



CITY OF NEWARK
DELAWARE

6A

February 16, 2017

TO: Mayor and City Council

FROM: Carol S. Houck, City Manager 

SUBJECT: Purchase and Sale Agreement – Rodney Dormitory Parcel for Primary Development of a Stormwater Facility

Attached please find the signed Purchase and Sale Agreement between the City of Newark and the University of Delaware related to our purchase of the former Rodney Dormitory site. This agreement was reached following months of negotiations and effort on behalf of our agencies. It followed initial public information sharing and meetings related to Newark's proposed development of a large stormwater pond at the site, possibly with recreational amenities as well as preliminary due diligence related to site conditions.

In addition to the Purchase and Sale Agreement, a time schedule presented by our special legal Counsel detailing the timing of our responsibilities and a draft timeline for the overall project, as prepared by staff, (previously shared with Mayor and Council) is also attached. Pending Council's final support of moving forward, a Request for Proposal (RFP) will be let to hire a consulting engineering firm to assist the City through the duration of the project. We anticipate this firm will be involved with project management, environmental evaluations, brownfield engagements, public outreach, project design, referendum development, State Revolving Fund application, public bidding, and construction inspection and management.

CSH/mp
Attachment

**TIME SCHEDULE FOR
PURCHASE AND SALE AGREEMENT
BETWEEN UNIVERSITY OF DELAWARE (SELLER)
AND CITY OF NEWARK (PURCHASER)**

Dates set forth herein are based on a February 27, 2017 effective date ("Effective Date") of the Purchase and Sale Agreement (the "Agreement"), which is the date the City Council can approve and ratify the Agreement and make it binding. Capitalized terms used but not otherwise defined have the meaning ascribed to such terms in the Agreement.

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| February 27, 2017: | Vote by City Council on Approval and Ratification of the Agreement and if approved, sets the Effective Date as February 27, 2017 per Section 1 of the Agreement. |
| February 27, 2017: | Inspection Period of 365 Days begins; can be extended an additional three (3) years for a total maximum Inspection Period of four (4) years per Sections 5 D. and 14 of the Agreement. |
| March 2, 2017: | City deposits \$50,000.00 with Parkowski, Guerke & Swayze as Escrow Agent (the "Deposit" per Section 2. A of the Agreement. |
| April 28, 2017: | Deadline for City to obtain Survey of the Property per Section 3 B. of the Agreement. |
| May 28, 2017: | Deadline for City to notify Seller of Survey Objections, per Section 3. C. of the Agreement (but right of City to Cancel remains until the end of the Inspection Period). |
| May 28, 2017: | Delivery by City to UD of City's Title Insurance Commitment with Title Report and any Title Objections per Sections 3 A. and C. of the Agreement. (but right of City to Cancel remains until the end of the Inspection Period). |
| February 26, 2018: | Last Date to Extend One Year Inspection for Two More Years. |
| February 27, 2020: | End of Three (3) Year Inspection Period Unless COCR not Issued. |
| April 28, 2021: | Latest Date to Close on the Property if City is waiting for receipt of a Certificate of Completion of Remedy (COCR) from DNREC ("Outside Closing Date"); otherwise the Closing shall occur within sixty (60) days after City receives the COCR from DNREC (the "Closing Date"). |
| April 28, 2021: | Payment of Purchase Price over Six (6) Year Term commences on Closing Date or Outside Closing Date (whichever is earlier); first payment of \$300,000.00 paid at Closing with annual payments of \$350,000.00 thereafter. Payment amount adjusted for DNREC expense reimbursements, per Section 2 of the Agreement. |

DRAFT - Timeline for Rodney following signed agreement

RFP for engineering, design and environmental services is issued approximately a 2-month turnaround to Council for hiring firm who will then:

Lead the due diligence phase of agreement	}	5 mo.
Will review Phase 1 environmental and provide direction regarding Phase 2, etc.		
Assist with the application/Approval for Brownfield Certification		
Stormwater improvement identification with City PWWR Staff		
Begin efforts for preliminary design to facilitate public meetings		

Public meetings held to determine scope of project 1 month

Subsequent recommendation to council on preliminary design and cost estimate for design and construction to facilitate referendum 2 months

Referendum preparation for vote

Delineation of the question to citizens	}	4 mo.
Question outlines cost for purchase, design, construction and cost to residents		
Confirmation of polling places and available dates (might try to hit April 2018 council election)		
Council approves the Question(s) at Council Meeting and date of Referendum		

Referendum advertised 2 months
Referendum held

Outcome of the referendum determines path forward

If positive vote of public the

Finalize purchase of the property	2 months
Design is finalized	approximately 6 months
Final Plan of Remedial Action from DNREC	3 months
Bidding and Council approval	3 months
Construction commences	2-year construction term
Preparation of the Long Term Stewardship Plan (if necessary) and Preparation of the Environmental Covenant (completed concurrently)	3 months

EXECUTION VERSION

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of this 14th day of February, 2017 (the "Execution Date"), by and between the **CITY OF NEWARK** ("Purchaser" or "City") and the **UNIVERSITY OF DELAWARE** ("Seller" or "University").

