

AGREEMENT BETWEEN
ARMY & FMERA
FOR ECONOMIC DEVELOPMENT CONVEYANCE OF FORMER FORT MONMOUTH
NEW JERSEY

**AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF THE ARMY
AND
FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY
FOR ECONOMIC DEVELOPMENT CONVEYANCE OF PHASE 1 PARCELS
AT
FORMER FORT MONMOUTH
LOCATED IN THE BOROUGHS OF OCEANPORT, EATONTOWN AND
TINTON FALLS, NEW JERSEY**

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THIS AGREEMENT ("Agreement") is made as of the 25th day of June 2012 (the "Effective Date") by and between the United States of America, acting by and through the Secretary of the Army ("Army"), and the Fort Monmouth Economic Revitalization Authority ("FMERA"), a public body corporate and political and an instrumentality of the State of New Jersey created pursuant to New Jersey P.L. 2010 c.51 ("FMERA Act") (C.52:271-18 et seq) and recognized by the U.S. Department of Defense, Office of Economic Adjustment as the Local Redevelopment Authority for Fort Monmouth, located in the boroughs of Oceanport, Eatontown and Tinton Falls, New Jersey, (individually each a "Party", collectively the "Parties").

RECITALS:

WHEREAS, the Department of the Army ("Army") has approved the application submitted by FMERA for a Economic Development Conveyance ("EDC") by the Army of certain parcels containing 562.76 acres of land designated the "Phase 1 Parcels", and related personal property; and

WHEREAS the Army agrees to convey the Phase 1 Parcels and related personal property to FMERA, pursuant to the powers and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (10. U.S.C. § 2687 note) ("ACT"), delegations and regulations promulgated thereunder, and terms of this AGREEMENT.

WHEREAS, FMERA agrees to acquire the Phase 1 Parcels and related personal property subject to and under the terms of this AGREEMENT.

WHEREAS, it is the intent of the Parties that the Army may convey all or portions of the Phase 2 Parcels to FMERA under the EDC authority, pursuant to the provisions of Article 16 hereof.

WHEREAS, these Parties agree that the EDC Agreement of Intent previously signed on 17 May 2012 is hereby merged with this Agreement in accordance with Article 18 with no future effect or enforceability.

NOW, THEREFORE, and in consideration of the mutual promises contained in this AGREEMENT and other good and valuable consideration, , the Parties hereto, intending to be fully and legally bound, agree as follows:

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ARTICLE 1. DEFINITIONS

As used in this Agreement unless the context otherwise requires, or unless it is otherwise expressly stated in this Agreement, the following terms shall have the following meanings:

“Agreement Modification Date” shall mean the date on which there is a legislative, regulatory or policy change to the terms on which an Economic Development Conveyance can be obtained by a Local Redevelopment Authority.

“Army” shall mean the Department of the Army acting through its Secretary of the Army or duly authorized official, on behalf of the United States of America with an address at: Department of the Army, Deputy Assistant Secretary of the Army (Installations, Housing and & Partnerships), 110 Army Pentagon, Washington, DC 20310.

“Entire Agreement” shall mean this Agreement and the exhibits attached hereto.

“FMERA” shall mean the Fort Monmouth Economic Revitalization Authority established pursuant to New Jersey P.L. 2010 c. 51.

“Finding of Suitability to Transfer” or “FOST” shall mean the document determining the environmental suitability for transfer of all or portions of the Phase 1 Parcels where required remedial action is completed prior to transfer. The FOST summarizes the required notifications and applicable environmental requirements, including a description of any long-term remedies (including land-use controls) and responsibilities for their maintenance and reporting.

“FMERA Homeless Trust” shall mean the trust fund established by FMERA that will receive escrow payments from Third Party Settlement with parties who acquire portions of the Phase 1 Parcels from FMERA pursuant to the provisions of Article 4 hereof, to be utilized to satisfy obligations to homeless providers under Legally Binding Agreements approved by the U.S. Department of Housing and Urban Development (“HUD”) in accordance with 32 CFR Part 176.

“Host Communities” shall mean the boroughs of Eatontown, Oceanport and Tinton Falls, New Jersey.

“Local Redevelopment Authority (“LRA” or “FMERA”) shall mean the Fort Monmouth Economic Revitalization Authority and its assignees or successors in function.

“Minimum Payment” shall mean the greater of the Floor Price multiplied by the percentage of Gross Sales Revenue due the Army, as specified in Article 4 hereof, or the highest offer accepted by FMERA for a Phase 1 Parcel multiplied by the said percentage.

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“Parties” shall mean the Army and FMERA.

“Phase 1 Parcels” shall mean the Parcel B, Parcel C, Parcel C-1, Parcel E, Parcel F, the Clinic Parcel, the Golf Course Parcel, the Howard Commons Parcel, and the Marina Parcel, as more particularly described in Exhibit 1 hereto, all of which shall be conveyed to the FMERA in accordance with the schedule set forth in Article 3 hereof, including all personal property and appurtenant rights, buildings, systems and improvements.

