall include the General Contractor and its subcontractors of whatever tier, engaged in on-site Project construction work within the scope of this Agreement as further defined in Article 3; TCNJ is referenced as Owner; the Mercer/Burlington County Building and Construction Trades Council, AFL-CIO is

referenced as the BTC, and the work covered by this Agreement (as defined in Article III) is referred to as the "Project".

## **SECTION 2. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT**

This Agreement shall be binding on all Unions and Contractors performing on-site Project work, including site preparation and staging areas, as defined in Article 3. Contractors shall include in any subcontract that they let, for performance during the term of this Agreement, a requirement that their subcontractors, of whatever tier, become signatory and bound by this Agreement with respect to subcontracted work performed within the scope of Article 3. This Agreement shall be administered by the General Contractor on behalf of all Contractors.

## **SECTION 3. SUPREMACY CLAUSE**

This Agreement, together with the applicable local collective bargaining agreements (CBAs) (available at [website address]) represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to this Project, in whole or in part, except for all work performed under the National Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article VII, IX and X of this Project Agreement, which shall apply to such work. Where a subject covered by the provisions, explicit or implicit, of this Agreement is also covered by a CBA, the provisions of this Agreement shall prevail. It is further understood that no Contractor shall be required to sign any other agreement as a condition of performing work on this Project. No practice, understanding or agreement between a Contractor and Local Union, which is not explicitly set forth in this Agreement shall be binding on this Project unless endorsed in writing by the Contractor.

**SECTION 4. LIABILITY**

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. A Contractor shall not be liable for any violations of this Agreement by any other Contractor and the BTC and Local Unions shall not be liable for any violations of this Agreement by any other Local Union. A Contractor shall not be liable in damages or otherwise for any other Contractor’s assignment or mis-assignment of work.

**SECTION 5. THE GENERAL CONTRACTOR**

The General Contractor shall require in its bid specifications for all work within the scope of Article 3 that all successful bidders, and their subcontractors of whatever tier, become bound by, and signatory to, this Agreement. TCNJ is not a party to and shall not be liable in any manner under this Agreement. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of TCNJ in determining which Contractor shall be awarded Project work. It is further understood that TCNJ has sole discretion at any time to terminate, delay or suspend the work, in whole or part, on this Project.

**SECTION 6. AVAILABILITY AND APPLICABILITY TO ALL SUCCESSFUL BIDDERS**

The Unions agree that this Agreement will be made available to, and will fully apply to any successful bidder for Project work who becomes signatory thereto, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder are, or are not, members of any unions. This Agreement shall not apply to the work of any Contractor, which is performed at any location other than the Project site, as defined in Article 3, Section 1.

**ARTICLE 3 - SCOPE OF THE AGREEMENT**

The Project work covered by this Agreement shall be defined and limited by the following sections of this Article.

## **SECTION 1: THE WORK**

This Agreement shall apply to the following on-site construction work and shall be binding on all persons (subject to the "Excluded Employees" listed below) performing on-site Project work, defined to include that work performed within the area of disturbance delineation as depicted on the bid documents line of the Project, as is further delineated in Exhibit A.

The scope of work is confined to the on-site Project work contained in the scope of the General Contractor's final construction contract.

## **SECTION 2. EXCLUDED EMPLOYEES**

The following persons are not subject to the provisions of this Agreement, even though performing work on the Project:

- A. Superintendents, supervisors (excluding superintendents and general supervisors and forepersons specifically covered by a craft's CBA), engineers, inspectors and testers (excluding divers specifically covered by a craft's CBA), quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, non-manual employees, architects; commissioning agents; individuals performing balancing and all professional, engineering, administrative and management persons;
- B. Employees of Owner or any State agency, authority or entity or employees of any municipality or other public employer;
- C. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery, unless such offsite operations are covered by the New Jersey Prevailing Wage Act (for example, by being dedicated exclusively to the performance of the public works contract or building project and are adjacent to the site of work), or involved in deliveries to and from the Project site, excepting local deliveries of all major construction materials including fill, ready mix, concrete and cement, asphalt and other items which are covered by this Agreement.

- D. Employees of any Contractor, excepting those performing manual, on-site construction labor who will be covered by this Agreement;
- E. Employees engaged in on-site equipment warranty.
- F. Employees engaged in geophysical testing (whether land or water) other than boring for core samples;
- G. Employees engaged in laboratory or specialty testing or inspections;
- H. Employees engaged in ancillary Project work performed by third parties such as electric utilities, gas utilities, telephone utility companies, and railroads;
- I. Employees of “Artisans”, understood to mean individuals or entities whom Owner may (or may not) employ directly to create unique, one-of-a-kind decorative elements, including architectural finishes, for incorporation into the Project. The design, illustration, and detailing of these one-of-a-kind decorative elements can only be fully completed in the field and can only be performed by that individual or entity. The duties of Artisans shall be to direct tradespeople, as well as provide assistance in the unloading, assembly, installation, and distribution of unique, one-of-a-kind decorative elements as defined above. Artisans shall perform all design, illustration, and detailing work and all final adjustments, finishing touches, and final painting of such one-of-a-kind decorative elements, provided they are assisted by a trades person.
- J. Maintenance personnel employed by Owner or employees of any vendor or contractor employed or engaged by Owner in maintenance activities related to the Owner’s permanent occupancy and operation of any of the facilities covered by this Agreement in its capacity as Owner.

