



**FORT
MONMOUTH**

DISCOVER ▶ INNOVATE ▶ TRANSFORM

REQUEST FOR SEALED BIDS

FOR

**THE PURCHASE AND LEASE
OF REAL AND PERSONAL PROPERTY**

Building 689 – Bowling Center

Issued by the

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

Date Issued: June 7, 2017

Responses due by 12:00 P.M. EDT on July 10, 2017

REQUEST FOR SEALED BIDS FOR THE PURCHASE AND LEASE OF REAL AND PERSONAL PROPERTY

Summary

The Fort Monmouth Economic Revitalization Authority (“FMERA” or the “Authority”), a state authority created pursuant to P.L. 2010, c.10 (N.J.S.A. 52:27I-18 et seq.), is responsible for the comprehensive redevelopment of Fort Monmouth. In furtherance of its mission, FMERA is seeking sealed bids from individuals or entities to purchase and lease certain real property and accompanying personal property described herein. This request for sealed bids (“RFB”) is being issued under FMERA’s rules for the sale of real and personal property (N.J.A.C. 19:31C-2, the “Sales Rules”). The successful Bidder as defined below shall be subject to the terms and provisions of the Sales Rules and the October 2016 Phase 2 Economic Development Conveyance Agreement (“EDC Agreement”) between FMERA and the Army. Reuse of the property will be subject to the Fort Monmouth Reuse and Redevelopment Plan (the “Reuse Plan”), which operates as the master plan for Fort Monmouth, and FMERA’s land use regulations and design and development guidelines (N.J.A.C. 19:31C-3, the “Land Use Rules”), which serve as the zoning ordinance for the Fort. The Reuse Plan and the Land Use Rules supersede the master plan, the zoning and land use ordinance and regulations, and the zoning map of the Borough of Eatontown and Monmouth County development regulations, except for procedures for site plan and subdivision approval. The Reuse Plan and the Land Use Rules can be found at: <http://www.fortmonmouthnj.com/developer-information/>.

1.0 PURPOSE

The Authority is requesting sealed bids (the “Bid”) from qualified individuals or entities (the “Bidder”) interested in purchasing the Fort Monmouth Bowling Center, aka Building 689, an approximately 17,599 sf, twenty (20) lane bowling alley, and ground leasing its site, a 2.7± acre parcel of land at Saltzman & Wilson Avenues in the Main Post Area of Fort Monmouth (together, the “Property”). A map of the Property can be found in **Attachment #1** of this RFB. The Authority is requesting Bids that are consistent with the Authority’s Reuse Plan and Land Use Rules. The Reuse Plan contemplates the reuse of Building 689 as a bowling alley. The Property is in the Fort’s Eatontown Route 35 Lifestyle/Tech Center development district. Building 689 is expandable. The Property also includes Building 682, a two-story, 4,720 sf wood frame building that the selected Bidder must demolish at its sole cost and expense.

FMERA acquired title to the Property via quit claim deed from the Army in November 2016 pursuant to the terms of the EDC Agreement. The Purchase and Sale Agreement (“PSA”) between the Authority and the selected Bidder will be subject to the terms of the EDC Agreement. Building 689 will be sold and the 2.7± site will be ground leased “as-is” and “where-is.” The Authority will convey title to the selected Bidder by way of a quit claim deed.

FMERA is seeking to sell the Property to a Bidder who will close on the Property at the earliest possible date and return it to active use. Bidders' proposals should state their willingness to commit to the following expedited closing schedule:

- execute a PSA substantially consistent with **Attachment #5** to this RFB within fifteen (15) days of FMERA Board approval; and
- execute a Ground Lease substantially consistent with **Attachment #6** to this RFB and close within ninety (90) days of PSA execution (i.e. with or without all approvals).

The Evaluation Score Sheet that FMERA will use to score and rank the proposals places considerable weight on Bidders' commitment to an expedited closing schedule, as well as on price. See **Attachment #3** to this RFB. **The minimum bid that FMERA will accept for the sale of Building 689 is \$1,130,000.00. Bidders should also propose an ongoing annual ground lease payment and a minimum ground lease term (in years) in their Bid.**

Note: The selected Bidder will be responsible for utility costs and property maintenance expenses beginning three (3) months after execution of a contract to purchase the Property, whether or not the Bidder has closed on the Property.

1.1 THE PROPERTY

The Property consists of 2.7± acres of land and Building 689, the Bowling Center (approximately 17,599 sf), and Building 682 (approximately 4,720 sf), located in the Eatontown section of the Fort's Main Post. Building 682 must be demolished by the selected Bidder. Title to the Property is currently held by FMERA. FMERA acquired title to the Property from the Army in November 2016 subject to the terms of the EDC Agreement and the Army's environmental clearance document, the Finding of Suitability to Transfer ("FOST").

The Army's FOST for the Main Post can be accessed at:

<http://www.pica.army.mil/FtMonmouth/Documents/ATT3-FinalPhase2FOST.PDF>.

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Army retains responsibility for any environmental contamination (other than asbestos, lead-based paint, mold, petroleum products and their derivatives, PAHs and commercially-applied pesticides and termiticides) that may be present on the Property as of the date of closing with FMERA. The selected Bidder will be afforded the opportunity to perform due diligence investigations prior to closing at its sole cost and expense. In order to expedite the selected Bidder's ability to close on the earliest possible date, FMERA will allow the selected Bidder to commence environmental due diligence investigations prior to execution of a PSA.

Bidders are hereby notified that registered pesticides may have been applied to the Property and may continue to be present. The Army has advised FMERA that where a pesticide was applied, it was applied in accordance with its intended purpose and consistently with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136, et seq., and other applicable laws and regulations. If the selected Bidder takes any action with regard to the Property, including demolition of structures or any disturbance or removal of soil that may

expose, or cause a release of, a threatened release of, or an exposure to, any such pesticide, the selected Bidder would assume all responsibility and liability therefore.

1.2 REUSE OF THE PROPERTY

FMERA seeks to sell the Property to a Bidder who will use the Property as a bowling alley and entertainment facility as set forth in the Reuse Plan. Given the Property's location at the center of the Main Post, between a proposed lifestyle retail complex and the Fort's technology hub, and across Saltzman Avenue from a proposed artist live/work community, FMERA envisions the Bowling Center upgraded into a vibrant, upscale, expanded entertainment destination, combining traditional bowling with dining, entertainment and other amenities. Bidders who propose to upgrade the Property consistent with this vision will receive additional consideration in the evaluation and scoring process. See **Attachment #3**, Evaluation Score Sheet.

Section 1.3 below provides a detailed description of the planned development in the Property's surrounding area.

There are 105 existing off-street parking spaces located on the Property, which satisfy the parking requirement contained in FMERA's Land Use Rules of five (5) spaces per lane. Building 682 must be demolished by the selected Bidder within twelve (12) months of closing. After Building 682 is demolished, and based on the maximum 0.25 floor area ratio specified in the Land Use Rules, the Property's 2.7± acre land area is sufficient to allow for the expansion of Building 689 by approximately 10,000 sf, the replacement of any parking lost to the building expansion, and the development of an additional 50± parking spaces on site. The expansion of Building 689 is encouraged and will receive additional consideration in the evaluation and scoring process, but is not mandatory.

All purchasers of real property on Fort Monmouth are required to submit applications to FMERA for Mandatory Conceptual Review ("MCR") of their projects, and to the municipal planning board for site plan review, regardless of whether the project includes new construction or substantial renovation. Projects fronting on a county road are also subject to review by the Monmouth County Planning Board. The successful Bidder must be willing to close on the Property prior to receipt of MCR, municipal and county planning board approvals.

It is FMERA's understanding that New Jersey state law and regulations permit alcoholic beverages to be sold in buildings situated on land owned or under the control of certain State entities provided that the Director of the New Jersey Division of Alcoholic Beverage Control ("ABC") issues a "Special Concessionaire Permit." (See N.J.S.A. 33:1-42; N.J.A.C. 13:2-5.2). It is FMERA's further understanding that Special Concessionaire Permits are issued by the ABC to eligible applicants on an annual basis for a fee of \$2,000 per year provided that the applicant has entered into a contract with the State entity that owns the land (i.e., FMERA) authorizing the applicant to serve alcoholic beverages to the public.

FMERA is agreeable to alcoholic beverages being served on the Property provided the Bidder complies with all applicable requirements of the ABC and any other governmental entity having

jurisdiction over the issuance of the required permits and/or licenses to serve alcoholic beverages. Note, however, that the sale and ground lease of the Property are not contingent on the selected Bidder's ability to obtain a State Concessionaire Permit or liquor license, and FMERA will reject any Bid that seeks to condition the sale and ground lease on any such contingency. Bidders who plan to apply for a State Concessionaire Permit or obtain a liquor license to serve alcohol on the Property should so indicate in their Bids. FMERA intends to sell the improvements on the Property (i.e., Building 689), and lease the ground to the selected Bidder on a long-term basis so that the underlying land remains owned by FMERA and the building is potentially eligible for a Special Concessionaire Permit. The selected Bidder could then apply to ABC to serve alcohol under a State Concessionaire Permit, subject to the approval of the ABC. At the expiration or earlier termination of the ground lease, FMERA would then convey the underlying land to the selected Bidder. A specimen form of Ground Lease Agreement is attached as **Attachment #6**. Bidders who plan to apply for a State Concessionaire Permit will be responsible for obtaining the Permit (or liquor license), at the Bidder's sole cost and expense, in order to serve alcoholic beverages within the building. Notwithstanding anything in this paragraph or the previous paragraph, FMERA makes no representation regarding the possibility of the selected Bidder obtaining a State Concessionaire Permit, and no Bidder is entitled to rely on any statements made herein regarding a State Concessionaire Permit. Nothing contained in this RFB shall be deemed legal advice and all Bidders are encouraged to consult with legal counsel. Bidders should note that if FMERA retains ownership of any portion of the Property and ground leases it to the selected Bidder, the selected Bidder will be obligated to pay workers employed to install, construct, renovate, refurbish or maintain any improvements on that portion of the Property not less than the prevailing wage rate for the particular trade, as required by N.J.S.A. 34:11-56.25 et seq. This requirement will continue for the duration of the ground lease.

Bidders must offer to pay the full value they ascribe to Building 689 at the closing of title. The minimum bid that FMERA will accept for the sale of Building 689 is \$1,130,000. Bidders should also propose an ongoing annual ground lease payment and a minimum ground lease term (in years) in their Bid.

1.3 FORT MONMOUTH'S REDEVELOPMENT STATUS

Fort Monmouth consists of 1,127 acres located in the Boroughs of Tinton Falls, Eatontown and Oceanport, New Jersey. Established in 1917 as Camp Little Silver, the Fort served as the home of the Signal Corps, and later CECOM, the Communications and Electronics Command. The Fort was designated for closure in the 2005 federal Base Realignment and Closure round, and formally closed in September 2011. FMERA entered into a Phase 1 EDC Agreement with the Army in June 2012, and took title to an initial property, a 55-acre tract in Tinton Falls known as Parcel E, in January 2013. FMERA subsequently sold Parcel E to Commvault, one of the nation's leading data and information management software companies, for construction of a new headquarters complex for the company. Commvault occupied the first building in the complex, a 275,000 sf facility for 900 employees, in late 2014. It is FMERA's understanding that Commvault has approvals in hand to develop up to 650,000 sf for an estimated 2,500 employees.



CommVault's new Headquarters

FMERA acquired the former Patterson Hospital from the Army and sold it to AcuteCare Health System in March 2014. AcuteCare is renovating the 100,000 sf building for use as an outpatient health clinic. The facility's first phase opened in the 2nd Quarter of 2015.



AcuteCare's renovated facility

FMERA acquired the former Building 2525 in Tinton Falls from the Army as part of the Phase I EDC and sold it to RADAR Properties in February 2016. RADAR is renovating the 84,000sf building for use as office space for AASKI Technology and other tenants. RADAR held a ribbon cutting ceremony in May 2017.

FMERA acquired the former Building 2290 in Tinton Falls from the Army as part of the Phase I EDC and sold it to Trinity Hall Corporation in March 2016. Trinity Hall renovated the 19,600sf former child development center building for use as a private high school for girls. The facility opened in the 3rd Quarter of 2016.

To date, FMERA has sold nine parcels of property, and another 15 are currently under contract or in negotiations. Combined, these 24 parcels total roughly half of the Fort's land area.

At full buildout in approximately twelve years, the Fort is projected to include:

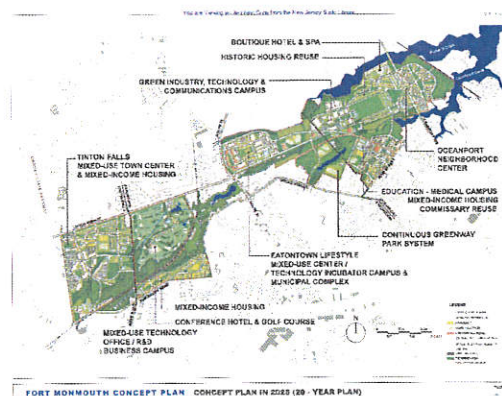
- 1,585 housing units, with over 4,000 new residents
- 300,000 sf of non-profit, civic, government and educational uses
- 500,000 sf of retail space
- 2,000,000 sf of office, research & development and other commercial uses

Total development costs are estimated at \$1.5 billion, generating 10,000 permanent jobs.

Fort amenities are anticipated to include:

- preservation of approximately 40% of the Fort's land area as recreational and passive open space
- creation of a system of bicycle lanes, pedestrian paths and/or multi-purpose trails
- dedication of an interconnected blue/green belt spanning the Fort
- a shuttle system linking the Fort with mass transit, including the Little Silver train station
- improved access to the Garden State Parkway via a new interchange (Exit 105A)

In addition to the above amenities, the Fort plans to also be home to a renovated fitness center, performing arts center/theater, golf course, and marina.



Fort Monmouth's 20-year Concept Plan

1.4 UTILITIES

The Property is directly served by New Jersey Natural Gas Company and the selected Bidder will be responsible for establishing an account. Electric power, water and sanitary sewer service are provided over former Army systems currently owned and operated by FMERA. For a transitional period FMERA will continue to service the Property over the existing systems which will have to be metered by the selected Bidder, at no cost or expense to FMERA. The selected Bidder will be responsible to make any needed improvements or upgrades to utility infrastructure within the footprint of the Property. FMERA anticipates that the selected Bidder, at its sole cost and expense, will be required to relocate water and sewer laterals as necessary and to reconnect utilities as FMERA and the public utilities install new water and sewer mains in the abutting streets (i.e. Saltzman and Wilson Avenues) over the next few years. The selected Bidder, at its sole cost and expense, will also be required to establish metered electric service with Jersey Central Power & Light Company.

Note: The selected Bidder will be responsible for utility costs and property maintenance expenses beginning three (3) months after execution of a contract to purchase the Property, whether or not the Bidder has closed on the property.

2.0 PREVAILING WAGE REQUIREMENT

Prevailing wage obligations apply to the extent that a project includes “public work” as that term is defined in the State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., or if the applicant receives financial assistance from FMERA, the State or any other State entity.

Pursuant to **Section 1.2** above, Bidders should note that if FMERA retains ownership of any portion of the Property and ground leases it to the selected Bidder, the selected Bidder will be obligated to pay workers employed to install, construct, renovate, refurbish or maintain any improvements on that portion of the Property not less than the prevailing wage rate for the particular trade, as required by N.J.S.A. 34:11-56.25 et seq. This requirement will continue for the duration of the ground lease.

3.0 PUBLIC INSPECTION OF DOCUMENTS

Due diligence material and documents held by FMERA pertaining to the Property and/or Buildings 689 and 682 will be made available for the review and inspection by Bidders during normal business hours at the FMERA office located at Fort Monmouth, New Jersey. Interested Bidders may make copies of the paper documents. Please note: FMERA does not warrant the accuracy or completeness of any documents originated by the Army or other sources. Copies of any documents requested that are larger than legal size shall be made at the expense of the Bidder. A copy of digital files will also be available upon request without charge. Limited materials and documents will be available for review and inspection during the tour referred to in Section 4.0 below.