“Phase 2 Parcels” shall mean the remaining real property located in Main Post not identified as Phase 1 Parcels, which may be conveyed by the Army to FMERA pursuant to the provisions of Article 16 hereof, as more particularly described in Exhibit 1.

“Property” shall mean all real estate comprising the Phase 1 Parcels totaling approximately 562.76 +/- acres, and including mineral rights, water rights, utility systems, buildings, improvements and personal property, all as more particularly described in Exhibit 1.

“Purchase Price” shall mean for each Phase 1 Parcel, the purchase escrow sum of the Gross Sale Revenues, a commercially reasonable and standard broker’s fee, not to exceed six (6) percent, and the amount paid into the FMERA Homeless Trust pursuant to Section 4.d.2 hereof.

“Reuse Plan” shall mean the reuse and redevelopment plan for the former Fort Monmouth prepared by the predecessor of FMERA and approved by U.S. Department of Housing and Urban Development, as it may be amended from time to time.

“Seven Year Reinvestment Period” shall mean the seven year period beginning on the date of the last Army conveyance of the Economic Development Conveyance Parcels by the Army to FMERA and ending on the seventh anniversary thereof.

“Third Party Settlement” shall mean the escrow settlement of a property sale by FMERA to a third party of one or more portions of the Phase 1 Property

“Gross Sale Revenues” shall mean the proceeds from the sale of a Phase 1 Parcel to a third party by FMERA not including payment of a commercially reasonable and standard broker’s fee, not to exceed six (6) percent, as agreed to by the Army and FMERA.

“Gross Lease Revenues” shall mean the proceeds from the lease of a Phase 1 Parcel to a third party by FMERA, with the exception of the Clinic Parcel, following the payment of a commercially reasonable and standard broker’s fee, not to exceed six (6) percent, as agreed to by the Army and FMERA.

“Competitive Sale Requirements” shall mean the competitive sale requirements as described in N.J.A.C. 19:31C-1 and C-2 attached hereto in Exhibit 3.

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“Floor Price” shall mean a proposed price for the Phase 1 Parcels or any portion thereof, to be used in determining the payment due to the Army, and to be determined in accordance with Section 4 b2 hereof.

ARTICLE 2. AGREEMENT TO ACQUIRE AND CONVEY THE PHASE 1 PARCELS

- a. The Army agrees to convey to FMERA and FMERA agrees to accept conveyance of the Phase 1 Parcels pursuant to the terms of this AGREEMENT.
- b. The Army will convey the Phase 1 Parcels to FMERA by good and sufficient quitclaim deed or deeds (“Deed” or “Deeds”), in substantially similar form and substance to the deed for the conveyance of Parcel E, attached at Exhibit 2 and made a part hereof. The Deed shall contain covenants (“CERCLA Covenants”), warranties and easements in accordance with the CERCLA, 42 U.S.C. § 9620 (h)(4) (D) and 9620 (h) (3) (A) and (B) , and other applicable laws, regulations, Department of Defense and Army policy, and easements, land use controls, conditions and restrictions all as more particularly described in the FOST, as applicable.
- c. Subject to the satisfaction of conditions precedent as set forth in Section e below, FMERA will accept conveyance of each Phase 1 Parcel in accordance with the following schedule:

	<u>Parcel</u>	<u>Conveyance Date</u>
(i)	Parcel E	June 27, 2012
(ii)	Golf Course, Parcel C, Parcel C-1, Howard Commons, Marina Parcel, Clinic Parcel	October 1, 2012
(iii)	Parcel B, Parcel F	February 1, 2013

The projected conveyance date for any particular Parcel may be extended for a mutually agreed upon period of time.

- d. With exception of Parcels leased to the FMERA on an interim basis pending conveyance , the Army will continue to protect and maintain the Phase 1 Parcels , other than for police services, until the Parcels are conveyed to FMERA subject to the availability of funds.
- e. Conditions precedent below to conveyance of each Phase 1 Parcel:
- e.1. All requirements for granting the CERCLA Covenants by the Army have been satisfied.

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e.2 The Army will make its best efforts to deliver to FMERA the FOST for each Parcel ninety (90) days prior to the Conveyance Date.

f. In addition to the conveyance of the Phase 1 Parcels in accordance with the terms of this AGREEMENT, The Army agrees to transfer ownership to FMERA and FMERA agrees to accept ownership of certain personal property associated with each parcel designated as a Phase 1 Parcel, pursuant to the terms of a bill of sale ("Bill of Sale") in the form attached hereto as Exhibit 9 or other disposal means designated by the Army.

g. The Army agrees to cooperate with FMERA in the transfer of all applicable and legally transferable governmental permits and approvals related to the ongoing operation of the Phase 1 Parcels, provided that the Army shall not be required to expend funds to effect such transfers.

