OPTION AGREEMENT

This Option Agreement (this "Agreement") is dated this 24 day of August, 2016 ("Effective Date") between **THE NEW BRUNSWICK PARKING AUTHORITY**, a public body corporate and political subdivision of the State of New Jersey with an address at 106 Somerset Street, 6th Floor, New Brunswick, NJ 08901 (the "NBPA" or "Optionor") and **NEW BRUNSWICK DEVELOPMENT CORPORATION**, a New Jersey not-for-profit corporation having its offices at 120 Albany Street Plaza, New Brunswick, New Jersey 08901 ("DEVCO" or "Optionee"). The parties herein are from time to time referred to as the "Parties," with each a "Party."

WITNESSETH:

WHEREAS, the NBPA is the owner of that certain real property located at Block 17, Lot 1.01 and Block 18, Lot 4.01 on the Official Tax Map of the City of New Brunswick, more commonly known as One Penn Plaza, New Brunswick, New Jersey (the "Property"); and

WHEREAS, the principal buildings and improvements on the Property are known as (A) the surface lot on Paterson Street (the "Surface Lot") and (B) the Ferren Mall and Parking Deck (the "Ferren Deck"); and

WHEREAS, the Property is currently not being used by the NBPA and the NBPA wishes to grant DEVCO an option to purchase so DEVCO can market and/or develop the Property for a mixed use development comprising residential, retail, office and parking garage components ("Project"); and

WHEREAS, DEVCO wishes to enter into the Agreement in order to demolish the existing structures and prepare the site for development.

NOW, THEREFORE, for One ($1.00) Dollar and other good and valuable consideration, the parties agree as follows:

1. The Option. The Optionor is currently the owner of the Property and hereby grants to Optionee an exclusive option to purchase said Property which Property is located in Block 17, Lot 1.01 and Block 18, Lot 4.01 on the official tax map of the City of New Brunswick in Middlesex County, New Jersey, on the terms further set forth herein. As is further set forth herein, such exclusive option is comprised of an initial option to acquire all or a portion of the Property ("First Option") and a second option to acquire the additional portions and/or the remainder of the property on one or more occasions ("Second Option").

2. Duration of First Option. The First Option shall run for a period of five (5) years from the date hereof (the "First Option Expiration Date"). If for any reason or no reason the First Option, as granted to Optionee herein, is not exercised by the Optionee by the First Option Expiration Date, this Agreement (as to both the First Option and Second Option, each, an "Option") shall cease and terminate and neither Party herein shall have any further rights or obligations to the other.

3. **Duration of Second Option.** The Second Option shall run for a period of five (5) years from the date of closing of title of the property acquired by the exercise of an option during the First Option period (the "Second Option Expiration Date"). If for any reason or no reason the Second Option, as granted to Optionee herein, is not exercised by the Optionee by the Second Option Expiration Date, this Agreement shall cease and terminate and neither Party herein shall have any further rights or obligations to the other. To the extent that there is a portion of the Property that has not been acquired by Optionee by the Second Option Expiration Date, the Optionee shall have no further rights to that property and this Agreement shall cease and terminate.

4. **Option Consideration.** The Optionee has this date paid good, valuable and adequate legal consideration to Optionor for the rights granted by Optionor to Optionee in this Agreement and Optionor acknowledges the receipt and sufficiency thereof.

5. **Property.** The Property to be sold consists of: (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Optionor's rights, title and interest relating to the Property. The portion of the Property sold in connection with the exercise of a given option shall be referred to as the "First Option Property" or "Second Option Property" (generically, an "Option Property"), as appropriate. Optionor shall divide the Property as directed by Optionee as required to convey a given Option Property, provided that any remainder of the Property following an acquisition can be reasonably developed for a permitted use under either the Redevelopment Plan or Zoning Ordinance.

6. **Purchase Price.** In the event the Optionee exercises an option granted to it herein by Optionor in the manner herein provided, closing of title on the applicable Option Property shall take place within 180 days following the exercise of the option. The purchase price to be paid to Optionor for an Option Property shall be the fair market value of the Option Property with, for the First Option Property, such purchase price being (a) its fair market value established without taking into account the existing improvements on the Property minus (b) the reasonable cost to demolish the existing improvements on the Property. The manner in which the fair market value will be determined is set forth in paragraph 14 hereof.