- K. Employees engaged in the delivery and installation of Non-Fixture Lab Equipment, including all loose equipment on countertops and floors, air/gas tanks strapped to walls, scientific equipment, microscopes, etc.
- L. Employees engaged in the delivery and installation of all owner-supplied loose equipment/furniture relocated from existing campus locations, including but not limited to desks, chairs, file cabinets, bookcases, tables, computers, tack boards, cork boards, and loose (plug and play) equipment.
- M. Employees of Specialty Vendors, including the movers of any equipment/furniture relocated from another campus location to the STEM building.

The Unions recognize Owner and its Vendors will be actively involved in supervisory roles in the installation/setup, checkout, startup, testing, inspection and training on telephone, video, audio, computer, and other proprietary systems and equipment including signs, graphics and unique project amenities, both interior and exterior to be installed in the Project and in connection with such Construction Work. Owner, its Tenants and Vendors and their respective employees will be working in close proximity to union members who will not consider the presence of these employees to be a violation of this Agreement. The Unions agree that employees or representatives of Owner and its Vendors or manufacturers' representatives may train and/or orient their operation employees on equipment, even if the equipment or system has not been formally turned over to them. Individuals performing the tasks as related to the items set forth in this paragraph will notify Owner and the Contractor's job foreman in the vicinity prior to undertaking such tasks.

It is agreed and understood that for all low-voltage telephone and data systems, covered work shall include all "behind the wall" infrastructure cabling and wiring, terminations at the floor and wall outlets, terminations at terminal strips in corridors and rooms, conduits/boxes at walls, cable trays in corridors and rooms, and work relating to the provision of 110 volt power and higher for powering up control devices, but shall exclude all other communication/data wiring in corridors and rooms and electrical closets.

### **SECTION 3. NON-APPLICATION TO CERTAIN ENTITIES**

This Agreement shall not apply to the parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor that do not perform work on this Project. It is agreed, for the purposes of this Agreement only, that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status between the Owner and/or any Contractor. The Agreement shall further not apply to the Owner or any other state or county agency, authority, or other municipal or public entity and nothing contained herein shall be construed to prohibit or restrict the Owner or its employees of any other state authority, agency or entity and its employees from performing on or off-site work related to the Project. As the contracts which comprise the Project work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned in writing (copy to Local Union involved) by the General Contractor for performance under the terms of this Agreement.

## **ARTICLE 4 - UNION RECOGNITION AND EMPLOYMENT**

### **SECTION 1. PRE-HIRE RECOGNITION**

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees who are performing on-site Project work within the scope of this Agreement as defined in Article 3.

### **SECTION 2. UNION REFERRAL**

A. The Contractors agree to hire Project, craft employees covered by this Agreement through the job referral systems and hiring halls (where the referrals meet the qualifications set forth in items 1, 2, and 4 subparagraph B) established in the Local Unions' area collective bargaining agreements. Notwithstanding this, the Contractors shall have sole rights to determine the competency of all referrals; the number of employees required (except with regard to pile driving); the selection of employees to be laid-off (subject to the applicable procedures in the CBA for permanent and/or temporary layoffs and except as provided in Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union, subject to the show-up payments

required in the applicable CBA. In the event that a Local Union is unable to fill any request for qualified employees within a 48-hour period after such requisition is made by a Contractor (Saturdays, Sundays, and holidays excepted), the Contractor may employ qualified applicants from another competent source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of the Project, craft employees hired within its jurisdiction from any source other than referral by the Union.

B. A Contractor may request by name, and the Local Union will honor, referral of persons who have applied to the Local Union for Project work and who meet the following qualifications as determined by a Committee of 3 designated, respectively, by the applicable Local Union, the General Contractor and a mutually selected third party or, in the absence of agreement, the permanent arbitrator (or designee) designated in Article 7:

- (1.) possess any license required by New Jersey law for the Project work to be performed;
- (2.) have worked a total of at least 1000 hours in the Construction craft during the prior 3 years;
- (3.) were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award;
- (4.) have demonstrated ability to safely perform the basic function of the applicable trade.

No more than 12 per centum of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above (any fraction shall be rounded to the next highest whole number).

C. A certified MBE/WBE Contractor may request from the Workforce Coordinator, through the General Contractor, an exception to, and waiver of, the above per centum limitation upon the number of its employees to be hired through the special provisions of Section 2.B

above. This exception is based upon hardship and demonstration by the Contractor that the Project work would be the Contractor's only job and that it would be obliged to lay off qualified minority and female employees if they were not permitted to perform work on the Project. The exception and waiver are also conditioned upon the employees meeting the qualifications as set forth in Section 2.B above.

### **SECTION 3. NON-DISCRIMINATION IN REFERRALS**

The Unions represent that their hiring halls and referral systems will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations, which require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.

### **SECTION 4. MINORITY AND FEMALE REFERRALS**

In the event a Union either fails, or is unable, to refer qualified minority or female applicants in percentages equaling Project affirmative action goals that may be required by law, Contractors may employ qualified minority or female applicants from any other available source as Apprentice Equivalents. Apprentice Equivalents will have completed a Department of Labor-approved training program, applied to take a construction Apprenticeship test, and will be paid at not less than the applicable equivalent Apprentice rate. With the approval of the Local Administrative Committee (LAC), experience in construction related areas may be accepted as meeting the above requirements.

### **SECTION 5. CROSS AND QUALIFIED REFERRALS**

The Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified craft employees to fulfill the requirements of the Contractor.

