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**Via Email and UPS Overnight Delivery**

Mr. Bruce Ciallella  
Senior Vice President  
New Jersey Economic Development Authority  
36 West State Street  
Trenton, New Jersey 08625

Dear Mr. Ciallella:

I am writing on behalf of NFI, L.P. (“NFI”) in response to your letter dated June 26, 2019. In that letter, you, on behalf of the New Jersey Economic Development Authority (“EDA”), asked that NFI respond to certain allegations made by the Governor’s Task Force on the EDA’s Tax Incentives established pursuant to Executive Order No. 52 (the “Task Force”) in its First Published Report dated June 17, 2019 (the “Report”), as well as certain allegations contained in the letter from Fredrick Potter, Vice President At-Large of the International Brotherhood of Teamsters dated June 13, 2019 to the EDA (the “Teamsters Letter”).

As you know, NFI, Conner Strong & Buckelew Companies, LLC (“CSB”) and The Michaels Organization, LLC (“TMO”) together coordinated the development of an office building located in Camden, New Jersey to house each of their corporate headquarters. For that reason, the three companies submitted their applications for tax credits pursuant to the Grow New Jersey Assistance Act, N.J.S.A. 34:1B-242 et. seq. (“Grow NJ”) at the same time. Because the applications were submitted and reviewed together, many of the issues raised in the Report are common to the three companies and considered collectively in the Report. For example, the Report’s conclusions relating to the companies’ alleged commitment to Camden and consideration of alternate locations rely on the same alleged “facts.”

**Background**

NFI is a fully integrated third-party global logistics and supply chain solutions provider. It serves customers around the world and across a variety of industries by providing engineered logistics solutions. NFI’s business lines include dedicated transportation, port drayage, warehousing and distribution, transloading, intermodal, brokerage, transportation management and global logistics services. NFI also has a significant real estate business that is focused on the

development and ownership of real property, particularly industrial property. NFI operates approximately 50 million square feet of warehouse and distribution space and nearly 4,000 tractors and 10,000 trailers throughout the United States and Canada, generating more than \$2 billion in annual revenue and employing more than 11,000 associates. NFI operates in 28 states and four Canadian provinces. Each business line is operated by a separately formed and maintained entity. NFI has been privately held by various members of the Brown family since its founding in Vineland, New Jersey in 1932.

At the time NFI filed its Application for Financial Assistance on October 24, 2016 (the "Application"), NFI's corporate headquarters employee base was spread among three separate buildings located in Cherry Hill, New Jersey and Voorhees, New Jersey. Until 2013, NFI maintained dual-headquarters in Cherry Hill, New Jersey and Vineland, New Jersey, with a third office in Voorhees, New Jersey. In May 2013, NFI closed its Vineland headquarters and relocated the corporate staff to its newly expanded Cherry Hill headquarters and the Voorhees office building, both of which buildings were, and continue to be, owned by the principals of NFI. In December 2014, as a result of the rapid growth in headcount, primarily in one of its business units, NFI considered moving such unit to an office building located at the Philadelphia Navy Yard, but ultimately decided to lease office space in a separate building located in Voorhees, New Jersey for an initial three-year term, with renewal options that would allow the lease to run through December 2024. It was not until the end of 2015, as NFI's headcount continued to rise dramatically (including as a result of a number of completed acquisitions) and space constraints became more apparent, that NFI gave serious consideration to the benefits of consolidating its three existing corporate offices into one building. However, there was no urgency to do so due to the availability of space within the buildings, the fact that the principals of NFI owned two of those buildings and the fact that NFI had significant lease flexibility at the third building.

On October 24, 2016, NFI submitted its Application with the EDA for tax credits under the Grow NJ program. After an extensive and lengthy review by the EDA staff and management, NFI's application was unanimously approved by the EDA Board on March 24, 2017. Upon receipt of that approval, the principals of NFI, together with CSB and TMO, commenced construction of their new Camden headquarters, each investing tens of millions of dollars of their own money in the project.

On October 18, 2017, NFI executed a Grow NJ approval letter with the EDA (the "Approval Letter"). Following such date, NFI obtained (a) site plan approval for the building, (b) site control through a lease with the landlord and (c) project financing for the construction of its office, as required by the Grow NJ Approval Letter. NFI has complied with all other requirements of the Grow NJ program, including the relevant prevailing wage and affirmative action obligations. NFI has met all conditions of approval that must be satisfied before an Incentive Agreement is provided by the EDA. On June 25, 2018, NFI submitted all of the required progress information to the EDA and requested the Incentive Agreement be provided. In addition to its submission of the progress information, NFI filed Project Status Update reports on September 22, 2017, March 23, 2018, September 24, 2018 and March 20, 2019, as required by the Approval Letter. On April 3, 2019, the EDA approved a modification to NFI's approval to permit the area of the qualified business facility estimated at the time of approval to reflect the actual building area upon the final design. Based on NFI's compliance with all of its obligations under the Approval Letter, NFI respectfully requests that the EDA provide it with an Incentive Agreement as required by the Approval Letter.

In June 2019, NFI completed the consolidation of its headquarters staff from its three Cherry Hill and Voorhees buildings into the new Camden building.

### **Lawsuits Involving NFI**

In the Report, the Task Force claims that NFI's Application "contained potential misrepresentations" for failing to disclose the existence of certain litigation. See Report, pp. 45-46. The Report further states that NFI may have misrepresented that all of the information contained in the application was true. See Report, p. 46. The Report specifically identifies the requirement that an applicant must disclose whether the "[A]pplicant, any officers or directors of Applicant or any Affiliates (collectively, the 'Controlled Group') [had] been found guilty, liable or responsible in any Legal Proceeding" for certain specified violations or conduct. See Report, p. 45. The term "Legal Proceeding" is defined in the Application as a "civil, criminal or administrative proceeding in a court or administrative tribunal in the United States, any territories thereof or foreign jurisdiction." The Report focuses on two categories of Legal Proceedings that the Task Force alleges NFI failed to disclose in its Application: (a) "violations of the governing hours or labor, minimum wage standards, and prevailing wage standards laws" (collectively, "Employment Legal Proceedings"); and (b) "a criminal conviction and guilty plea by [an] affiliate" of NFI. See Report, p. 46. Both claims made by the Task Force have no basis in law or fact.

### **Employment Legal Proceedings**

The EDA form application requires that an applicant answer a series of eleven background questions under the heading "Additional Background Information" relating to Legal Proceedings. The questions ask whether any members of the Controlled Group have been found guilty, liable or responsible in Employment Legal Proceedings and other specified Legal Proceedings. Although NFI has been party to litigation related to discrimination and wage and hour claims, and has settled various claims without admitting liability, it has not been "found guilty, liable or responsible" for such claims. For that reason, NFI correctly answered "No" to Questions 1 through 10. NFI inadvertently answered "No" to one such question, Question 11, for which the answer arguably should have been "Yes." However, in order to be transparent with respect to three of the questions for which NFI answered "No" (Questions, 5, 6 and 10.i.), and in response to Question 11, NFI submitted with its original Application filing a document titled "Supplement to Background Questions," in which it provided the following disclosure (the "Supplement"):

"Supplement to Question Numbers 5, 6, 10.i, & 11

With approximately 8,100 employees company-wide, NFI has been a party to employment-related litigation in the ordinary course of its business. Such litigation has involved, among other claims, allegations of discrimination and harassment. In resolving such litigation, NFI has not admitted any liability in such matters or that it committed any wrongdoing.

No member of the Controlled Group has been found guilty, liable, or responsible for any such claims.



No such litigation should be considered grounds for debarment or disqualification under relevant regulations.” See Exhibit A enclosed herewith.

As stated in the Supplement, due to its size and the nature of its business, NFI has been, and continues to be, subject to various Employment Legal Proceedings. With respect to its response to Question 11, regarding pending litigation, NFI included the Supplement as a reasonable way to acknowledge the existence of such litigation without listing each and every matter, especially in light of the fact that, regardless of the potential disposition of such matters, none of such proceedings should or would constitute a disqualifying event under Grow NJ regulations. With respect to Questions 5, 6 and 10.i., NFI filed the Supplement in order to clarify the fact that, although there have been Employment Legal Proceeding claims made against NFI, no members of the Controlled Group have been found guilty, liable or responsible in any such Legal Proceedings. Further, by providing the disclosure contained in the Supplement, the belief was that the EDA could request additional information with respect to any such litigation as it deemed necessary. In fact, as noted by the Task Force in the Report, the EDA did request information about certain past and existing litigation (see Report, p. 46), and NFI promptly responded to such requests with detailed summaries of such litigation, as well as a copy of the settlement agreement entered into in connection with one such matter. See Exhibit B enclosed herewith. As the Task Force well knows and acknowledges in its Report, most litigation can easily be discovered either by a google search or some other electronic means. See Report, p. 46. In light of such fact as well as NFI’s inclusion of the Supplement, it is clear that NFI did not intend to misrepresent the facts concerning Employment Legal Proceedings.

The Report fails to acknowledge that NFI filed the Supplement as part of the Application, which sets forth the existence of Employment Legal Proceedings and NFI’s position with respect to the disposition of such Legal Proceedings and any potential debarment or disqualification from eligibility under Grow NJ regulations. The Task Force inexplicably omits to acknowledge the filing of the Supplement and hardly acknowledges that NFI cooperated with the EDA in promptly responding to the EDA’s follow-up inquiries regarding litigation. Contrary to the Task Force’s findings in the Report, NFI’s inclusion of the Supplement and its responsiveness to the EDA’s follow-up inquiries are clear evidence that it did not intend to misrepresent the facts concerning Employment Legal Proceedings.