WITNESSETH:

WHEREAS, Purchaser desires to purchase, and Seller desires to sell, premises consisting of approximately 7.2 acres of land situated in the City of Newark, County of New Castle, State of Delaware, and commonly known as UD Caesar Rodney Dormitory Complex ("Rodney DORMS Complex"), 103 Hillside Road, Newark, DE 19717, being the following tax parcel number: 18-019.00-296, including (i) the land described in the rider annexed hereto as Exhibit A (the "Land"), (ii) any buildings and other improvements thereon and any fixtures related thereto ("Improvements"), (iii) any easements, rights-of-way, tenements, hereditaments, appurtenances, licenses and privileges thereto belonging or in any way appertaining to the Land (and to include a separate Right of Way and Easement in Hillside Road which traverses other lands owned by the University known as the Dickinson DORMS Complex, identified as tax parcel no. 18-019.00-222) (the "Easements and Ownership Rights"), and (iv) all air, subsurface and mineral rights relating to the Land (the "Air and Subsurface Rights"), all of the foregoing land and premises described in this paragraph, consisting collectively of the Land, Improvements, Easements and Ownership Rights, and Air and Subsurface Rights being herein collectively referred to as the "Property";

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and of the benefits to be derived herefrom, receipt of which is severally acknowledged, Purchaser and Seller hereby agree as follows:

1. **Offer and Acceptance.** Purchaser offers and agrees to purchase the Property for the Purchase Price and upon the other terms and conditions set forth in this Agreement. Seller hereby accepts the offer of the Purchaser. Such offer and acceptance are subject to and conditioned upon ratification and approval of this Agreement by a vote of a majority of the Newark City Council; the date of such ratification and approval shall be the "Effective Date" of this Agreement.

2. **Purchase Price and Expense Approvals.** The Gross Purchase Price for the property is Two Million One Hundred Thousand Dollars (\$2,100,000.00) (the "Gross Purchase Price"). The actual "Net Purchase Price" to be paid by Purchaser to Seller shall be equal to the Gross Purchase Price reduced by the out-of-pocket third-party costs paid by the City for demolition and remediation minus the greater of (i) \$625,000 or (ii) the amount of any Brownfields grant from DNREC to the City for remediation actually paid by DNREC to the City before the Closing; and, provided further, that the reduction to the Gross Purchase Price shall in no event exceed \$700,000 (meaning that the minimum Net Purchase Price shall be \$1,400,000). By way of example, if the cost of remediation and demolition was \$1.2 million, and DNREC granted and paid \$625,000 to the City before the Closing, the Net Purchase price would be

reduced by \$575,000 (\$1.2 million in demolition and remediation costs less \$625,000) for a Net Purchase Price of \$1,525,000 (\$2,100,000 less \$575,000). To the extent that DNREC reimburses the City for demolition and remediation costs within ten (10) years after the date of Closing, such monies shall be paid over to the University within 10 business days of their receipt by the City to the extent that, had the City received such monies before Closing, the Net Purchase Price would have been higher; and, the foregoing obligation shall survive Closing for a period of ten (10) years after which the City will have no further obligation to pay over any DNREC reimbursement monies to the University and any such obligation is terminated at that time. The Net Purchase Price shall be payable as follows:

A. Within three (3) business days after the Effective Date of this Agreement Purchaser shall deposit with Parkowski, Guerke & Swayze, P.A., as escrow agent (the "Escrow Agent"), the sum of Fifty Thousand Dollars (\$50,000.00) (the "Deposit"). The Deposit shall be held by the Escrow Agent in a non-interest bearing account for application to the Purchase Price upon consummation of the transaction. All references to "Deposit" contained in this Agreement shall be deemed to mean the Deposit. In the event the sale is consummated as contemplated hereunder, the Deposit shall be paid by the Escrow Agent to Seller on the Closing Date and credited against the Purchase Price. In the event the sale is not consummated for any reason, disposition of the Deposit shall be governed by the provisions of this Agreement applicable thereto.

B. On the date established pursuant to Section 14 (the "Closing Date") for delivery of the deed to Purchaser and disbursement of the proceeds of the sale due Seller (the "Closing"), Purchaser shall make payment to Seller of the Net Purchase Price in installment payments, adjusted to reflect all prorations made pursuant to Section 15 and the allocation of closing costs pursuant to Section 16 and otherwise as provided in any other paragraph of this Agreement, less the Deposit. Thirty (30) days prior to the Closing Date, the parties will execute an addendum to this Agreement confirming the Net Purchase Price calculation (the "Net Price Addendum"). Payment of the amount due to Seller hereunder shall be made under the following payment schedule and terms: The Net Purchase Price will be paid by the City to the University in annual installments of Three Hundred Fifty Thousand Dollars (\$350,000.00) each (subject to Net Purchase Price reduction) over a maximum term of six (6) years with interest accruing at three (3.0%) percent per annum on the unpaid balance until paid in full. The Deposit shall be credited against the Net Purchase Price at closing. The City's payment obligation can be secured by a promissory note and mortgage on the Property conveyed on the Closing Date.

3. Title.

A. Purchaser shall, within ninety (90) days after the Effective Date, furnish or cause to be furnished to Seller, a copy of a commitment for the issuance of an ALTA fee owner's policy of title insurance (which title insurance policy is to be issued at Closing or as soon as reasonably practicable thereafter), without standard exceptions (subject to subsection 3B below), in the amount of the Purchase Price, together with copies of all exception documents shown on Schedule B thereof, which commitment shall be issued by a Delaware licensed title insurance company of Purchaser's choosing (the "Title Company"), which Title Company shall agree to insure the title in the condition required hereunder (the "Title Commitment"). Purchaser shall, at

the time of Closing, order an owner's policy of title insurance from the Title Company pursuant to the Title Commitment.