Materials made available by FMERA for public inspection are offered “as is” and “where is” and they may include pertinent information regarding the environmental conditions, utility access, and other information related to these facilities. However, FMERA shall not be held responsible or liable for the accuracy or inaccuracy of such information or materials reviewed or obtained. All Bidders shall be wholly responsible for their own due diligence efforts. Any information obtained by the Bidders shall become the property of the Authority immediately upon the Bidder’s submission of its Bid and the release of such information by the Bidder to a third party shall only be made with the written approval of the Authority.

4.0 TOURS

Walk-throughs will commence on **June 12, 2017 at 10:00 A.M.** All requests for a walk-through tour of the property are due by **June 30, 2017.** Please schedule a walk-through tour by contacting Regina McGrade at rmcgrade@njeda.com or 732-720-6350.

5.0 BID SUBMISSION

Five (5) copies of the Bid (one (1) unbound, original; three (3) bound copies and one (1) copy in PDF format on a CD) must be submitted marked “SEALED BID FOR THE PURCHASE AND LEASE OF REAL AND PERSONAL PROPERTY” in a sealed package and addressed to:

Bruce Steadman
Executive Director
Fort Monmouth Economic Revitalization Authority

Bids must be received by July 10, 2017 at 12:00 P.M. Eastern Daylight Time (EDT).

Bids must be received by July 10, 2017 at 12:00 P.M. EDT. Proposals may be delivered via an overnight service (FedEx or UPS) to 100 Barton Avenue, Oceanport, NJ, 07757.

Hand delivered Bids must be received at the FMERA Office located at 502 Brewer Avenue, Fort Monmouth, Oceanport, NJ by July 10, 2017 at 12:00 P.M. EDT. Access to the FMERA Office is via the Fort Monmouth Main Gate located on the west side of Oceanport Avenue, Oceanport or via the Fort Monmouth West Gate located at the intersection of Route 35 and Tinton Avenue (County Route 537), Eatontown.

For US mail delivery, please mail to FMERA, P.O. Box 267, Oceanport, NJ 07757. All US mail deliveries must be received by July 10, 2017 at 12:00 P.M. EDT.

No faxed or email Bids will be accepted. Bids received after the time and date listed above will not be accepted.

Bids will be held unopened until they are publicly opened on July 10, 2017 at 12:30 P.M. at the FMERA Office located at 502 Brewer Avenue, Fort Monmouth, Oceanport NJ 07757.

FMERA may extend the time for opening sealed bids at the request of a potential Bidder who notifies FMERA that he or she intends to submit a sealed bid and gives valid reasons why he or she will not meet the formal opening date. The potential Bidder making this request shall do so in writing and specify the length of additional time requested. The written request must be received by FMERA no later than one week prior to the close of the bid submission period. If granted, extensions of time for opening of sealed bid(s) shall be applicable to all potential Bidders and shall be posted only on the Authority's website. All sealed bids shall be held and remain sealed until the expiration of the time extension granted by FMERA.

The Authority will not be responsible for any expenses in the preparation and/or presentation of the Bids or for the disclosure of any information or material received in connection with this RFB, whether by negligence or otherwise.

The Authority reserves the right to request additional information if necessary, or to reject any and all Bids with or without cause, and, in its sole discretion, waive any irregularities or informalities, such as minor elements of non-compliance with regard to the requirements of this RFB, in the Bids submitted. The Authority further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting a Bid. In the event that all Bids are rejected, the Authority reserves the right to re-solicit Bids.

FMERA may negotiate with one or more Bidders who have submitted advantageous sealed bid terms that are in the best interests of the Authority and the redevelopment plans for Fort Monmouth, price and other factors considered, in accordance with the evaluation criteria in this RFB. FMERA reserves the right to negotiate with some but not all parties who submitted a sealed bid based on initial submissions.

FMERA may also seek **Best and Final Sealed Bids** from one or more Bidders who timely submitted a responsive Bid for this RFB.

Responding Bidders may withdraw their Bids at any time prior to the final filing date and time, as indicated on the cover page to this RFB, by written notification signed by an authorized agent of the firm(s). Bids may thereafter be resubmitted, but only up to the final filing date and time.

The responding Bidder assumes sole responsibility for the complete effort required in this RFB. No special consideration shall be given after the Bids are opened because of a Bidder's failure to be knowledgeable about all requirements of this RFB. By submitting a Bid in response to this RFB, the Bidder represents that it has satisfied itself, from its own investigation, of all of the requirements of this RFB.

By submitting a Bid in response to this RFB, each Bidder agrees to hold its Bid open for at least ninety (90) days after the response due date. Any provision in a submitted Bid that attempts to limit or condition the time that a Bid is open for consideration by FMERA will not be binding on

FMERA. FMERA reserves the right, upon good cause shown to the satisfaction of FMERA's staff, to allow a Bidder to withdraw its Bid after Bids have been opened.

Documents and information submitted in response to this RFB shall become property of the Authority and generally shall be available to the general public as required by applicable law, including the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. and New Jersey right-to-know laws.

Communications with representatives of the Authority by the Bidder or the Bidder's representatives concerning this RFB are **NOT PERMITTED** during the term of the submission and evaluation process. Communications regarding this RFB in any manner (except as set forth in Section 4 above and Section 6 below or negotiations initiated by the Authority) **will result in the immediate rejection** of the Bid.

5.1 BID REQUIREMENTS

In order to be considered, all Bids must include the following:

- a. **Cover Letter.** A letter identifying the Bid and disclosing the documentation included. The Bidder must indicate the name and contact information for the individual who will be its senior contact person for its Bid. The Bidder must also indicate whether the firm is operating as an individual proprietorship, partnership, corporation or a joint venture. The cover letter should also indicate the state of incorporation of the Bidder.
- b. **Price Submittal.** A signed document stating the proposed purchase price for Building 689, the ground lease payment for the land, and a minimum ground lease term (in years). The proposed purchase price and ground lease payment must be typewritten, photocopied or written in ink or some other indelible substance. **The minimum bid that FMERA will accept for the sale of Building 689 is \$1,130,000. Bidders should also propose an ongoing annual ground lease payment and a minimum ground lease term (in years) in their Bid.**
- c. **Bid Deposit.** A payment of ten (10%) percent of the as-is-where-is purchase price offered by the Bidder which shall be held in an interest-bearing account and applied to the purchase for the accepted Bid, and returned to all others.

The deposit shall be in the form of a certified, cashier's or bank check made payable to the Authority issued by a FDIC accredited financial institution.

The deposit may also be a wire transfer of immediately available funds. Please contact Regina McGrade at rmcgrade@njeda.com or 732-720-6350 for wiring instructions.

- d. **Conceptual Redevelopment Plan.** A narrative conceptual plan, including an optional elevation sketch, describing the initial renovations to be made and any long-term expansion and site improvements at the Property as well as their estimated costs and the

manner in which such improvements shall comply with the requirements of the Reuse Plan and the Land Use Rules adopted by the Authority. The Bidder should indicate whether it intends to upgrade the Property into a vibrant, upscale, expanded entertainment destination.

- e. **Financing Plan.** The Bidder's financials and committed resources evidencing the Bidder's ability to meet the financial requirements of its redevelopment plan.
- f. **Schedule of Critical Paths.** A detailed summary of the Bidder's schedule for renovation of Building 689 and demolition of Building 682, and if applicable, expansion of Building 689, as well as Bidder's time to complete purchase and occupy the Property. Please note that the FMERA Land Use Rules contain a procedural section that outlines the site plan application and approval process.
- g. **Management & Organizational Plan.** A detailed summary of management and experience, organizational chart, as well as total number of other projects of similar size completed by the Bidder.
- h. **Jobs Generation.** Provide an estimated number of permanent jobs (new to New Jersey and/or relocated within the state) to be created at the Property.
- i. **Disclosure of Investment Activity in Iran.** A completed and signed Disclosure of Investment Activities in Iran form.
- j. **Closing Schedule, Purchase and Sale Agreement and Ground Lease Agreement.** The Bidder should state whether it is willing to commit to an expedited closing schedule (i.e. closing within ninety (90) days of PSA execution). The Bidder should also state whether it is willing to execute a PSA and a Ground Lease substantially consistent with **Attachments #5 and #6**, respectively, to this RFB within fifteen (15) days of FMERA Board approval. As part of its Bid, the Bidder should provide a list of any material revisions that it will seek to the attached PSA and Ground Lease. FMERA will not be obligated to accept or make any revisions to the PSA or Ground Lease that a Bidder may request.

6.0 QUESTIONS AND ANSWERS

The Authority will also accept questions from firms regarding any aspect of this RFB via e-mail only until 5:00 p.m. Eastern Daylight Time on **July 5, 2017**. Questions should be directed via e-mail to:

rharrison@njeda.com

All answers to questions posed will be posted on the Authority website at www.fortmonmouthnj.com and/or through an addendum (if any) to this RFB made available to all potential Bidders at the Authority website.

7.0 COMPLIANCE WITH STATE LAW REQUIREMENTS

7.1 Chapter 51, Executive Order No. 117 and Executive Order No. 7.

In order to safeguard the integrity of State government, including the Authority, procurement by imposing restrictions to insulate the negotiation and award of State and Authority contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c. 51 (codified at N.J.S.A. 19:44A-20.13 – 25)(“Chapter 51”), on March 22, 2005, effective retroactive October 15, 2004, superseding the terms of Executive Order No. 134. In addition, on September 24, 2008, Governor Corzine issued Executive Order No. 117, effective on November 15, 2008 (“EO 117”) setting forth additional limitations on the ability of Executive Branch agencies to contract with consultants who have made or solicited certain contributions. Governor Christie issued Executive Order No. 7 on January 20, 2010 (“EO 7”), and effective the same day, setting forth additional limitations on the ability of Executive Branch agencies to contract with consultants who have made or solicited certain contributions. Pursuant to the requirements of Chapter 51, EO 117, and EO 7 the terms and conditions set forth in this section are material terms of this engagement:

I. Definitions:

For the purpose of this section, the following shall be defined as follows:

(a) Contribution means a contribution reportable as a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act, P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

(b) Business Entity means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes:

(i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:

(1) In the case of a corporation: the corporation, any officer of the corporation, and any Person or business entity that owns or controls 10% or more of the stock of the corporation;

(2) In the case of a general partnership: the partnership and any partner;

(3) In the case of a limited partnership: the limited partnership and any partner;

(4) In the case of a professional corporation: the professional corporation and any shareholder or officer;

(5) In the case of a limited liability company: the limited liability company and any member;

(6) In the case of a limited liability partnership: the limited liability partnership and any partner;

(7) In the case of a sole proprietorship: the proprietor; and

(8) In the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

(ii) Any subsidiaries directly or indirectly controlled by the business entity;

(iii) Any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

(iv) If a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that, unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of Chapter 51.

(v) Any labor union, labor organization, and any political committee formed by a labor union or labor organization if one of the purposes of the political committee is to make political contributions.

II. Breach of Terms of Chapter 51, EO 117 and EO 7 is a breach of this engagement:

It shall be a breach of the terms of this engagement for the Business Entity to do any of the following:

(a) Make or solicit a contribution in violation of the Chapter 51, EO 117 and EO 7;

(b) Knowingly conceal or misrepresent a contribution given or received;

(c) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

(d) Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;

(e) Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited

by the business entity itself, would subject that entity to the restrictions of Chapter 51, EO 117 and EO 7;

(f) Fund contributions made by third parties, including consultants, attorneys, family members, and employees;

(g) Engage in any exchange of contributions to circumvent the intent of the Chapter 51, EO 117 or EO 7; or

(h) Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51, EO 117 and EO 7.

III. Certification and disclosure requirements:

(a) The State or the Authority shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, or to any State, county political party, or to a legislative leadership or municipal political party, committee during certain specified time periods.

(b) Prior to entering any contract with any Business Entity, the Business Entity proposed as the selected Bidder under the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a continuing political committee within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions for completion and submission to the Authority at the time of submission of a Bid in response to the RFB are available for review on the Purchase Bureau website at:
<http://www.state.nj.us/treasury/purchase/forms.htm#eo134>.

(c) Further, the Bidder is required, on a continuing basis, to report any contributions and solicitations Bidder makes during the term of the contract, and any extension(s) thereof, at the time any such contribution or solicitation is made.

(d) Bidder's failure to submit the required forms will prevent FMERA from entering into a Purchase and Sale Agreement with that party. The State Treasurer or his designee shall review the Disclosures submitted by the Bidder Pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the selected Bidder, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Bidder violated Chapter 51 or EO 117 the State Treasurer shall disqualify the Bidder from award of such contract. If the State Treasurer or his designees determines that any contribution or action constitutes a breach of contract that poses a conflict of interest, pursuant to Chapter 51 and EO 117, the State Treasurer shall disqualify the Bidder from

award of such contract.

Please refer to ATTACHMENT #2 for copies of the Information and Instruction and Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions. Failure to submit the attached Information and Instruction and Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form shall be cause for rejection of your firm's Bid. The Bidder selected to provide services to the Authority shall maintain compliance with Chapter 51, EO 117 and EO 7 during the term of their engagement.

7.2 Prevailing Wage. Prevailing wage will apply only to the extent that a project includes "public work" as that term is defined in the State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., or if the Bidder receives financial assistance from FMERA, the State or any other State entity.

Pursuant to **Section 1.2** above, Bidders should note that if FMERA retains ownership of any portion of the Property and ground leases it to the selected Bidder, the selected Bidder will be obligated to pay workers employed to install, construct, renovate, refurbish or maintain any improvements on that portion of the Property not less than the prevailing wage rate for the particular trade, as required by N.J.S.A. 34:11-56.25 et seq. **This requirement will continue for the duration of the ground lease.**

7.3 Certification of Non-Involvement in Prohibited Activities in Iran.

Pursuant to N.J.S.A. 52:32-58, all Proposals submitted in response to this RFB must include the Bidder's certification that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the State of New Jersey Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities. A copy of the Disclosure of Investment Activities in Iran form included in ATTACHMENT #2 must be completed and submitted by each Bidder with its Proposal.

7.4 Standards Prohibiting Conflicts of Interest.

The following prohibitions shall apply to all contracts made with the Authority.

- (a) No Bidder shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any Board member, officer or employee of the State or the Authority, or special State officer or employee as defined in N.J.S.A. 52:13D-13b and e, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13f of any such Board member, 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.
- (b) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by a Board member, officer or employee of the Authority from any Bidder shall be reported in writing forthwith by the Bidder to the State Attorney General.
- (c) No Bidder 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 Bidder to any Board member, officer or employee of the Authority or special State officer or employee, or 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 is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.

(d) No Bidder shall influence, or attempt to influence or cause to be influenced any Board member, officer or employee of the Authority in his official capacity in any manner which might tend to impair the objectivity or independence or judgment of said Board member, officer or employee.

(e) No Bidder shall cause or influence, or attempt to cause or influence, any Board member, officer or employee of the Authority to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Bidder or any other person.

(f) It is agreed and understood that the Authority reserves the right to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect or would be contrary to the best interest of the Authority.

7.5 Record Retention

The selected Bidder shall maintain all documentation related to the purchase and development of the Property for a period of five (5) years from the date of completing the development of the Property. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

8.0 EVALUATION CRITERIA

FMERA will evaluate each sealed bid received in accordance with this RFB and shall identify the Bid(s) determined to be responsive to all material elements set forth in the notice, including, but not limited to: purchase price; proposed annual Ground Lease payment and minimum duration of Ground Lease term; estimated jobs to be created at or relocated to the Property; willingness to expedite purchase term including due diligence period and accept FMERA's standard form of PSA and Ground Lease; proposed project capital investment; Bidder's financial capability to meet the proposed terms of purchase and project completion; FMERA's prior experience with the Bidder; impact to host municipality; and Bidder's intention to upgrade the Property into a vibrant, upscale, expanded entertainment destination. Selection of the winning Bidder will be based on price and other factors considered. FMERA is looking to accelerate reuse of the Property to the extent possible.