In the Teamsters Letter, Mr. Potter similarly alleges that NFI failed to disclose the existence of certain litigation that it believes was required to be disclosed in the Application. The Teamsters Letter accuses NFI of “conceal[ing] that the company was facing lawsuits alleging violations of laws protecting workers at the time of its Grow NJ application.” See Teamsters Letter, p.3. The Teamsters Letter also fails to acknowledge the filing of the Supplement. For the reasons described above and below, such accusations are without merit. As an aside, it is clear that the Task Force incorporated into its Report information contained in the Teamsters Letter, accepting it at face value without conducting any additional research into the allegations contained therein, even including references to litigation that is not responsive to the EDA’s application questions. The Teamsters Letter also attempts to confuse the reader by highlighting litigation and other claims involving companies acquired by NFI that pre-date NFI’s consummation of such acquisitions (*e.g.*, the California Cartage Company and its related companies, which NFI acquired nearly one year after the Application was filed).



For context, we believe it is important to provide the EDA with some pertinent background information about the Teamsters and their interest in engaging with the EDA in this matter. The Teamsters have for years utilized misinformation and false statements about California Cartage, NFI (both of which are non-union) and employers in general as part of their effort to grow their ever-shrinking ranks. As they have become more desperate to stem their losses, the Teamsters have become more aggressive in spreading such misinformation through any means available to them. In their letter, the Teamsters claim as their stated mission to hold companies applying for tax credits accountable for their alleged violations of laws. However, the Teamsters' true and ultimate goal is to unionize NFI's (and California Cartage's) trucking and warehousing workforces. The Teamsters' latest efforts to accomplish this goal stem from a failed organizing campaign of certain California Cartage warehouse workers, despite the fact that such employees had on two previous occasions overwhelmingly voted against unionization. The Teamsters' continuing campaign, including their engagement of a sympathetic member of Los Angeles City Council, ultimately led to the revocation of the lease for city-owned property and the closure of the warehouse earlier this year. The Teamsters now are seeking to "punish" California Cartage and NFI for such closure, the failure of their tactics and the harm caused to nearly 800 people who worked in or supported the now shuttered operation.

As described above, NFI included the Supplement with the Application with the clear intent of disclosing to the EDA that NFI was, in fact, party to employment litigation. The Supplement states the following: "NFI has been a party to employment-related litigation in the ordinary course of its business. Such litigation has involved, among other claims, allegations of discrimination and harassment." This statement clearly acknowledges the existence of Employment Legal Proceedings against NFI and served as an open invitation to the EDA to ask any questions with respect to such proceedings, which the EDA did on October 27, 2016, just four days after NFI filed the Application. However, in order to advance their ongoing agenda against NFI, the Teamsters Letter conveniently, and almost certainly intentionally, fails to acknowledge NFI's inclusion of the Supplement with the filing of its Application. The Teamsters Letter states that "making a knowing 'material representation that is false in connection with the negotiation, award or performance of a government contract,' including the incentive agreement into which the EDA enters with all recipients of Grow NJ financial assistance," is a criminal act punishable by imprisonment and the payment of restitution and fines. See Teamsters Letter, p. 8. Contrary to the Teamsters assertion, as NFI did not make a false representation in its Application with respect to the Employment Legal Proceedings based on the very fact that it disclosed the existence of such proceedings in the Supplement, no criminal act was committed by NFI.

#### Criminal Legal Proceeding

In its Report, the Task Force also claims that NFI's failure to identify a criminal conviction and guilty plea by Interactive Logistics, Inc. ("Interactive") in 2005 (the "Criminal Legal Proceeding") in response to, presumably, Questions 2 and 10(ix) highlights a potential misrepresentation by NFI and a potentially fraudulent CEO certification. See Report, pp. 46-47. NFI takes exception to the Task Force's unsupported assertion that the non-disclosure of Interactive's 2005 guilty plea constitutes a misrepresentation and fraudulent certification.

Simply stated, NFI answered the relevant questions accurately and did not disclose the Criminal Legal Proceeding because, based on the definition contained in the Application, Interactive was not an "Affiliate" of the Applicant. For purposes of the Additional Background

Information Questionnaire, “Affiliate” is specifically defined as “*persons* having an overt or covert relationship such that *any one of them* directly or indirectly *controls* or has the *power to control* another” (the “Questionnaire Definition”) (emphasis added). This is in stark contrast to the definition used in connection with the “affiliate chart” that is required to be submitted with the EDA listing the companies that would be contributing full-time employees or making a capital investment at the Qualified Business Facility. The definition used for the affiliate chart is “*an entity* that directly or indirectly controls, *is under common control with*, or *is controlled by* the business. Control exists in all cases in which the entity is a member of a controlled group of corporations....” (the “Chart Definition”) (emphasis added).

The EDA, through its form of application, specifically and intentionally provides different definitions for the same term that is used for different purposes. The EDA could have provided that only the Chart Definition apply throughout the application form. Instead, it specifically provided for two separate definitions, each to be used for different purposes. The Questionnaire Definition, specified for use in connection with the Questionnaire and at issue here, specifically refers only to “persons” (*i.e.*, individual human beings), instead of “entit[ies]” as provided in the Chart Definition. In this instance, for purposes of the Application, such “persons” would be Sidney Brown, Irwin Brown and Jeffery Brown, the individuals who control or have the power to control the Applicant and other NFI-related entities. Interactive would not be considered an Affiliate as it is an entity. And none of Sidney Brown, Irwin Brown or Jeffery Brown, who would be considered the Affiliates of the Applicant using the definition provided in the Questionnaire, has been found guilty, liable or responsible in any legal proceeding described in the Questionnaire, including the Criminal Legal Proceeding.

Further, as provided in the Questionnaire Definition, an Affiliate has to “control[] or have the power to control another.” In this case, even if Interactive were considered a “person” (in sharp contrast to the Questionnaire Definition in light of the Chart Definition specifically referring to an “entity”), Interactive did not control or have the power to control the Applicant, both because (a) NFI is, and has always been, controlled only by its general partner, NFI GP, LLC (which in turn is controlled by the members of the Brown family) and (b) because the Applicant was formed in December 2012, one year after Interactive was dissolved, meaning their existences never overlapped and neither held an ownership or control interest in the other—therefore control could not have existed. In addition, as the Questionnaire Definition does not contain language regarding parties being “under common control with” the business (as is contained in the Chart Definition) or reference to control existing in cases in which the entity is a controlled group of companies (as is contained in the Chart Definition), no common control would be deemed to exist. For all these reasons, NFI was not required to disclose the Criminal Legal Proceeding as Interactive was not, and could not have been, an Affiliate as defined for purposes of the Questionnaire.

Even if the Applicant’s above-described interpretation of the Questionnaire Definition is disputed, NFI still had no obligation to disclose the Criminal Legal Proceeding because, based on such definition, Interactive was not, at the time the Application was filed, an “Affiliate” of the Applicant. The Questionnaire Definition defines “Affiliate” as “persons *having* an overt or covert relationship such that any one of them directly or indirectly *controls* or *has the power to control* another” (emphasis added). Critically, the Questionnaire Definition is phrased in the present tense and cannot reasonably be interpreted to include previously dissolved entities or any other entity that is not in existence at the time an application is submitted. In order to even be eligible for consideration as an “Affiliate,” Interactive would have been required to be in existence at the time

the Application was filed on October 24, 2016. Interactive was dissolved by the filing of a Certificate of Dissolution with the Delaware Secretary of State on December 13, 2011, nearly five years prior to the filing of the Application. See Exhibit C enclosed herewith. It would seem that from any perspective, NFI would not have had an obligation to identify matters related to a company that had been long past dissolved at the time the Application was filed and which otherwise relate to a matter that arose twelve years earlier.

Even assuming the Questionnaire Definition of “Affiliate” could possibly be read to encompass entities that were dissolved five years prior to NFI’s submission of its Application, under controlling precedent, any such ambiguity must be resolved in favor of the entity answering the questions (*i.e.*, NFI). In *Bronston v. United States*, 409 U.S. 352 (1973), the United States Supreme Court found that it is the questioner’s burden to propound accurate questions and ultimately concluded that “[p]recise questioning is imperative as a predicate for the offense of perjury.” *Id.* at 362. See also *United States v. Serafini*, 167 F.3d 812 (3d Cir. 1999), holding that an “‘excessively vague or fundamentally ambiguous’ question may not form the predicate to a perjury or false statement prosecution,” and see also *State v. Browne*, 43 N.J. 321 (1964), holding that where “the words of the question are subject to varying, contradictory or confusing interpretations, to force an accused to go to trial for his answer would constitute an open invitation for the jury to substitute, by conjecture, its understanding of the meaning of the question and of the answer in relation thereto.”

For all the reasons set forth above, NFI correctly answered “No” to Questions 2 and 10(ix) of the Questionnaire. And contrary to the Task Force’s assertion, NFI’s basis for responding as it did cannot be considered a misrepresentation with respect to the certification filed with the Application.