B. Purchaser shall obtain a survey of the Property ("Survey") within sixty (60) days after the Effective Date (the "Survey Deadline").

C. Within thirty (30) days after the Survey Deadline ("Title Review Date"), Purchaser shall notify Seller of any objection to the title to the Property including any matters of Survey (collectively the "Title Objections"), which renders the Property unsuitable for Purchaser's use of the property as a stormwater management facility/public recreation area ("Purchaser's Intended Use"), based upon a written opinion of Purchaser's attorney that the title is not in the condition required for performance of this Agreement. Seller shall have thirty (30) days from the date it is notified in writing of the particular defects claimed either to remedy the defect or defects or advise Purchaser it is unwilling to remedy said defects, in which case Purchaser may either (a) terminate this Agreement if Seller is unwilling to remedy the defect or defects or (b) elect to waive any defect and proceed with the purchase subject thereto. If Seller is unable or unwilling to remedy the defect or defects before the end of the Inspection Period (as such term "Inspection Period" is defined in Section 5A), and Purchaser does not elect to waive such defect or defects, this Agreement may be terminated by Purchaser and Purchaser shall be entitled to a refund of the Deposit. If Purchaser shall fail to make any Title Objections on or before the end of the Inspection Period, Purchaser shall be deemed to have accepted all exceptions to the Title Commitment and the form and substance of the Survey and all matters shown thereon. Any title exceptions not objected to by Purchaser and any defect noted by Purchaser but waived by Purchaser as set forth above and any and all matters that would have been shown on a Survey if Purchaser desires to obtain one shall be referred to herein collectively as the "Permitted Exceptions".

4. Possession. Possession of the Property shall be delivered to Purchaser on the Closing Date, free of any occupants, agents or contractors and following the issuance by DNREC of a Certificate of Completion of Remedy.

5. Inspection and Investigation and Remediation by Purchaser.

A. Subject to the terms and conditions of this Section 5, Purchaser and its agents shall have three hundred sixty-five (365) days from the Effective Date of this Agreement (the "Inspection Period") to inspect and investigate the Property and, at Purchaser's election, enter into a Brownfields Agreement with DNREC and commence demolition and environmental remediation of the Property (collectively the "Due Diligence"). Seller will reasonably cooperate with Purchaser to obtain approvals and execute any necessary applications as a part of Purchaser's Due Diligence, provided that Purchaser shall be responsible for any expense in connection therewith, but excluding any of Seller's attorneys' fees. Purchaser shall provide at least ten (10) days prior written notice to Seller of any meetings and/or hearings scheduled in connection with the Due Diligence, and Seller shall be permitted to attend and participate in any such meetings or hearings. Seller shall designate an official point of contact to consult with and advise Purchaser during the Purchaser's RFP and public bidding process for contracts related to Purchaser's Work under this Agreement, provided that such consultation and advice by Seller's representative is non-binding on Purchaser. Seller shall be consulted by Purchaser before

Purchaser executes any contracts for the demolition or remediation of the Property and Seller shall have a reasonable opportunity to review and make non-binding advisory comments on such contracts before Purchaser binds itself to any such contracts. During the pre-bid qualifying period, the Seller shall be provided five (5) business days to reject any proposed bidding contractor or sub contractor for any work or study to be performed on the Property while the Seller still owns the Property, and if Seller does not respond within said five (5) business day period, the named contractor or sub contractor shall be deemed approved by Seller; only such pre-qualified contractors and sub contractors shall be permitted on the Property as long as Seller is the owner of the Property.

B. Purchaser has recently completed a Phase I and Phase II Environmental Assessment, copies of which have been previously provided to Seller and Seller acknowledges its receipt of said assessments (the "Phase I and Phase II") and Seller consents to Purchaser's disclosure of Phase I and Phase II to DNREC, Purchaser's agents and consultants, and to members of the general public, if so requested by a FOIA request, or if so requested by a member of the Newark City Council.

C. All Due Diligence shall be conducted at Purchaser's sole cost and expense. Purchaser shall not interfere with Seller's use and/or operations conducted on the Property. If the Land is disturbed or materially altered as a result of Due Diligence and provided Purchaser has not commenced any demolition or environmental remediation activity, Purchaser shall promptly restore the Land (but not the Improvements) to its condition immediately prior to such activities at its own expense if Purchaser does not close on the Property. If Purchaser commences demolition and/or environmental remediation on the Property and thereafter terminates this Agreement during the Inspection Period, Purchaser shall not be obligated to restore the Land or the Improvements to its former condition, but Purchaser shall pay all such demolition and remediation costs incurred up to the date of such termination.