FMERA shall be under no obligation whatsoever, legal or otherwise, to sell or convey the Property or any interest in the Property unless and until final forms of PSA and Ground Lease are approved for execution by the FMERA Board of Members in its sole and absolute discretion. No Bidder or other party shall have any legal right or interest in the Property unless and until a Purchase and Sale Agreement and Ground Lease are properly executed and delivered by FMERA.

ATTACHMENT #1 Description of Property

The Property consists of 2.7± acres of land and two buildings: Building 689, the Bowling Center, constructed in 1967 and totaling 17,599± sf; and Building 682, a 4,720± sf building constructed in 1941. The selected Bidder shall demolish Building 682 within 12 months of closing. The Property is located at the northeast corner of Saltzman and Wilson Avenues in the Eatontown section of the former Fort Monmouth.



**ATTACHMENT #2
REQUIRED FORMS**

**STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

Quote Number: _____

Bidder/Offeror: _____

PART 1: CERTIFICATION

BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.

FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE.

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders must review this list prior to completing the below certification. **Failure to complete the certification will render a bidder's proposal non-responsive.** If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party

PLEASE CHECK THE APPROPRIATE BOX:

I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. **I will skip Part 2 and sign and complete the Certification below.**

OR

I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

EACH BOX WILL PROMPT YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ADDITIONAL ACTIVITIES ENTRY" BUTTON.

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____ _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

ADD AN ADDITIONAL ACTIVITIES ENTRY

Certification: I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder; that the State of New Jersey is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____

Signature: _____

Do Not Enter PIN as a Signature

Title: _____

Date: _____

Division of Purchase and Property
 Two-Year Chapter 51/Executive Order 117 Vendor Certification and
 Disclosure of Political Contributions

FOR STATE AGENCY USE ONLY

Solicitation, RFP, or Contract No. _____ Award Amount _____

Description of Services _____

State Agency Name _____ Contact Person _____

Phone Number _____ Contact Email _____

Check if the Contract / Agreement is Being Funded Using FHWA Funds

Please check if requesting
recertification

Part 1: Business Entity Information

Full Legal Business Name _____
(Including trade name if applicable)

Address _____

City _____ State _____ Zip _____ Phone _____

Vendor Email _____ Vendor FEIN (SS# if sole proprietor/natural person) _____

Check off the business type and list below the required information for the type of business selected.
MUST BE COMPLETED IN FULL

- Corporation: LIST ALL OFFICERS and any 10% and greater shareholder
- Professional Corporation: LIST ALL OFFICERS and ALL SHAREHOLDERS
- Partnership: LIST ALL PARTNERS with any equity interest
- Limited Liability Company: LIST ALL MEMBERS with any equity interest
- Sole Proprietor

Note: "Officers" means President, Vice President with senior management responsibility, Secretary, Treasurer, Chief Executive Officer or Chief Financial Officer of a corporation, or any person routinely performing such functions for a corporation.

All Officers of a Corporation or PC

**10% and greater shareholders of a corporation
or all shareholder of a PC**

All Equity partners of a Partnership

All Equity members of a LLC

If you need additional space for listing of Officers, Shareholders, Partners or Members, please attach separate page.

IMPORTANT NOTE: You must review the definition of "contribution" and "business entity" on the Information and Instructions form prior to completing Part 2 and Part 3. The Information and Instructions form is available at: <http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>

Part 2: Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity.

1. Report below all contributions solicited or made during the 4 years immediately preceding the commencement of negotiations or submission of a proposal to any:

Political organization organized under Section 527 of the Internal Revenue Code and which also meets the definition of a continuing political committee as defined in N.J.S.A. (See Information and Instructions form.)

2. Report below all contributions solicited or made during the 5 1/2 years immediately preceding the commencement of negotiations or submission of a proposal to any:

Candidate Committee for or Election Fund of any Gubernatorial or Lieutenant Gubernatorial candidate
State Political Party Committee
County Political Party Committee

3. Report below all contributions solicited or made during the 18 months immediately preceding the commencement of negotiations or submission of a proposal to any:

Municipal Political Party Committee
Legislative Leadership Committee

Full Legal Name of Recipient _____
Address of Recipient _____
Date of Contribution _____ Amount of Contribution _____
Type of Contribution (i.e. currency, check, loan, in-kind) _____
Contributor Name _____
Relationship of Contributor to the Vendor _____
If this form is not being completed electronically, please attach additional contributions on separate page. Click the "Add a Contribution" tab to enter additional contributions.

Remove Contribution
Add a Contribution

Check this box only if no political contributions have been solicited or made by the business entity or any person or entity whose contributions are attributable to the business entity.

Part 3: Certification

- (A) I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**.
- (B) I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**, except for the individuals and/or entities who are submitting separate Certification and Disclosure forms which are included with this submittal.
- (C) I am certifying on behalf of the business entity only; any remaining persons or entities whose contributions are attributable to the business entity (as listed on Page 1) have completed separate Certification and Disclosure forms which are included with this submittal.
- (D) I am certifying as an individual or entity whose contributions are attributable to the business entity.

I hereby certify as follows:

1. I have read the Information and Instructions accompanying this form prior to completing the certification on behalf of the business entity.
2. All reportable contributions made by or attributable to the business entity have been listed above.

3. The business entity has not knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions, that would bar the award of a contract to the business entity unless otherwise disclosed above:

- a) Within the 18 months immediately preceding the commencement of negotiations or submission of a proposal for the contract or agreement to:
 - (i) A candidate committee or election fund of any candidate for the public office of Governor or Lieutenant Governor or to a campaign committee or election fund of holder of public office of Governor or Lieutenant Governor; OR
 - (ii) Any State, County or Municipal political party committee; OR
 - (iii) Any Legislative Leadership committee.
- b) During the term of office of the current Governor or Lieutenant Governor to:
 - (i) A candidate committee or election fund of a holder of the public office of Governor or Lieutenant Governor; OR
 - (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.
- c) Within the 18 months immediately preceding the last day of the sitting Governor or Lieutenant Governor's first term of office to:
 - (i) A candidate committee or election fund of the incumbent Governor or Lieutenant Governor; OR
 - (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.

4. During the term of the contract/agreement the business entity has a continuing responsibility to report, by submitting a new Certification and Disclosure form, any contribution it solicits or makes to:

- (a) Any candidate committee or election fund of any candidate or holder of the public office of Governor or Lieutenant Governor; OR
- (b) Any State, County or Municipal political party committee; OR
- (c) Any Legislative Leadership committee.

The business entity further acknowledges that contributions solicited or made during the term of the contract/agreement may be determined to be a material breach of the contract/agreement.

5. During the two-year certification period the business entity will report any changes in its ownership structure (including the appointment of an officer within a corporation) by submitting a new Certification and Disclosure form indicating the new owner(s) and reporting said owner(s) contributions.

I certify that the foregoing statements in Parts 1, 2 and 3 are true. I am aware that if any of the statements are willfully false, I may be subject to punishment.

Signed Name _____ Print Name _____

Title/Position _____ Date _____

Procedure for Submitting Form(s)

The contracting State Agency should submit this form to the Chapter 51 Review Unit when it has been required as part of a contracting process. The contracting State Agency should submit a copy of the completed and signed form(s), to the Chapter 51 Unit and retain the original for their records.

The business entity should return this form to the contracting State Agency. The business entity can submit this form directly to the Chapter 51 Review Unit only when it -

- Is approaching its two-year certification expiration date and wishes to renew certification;
- Had a change in its ownership structure; OR
- Made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Forms should be submitted either electronically to: cd134@treas.nj.gov, or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625.

INFORMATION AND INSTRUCTIONS

For Completing the “Two-Year Vendor Certification and Disclosure of Political Contributions” Form

Background Information

On September 22, 2004, then-Governor James E. McGreevey issued E.O. 134, the purpose of which was to insulate the negotiation and award of State contracts from political contributions that posed a risk of improper influence, purchase of access or the appearance thereof. To this end, E.O. 134 prohibited State departments, agencies and authorities from entering into contracts exceeding \$17,500 with individuals or entities that made certain political contributions. E.O. 134 was superseded by Public Law 2005, c. 51, signed into law on March 22, 2005 (“Chapter 51”).

On September 24, 2008, Governor Jon S. Corzine issued E.O. 117 which is designed to enhance New Jersey’s efforts to protect the integrity of procurement decisions and increase the public’s confidence in government. The Executive Order builds upon the provisions of Chapter 51.

Two-Year Certification Process

Upon approval by the State Chapter 51 Review Unit, the Certification and Disclosure of Political Contributions form is valid for a two (2) year period. Thus, if a vendor receives approval on January 1, 2014, the certification expiration date would be December 31, 2015. Any change in the vendor’s ownership status and/or political contributions during the two-year period will require the submission of new Chapter 51/Executive Order 117 forms to the State Review Unit. **Please note that it is the vendor’s responsibility to file new forms with the State should these changes occur.**

State Agency Instructions: Prior to the awarding of a contract, the State Agency should first send an e-mail to CD134@treas.nj.gov to verify the certification status of the vendor. If the response is that the vendor is NOT within an approved two-year period, then forms must be obtained from the vendor and forwarded for review. If the response is that the vendor is within an approved two-year period, then the response so stating should be placed with the bid/contract documentation for the subject project.

Instructions for Completing the Form

NOTE: Please refer to pages 3 and 4 “USEFUL DEFINITIONS for the purposes of Chapter 51 and Executive Order 117” for guidance when completing the form.

Part 1: BUSINESS ENTITY INFORMATION

Business Name – Enter the full legal name of the vendor, including trade name if applicable.

Address, City, State, Zip and Phone Number -- Enter the vendor's street address, city, state, zip code and telephone number.

Vendor Email – Enter the vendor’s primary email address.

Vendor FEIN – Please enter the vendor’s Federal Employment Identification Number.

Business Type - Check the appropriate box that represents the vendor's type of business formation.

Listing of officers, shareholders, partners or members - Based on the box checked for the business type, provide the corresponding information. (A complete list must be provided.)

Part 2: DISCLOSURE OF CONTRIBUTIONS

Read the three types of political contributions that require disclosure and, if applicable, provide the recipient's information. The definition of "Business Entity/Vendor" and "Contribution" can be found on pages 3 and 4 of this form.

Name of Recipient - Enter the full legal name of the recipient.

Address of Recipient - Enter the recipient's street address.

Date of Contribution - Indicate the date the contribution was given.

Amount of Contribution - Enter the dollar amount of the contribution.

Type of Contribution - Select the type of contribution from the examples given.

Contributor's Name - Enter the full name of the contributor.

Relationship of the Contributor to the Vendor - Indicate the relationship of the contributor to the vendor. (e.g. officer or shareholder of the company, partner, member, parent company of the vendor, subsidiary of the vendor, etc.)

NOTE: If form is being completed electronically, click "Add a Contribution" to enter additional contributions. Otherwise, please attach additional pages as necessary.

Check the box under the recipient information if no reportable contributions have been solicited or made by the business entity. **This box must be checked if there are no contributions to report.**

Part 3: CERTIFICATION

Check Box A if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity. **(No additional Certification and Disclosure forms are required if BOX A is checked.)**

Check Box B if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity with the exception of those individuals and/or entities that submit their own separate form. For example, the representative is not signing on behalf of the vice president of a corporation, but all others. The vice president completes a separate Certification and Disclosure form. **(Additional Certification and Disclosure forms are required from those individuals and/or entities that the representative is not signing on behalf of and are included with the business entity's submittal.)**

Check Box C if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity only. **(Additional Certification and Disclosure forms are required from all individuals and/or entities whose contributions are attributable to the business entity and must be included with the business entity submittal.)**

Check Box D when a sole proprietor is completing the Certification and Disclosure form or when an individual or entity whose contributions are attributable to the business entity is completing a separate Certification and Disclosure form.

Read the five statements of certification prior to signing.

The representative authorized to complete the Certification and Disclosure form must sign and print her/his name, title or position and enter the date.

Public Law 2005, Chapter 51 and Executive Order 117 (2008)

State Agency Procedure for Submitting Form(s)

The State Agency should submit the completed and signed Two-Year Vendor Certification and Disclosure forms either electronically to: cd134@treas.nj.gov or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625-0230. Original forms should remain with the State Agency and copies should be sent to the Chapter 51 Review Unit.

Business Entity Procedure for Submitting Form(s)

The business entity should return this form to the contracting State Agency.

The business entity can submit the Certification and Disclosure form directly to the Chapter 51 Review Unit only when:

- The business entity is approaching its two-year certification expiration date and is seeking certification renewal;
- The business entity had a change in its ownership structure; OR
- The business entity made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Questions & Information

Questions regarding the interpretation or application of Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13) or E.O. 117 (2008) may be submitted electronically through the Division of Purchase and Property website at: <https://www.state.nj.us/treas/purchase/eo134questions.shtml>

Reference materials and forms are posted on the Political Contributions Compliance website at: <http://www.state.nj.us/treasury/purchase/execorder134.shtml>

USEFUL DEFINITIONS for the purposes of Chapter 51 and Executive Order 117

- **“Business Entity/Vendor”** means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition also includes (i) if a business entity is a for-profit corporation, any officer of the corporation and any other person or business entity that owns or controls 10% or more of the stock of the corporation; (ii) if a business entity is a professional corporation, any shareholder or officer; (iii) if a business entity is a general partnership, limited partnership or limited liability partnership, any partner; (iv) if a business entity is a sole proprietorship, the proprietor; (v) if the business entity is any other form of entity organized under the laws of New Jersey or any other state or foreign jurisdiction, any principal, officer or partner thereof; (vi) any subsidiaries directly or indirectly controlled by the business entity; (vii) any political organization organized under 26 U.S.C.A. § 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (viii) with respect to an individual who is included within the definition of “business entity,” that individual's civil union partner and any child residing with that person. ¹
- **“Officer”** means a president, vice president with senior management responsibility, secretary, treasurer, chief executive officer or chief financial officer of a corporation or any person routinely performing such functions for a corporation. Please note that officers of non-profit entities are excluded from this definition.
- **“Partner”** means one of two or more natural persons or other entities, including a corporation, who or which are joint owners of and carry on a business for profit, and which business is organized under the laws of this State or any other state or foreign jurisdiction, as a general partnership, limited partnership, limited liability partnership, limited liability company, limited partnership association, or other such form of business organization.

¹Contributions made by a spouse, civil union partner or resident child to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides are permitted.