7. **Payment of Purchase Price.** The Optionee will pay the purchase price in the form of cash, certified check, bank cashier's check, or by federal wire transfer subject to usual and customary adjustments and prorations for real estate taxes and the like. Optionor shall be solely responsible for the payment of the New Jersey Realty Transfer Tax, if required, and the posting of any escrow required by the New Jersey Department of Treasury, Department of Taxation, Bulk Sales Division.

8. **Transfer of Ownership.** At the closing, the Optionor will transfer ownership of the Option Property to the Optionee or to Optionee's designee or assignee. The Optionor will give the Optionee (or Optionee's designee or assignee) a properly executed deed together with appropriate conveyancing and tax forms required by the State of New Jersey as a condition precedent to recordation, an adequate affidavit of title, a resolution, FIRPTA Affidavit, IRS form 1099, if applicable, clear title to the property without any liens or encumbrances not approved in advance of the closing in writing by Optionee. Optionor will also comply with the New Jersey Bulk Sales Tax

law and pay the New Jersey Realty Transfer Tax, if required. Optionor shall also execute and produce at closing such additional documents as Optionee's title insurance company may reasonably require.

9. **Type of Deed.** A deed is a written document used to transfer ownership of property. In this sale, the Optionor agrees to provide and the Optionee agrees to accept a deed known as Bargain and Sale with covenants against grantor's acts.

10. **Exercise of Option.** In the event Optionee or Optionee's designee or assignee elects to exercise the option to purchase an Option Property in accordance with the provisions of this Agreement, it may do so by delivering a written notice to that effect ("Election Notice") to Optionor on or before the First Option Expiration Date or Second Option Expiration Date, as applicable. The Election Notice shall identify the portion of the Property that Optionee wishes to acquire as an Option Property, provided that any remainder of the Property following an acquisition can be reasonably developable for a permitted use under either the Redevelopment Plan or the zoning for the Property. For the purposes of clarity, Optionee shall not be limited as to the number of Election Notices it may provide, subject to the immediately foregoing proviso.

11. **Marketing and Physical Condition of the Property.** Optionee (or its designee and assignee, as the case may be) has had an ample opportunity to inspect the Property and agrees to accept the Property as vacant land at closing. The Optionor agrees that prior to the First Option Expiration Date, the Optionee shall use its best efforts to market the property and demolish the improvements on the Property at its sole cost and expense and that, following the conveyance of the First Option Property, Optionee shall demolish the improvements on the Property at its sole cost and expense if it has not already done so.

12. **Insurance: Indemnification.**

(a) During the Option period, DEVCO agrees that DEVCO and all workers and contractors employed by DEVCO shall be covered by worker's compensation, professional liability, contractual liability, pollution liability and general liability insurance naming the NBPA as an additional insured with limits in the minimum amount of $2,000,000 and $5,000,000 umbrella coverage. At the request of the NBPA, all such contractors shall furnish certificates of insurance, reasonably satisfactory to the NBPA, confirming that the required coverage is then in effect.

(b) The Parties hereby agree to save, defend with counsel reasonably satisfactory to each other, indemnify and hold harmless each Party and each of their respective principals, officers, members, affiliates, directors, trustees, agents and employees from and against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable consultant and contractor costs and attorneys' fees arising under this indemnity) which may arise directly or indirectly from or in any way related to: (a) the acts or omissions of each Party (and, as to the DEVCO, their agents, subcontractors or consultants) pursuant to this Agreement; (b) any breach of any term, condition or covenant set forth in this Agreement, including, as to DEVCO, their agents, subcontractors or consultants.

13. **Cancellation by Optionee.** If this contract is legally and rightfully cancelled, the Optionee (or Optionee's designee or assignee) and Optionor shall be free of liability to each other.