D. If Purchaser is unsatisfied with the results of its Due Diligence for any reason or no reason, then Purchaser may terminate this Agreement by giving written notice as specified in Section 21 to Seller at any time before the Inspection Period (or any extension thereof) expires, in which case Seller shall refund the Deposit to Purchaser. Purchaser and Seller acknowledge that the Phase I and Phase II reports identify certain environmental conditions that will require DNREC approved remediation under a mutually agreeable Brownfields Development Agreement (the "BDA") between Purchaser and DNREC (the "Environmental Conditions"). If Purchaser chooses to engage in demolition and remediation of the Environmental Conditions under the BDA, Purchaser shall use good faith efforts to complete such demolition and remediation in accordance with the requirements of the BDA before the expiration of the Inspection Period, provided that Purchaser at all times reserves the right to terminate the BDA and this Agreement at any time before the expiration of the Inspection Period. Seller agrees to extend the Inspection Period for two (2) additional twelve (12) month periods upon Purchaser's request, with the understanding that the Deposit shall be nonrefundable (except in the event of default by Seller) and paid over to Seller as a condition of the first such extension. In the event Purchaser exercises its right to terminate this Agreement before the expiration of the Inspection Period, Purchaser shall complete all demolition and remediation work already in progress on the date of such termination, but shall not be required to commence any such work not already in progress, and all demolition and remediation contracts shall include

phases or stages such that the parties can understand and identify what stage or phase of work then underway must be completed. In no event shall the Purchaser be required to obtain a COCR or commence any new work in connection with such COCR if Purchaser terminates this Agreement.

E. For purposes of this Agreement "Environmental Laws" shall mean all federal, state and local laws, regulations and requirements in effect as of the date of this Agreement relating to the presence or discharge of "Hazardous Materials" (as hereinafter defined). The term "Hazardous Materials" means (i) any hazardous, toxic or radioactive substance, material, matter or waste which is currently regulated by any federal, state or local law, ordinance, rule, regulation, code or any other governmental restriction or requirement, including, but not limited to, formaldehyde, urea, asbestos, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, any flammable or explosive materials; (ii) the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq. ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq. ("RCRA"), and in any current amendments, extensions or substitution of or for any of such acts; (iii) the term "Chemical Substance" as defined in the Toxic Substance Control Act, as amended, 15 U.S.C. §2601 et seq., and in any current amendments, extensions or substitution of or for such Act; and (iv) "Hazardous Materials" as defined under any and all applicable environmental protection statutes of the state and municipality in which the Property is located.

6. Conditions Precedent.

A. The obligation of Purchaser to proceed to consummate this transaction shall be expressly conditioned upon the following conditions precedent:

- (i) Purchaser has entered into a Brownfields Development Agreement with DNREC for the Property and such BDA has not been terminated by Purchaser or DNREC.
- (ii) Purchaser has not terminated this Agreement under any right to terminate.
- (iii) Seller shall be prepared to deliver to Purchaser the documents listed in Section 7.
- (iv) Purchaser has obtained a Certificate of Completion of Remedy or comparable compliance certification from DNREC that the Property's recognized environmental conditions have been remediated to the satisfaction of DNREC and that no further action is required, and that Purchaser has fully complied with the BDA.

B. The obligation of Seller to proceed to consummate this transaction shall be expressly conditioned upon the following conditions precedent:

- (i) The provisions of Section 3 shall have been satisfied.

- (ii) No right of Seller to terminate this Agreement under Sections 12 or 13 shall have occurred and be continuing.
- (iii) Purchaser shall be prepared to deliver to Seller the documents listed in Section 7.

7. Documents to be Furnished on Closing Date.

A. On the Closing Date, Seller shall deliver to Purchaser the following documents:

- (i) A special warranty deed to the Property in recordable form conveying good and marketable fee simple title to the Property subject only to the Permitted Exceptions and the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the date of Closing, subject to adjustment as herein provided.
- (ii) An affidavit executed by Seller, to the best of Seller's knowledge, substantially in the form required by the Title Company to remove the standard exceptions from the owner's policy of title insurance to be issued to Purchaser hereunder other than standard survey exceptions, the removal of which shall be conditioned upon Purchaser, at its sole cost and expense, obtaining and delivering the Survey of the Property to the Title Company.
- (iii) A fully executed access and utility Right of Way Agreement for the benefit of Purchaser as to the use of a portion of Seller's retained land known as that portion of Hillside Road traversing Seller's Dickinson Dorms Complex, in a form mutually agreeable to Purchaser and Seller.
- (iv) Originals or copies of any bills or invoices then in Seller's possession in respect of which an adjustment is made between Purchaser and Seller at the Closing.
- (v) A FIRPTA Affidavit.
- (vi) Applicable state and local transfer tax affidavits.

B. On the Closing Date, Purchaser shall deliver to Seller, in form reasonably satisfactory to Seller and its counsel, the following documents:

- (i) An Affidavit executed by Purchaser in form required by the Title Company to satisfy any requirements of the Title Commitment to be satisfied by Purchaser.
- (ii) Applicable state and local transfer tax affidavits.

- (iii) Copies of all invoices related to the demolition and remediation of the Property by or on behalf of Purchaser.
- (iv) A copy of the Certificate of Completion of Remedy issued by DNREC regarding the Property.
- (v) An easement for utility lines in recordable form as described in paragraph 34 below (unless such easements are incorporated into the deed for the Property).