USEFUL DEFINITIONS for the purposes of Chapter 51 and Executive Order 117

- **“Contribution”** is a contribution, including an in-kind contribution, in excess of \$300.00 in the aggregate per election made to or received by a candidate committee, joint candidates committee, or political committee; or per calendar year made to or received by a political party committee, legislative leadership committee, or continuing political committee or a currency contribution in any amount.
- **“In-kind Contribution”** means a contribution of goods or services received by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, which contribution is paid for by a person or entity other than the recipient committee, but does not include services provided without compensation by an individual volunteering a part of or all of his or her time on behalf of a candidate or committee.
- **“Continuing Political Committee”** includes any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$4,300 to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined by the Commission to be a continuing political committee in accordance with N.J.S.A. 19:44A-8(b).
- **“Candidate Committee”** means a committee established by a candidate pursuant to N.J.S.A. 19:44A-9(a), for the purpose of receiving contributions and making expenditures.
- **“State Political Party Committee”** means a committee organized pursuant to N.J.S.A. 19:5-4.
- **“County Political Party Committee”** means a committee organized pursuant to N.J.S.A. 19:5-3.
- **“Municipal Political Party Committee”** means a committee organized pursuant to N.J.S.A. 19:5-2.
- **“Legislative Leadership Committee”** means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, or the Minority Leader of the General Assembly pursuant to N.J.S.A. 19:44A-10.1 for the purpose of receiving contributions and making expenditures.
- **“Political Party Committee”** means:
 1. The State committee of a political party, as organized pursuant to N.J.S.A. 19:5-4;
 2. Any county committee of a political party, as organized pursuant to N.J.S.A. 19:5-3; or
 3. Any municipal committee of a political party, as organized pursuant to N.J.S.A. 19:5-2

**ATTACHMENT #3
EVALUATION SCORE SHEET**

**Fort Monmouth Economic Revitalization Authority (FMERA)
Request for Proposals
Bowling Center RFB**

Bidder: _____

Evaluator #: _____

<u>Sample Score Sheet</u>	<u>Score 1-10</u> x	<u>Weight</u> =	<u>Criterion</u> <u>Score</u>
1. Purchase price [weight = 30]		30	
2. Estimated jobs to be created at or relocated to the parcel [weight = 5]		5	
3. Willingness to expedite purchase term including due diligence period, and accept FMERA's standard form PSA [weight = 20]		20	
4. Proposed project capital investment [weight = 5]		5	
5. Bidder's financial capability to meet the proposed terms of purchase and project completion [weight = 10]		10	
6. FMERA's prior experience with the Bidder [weight = 5]		5	
7. Impact to host municipality [weight = 5]		5	
8. Amount of Bidder's proposed annual ground lease payment and the duration of the ground lease term [weight = 10]		10	
9. Bidder proposes to upgrade the Property into a vibrant, upscale, expanded entertainment destination [weight = 10]		10	
Grand Total Score		100	

**ATTACHMENT #4
BUILDING INFORMATION**



FOR SALE

FORT MONMOUTH BOWLING CENTER

BUILDING # 689
AVENUE OF MEMORIES, EATONTOWN, NJ

17,600 RSF AVAILABLE



BUILDING FEATURES

PREMISES	Entire Building – 17,600 RSF
ASKING RATE	Request For Offers to Purchase
TIMING	Immediate
PARKING	107 Parking Spaces

For Due-Diligence materials, please contact Les Smith at:
(973) 292 4601 or les.smith@cushwake.com



PROPERTY FEATURES

- State-of-the-Art Turnkey Facility
- High visibility location
- Features Brunswick 2000 equipment
- Lounge Area
- Pro Shop
- Stocked Parts Room and Repair Shop
- Locker Area
- Walk-in 8 x 15 Refrigerator
- Fully Equipped Kitchen with Pizza oven, Grill, 4 Tap Kegerator and more

Additional information on Fort Monmouth can be found at: www.fortmonmouthnj.com

For more information, please contact:

LES SMITH
Senior Director
(973) 292 4601
les.smith@cushwake.com

PAUL GIANNONE
Executive Vice President
(732) 452 6184
paul.giannone@cushwake.com

KEVIN CARTON
Senior Director
(732) 452 6186
kevin.carton@cushwake.com

DAVID BERNHAUT
Vice Chairman
(201) 460 3356
david.bernhaut@cushwake.com

**CUSHMAN & WAKEFIELD
OF NEW JERSEY, INC.**
Licensed Real Estate Brokers
1150 Headquarters Plaza
Morristown, NJ 07960
www.cushmanwakefield.com

**ATTACHMENT #5
PURCHASE AND SALE AGREEMENT**

PURCHASE AND SALE AGREEMENT

BETWEEN

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

As Seller,

AND

As Purchaser

As of _____, 2017

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EXHIBIT LIST

- A. Quitclaim Deed from Army to FMERA (Army Quitclaim Deed) [Previously provided by Seller and incorporated herein by reference]**
- B. Conceptual Plan [To be attached]**
- C. Survey & Description of Property [To be delivered by Seller at a later date as set forth herein]**
- D. Title Insurance Policy [To be delivered by Purchaser at a later date as set forth herein]**
- E. Certificate of Completion [Attached]**

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (“Agreement”) is made as of _____, 2017 (“Effective Date”) between **Fort Monmouth Economic Revitalization Authority**, (“FMERA” or “Authority” or “Seller”) a public body corporate and political constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, Oceanport, NJ 07757 referred to as the Seller, and, _____ (“Purchaser”), a _____, whose address is _____. Seller and Purchaser are collectively referred to herein as the “Parties”.

WITNESSETH:

WHEREAS, on behalf of the United States Secretary of Defense, the Office of Economic Adjustment recognizes the Seller as the local redevelopment authority for Fort Monmouth, located in the Boroughs of Tinton Falls, Eatontown and Oceanport, New Jersey; and

WHEREAS, FMERA has publicly advertised a Request for Sealed Bids (“RFB”) for the sale of Building 689, an approximately 17,599 square foot building known as the Bowling Center, and a ground leasehold interest in an approximately 2.7 acre parcel of land located on the former Fort Monmouth, in the Borough of Eatontown, New Jersey (the “Property” as further identified, described and defined herein) in accordance with FMERA’s Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq.; and

WHEREAS, Purchaser acknowledges that Seller entered into a Phase 2 Economic Development Conveyance Agreement (“EDC Agreement”) with the United States Department of the Army (“Army”) on October 25, 2016, which addresses the terms by which the Army transferred to Seller a portion of Fort Monmouth, which includes the Property; and

WHEREAS, Seller is subject to the terms and conditions of the EDC Agreement; and

WHEREAS, Purchaser acknowledges that the Army conveyed the Property to FMERA by way of a quitclaim deed dated November 17, 2016, a copy of which has been provided to the Seller by the Purchaser (the “Army Quitclaim Deed”); and

WHEREAS, FMERA has adopted the Fort Monmouth Reuse and Redevelopment Plan, last amended August 2016, as same may be amended from time to time (the “Reuse Plan”); and

WHEREAS, Seller acknowledges that the Purchaser proposes to utilize the Property as _____ and related and ancillary uses; and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Property subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the mutual receipt and legal sufficiency of which the Parties hereby acknowledge, Seller and Purchaser hereby agree as follows:

DEFINITIONS

For all purposes of this Agreement, the following terms shall have the respective meanings set forth below:

1. Definitions:

- a. **"Affiliate"** means with respect to Purchaser, any other Person directly or indirectly controlling or controlled by, or under direct common Control with Purchaser. For purposes of this definition the term "Control" (including the correlative meanings of the term "controlled by" and "under common control with" as used with respect to Purchaser), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations and policies of the Purchaser, whether through the ownership of voting securities or by contract or otherwise.
- b. **"Agreement"** means this Purchase and Sale Agreement dated above, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- c. **"Army"** means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- d. **"CERCLA"** means the Comprehensive Environmental Response and Liability Act of 1980 (P.L. 96-510), as amended.
- e. **"CERCLA Covenants"** shall have the meaning ascribed in Section 21.
- f. **"Certificate of Occupancy"** shall mean a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued by the Municipality for the Improvements to be occupied for Purchaser's intended use of the Property as set forth in Paragraph 6(a) of this Agreement.

- g. **“Closing”** shall mean the transfer of the Property from the Seller to the Purchaser and the transfer of the Purchase Price from the Purchaser to the Seller which shall occur upon the satisfaction of the Conditions Precedent to Closing set forth in Section 14.
- h. **“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Section 14.
- i. **“Deposit”** shall mean collectively the Deposit described in Section 5 herein.
- j. **“Discharge”** pursuant to N.J.S.A. 58:10-23.11b, as same may be amended, means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.
- k. **“Due Diligence Period”** means the sixty (60) day period commencing on the Effective Date of this Agreement and ending at five o’clock (5:00) p.m. on the sixtieth (60th) day thereafter, during which the Purchaser upon prior written notice to Seller, at its sole cost and expense, may investigate the Property to determine whether the as-is condition of the Property is satisfactory to the Purchaser. The Due Diligence period shall be extended for an additional period of thirty (30) days: (i) in the event the Purchaser’s environmental assessment indicates further investigation is warranted as to the environmental condition of the property; or (ii) if the environmental assessment uncovers another significant environmental concern that has not been identified in the FOST which would require the Purchaser to conduct additional environmental testing or due diligence; or by the mutual agreement of the parties for such additional period as the parties may determine. Seller shall grant Purchaser with immediate access to the Property in order to perform the environmental assessment.
- l. **“EDC Agreement”** shall mean the agreement between the Army and FMERA which sets forth the terms by which the Army conveyed portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA acquired same from the Army.
- m. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement.

- n. **“Environmental Laws”** or **“Environmental Law”** shall mean each and every applicable federal, state, county or municipal environmental and/or health and safety statute, ordinance, rule, regulation, order, code, directive or requirement.
- o. **“Final Remediation Document”** pursuant to N.J.S.A. 58:10-23.11b, as it may be amended, means a no further action letter (“NFA”) issued by the NJDEP pursuant to N.J.S.A. 58:10B-1 et al., or a response action outcome (“RAO”) issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.
- p. **“Finding of Suitability to Transfer”** or **“FOST”** means the document issued by the Army confirming the environmental suitability of certain parcels located on Fort Monmouth’s Main Post for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST includes CERCLA Notice, Covenant and Access Provisions and other Deed Provisions and the Environmental Protection Provisions necessary to protect human health or the environment after transfer of certain parcels from the Army to FMERA.
- q. **“Force Majeure”** shall mean the failure or delay of performance by Seller or Purchaser of any provision of this Agreement by reason of the following: labor disputes, strikes, picket lines, boycott efforts, war (whether or not declared), riots, moratorium regarding sewer, water or any other utilities, litigation filed against either Seller or Purchaser affecting the Property, acts of God, or materially adverse conditions affecting the real estate market and the Project or any individual phase of the Project as demonstrated by an independent market study prepared by a qualified economist or financial consultant selected by the Party seeking a delay in performance based upon materially adverse real estate market conditions and approved by the non-benefitting party which approval shall not be unreasonably withheld or delayed. In such cases, neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of the aforementioned events or conditions. Any extension of the timeframes for performance of obligations set forth in this Agreement for Force Majeure shall be contingent upon the Party claiming a Force Majeure notifying the other Party in writing within thirty (30) days of the occurrence of the event resulting in the failure or delay of performance. The time of performance shall be extended for the period of the delay occurring as a result of the Force Majeure event; provided, however, that in no event

shall the extension of the timeframe exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.

- r. **“Ground Lease”** means the long-term lease from Seller to Purchaser of an approximately 2.7 acre parcel of land comprising a portion of the Property located in the former Fort Monmouth, Eatontown, New Jersey.
- s. **“Hazardous Substances”** means all substances set forth in N.J.A.C. 7:1E-1.7 as same may be amended from time to time.
- t. **“Improvements”** shall mean the building, fixtures and structures located on Property.
- u. **“Infrastructure District”** shall mean the districts created pursuant to the state statute creating FMERA, P.L. 2010, c. 10 (N.J.S.A. 52:271-18 et seq.), which permits FMERA to create these districts in order to support the redevelopment of the Fort.
- v. **“Interested Parties”** means Purchaser’s Mortgagee, Purchaser’s Lender, and/or Purchaser’s Tax Credit Investor.
- w. **“Municipality”** shall mean the Borough of Eatontown, in the County of Monmouth, State of New Jersey.
- x. **“No Further Action Letter” (“NFA”)** has the same meaning as set forth at N.J.S.A. 58:10B-1.
- y. **“Person”** means an individual, partnership, Limited Liability Company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, government authority, or other entity of whatever nature.
- z. **“Property”** The Property consists of Building 689, an approximately 17,599 square foot building known as the Bowling Center, and a ground leasehold interest in an approximately 2.7 acre parcel of land located on the former Fort Monmouth, in the Borough of Eatontown, New Jersey (the “Property” as further identified, described and defined herein). The Property also includes Building 682, a two-story, 4,720 sf wood frame building that the Purchaser shall demolish at its sole cost and expense.
- aa. The Property is further described in Section 3 and will also be depicted in the boundary survey and the metes and bounds description that Seller will provide to Purchaser within 30 days of the Effective Date of this Agreement.
- bb. **“Purchaser”** shall mean _____, (“_____”) and its authorized assignees or successors.

cc. **“Purchase Price”** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Sections 4 and 5.

dd. **“Tolling”** shall mean a period of time during which all time frames and obligations of Purchaser or Seller as set forth in this Agreement are suspended in accordance with the terms of this Agreement and which suspension of time frames and obligations shall continue until the event causing the Tolling is resolved to the satisfaction of the Party seeking the benefit of a Tolling period. The Party seeking the benefit of a Tolling period must provide the other Party with notice of the happening of the Tolling event within thirty (30) days after the occurrence of the Tolling event.

2. **Purchase and Sale Agreement.** Subject to the terms and conditions set forth in this Agreement and the performance by the Parties of all of the obligations hereunder, the Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to purchase and acquire from Seller, the Property. The Seller will sell and convey to the Purchaser the Property in its as-is condition, which consists of: (a) the buildings, other improvements and fixtures on the land; (b) all personal property specifically included in this Agreement; and (c) a ground leasehold interest in the land.
3. **The Property.** The Property consists of Building 689, an approximately 17,599 square foot building known as the Bowling Center, and a ground leasehold interest in an approximately 2.7 acre parcel of land located on the former Fort Monmouth, in the Borough of Eatontown, New Jersey (the “Property” as further identified, described and defined herein).
4. **The Purchase Price.** Subject to adjustments as called for in Section 26, the price that the Purchaser will pay the Seller for the Property is _____ (\$ _____) dollars.
5. **Payment of the Purchase Price.** Subject to adjustments as called for in Section 26, the Purchaser will pay the purchase price as follows:

A deposit of _____ (\$ _____) dollars. \$ _____

Balance to be paid at closing of title, by wire transfer, in cash or by certified check (subject to adjustment at closing).

\$ _____

Total purchase price

\$ _____

6. Use and Occupancy, Capital Investment, and Job Creation.

a. **Use and Occupancy:** Purchaser covenants to demolish Building 682, install site improvements and obtain a Certificate of Occupancy and use and occupy the Property for _____ use consistent with the Fort Monmouth Reuse and Redevelopment Plan within twelve (12) months after Closing.

In the event that Purchaser has not demolished Building 682, installed site improvements and obtained a Certificate of Occupancy and commenced to use and occupy the Property within twelve (12) months from Closing as contemplated above by reason of force-majeure or such reasons as agreed between the Parties and provided Purchaser's efforts to demolish Building 682, install site improvements and obtain a Certificate of Occupancy and commence using and occupying the Property are ongoing and proceeding in good faith toward the completion of the Project, then in such event, Purchaser shall be entitled to a six (6) month extension of the completion date.

b. **Capital Investment:** Purchaser will demolish Building 682, install site improvements and renovate Building 689's interior and exterior ("the "Project") at an estimated cost of _____ (\$ _____) dollars.

c. **Job Creation:** Purchaser covenants that Purchaser will relocate or create a total of _____ () jobs: a minimum of _____ () full-time equivalent jobs and _____ () part-time jobs, within eighteen (18) months of the completion of renovation and obtaining the initial certificate of occupancy.

7. [Intentionally omitted]

8. Seller's Repurchase Option. The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth herein have not been met, then Seller shall have the right to repurchase the Property, at Seller's sole option, if Purchaser has not demolished Building 682

and obtained a Certificate of Occupancy and commenced to use and occupy the Property within twelve (12) months from Closing. In the event Purchaser's efforts to obtain a Certificate of Occupancy is ongoing and Purchaser is proceeding in good faith toward the use and occupancy of the Property, then in such event, Purchaser shall be entitled to a six (6) month extension of the twelve (12) month completion date without penalty. Such repurchase right shall be, by its terms as set forth in the quitclaim deed, subordinate to any and all land, construction, permanent or other lender whose lien shall have superiority over any such rights.