## **SECTION 6. UNION DUES / WORKING ASSESSMENTS**

All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable CBA, but only for the period of time during which they are performing on-site Project work and only to the extent of rendering payment of the applicable union dues and assessments uniformly required for union membership in the Local Unions signatory to this Agreement, which represents the craft in which the employee is performing Project work. No employee shall be discriminated against at the Project site because of the employee's union membership or lack thereof. In the case of unaffiliated employees, the dues payment can be received by the Unions as a working assessment fee.

## **SECTION 7. CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractors except where otherwise provided by specific provisions of an applicable CBA. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local CBA prohibits a foreperson from working when the craftsman he is leading exceed a specified number.

## **ARTICLE 5 - UNION REPRESENTATION**

### **SECTION 1. LOCAL UNION REPRESENTATIVE**

Each Local Union representing on-site Project employees shall be entitled to designate in writing (copy to General Contractor) names of representatives, including the Business Manager, who shall be afforded access to the Project.

### **SECTION 2. STEWARDS**

(a) Each Local Union shall have the right to designate a working journey person as a Steward and an alternate, and shall notify the General Contractor of the identity of the designated Steward (and alternate) prior to the assumption of such duties.

Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. There will be no non-working Stewards on the Project.

(b) In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's Contractor and, if applicable, subcontractors of that Contractor, but not with the employees of any other Contractor. The Contractor will not discriminate against the Steward in the proper performance of Union duties.

(c) The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime, except pursuant to a CBA provision providing procedures for the equitable distribution of overtime.

### **SECTION 3. LAYOFF OF A STEWARD**

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a CBA, such provisions shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

## **ARTICLE 6 - MANAGEMENT'S RIGHTS**

### **SECTION 1. RESERVATION OF RIGHTS**

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their Project operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and the qualifications therefor; the promotion, transfer, layoff of its employees; or the discipline or discharge for just cause of its employees; the assignment and schedule of work; the promulgation of reasonable Project work rules; and, the requirement,

timing and number of employees to be utilized for overtime work. No rules, customs, or practices, which limit or restrict productivity or efficiency of the individual, as determined by the General Contractor, and/or joint working efforts with other employees [please explain], shall be permitted or observed.

## **SECTION 2. MATERIALS, METHODS & EQUIPMENT**

There shall be no limitations or restriction upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tool, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-out or testing of specialized or unusual equipment or facilities as designated by the Contractor. Notwithstanding the foregoing statement of contractor rights, prefabrication issues relating to work traditionally performed at the job site shall be governed pursuant to the terms of the applicable CBA. There shall be no restrictions as to work, which is performed off-site for the Project, except for 1) offsite operations work covered under the New Jersey Prevailing Wage Act or 2) done in a fabrication center, tool yard, or batch plant dedicated exclusively to the performance of work on the Project, and located adjacent to the "site of work".

## **ARTICLE 7 - WORK STOPPAGES AND LOCKOUTS**

### **SECTION 1. NO STRIKES-NO LOCKOUT**

There shall not be strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other disruptive activity at the Project for any reason by any Union or employee against any Contractor or employer while performing work at the Project. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the operation of the existing free flow of traffic in the project area. Failure of any Union or employee to cross any picket line established by any union, signatory or non-signatory

to this Agreement, or the picket or demonstration line of any other organization, at or in proximity to the Project site is a violation of this Article. There shall be no lockout at the Project by any signatory Contractor. Contractors and Unions shall take all steps necessary to ensure compliance with this Section 1 and to ensure uninterrupted construction and the free flow of traffic in the project area for the duration of this Agreement.

## **SECTION 2. DISCHARGE FOR VIOLATION**

A Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

## **SECTION 3. NOTIFICATION**

If a Contractor contends that any Union has violated this Article, it will notify the appropriate district or area council of the Local Union involved advising of such fact, with copies of the notification to the Local Union and the BTC. The district or area council, and the BTC shall each instruct, order and otherwise use their best efforts to cause the employees, and/or the Local Unions to immediately cease and desist from any violation of this Article. A district or area council, or the BTC complying with these obligations shall not be liable for the unauthorized acts of a Local Union or its members.

## **SECTION 4. EXPEDITED ARBITRATION**

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity) that may be brought.

- a. A party invoking this procedure shall notify J.J. Pierson Jr, Esq., at 51 JFK Parkway, First Floor West, Short Hills, New Jersey 07078, telephone number (973) 359-8100, fax number (973) 359-8161, who shall serve as arbitrator under this expedited arbitration procedure. In the event that J.J. Pierson is unable to serve, a party invoking this procedure shall notify Gary Kendellen, who shall serve as arbitrator under this expedited procedure. Copies of such notification will be simultaneously

sent to the alleged violator and, if a Local Union is alleged to be in violation, its International, the BTC, and the General Contractor.

- b. The arbitrator shall thereupon, after notice as to time and place to the Contractor, the General Contractor the Local Union involved, and the BTC, hold a hearing within 48 hours of receipt of the notice invoking the procedure it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice to the district or area council required by Section 3 above. Hearings shall be held at the jobsite or at the Newark office of the New Jersey State Board of Mediation, as directed by the arbitrator.
- c. All notices pursuant to this Article may be by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the arbitrator, Contractor or Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.
- d. The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the arbitrator shall issue a cease and desist award (“Award”) restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved solely for court proceedings, if any. The Award shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

- e. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of the Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union or Contractor involved. In any court proceeding to obtain a temporary or preliminary order enforcing the arbitrator's Award as issued under this expedited procedure, the involved Union and Contractor waive their right to a hearing and agree that such proceedings may be ex parte, provided notice is given to opposing counsel. Such agreement does not waive any party's right to participate in a hearing for a final court order of enforcement or in any contempt proceeding.
  