C. On the Closing Date, Purchaser and Seller shall each deliver to the other a closing statement reflecting payment of the Net Purchase Price installment then due and the applicable prorations, in form reasonably satisfactory to both Purchaser and Seller and their respective counsel. Purchaser and Seller shall also deliver to each other a fully executed Net Price Addendum. Purchaser shall also deliver a fully executed Promissory Note and a Mortgage in recordable form for the balance of the Net Purchase Price due in accordance with the terms of this Agreement.

8. Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

A. Power. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated hereby, and that no person or entity other than Seller and Purchaser have any legal or equitable interest in the Property.

B. Requisite Action. All requisite action has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby. Except as otherwise provided in this Agreement, no consent of any other party is required which has not been obtained to permit Seller to enter into this Agreement and consummate the transactions contemplated hereby.

C. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

D. Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor referenced herein conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, lease or other agreements or instruments to which Seller is a party.

E. No Encumbrances. Seller is not a party to or bound by any option to purchase, contract of sale, lease or right of first refusal with respect to the Property.

F. "As-Is" Condition. Notwithstanding any other statements contained anywhere else in this Agreement or elsewhere, Seller makes no representations or warranties of

any kind with respect to the condition of the Property, and the Property is to be conveyed in its "as is" condition.

9. Purchaser's Representations, Warranties and Covenants. Purchaser hereby represents, warrants and covenants as follows:

A. Power. Purchaser is a municipality of the State of Delaware, validly existing, and has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated hereby.

B. Requisite Action. All requisite action has been taken by Purchaser in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby, subject to approval by City Council as set out in Section C herein.

C. Authority by City Council. Unless and until the City Council of the City of Newark votes to ratify and approve a fully executed version of this Agreement, the City shall not be bound by the terms of this Agreement.

D. Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor referenced herein conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, lease or other agreements or instruments to which Purchaser is a party.

E. "As-Is" Condition. Notwithstanding any other statements contained anywhere else in this Agreement or elsewhere, Buyer acknowledges that Seller has made no representations or warranties of any kind with respect to the condition of the Property, that the Property is to be conveyed in its "as is" condition, and that Buyer has had, and during the Inspection Period will have, sufficient time and access to fully inspect and acquaint itself with the Property.

10. Obligations of Seller Prior to Closing. During the period commencing on the Effective Date and ending on the Closing Date, Seller shall:

A. Operate and maintain the Property in substantially the same manner in which Seller has operated and maintained it prior to the Effective Date.

B. Pay all costs and expenses arising out of its ownership of the Property.

C. Furnish to Purchaser promptly after receipt by Seller any and all notices of any proposed action under or violation of any law, statute, ordinance, rule or regulation materially affecting all or any portion of the Property.

D. Cooperate fully with Purchaser, DNREC and Purchaser's agents, contractors and subcontractors in connection with the demolition and environmental testing and remediation of the Property.

E. Reaffirm as true all of Seller's Representations and Warranties under this Agreement to Purchaser.

11. Loss by Fire. Other Casualty or Condemnation.

A. In the event that prior to the Closing any of the Property is destroyed or suffers material damage, including but not limited to a release of Hazardous Materials, (a "Casualty") and provided that the primary cause of any such Casualty was not due to the negligence or willful misconduct of the Purchaser or Purchasers contractors or subcontractors, then Purchaser shall have the right, exercisable by giving notice to Seller within fifteen (15) days after receiving written notice of such Casualty either (i) to terminate this Agreement, or (ii) to accept the Property in its then condition and to proceed with the Closing without an abatement or reduction of the Purchase Price and Seller shall assign to Purchaser at closing those insurance proceeds attributable to damage or destruction to the Land, Easement and Ownership Rights and Air and Subsurface Rights, but shall retain all right, title and interest in and to insurance proceeds attributable to damage to the Improvements. If Purchaser elects to proceed under clause (ii) above, neither party shall compromise, settle or adjust any claims to such proceeds without the other party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed) and, if Seller's casualty insurer shall at any time after such election deny coverage in whole or in part, this Agreement shall terminate at the election of Purchaser only with the same effect as if Purchaser had elected to proceed under clause (i) above. However, in the event the primary cause of any such Casualty is due to the negligence or willful misconduct of Purchaser or Purchasers contractors or sub contractors (a "Purchaser Casualty"), then the Purchaser may still exercise its rights under this Agreement to terminate this Agreement but in addition, the Purchaser shall also be liable for any material damage to the Land as a result of any Purchaser Casualty and Purchaser's only obligation relative to damage to the Improvements is to render the same safe and stable, since demolition of the same is intended under this Agreement.

B. In the event that prior to Closing there is any non-material damage to the Property, Seller shall repair such damage to the Land as a result thereof prior to the Closing but its only obligation relative to damage to the Improvements is to render the same safe and stable, since demolition of the same is intended under this Agreement. In the event of any damage or destruction and Purchaser elects not to terminate this Agreement, there shall be no delay in the Closing.

C. Seller shall give Purchaser prompt notice of any damage to or destruction of the Property or of the institution of any proceedings for condemnation of all or any portion of the Property.

D. If Purchaser rightfully terminates this Agreement pursuant to subsection A above, Purchaser shall be entitled to a refund of the Deposit.