Notwithstanding the fact that disclosure of the Criminal Legal Proceeding was not required, we would like to take the opportunity to clarify certain facts surrounding the Criminal Legal Proceeding. For reference, Interactive was a corporation incorporated in April 2000 to provide certain transportation services. Interactive did not have an ownership interest in any other NFI-related company, including the Applicant, and neither the Applicant nor any other NFI-related entity ever held an ownership interest in Interactive. Interactive was dissolved on December 13, 2011, six years after disposition of the Criminal Legal Proceeding. The Applicant was not formed until December 2012 for the purpose of serving as a holding company for certain NFI operating companies. Interactive itself paid the imposed fines and restitution and took corrective actions to prevent any of the alleged actions from happening again.

#### **Alleged Commitment to Camden in 2015**

The Report claims that statements made by NFI in its Application indicating that its jobs were at risk of leaving the State of New Jersey were false because NFI had committed to locate its headquarters jobs in Camden before it had filed its Application. In support of that claim, the Task Force points to statements made in 2015 not by NFI or representatives of NFI but rather by other individuals not associated with NFI. The record, however, does not support the Task Force’s conclusion that NFI had committed to move its headquarters to Camden before it filed its Grow NJ Application. In fact, NFI did not commit to locating the jobs in Camden until after the EDA Board approved the award of tax credits for the proposed office in Camden. As described below, NFI investigated and identified an alternate location in Pennsylvania to which NFI would have



relocated if the tax credits were not awarded or an agreement to construct the Camden building was not consummated.

The Report states that “Grow NJ applicants are required to provide information about locations in New Jersey and other states to which they are considering relocating.” See Report, p. 47. The Report states that certain Grow NJ applicants, including NFI, made representations about a potential out-of-state alternative site that “should have raised serious red flags about whether the applicant genuinely intended to move out of state.” See Report, p. 47. In support of this claim, the Report states that NFI retained a lobbyist, presumably prior to 2013, to place “special provisions” in the amendments to the Grow NJ program to assist NFI in a possible move to Camden and that NFI “committed” to locate its headquarters in Camden in 2015. See Report, pp. 55-58. The Report’s claims are false and not supported by the facts.

First, the Report states that the Task Force is “skeptical” that NFI would have a “legitimate” business plan to move to Pennsylvania because its “lobbyist” had placed special provisions in the 2013 Grow NJ amendment legislation for its benefit. See Report, p. 47. The Task Force provides no evidence to support the claim that NFI hired a lobbyist to include provisions in the 2013 law that would help it move its headquarters to Camden. The Report does not cite to any specific information to support its allegation that NFI had hired anyone to lobby on its behalf to help it move to Camden. In fact, NFI did not retain, and never has retained, a lobbyist, including Parker McCay, to provide any lobbying services with respect to a potential move to Camden. Further, NFI has never paid any lobbyist for any such services. In fact, NFI’s actions would suggest that, contrary to the conclusions made by the Task Force in the Report, NFI was not at all interested in such legislation or moving its corporate staff to Camden. As described above, in December 2012, NFI determined to consolidate its corporate workforce from three separate offices located in Cherry Hill, New Jersey, Voorhees, New Jersey, and distant Vineland, New Jersey into its recently expanded Cherry Hill headquarters facility and the Voorhees office building, both of which were owned by the principals of NFI. That determination and the actual consolidation, which was completed in May 2013, both occurred prior to the 2013 Grow NJ amendment being signed into law. At that time, the Cherry Hill and Voorhees locations were expected to satisfy NFI’s space demands for at least five additional years.

Additionally, the Report states that NFI “had publicly committed to moving to Camden on September 24, 2015 – thirteen months prior to their Grow NJ application, which would seem to directly belie their claim that they were considering an out-of-state move.” See Report, pp 47-48. However, as set forth below, at no time prior to the EDA Board approval of its Grow NJ application did NFI “commit” to moving its headquarters to Camden, New Jersey. Any claim to the contrary is demonstrably false. The Report does not point to a single statement made by NFI or its representatives to support that assertion because no such statement was ever made and because no such commitment existed at such time. Instead, to support its assertion, the Report points to (a) a public announcement and press release made by the City of Camden and Liberty Property Trust (“Liberty”), the expected developer of a mixed-use project on the Camden waterfront, on September 24, 2015, (b) a September 24, 2015 newspaper article that cites an anonymous source, and (c) a September 24, 2015 television interview of a person who is not a representative of or affiliated with NFI.

The fact is that in September 2015, Liberty had not even committed to complete the Camden waterfront development. At that time, Liberty had signed only an agreement to undertake

a due diligence investigation to determine whether it would acquire the ownership interest in Camden Town Center, LLC (“CTC”), the redeveloper designated by the EDA ten years earlier to redevelop certain property on the Camden waterfront. In fact, Liberty did not ultimately purchase the CTC ownership interest and become the redeveloper of the property until December 2, 2016, more than fourteen months after the September 2015 events cited by the Task Force as evidence of NFI’s commitment to move to Camden and more than a month after NFI filed its Application for Grow NJ tax credits with the EDA. Until that time, Liberty could have walked away from the project. Furthermore, the fact that NFI was unable to come to an agreement with Liberty on development of the building and ultimately decided, after it had filed its Application, to buy the property from Liberty and have another developer construct it is further proof that there was no commitment to Liberty in September 2015 or at the time the Application was filed in October 2016.

The press release cited by the Task Force states that “local leaders,” identified as George Norcross, John O’Donnell, Sid Brown and Christopher Gibson, have “committed to *investing* in the [Liberty] project either personally or through their firms” (emphasis added). See Report, p. 56 and Exhibit 31 thereto. The press release does not support the Task Force’s claim that NFI committed to *locate* its business in Camden in 2015. It states only that one of the owners of NFI had committed to “invest[] in the project.” The proposed project, as described in the press release, contemplated 1.7 million square feet of office space that would also “include a hotel, retail and a residential component.” See Report, Exhibit 31. The owners of NFI have a long history of making financial investments in various types of real estate projects for third-party lease, and investing in real estate is, and has always been, one of the Brown family’s primary business ventures. In fact, the principals of NFI currently own or have investments in more than 10 million square feet of warehouse, office and retail space for lease. The press release does not indicate which aspects of the project the “local leaders” had committed to invest in or what type of investment was contemplated (for point of reference, the owners of NFI in fact made an equity investment in the residential portion of the Liberty project and intended to make a similar investment in the hotel portion of the project). More importantly, the press release does not state that NFI committed to locating its headquarters in the Liberty project.

It is important to note that Christopher Gibson, the Managing Partner of Archer & Greiner, was also identified in the press release as a “local leader” who “committed” to invest in the project. However, the Task Force conveniently omits from its Report the fact that Mr. Gibson ultimately did not invest in the project and that Archer & Greiner did not relocate its headquarters to Camden. It seems, then, that having been named in the press release as a person who has “committed” to invest in the project “either personally or through their firm[]” does not necessarily mean that the person’s company has “committed” to relocating its headquarters office to the Liberty project site. Mr. Gibson and Archer & Greiner are a perfect case in point.

The Report also cites a September 24, 2015 article in the *Philadelphia Inquirer* regarding the announcement of the proposed Liberty project. The article states that “an anonymous source” believed CSB was “*considering* moving its headquarters into the [Liberty] development” and that NFI and TMO were also “*expected* to join the project” (emphasis added). See Report, p. 56, footnote 147. This article does not contain a single statement from NFI or any authorized representative. Furthermore, the anonymous source did not even say that NFI had “committed” to (or even that it was considering) moving to Camden; only that NFI was “expected to join the project” in an unknown capacity. The vague statement of an anonymous source in a newspaper

article can hardly be said to be solid evidence of a commitment by NFI to move its workforce to a new building expected to be developed by a developer that did not even own the property on which the project was to be constructed, regardless of whether it received tax incentives to do so. Such flimsy evidence is offensive to NFI's right to due process.

The Report also refers to an NJTV interview with George Norcross. Mr. Norcross was asked whether it was true that he had committed to put \$50 million "into the [Liberty] project." See Report, p. 56, footnote 146. Mr. Norcross responded that it was true. However, Mr. Norcross did not mention NFI in that interview, nor was there a statement by or on behalf of NFI in that interview regarding NFI, its owners or any such commitment, whether as an investment or in connection with a move to Camden.

NFI never actually committed to move forward with the Camden project until June 8, 2017, the date on which the principals of NFI, CSB and TMO agreed to acquire Camden waterfront property from Liberty and to develop a Class A office building on the property. Prior to that time, a move to Camden actually became increasingly uncertain as NFI sought to change the project design, building design and project manager in an effort to reduce the overall building costs, which NFI determined were far too high for it to commit to. Through such changes, including buying the property from Liberty and hiring a new project manager, NFI was ultimately able to reduce the overall building costs by more than \$45 million. The fact that NFI never came to a development agreement with Liberty and decided instead to purchase the property from Liberty and hire another developer to build it is further proof that there was no commitment to Liberty or the project in September 2015 or at the time the application was filed in October 2016.

This position is supported by the fact that two days after the Application was filed with the EDA, Steve Grabell, Chief Financial Officer of NFI, sent an email to Tim Lizura, President and Chief Operating Officer of the EDA, stating his understanding that if NFI decided not to proceed with a move to Camden, the Application could be withdrawn by NFI and all documents in the EDA's possession relating to the Application would be returned or destroyed. See Exhibit D enclosed herewith. The Task Force claims to have reviewed the entire EDA file relating to the NFI Application but fails to include this email from Mr. Grabell to Mr. Lizura in its Report, which further discredits its conclusions. As Mr. Grabell points out in his email, at the time the Application was filed in October 2016, NFI was not committed to moving forward with the Camden project. NFI had the ability to abandon the proposed project and, if it so desired, relocate its headquarters elsewhere at any time.