- f. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.
  
- g. The fees and expenses of the arbitrator shall be equally divided between the involved Contractor and Union.

## **SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION**

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

## **ARTICLE 8. - LOCAL ADMINISTRATIVE COMMITTEE (LAC)**

### **SECTION 1. MEETINGS**

The Local Administrative Committee (LAC) will meet on a regular basis to 1) implement and oversee the Agreement procedures and initiatives; 2) monitor the effectiveness of the Agreement; and 3) identify opportunities to improve efficiency and work execution.

### **SECTION 2. COMPOSITION**

The LAC will be co-chaired by the President of the Council or his designee, and designated official of the General Contractor. It will be comprised of representatives of the signatory Unions and Contractors on the Project.

## **ARTICLE 9 - GRIEVANCE & ARBITRATION PROCEDURE**

### **SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES**

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure of the steps described below; provided, in all cases, that the question, dispute or claim arose during the term of this Agreement.

#### Step 1:

(a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union business representative or job steward give notice of the claimed violation to the work site representative of the involved Contractor. To be timely, such notice of the grievance must be given within 7 calendar days after the act, occurrence, or event giving rise to the grievance, or after the act, occurrence or event became known or should have become known to the Union. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may,

within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor and the General Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, employee and Contractor directly involved, unless the settlement is accepted in writing, by the General Contractor, as creating a precedent.

(b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article 7, Section 1) with any other signatory to this Agreement and, if after conferring, a settlement is not reached within 7 calendar days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

Step 2:

The Business Manager or designee of the involved Local Union, together with representatives of the BTC, the involved Contractor, and the General Contractor shall meet in Step 2 within 5 calendar days of the written grievance to arrive at a satisfactory settlement.

Step 3:

(a) If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within 14 calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants), to the next available arbitrator of the panel of arbitrators consisting of J.J. Pierson Jr., Esq., Gary Kendellen and Wellington Davis, who shall serve as arbitrator under this expedited procedure. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. Hearings shall be held at the jobsite or at the Newark office of the New Jersey State Board of Mediation, as directed by the arbitrator. The decision of the arbitrator shall be final and binding on the involved Contractor, Local Union and employees, and the fees and expenses of such arbitrator shall be borne equally by the involved Contractor and Local Union.

(b) Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by written consent of the General Contractor, involved Contractor and involved Local Union at the particular step where the extension is agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

## **SECTION 2. LIMITATION AS TO RETROACTIVITY**

No arbitration decision or award may provide retroactivity of any kind exceeding 30 calendar days prior to the date of service of the written grievance on the General Contractor and the involved Contractor and Local Union.

## **SECTION 3. PARTICIPATION BY GENERAL CONTRACTOR**

The General Contractor shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at the General Contractor's election, may participate in full in all proceedings at these Steps, including Step 3 arbitration.

# **ARTICLE 10 - JURISDICTIONAL DISPUTES**

## **SECTION 1. NO DISRUPTIONS**

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractors. No jurisdictional dispute shall excuse a violation of Article 7.

## **SECTION 2. ASSIGNMENT**

A. There shall be a mandatory pre-job markup / assignment meeting prior to the commencement of any work. Attending such meeting shall be designated representatives of the Union signatories to this Agreement, the General Contractor, and the involved Contractors. Best

efforts will be made to schedule the pre-job meeting in a timely manner after Notice to Proceed is issued but not later than 30 days prior to the start of the Project.

B. All Project construction work assignments shall be made by the Contractor according to the criteria set forth in Section 3, Subsection D 1-3.

C. When a Contractor has made an assignment of work, he shall continue the assignment without alteration unless otherwise directed by an arbitrator or there is agreement between the National or International Unions involved. Claims of a change of original assignment shall be processed in accordance with Article I of the Procedural Rules of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("the Plan").

D. In the event that a Union involved in the change of original assignment dispute is an affiliate of a National or International Union that is not affiliated with the Building and Construction Trades Department and does not wish to process a case through the Plan, the parties shall mutually select one of the following Arbitrators: Arbitrator J.J. Pierson, Arbitrator Richard Hanft or Arbitrator Andy Douglas and submit the dispute directly to the selected arbitrator. The selected arbitrator shall determine whether the case requires a hearing or may be decided upon written submissions. In rendering his determination on whether there has been a change of original assignment, the Arbitrator shall be governed by the following:

1. The Contractor who has the responsibility for the performance and installation shall make a specific assignment of the work which is included in his contract to a particular Union(s). For instance, if contractor A subcontracts certain work to contractor B, then contractor B shall have the responsibility for making the specific assignments for the work included in his contract. If contractor B, in turn, shall subcontract certain work to contractor C, then contractor C shall have the responsibility for making the specific assignment for the work included in his contract. After work has been so assigned, such assignment will be maintained even though the assigning contractor is replaced and such work is subcontracted to another contractor. It is a violation of the Agreement for the Contractor to hold up disputed work or shut down a project because of a jurisdictional dispute.