- a. Should Seller exercise this repurchase option, Seller shall pay Purchaser [insert Purchase Price from Section 4]. Any repurchase purchase price paid by Seller shall be applied first to reduce any outstanding balance of any mortgage or lien imposed on the Property by Purchaser.
- b. Seller's repurchase right shall always be subject to and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage in favor of any Interested Parties or (ii) any rights or interests for the protection of Interested Parties. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with ninety (90) days advance written notice of Seller's intent to exercise its right of repurchase and the Purchaser shall have the opportunity to cure within said notice period. The ninety (90) day period referred to is known as the "Repurchase Cure Period." During the Repurchase Cure Period, any of the Interested Parties may either (a) cure the default identified by the Seller in their default notice or (b) agree with Seller on a proposal which must be acceptable to both parties in both parties' reasonable discretion, for one or more of the Interested Parties to cure Purchaser's default beyond the Repurchase Cure Period. If following the Repurchase Cure Period, the default is neither cured nor have the parties agreed upon a proposal to cure the default, then Seller may move forward with its right of repurchase.
- c. The Seller's right of repurchase shall survive the Closing and/or termination of this Agreement, and shall run with the land on any portion of the Property that is subject to the Seller's right of repurchase pursuant to Section 8(a).
- d. Seller shall release its right of repurchase by issuing a Certificate of Completion on any portion of the Property for which the improvements as set forth in Exhibit B have been

completed upon the presentation of proof of completion, upon which Purchaser shall be entitled to record the Certificate of Completion.

9. **Prevailing Wage.** Prevailing wage will only apply to the extent that a project includes “public work” as that term is defined in the State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., or if the applicant receives financial assistance from FMERA, the State or any other State entity. Notwithstanding the foregoing, if FMERA retains ownership of any portion of the Property and ground leases it to the Purchaser, the Purchaser will be obligated to pay workers employed to install, construct, renovate, refurbish or maintain any improvements on that portion of the Property not less than the prevailing wage rate for the particular trade, as required by N.J.S.A. 34:11-56.25 et seq. This requirement will continue for the duration of the Ground Lease.
10. **Purchaser Financially Able to Close.** The Purchaser represents that it has or will have sufficient cash available at Closing to complete the purchase. The Closing shall not be contingent upon the Purchaser or any other Person obtaining financing to pay the Purchase Price. Notwithstanding Purchaser’s representation that it has or will have sufficient cash available at Closing to complete the purchase, Purchaser may in Purchaser’s sole discretion choose to seek and obtain financing to complete the purchase.
11. **Deposit Monies.**
 - a. All deposit monies (and interest accrued thereon) will be held by FMERA’s attorney (“Escrow Agent”) in its interest-bearing, Attorney Trust Account pursuant to the Escrow letter executed by the Purchaser and Seller until the date of Closing or as otherwise provided in this Agreement. At Closing, Purchaser shall receive a credit against the Purchase Price in the amount of the Deposit and all interest accrued thereon. If Purchaser terminates this Agreement in accordance with its terms, the Escrow Agent shall refund the Deposit to Purchaser within ten business days of receipt of Purchaser’s notice. The Deposit shall be refundable upon termination of this Agreement pursuant to Sections 11, 12, 13, 14, 21, 23 and 24.
 - b. In the event that this Agreement is terminated by the Seller because Purchaser defaults and said default is not cured within the time frames established herein, then the Escrow Agent shall pay the Seller the _____ (\$ _____) dollar Deposit and all accrued interest as liquidated damages.

12. Title and Survey Investigation.

- a.** Seller agrees that prior to and as a Condition Precedent to Closing, Seller shall:
 - i.** Deliver title to the Property that is good, marketable, fee simple title, valid of record and insurable at regular rates; and
 - ii.** Satisfy, remove, discharge and/or cure to the reasonable satisfaction of Purchaser and its Title Company the following requirements and exceptions that are identified in the Title Commitment.
- b.** Within thirty (30) days of the Effective Date of this Agreement, Seller will provide Purchaser a boundary survey and metes and bounds description of the Property. If Purchaser elects to obtain a survey, then no later than the end of the Due Diligence Period, Purchaser shall deliver to Seller a copy of Purchaser's survey together with a list of survey objections. Not later than ten (10) days after Seller receives Purchaser's survey objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at the Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either terminate this Agreement within thirty (30) days of receipt of Seller's response (or within thirty (30) days of Seller's failure to respond) or proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Purchaser supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the survey objections by the Purchaser and Seller shall have no further obligation to cure the Purchaser's survey objections either prior to or at Closing.
- c.** Purchaser shall have the further right to order a run-down title examination(s) at any time prior to Closing, at Purchaser's cost and expense, and to submit to Seller any title and/or survey objections which may have arisen since the initial title and survey examination.
- d.** If Seller fails to meet the requirements of Section 12(a), or if Seller has agreed to cure a survey objection pursuant to Section 12(b) and fails to do so, or if Purchaser has additional title and/or survey objections as a result of its run-down title examination pursuant to Section 12(c) and Seller fails to cure such objections, then Purchaser may:
 - (i)** delay Closing to a date mutually agreed upon by Seller and Purchaser so that Seller

or Purchaser removes or cures such non-permitted exception at Seller's expense; or (ii) terminate this Agreement and receive a full refund of the Deposit.

- e. From the date of this Agreement, Seller shall not permit any further encumbrance on the Property without Purchaser's prior written consent, which consent may be withheld for any reason.

13. Due Diligence Period.

- a. Purchaser, its agents and Purchaser's prospective assignees, shall have the right, during the Due Diligence Period, and at all times during the term of this Agreement, to access the Property, to inspect the Property and to investigate all matters relating thereto, including, but not limited to, existing zoning requirements, the physical condition of the Property, the environmental condition of the Property and its environs, and any other matters Purchaser deems relevant to its decision to purchase the Property.
- b. Purchaser may terminate this Agreement in its sole, absolute and unfettered discretion prior to five o'clock (5:00) p.m. on the last day of the Due Diligence Period. Upon termination of this Agreement during the Due Diligence Period, the Deposit shall be promptly returned to Purchaser.
- c. Purchaser, its agents and Purchaser's prospective assignees, shall provide Seller with proof of the following insurances prior to being provided access to the Property:
 - i. Comprehensive General Liability policy (including insurance with respect to owned or operated motor vehicles which may be provided under a separate policy) as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an additional insured endorsement (broad form) for contractual liability. Limits of liability and property damage in the minimum amounts of one million (\$1,000,000.00) dollars per occurrence and three million (\$3,000,000.00) dollars aggregate. Seller shall be named an additional insured on this policy;
 - ii. Worker's Compensation applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than one hundred thousand (\$100,000.00) dollars per occurrence for bodily injury liability and one hundred thousand (\$100,000.00) dollars occupational disease per employee with an

aggregate limit of five hundred thousand (\$500,000.00) dollars occupational disease;

- d. Purchaser shall repair any damage caused by its investigations and shall restore the Property to substantially the same condition as existed immediately prior to such investigations. Purchaser hereby indemnifies and holds Seller harmless from any liability to the extent related to any negligent act or omission of Purchaser or Purchaser's agents or representatives in the performance of any and all activities conducted on the Property by Purchaser until Closing, unless such liability is the result of Seller's negligence or intentional acts or omissions.

14. Conditions Precedent to Closing. The Closing is subject to and conditioned upon the following:

- a. Receipt by Purchaser of a Final Remediation Document that demonstrates that any area of concern or Hazardous Substance at the Property has been remediated in accordance with all applicable Environmental Laws which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2;
- b. Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of Closing and shall have cured all defaults;
- c. Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 12;
- d. Purchaser has not terminated this Agreement in accordance with the terms set forth in this Agreement; and
- e. Seller and Purchaser shall have entered into a Ground Lease as of the date Closing.
- f. The Seller and Purchaser mutually agree as follows concerning the Conditions Precedent to Closing:
 - i. Purchaser shall conduct standard due diligence prior to closing;
 - ii. Each Party shall use its best efforts to perform all conditions required by this Agreement diligently prior to or as of Closing and each Party shall have cured any of its respective defaults prior to Closing or at Closing; and

- iii. Either Party may waive the performance of a covenant or a condition by the other Party, or may waive the cure of the other Party's default at any time prior to Closing or at Closing.

15. Time and Place of Closing.

- a. The Closing shall take place within thirty (30) days of satisfaction of the Conditions Precedent to Closing detailed in Section 14. The Closing will be held at the offices of Purchaser's counsel.
- b. If any event constituting a Force Majeure is in effect at the time of the Closing, then the date for the Closing shall be Tolloed and suspended for an equal number of days not to exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.
- c. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and to Purchaser's Title Company: (1) quitclaim deed; (2) Affidavit of Title; (3) entity resolution; (4) paid receipt of commission to the Real Estate Broker; (5) tax and utility bills, if any; (6) Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA), (7) Bill of Sale for any Personalty; (8) IRS Form 1099; (9) partial release of mortgage in favor of the County of Monmouth; (10) a post-Closing adjustments letter whereby the Parties agree to readjust the pro-rations should any error or mistake be discovered within twelve (12) months of Closing; and (11) Memorandum of Ground Lease. Purchaser shall deliver the Purchase Price and a Title Closing Statement at Closing.
- d. At Closing, Purchaser shall pay the balance of the Purchase Price (after application of a credit for the Deposit and all accrued interest) to the Seller. Purchaser shall make payment at Purchaser's option by either certified check or attorney trust account check or with the consent of Seller by wire transfer.

16. Transfer of Ownership. At Closing, the Seller shall transfer ownership of the Property to the Purchaser via a properly executed quitclaim deed. The quitclaim deed shall be in a form reasonably acceptable to Purchaser and the Title Company. The quitclaim deed between the Parties shall include a metes and bounds description of the Property that, at Purchaser's election, shall be based upon the boundary survey supplied and paid for by FMERA and which may also recite the survey to be prepared by the Purchaser, at Purchaser's sole cost and expense. The quitclaim deed between the Purchaser and Seller shall be subject to all notices,

CERCLA Covenants, covenants, access provisions, deed provisions and environmental protection provisions recorded upon the Property as set forth in the Army Quitclaim Deed and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24.

17. Personal Property and Fixtures. Many items of property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in shelving. All personal property and fixtures are INCLUDED in this sale unless they are listed below as being EXCLUDED.

a. The following fixtures are EXCLUDED from this sale: none.

b. The following personal property is EXCLUDED from this sale: none.

18. Physical Condition of the Property. This Property is being sold “as is”. The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Purchaser has inspected the Property and relies on this inspection and any rights, if any, which may be provided for elsewhere in this Agreement. Until Closing, the Seller agrees to maintain the grounds and secure, but not maintain, the building and improvements; provided, however, that the Purchaser will be responsible for utility costs and property maintenance expenses beginning three (3) months after execution of this Agreement, whether or not the Purchaser has closed on the Property.

19. Acknowledgment and Covenants Regarding FOST. Purchaser and Seller agree and acknowledge that the Army is responsible for the environmental investigation and remediation of the Property, as required by applicable law. The Purchaser further acknowledges that Seller has previously provided a copy of the FOST. The Purchaser and Seller agree that to the extent that the notices, covenants, access provisions, deed provisions and environmental protection provisions concerning the Property found in the FOST are contained in the Army Quitclaim Deed, then such terms shall run with the land. Purchaser, its affiliates, assignees, corporate successors, heirs, devisees and personal representatives covenant and hold harmless the Seller, and shall make no claim against the Seller, its successors and assigns, whether based upon strict liability, negligence or otherwise, concerning noise, environmental, land use, pollution, vibrations, or any similar problems, for any damage, direct or consequential, to any person or persons, or to property or otherwise, or for any other relief, which may arise from the condition of the Property or the fact that the Property is subject to the FOST and the Army Quitclaim

Deed. This covenant shall survive Closing and/or termination of this Agreement and if the terms are included in the Army Quitclaim Deed, then such terms shall also run with the land and be binding upon the Purchaser and its successors and assigns.

20. Risk of Loss. Seller shall be responsible for all losses and damages to the Property by fire, windstorm, casualty or other cause, and for all damages or injuries to persons or property occurring thereon or relating thereto (except as may be caused by acts of the Purchaser or its officers, employees, agents, contractors, licensees or sub lessees) prior to Closing. Notwithstanding the foregoing, Seller shall have no obligation to repair, replace or demolish any portion of the Property that is damaged or destroyed prior to Closing, but Seller shall take reasonably appropriate measures to ensure that the Property is secured against vandalism. Seller and Purchaser agree that any damage or destruction to the Property shall not otherwise affect the rights and responsibilities under this Agreement, and that Purchaser shall not be entitled to any offset against the Purchase Price for any damage or destruction to the building, structures, fixtures or improvements located on, under or above the Property that might occur prior to Closing.

21. Environmental Matters.

- a.** Purchaser and Seller acknowledge that pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Army will retain responsibility for any Army caused environmental contamination (other than mold, asbestos containing materials, lead-based paint, petroleum products and their derivatives, PAHs and commercially-applied pesticides and termiticides) that may be present on the Property as of the date of the Army Quitclaim Deed and as otherwise set forth in the RFB. The Parties acknowledge that the quitclaim deed between Seller and the Purchaser shall contain certain covenants required by CERCLA (the “CERCLA Covenants”) which covenants are contained in the Army Quitclaim Deed.

The Seller shall not bear any responsibility or liability to the Purchaser or its successors or assigns for the presence of mold, asbestos containing materials, lead-based paint, petroleum products and their derivatives, PAHs or commercially applied pesticides and termiticides on the Property as of or after the Closing. Purchaser shall be solely responsible for the proper disposal of any mold, asbestos containing materials, lead-based paint, petroleum products and their derivatives, PAHs or commercially

applied pesticides encountered during the renovation or demolition of any improvements on the Property.

- b. If Seller receives notice from any Person at any time prior to the Closing that any Discharge of a Hazardous Substance has occurred on the Property which has not already been documented in the FOST, then Seller shall provide Purchaser with notice of the Discharge on the Property within three (3) days of receiving notice. Seller shall advise Purchaser within thirty (30) days of receiving the notice of Discharge whether Seller or the Army or other responsible third party shall remediate such Discharge and obtain a Final Remediation Document. If Seller advises Purchaser that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge and obtain a Final Remediation Document, then Purchaser shall have thirty (30) days from the receipt of this notice from the Seller to terminate this Agreement and receive a full refund of all Deposits. If Purchaser fails to terminate this Agreement within thirty (30) days of receipt of notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge, then the Purchaser shall have waived the right to terminate the Agreement due to the Discharge. If Purchaser waives the right to terminate the Agreement after receiving notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge of a Hazardous Substance on the Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at Closing.
- c. If Seller or the Army or the other responsible third party agree to remediate the Property by delivering a Final Remediation Document and Seller or the Army or the other responsible third party subsequently fails to provide the Final Remediation Document prior to the date set for the Closing, then Purchaser may (1) terminate this Agreement and recover all Deposits, or (2) delay Closing to a date reasonably specified by Purchaser to allow sufficient time for Seller or the Army or the other responsible third party to obtain the Final Remediation Document.

22. Infrastructure District. Retail sales within an Infrastructure District on the Fort will be exempt to the extent of fifty (50) percent of the retail sales taxes (except taxes generated from the retail sale of motor vehicles, alcoholic beverages, cigarettes or energy) normally collected by the State of New Jersey, and FMERA may collect a franchise assessment not to exceed the

remaining fifty (50) percent of retail sales taxes normally collected, to be used by FMERA toward on-site or off-site infrastructure improvements, or parking or transportation facilities, or work that reduces, abates, or prevents environmental pollution, or other improvements that provide a public benefit within or to an Infrastructure District. FMERA may, at its Board's discretion, opt to collect less than fifty (50) percent of normal sales tax through the franchise agreement, effectively allowing retailers to charge less than the current sales tax imposed under the New Jersey Sales and Use Tax Act. In the event that FMERA creates an Infrastructure District that includes the Property within its boundaries, Purchaser and any tenants operating a retail business on the Property, shall apply to become a certified retail vendor.