ARTICLE 3. SETTLEMENT

a. Initial Army Settlement

a.1. It is the intent of the Parties to seek an Initial Settlement ("Initial Settlement") and conveyance of Parcel E from the Army to FMERA on the date established in Section 2.c above.

a. 2. At the Initial Army Settlement: (1) the Army shall deliver the Deed for Parcel E; and (2) FMERA will accept delivery of the Deed and, if provided, Bill of Sale in the forms specified above and tendered by the Army.

a.3. FMERA shall pay all survey expenses (except with regard to the boundary identification of land use controls, environmental easements and historic/archeological sites, which shall be paid for by Army), real estate transfer taxes, if any, associated with the conveyance of the Phase 1 Parcels or portions thereof.

a.4. Any title insurance that may be desired by FMERA will be procured at its sole cost and expense. The Army will, however, cooperate with FMERA or its authorized agent, and will permit examination and inspection of any documents relating to the title of the Phase 1 Parcels as it may have available.

a.5 FMERA shall promptly record all deeds conveying the Phase 1 parcels to FMERA in the local land records at FMERA's sole cost and expense.

b. Subsequent Army Settlements

b.1. Subsequent Army Settlements will be concluded in accordance with the specifications outlined above, and the dates established in Article 2.c. above.

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ARTICLE 4. CONSIDERATION; COMPETITIVE SALES; LEASING

a. For and in consideration of the conveyance of Phase 1 Parcels to FMERA under existing EDC authority, the Parties agree to the following terms and conditions concerning the sale and/or lease of Property by FMERA to third parties of the Phase 1 Parcels and consideration to be received by the Army from FMERA. A Worksheet for Property Sale in the form attached hereto as Exhibit 8 will be provided by FMERA to the Army for each sale.

a. 1. FMERA will pay to the Army an amount equal to: 63% share of all Gross Sale Revenues from the sale of Phase 1 Parcels to third parties, except for Parcels E, C and B as set forth in Section a. 2 below.

(i) Payment will be due and payable to the Army at the time of Third Party Settlement, except that any shared payment of deferred (post-closing) Gross Sale Revenues will be due within 30 days after the close of the FMERA fiscal year during which such payment was due, accompanied by an audited FMERA financial statement.

(ii) The Army 63% share of Gross Sale Revenues for the Clinic Parcel will be based on an amount equal to the average of two appraisals obtained by FMERA, as projected in the Worksheet attached hereto as Exhibit 10.

a. 2. FMERA will pay to the Army an amount equal to a 60% share of all Gross Sale Revenues from Parcel B, a 20 % share of all Gross Sale Revenues from Parcel E [as projected in the Worksheet attached hereto as part of Exhibit 2], and 80% of Gross Sale Revenues from Parcel C.

(i) Payment will be due and payable to the Army at the time of the Third Party Settlement for each parcel except that any shared payment of deferred (post-closing) Gross Sale Revenues will be due within 30 days after the close of the FMERA fiscal year for which such payment was due, accompanied by an audited FMERA financial statement.

a. 3. The commission percentage paid to the broker from any sale of the Phase 1 Parcels shall be based on the Purchase Price.

a. 4. With the exception of Parcel E, and the Clinic Parcel, and prior to conveyance of all other Phase 1 Parcels by FMERA to third parties, FMERA will develop, a request for proposal (RFP) for the competitive selection of a commercial broker or master broker/ developer to assist FMERA in the competition-based marketing, sale, and leasing of all other Phase 1 Parcels to third parties. With the exception of Parcel E and the Clinic Parcel, the Army and FMERA agree that all other Phase 1 Parcels will be advertised, marketed, and afforded the standard and customary exposure by the broker's advertising and marketing campaign in accordance with this Agreement, and FMERA's Competitive Sale Requirements (Exhibit 3).

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b. Competitive Sales and/or Leasing by FMERA of the Phase 1 Parcels

b.1. With the exception of Parcel E, and the Clinic Parcel, it is the intent of the Parties that FMERA proceed with the public and competitive sale and/or leasing of the Phase 1 Parcels in order to support the economic redevelopment of the installation, to promote job creation, and to maximize value. To this end, FMERA agrees to competitively advertise, market, sell and/or lease Parcel C, Parcel C-1, Parcel F, the Golf Course Parcel, the Howard Commons Parcel, Parcel B, the Marina Parcel, or portions thereof, in accordance with the provisions of Article a.4 above.

(i) Any proposed change to any portion of the configuration of any Phase 1 Parcel as set forth in Exhibit 1 will be provided to the Army prior to the issuance of FMERA's notice of intent to secure an appraisal for such Parcel, as provided in Section b.2 below.

(ii) Parcel E and the Clinic Parcel will be marketed, sold and/or leased directly to 3rd parties by FMERA using its own resources in accordance with this Agreement, and its Competitive Sale and Lease Requirements.

b.2. Sales of the Phase 1 Parcels: With the exception of Parcel E and the Clinic Parcel, the Army will establish a floor price ("Floor Price") for the sale of the Phase 1 Parcels or portions thereof, which Floor Price will be determined by the average price between two appraisals.