2. When a Contractor has made an assignment of work, he shall continue the assignment without alteration unless otherwise directed by an arbitrator or there is agreement

between the National or International Unions involved.

a. Unloading and/or handling of materials to stockpile or storage by a trade for the convenience of the responsible Contractor when his employees are not on the job site, or in an emergency situation, shall not be considered to be an original assignment to that trade.

b. Starting of work by a trade without a specific assignment by an authorized representative of the responsible Contractor shall not be considered an original assignment to that trade, provided that the responsible Contractor, or his authorized representative, promptly, and, in any event, within eight working hours following the start of work, takes positive steps to stop further unauthorized performance of the work by that trade.

### **SECTION 3. PROCEDURE FOR SETTLEMENT OF DISPUTES**

A. Any Union having a jurisdictional dispute with respect to Project work assigned to another Union will submit through its International the dispute in writing to the Administrator of the Plan within 72 hours and send a copy of the letter to the other Union involved, the Contractor involved, the General Contractor, the BTC, and the district or area councils of the unions involved. Upon receipt of a dispute letter from any Union, the Administrator will invoke the procedures set forth in the Plan to resolve the jurisdictional dispute. The jurisdictional dispute letter shall contain the information described in Article IV of the Procedural Rules of the Plan.

B. Within 5 calendar days of receipt of the dispute letter, there shall be a meeting of the General Contractor, the Contractor involved, the Local Unions involved and designees of the BTC and the district or area councils of the Local Unions involved for the purpose of resolving the jurisdictional dispute.

C. In order to expedite the resolution of jurisdictional disputes, the parties have agreed in advance to mutually select one of the following designated arbitrators: Arbitrator J.J. Pierson, Arbitrator Richard Hanft or Arbitrator Andy Douglas to hear all unresolved jurisdictional disputes arising under this Agreement. All other rules and procedures of the Plan shall be followed. If none of the three arbitrators is available to hear the dispute within the time limits of the Plan, the Plan's arbitrator selection process shall be utilized to select another arbitrator.

D. In the event that a Union involved in the dispute is an affiliate of a National or International Union that is not affiliated with the Building and Construction Trades Department and does not wish to process a case through the Plan as described in paragraphs A-C above, the parties to the dispute shall mutually select one of the following Arbitrators: Arbitrator J.J. Pierson, Arbitrator Richard Hanft or Arbitrator Andy Douglas to hear the dispute and shall submit the dispute directly to the selected arbitrator. The time limits for submission and processing disputes shall be the same as provided elsewhere in this Section. The selected arbitrator shall schedule the hearing within seven business days from the date of submission. If he cannot hear the case within the required timeframe, one of the other arbitrators will be selected to hear the case unless all parties to the dispute agree to waive the seven day time limit. In rendering his decision, the arbitrator shall determine:

1. First whether a previous agreement of record or applicable agreement, including a disclaimer agreement, between the National and International Unions to the dispute governs;
2. Only if the arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case, the arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality.
3. Only if none of the above criteria is found to exist, the arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.

The arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are

relied upon, the arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The arbitrator's decision shall only apply to the job in dispute.

Each party to the arbitration shall bear its own expense for the arbitration and agrees that the fees and expenses of the arbitrator shall be borne by the losing party or parties as determined by the arbitrator.

E. The arbitrator shall render a short-form decision within 5 days of the hearing based upon the evidence submitted at the hearing, with a written decision to follow within 30 days of the close of hearing.

F. This Jurisdictional Dispute Resolution Procedure will only apply to work performed by Local Unions that represent workers employed on the Project.

G. Any Local Union involved in a jurisdictional dispute on this Project shall continue working in accordance with Section 2 above and without disruption of any kind.

#### **SECTION 4. AWARD**

Any award rendered pursuant to this Article and the Plan shall be final and binding on the disputing Local Unions and the involved Contractor on this Project only and may be enforced in accordance with the provisions of Article VII of the Plan. Any award rendered pursuant to the alternate procedures of this Article shall be final and binding on the disputing Local Unions and the involved Contractor on this Project only, and may be enforced in any court of competent jurisdiction. Such award or resolution shall not establish a precedent on any other construction work not covered by this Agreement. In all disputes under this Article, the General Contractor and the involved Contractors shall be considered parties in interest.

#### **SECTION 5. LIMITATIONS**

The arbitrator shall have no authority to assign work to a double crew, that is, to more employees than the minimum required by the Contractor to perform the work involved; nor to assign work to employees who are not qualified to perform the work involved; nor to assign work being performed by non-union employees to union employees. This does not prohibit the establishment, with the agreement of the involved Contractor, of composite crews where more than 1 employee is needed for the job. The aforesaid determinations shall decide only to whom

the disputed work belongs.

## **SECTION 6. NO INTERFERENCE WITH WORK**

A. There shall be no interference or interruption of any kind with the work of the Project while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the Contractors until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award. Any claims of a violation of this section shall be submitted and processed in accordance with the impediment to job progress provisions of the Plan.

B. In the event a Union alleged to have engaged in an impediment to job progress is an affiliate of a National or International Union that is not affiliated with the Building and Construction Trades Department and does not wish to have the impediment to job progress charge processed through the Plan, the parties to the dispute shall mutually select one of the three arbitrators designated in this Article to hear the dispute. The selected arbitrator shall schedule the hearing within two business days from the date of submission. If he cannot hear the case within the required timeframe, one of the other arbitrators shall be selected by the parties to hear the case unless all parties to the dispute agree to waive the two day time limit. The sole issue at the hearing shall be whether or not a violation of this Section has in fact occurred, and the arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages. The arbitrator's decision shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within 15 days, but its issuance shall not delay compliance with, or enforcement of, the decision. The arbitrator may order cessation of the violation of this Section and other appropriate relief, and such decision shall be served on all parties by facsimile upon issuance. Each party to the arbitration shall bear its own expense for the arbitration and agrees that the fees and expenses of the arbitrator shall be borne by the losing party or parties as determined by the arbitrator.

