

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
BRRAG TAX CREDIT CERTIFICATE TRANSFER PROGRAM APPLICATION**

(As authorized by the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65)

FOR:

(Selling Company)

Directions: Please submit the completed application and all required exhibits to the New Jersey Economic Development Authority. An original signature of an authorized corporate officer on the application is required (fax signatures cannot be accepted.) Do not place pages in plastic sheets or bindings that have to be taken apart. For your convenience, a listing of definitions pertaining to this application can be found on Form 4, pages 21, 22 and 23.

Please submit:

- One (1) completed original application
- One (1) photocopy of the completed original application
- One (1) electronic copy of the application to your assigned EDA Representative
- A non-refundable application fee of \$1000 made payable to the New Jersey Economic Development Authority. (Please reference "BRRAG Tax Credit Cert. Transfer" program on checks.) The New Jersey Economic Development Authority reserves the right to decline any application package for incomplete or inaccurate information.

Mail to:

New Jersey Economic Development Authority
P.O. Box 990
Trenton, New Jersey 08625

Ship to:

New Jersey Economic Development Authority
36 West State Street
Trenton, New Jersey 08625

Please note:

Those with questions about this application or the application process are encouraged to contact EDA Customer Care at 609-777-4898 or via e-mail at CustomerCare@njeda.com.

(8/7/08)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
BRRAG TAX CREDIT CERTIFICATE TRANSFER PROGRAM APPLICATION

(As authorized by the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65)

Summary

The Business Retention and Relocation Assistance Grant “BRRAG” Tax Credit Certificate Transfer Program (“Program”) is an initiative under the jurisdiction of the New Jersey Economic Development Authority (EDA) and is administered by the EDA, in cooperation with the Division of Taxation within the New Jersey Department of the Treasury.

The purpose of the Program is to allow businesses in this State with unused amounts of BRRAG tax credits to surrender those tax credits to other corporations desiring such credits, which in exchange, will provide private funding to assist with costs incurred by the relocating business.

A BRRAG tax credit may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following and shall expire thereafter. However, it is possible that unused credits that remain stranded in the allowable periods may be utilized in the event of future additional liability for such allowable periods, like an audit assessment. Therefore, eligibility for this program will require the selling business to certify that to the best of its knowledge, it cannot use the tax credits originally issued for the tax periods in which the credits are allowable.

Eligibility Criteria

A business shall be eligible to apply to the Program if the business:

1. Entered into a BRRAG project agreement pursuant to the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65 (the “Act”) and N.J.A.C. 12:2A-1 and is not in default of that BRRAG project agreement;
2. Has unused amounts of BRRAG tax credits issued and otherwise allowable;
3. Certifies, to the best of its knowledge, that it cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable; and
4. Has incurred or will incur expenses in connection with the operation of the business in the State, including, but not limited to, the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the Chief Executive Officer of the EDA to be necessary to carry out the purposes of the Act.

Submission Requirements

Each application to the EDA by a selling company shall include the following information. Completed applications must be received at least 120 days prior to the expiration of the second tax period, pursuant to N.J.A.C. 12A:2-1.11 and 12A:2A-1.5.

1. The name and address of the applicant;
2. A statement that all terms and conditions of the selling businesses’ BRRAG project agreement have been and/or are continuing to be met;
3. A list of all corporations and affiliated groups of corporations that directly or indirectly own or control five percent or more of the voting rights or five percent or more of the value of all classes of stock of the selling business;
4. A statement that the selling business is operating and has no current intention to cease operating;
5. A certification that, to the best of the applicant’s knowledge, the applicant cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable;
6. The proposed use of any private financial assistance that would be provided by a buying business, to assist in the funding of costs incurred by the relocating business;
7. Any other necessary and relevant information as determined by the Chief Executive Officer of the EDA for a specific application.

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Application and Review Procedures

(a) Applicants shall submit to the Chief Executive Officer a completed BRRAG Tax Credit Transfer Program application. The application shall bear either a legible post-mark date or a date-received stamp from the EDA.

(b) The EDA, in cooperation with the Director of the Division of Taxation, shall conduct a review of the applications commencing with the application bearing the earliest submission date. The EDA may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The application review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

(c) Once the review in (b) above is completed, the EDA's Board Members shall recommend to either approve or deny an application. The minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days after the Governor's receipt of the minutes unless earlier approved or vetoed.