23. Termination of Agreement. If this Agreement is legally terminated, the Purchaser and the Seller shall be free of liability to each other, except (subject to the terms of Section 11 herein) for the return of the Deposit with all accrued interest that may be owed and any obligations that specifically survive termination of the Agreement.

24. Default by Seller. If Seller shall be unable or fail to convey the Property in accordance with the terms of this Agreement, then Purchaser shall have the right to terminate this Agreement and upon return of the Deposit (together with all interest accrued thereon), this Agreement shall be terminated and neither party shall have any further rights or obligations hereunder, except for any rights or obligations that specifically survive the termination of this Agreement.

a. Purchaser acknowledges that the remedies set forth in this Section 24 are Purchaser's exclusive remedies in the event of any breach of or default under this Agreement by Seller or the inability or unwillingness of Seller to consummate the Closing as provided in this Agreement. In no event shall Purchaser have any claim for any damages against Seller, except as set forth in this Section 24. The terms of this Section 24 shall survive the Closing and/or any termination of this Agreement.

b. The Purchaser agrees that prior to declaring the Seller in default hereunder, Purchaser shall provide Seller with thirty (30) days advance written notice of such default and Seller shall have the right to cure such default within said thirty (30) day period.

25. Default by Purchaser.

a. The following occurrences shall be a default by Purchaser of the terms of this Agreement:

- i. Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement hereunder, and continuance of such failure for a period of ninety (90) days (if such default cannot be reasonably cured within ninety (90) days, then such obligation to cure shall be extended for such time as is minimally necessary to undertake such cure), after receipt of written notice from the Seller specifying the nature of such failure and requesting that such failure be remedied.
- ii. Purchaser shall have (a) applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; or (b) a custodian shall have been legally appointed with or without consent of Purchaser; or (c) Purchaser has (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or (d) Purchaser has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (e) a petition in bankruptcy shall have been filed against Purchaser, and shall not have been dismissed for a period of ninety (90) consecutive days; or (f) an Order for Relief shall have been entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code; or (g) an Order, judgment or decree shall have been entered, without the application, approval or consent of Purchaser, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Purchaser, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (h) Purchaser shall have suspended the transaction of its usual business.
- iii. Purchaser has abandoned or substantially suspended any work on the Certificate of Occupancy such abandonment or suspension of work shall not be cured, ended or remedied within ninety (90) days after written demand by the Seller.
- iv. The Purchaser shall place on the Property any unauthorized encumbrance or lien on the Property prior to Closing, or shall suffer any levy or attachment to be made on the Property prior to Closing, or any materialmen's or mechanics'

lien, or any other unauthorized encumbrance or lien to attach to the Property prior to Closing and the encumbrance or lien shall not have been removed or discharged satisfactorily to the Seller at the sole cost and expense of the Purchaser within ninety (90) days after written demand by the Seller to do so.

- b. If an occurrence of default by Purchaser occurs or Purchaser fails or refuses to consummate the Closing (where no default by Seller has occurred under the Agreement and all Conditions Precedent to Closing have been satisfied), then Seller, as its sole and exclusive remedy, may terminate this Agreement by giving notice thereof to Purchaser. Upon any such termination, Seller shall retain as liquidated damages the portion of the Deposit stated in Section 11(b) above and all accrued interest and neither party shall have any further rights or obligations hereunder, except any rights or obligations that specifically survive the termination of this Agreement.
- c. Seller agrees that prior to declaring the Purchaser in default, Seller shall provide Purchaser with ninety (90) days advance written notice of such default and Purchaser shall have the right to cure such default within ninety (90) of receipt of written notice of the default.

26. Adjustments at Closing/Assessments for Municipal Improvements.

- a. Subject to the provisions of Section 18 above, the Purchaser and Seller agree to adjust the following expenses as of the closing date: water charges, sewer charges, and taxes. The Purchaser or the Seller may require that any person with a valid claim or right affecting the Property be paid from the proceeds of this sale.
- b. Certain municipal improvements, including, but not limited to, sidewalks and sewers, may result in the Municipality charging property owners to pay for the improvement. All unpaid charges (assessments) against the Property for work completed before the date of Closing will be paid by the Seller at or before Closing, unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Project, then the Purchaser shall pay such assessments. If the improvement is not completed before the date of Closing then only the Purchaser will be responsible. If the improvement is completed at or before Closing, but the amount of the charge (assessment) has not been determined by the Municipality, the Seller will pay an estimated amount at Closing (unless such assessments resulted from action taken by

the Municipality in connection with Purchaser's Project, then the Purchaser shall pay such assessments). When the amount of the charge is finally determined by the Municipality, the Seller will pay any deficiency to the Purchaser (if the estimate proves to have been too low), or the Purchaser will return any excess to the Seller (if the estimate proves to have been too high).

27. Possession. At Closing, the Purchaser will be given possession of the Property subject to the Army's right of access to the Property pursuant to the Army Quitclaim Deed. The delivery of the quitclaim deed for the Property by Seller to Purchaser and possession of the Property from Seller to Purchaser and the acceptance of possession of the Property by Purchaser shall be deemed full performance by Seller of its obligations under this Agreement, except for any duties that expressly survive Closing as provided herein.

28. Liens. In the event that an objection to title consists of an unpaid lien of a defined amount attributable to Seller, Seller has the right to satisfy the lien from the sales proceeds.

29. Intentionally omitted

30. Parties Liable. This Agreement is binding upon the Parties and all who succeed to their rights and responsibilities.

31. Assignment.

- a. Seller shall have the right to assign this Agreement without the consent of Purchaser to the State of New Jersey or any division thereof.
- b. Purchaser shall not have the right to assign this Agreement without first obtaining the express written consent of the Seller, which consent shall not be unreasonably withheld provided that:
 - i. the assignee is an Affiliate of the Purchaser;
 - ii. the assignee is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions;
 - iii. the assignee has demonstrated to the satisfaction of FMERA that the potential assignee has the financial ability to meet the funding requirements of this Agreement and the Project;
 - iv. the assignee provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement; and

- v. the assignment will not delay the Closing or the Completion of the Project.
 - c. The Parties agree that if Seller authorizes an assignment in accordance with the terms herein, then Seller shall enforce this Agreement against the assignee and Seller shall release Purchaser from any and all duties, obligations, claims and damages arising under this Agreement, provided that the assignee has unconditionally accepted the assignment of this Agreement.
- 32. Successors and Assigns.** This Agreement shall inure to the benefit of and shall bind the Parties, their successors and assigns.
- 33. Entire Agreement.** It is understood and agreed that all understandings and agreements between the Parties regarding purchase, sale and conveyance of the Property are merged in this Agreement which alone fully and completely expresses their agreement. This Agreement replaces and supersedes any previous agreements between the Purchaser and the Seller regarding the purchase, sale and conveyance of the Property. This Agreement can only be changed by an agreement in writing signed by both Purchaser and Seller. The Seller states that the Seller has not made any other Agreement to sell the Property to anyone else.
- 34. Governing Law.**
- a. This Agreement shall be governed, interpreted, construed and enforced in accordance with, the laws of the State of New Jersey without respect to any principles of conflict of law, both as to interpretation and performance. Seller and Purchaser waive any statutory or common law presumption which would serve to have this Agreement construed in favor and against either party as the drafter.
 - b. The Seller and the Purchaser agree that any and all claims made or to be made against the Seller based in contract law arising from or in connection with this Agreement 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.
- 35. Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid 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 term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

- 36. Headings.** The headings of the various Sections and Exhibits of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.
- 37. 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 between Purchaser and Seller hereunder is that of seller and purchaser. 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.
- 38. No Third-Party Rights or Benefits.** Nothing in this Agreement shall be construed as creating any rights of enforcement against any person or entity that is not a party to this Agreement, nor any rights, interest or third-party beneficiary status for any entity or person other than Purchaser and Seller. This Agreement is not an obligation of the State of New Jersey or any political subdivision thereof (other than FMERA) nor shall the State or any political subdivision thereof (other than FMERA) be liable for any of the obligations under this Agreement. Nothing contained in this Agreement shall be deemed to pledge the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).
- 39. No Waiver.** No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
- 40. Time Periods.** All time periods contained in this Agreement shall expire at five o'clock (5:00) p.m. Eastern Time on the date performance is due and any performance after such time and any Notice received after such time shall be deemed to have occurred on the next business day. In the event that any date falls on a weekend or any other day which commercial banks in the State of New Jersey are closed or permitted to be closed, the date shall be deemed to extend to the next weekday.

- 41. Publication.** Purchaser and Seller agree to consult with and cooperate with each other on the content and timing of all press releases and other public announcements relating to the transactions contemplated by this Agreement and that Purchaser shall not issue any announcement or statement without the express written approval of Seller as to the text of the announcement.
- 42. Recording or Notice of Pendency.** Purchaser shall not record nor attempt to record this Agreement; however, Purchaser may record the following: a) a memorandum or “short form” of this Agreement, b) a Notice of Settlement or c) other reporting requirements under the Federal Securities Laws or other securities laws applicable to the Purchaser, provided that the documents that Purchaser proposes to record are provided to the Seller for review and approval, which shall not be unreasonably delayed or withheld, prior to recording. In the event Purchaser records this Agreement, without having obtained the prior written consent of Seller thereto, then Purchaser shall be deemed in material incurable default under this Agreement and Seller shall be authorized without any notice whatsoever: (i) to terminate this Agreement and (ii) to take the Deposit set forth in Section 5, including interest as liquidated damages, such damages being difficult, if not impossible to ascertain. This Section shall survive the termination of the Agreement.
- 43. Authority Representations of Purchaser and Seller.** Purchaser and Seller 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 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 Seller and Purchaser shall be duly authorized to sign the same on Purchaser’s and Seller’s behalf and to bind Seller and Purchaser thereto. This Agreement and all documents to be executed pursuant to Seller and Purchaser are and shall be binding upon and enforceable against Seller and Purchaser in accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of

trust or indenture, or any lease or other material agreement or instrument to which Purchase or Seller is bound.

44. Lis Pendens. Unless Seller defaults, Purchaser hereby waives any right or privilege to place a lis pendens upon the Property or any property owned or controlled by FMERA and, accordingly, notwithstanding anything contained herein to the contrary, Purchaser shall be liable for all damages, including, but not limited to Seller's costs of removing the lis pendens for Purchaser's failure to comply with the terms hereof. This Section shall survive the termination of this Agreement.

45. Political Campaign Contributions.

a. For the purpose of this Section, these terms shall be defined as follows:

i. **"Contribution"** means a contribution reportable by a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" P.L. 1973, c. 83 (C.19:44A-1 et seq.), a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of three hundred (\$300.00) dollars during a reporting period are deemed "reportable" under these laws.

ii. **"Business Entity"** means:

1. A for-profit entity as follows:

- a. In the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls ten (10%) percent or more of the stock of corporation;
- b. In the case of a general partnership: the partnership and any partner;
- c. In the case of a limited partnership: the limited partner and any partner;
- d. In the case of a professional corporation: the professional corporation and any shareholder or officer;
- e. In the case of any limited liability company; the limited liability company and any member;

- f. In the case of a limited liability partnership; the limited liability partnership and any partner;
 - g. In the case of a sole proprietorship; the proprietor; and
 - h. In the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
 - 2. Any subsidiary directly or indirectly controlled by the Business Entity;
 - 3. Any political organization organized under Section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Business Entity, other than a candidate committee, election fund, or political committee;
 - 4. Principals who own or control more than ten (10%) percent of the profits or assets of a Business Entity or ten (10%) percent of the stock in the case of a Business Entity that is a corporation for profit (“Principals”); and
 - 5. With respect to an individual who is included within the definition of Business Entity, the individual’s spouse or civil union partner, and any child residing with the individual, provided, however, that, P.L. 2005, c. 51 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of Section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et. seq.) (“Chapter 51”)
- iii. PL 2005, c. 51 means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).
- b. The terms, restrictions, requirements and prohibits set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Purchaser shall be a material term of this Agreement.

- c. Purchaser hereby certifies to FMERA that commencing on and after October 15, 2004, Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Purchaser and Seller pursuant to P.L. 2005, c. 51. Purchaser hereby further certifies to the Seller that any and all certifications and disclosures delivered to the Seller by Purchaser (and each of its Principals, subsidiaries and political organization included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Seller shall have the right to declare this Agreement to be in default.
- d. Purchaser hereby covenants that Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any Contributions of money, or pledge of a Contribution, including in-kind Contributions, to a candidate, committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Section 44 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L., c. 51, the Seller shall have the right to declare this Agreement to be in default.
- e. In addition to any other Event of Default specified in this Agreement, the Seller shall have the right to declare an event of default under this Agreement if: (i) Purchaser (or any of its Principals, subsidiaries and political organization included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the Definition of Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Purchaser (or any of its Principals, subsidiaries and

political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or County party committee; (v) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51 or (ix) any material misrepresentations exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Purchaser to the Seller in connection with this Agreement.

- f. The Parties agree that on FMERA received confirmation from the Department of Treasury's Chapter 51 Review Unit that Purchaser was approved for 2 year Chapter 51/EO117 certification. Purchaser hereby acknowledges and agrees that pursuant to P.L.2005, c. 51, Purchaser shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Purchase Price is paid to FMERA, any Contribution is made by

Purchaser and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, FMERA shall have the right to declare this Agreement to be in default.

46. Notices: Any notices required to be given under this Agreement must be in writing and shall be addressed as follows:

TO: Fort Monmouth Economic Revitalization Authority
502 Brewer Avenue
Oceanport, New Jersey 07757
Attention: Bruce Steadman, Executive Director

CC: _____

AND

TO: _____

CC: _____

- a. All notices which must be given under this Agreement are to be given either by:
 - i. personal service,
 - ii. certified mail, return receipt requested, addressed to the other party at their address specified above, or
 - iii. overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail).
- b. 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.
- c. Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

- 47. Brokerage Commissions.** FMERA's broker is Cushman & Wakefield of New Jersey, Inc. Seller and Purchaser represent to each other that each has had no dealings with any other broker, salesperson or agent in connection with the sale of the Property. In no event shall Seller be responsible for any commission to a broker other than Cushman & Wakefield arising from this transaction. The provisions of this Section shall survive Closing and/or any termination of this Agreement.
- 48. Counterparts.** This Agreement may be simultaneously executed in several counterparts, or with counterpart signature pages, and may be delivered by facsimile or electronic mail, it being understood that all such counterparts or counterpart signature pages, taken together, shall constitute one and the same instrument.
- 49. Exhibits.** By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in this Agreement, which have been delivered previously to Purchaser in a package separate from this Agreement.
- 50. Recitals.** The Recitals are incorporated herein as if restated at length.
- 51. Right of Entry.**
- a. Provided that Purchaser has not terminated this Agreement or is in default hereunder, at any time subsequent to Purchaser's completion of Due Diligence, Purchaser may request that Seller grant Purchaser a license to use and enter the Property prior to Closing for the purposes of initiating interior demolition or renovation of the Improvements. The license will be for one (\$1.00) dollar and will be on an absolutely triple net basis.
 - b. The parties agree that the license for right of entry is not intended and will not create a leasehold interest in the Property, and that Purchaser will be precluded from sub-licensing or sub-leasing the Property during the license term. The license will terminate upon Closing or earlier termination of this Agreement.
 - c. Seller will not, under any circumstance, reimburse the Purchaser for undertaking any improvements to the Property and Seller will own any fixtures that the Purchaser installs until title closing occurs.
 - d. Purchaser agrees that any work undertaken by Purchaser and its consultants and/or contractors will comply with all applicable permits, approvals, ordinances, statutes, regulations, building codes and other applicable laws.