(i) One of the appraisals will be conducted by FMERA, in accordance with State regulations and by certified MAI appraisers familiar with the regional commercial and residential real estate market and licensed in the State of New Jersey. The other appraisal will be provided by the Army, and will be conducted by an MAI appraiser familiar with the regional commercial and residential real estate market and licensed in the State of New Jersey.

(ii) The Army will provide the appraisal to FMERA within sixty (60) days of written notice from FMERA of FMERA's intent to secure an appraisal for a Phase 1 Parcel, or portion thereof. If the Army fails to provide an appraisal within sixty (60) days of receipt of this written notice, the Floor Price will be the value as established by the appraisal secured by FMERA. FMERA agrees that the Floor Price must be established prior to FMERA offering any Parcel for sale. If FMERA accepts an offer for a Phase 1 Parcel which is less than the Floor Price, then the Army shall receive the Minimum Payment.

b.3. Phase 1 Parcels will be marketed and sold as set forth in Sections a.4, b.1 and b.2 above for the land uses, including densities and other reuse requirements, as are set forth in the Reuse Plan and land use regulations for the Property adopted by FMERA. The appraisals to be conducted by FMERA and the Army shall be based upon the

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land uses, densities and other reuse requirements as set forth in the Reuse Plan and land use regulations for the Property adopted by FMERA. A set of common appraisal instructions incorporating these requirements will be agreed upon by the Army and FMERA and shall be the basis of the appraisals secured by the Army and FMERA hereunder.

b.4. The Army agrees to provide FMERA, its representatives, and 3rd party buyers a right of entry to the Property to support its sales and leasing activities.

b.5. The Parties acknowledge that the Purchase Price as defined herein for each Phase 1 Parcel may be appropriately utilized by FMERA for purposes of the Third Party Settlement

b.6 Upon request of the Army, the FMERA shall execute either at the time of the Army Settlement, or Third-Party Settlement for each Phase 1 Parcel, Building, or Facility, a mutually acceptable Promissory Note and Mortgage to the Army to record and secure the revenue share payment obligation of FMERA under Article 4.

c. Leasing of Phase 1 Parcels by FMERA After Conveyance from Army

(i) With the exception of Parcel E and the Clinic Parcel, following Army conveyance of the Phase 1 Parcels or portions thereof to FMERA, if FMERA decides to lease a Phase 1 Parcel or any portion thereof to a third party, FMERA will pay to the Army 20% of the annual Gross Lease Revenues for a period of two (2) years following the date of execution for lease of the Parcel.

(ii) FMERA further agrees to pay the Army 63% of the Gross Lease Revenues starting on the 3rd anniversary of the date of execution for lease of the Parcel, or until such time as the Property is sold by FMERA to 3rd party buyers. Annual payments of the Army share of Gross Lease Revenues will be due and payable to the Army and accompanied by an audited FMERA financial statement, as provided in Section 5.a.3 hereof. The commission percentage paid to the Broker for the lease of any Phase 1 Parcel shall be based on the gross amount of the lease.

(iii) Prior to conveyance of the Building 2525 parcel, if such parcel is leased to the Federal Government, the parties agree to adjust the percentages of Gross Lease Revenues that FMERA will pay to the Army to mitigate FMERA's tenant improvement allowance ("TI"), the TI amortization, or Operating Costs as identified under the terms of such lease

d. No-cost Parcels and Homeless Accommodation Trust Fund

d.1. In order to maximize FMERA's flexibility to adjust the community use and parcel boundaries to best support economic development and enhance the quality of life in the surrounding area, which will have a positive impact on FMERA's ability to create high quality and sustainable jobs, the Parties hereby agree that the following

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land parcels may be conveyed by FMERA to local public entities at no cost and if so conveyed, no monetary consideration will due or payable to the Army . The specific land, buildings and facilities designated as Phase 1 "No-cost parcels" are as follows:

- An approximately 6.7 acre parcel including Building 2290 [Charles Wood Parcel]
- An approximately 6.5 acre parcel including Buildings 2569 and 2566 [Charles Wood Parcel]

d.2. The Parties acknowledge that as a condition of sale by FMERA of the Phase 1 Parcels, at Third Party Settlement, payment will be made by the Purchaser or closing agent (estimated at \$20,055/developable acre *See Exhibit 6 & 7*), directly to the FMERA Homeless Trust consistent with the terms of and established to comply with the homeless accommodation requirements under Legally Binding Agreements (LBA's) between FMERA and the homeless providers, as approved by the Housing and Urban Development (HUD). The Parties also hereby agree that Gross Sale Revenues also shall not include the amount paid into the FMERA Homeless Trust.