14. **Fair Market Value.**

(a) The Optionee has the right to acquire the whole Property pursuant to exercise of the First Option or to exercise multiple options for multiple portions of the Property in accordance with Paragraphs 5 and 10. The fair market value for the First Option Property, whether the First Option Property is the whole Property or a portion of the Property, shall take into consideration the reasonable costs to demolish the improvements on the Property.

(b) The procedure to be used to evaluate either the value of the whole Property or the relevant portions of the Property optioned by the Optionee shall be as follows. The Parties agree that they will either both obtain appraisals or agree upon a joint appraisal of the fair market value of the Option Property. The Option Property shall be appraised as vacant property. After obtaining the appraisal(s), the parties shall negotiate a purchase price for the Option Property. In the event the parties cannot agree upon a purchase price for the Option Property, within thirty (30) days after receipt of the appraisal(s), the parties agree to appoint a third Appraiser. If the parties cannot agree upon a third Appraiser, they shall request that the Middlesex County Assignment Judge appoint the third Appraiser. The third Appraiser shall proceed with all reasonable dispatch to determine the fair market value. Within fifteen (15) days following the appointment of the third Appraiser, each Party shall submit to the third Appraiser a written report setting forth its determination of the fair market value, together with such information as such Party shall deem relevant. The third Appraiser shall, within thirty (30) days following the submission of such written reports, render its decision by concluding its own determination of fair market value. The decision of the third Appraiser shall be final; such decision shall be in writing and a copy shall be delivered simultaneously to both parties. Optionor and Optionee shall each be responsible for and shall pay the fee of the Appraiser engaged by them respectively, and shall share equally the fee of the third Appraiser. NBPA and DEVCO expressly acknowledge that their respective obligations under this Section shall be subject to the implied obligations of good faith and fair dealing implied in all contracts in the State of New Jersey.

15. **Title.** Title to the Property shall be good, marketable and insurable at regular rates by a title insurance company licensed to do business in the State of New Jersey subject only to the following exceptions, which exceptions to be deemed as "Permitted Exceptions":

(a) Laws, regulations or ordinances of federal, state, county or local entities or agencies having jurisdiction over the Property.

(b) Utility or other easements and restrictions of record which are not encroached upon and which do not interfere with the Optionee's intended use of the Property.

16. **Complete Agreement.** This Agreement is the entire and only agreement between the Optionor and Optionee. This contract can only be changed by an agreement in writing signed by both Optionor and Optionee. The Optionor also promises that the Optionor has not made any other contract to sell the property to anyone else.

17. **Parties Liable.** This contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

18. **Assignment.** The Optionee shall have the right to assign this Agreement or the right hereunder to acquire an Option Property to another person or entity, by written notice to Optionor, provided such person or entity has been designated as redeveloper for the corresponding Option Property(ies) pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. on the condition that the Optionor is reasonably satisfied with the development experience and financial capability of the Assignee. Upon any such assignment, Optionee shall be relieved of any further corresponding obligations of liability to Optionor hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts by Optionor and Optionee and the counterparts, taken together, shall serve to form a single binding Agreement between Optionor and Optionee.

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

If to the NBPA:

New Brunswick Parking Authority
106 Somerset Street, 6th Floor
New Brunswick, New Jersey 08901
Attn.: Mitchell Karon, Executive Director

with copy to:

John A. Hoffinan, Esquire
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive
Woodbridge, New Jersey 07095

If to DEVCO:

New Brunswick Development Corporation
120 Albany Street
Tower 1, 7th Floor
New Brunswick, New Jersey 08901
Attn: Christopher J. Paladino, President

with copy to:

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

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

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

22. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision hereof shall be valid and be enforced to the fullest extent permitted by law.

[SIGNATURES APPEAR ON SUCCESSIVE PAGE]

IN WITNESS WHEREOF, the NBPA and DEVCO have executed this Agreement as of the date set forth above.

WITNESS:

Stephanie Zeller

NEW BRUNSWICK PARKING AUTHORITY

By: [signature]
Name: Mitchell Karon
Title: Executive Director

WITNESS:

Mary Luong

NEW BRUNSWICK DEVELOPMENT CORPORATION

By: [signature]
Christopher J. Paladino
President