- e. Purchaser covenants and agrees to, at all times, indemnify, protect and save harmless FMERA and the Army from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges, which FMERA or the Improvements may directly or indirectly suffer, sustain or be subject to by reason or on account of Purchaser's entry upon the Property or the conduction of the Activities by Purchaser, its contractors, subcontractors, agents, officers, employees or invitees. In addition, Purchaser shall require its respective contractors, consultants, agents, and representatives to defend, indemnify, and hold harmless FMERA from and against any and all claims, actions, suits, complaints, and proceedings, including but not limited to any attorney's fees, costs of defense, judgments and damages which arise from or are in any way connected with the contractors', consultants', agents', or representatives' entrance upon the Property.
- f. All consultants, agents, assignees, contractors, subcontractors, officers, or employees of Purchaser shall be covered by adequate Workers' Compensation.
- g. Purchaser agrees that any claims asserted against FMERA based in contract law in connection with this permit shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and that any claims asserted against FMERA based in tort law in connection with this permit shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.
- h. Purchaser agrees that it:
 - i. will not create any condition during its entry upon the Property, which violates any municipal, state or other regulatory agency or is dangerous.
 - ii. will not permit the creation of any liens affecting the Property during the pendency of this Agreement and shall promptly pay and discharge any claims or liabilities which may become a lien against the Property.
 - iii. will maintain in force and effect, insurance for liability and property damage in the minimum amounts of one million (\$1,000,000.00) dollars per occurrence and three million (\$3,000,000.00) dollar aggregate naming the FMERA and the Army as additional insureds and provide proof of same to the FMERA prior to entry on the Property.

52. Utilities.

- a. Seller shall provide interim access to the water, sewer and electric service over the existing systems at cost.
- b. Purchaser is responsible for reconnection to new water and sewer mains following their installation.
- c. Purchaser shall be responsible for replacement, repair, maintenance and/or relocation of all utilities within the Property, subject to Seller's review and approval, which approval shall not be unreasonably withheld.

53. Cooperation.

a. Purchaser and Seller agree to cooperate with each other in Purchaser's efforts to obtain a Certificate of Occupancy and to that end agree, when necessary, to consent to the filing of applications and to execute other documents, declarations and or maps required to be signed by either of the parties and returned within seven (7) calendar days of delivery to the other Party. This time period is deemed to be a reasonable opportunity to review any document required in connection with this Agreement. Where required by law, FMERA will sign as owner or applicant on applications made by the Purchaser.

b. Seller shall join Purchaser in filing and recording a subdivision plat or plats in the County Clerk's office, which facilitates the dedication of streets, rights-of-way, and any easements, to the extent reasonably necessary, prior to the Closing provided that the cost and expense for same is paid solely by the Purchaser.

54. Miscellaneous.

- a. Purchaser acknowledges that the Seller may dedicate the existing cartway of Messenger Avenue as a public roadway and agrees to convey and dedicate any land necessary to establish a right-of-way width conforming to county and/or municipal standards at a later date to the County of Monmouth and/or Boroughs of Eatontown or Oceanport without the payment of any price or other consideration to the Purchaser.

Wherefore the Seller and Purchaser have signed this Agreement as of the date first written above.

ATTEST:

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY, Seller

By: _____
Bruce Steadman
Executive Director

ATTEST:

_____, Purchaser

By: _____
(Name)
(Title)

STATE OF NEW JERSEY)
)
COUNTY OF Monmouth)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, (the "Purchaser"), by _____, the _____ of Purchaser on behalf of the Purchaser.

Attorney

STATE OF NEW JERSEY)
)
COUNTY OF MONMOUTH)

The foregoing instrument was acknowledged before me this _____ day of _____ 2017, by Fort Monmouth Economic Revitalization Authority, a public body corporate and political constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51 , by Bruce Steadman, its Executive Director, on behalf of Seller.

**ATTACHMENT #6
GROUND LEASE**

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

GROUND LEASE AGREEMENT

THIS **GROUND LEASE AGREEMENT** (this "Lease" or this "Agreement") made and executed this ____ day of _____, 201_, by and between the FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY ("Lessor" or "FMERA"), an instrumentality of the State of New Jersey, with an address at 502 Brewer Avenue, P.O. Box 267, Oceanport, New Jersey 07757, and _____ ("Lessee"), a _____ [type of entity and State of formation], with an office at _____.

WITNESSETH:

WHEREAS, on behalf of the United States Secretary of Defense, the Office of Economic Adjustment recognizes Lessor as the Local Redevelopment Authority for Fort Monmouth, located in the Boroughs of Oceanport, Eatontown and Tinton Falls, New Jersey;

WHEREAS, Lessor is the owner of the Premises (defined below) pursuant to that certain Quitclaim Deed from the Department of the Army to FMERA (the "Army Deed") recorded on November 28, 2016 at OR 9199, Page 6736 et seq.;

WHEREAS, Lessor and Lessee have entered into a certain Purchase and Sale Agreement (the "PSA") dated _____ whereby Lessor agreed to sell and ground lease and Lessee agreed to purchase and ground lease the land and improvements (the "Property") as described more fully therein;

WHEREAS, by Quitclaim Deed of even date herewith and pursuant to the PSA, Lessor conveyed to Lessee Building 689 (the "Building") which is situated on the "Premises" (as that term is defined hereinbelow);

WHEREAS, the Premises is the land situated beneath and around the Building consisting of approximately 2.7 acres; and

WHEREAS, Lessor desires to ground lease the Premises to Lessee and Lessee desires to ground lease the Premises from Lessor pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual exchange of promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Lessee and Lessor agree as follows:

1. Demise:

A. Subject to the terms and conditions of this Agreement, Lessor hereby leases to Lessee that portion of the Property situated beneath and around the Building consisting of approximately 2.7 acres

referenced as portion of Block ____, Lot ____ on the Tax Map of the Borough of Eatontown, Monmouth County, New Jersey, and set forth in the description attached hereto as Exhibit "A" (the "Premises") for the sole purpose of renovating and operating a _____ (the "Facility"), as set forth in greater detail in the PSA.

B. The demise of the Premises is and shall at all times be subject and subordinate to the terms, restrictions and covenants of the Army Deed; including, but not limited: to Section 1 – Property Covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(h)(3)(A)); and Section 4 - Post-Transfer Discovery of Contamination and Release of Liability, with the same force and legal effect as if those provisions of the Army Deed had been set forth herein at length.

2. Permissible Uses of the Premises: Lessee covenants that it will use the Premises solely for the renovation and operation of the Facility, unless additional or other uses are expressly approved by Lessor in advance and in writing, which approval shall be commercially reasonable and timely provided that such other uses comply with the FMERA Reuse and Redevelopment Plan, as may be amended from time to time. In connection with the foregoing uses, Lessee shall obtain all necessary licenses, permits, insurance coverages, and shall comply with all applicable laws, regulations, ordinances, and codes.

3. Condition of the Premises: Lessor shall deliver the Premises to Lessee in "as is" condition. Lessor makes no warranties or representations regarding the adequacy of the Premises for Lessee's intended use, and Lessee attests that it has not relied on any such representation or warranty.

4. Rent: Commencing on the date of the execution of this Lease and on each anniversary of said date, Lessee covenants that it shall pay rent to Lessor in the amount of _____ Dollars (\$_____) annually. All rental payments must be made at the address of Lessor, as set forth in Paragraph 38, or such other place as may be designated by Lessor.

5. Representations and Warranties of Lessor: Notwithstanding the foregoing, Lessor makes the following representations and warranties to and for the benefit of Lessee:

A. No further action or approval is required for this Agreement to be binding upon Lessor and enforceable against it in accordance with its terms.

B. Lessor has good and marketable title to the Premises, subject only to Permitted Encumbrances (as hereinafter defined).

C. Lessor has the legal right and authority to lease the Premises to Lessee without the consent of any third party.

D. At the time of the execution of this Agreement, Lessor is not in default with respect to any order, writ, injunction or decree of any court or governmental entity having jurisdiction over Lessor which could result in any material adverse change in the Premises or Lessor's ability to lease the Premises to Lessee.

6. Representations and Warranties of Lessee: Lessee represents and warrants that:

A. Lessee is a _____, and is duly formed and organized, validly existing, and in good standing under the laws of the State of _____;

B. Lessee has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement;

C. The execution, delivery, and performance of this Agreement have been duly authorized by the board of directors of Lessee; and

D. All work performed by or on behalf of Lessee pursuant to this Agreement shall be performed in accordance with industry standards and practices that are applicable to the performance of such work.

7. Term: This Agreement shall commence upon the execution hereof by Lessee and Lessor and continue thereafter for a period of _____ (__) years (the "Term"), unless sooner terminated in accordance with Paragraph 24 of this Agreement.

8. Prevailing Wages: As required by N.J.S.A. 34:11-56.25 et seq, workers employed to install, construct, renovate, refurbish or maintain the Improvements (defined below) shall be paid not less than the prevailing wage rate for the particular trade.

9. Design and Renovation of Improvements: For purposes of this Agreement, "Improvements" means all temporary and permanent structures, buildings, sidewalks, driveways, loading areas, fixtures, equipment, permanently affixed trade fixtures, and all other improvements to be constructed or installed on the Premises or in the Building. Lessee shall be solely responsible for the design and renovation of the Improvements, including but not limited to the Facility, as well as all costs and expenses associated therewith. Lessee shall diligently renovate, or cause the diligent renovation of, the Improvements in a good, safe, and workmanlike manner, in strict conformity with all laws, regulations, ordinances, and codes of governmental authorities having jurisdiction over the work. All permits, certificates and other authorizations shall be obtained by Lessee, at Lessee's sole cost and expense. Lessee shall obtain a final, unconditional certificate of occupancy from the appropriate governmental authority prior to occupying the Building for its permitted use hereunder.

10. Risk of Damage to Property: Lessee is solely liable and responsible for all materials, work, installations, equipment, decorations, and other items that are brought upon or installed in or on the Premises, and Lessor shall have no liability whatsoever in connection therewith.

11. Signs: Any signs posted by Lessee or its lender(s) or contractor(s) shall be in strict conformance with all applicable codes, ordinances, laws, and regulations.

12. Construction Deadlines: Lessee shall cause the renovation of the Improvements and the Facility to commence no later than _____, and shall cause the Improvements and Facility to be completed no later than _____.

13. Alcoholic Beverages: Lessor agrees to cooperate with Lessee's efforts to obtain a Special Concessionaire Permit from the New Jersey Alcoholic Beverage Commission ("ABC") to serve alcoholic beverages at the Facility provided that Lessee satisfies ABC's criteria for receiving a Special Concessionaire Permit. To that end, Lessor agrees to enter into contract(s) with Lessee authorizing Lessee to sell alcoholic beverages in the Building.

14. Ownership of Improvements and Facility: Lessee shall own the Building, the Improvements and the Facility during the entire Term of this Lease.

15. Permitted Encumbrances: The Premises are being leased, and Lessee agrees to accept the Premises, subject to the following encumbrances to the extent that they affect the Premises, which encumbrances shall be deemed to be "Permitted Encumbrances" under this Lease:

A. Zoning regulations and ordinances, building restrictions and regulations of the FMERA Land Use Regulations (N.J.A.C. 19:31-3 et seq.);

B. The Fort Monmouth Reuse and Redevelopment Plan, as may be amended by FMERA from time to time;

C. The lien of any real estate taxes, special assessments, water frontage and/or meter charges, and sewer rents not yet due and owing;

D. Any encroachments of any building or improvement, if any, upon, under or above any street or highway or any adjoining property, and any similar encroachment projecting upon, under or above the Premises;

E. The lien of any assessment which is or may become payable in annual installments, of which any installment is then a charge or a lien, provided that apportionment thereof is made on the date hereof, and any assessments or pending assessments for which a lien or liens have not yet been filed or recorded in the appropriate offices;

F. Any party walls and party wall agreements of record;

G. Any state of facts that an accurate survey would show, provided that such state of facts (except as otherwise set forth herein) does not render title uninsurable;

H. Any covenants, restrictions and easements of record;

I. The provisions, if applicable, of any wetlands, coastal wetlands or historical district statutes, ordinances, laws, rules and regulations;

J. Rights of any electric, gas, steam, telephone, cable, water and any other utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cables, boxes, and related equipment upon, under and above the Premises; and

K. The standard printed exceptions contained in any policy of title insurance issued to Lessee by the Title Company.

16. Utilities: Subject to Lessor's obligation to provide utility service to the Property, Lessee shall be solely responsible for connecting all necessary utility services to the Premises, as well as all costs and expenses associated therewith. Lessee shall arrange for all utilities servicing the Property to be separately metered and billed to Lessee. Lessee shall pay, before any interest or penalty shall accrue thereon, all utility charges (including, but not limited to, water, sewer, gas, electricity, telephone, cable, satellite, and communication services) for services used, rendered, or consumed by Lessee during the Term of this Lease.

17. Payments in Lieu of Taxes: Lessee shall pay, prior to the date on which they are due, all payments in lieu of taxes, assessments and special assessments imposed on the Premises and the Improvements and any other taxes, assessments and special assessments which may be imposed by any other governmental entity with jurisdiction over the Premises and the Improvements. Such payment may be made pursuant to a Payment in Lieu of Taxes agreement with the Borough of Eatontown ("PILOT Payments"). Lessee shall be solely responsible for negotiating such Payment in Lieu of Taxes agreement.

18. Waste: Lessee shall not cause or permit any substantial waste, damage, disfigurement, or injury to the Premises or the Improvements during the Term of this Agreement.

19. Return of the Premises: **[NOTE: Either I or II below will apply; not both]**

I. Prior to the expiration or termination of this Agreement, Lessee shall remove all personal property, equipment, and trade fixtures from the Premises. On the date of the expiration or termination of this Agreement, Lessee shall surrender and deliver the Premises to Lessor in the same or better condition than existed on the date of execution of this Agreement, except that the Improvements shall also be surrendered and delivered to Lessor in an "as is" condition. Upon the expiration or termination of this Agreement, the ownership of the Improvements shall vest automatically and exclusively in Lessor, and Lessee shall have no further rights to the Improvements and shall not be entitled to any compensation therefor. The provisions of this Paragraph 12 shall survive the expiration or termination of this Lease.

OR

II. At the earlier of the expiration of this Agreement or Lessee obtaining a plenary retail liquor license issued by the Borough of Eatontown, Lessor shall convey ownership of the Premises to Lessee for One (\$1.00) Dollar.

20. Condemnation: If the whole of the Premises shall be taken by condemnation or other eminent domain proceedings pursuant to any law, this Agreement shall terminate as of the date that possession

has been taken, and neither party shall have any further rights or liabilities hereunder. If any portion of the Premises shall be taken by condemnation or other eminent domain proceeding so as to have a material adverse effect on the operation of the Facility, or if, as a result of any such taking, Lessee's rights of ingress and egress to and from the Premises are terminated or substantially restricted thereby, then Lessee shall have the right to terminate this Lease upon not less than thirty (30) days' prior written notice to Lessor. In the event of such termination, the provisions of Paragraph 19 shall apply, in addition to all other rights available under this Agreement or at law or in equity.

A. Right to Award: In the event that either the whole or any part of the Premises is taken by condemnation or eminent domain proceedings, Lessee shall be entitled, at its sole cost and expense, to apply for and prosecute any claim for such taking. Lessee and Lessor shall cooperate with each other to the fullest extent in any such proceedings. If an award is granted as the result of such proceedings, the award shall be distributed in the following manner: (1) an award for the present value, as of the date of the condemnation award, of Lessor's future ownership interest of the land and Improvements after the expiration of the Term of this Agreement shall be paid and awarded to, and be the property of, Lessor; (2) an award for the present value, as of the date of the condemnation award, of the aggregate amount of all rent payments to be made over the remaining balance of the Term hereof, shall be paid and awarded to, and be the property of, Lessor; and (3) the balance of the award shall be paid and awarded to, and be the property of, Lessee, and shall include, but not be limited to, the value of the Improvements, including, but not limited to, any fixtures, equipment, trade fixtures and personal property so taken, any award for relocation costs payable as a result of such taking, and any award for other costs and expenses incurred by Lessee in connection with such taking, including, but not limited to, attorneys' fees and expenses. Items (1) and (2) of the foregoing calculations shall be (i) discounted to present value, using an annual rate of return that is equal to the rate of the United States Treasury Bill, as published in The Wall Street Journal, for the period corresponding to then-remaining Term of this Agreement; and (ii) based upon a valuation that is made by a qualified real estate appraiser to be mutually agreed upon by Lessor and Lessee, and no payments shall be made hereunder unless and until both Lessor and Lessee are satisfied with such calculations and valuation.