(d) The Chief Executive Officer, after receipt and consideration of the recommendation from the EDA Board Members, shall issue a preliminary approval, approval with modifications, or denial of an application in the program and so notify the applicant.

(e) In the event that the applicant receives notification of preliminary approval, that notification will state the conditions that must be met before the Chief Executive Officer will issue a final approval. The notification of preliminary approval will state that the Chief Executive Officer will forward the application to the Division of Taxation only upon receipt of the following:

1. A statement (Seller's Closing Certificate, Form 1), dated the date of the closing of the sale of the tax credit transfer certificate that states, among other matters, that as of the date of the certificate, the selling business is operating and has no current intention to cease operating;
2. A completed Tax Benefit Identification Form (Form 2) that identifies the accumulated BRRAG tax credits, the amount intended to be sold, and the years that the BRRAG tax credits were incurred;
3. A Buying Business Application (Form 3) that the selling business should forward to the buying business, and which identifies the buying business's name, address, telephone number, the estimated value of the tax credits to be transferred, and from whom, and a certification that the buying business is not an affiliate;
4. An executed form of standard selling agreement (Form 4) between the buying and selling business defining the terms and conditions of the sale of the tax certificate(s) with the Private Financial Assistance Form attached as an exhibit;
5. A Private Financial Assistance Form (Form 5) specifying how the applicant will expend the private financial assistance for allowable expenditures for the expenses incurred by the selling business in connection with the operation of the business in the State; and
6. Information evidencing that the amount of private financial assistance to be made by the buying business is equal to at least 75 percent of the surrendered BRRAG tax credit of the selling business (See Form 3).

(f) After approval of the tax credit by the Division of Taxation as evidenced by the issuance of the appropriate tax credit transfer certificate(s), the Chief Executive Officer, after recommendation by the Board Members, will issue final approval of the application but only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax credit transfer certificate that states, among other matters, that as of the date of the certificate, the business is not in default under the BRRAG project agreement.

(g) In the event that an application is denied for either preliminary or final approval, the applicant shall be notified of the denial and the reasons for such denial.

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Summary of Approval Steps

1. EDA/Taxation review of the application
2. EDA Board recommendation (preliminary)
3. Chief Executive Officer of EDA action (e.g. preliminary approval)
4. Notification to applicant
5. Applicant submission of required statement, forms to EDA
6. EDA sends application to Taxation
7. Taxation approval of tax credit
8. EDA Board recommendation (final)
9. Final Approval by Chief Executive Officer of EDA

Appeals

The procedure for appeals arising from the Chief Executive Officer's action on an application to the Program as well as appeals arising from other decisions of the Chief Executive Officer relating to the Program shall be the procedures set forth at N.J.A.C. 12A:2-1.16.

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APPLICATION

1. Company Information

- a) Company Name of Applicable
New Jersey Taxpayer and Tax ID #(s)
- b) Date of Incorporation/formation
- c) Name of U.S. Parent Company (if different from above)
- d) State of Incorporation/formation
- e) (If applicable) Detail company connection to predecessor company(ies)

2. Company Contact Person

- a) Name
- b) Title
- c) Address
- d) City
- e) State
- f) Zip
- g) Telephone
- h) Fax Number(s)
- i) E-mail address

3. Company agent/contact person (if applicable) for this application

- a) Name
- b) Title
- c) Address
- d) City
- e) State

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f) Zip

g) Telephone

h) Fax Number(s)

i) E-mail address

4. Has your company entered into a BRRAG project agreement pursuant to P.L. 2004, c. 65 and N.J.A.C. 12:2A-1?

_____ YES _____ NO

5. Date of BRRAG Project Agreement?

6. Is your company in default of the above referenced BRRAG Project Agreement?

_____ YES _____ NO

7. Does your company have unused BRRAG tax credits?

_____ YES _____ NO

8. Has your company attached a certification that to the best of the applicant's knowledge it cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable?

_____ YES _____ NO

9. Is your business currently operating in New Jersey?

_____ YES _____ NO

10. Does your business intend to keep operating in New Jersey?

_____ YES _____ NO

11. Please indicate any/all types of expenses your company has incurred as a result of its relocation within New Jersey, including, but not limited to, the following: fixed assets, such as construction and acquisition and development of real estate; materials; start-up costs; tenant fit-out; working capital; salaries; and research and development expenditures. If more space is necessary, please attach documentation.