## **ARTICLE 11 - WAGES AND BENEFITS**

### **SECTION 1. CLASSIFICATION AND BASE HOURLY RATE**

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the base hourly wage rates for those classifications as specified in the attached CBAs. Recognizing, however, that special conditions may exist or occur on the Project, the parties, by mutual agreement may establish rates and/or hours for one or more classifications, which may differ from the CBAs. Parties to such agreements shall be the General Contractor, the Contractor involved, the involved Local Unions and the BTC.

### **SECTION 2. EMPLOYEE BENEFIT FUNDS**

A. Contractors agree to pay contributions on behalf of all employees covered by this Agreement to the established employee benefit funds in the amounts designated in the appropriate CBA. Bona fide jointly trusted fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added.

B. Contractors agree to be bound by the written terms of the legally established Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to work done on this Project and only for those employees to whom this Agreement requires such benefit Payments.

C. Should any contractor or sub-contractor become delinquent in the payment of contributions to the fringe benefit funds, then the subcontractor at the next higher tier, or upon notice of the delinquency claim from the Union or the Funds, agrees to withhold from the subcontractor such disputed amount from the next advance, or installment payment for work performed and the amount claimed and owed will be paid within thirty (30) days after receipt of the notification by the General Contractor, if not paid prior to said date by the delinquent contractor/subcontractor.

**ARTICLE 12 - HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND  
HOLIDAYS**

**SECTION 1. WORK WEEK AND WORK DAY**

A. The standard work week shall consist of 40 hours of work at straight time rates per one of the following schedules:

1) Five-Day Work Week: Monday-Friday, 5 days, 8 hours plus 1/2 hour unpaid lunch period each day.

2) Four-Day Work Week: Monday-Thursday; 4 days, 10 hours plus 1/2 hour unpaid lunch period each day.

If workers on the Project are unable to perform assigned tasks during the normal work week as a result of severe weather or other factor outside the control of the Parties, Contractors may designate a Saturday "make up day" (in the event of a 5-day work week) or a Friday "make up day" (in the event of a 4-day work week) for the performance of such tasks. Subject to the prevailing wage rate designated by the New Jersey Commissioner of Labor, any work performed on a designated make-up day shall be paid at the straight time wage rate.

B. The Day Shift shall commence between the hours of 7:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 7:30 p.m. Starting and quitting times shall occur at the employees' place of work as may be designated by the Contractors.

C. Scheduling - Contractors shall have the option of scheduling either a five-day work week, or four-day work week (when mutually agreed upon on a craft-by-craft basis). Contractors shall also have the option to set the work day hours consistent with Project requirements, the Project schedule, and minimization of interference with school operations traffic flow. When conditions beyond the control of the Contractors, such as severe weather, power failure, fire or natural disaster, prevent the performance of Project work on a regularly scheduled work day, Contractors may, with mutual agreement of the Local Union on a craft-by-craft basis, schedule Friday (where on 4, 10's) during the calendar week in which a workday was

lost, at straight time pay; providing the employees involved work a total of 40 hours or less during that work week.

D. Notice – Contractor shall provide not less than 5 days prior notice to the Local Union involved as to the work week and work hours schedules to be worked or such lesser notice as may be mutually agreed upon.

E. Special Events: Notwithstanding any other provision of the PLA, Contractors shall be permitted to vary the hours of the standard work week set forth in Section 1(a), such that no construction work shall be performed on the Project on the following days.

The two days each year on which TCNJ commencement takes place (subject to change by TCNJ, currently scheduled for May 21, 2015 and May 22, 2015; May 19, 2016 and May 20, 2016; and May 18, 2017 and May 19, 2017);

The day each year on which TCNJ convocation takes place (subject to change by TCNJ, currently scheduled for August 24, 2015, August 29, 2016, and August 28, 2017); and

The first weekday each year on which TCNJ hosts the New Jersey Special Olympics (subject to change by TCNJ, currently scheduled for May 29, 2015, May 27, 2016, and May 26, 2017).

Such days shall not be treated as holidays otherwise subject to the provisions of Section 4 of this Article.

## **SECTION 2. OVERTIME**

Overtime pay for hours outside of the standard work week and work day, described in paragraph A above, shall be paid in accordance with the applicable CBA. There will be no restriction upon the Contractor's scheduling of overtime or the non-discriminatory designation of employees who shall be worked, except as noted in Article 5, Section 2. There

shall be no pyramiding of overtime pay under any circumstances. Contractors shall have the right to schedule work so as to minimize overtime.

### **SECTION 3. SHIFTS**

A. Flexible Schedules - Scheduling of shift work shall remain flexible in order to meet Project schedules and existing Project conditions including the minimization of interference with school operations. It is not necessary to work a day shift in order to schedule a second shift. Shifts must be worked a minimum of five consecutive work days, must have prior approval of the General Contractor and must be scheduled with not less than five work days notice to the Local Union.