The conclusion that NFI had committed to locate in Camden in 2015, more than a year prior to the time it filed its Application, is meritless and not factually supported. The only support provided by the Task Force are the statements of an anonymous source, a newspaper article and the statements of unaffiliated third parties, none of whom stated that NFI had committed to locate, or even was considering locating, its headquarters in Camden.

### **The NFI Jobs Were "At Risk" of Leaving New Jersey**

The Report questions the truthfulness of NFI's statement on its application that its jobs were at risk of being relocated outside of New Jersey. NFI's Application states that the New Jersey jobs were at risk of leaving the state. See Report, Exhibit 28. The Report claims that the Task Force had "discovered evidence appearing to indicate that [NFI] did not genuinely consider



Philadelphia as an alternate location to Camden.” See Report, p. 61. In a contrived attempt to support this allegation, the Report refers to (a) the alternate location, identified in NFI’s Application as 1500 Spring Garden Street in Philadelphia (the “Spring Garden Property”), (b) the proposals received by CBRE from the landlord for such property, and (c) emails among NFI representatives and representatives of TMO, CSB, and CBRE. See Report, pp. 58-64. As clearly demonstrated below, the Task Force’s assertions in this regard are incorrect.

NFI was founded in Vineland, New Jersey in 1932 as a trucking company. Over time, it expanded its transportation operations beyond New Jersey to become an interstate carrier, serving customers throughout the United States and Canada. In the mid-1980s, NFI began providing warehousing and distribution services. NFI now provides such services in nearly 50 million square feet of warehouse space throughout the United States and Canada. Since 2000, NFI has grown exponentially, expanding beyond asset-based transportation and distribution into intermodal, brokerage, transportation management and global logistics. Such growth has been fueled in part by the consummation of 15 acquisitions since 2000. Today, NFI employs more than 11,000 associates worldwide.

As a result of this extraordinary growth, NFI’s headquarters headcount has grown dramatically, especially since 2010. To accommodate this growth, NFI expanded its Cherry Hill and Voorhees office spaces, both of which were, and continue to be, owned by the principals of NFI. In December 2014, in response to the rapid growth in headcount of one of its business units, NFI considered moving such unit to a building located at the Philadelphia Navy Yard, but ultimately decided to lease additional office space in a separate building located in Voorhees, New Jersey for three years, with the right to extend the term to ten years. It was not until the end of 2015, as NFI’s headcount continued to rise and space constraints became more apparent, that NFI gave any consideration to the benefits of consolidating its three existing corporate offices into one building.

As part of its investigation into a possible a new headquarters location, NFI held discussions with Liberty about the Camden waterfront property that Liberty announced it intended to develop. Those discussions included the possibility of joining with CSB, TMO and others in a new building to be constructed by Liberty. Liberty’s initial formal proposal was projected to cost \$292 million, an amount that was far too expensive for NFI and the other companies. It became apparent to NFI, CSB and TMO that Liberty’s proposal was financially untenable, so they sought a new design and construction manager but were unable to finalize an agreement with Liberty. NFI became increasingly concerned that such an agreement would not be possible.

While the parties continued to negotiate, in late spring and summer 2016, NFI evaluated additional locations in and around Philadelphia for new headquarters space, including at the Philadelphia Navy Yard, in downtown and Northeast Philadelphia and in Allentown, Pennsylvania. Because of NFI’s well developed real estate business, it had relationships with a number of regional and national commercial real estate brokers. One such relationship was with CBRE. NFI requested that CBRE identify potential locations. Because CSB and TMO had limited experience with commercial real estate, NFI also agreed to assist those companies with their searches and requested that CBRE identify potential locations for those companies as well. CBRE presented a list of options from Philadelphia, the Lehigh Valley and Bucks, Delaware and Montgomery Counties in Pennsylvania. NFI also briefly considered locations outside metropolitan Philadelphia. Because of its global reach and operations, NFI maintained, and

continues to maintain, significant regional operations and headquarters in Dallas, Texas, Chicago, Illinois, Toronto, Canada and Los Angeles, California. In fact, more than one-quarter of NFI's workforce is located in Southern California. For various reasons, NFI could have relocated its headquarters to any of such locations.

After an evaluation of alternative sites, NFI selected second floor space at the Spring Garden Property as a location that would allow NFI to best meet its needs. Among other things, it was large enough to accommodate on one floor its existing employee base and expected additional growth that might occur; the Philadelphia location would allow it to continue to attract the young talent that was increasingly living in Philadelphia; the location was a few blocks from the newly purchased residence of one of the owners of NFI and its Chief Executive Officer; it was close enough to NFI's existing offices that the company expected to be able to retain most of its current staff without much disruption; and the financial terms of the lease were reasonable. As part of its continuing evaluation of the Spring Garden Property space, NFI hired a nationally recognized space planner to review the Spring Garden Property space and create a layout and floorplan for the prospective offices. See Exhibit E enclosed herewith.

Although NFI, CSB and TMO were eventually able to agree on a new design and a new project manager to reduce the total cost of the Camden building, when NFI compared the Camden location and the Spring Garden Property, it was apparent from a financial perspective that a move to the Spring Garden Property would be far superior. The construction of a new building in Camden would require a significant equity investment (of at least \$30 million) by the principals of NFI, significant debt to construct the building, and rental payments that would be well above the market rate for Class A space in the area, including the Spring Garden Property, in order to allow the owners of the building to service the debt. The Spring Garden Property would require a small cash outlay to cover fit out costs, no debt, a market rate rent and the flexibility of leasing instead of owning such space. However, NFI determined that moving to a new Camden office was its first choice, specifically because it would continue NFI's commitment to, and nearly 85 year long history in, South Jersey, the office would be closer to a majority of NFI's local employee base, and it would allow NFI to actively participate in the ever strengthening revitalization of Camden, one of the country's poorest cities. NFI recognized that the only way in which it would make financial sense to locate at the Camden site was if it were to receive Grow NJ tax credits to help offset the cost differential. Without the tax incentives, the development of a new office building and NFI's relocation to such building would not be financially feasible. While the Camden location remained NFI's first choice, if a deal could not be consummated with Liberty or if adequate tax credits were not awarded, NFI would have been willing to move its corporate headquarters to the Spring Garden Property in order to accommodate its ever growing employee base.

NFI submitted its Grow NJ application on October 24, 2016. See Report, Exhibit 29. The application stated that its 341 headquarters jobs were at risk of leaving the state. The application identified the Spring Garden Property as an alternate location for the jobs should NFI's first choice, Camden, become untenable. The lease proposal received by CBRE for the Spring Garden Property, dated August 29, 2016, was submitted with the Application. See Report, Exhibit 36. Such proposal was for a fifteen year lease for 103,491 square feet on the second floor of the Spring Garden Property at a base rental rate of \$23.00 per square foot, with a twelve-month rent abatement and an improvement allowance of \$55.00 per square foot. After the Application was filed, NFI and the other companies decided the Liberty proposal was unworkable and obtained a proposal for

the construction of the new building by a different contractor, Joseph Jingoli & Sons, Inc. ("Jingoli"). NFI and the other companies continued to modify the design and cost structure of the new building with Jingoli while attempting to negotiate the purchase of the Camden land from Liberty in order to allow Jingoli to construct the building. On February 17, 2017, NFI updated its Grow NJ application to modify the project description and cost information of the project based upon the Jingoli proposal. NFI also submitted an updated lease proposal received by CBRE for the Spring Garden Property, dated February 28, 2017. See Report, Exhibit 40. The updated proposal reduced the floor area to 93,308 square feet and reduced the base rent to \$22.50 per square foot.

The Report claims that the updated proposal for the Spring Garden Property differed from the initial proposal. In reality, the proposals for NFI differed only slightly, which should not be surprising to anyone who understands real estate procurement, especially considering six months had passed from the date on which NFI received the first proposal. As set forth above, the square footage decreased only slightly as a result of the space planning and floor design efforts conducted by Norr, a well-respected national third party design firm engaged by NFI. The Task Force concluded that such changes "cast doubt" on the availability of the site. See Report, pp. 59 and 63. While much of the Report is focused on the "significant" differences between the proposals received by TMO, the Report fails to give any support as to why the slight difference in NFI's proposals would or should raise "red flags." See Report, p. 63. In addition to the update to the Spring Garden Property proposal filed with the EDA in March 2017, NFI also provided an updated Camden proposal with Jingoli, in which the proposed square footage and costs also changed. However, in contrast to the Spring Garden Property proposal, the Task Force does not seem to have the same concern over the more significant changes to the Camden proposal. The fact that the Spring Garden Property proposal was updated and the amount of space identified had changed only slightly is not evidence of deceit or any intent to defraud. Rather, it serves as evidence that NFI was providing the EDA with the most current information in its possession relating to the Camden proposal as well as the Spring Garden Property alternate location, allowing the EDA to give final approval of the Application based on the most current information.

The Report further states that the Task Force "discovered evidence appearing to indicate that the three companies did not genuinely consider Philadelphia as an alternate location to Camden." See Report, p. 61. The Report states that NFI, TMO and CSB "collaborated to obtain proposals" in Philadelphia, which it claims should have raised "clear red flags" that "should have caused EDA personnel to question the statements that the companies were considering relocating out of state." See Report, pp. 61 and 63. As described above, it is important to recognize that, because of NFI's sophisticated real estate business, knowledge of various real estate markets and relationships with a large network of brokers, NFI agreed to assist CSB and TMO with, and supplement, their searches for alternate space while NFI was conducting searches for its own alternate space. As NFI had come to work closely with CSB and TMO in partnership on negotiating an agreement with Liberty, NFI was also happy to share its real estate expertise with CSB and TMO.