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Release Authorization

_____, an officer of _____
_____, hereby authorize the New Jersey Economic Development Authority to contact the New Jersey Department of Labor and Workforce Development to conduct a review of our tax filing history to determine if there are currently any tax deficiencies and/or delinquencies. The New Jersey Department of Labor and Workforce Development may release its findings to the New Jersey Economic Development Authority, Business Retention and Relocation Assistance Act, (P.L. 2004, c. 65), Business Retention and Relocation Assistance Grant, Tax Credit Program.

Date

Signature/Title

Sworn to and subscribed before me
this _____ day of _____, 20_____.

NOTE: In order to receive benefits under the BRRAG TCCT program, the company will need to receive tax clearance from the NJ Division of Taxation.

Has your company applied for and received tax clearance? ___ Yes ___ No

*Go to <http://www.state.nj.us/treasury/taxation/index.html?busasst.htm> for further details.

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SELLER'S CLOSING CERTIFICATE **[FORM 1]**

This Certificate is made in connection with the application of _____
for participation in the BRRAG Tax Credit Certificate Transfer Program.

I, _____, of full age, certify
as hereunder stated on the date of closing:

1. I am the _____ with the authority and knowledge to
execute this Certificate on behalf of the Company.

2. The Company is operating and has no current intention to cease operating.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this _____
e _____

(8/7/08)

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SELLING BUSINESS TAX BENEFIT IDENTIFICATION FORM

[FORM 2]

Submission Date: _____

1. Business Name _____
Primary Business Address _____

Contact Person and Title _____
Telephone _____
Fax _____
Email Address _____
Tax Identification Number _____
2. Amount of accumulated BRRAG Tax Credit \$ _____
3. Amount of accumulated BRRAG Tax Credit intended to be sold \$ _____
4. Years the BRRAG Tax Credits were incurred _____

(8/7/08)

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BUYING BUSINESS APPLICATION

[FORM 3]

FOR:

(Buying Company)

Directions: Please submit the completed application and all required exhibits to the New Jersey Economic Development Authority. An original signature of an authorized corporate officer on the application is required (fax signatures cannot be accepted). Do not place pages in plastic sheets or bindings that have to be taken apart.

Please submit:

- One (1) completed original application
- One (1) photocopy of the completed original application
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Mail to:

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P.O. Box 990
Trenton, New Jersey 08625

Deliver to:

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Please note:

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[FORM 3]

BUYER APPLICATION

1. Company Information:

- a) Company Name of Applicable New Jersey Taxpayer
Tax ID #(s)
- b) Date of Incorporation/formation
- c) Name of U.S. Parent Company (if different from above)
- d) State of Incorporation/formation
- e) (If applicable) Detail company connection to predecessor company(ies)

2. Company Contact Person:

- a) Name
- b) Title
- c) Address
- d) City
- e) State
- f) Zip
- g) Telephone
- h) Fax Number(s)
- i) E-mail address

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[Form 3]

3. Company agent/contact person (if applicable) for this application:

- a) Name
- b) Title
- c) Address
- d) City
- e) State
- f) Zip
- g) Telephone
- h) Fax Number(s)
- i) E-mail address

4. Selling Business

- a) Business Name
- b) Primary Business Address
- c) Contact Person and Title
- d) Telephone
- e) Fax
- f) Email Address

5. Estimated value of the tax credits to be transferred.

6. Selling Price of Benefits to be transferred.

7. Gross Amount of Sale of Certificate.

This must be at least 75% of the amount of the Grand Total

8. Total expenses, fees or costs

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[Form 3]

9. Net proceeds to seller.

10. Is your business currently operating in New Jersey?

_____ YES _____ NO

11. Does your business have corporation business tax liability against which BRRAG tax credits may be used?

_____ YES _____ NO

12. Does your business have insurance premiums tax liability against which BRRAG tax credit may be used?

_____ YES _____ NO

13. Please provide a list of all business entities that directly or indirectly own or control five percent or more of the voting rights or five percent or more of the value of all classes of stock of the applicant buying company. If more space is needed, please attach additional documents.

Note: the Buying Business named in this application agrees not to buy any BRRAG Tax Credit from an Affiliated Business (See explanation of Affiliated Business below).

(Affiliated Business – the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.)

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The undersigned certifies that the information provided in connection with this application is accurate to the best of my knowledge.