B. Second/Shift - The second shift (starting between 2 p.m. and 8p.m.) shall consist of 8 hours work (or 10 hours of work) for an equal number of hours pay at the straight time rate plus 15% in lieu of overtime and exclusive of a 1/2 hour unpaid lunch period.

C. Flexible Starting Times – Shift starting times will be adjusted by Contractors as necessary to fulfill Project requirements subject to the notice requirements of Paragraph A.

D. Four Tens - When working a four-day work week, the standard work day shall consist of 10 hours work for 10 hours of pay at the straight time rate exclusive of an unpaid 1/2 hour meal period and regardless of the starting time. This provision is applicable to night shifts only, and such night shifts are subject to the shift differential in paragraph B above.

E. It is agreed that when project circumstances require a deviation from the above shifts, the involved Unions and Contractors shall adjust the starting times of the above shifts or establish shifts which meet the project requirements. It is agreed that neither party will unreasonably withhold their agreement.

**SECTION 4. HOLIDAYS**

A. Schedule - There shall be 8 recognized holidays on the Project:

- |                |                  |
|----------------|------------------|
| New Years Day  | Labor Day        |
| Presidents Day | Veterans Day     |
| Memorial Day   | Thanksgiving Day |
| Fourth of July | Christmas Day    |

\*Work shall be scheduled on Good Friday pursuant to the craft's CBA.

All said holidays shall be observed on the dates designated by New Jersey State Law. In the absence of such designations, they shall be observed on the calendar date except those holidays which occur on Sunday shall be observed on the following Monday. Holidays falling on Saturday are to be observed on the preceding Friday.

B. Payment - Regular holiday pay, if any, and/or premium pay for work performed on such a recognized holiday shall be in accordance with the applicable CBA.

C. Exclusivity - No holidays other than those listed in Section 4-A above shall be recognized nor observed except in Presidential Election years when Election Day is a recognized holiday.

**SECTION 5. REPORTING PAY**

A. Employees who report to the work location pursuant to regular schedule and who are not provided with work or whose work is terminated early by a Contractor, for whatever reason, shall receive minimum reporting pay in accordance with the applicable Schedule A. The Parties agree that the payment of "show up" time is not applicable if an employee refuses to perform his or her assigned tasks, except when TCNJ and the union mutually agree that a condition exists that would prevent the employee from safely performing such tasks.

B. When an employee, who has completed their scheduled shift and left

the Project site, is "called back" to perform special work of a casual, incidental or irregular nature, the employee shall receive pay for actual hours worked with a minimum guarantee, as may be required by the applicable CBA.

C. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of a Contractor's invocation of Section 7 below, they shall be paid only for the actual time worked.

D. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty, high time or other special payments of any kind.

E. There shall be no pay for time not actually worked except as specifically set forth in this Agreement and except where an applicable CBA requires a full weeks pay for forepersons.

## **SECTION 6. PAYMENT OF WAGES**

A. Payday - Payment shall be made by check, drawn on a New Jersey bank with branches located within commuting distance of the job site. Paychecks shall be issued by Contractors at the job site by 10 a.m. on Thursdays. In the event that the following Friday is a bank holiday, paychecks shall be issued on Wednesday of that week. Not more than 3 days wages shall be held back in any pay period. Paycheck stubs shall contain the name and business address of the Contractor, together with an itemization of deductions from gross wages.

B. Termination-Employees who are laid-off or discharged for cause shall be paid in full for that which is due them at the time of termination. Contractors shall also provide the employee with a written statement setting forth the date of lay off or discharge.

## **SECTION 7. EMERGENCY WORK SUSPENSION**

A Contractor may, if considered necessary for the protection of life and /or safety of employees or others, suspend all or a portion of Project Work. In such instances, employees

will be paid for actual time worked; provided, however, that when a Contractor request that employees remain at the job site available for work, employees will be paid for "stand-by" time at their hourly rate of pay.

#### **SECTION 8. INJURY/DISABILITY**

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall received no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties provided there is still work available on the Project for which the employee is qualified and able to perform.

#### **SECTION 9. TIME KEEPING**

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

#### **SECTION 10. MEAL PERIOD**

A Contractor shall schedule an unpaid period of not more than 1/2 hour duration at the work location between the 3<sup>rd</sup> and 5<sup>th</sup> hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable CBA.

#### **SECTION 11. BREAK PERIODS**

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location. Local area practice will prevail for coffee breaks that are not organized.

## **ARTICLE 13 - APPRENTICES**

### **SECTION 1. RATIOS**

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Subject to the prevailing wage rate designated by the New Jersey Commissioner of Labor, Contractors may utilize apprentices and such other appropriate classifications as are contained in the applicable Schedule A in a ratio not to exceed **33%** of the work force by craft (without regard to whether a lesser ratio is set forth in a CBA), unless the applicable CBA provides for a higher percentage. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate CBA.

### **SECTION 2. DEPARTMENT OF LABOR**

To assist the Contractors in attaining a maximum effort on this Project, the Unions agree to work in close cooperation with, and accept monitoring by, the New Jersey State and Federal Departments of Labor to ensure that minorities, women, or economically disadvantaged are afforded opportunities to participate in apprenticeship programs which result in the placement of apprentices on this Project. To further ensure that this Contractor effort is attained, up to 50% of the apprentices placed on this Project should be first year, minority, women or economically disadvantaged apprentices. The Local Unions will cooperate with Contractor request for minority, women or economically disadvantaged referrals to meet this Contractor effort.