The Report strings together out-of-context sentences from several different emails in an effort to create the false narrative that the companies did not actually consider moving out of the state. See Report, pp. 61-63. A full review of the entire email chain contained in Exhibit 45 to the Report, as well as the actual facts surrounding NFI's search for alternative space, is illustrative of the Task Force's effort to cherry-pick information to further its narrative and agenda. Exhibit 45



contains a series of emails among a number of people, including Mr. Grabell, Michael Landsburg, Vice President of Real Estate at NFI, Troy Adams, Real Estate Manager at NFI, representatives of CSB and TMO, and representatives of CBRE. In those emails, the participants discuss various alternate office locations in Allentown, Pennsylvania and Philadelphia (as a point of reference, NFI maintains significant trucking, warehousing and real estate operations in Allentown; therefore, moving NFI's corporate offices to Allentown would have made operational sense). Mr. Adams toured various locations and wrote that the Crown, Cork and Seal property in Northeast Philadelphia was a good option as it "could fit all of the partners in a nice campus setting." Further, as NFI is a real estate company that likes to acquire real estate assets, Mr. Adams was intrigued by the prospect of buying and further developing the site. Mr. Adams also wrote that, from his perspective, "[NFI would be] most interested in Allentown due to fact that [it] is the lowest occupancy cost and incentives [would be available]." Mr. Adams toured a number of the Pennsylvania locations, reviewed the financial aspects of each such location, and provided his analysis of the best alternative from his perspective. It is clear that this representative of NFI was commenting upon how the site would accommodate NFI and, potentially, the other companies. After further analysis by members of the NFI real estate team and its executive team, Mr. Grabell later emailed a note to the larger group indicating that he had asked CBRE to request a proposal for the Spring Garden Property, stating that it "checks all the boxes and will be very convenient for our workforce." He also noted that it would be able to accommodate the space needs of one of the other companies, and, after speaking with CBRE, he identified additional space within 1601 Market Street in Philadelphia for the third company if they so wished to investigate that space. John Muscella, the CFO of CSB, responded by email that CSB would be interested in touring the 1601 Market Street building and thanking Mr. Grabell for his help in identifying such building. At that point, representatives of CSB evaluated the feasibility of such space.

It is important to note that a number of members of NFI's real estate and executive teams, including Mr. Landsburg, Mr. Adams and myself, toured the Spring Garden Property on multiple occasions. Further, Mr. Landsburg directly engaged in negotiations with representatives of the Spring Garden Property regarding operational aspects of the space and the terms contained in the lease proposal. Finally, NFI retained Norr, a nationally recognized space planning and design firm, to prepare a layout and CAD design drawings of space designated for NFI within the Spring Garden Property. The full text of the above-referenced chain of emails, together with the other information contained herein, show that a thorough and serious search and evaluation of alternative locations were conducted by NFI on behalf of itself and, in an effort to assist its other partners of the Camden project, CSB and TMO, in stark contrast to the conclusions of the Task Force. NFI clearly did not consider its efforts simply an exercise to check a box.

The fact is that it would not have made financial sense for NFI to locate its headquarters in Camden without receiving tax credits given the availability of Class A and significantly less expensive office space options throughout the region, including in Pennsylvania. The cost of undertaking the project in Camden was significantly higher than the cost of leasing Class A office space in downtown Philadelphia. NFI will be paying \$62.00 per square foot for the Camden office space, as well as its share of all common area maintenance charges. The Spring Garden Property could have been leased for \$22.50 per square foot, plus its share of certain common area maintenance charges, with a rent abatement of twelve months (*i.e.*, no rental payments of rent for twelve months). See Report, Exhibit 40. As described above, the Camden Project required the principals of NFI to invest over \$30 million up front in equity and to borrow, collectively with the principals of CSB and TMO, more than \$155 million to locate in Camden. The economics of

trying to develop the proposed building in Camden without tax incentives would have made no financial sense.

### **The Task Force Report Misstates the Law Regarding “At Risk” Jobs**

The Report misstates the New Jersey Economic Opportunity Act of 2013 (the “2013 Amendment”). In the Report, the Task Force provides its own interpretation of the 2013 Amendment’s requirements for projects locating in Camden. See Report, pp. 24-29. The Task Force’s interpretation is contrary to the plain language of the statute. The Task Force incorrectly states that “tax credits for a project relocating to Camden, like incentives for projects relocating to elsewhere, are available only if the company is considering a potential out of state location.” See Report, p. 26. This position is contrary to the plain language of the 2013 Amendment. It is also contrary to the position taken by the EDA. In taking its position, the Task Force ignores relevant statutory text, legislative history and legal precedent. It also misapplies existing relevant case law.

The original Grow NJ program was signed into law in 2012 with the express purpose to “encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State.” See N.J.S.A. 34:1B-244. Under the Grow NJ program as originally enacted in January 2012, an applicant seeking Grow NJ tax credits was required to demonstrate that:

“the capital investment resulting from the award of tax credits and the resultant retention and creation of eligible positions will yield a net positive benefit to the State . . . [and] the award of tax credits will be a material factor in the business’s decision to create or retain the minimum number of full-time jobs for eligibility under the program.” See N.J.S.A. 34:1B-244.

To be eligible for tax credits under the Grow NJ program, an applicant’s chief executive officer is required to certify, among other things, “(1) that any existing full-time jobs are at risk of leaving the State or being eliminated”; and “(2) that any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of the tax credits under the program.” See N.J.S.A. 34:1B-244.

Beginning in January 2013, the New Jersey Legislature introduced a number of proposed amendments to the Grow NJ act. In June 2013, the Senate Budget and Appropriations Committee first introduced the concept of a Garden State Growth Zone (“GSGZ”) into the legislation. The GSGZ program was introduced as a new designation for the cities of Camden, Passaic, Paterson, and Trenton. On June 27, 2013, the Assembly concurred with the amendments introduced by the Senate and made additional amendments on the floor. The Senate approved the Assembly amendments on August 19, 2013. Following such approval, Governor Christie issued a conditional veto and the Assembly and Senate concurred with the conditions of the veto. The 2013 Amendment was signed into law by Governor Christie on September 18, 2013.

The 2013 Amendment retained the CEO certification requirements of applicant companies. However, the 2013 Amendment created a new and separate requirement for projects located in a GSGZ that qualify under the Municipal Rehabilitation and Economic Recovery Act (“MRERA”). The 2013 Amendment specifically provided that “*in satisfaction of* paragraphs (1) and (2) of this subsection” (which are the “at risk” and “but for” certification requirements, respectively,

described above), an applicant in a GSGZ that qualifies under MRERA must “indicate that the provision of tax credits under the program is a *material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone* that qualifies under [MRERA]” (emphasis added). See N.J.S.A. 34:1B-244(d). At the time of the 2013 Amendment, only the city of Camden was a GSGZ that qualified under MRERA (although other cities have since qualified). The effect of the above described 2013 Amendment was that an applicant proposing a project in Camden was no longer required to demonstrate that jobs were “at risk” of leaving the state or that any new job creation would not occur but for the tax credits. Instead, an applicant would satisfy such requirements, particularly the “at risk” requirement, by demonstrating simply that receipt of the tax credits were a “material factor” in the applicant’s decision to make an investment and locate jobs in Camden. In its Report, the Task Force ignores the new and separate requirement for projects locating in Camden. Instead, the Task Force states that, from their perspective, “tax incentives for projects relocating to Camden, like tax incentives for projects relocating from elsewhere, are available only if the company is considering a potential out-of-state location.” See Report, p. 26. Such a position is incorrect and ignores the clear language as to the legislative intent and the purpose behind the adoption of the 2013 Amendment.

The 2013 Amendment includes an additional distinction for projects located in Camden. The 2013 Amendment provides that when the EDA considers “an application involving intra-State job transfers,” the EDA must independently verify and confirm “the business’s assertion that the jobs are at risk of leaving the State... *or*, with respect to projects located in [Camden], the business’s assertion that the provision of tax credits under the program is a *material factor* in the business’s decision to make a capital investment and locate in [Camden]” (emphasis added). See N.J.S.A. 34:1B-244(d). This provision clearly provides that with respect to Camden projects, an applicant may demonstrate not that the jobs are at risk of leaving New Jersey but alternatively that the tax credits were a material decision in the applicant’s decision to invest and locate in Camden in order to be eligible under the program. The alternative for Camden projects was included by the Senate Budget and Appropriations Committee as part of its amendments creating GSGZs. In introducing the GSGZ provisions, the Senate Budget and Appropriations Committee supported this position in its Committee Statement. See Committee Statement, p. 4. This position was further supported in Governor Christie’s Conditional Veto to First Reprint of A. 3680 (Sept. 9, 2013), which stated that the bill was intended to “lower[] program eligibility thresholds for New Jersey’s municipalities in the most need of economic development.”