Signature of Authorized Buying
Business Representative

Printed Name, Title

Signature of Authorized Selling
Business Representative

Printed Name, Title

(3/25/08)

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[Form 3]

Release Authorization

_____, an officer of _____
_____, hereby authorize the New Jersey Economic Development Authority to contact the New Jersey Department of Labor and Workforce Development to conduct a review of our tax filing history to determine if there are currently any tax deficiencies and/or delinquencies. The New Jersey Department of Labor and Workforce Development may release its findings to the New Jersey Economic Development Authority, Business Retention and Relocation Assistance Act, (P.L. 2004, c. 65), Business Retention and Relocation Assistance Grant, Tax Credit Program.

Date

Signature/Title

Sworn to and subscribed before me
this _____ day of _____, 20_____.

NOTE: In order to receive benefits under the BRRAG TCCT program, the company will need to receive tax clearance from the NJ Division of Taxation.

Has your company applied for and received tax clearance? ___ Yes ___ No

*Go to <http://www.state.nj.us/treasury/taxation/index.html?busasst.htm> for further details.

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[Form 3]

Businesses applying to purchase BRRAG tax credits are subject to the EDA's Disqualification/Debarment Regulations (the "Regulations"), which are set forth in N.J.A.C. 12A:4-12.1, et seq. Applicants are required to answer the following background questions pertaining to the commission of certain offenses that can lead to disqualification from eligibility under the Regulations.

All capitalized terms used in this Questionnaire, except those defined elsewhere herein, shall be defined at the bottom of this form.

Has Applicant, any officers or directors of Applicant, or any Affiliates (collectively, the "Controlled Group") been found guilty, liable or responsible in any Legal Proceeding for any of the following violations or conduct? (Any civil or criminal decisions or verdicts that have been vacated or expunged need not be reported).

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract there under, or in the performance of such contract or subcontract.

___ Yes ___ No

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.

___ Yes ___ No

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874).

___ Yes ___ No

4. Violation of any law governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivision.

___ Yes ___ No

5. Violation of the "Law Against Discrimination" (P.L. 1945, c169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c. 127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, c114, N.J.S.A. 10:10, et seq.).

___ Yes ___ No

6. To the best of your knowledge, after reasonable inquiry, violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

___ Yes ___ No

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[Form 3]

7. To the best of your knowledge, after reasonable inquiry, violation of any law governing the conduct of occupations or professions of regulated industries.

___ Yes ___ No

8. Debarment by any department, agency, or instrumentality of the State or Federal government.

___ Yes ___ No

9. Violation of any of the following prohibitions on vendor activities representing a conflict of interest, or failure to report a solicitation as set forth below:

(i) No person shall pay, offer or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any EDA officer or employee or special EDA officer or employee, as defined by N.J.S.A. 52:13D-13b and e, with which such person transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

(ii) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any EDA officer or employee or special EDA officer or employee from any person shall be reported in writing by the person to the Attorney General and the Executive Commission on Ethical Standards.

(iii) No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any EDA officer or employee or special EDA officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the EDA officer or employee or special EDA officer or employee upon a finding that the present or proposed relationship does not present the potential, actually or appearance of a conflict of interest.

(iv) No person shall influence, or attempt to influence or cause to be influenced, any EDA officer or employee or special EDA officer or employee in his or her capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

(v) No person shall cause or influence, or attempt to cause or influence, any EDA officer or employee or special EDA officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other person.

___ Yes ___ No
(If Yes, specify subsection)

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[Form 3]

10. Has any member of the Controlled Group been found guilty, liable or responsible for the violation in any Legal Proceedings of any State or Federal law that may bear upon a lack of responsibility or moral integrity, or that may provide other compelling reasons for disqualification? (Your responses to the foregoing question should include, but not be limited to, the violation of the following laws, without regard to whether any monetary award, damages, verdict, assessment or penalty has been made against any member of the Controlled Group, except that any violation of any environmental law in category (v) below need not be reported where the monetary award, damages, etc. amounted to less than \$1 million).