12. Purchaser's Remedies Upon Default. If Seller, without legal excuse, fails to consummate the sale of the Property contemplated by this Agreement by the Closing Date or is in material breach of any if its representations, warranties, covenants or obligations under this

Agreement and shall not have cured such breach on or prior to the Closing Date, Purchaser may, as its sole and exclusive remedy therefor, within thirty (30) days after the Closing Date, either (i) terminate this Agreement by written notice to Seller and receive a return of its Deposit, in which event this Agreement shall terminate and be of no further force or effect and the parties shall be relieved of all obligations and liabilities hereunder, except as otherwise expressly set forth herein; or (ii) sue for specific performance of the material unperformed obligation(s) of Seller under this Agreement and an award of reasonable attorneys' fees and costs for bringing such specific performance action. Notwithstanding anything to the contrary contained in this Agreement, Purchaser shall in no event be entitled to any damages from Seller, including, without limitation, actual, incidental, consequential damages, and/or punitive damages, arising out of any breach or default by Seller of any representation, warranty, covenant or obligation of Seller under this Agreement; provided, however, in the event an action for specific performance is not an available remedy to Purchaser, Purchaser shall have the right to recover from Seller all of its out of pocket costs and expenses incurred in connection with this Agreement, including its reasonable attorneys' fees.

13. Seller's Remedy Upon Default. If Purchaser, without legal excuse, (a) fails to consummate the purchase of the Property contemplated by this Agreement by the Closing Date or (b) is in material breach of any of its representations, warranties, covenants or obligations under this Agreement and shall not have cured such breach on or before the Closing Date, Seller shall be entitled, as its sole and exclusive remedy therefor, to the Deposit (which shall be immediately paid by Escrow Agent to Seller) as full liquidated damages for such failure or breach by Purchaser, and not as a penalty, the parties hereto acknowledging that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default, and that the liquidated damage amount set forth in this Section represents both parties' best efforts to approximate such potential damages. Thereupon this Agreement shall terminate and the parties shall be relieved of all further obligations and liabilities hereunder, except as otherwise expressly set forth herein.

14. Closing. Within sixty (60) days after receipt by Purchaser of a Certificate of Completion of Remedy from DNREC for the Property (or on such earlier date as Purchaser and Seller may mutually agree), the Closing shall take place at the offices of the Escrow Agent or at another mutually agreeable location (the "Closing Date"). If Purchaser has not received the COCR from DNREC on or before the third anniversary of the Effective Date but Purchaser is engaged in good faith efforts to obtain such COCR from DNREC, then at Purchaser's election's the Inspection Period shall be extended an additional 365 days, that is, for a total period of four (4) years from the Effective Date (the "Last Extension Period"). If Purchaser does not Close on the Property within sixty (60) days after the end of the Last Extension Period, this Agreement shall terminate of its own accord and neither party shall have any claims or obligations as to the other except as specifically provided for in this Agreement.

15. Prorations. At Closing, there shall be a proration of any utility charges, including without limitation charges for public water and sewer service for the Property, charges under service contracts and other like agreements relating to the Property, if any, and city, county and/or state ad valorem property taxes levied upon the Property.

16. Closing Costs. Purchaser shall pay the cost of recording the deed conveying the Property to Purchaser and the Right of Way Agreement, the premium for any title endorsements Purchaser elects to obtain, the cost of any owner's policy of title insurance, the cost of any Survey obtained by Purchaser pursuant to subsection 3B, and one-half (1/2) of any transfer taxes and other taxes with respect to the deed (collectively, the "Transfer Taxes"). Seller shall pay one-half (1/2) of any Transfer Taxes and all recording costs other than the cost of recording (i) the deed or (ii) instruments required by Purchaser's lender, if any. Purchaser and Seller shall each pay the cost of their own attorneys and consultants.

17. Brokers. Both parties represent to each other that there are no brokers involved in this transaction. The parties shall indemnify each other against any and all claims for fees from their breach of the foregoing representation.

18. Assignment. This Agreement shall not be assigned by either Purchaser or Seller without the written consent of both Purchaser and Seller.

19. Governing Law; Choice of Forum. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF DELAWARE AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE. BOTH PARTIES AGREE THAT ANY ACTION ARISING OUT OF THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF DELAWARE.

20. Additional Documents. Each party agrees to execute any additional documents reasonably requested by the other party or the Title Company to carry out the intent of this Agreement.

21. Notices. Any notice or other communication required by this Agreement (exclusive of the delivery of Seller's Materials) to be given to Purchaser or Seller shall be in writing and shall be either (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid and return receipt requested, (iii) sent by a nationally recognized overnight delivery service, in each case addressed as follows or (iv) sent by facsimile, provided that one of the other delivery methods identified in clauses (i)-(iii) of this Section 21 is also utilized:

If to Purchaser: City of Newark
Carol Houck, City Manager
220 S. Main Street
Newark, DE 19711
Fax Number: 302-366-7160

With a Copy to: Bruce Herron, Esquire
City Solicitor, City of Newark
220 S. Main Street
Newark, DE 19711
Fax Number: 302-656-7774

Mark F. Dunkle, Esquire
Parkowski, Guerke & Swayze, P.A.
PO Box 598
Dover, DE 19903
Fax No: 302-678-9415

If to Seller: University of Delaware
Alan Brangman
Executive Vice President
122 Hullihen Hall
Newark, DE 19716
Fax Number: 302-831-7060

With a Copy to: William Manning, Esquire
Richard A. Forsten, Esquire
Saul Ewing, LLP
PO Box 1266
Wilmington, DE 19899
Fax Number: 302-421-5869

Any such notice or other communication shall be effective on the earlier of the day of its receipt by, or the day after the day on which it is sent to, Purchaser or Seller, as the case may be. If Purchaser or Seller shall change its address for the purpose of receipt of notices and other communications under this Agreement, the notice of such change of address shall be given in the manner specified above.