In its Report, the Task Force ignores the plain language of the 2013 Amendment, the Committee Statement, the Conditional Veto and relevant case law to advance its own agenda. Instead, it focuses on three reasons why applicants desiring to locate in Camden are required to demonstrate that their jobs are “at risk” of leaving New Jersey. First, the Task Force states that because the Grow NJ program was created specifically to “preserve” jobs that might otherwise leave the State of New Jersey, all applicants must satisfy the “at risk” requirement. See Report, p. 26. However, the legislative history from the original enactment of the Grow NJ act is irrelevant to the interpretation of the 2013 Amendment, which stands on its own as a separate piece of legislation subject to its own legislative history. As described above, the 2013 Amendment, drafted and approved by the Legislature and signed into law by the Governor, was explicitly designed, among other things, to promote economic development and exempt Camden applicants from the “at risk” certification requirement. Further, the 2013 Amendment was intended to encourage development specifically in certain municipalities (including Camden) that were most in need by lowering the eligibility threshold. In addition, if the Task Force’s position was correct, there would



be no reason to include the alternative material investment factor in lieu of the at risk jobs and creation of jobs requirement in the 2013 Amendment. The Task Force's interpretation is not in keeping with the legislative enactment, intent and history.

Second, the Task Force believes that the statute must require a finding that, with respect to Camden projects, an applicant's jobs are "at risk" because a contrary interpretation would violate New Jersey's constitution because it would favor one municipality, Camden, above all other municipalities. See Report, pp. 27-28. The Task Force's position is wrong as it is inconsistent with legal precedent and has been rejected previously by New Jersey courts. For example, in *Camden City Board of Education v. McGreevey* (369 N.J. Super. 592, 607)(App. Div. 2004), the New Jersey Appellate Division held that MRERA is not considered "special legislation" even though it applies only to the city of Camden. The above decision is in keeping with existing case law and precedent.

Third, the Report states that jobs must be at risk in order to be included in the net positive benefit analysis. See Report, p. 28. In 2015, the EDA adopted certain rules required for the implementation of the 2013 Amendment. Consistent with the statute, such rules provide that "taxes paid directly or generated indirectly by new or retained employees" are to be included in the net positive benefit analysis. See N.J.A.C. 19:31-18.7(c), at 1791. In January 2017, prior to approval of NFI's Application, the EDA amended and clarified the 2015 rules by including a provision providing that "[r]etained employees in a project in [Camden]...shall not be included [in the benefits calculation] unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State...." See Report, p. 29, footnote 74. However, this EDA amendment to the regulations is not consistent with the 2013 Amendment or its legislative history. NFI's employees were at risk of leaving the state, therefore NFI's retained employees were to be included in the net positive benefit analysis as the tax credits were a material factor in its decision to retain the employees in New Jersey.

For the reasons set forth above, the Task Force's positions with respect to "at risk" jobs are incorrect.

#### **NFI's Application Was Reviewed Extensively by the EDA and the Award Was Proper**

The NFI Application was filed on October 24, 2016. Upon submission of the Application, the EDA undertook a thorough review of all of the information submitted. During the five months between submission and approval, the EDA asked NFI and its counsel numerous questions about the Camden project, the Spring Garden Property, various litigation matters, the number of jobs at risk, and the ability to finance the project. The Application met all of the requirements necessary to allow the Board to approve the Application. After that extensive review by the EDA underwriter, senior leadership team, Attorney General, Incentives Committee and EDA Board, the application was approved by the EDA Board at a public hearing on March 24, 2017.

Although it is apparent that the Task Force does not fully comprehend the issues and history relating to the redevelopment of Camden, the EDA has had a long history of trying to redevelop Camden and was fully aware of the inherent difficulties of doing so. For over ten years, the EDA owned the property that Liberty acquired and sought to redevelop. During that time, it had a contract with CTC to develop the property. CTC was unable to develop the property, and it sat vacant for the entire period. We believe the EDA understands better than anyone that the Grow NJ tax credit program, along with the vision and sheer determination of NFI, CSB and TMO to try

to improve the city of Camden, is what finally led to the long-sought development of the Camden waterfront.

NFI was looking for a single headquarters building into which it could consolidate its corporate staff from its then three existing locations. NFI discovered that the cost to relocate to Liberty's Camden project was exponentially greater than the cost of leasing space in Philadelphia. While NFI could have simply relocated its corporate headquarters to Philadelphia, its preference was to continue its legacy in South Jersey while at the same time participating in the redevelopment of Camden.

NFI has exceeded what it promised the EDA when it was awarded its tax credits. NFI estimates that its share of investment in the new Camden building will be approximately \$82 million, even more than the projected \$79 million in Grow NJ tax credits approved by the EDA. It has already moved more than 400 Grow NJ-eligible jobs into its new Camden headquarters, compared to the 341 jobs committed to in the Application. A review of the entire record in context, and not just statements from unrelated parties and phrases cherry-picked from separate documents, reveals that: the cost of locating in Camden was significantly greater than alternative locations; it made no financial sense to undertake the Camden project without tax incentives; NFI was thoroughly and seriously evaluating the Philadelphia alternatives, which for many reasons provided a significantly superior alternative to the Camden project; and the NFI jobs were at risk of leaving the state if the tax credits were not awarded because of the superior alternatives in Philadelphia and other Pennsylvania locations. The complete record shows that the EDA performed a full review of the Application and all of the other information provided by NFI, including regarding past and existing litigation against NFI. NFI has relied upon the EDA Board approval and the signed Approval Letter in pursuing its project and has, with its principals, invested tens of millions of dollars in furtherance of its project. There are no facts in the Task Force Report to show that NFI intended to, or did, misrepresent any information contained in its Application or any of the supporting documentation.

Thank you for the opportunity to respond to the Task Force Report and the Teamsters Letter. We look forward to meeting with your representatives as soon as possible to discuss any other questions that may arise.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Scott Brucker", with a stylized, flowing script.

Scott Brucker  
Senior Vice President & General Counsel

Enclosures

## INDEX OF EXHIBITS

EXHIBIT A – Supplement to Question Numbers 5, 6, 10.i & 11

EXHIBIT B – Litigation Matters

EXHIBIT C – Certificate of Dissolution from Delaware Secretary of State dated December 13, 2011

EXHIBIT D – October 26, 2016 email to NJEDA from S. Grabell

EXHIBIT E – 1500 Spring Garden Street Proposal



## EXHIBIT A

**Application No. 209391**

NFI, L.P. - Supplement to Additional Background Questions

Supplement to Question Numbers 5, 6, 10.i, & 11

With approximately 8,100 employees company-wide, NFI has been a party to employment-related litigation in the ordinary course of its business. Such litigation has involved, among other claims, allegations of discrimination and harassment. In resolving such litigation, NFI has not admitted any liability in such matters or that it committed any wrongdoing.

No member of the Controlled Group has been found guilty, liable, or responsible for any such claims.

No such litigation should be considered grounds for debarment or disqualification under relevant regulations.

## EXHIBIT B



1. *Equal Employment Opportunity Commission v. NFI Industries, Inc.* was a suit initiated by the EEOC on behalf of a former employee who alleged compensation discrimination based on gender. The suit was filed on January 17, 2014 in the Northern District of Texas and alleges that NFI paid the former employee less than the individuals who previously held her position because of the former employee's gender. NFI provided a significant amount of evidence disputing the claim. During discovery and prior to trial, the EEOC and former employee agreed to settle the matter for only \$45,000 and, as part of the settlement, NFI agreed to continue to provide training to employees at its Irving, Texas facility that it already was providing. NFI agreed to settle the matter to avoid protracted and costly litigation.

2. *DOL FLSA Reclassification Matter.* In 2014, the Department of Labor initiated an investigation of NFI's classification of certain New Jersey employees, following which the DOL informed NFI that it believed that some of those employees should be overtime eligible. Although NFI disagreed that any of its employees were misclassified, the impending increase to the weekly salary requirement associated with the proposed changes to the federal overtime exemptions caused NFI to decide to reclassify as non-exempt the positions at issue in January 2016. In the August 2016 settlement agreement with the DOL, NFI denied the misclassification. However, in order to avoid protracted and costly litigation, NFI decided to make back wage payments totaling approximately \$1,000,000 to certain eligible reclassified employees under the DOL's supervision.

3. *Brown v. NFI Interactive Logistics, LLC* involved a matter brought by the U.S. Occupational Safety and Health Administration on behalf of a former employee who alleged that he was terminated in violation of his federal whistleblower protections for raising concerns about instructions he received from a supervisor that would have caused him to violate a law. An initial finding was issued to NFI by OSHA on December 18, 2015. NFI provided a significant amount of evidence disputing the claim. The former employee and NFI agreed to resolve the matter, in each party's case to avoid protracted and costly litigation.

## EXHIBIT C

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DISSOLUTION OF "INTERACTIVE LOGISTICS, INC.", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF DECEMBER, A.D. 2011, AT 2:02 O`CLOCK P.M.



3195308 8100  
SR# 20196576699

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 203429144  
Date: 08-19-19



**CERTIFICATE OF DISSOLUTION  
BY WRITTEN CONSENT OF ALL  
STOCKHOLDERS ENTITLED TO VOTE**

**Interactive Logistics, Inc.**, a corporation organized and existing under the General Corporation Law of the State of Delaware

DOES HEREBY CERTIFY AS FOLLOWS:

The dissolution of said Interactive Logistics, Inc. (the "Corporation") has been duly authorized by all the stockholders of the Corporation entitled to vote on a dissolution in accordance with subsection (c) of Section 275 of the General Corporation Law of the State of Delaware.