- (i) Laws banning or prohibiting discrimination or harassment in the workplace on the basis of gender, race, age, religion or handicapped status.
- (ii) Laws prohibiting or banning any form of forced, slave, or compulsory labor.
- (iii) Laws protecting workers who have reported the wrongdoing of their employers to governmental authorities, commonly referred to as "Whistleblower Laws".
- (iv) Securities or tax laws resulting in a finding of fraud or fraudulent conduct.
- (v) Environmental laws.
- (vi) Laws banning the possession or sale of, or trafficking in, firearms or drugs.
- (vii) Laws banning anti-competitive dumping of goods.
- (viii) Anti-terrorist laws.
- (ix) Criminal laws involving commission of any felony or indictable offense under State or Federal law.
- (x) Laws banning human rights abuses.
- (xi) Laws banning the trade of goods or services to enemies of the United States.
- (xii) The New Jersey Conflicts of Interest Law 52:13D-1 et seq.

___ Yes ___ No

11. To the best of your knowledge, after reasonable inquiry, is any member of the Controlled Group a party to pending Legal Proceedings wherein any of the offenses or violations described in questions 1-10 above are alleged or asserted against such entity or person?

___ Yes ___ No

If the answer to any of the foregoing questions is affirmative, you must provide the following information as an attachment to the application: (i) the case and court in which such matters were tried or are pending; (ii) the charges or claims adjudicated or alleged; and (iii) a brief explanation of the circumstances giving rise to such matters. Also, for affirmative answers to question 1-10, copies of the final judgments, consent orders or administrative findings, as the case may be, that were entered or made in such matters must be attached.

The terms set forth below shall be defined as follows:

"Affiliates" means entities having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

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[Form 3]

“Legal Proceedings” means any State or Federal civil, criminal or administrative proceeding in a court or administrative tribunal in the United States or any territories thereof.

The EDA reserves the right to require additional clarifying or explanatory information from the applicant (“Applicant”) regarding the answers given. If, at any time prior to board action on this application, or, at any time between the date of such action and the execution of a BRRAG grant agreement with the EDA, the Applicant should become aware of any facts that materially alter or change such answers, or that render any of them incomplete, the Applicant shall have a duty to immediately report such facts to the EDA in writing.

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BRRAG TAX CREDIT CERTIFICATE SELLING AGREEMENT [Form 4]

This BRRAG Tax Credit Certificate Selling Agreement (hereinafter "Agreement"), made as of ____ day of _____, 20____, by and between _____, ("Selling Company"), a company organized under the laws of the State of _____, having its principal offices at _____ and _____ ("Buying Company"), a company organized under the laws of the State of _____, having its principal offices at _____, the above entities being hereinafter referred to as the "Parties."

WITNESSETH:

WHEREAS, pursuant to P.L. 2004, c. 65, the State of New Jersey created the Tax Credit Certificate Transfer program (the Program) to allow businesses in this State with unused amounts of BRRAG tax credit to surrender those tax credits to other businesses desiring such credits which in exchange will provide private financial assistance to assist in the funding of costs incurred by the relocating business; and

WHEREAS, the Division of Taxation has established the amount of tax benefits that the Selling Company can transfer over State Fiscal Year _____ to be \$ _____;

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, the Parties agree as follows:

ARTICLE I

1.01 Definitions:

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65.

"Affiliated business" means an entity that directly or indirectly owns or controls five percent (5%) or more of the voting rights or five percent (5%) or more of the value of all classes of stock of both the selling and buying businesses.

"Application" means the application submitted to the New Jersey Economic Development Authority from the seller of BRRAG tax credits, for approval of the BRRAG tax credit transfer certificate.

"Board Members" means the Board Members for the New Jersey Economic Development Authority.

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
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(As authorized by the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65)

“BRRAG Project agreement” means an agreement between a business and the New Jersey Economic Development Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.), as amended by P.L. 2004, c. 65 §§ 1-16 (C.34:1B-112 through 123).

“BRRAG program” means the tax credit grant program created pursuant to P.L. 1996, c. 25, as substantially amended by P.L. 2004, c. 65 §§ 1-16 (C.34:1B-112 through 123), and provided in N.J.A.C. 12A:2-1.

“BRRAG tax credit certificate transfer program” or “Program” means the Business Retention and Relocation Assistance Grant Tax Credit Transfer Program created pursuant to section 17 of the Act (N.J.S.A. 34:1B-120.2) and regulations thereunder at N.J.A.C. 12A:2A-1.1 et seq.