22. Escrow Agent. The Escrow Agent shall have no liability to either Purchaser or Seller except for the Escrow Agent's own negligence or willful misconduct and shall be indemnified by both Purchaser and Seller, jointly and severally, against any claim, liability or expense (including reasonable attorneys' fees) resulting from any action taken or omitted by the Escrow Agent under or pursuant to this Agreement. The Escrow Agent is authorized to make payment of the Deposit to Purchaser or Seller upon the written request of Purchaser or Seller, as the case may be, accompanied by a certification of such party that it is entitled to receive the payment. Notwithstanding any other provision of this Agreement, the Escrow Agent shall not be required to make payment of the Deposit, except in accordance with the foregoing authorization and upon the Escrow Agent's receipt of such specific assurance of indemnification from the party requesting payment as the Escrow Agent may reasonably request.

23. Third Parties. Except as set forth with respect to the Escrow Agent in Section 22, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies whatsoever.

24. Effective Date of this Agreement. This Agreement shall only become effective if and when it is ratified and approved by a vote of a majority of the members of the Newark City Council (the "Effective Date").

25. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provisions of this Agreement.

26. Saturdays, Sundays and Holidays. Time is of the essence of this Agreement and the performance of all covenants, agreements and obligations hereunder. Whenever in this Agreement it is provided that notice must be given or an act performed or payment made on a certain date, if such date falls on a Saturday, Sunday or a nationally recognized holiday of the United States, the date for the notice of performance or payment shall be the next following business day.

27. Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing to the party making the waiver.

28. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

29. Integration. This Agreement constitutes the entire agreement and understanding between the parties hereto relating to the sale and purchase of the Property, and it is agreed that any change in, addition to, or amendment or modification of the terms hereof shall be of no effect unless reduced to writing and executed by both Purchaser and Seller.

30. Survival. This Agreement shall not be merged into any instruments or documents executed and delivered at the Closing, and shall not survive the Closing, except as otherwise expressly set forth herein.

31. Recordation. Purchaser shall not record this Agreement or a memorandum or other notice thereof in any public office without the express written consent of Seller. A breach by Purchaser of this covenant shall constitute a material default by Purchaser under this Agreement.

32. Prevailing Party. In the event a suit or action is instituted to interpret or enforce the terms of this Agreement, or in connection with any arbitration or mediation of any dispute, the prevailing party shall be entitled to recover from the other party such sum as the court, arbitrator or mediator may adjudge reasonable as such party's costs and attorney's fees, including such costs and fees as are incurred in any trial, on any appeal, in any bankruptcy proceeding (including the adjudication of issues peculiar to bankruptcy law) and in any petition for review. Each party shall also have the right to recover its reasonable costs and attorney's fees actually incurred in collecting any sum or debt owed to it by the other party, with or without litigation, if such sum or debt is not paid within fifteen (15) days following written demand therefor. The provisions of this Section 32 shall survive Closing or any termination of this Agreement.

33. Collaboration with the School of Engineering. The Purchaser shall provide reasonable opportunities for the students and faculty of the School of Engineering of the University of Delaware to observe and, under mutually acceptable safety protocols, participate in

educational lab and field work reasonably related to the demolition, remediation and development of the Property, provided such participation does not, in the sole discretion of the Purchaser, contribute to any delay, increased cost or have such other objectionable impact on Purchaser's Due Diligence, closing or post-closing activities involving the Property. As such, the student and faculty participants shall be considered licensees whose permission under this Section to participate can be revoked by Purchaser.

34. Existing Utility Lines and Easements. During the Inspection Period, the Seller shall physically identify the location of all utility lines and easements on the Property. During the Inspection Period, the Purchaser may relocate such lines or easements on the Property at Purchaser's expense, subject to the Seller's right to approve any such proposed relocations, such approval by Seller not to be unreasonably withheld, delayed or conditioned. The parties agree and acknowledge that an appropriate easement or easements for such utility lines or relocation of existing easements shall be recorded at closing, either by incorporation into the deed for the Property or by recordation of a separate easement document.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement as of the date first above written.

Purchaser:

CITY OF NEWARK

By: Carol A. Houch (SEAL)
Name: Carol S. Houch
Its: City Manager

Dated: 2/6/17

Seller:

UNIVERSITY OF DELAWARE

By: H. Alan Brangman (SEAL)
Name: H. ALAN BRANGMAN
Its: EVP & UNIV. TREASURER

Dated: 02/14/2017

CONSENTED TO BY THE CITY COUNCIL OF THE CITY OF NEWARK on _____, 2017, at its _____ meeting.

Certification of City Clerk

RECEIPT OF DEPOSIT

The undersigned, as Escrow Agent under the foregoing Purchase Agreement, hereby acknowledges receipt of funds in the amount of Fifty Thousand Dollars (\$50,000.00), constituting Purchaser's Deposit under the Agreement, and agrees to hold and administer such Deposit in accordance with the terms of the Agreement.