ARTICLE 5. EDC REINVESTMENT REQUIREMENTS

a.1. FMERA agrees that following Third Party Settlement on Phase 1 Parcel buildings, facilities, and land tracts, and following consideration payments from FMERA to the Army, as specified in Article 4 above, all proceeds from the sale, lease or equivalent use of the Phase 1 Parcels and the interim lease of Phase 2 Parcels received by FMERA ("Proceeds") under this Agreement during the Seven Year Reinvestment Period, must be used to support the economic redevelopment of or related to the Property. Proceeds not used for these purposes shall be remitted to the Army within sixty (60) days of the end of the Seven Year Reinvestment Period. Allowable uses of Proceeds include payment for, or offsetting the costs of public investment, for the following purposes on or related to the Property as defined under the Act:

- (1) Road construction
- (2) Transportation management facilities
- (3) Storm and sanitary sewer construction
- (4) Police and fire protection facilities and other public facilities
- (5) Utility construction
- (6) Building rehabilitation
- (7) Historic property preservation

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- (8) Pollution prevention equipment or facilities
- (9) Demolition
- (10) Disposal of hazardous materials generated by demolition
- (11) Landscaping, grading, and other site or public improvements
- (12) Planning for, or the marketing of the redevelopment and reuse of the installation.

a.2. Other activities that are directly related to those listed above may also be considered appropriate, allowable uses of the Proceeds. Directly related activities that may be considered allowable uses of Proceeds must be related to those listed above and directly benefit FMERA's economic redevelopment and long-term job generation efforts for the Phase 1 Parcels. At any time, FMERA may request the opinion of the Army as to whether a proposed expenditure would constitute an allowable use of Proceeds, and the Army shall provide such written opinion within ninety (90) days of receipt of a written request from FMERA.

a.3. Within ninety (90) calendar days of the end of calendar year 2012, and for each year thereafter until the end of the Seven Year Reinvestment Period, FMERA shall submit annual financial statements to the Army, certified by an independent Certified Public Accountant (CPA) that account for the annual gross and net revenues received by FMERA from all sales, and leases, or equivalent use of the Phase 1 Parcels and the reinvestment of EDC proceeds during the Seven Year Period. The CPA's audit report shall express an opinion on FMERA's financial position, results of its operations and whether the financial statements were presented fairly in all material respects, in conformity with generally accepted accounting principles.

a.4. The above-referenced annual financial statements shall include in the statements (or as supplemental statements) a breakdown of the EDC portion of revenues and expenditures of Proceeds. Expenditures will be broken down into the 12 categories to show where the proceeds were reinvested. In addition, FMERA will include in the notes to the financial statements or through supplemental schedules, explanations of the sources of revenues and expenditures.

a.5. Annual accounting of the use of Proceeds as required by this Article shall be provided in the form specified in Exhibit 4 and provided to the U.S. Army Corps of Engineers, New York District, Chief, Real Estate Division (CENAN-RE-M), 26 Federal Plaza, Room 2007, New York, NY 10278. At any time during the Army's review of the financial statements submitted hereunder, FMERA shall provide the Army with any additional information related to receipts and expenditures which may be reasonably required by the Army to assist the Army in its review. The Army shall

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have the right to perform annual audits of the records and accounts of FMERA in order to ensure compliance with this Article 5.

a.6. FMERA agrees that any Proceeds received that are not reinvested into one or more of the 12 allowable categories listed above will be recouped by the Army and upon demand are required to be remitted to the Army, in addition to the other consideration terms specified herein.

a.7. FMERA shall have ninety (90) days from the date of demand by the Army to remit the amount of any such Proceeds/recoupment amounts due to the Army, unless both Parties agree to other arrangements for the payment of the amount due.

a.8. If the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. § 2687 note) and/or regulations promulgated and/or Department of Defense policy issued thereunder are amended and/or changed in regard to Economic Development Conveyances in a manner that would require modification of this transaction and agreement to an economic development conveyance without consideration, the Parties agree that the terms and conditions of this transaction shall be modified by mutual agreement of the parties within sixty (60) days of the legislative, regulatory or policy effective date, in accordance with such legislative, regulatory or policy change ("Agreement Modification Date"). The agreement modification to an EDC without consideration will require that any consideration already received by the Army as of the Agreement Modification Date shall be retained by the Army, and all rights of the Army to receive consideration hereunder after said Date shall terminate.

a.9. The Army may recoup any portion of the Army's share of Gross Sale or Lease Revenues not paid to the Army in accordance with the provisions of Article 4.

ARTICLE 6. INTERIM LEASING

a. In addition to the existing lease for the Golf Course Parcel, the Army may consider an interim lease with FMERA for any Phase 1 building, facility, or land tract or for portions of the Phase 2 Parcels identified below, that will not interfere with the Army's timely conveyance of the Property, or any portion thereof.. The term of all interim leases will be for a period of two (2) years, and may be renewed for two (2) additional years at the Army's option.. If FMERA sublets any portion of the Phase 2 Parcels to a third party, the Army will receive 20% of the Gross Lease Revenues and FMERA will receive 80% of the Gross Lease Revenues. However, the annual amount of the Gross Lease Revenues received by the Army will increase to 63% beginning on the 3rd anniversary following the commencement date of any lease. The Phase 2 "Interim Lease Parcels" are as follows:

- McAfee Center
- Fitness Center

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- Vail Hall
- Russell Hall
- Mallet Hall

- b. All interim leases between the Army and FMERA must be approved by the Army under its 10 U.S.C. 2667 lease authority. FMERA and/or its tenant shall be responsible for installation of meters for all utilities prior to gaining occupancy of any building, facility, or land tract and all sublease proceeds shall be subject to the reinvestment requirements of Article 5 .