The date the dissolution was authorized is: November 30, 2011

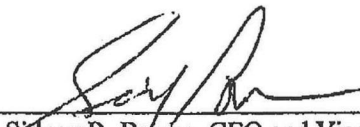
The following is a list of the names and addresses of the directors of the Corporation:

<u>Name</u>	<u>Address</u>
Sidney R. Brown	71 West Park Avenue, Vineland, NJ 08360
Irwin J. Brown	201 Butcher Road, Waxahachie, TX 75165
Jeffrey S. Brown	71 West Park Avenue, Vineland, NJ 08360

The following is a list of the names and addresses of the officers of the Corporation:

<u>Name</u>	<u>Address</u>
Joseph Roeder	71 West Park Avenue, Vineland, NJ 08360
Sidney R. Brown	71 West Park Avenue, Vineland, NJ 08360
Irwin J. Brown	201 Butcher Road, Waxahachie, TX 75165
Jeffrey S. Brown	71 West Park Avenue, Vineland, NJ 08360
Kathy Daniels	71 West Park Avenue, Vineland, NJ 08360

**INTERACTIVE LOGISTICS, INC.**

By:   
Sidney R. Brown, CEO and Vice President

## EXHIBIT D



Grabell, Steven &lt;steven.grabell@nfiindustries.com&gt;

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**NFI, L.P. #209391**

1 message

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**Grabell, Steven** <steven.grabell@nfiindustries.com>

Wed, Oct 26, 2016 at 7:53 AM

To: tlizura@njeda.com

Cc: Kevin Sheehan &lt;ksheehan@parkermccay.com&gt;

Mr. Lizura.

As you are aware a GrowNJ application was filed on behalf of NFI, L.P.. Although a final decision on whether to obtain approval of the GrowNJ tax credits has not and cannot be made at this time, we wanted to get the application to your team so that you can start the underwriting process with the goal of having it considered by the EDA Board at its November 17 meeting. It is our understanding that if we decide not to proceed at some point prior to the placement of our application on the Board agenda we may do so and that the application will be withdrawn and all documents (physical or electronic) within the possession of EDA will be either returned to us if physical documents or destroyed if electronic documents and such documents will not be subject to the OPRA.

Thank you,

Steve

**Steven S. Grabell****CFO****NFI Industries**

1515 Burnt Mill Road

Cherry Hill, NJ 08003

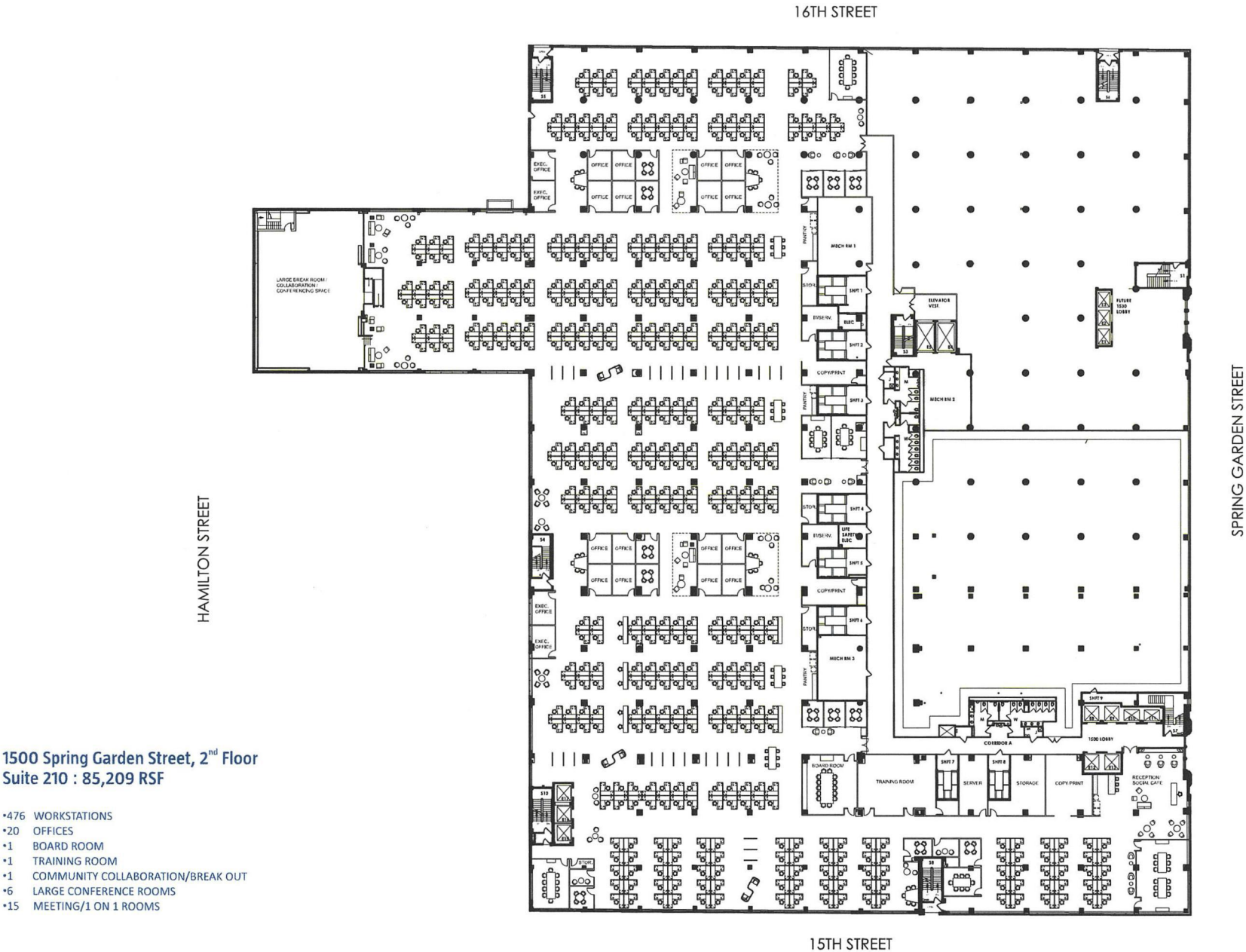
856.507.4454 Office

609.685.7089 Cell

steven.grabell@nfiindustries.com



**EXHIBIT E**



# NORR

**Submitted to:** Michael Landsburg  
Vice President of Real Estate  
NFI Industries  
1515 Burnt Mill Road  
Cherry Hill, NJ 08003

**Project:** Design Services Proposal  
NFI  
1500 Spring Garden Street  
Block Plans

**Date:** February 13, 2017

**Prepared By:** Judy Channick

## A. PROJECT UNDERSTANDING

As we understand it, NFI is considering leasing approximately 88,000 SF of office space in the city of Philadelphia. One location that is currently under consideration is 1500 Spring Garden Street, second floor. In order to determine the suitability of this location NFI has requested generic block plans showing conceptual layout. The block plans will be similar to the ones NORR prepared for NFI at the Camden Tower project.

## B. SCOPE OF BASIC SERVICES

NORR will:

- Tour 1500 Spring Garden St. available spaces with NFI and the real estate brokers;
- Prepare block plans for the available space on the second floor based on generic program;
- Prepare block plan layout for the penthouse level;
- Submit to NFI for review and comment;
- Revise block plans based on NFI comments received;
- Submit final versions to NFI for distribution.

## C. ASSUMPTIONS

- AutoCAD files will be received from the building representatives;
- One (1) site tour and one (1) meeting has been included.

**D. EXCLUSIONS**

- Any changes after approval in project scope, layout, details, finishes, services, change orders, meetings or site visits in addition to those described above are additional;
- Cost estimating;
- BOMA or other square footage calculations;
- Hazardous materials studies and abatement;
- Mechanical, Electrical, Plumbing and Structural Engineering.

**E. COMPENSATION FOR BASIC SERVICES**

NORR proposes to provide the services described herein for a **Lump Sum Fee of** [REDACTED] dollars.

**F. REIMBURSABLE EXPENSES**

Reimbursable expenses which are in addition to the fees for professional services include mileage, travel, overnight delivery services, messenger delivery services, copying, printing and other reprographic services, testing services, specialized consultants outside of NORR's resident staff and miscellaneous out-of-pocket expenditures.

**G. PAYMENT TERMS**

Invoices for services will be issued monthly based on the percentage of completion of the work. Reimbursable expenses are invoiced monthly with an administrative mark-up of 10%.

**H. ADDITIONAL SERVICES**

If requested and authorized by NFI, additional services will be billed on a Lump Sum Basis when the Scope of Work can be defined, and on an Hourly Basis using Exhibit B, Hourly Billing Rates, when a Scope cannot be defined.

**I. TERMS & CONDITIONS**

Our agreement for this project will be governed by NORR Partnership's Standard Terms and Conditions attached as Exhibit A.

**J. ACCEPTANCE**

If this Proposal is acceptable, please sign and return one copy to NORR as evidence of your acceptance and our authorization to proceed.