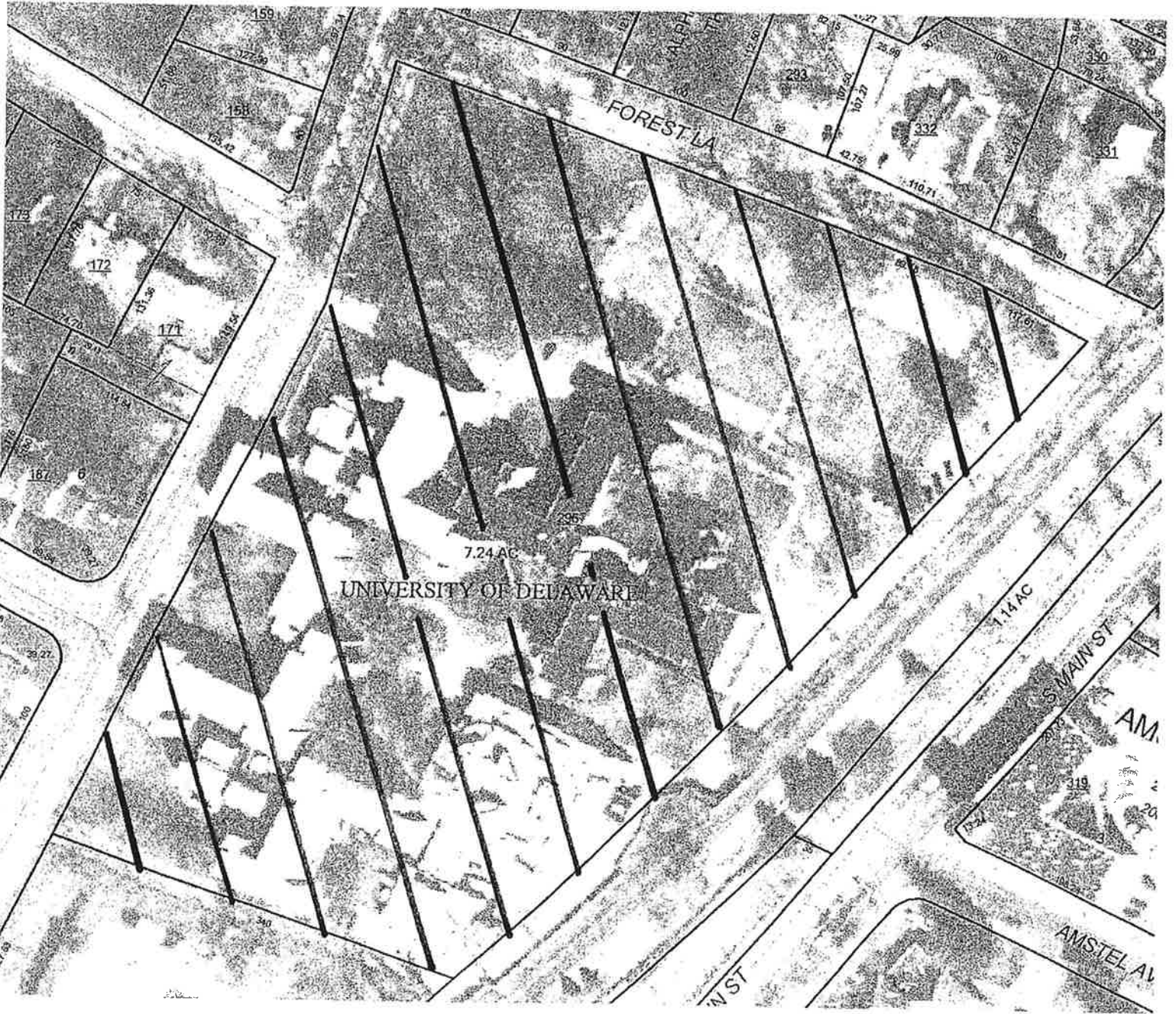
PARKOWSKI, GUERKE & SWAYZE, P.A.

By: _____
Name: _____
Its: _____

Dated: _____

EXHIBIT A

GRAPHIC DEPICTION AND DEED REFERENCES FOR “THE LAND” ATTACHED



BEING part of the same lands and premises which were conveyed unto University of Delaware, by deed of Paul K. Musselman & Kathleen C. Musselman dated July 7, 1964, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on July 14, 1964, in Deed Book I, Volume 73, Page 516.

BEING the same lands and premises which were conveyed unto University of Delaware, by deed of Joseph G. Malone and Shirley J. Malone recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on July 15, 1965, in Deed Book K, Volume 75, Page 226.

BEING the same lands and premises which were conveyed unto University of Delaware, by deed of Robert C. Squier and Jacqueline L. Squier recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on November 1, 1966, in Deed Book A, Volume 78, Page 456.

BEING the same lands and premises which were conveyed unto University of Delaware, by deed of The Schuylkill Improvement Land Company of Philadelphia dated December 21, 1960, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on January 30, 1961, in Deed Book I, Volume 67, Page 166.

BEING the same lands and premises which were conveyed unto University of Delaware, by deed of The Baltimore and Philadelphia Railroad Company dated December 21, 1960, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, on January 30, 1961, in Deed Book I, Volume 67, Page 154.