**ARTICLE 7. MAINTENANCE; EFFECT OF TRANSFER OF TITLE;
CONTINUING OBLIGATIONS OF THE ARMY; RISK OF LOSS**

a. The delivery of the Deed conveying one or more Phase 1 Parcels from the Army to FMERA, , shall be deemed full performance by the Army of its obligations hereunder with regard to the portion of the Phase 1 Parcels conveyed thereby, except for any continuing obligations of the Army provided for in the Deed, or as may otherwise be specifically provided for in this AGREEMENT, by applicable laws, including CERCLA and the Act, or applicable regulations and DoD and Army policy.

b. The Army shall maintain or cause the Phase 1 Parcels to be maintained in accordance with the provisions of 32 Code of Federal Regulations (CFR) §174.14, subject to the availability of funds, until such time as the Phase 1 Parcels are conveyed to FMERA. The Army shall be responsible for liabilities that may arise due to the activities of its officers, agents, invitees, contractors and employees, prior to the conveyance of the Phase 1 Parcels to FMERA.

c. The Army shall remain responsible, to the extent provided for under applicable law, for all losses and damages to the Phase 1 Parcels and the Property by fire, windstorm, casualty or other cause, and for all damages or injuries to persons or property occurring thereon or related thereto (except as may be caused by acts of the FMERA or its officers, employees, agents, contractors, licensees or sublessees), prior to leasing or conveying the Phase 1 Parcels to FMERA. Notwithstanding the foregoing, the Army shall have no obligation to repair, replace or demolish any portion of the Phase 1 Parcels, damaged or destroyed prior to transfer, but the Army shall take reasonably appropriate measures to ensure that the site upon which the building or structure is located is protected in accordance with applicable Federal regulations. The Parties agree that any damage or destruction to the Phase 1 Parcels shall not otherwise affect the Parties' rights and responsibilities under this AGREEMENT.

ARTICLE 8. ENVIRONMENTAL PROVISIONS

a. The Army will coordinate with FMERA on the development of environmental restrictions and/or land use controls under consideration for the Property for inclusion in the deeds conveying the Phase 1 Parcels.

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- b. The Army agrees to complete the environmental cleanup of the Phase 1 Parcels as required by Section 120(h) of CERCLA, and other applicable laws and regulations, and the Deed, subject to the availability of funds appropriated for that purpose.
- c. In furtherance of the agreement in Section a. above, and in recognition of the acceleration of the conveyances of the Phase 1 Parcels under this AGREEMENT, the Army further agrees to pursue, where possible, funding required to complete the environmental cleanup of the Property through the federal budget process.
- d. At the request of FMERA, the Army will consider an Environmental Services Cooperative Agreement (ESCA) for environmental study and remediation at the Myers Center and for additional environmental remediation and/or on-going monitoring that may be necessary at the former Fort Monmouth property if the Army determines that this option is most appropriate.

ARTICLE 9. DEFAULT AND TERMINATION

- a. This AGREEMENT shall terminate at the option of Army, subject to the following:
 - (i) loss of FMERA's status as a Local Redevelopment Authority recognized by Department of Defense, Office of Economic Adjustment; or
 - (ii) FMERA's inability or refusal to accept title to the Phase 1 Parcels or portions thereof at the scheduled conveyance time(s) and in the manner as required herein, after FMERA receives written notice to this effect from Army.
- b. In the event a Party hereto fails to observe or perform any of its obligations under this AGREEMENT, after having been provided written notice and failing to cure the default, or initiate such cure, within ninety (90) days of the date such notice, the other will be entitled to terminate this AGREEMENT and exercise any and all of the remedies for breach which are provided for herein, as well as any other remedies to which the Party is entitled at law or in equity; provided, however, that if a default occurs which cannot be remedied within said ninety (90) day period, the other party may afford such additional time as may reasonably be required to cure such default, provided the defaulting party proceeds with reasonable diligence to cure same. Army agrees to provide such additional time to FMERA in the event a lawsuit, the inability of a prospective third party transferee to take title pursuant to the Competitive Sale Requirements hereunder or other action not in FMERA's control, delays the ability of FMERA to take title to the Phase 1 Parcels, provided FMERA proceeds with reasonable diligence to resolve any such action and proceed to take title to the Phase 1 Parcels as contemplated hereunder.
- c. The termination of this AGREEMENT shall have no effect on the continuing obligations of the Parties as provided for in Article 5 of this AGREEMENT, or in the Deed, Bill of Sale or other documents as may be executed and delivered under the terms

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and provisions of this AGREEMENT or applicable law. In the event of termination, the Army shall not be required to return any monies already paid to it by the FMERA under this Agreement.