“Business” means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State[.], such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

“Business retention or relocation grant of tax credits” or “grant of tax credits” means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15), and N.J.S.17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), as amended by P.L. 2004, c. 65, and pursuant to N.J.A.C. 12A:2-1.

“Business retention or relocation tax credit” or “BRRAG tax credit” means the tax credit that a business obtains through the BRRAG program.

“Buying business,” means a business with the financial ability to purchase the unused BRRAG tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

“Buying Business Information Sheet” means the form that the Buying Business completes with information about the estimated value of the tax credits to be transferred, the selling price of the benefits to be transferred and other information required by the EDA.

“Certificate” or “BRRAG tax credit transfer certificate” or “Closing Certificate” means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused BRRAG tax credit. The certificates are issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates.

“Director” means the Director of the Division of Taxation in the New Jersey Department of the Treasury.

“New business location” means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as “reconstruction” is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3. In that case, the move to the permanent premises will trigger availability of the grant of tax credits.

“Private financial assistance” means the assistance that the buying business provides the selling business to assist in the funding of costs incurred by the relocating business.

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“Private Finance Assistance Form” means the form attached to this Agreement specifying how the Selling Business will expend the Private Financial Assistance for allowable expenditures for the expenses incurred by the Selling Business in connection with the operation of the Business in the State.

“Project” means the construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business’s new business location.

“Selling business” means a business that has unused BRRAG tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), as amended by P.L. 2004, c. 65, and otherwise allowable which it wishes to “sell.”

“Selling Business Tax Benefit Identification Form” means the form that identifies the accumulated BRRAG tax credits, the amount intended to be sold, and the years that the BRRAG tax credits were incurred.

“Total allowable relocation costs” means \$1,500 times the number of retained full-time jobs. “Total allowable relocation costs” does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).

ARTICLE II

Section 2.01 Compensation.

Subject to the conditions set forth in Section 2.02 hereof, within 10 days of Selling Company's notifying Buying Company that the EDA has received a Certificate from the Division of Taxation, Buying Company agrees to purchase the Certificate for a purchase price in the aggregate amount of \$_____ for the transfer of tax benefits in the amount of \$_____ for the years and amounts more fully set forth in the Selling Business Tax Benefit Identification Form, attached.

Section 2.02 Conditions to Purchase.

Buying Company's obligation to purchase is conditioned upon:

- a) preliminary approval by the EDA of Selling Company’s Application;
- b) approval by the EDA of this Agreement, the Buying Business Information Sheet, the Selling Business Tax Benefit Identification Form, and the Private Financial Assistance Form;
- c) a final determination by the Division of Taxation that the amount of the Certificate is equal to \$_____ as evidenced by issuance of the Certificate to the EDA.
- d) receipt of the EDA of the Seller's Closing Certificate satisfactory to the EDA, and final approval of the grant to transfer tax benefits;
- e) the Selling Company named in this Agreement agrees not to sell any tax benefit certificate in connection with the BRRAG Tax Credit Certificate Transfer Program Application to an Affiliated Business.

ARTICLE III

Section 3.01 Covenants of the Selling Company.

- a) the Selling Company has entered into a BRRAG Project Agreement pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c. 65 and N.J.A.C. 12:2A-1 and is not in default of that BRRAG Project Agreement.
- b) the Selling Company has unused amounts of BRRAG tax credits issued and otherwise allowable;
- c) the Selling Company certifies that, to the best of its knowledge, that it cannot use the BRRAG Tax Credits originally issued for the tax periods in which the credits are allowable.
- d) the Selling Company has incurred or will incur expenses in connection with the operation of the business in this State, including but not limited to, the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the Secretary to be necessary to carry out the purposes of the Act.

Section 3.02 Covenants of the Buying Company.

- a) it shall not assign, sell or transfer the Certificate to any Affiliated Business of Selling Company.

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- b) if any representation made by Buying Company in this Agreement is willfully false or materially misleading or if Buying Company breaches the covenant set forth in Paragraph 3.02(a), the transfer of tax benefits contemplated by this Agreement shall be null and void.

Section 3.03 Representation by Selling Company.

The Selling Company represents to Buying Company, the EDA and the Division of Taxation that the Selling Company is not an Affiliated Business of Buying Company.

Section 3.04 Representation by Buying Company.

The Buying Company represents to Selling Company, the EDA and the Division of Taxation that the Buying Company is not an Affiliated Business of Selling Company.

ARTICLE IV

Section 4.01 Non-assignability.