## **ARTICLE 14 - SAFETY PROTECTION OF PERSON AND PROPERTY**

### **SECTION 1. SAFETY REQUIREMENTS**

Each Contractor will ensure that applicable OSHA requirements and other requirements set forth in the contract documents are at all times maintained on the Project and the employees and Unions agree to cooperate fully with these efforts. Employees must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and the Owner from injury or harm. Failure to do so will be grounds for discipline, including discharge.

### **SECTION 2. CONTRACTOR RULES**

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by Contractors for this Project. Such rules will be published and posted in conspicuous places throughout the Project.

### **SECTION 3. INSPECTIONS**

Contractors retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

## **ARTICLE 15 - NO DISCRIMINATION**

### **SECTION 1. COOPERATIVE EFFORTS**

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or age in any manner prohibited by law or regulation. It is recognized that special procedures maybe established by Contractors and Local Unions and the New Jersey State Department of Labor for the training and employment of persons who have not previously qualified to be employed on construction projects of the type covered by this Agreement. The parties to this Agreement will assist in such programs and agree to use their best efforts to ensure that the goals for female and minority employment are met on this Project.

## **SECTION 2. LANGUAGE OF AGREEMENT**

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

## **ARTICLE 16 - GENERAL TERMS**

### **SECTION 1. PROJECT RULES**

Contractors shall establish such reasonable Project rules as are appropriate for the good order of the Project, provided they do not violate the terms of this agreement. These rules will be explained at the pre-job conference and posted at the Project site and may be amended thereafter as necessary. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

### **SECTION 2. TOOLS OF THE TRADES**

The welding/cutting torch and chain fall, are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

### **SECTION 3. SUPERVISION**

Employees shall work under the supervision of the craft foreperson or general foreperson.

#### **SECTION 4. TEMPORARY SERVICES**

Unless there is active work ongoing at the Project, there shall be no requirement to man any aspect of the Project solely because: (a) safety lights, temporary heat, temporary ground heaters and pumps are left on during off-hours; or (b) equipment is charging during off-hours. Where there is active work ongoing at the Project during off-hours, temporary services shall be performed by trades employees assigned to other construction duties on the shift, within their trade jurisdiction.

If it is found that OSHA or New Jersey State regulations require a different manning of temporary or permanent heat, light, or power, those regulations will be complied with.

#### **SECTION 5. FULL WORK DAY**

Employees shall be at their staging area at the starting time established by the Contractor and shall be returned to their staging area by quitting time after performing their assigned functions under the supervision of the Contractor. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

#### **SECTION 6. COOPERATION**

The Contractor and the Unions will cooperate in seeking any NJS Department of Labor approvals that may be required for implementation of any terms of this Agreement.

### **ARTICLE 17 - SAVINGS AND SEPARABILITY**

#### **SECTION 1. THIS AGREEMENT**

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, the provision involved shall be rendered, temporarily or permanently, null and void but the remainder of the Agreement shall remain in full force and effect. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in construction where the

Contractor voluntarily accepts the Agreement. The parties to this Agreement will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be let in the future.

## **SECTION 2. THE BID SPECIFICATIONS**

In the event that the General Contractor's bid specifications, or other action, requiring that a successful bidder become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law such requirement shall be rendered, temporarily or permanently, null and void but the Agreement shall remain in full force and effect to the extent allowed by law. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in constructions where the Contractor voluntarily accepts the Agreement. The parties will enter in to negotiations as to modifications to the Agreement to reflect the court action taken and the intent of the parties for contracts to be let in the future.

## **SECTION 3. NON-LIABILITY**

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the Owner, any Contractor, or any signatory Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order, injunction or determination. Project bid specifications will be issued in conformance with court orders in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

## **SECTION 4. NON-WAIVER**

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to signatory Contractors and signatory Unions.

## **ARTICLE 18 - FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS**

### **SECTION 1. CHANGES TO AREA CONTRACTS**

A. CBAs shall continue to be in full force and effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements which are the basis for the CBAs notify the General Contractor in writing of the mutually agreed upon changes in provisions of such agreements which are applicable to the Project, and their effective dates.

B. It is agreed that any provisions negotiated into the CBAs will not apply to work on this Project if such provisions are less favorable to this Project than those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provisions be recognized or applied on this Project if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

C. Any disagreement between signatories to this Agreement over the incorporation into CBAs of provisions agreed upon in the renegotiations of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

### **SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS**

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Project by any Local Union involved in the renegotiations of Area Local Collective Bargaining Agreements nor shall there be any lock-out affecting the Project by any Local Unions during the course of such renegotiations.

## **ARTICLE 19 HELMETS TO HARDHATS**

The Contractors and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of

construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

The Contractors and Unions agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, .

**[GENERAL CONTRACTOR]**

\_\_\_\_\_

**MERCER/BURLINGTON BUILDING & CONSTRUCTION TRADES COUNCIL**

\_\_\_\_\_

Wayne P. DeAngelo, President

Mercer/Burlington Building & Construction Trades Council

\_\_\_\_\_

Operating Engineers

\_\_\_\_\_

Roofers

\_\_\_\_\_

Elevator Constructors

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Iron Workers

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Laborers

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Plasterers

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Bricklayers & Allied Crafts

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Electrical Workers

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Sheet Metal Workers

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Painters & Allied Crafts

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Pipe Trades

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Boilermakers

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Asbestos Workers

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Carpenters

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