ARTICLE 10. NOTICES

a. Any notice, request, demand, instruction or other document required or permitted to be given or served under this AGREEMENT shall be in writing and shall be deemed sufficiently served when delivered by hand if a receipt is obtained therefrom, or when actually received if delivered by mail or facsimile, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed as follows:

To FMERA:

Bruce Steadman
Executive Director
Fort Monmouth Economic Revitalization Authority
2-12 Corbett Way
Eatontown, NJ 07724-4251

with a copy to:

New Jersey Division of Law Treasury Section
Department of Law and Public Safety
P.O. Box 106
Trenton, NJ 08625-0106

To Army:

U.S. Army Corps of Engineers
New York District
Chief, Real Estate Division (CENAN-RE-M)
26 Federal Plaza, Room 2007
New York, NY 10278

with a copy to:

Office of the Assistant Chief of Staff for Installation Management
ATTN: Joseph Vignali, c/o James Briggs
DAIM-ODB (BRAC Division)
Room 5000, Taylor Building/NC3
2530 Crystal Drive
Arlington, Virginia 22202

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- a. Either Party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other Party at that Party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.
- b. Whenever under the terms of this Agreement, the time for performance falls upon a Saturday, Sunday or holiday observed by the performing party, such time for performance shall be extended to the next business day. Otherwise, all references herein to "days" shall mean "calendar days".

ARTICLE 11. NON-DISCRIMINATION

FMERA and its successors and assigns and every successor in interest to the Phase 1 Parcels hereby conveyed, or any part thereof, covenant that FMERA and such successors and assigns shall not discriminate upon the basis of race, color, sex, religion, handicap, or national origin in the use, occupancy, sale or lease of the Phase 1 Parcels, or in their employment practices conducted thereon. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Phase 1 Parcels hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

ARTICLE 12. DISPUTE RESOLUTION

Any dispute arising between the Parties to this Agreement concerning the applicability, interpretation, or implementation of any provision of this Agreement shall be resolved under the following dispute resolution process:

- a. Representatives of the Parties who are responsible for implementation of this Agreement shall attempt to resolve the dispute in good faith. If no such resolution is possible, such representatives shall elevate the issue to their respective supervisors, who shall also attempt to resolve the dispute in good faith.
- b. At all times, FMERA and Army shall proceed diligently with performance of this Agreement, pending final resolution of any dispute arising under the Agreement.

ARTICLE 13. INVALID TERM OR PROVISION

If any term or provision of this Agreement or the application thereof to any person or circumstance is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall continue in full force and effect.

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ARTICLE 14. ANTI-DEFICIENCY ACT

Army's obligation to pay or reimburse any money under this Agreement is subject to the availability of appropriated funds, and nothing in this Agreement shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, Public Law 31 U.S.C. Section 1341.

ARTICLE 15. AUTHORITY REPRESENTATIONS

FMERA and the Army hereby represent to each other on and as of the date of this Agreement and on and as of the transfer(s) provided for herein, that FMERA and Army each have full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of FMERA and Army shall be duly authorized to sign the same on FMERA's and the Army's behalf and to bind FMERA and Army thereto. This Agreement and all documents to be executed pursuant hereto by FMERA and Army are and shall be binding upon and enforceable against FMERA and Army in accordance with their respective terms.

ARTICLE 16. PHASE 2 PARCEL CONSIDERATIONS

- a. It is the Army's intent to collaborate with FMERA to seek appropriate conveyance mechanisms for Phase 2 Parcels to obtain best value for both Parties and create jobs in the community.
- b. In furtherance of this goal, it is the intent of the Parties that, subject to Army approval of a separate Economic Development Conveyance or amendment to this EDC, the land, buildings and facilities located within those areas designated as Phase 2 Parcels which have been determined to meet the criteria necessary for Army approval of FMERA's EDC application (i) may be conveyed to FMERA by the Army utilizing the EDC authority, and (ii) the Parties may share revenues derived from the sale and/or lease of appropriate Phase 2 Parcels in a manner and in amounts that are acceptable to both Parties and as authorized by applicable law and regulation. However, the land, buildings and facilities identified as Phase 2 Parcels, may also be conveyed by the Army to other parties using other applicable authorities available to the Army.

ARTICLE 17: PRESERVATION OF HISTORIC, CULTURAL AND ARCHAEOLOGICAL RESOURCES

- a. The Army and the New Jersey State Historic Preservation Officer entered into a Programmatic Agreement in 2011 (attached as Exhibit 5) to govern the protection of Cultural Resources and Archaeological Sites that exist on the Property. The Agreement was concurred with by the FMERA. Current and future use of the Property shall be subject to and in accordance with the Standard Preservation Covenant and the Caretaker .

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Maintenance Plan, Appendix C and Appendix D respectively to the Programmatic Agreement, and the Quitclaim deed(s) for the Property which shall contain the Covenant and Plan as required by the Programmatic Agreement.

b. FMERA shall comply with the requirements of the Programmatic Agreement until such time as the Property is conveyed with the preservation restrictions as required by the Programmatic Agreement.