The Buying Company may not assign or transfer the Certificate in any manner.

ARTICLE V

Section 5.01 Third Party Beneficiary.

The EDA shall be a third party beneficiary to this Agreement, with the authority to enforce the provisions hereof and to declare a default hereunder.

ARTICLE VI

Section 6.01 Default.

Failure by the Selling Company to comply with any covenant set forth under this Agreement shall constitute an event of default.

Section 6.02. Remedies upon Default.

Upon the existence of any events of default, the Buying Party or the EDA, as third party beneficiary to this Agreement may take any action legally available to it.

Section 6.03. Forbearance not a Waiver.

No act of forbearance or failure to insist on the prompt performance of the obligations pursuant to this Agreement, either expressed or implied, shall be construed as a waiver of any rights hereunder. In the event that any provision of this Agreement should be breached and the breach may thereafter be waived, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach.

ARTICLE VII

Section 7.01 Indemnification.

Selling Company covenants and agrees to indemnify and hold harmless, the EDA, the Division of Taxation, and the State of New Jersey and their respective members, agents, officers, employees and servants from all losses, claims, damages, liabilities, and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.), brought by any person or entity, and caused by, related to, arising or purportedly arising out of, or from any loss, damage or injury resulting from the expenditure of the proceeds received pursuant to this Agreement or from the performance by the parties hereto of the obligations set forth herein. The provisions of this Paragraph shall survive termination of this Agreement.

ARTICLE VIII

Section 8.01 Governing Law.

This Agreement shall be governed by, construed and interpreted in accordance with, the laws of the State of New Jersey.

Section 8.02 Forum and Venue.

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The forum and venue for all actions related to the matters which are the subject of this Agreement shall be a court of competent jurisdiction in the County of Mercer, State of New Jersey.

Section 8.03 Entire Agreement.

This Agreement, the Buying Business Information Sheet, the Selling Business Tax Benefit Identification Form, the Private Financial Form, the Seller's Closing Certificate, the application forms of the Selling Company and any documents referred to herein, constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, oral or written, between the parties with respect to the subject matter of this Agreement.

Section 8.04 Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement, unless Buying Company shall in its sole and absolute discretion deem the invalidated provision essential to the accomplishment of the public purposes served by this Agreement, in which case Buying Company has the right to terminate this Agreement and all benefits provided to Selling Company hereunder upon the giving of sixty (60) days prior notice as set forth in Paragraph 8.05 hereof.

Section 8.05 Notices.

All notices, consents, demands, requests and other communications which may be or are required to be given pursuant to any term of this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as each party to this Agreement may hereafter designate in a written notice to the other party transmitted in accordance with this provision.

Selling Company Address:

Buying Company Address:

Section 8.06 Amendments or Modifications.

This Agreement may only be amended or modified in a writing executed by both Parties, for good cause shown. Such amendments or modifications shall become effective only upon execution of same by both parties and submission of the amendment or modification to the EDA and the Division of Taxation for approval.

Section 8.07 Headings.

Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

Section 8.08 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.09 Successors and Assigns.

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This Agreement shall be binding upon the successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
by their respective officers duly authorized as of the date and year first set forth above.

ATTEST:

SELLING COMPANY:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

ATTEST:

BUYING COMPANY:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

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PRIVATE FINANCIAL ASSISTANCE FORM – [FORM 5]

Pursuant to applicable law, the private financial assistance received from the BRRAG Tax Credit Certificate Transfer Program (Program) must be used by the Selling Business to fund expenses incurred or that will be incurred in connection with the operation of the business in the State, including but not limited to, the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the Chief Executive Officer to be necessary to carry out the purposes of the Business Retention and Relocation Assistance Act.

Specify in detail how the company will expend the private financial assistance for the operation of the company in accordance with the above:

EXPENDITURE	ESTIMATED AMOUNT
Construction, Acquisition and Development of Real Estate	\$ _____
Materials	\$ _____
Start-up	\$ _____
Tenant fit-out	\$ _____
Working capital	\$ _____
Salaries	\$ _____
Research and development	\$ _____
Other (please specify)	\$ _____
*TOTAL	\$ _____

DATE: _____ BY: _____
 (1/18/08) Name _____
 Title _____
 Selling Company Name _____

* Total should equal the selling price of the tax credits listed on the Buying Business Information Sheet.