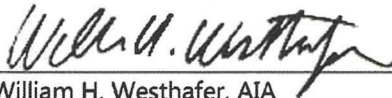
**SUBMITTED BY: NORR Partnership**



Judy Channick  
Principal

February 13, 2017

Date



William H. Westhafer, AIA  
Vice President

February 13, 2017

Date

**ACCEPTANCE FOR: NFI**



Signature

  
Name/Title

Feb. 13, 2017

Date



# NORR

## NORR Partnership - Exhibit A 2017 STANDARD TERMS AND CONDITIONS – INTERIOR DESIGN

- 1.0 **BASIS OF COMPENSATION**  
1.01 The fee (including method of payment) as described in the attached proposal is valid for (45) forty-five days from the date of the proposal.  
1.02 The fee as proposed is based on the scope of services and project description described in the proposal. Unless indicated, all other services are not included.  
1.03 The method of payment shall be as indicated on the attached proposal.  
1.04 Unless indicated otherwise, fees do not include reimbursable expenses.  
1.05 Time and Materials (T&M) fee shall be based on the rates that prevail at the time services are rendered. Engineer reserves the right to increase rates after every 12 months.  
1.06 Payment for service provided is the sole responsibility of the signatory of this Agreement and is not subject to third party agreements.
- 2.0 **INTERIOR DESIGNER RESPONSIBILITIES**  
2.01 The Interior Designer's scope of services shall be as defined in the attached proposal.  
2.02 In providing services under this agreement, the Interior Designer will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently under similar circumstances.  
2.03 Interior Designer has the responsibility to ensure that such deficiencies, when identified during the design and construction phase will be corrected when identified.  
2.04 The Client (for the purposes of this Exhibit A the term "Client" shall refer to Owner and/or Client) acknowledges and understands that the Contract Documents may represent imperfect data and may contain errors, omissions, conflicts, inconsistencies, code violations, and improper use of materials. Such deficiencies will be corrected when identified.  
2.05 The Client agrees to bind Owner's Contractor(s) to carefully study and compare the individual Contract Documents and report at once in writing to the Client any deficiencies the Contractor may discover.  
2.06 The Client agrees to bind Client's Contractor(s) to resolve all reported deficiencies with the Interior Designer prior to awarding any subcontracts or starting any work with the Contractor's own employees. If any deficiencies cannot be resolved by the Contractor without additional time or additional expense, the Contractor shall so notify the Client in writing. Any work performed prior to receipt of instruction from the Client will be done at the Contractor's risk.  
2.07 If included as part of the Interior Designer's services under this agreement, administration of the Contract for Construction shall be in accordance with AIA Document A201, General Conditions of the Contract for Construction.  
2.08 The Interior Designer shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Interior Designer shall not have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work.  
2.09 The Interior Designer shall not be responsible for deviations from the Contract Documents unless mutually agreed to by the Interior Designer and Client, and in writing.
- 3.0 **ADDITIONAL SERVICES**  
3.01 Services not specifically called for in the Interior Designer's Scope of Services and work associated with project scope not specifically identified in the Project Description shall be considered additional services.  
3.02 Unless otherwise agreed, additional services shall be performed on an hourly basis, using rates prevailing at the time service is rendered.
- 4.0 **OWNER'S RESPONSIBILITIES**  
4.01 The Client shall provide full information in a timely manner regarding requirements of the project, including a written program unless otherwise noted.  
4.02 The Interior Designer shall be entitled to rely upon the accuracy and completeness of the services, information, surveys and reports supplied by the Client.  
4.03 If requested by the Interior Designer for the performance of Interior Design services, the Client shall be responsible for obtaining and providing to the Interior Designer, unless noted otherwise, the following:
  - Site Survey
  - Geotechnical Report
  - Testing of Building Components
  - Peer Review
  - Budgets  
4.04 The Interior Designer shall not be liable for building components or goods or services desired under separate agreement with the Owner.  
4.05 The Interior Designer shall not be liable for services provided under separate contract with the owner.  
4.06 If requested by the Interior Designer, the Client is responsible for providing to the Interior Designer a completed New Account Application provided by Interior Designer and which will include: Client's Name and Address Information, a bank reference and two Trade references.
- 5.0 **CONSTRUCTION COSTS**  
5.01 Preparation of the Client's budget or estimates of construction cost are not the responsibility of the Interior Designer and are not a part of the Interior Designer's scope of services unless otherwise noted.  
5.02 If required by the Client, budgets and estimates of construction cost can be provided as an additional service.
- 6.0 **USE OF INTERIOR DESIGNER'S INSTRUMENTS OF SERVICE**  
6.01 The drawings, specifications and other documents, including those in electronic format, as prepared by the Interior Designer and the Interior Designer's Consultants are instruments of the professional service rendered for use solely with respect to this project and unless otherwise provided, the Interior Designer shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The client shall be permitted to retain copies of documents for reference and information in connection with the Client's use and occupancy of the project. Reuse of any of the instruments of service of the Interior Designer by the client, on extensions of this Project or any other project is not allowed.  
6.02 By written agreement, if Ownership of such documents is transferred to the Client at the completion of the work, the Client shall agree to hold harmless, indemnify and defend the Interior Designer against all damages, claims, losses, including attorney fees and other defense costs arising out of any reuse of said plans and specifications.  
6.03 The Client shall permit the Interior Designer to prominently display on the front side of all Interior Designer's Instruments of Service the Interior Designer's corporate name, address and contact information. The Client shall not take any action to modify, alter or eliminate Interior Designer's information without the written consent of Interior Designer.
- 6.04 The Client agrees to erect on site a project sign, whose specifications shall be agreed upon by the Owner and Interior Designer, and which shall contain at a minimum the corporate names and contact information for project team members.
- 7.0 **MEDIATION**  
7.01 All questions in dispute under this Agreement shall be submitted to non-binding mediation subject to the parties agreeing to a mediator(s). Unless otherwise specified, this agreement shall be governed by the laws of the principal place of business of the Interior Designer.
- 8.0 **TERMINATION, SUSPENSION, ABANDONMENT**  
8.01 This Agreement may be terminated by either party upon not less than ten days' written notice. The Interior Designer shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and reasonable Termination Expenses.  
8.02 If the project is suspended by the Owner for more than 30 consecutive days, the Interior Designer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Interior Designer's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Interior Designer's services.
- 9.0 **PAYMENTS**  
9.01 Invoices for services and reimbursable expenses shall be submitted at the Interior Designer's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or legal rate) per month will be applied to the unpaid balance after 30 days.  
9.02 Retainers shall be credited on the final invoice.  
9.03 The Interior Designer reserves the right to suspend work and/or withhold issuance of drawings and/or documents including but not limited to Conceptual Design, Schematic Drawings, Design Development Documents, Permit Drawings, Construction Documents, Building Affidavits, etc. without recourse by the Owner, if invoices beyond Thirty (30) days remain unpaid. In the event of a suspension of services, the Interior Designer shall have no liability to the Client for delay or damage caused the Client because of such suspension of services. Before resuming services, the Interior Designer shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Interior Designer's services. The Interior Designer's fees for the remaining services and the time schedules shall be equitably adjusted.  
9.04 The Client agrees to pay all costs of collection, including reasonable attorneys' fees.  
9.05 Payments to the Interior Designer shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Client of offsetting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Interior Designer's compensation for any reason unless Interior Designer has been found to be legally liable for such amounts.  
9.06 The Owner shall have Twenty-One (21) days from invoice date to review Interior Designer's invoice and provide Interior Designer written notice of any or all fees Client disputes. Failure to provide such notice within the specified time period waives Client's right to dispute such fees and Client shall be responsible for paying non-disputed fees in accordance with the terms of this Agreement.
- 10.0 **INDEMNIFICATION**  
10.01 The Interior Designer and the Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are liable, and arising from the project that is the subject of this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.  
10.02 The Interior Designer shall not be responsible for failure to perform or for delays in the performance of work, which arises out of causes beyond the control and without the fault or negligence of the Interior Designer.
- 11.0 **RISK ALLOCATION**  
11.1 In recognition of the relative risks and benefits of the project to both the Client and the Interior Designer, the Client agrees to the fullest extent permitted by law, to limit the Interior Designer total liability to the Client for any and all damages or claim expenses (including attorneys' fees) arising out of this agreement, from any and all causes, to the total amount of the Interior Designer's fee.
- 12.0 **CERTIFICATIONS, GUARANTEES AND WARRANTIES**  
12.01 The Interior Designer shall not be required to sign any document, no matter by whom requested, that would result in the Interior Designer's having to certify, guarantee or warrant the existence of conditions whose existence the Interior Designer or other Consultant cannot ascertain.  
12.02 The Client agrees not to make resolution of any dispute with the Interior Designer or payment of any amount to the Interior Designer in any way contingent upon the Interior Designer's signing any such certification.  
12.03 The Interior Designer shall not be required to execute any documents subsequent to execution of this agreement that would affect the cost or availability of professional or general liability insurance coverage.
- 13.0 **WAIVER OF SUBROGATION**  
13.01 The Interior Designer and Client waive consequential damages for claims, disputes and other matters in question arising out of or relating to this Agreement. In addition, to the extent any damages are covered by property insurance during construction, or afterwards, the Client and Interior Designer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Client and the Interior Designer, as appropriate, shall require of the contractors, sub-consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. END



**Exhibit "B"**  
**NORR Partnership**

**Standard Billing Rate**  
**January 1, 2017**

These Rates are valid for twelve (12) months on services performed under Basic Scope of Services as of NORR Partnership's proposal date. NORR Partnership reserves the right to revise these rates annually from the date on this document (Rate Change Date) and any work performed by NORR Partnership beyond the one year period on Basic Services or Additional Work performed subsequent to the rate change date is subject to the revised rates.

Principal  
Senior Associate  
Associate  
Senior Designer  
Senior Engineer  
Project Manager  
Project Architect  
Project Engineer  
Designer/Technical  
Administrative Support