ARTICLE 18: MISCELLANEOUS

a. **MERGER.** This AGREEMENT contains the entire agreement between the Parties regarding the conveyance of the Phase 1 Parcels, and any agreement hereafter made shall not operate to change, modify, or discharge this AGREEMENT in whole or in part unless that agreement is in writing and signed by the party sought to be charged with it. All prior negotiations, letters of intent and the Intent Agreement of 17 May 2012 are merged in this Agreement, and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between the parties other than as set forth in this Agreement.

b. **AMENDMENT.** This Agreement may not be amended or otherwise modified except by a writing which is executed by the Parties hereto.

c. **WAIVER.** No delay or omission by either Party to this Agreement in any one or more instances to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms or conditions of this Agreement shall impair any such right or power or be construed to be a waiver or relinquishment thereof.

d. **COVENANT AGAINST CONTINGENT FEES.** FMERA warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies retained by FMERA for the purpose of securing business. For breach or violation of this warranty, the Army shall have the right to annul this AGREEMENT without liability or in its discretion to require FMERA to pay the full amount of such commission, percentage, brokerage, or contingent fee.

e. **OFFICIALS NOT TO BENEFIT.** No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this AGREEMENT or to any benefit to arise therefrom. Nothing herein contained, however, shall be construed to extend to any incorporated company, if this AGREEMENT is for the general benefit of such corporation or company.

f. **NO PARTNERSHIP OR JOINT VENTURE.** Nothing contained in this AGREEMENT will make or will be construed to make the Parties hereto joint venture partners with each other, it being understood and agreed that the only relationship

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between FMERA and the United States hereunder is that of seller and buyer and potentially lessor and lessee. Nor should anything in this AGREEMENT render or be construed to render either of the Parties hereto liable to the other for any third party debts or obligations due the other party.

g. The failure of either party to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this AGREEMENT shall not be construed as a waiver or a relinquishment of that Party's rights to the future performance of any such terms, covenants, or conditions by the other Party, in accordance with the terms hereof.

h. The brief headings or titles preceding each Article herein are merely for purposes of identification, convenience, and ease of reference and will be completely disregarded in the construction of this AGREEMENT.

i. ASSIGNMENT. FMERA may not transfer or assign its rights and interests under this AGREEMENT without the written consent of Army. The covenants, agreements, rights, and responsibilities contained in this AGREEMENT inure to the benefit of and are binding upon the Parties hereto, their successors, and assigns. Nothing in this AGREEMENT otherwise shall be construed as creating any rights of enforcement against any person or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

j. COUNTERPARTS. The AGREEMENT is executed in two (2) counterparts, each of which is deemed an original of equal dignity with the others and which is deemed one and the same instrument as the other.

k. GOVERNING LAW. This AGREEMENT and the relationship between the parties shall be construed in accordance with and governed by Federal law, as applicable; otherwise the law of the State of New Jersey shall govern.

l. RESERVATION OF RIGHTS. The Army and FMERA reserve unto themselves all rights and remedies to which each is entitled at law or in equity. In addition to the rights and obligations arising under this Agreement, the Parties retain their rights and obligations under law. This Agreement shall be enforceable in accordance with applicable laws and regulations in any Federal court of competent jurisdiction in the state of New Jersey.

FMERA reserves the right to assert that any and all claims made or to be made against FMERA under this Agreement or related documents or actions based in tort law for damages shall be governed by and subject to provisions of the New Jersey Tort Claims Act, N.J.S.A. 59: 1-1 et seq. and any and all claims made or to be made against FMERA based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

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m. SURVIVAL. Those provisions of the Agreement which, by their express terms or by their operation, are intended to survive termination of the Agreement, shall survive termination of the Agreement. Such provisions include, but are not limited to, this Article 5 and 14.

ARTICLE 19. LIST OF EXHIBITS

The following exhibits are made a part of this AGREEMENT:

Exhibit 1 Description of the Property including the Phase 1 Parcels & Phase 2 Parcel

Exhibit 2 Parcel E Draft Deed, Projected Parcel E Worksheet of Property Sale & Draft Promissory Note for Third Party Settlement on Parcel E

Exhibit 3 FMERA Competitive Sale and Lease Requirements

Exhibit 4 FMERA Annual Accounting Form

Exhibit 5 Preservation Programmatic Agreement

Exhibit 6 Developable Acres Summary

Exhibit 7 Homeless Accommodation Trust Fund Assessment

Exhibit 8 Worksheet of Property Sale Form


Exhibit 9 Bill of Sale Form

Exhibit 10 Projected Clinic Parcel Worksheet of Property Sale

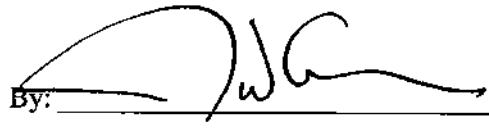
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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA

By: 
Paul Cramer
Acting Deputy Assistant Secretary of the Army
(Installations, Housing and Partnerships)

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

By: 
James V. Gorman
Chairman of the Board