21. Net Ground Lease: The parties acknowledge and agree that this Agreement is a net ground lease and that all costs of tenancy, including, but not limited to, environmental remediation, site preparation, construction, utilities, maintenance, repairs, operation, and security, shall be paid by Lessee and not by Lessor. Such costs shall be in addition to all other payments required by this Agreement.

22. Right to Mortgage Leasehold Interest: Upon the prior written approval of Lessor, which shall not be unreasonably withheld or delayed, Lessee shall have the right to mortgage Lessee's leasehold interest in the Premises and Improvements through one or more leasehold mortgages. Lessor agrees to cooperate with Lessee in connection with Lessee's efforts to obtain such financing, and Lessor agrees to make such reasonable changes to this Agreement as may be requested by any holder of a leasehold mortgage (each a "Leasehold Mortgagee"), at Lessee's sole cost and expense, provided that such requested changes do not materially decrease Lessee's obligations or increase Lessor's obligations hereunder, or otherwise have an adverse effect on Lessor.

A. Provision of Mortgage Agreement to Lessor: Lessee must deliver an executed copy of each leasehold mortgage to Lessor within ten (10) days of execution thereof.

B. Additional Rights Available to Leasehold Mortgagee: Upon the submission of a written request to receive notices under this Agreement, the Leasehold Mortgagee shall have the following additional rights:

a. Notices: Lessor shall send all notices under this Agreement to Lessee and the Leasehold Mortgagee at the same time. All notices to the Leasehold Mortgagee will be deemed given when mailed by certified mail, return receipt requested. No notice given by Lessor to Lessee shall be binding upon the Leasehold Mortgagee unless a copy of the notice was also given to the Leasehold Mortgagee pursuant to this Paragraph 22. The Leasehold Mortgagee may change the address to which notices are sent through the procedure set forth in Paragraph 38.

b. Assignment of Leasehold Mortgage: If the Leasehold Mortgagee assigns the leasehold mortgage, it must provide written notice to Lessor within thirty (30) days of the date of assignment. Said notice must include the name and address of the assignee. Lessor shall not be bound to recognize any assignment of the leasehold mortgage until it receives such written notice, and thereafter, the assignee shall be deemed to be the Leasehold Mortgagee.

c. Consent to Cancellation, Surrender, or Modification: No action or agreement hereafter taken or entered into by Lessee or Lessor to cancel, surrender or modify this Agreement, except in accordance with the express terms hereof, shall be binding upon the Leasehold Mortgagee or affect the lien of such leasehold mortgage, without the prior, written, commercially reasonable consent of such Leasehold Mortgagee.

d. Right to Substitute Performance: Subject to the terms of Paragraph 22(B)(f) below, the Leasehold Mortgagee shall have the right to perform any term, covenant or condition of this Agreement on behalf of Lessee and shall have the right to remedy any default by Lessee hereunder. Lessor shall accept performance by the Leasehold Mortgagee with the same force and effect as if furnished by Lessee; provided, however, that the Leasehold Mortgagee shall not be subrogated to the rights of Lessor. On behalf of Lessee, the Leasehold Mortgagee shall have the right to enforce all claims and rights to the payment of money arising in connection with any rejection or breach of this Lease by Lessor, including, without limitation, all rights to recover damages arising out of such breach or rejection.

e. Delegation of Rights: Lessee may delegate to the Leasehold Mortgagee the authority to exercise any or all of Lessee's rights hereunder. No such delegation shall be binding upon Lessor unless and until Lessor is provided with a copy of the executed written instrument effecting such delegation; provided, however, that performance by the Leasehold Mortgagee shall be deemed to be performance by Lessee hereunder, even absent such written delegation. Lessor shall be entitled to rely on any notice of delegation that Lessor receives from the Leasehold Mortgagee and shall have no liability to Lessee on account of such reliance.

f. Grace Period for Curing Default without Taking Possession of Premises: If Lessee defaults in the performance of its obligations under this Agreement and said default can be cured by the Leasehold Mortgagee without taking possession of the Premises, Lessor agrees not to terminate Lessee's leasehold estate until:

(i) In the case of a monetary default, twenty (20) business days after Lessor has the right to terminate this Agreement; and

(ii) In the case of a non-monetary default, forty five (45) business days after Lessor has the right to terminate this Agreement.

g. Grace Period for Taking Possession of Premises: If Lessee defaults in the performance of its obligations under this Agreement and said default cannot be cured by the Leasehold Mortgagee without taking possession of the Premises or if such default is of such a nature that it is not susceptible of being cured by the Leasehold Mortgagee, then Lessor shall not terminate Lessee's leasehold estate so long as:

(i) In the case of a default which cannot be cured without taking possession of the Premises, the Leasehold Mortgagee diligently proceeds to take possession of the Premises and, upon obtaining such possession, diligently proceeds to cure the default;

(ii) In the case of a default which is not susceptible of being cured by the Leasehold Mortgagee, the Leasehold Mortgagee institutes foreclosure proceedings with respect to the leasehold estate and Improvements and diligently prosecutes the foreclosure to completion (unless the Leasehold Mortgagee acquires Lessee's leasehold estate, either in its own name or through a nominee, by assignment in lieu of foreclosure); and

(iii) The Leasehold Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession of the Premises, or to continue to prosecute foreclosure proceedings, if the default is cured. Nothing herein shall preclude Lessor from exercising any of its rights or remedies with respect to any other default by Lessee during any period of such forbearance, but in such event the Leasehold Mortgagee shall have all of the rights and protections hereinabove provided for.

h. Bankruptcy: If the Leasehold Mortgagee, or its nominee, or a purchaser at a foreclosure sale, acquires title to Lessee's leasehold estate hereunder and cures all existing defaults of Lessee within a period of ninety (90) days after taking such title, and if the Leasehold Mortgagee, or purchaser, shall not itself be subject to any bankruptcy or other proceedings which would entitle Lessor to terminate this Lease, then Lessor shall not have the right to terminate this Lease by reason of the existence of bankruptcy or other proceedings relating to any prior holder of Lessee's leasehold estate hereunder.

i. New Lease: In the event that Lessor terminates this Agreement, the Leasehold Mortgagee or, if there are multiple Leasehold Mortgagees, the Leasehold Mortgagee holding the highest priority lien, shall have thirty (30) days to request, in writing, that Lessor enter into a new lease agreement ("New Lease") for the Premises subject to the terms set forth below. If the Leasehold Mortgagee exercises its right to enter into a New Lease, Lessor shall have no obligation to do anything, other than to execute the New Lease as herein provided, to assure the Leasehold Mortgagee good title to the leasehold estate.

j. Terms of the New Lease: The New Lease shall be solely comprised of the terms, covenants, and conditions of this Agreement, except as they may be superseded by the following sub-paragraphs:

(i) The New Lease shall require the Leasehold Mortgagee to reimburse Lessor for any and all monies reasonably expended by Lessor to preserve or protect the Premises or the Improvements (including, without limitation, the payment of PILOT Payments, taxes, assessments and special assessments), to the extent not paid by Lessee;

(ii) The New Lease shall be deemed to commence, and the rent and all other obligations of the Leasehold Mortgagee under the New Lease shall accrue, as of the date of the termination of this Agreement;

(iii) The term of the New Lease shall continue for the period which would have constituted the remainder of the Term of this Agreement had this Agreement not been terminated; and

(iv) The New Lease and this covenant shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of the New Lease, and shall be free of any and all rights of Lessee hereunder; provided, Lessor shall have no liability or responsibility for any intervening rights, liens, encumbrances or claims created by or relating to Lessee.

k. Required Payments for Execution of the New Lease by Lessor: The Leasehold Mortgagee shall, simultaneously with the delivery of the New Lease, pay to Lessor the following:

(i) Any and all monies reasonably expended by Lessor to preserve or protect the Premises or the Improvements (including, without limitation, the payment of PILOT Payments, taxes, assessments and special assessments), to the extent not paid by Lessee ; and

(ii) All rent and other sums of money due under the New Lease for the period from the date of commencement of the term to the date of delivery of the New Lease; and

(iii) All costs and expenses, including reasonable attorneys' fees, court costs and litigation expenses, incurred by Lessor in connection with the termination of this Agreement, recovery of possession of the Premises, putting the Premises in good condition and repair, and the preparation, negotiation, execution and delivery of the New Lease.

l. Multiple Leasehold Mortgagees: If, in any instance, more than one Leasehold Mortgagee exercises its right to obtain a New Lease pursuant to this Paragraph 15, then only the Leasehold Mortgagee holding the lien of highest priority shall be entitled to the New Lease free and clear of the rights of all other lienors.

m. Failure to Execute New Lease: If the Leasehold Mortgagee or a Leasehold Mortgagee holding the lien of highest priority exercises its right to obtain a New Lease pursuant to this Paragraph 15, but fails to execute the New Lease when tendered by Lessor, said Leasehold Mortgagee shall have no further rights to a New Lease.

n. No Merger: As long as any leasehold mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, fee title to the Premises and the leasehold estate of Lessee therein shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of the fee title or leasehold estate by Lessor, Lessee or a third party.

23. Default by Lessee: The following shall constitute events of default under this Agreement (each an "Event of Default"):

A. Failure to pay rent, utilities, taxes or PILOT Payments, subject to Paragraph 17 hereof, on or before the date that such payment is due, with said failure continuing for a period of forty five (45) consecutive days after such due date;

B. Failure to renovate and operate the Facility for the purposes and in the manner required by this Agreement, with such failure continuing for a period of forty five (45) days after Lessee receives written notice from Lessor; provided, that the continuation of the failure for forty five (45) days or longer after receipt of the notice shall not constitute an Event of Default if such failure cannot reasonably be cured within that period and Lessee commences such cure within the forty five (45) day period and diligently and continuously prosecutes the cure of such failure to completion; or

C. Failure to timely perform any other material obligation under this Agreement, with such failure continuing for a period of sixty (60) days after Lessee receives written notice from Lessor; provided, that the continuation of the failure for sixty (60) days or longer after receipt of the notice shall not constitute an Event of Default if such failure cannot reasonably be cured within that sixty (60) day period, and Lessee commences such cure within the sixty (60) day period and diligently and continuously prosecutes the cure of such failure to completion.

24. Remedies for Lessee's Default: Upon the happening of an Event of Default by Lessee, as defined in Paragraph 23, and subject to the requirements of Paragraph 22, Lessor shall have the right to terminate this Agreement upon written notice to Lessee and to pursue all other remedies available at law or in equity. In the event that Lessor terminates this Agreement, all rights and interest of Lessee in the Premises and the Improvements shall cease and expire in the same manner and with the same force and effect as if the date specified in such notice of default was the date originally specified herein for the expiration of this Agreement. In the event of such termination, Lessee shall pay to Lessor an amount equal to all rent, utilities, taxes and PILOT Payments which are due and payable as of and through the date of such termination.

25. Default by Lessor: If Lessor defaults in the performance of any of its obligations under this Agreement and such default continues for a period of more than thirty (30) days after receipt of written notice from Lessee specifying such default, or if such default is of a nature as to require more than thirty (30) days for remedy and Lessor fails to commence procedures to cure the default within the thirty (30) day period and diligently and continuously prosecutes the cure of such failure to completion, then Lessee may, in addition to any other remedy available at law or in equity, upon fifteen (15) days' prior written notice, pay and incur any costs and expenses that are necessary to perform the obligation of Lessor specified in such notice and then charge Lessor for same. If Lessor fails to reimburse the aforesaid costs and expenses within thirty (30) days after receipt of the invoice, then Lessee may offset the amount against the next payment of rent. Upon any event of default by Lessor which constitutes an emergency, Lessee may prosecute the cure thereof without prior notice, and Lessor shall likewise reimburse Lessee for the costs and expenses paid and incurred by Lessee in connection therewith; if Lessor fails to reimburse the aforesaid costs and expenses within thirty (30) days after receipt of the invoice, then Lessee may offset the amount against the next payment of rent.

26. Construction Liens: Lessee shall use commercially reasonable efforts not to permit any construction lien or notice of unpaid balance to be filed against the interest of Lessor or Lessee in the Premises, the Facility or the Improvements, by reason of any work, labor, services, or materials supplied to or for the benefit of Lessee, the Premises, or any part thereof, and Lessee agrees to defend, indemnify and save harmless Lessor from and against any such lien. If any such construction lien or notice of unpaid balance shall be filed at any time, Lessee shall cause the same to be discharged within thirty (30) days; provided, however, if Lessee shall promptly bond the entire amount of such lien with a responsible surety company, Lessee may contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings, diligently prosecuted, and such contest shall defer, for its duration, Lessee's duty hereunder to discharge the same. Upon request by Lessee, Lessor shall, at no cost to Lessor, execute and deliver any and all documents and take any and all actions as shall be reasonably necessary or proper to permit Lessee to bring such proceedings in Lessee's name or on Lessor's behalf to facilitate the conduct of such proceedings by Lessee. Lessee covenants to defend and save harmless Lessor from and against any and all liability for the payment of any cost or expense in connection with any such proceedings.

27. Legal Compliance: Lessee shall comply with all laws, statutes, rules, regulations, ordinances, and codes that govern its use and the operation of the Premises.

28. Not A Joint Venture: Nothing herein contained shall be construed as creating or constituting Lessor and Lessee as co-partners or joint venturers, nor shall anything herein contained be construed in any manner so as to make Lessor or Lessee liable for any debts, defaults, obligations or losses of the other.

29. Indemnification: Lessee agrees to defend, indemnify, protect, save and hold harmless Lessor, its officers, commissioners, directors, members, agents, servants, attorneys, and employees from and against any and all suits, claims, demands and damages, of whatsoever kind or nature, arising from, out of, or in connection with the performance of this Agreement, including, but not limited to, expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise. Lessee will further defend, indemnify and save Lessor harmless from and against any and all claims against Lessor arising during the Term of this Agreement from any breach or default by Lessee in the performance of any covenant or obligation under this Agreement. The provisions of this Paragraph 29 shall survive the expiration or earlier termination of this Lease.

30. Environmental Matters:

A. Compliance with Environmental Laws: From and after the commencement of this Lease, Lessee shall comply with all applicable Environmental Laws with respect to Lessee's possession, use and occupancy of the Premises. "Environmental Laws" shall mean the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 98-489, 100 Stat. 1613, 1986); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6801 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601; the Clean Water Act, 33 U.S.C. Section 407 et seq.; the Clean Air Act, 42 U.S.C. Section 7901 et seq.; the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq.; the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. ("ISRA"); and any and all other present or future federal, state or local laws, statutes, ordinances, regulations, executive orders or orders of local code officials in any way related to the protection of human health, safety or the environment, and applicable to the Premises or any activities conducted thereon by Lessee.

B. Indemnification: Lessee shall indemnify, defend, save, and hold harmless Lessor of, from and against any and all liability, damage, costs and expenses, including, but not limited to, attorneys' fees and expenses and court costs, incurred by Lessor and arising during the Term of this Lease relating to the environmental condition of the Premises.

C. Environmental Protection Provisions: The Lessee shall neither transfer the Premises, sublease the Premises, nor grant any interest in connection with the Premises without including the Environmental Protection Provisions set forth in Exhibit "B," attached hereto and made a part hereof, and shall require that said provisions be included in all subsequent deeds, easements, transfers or subleases in, of, on, or to the Premises or any portion thereof.

D. Survival: The provisions of this Paragraph 30 shall survive expiration or earlier termination of this Lease.

31. Insurance: To the extent offered by insurance companies authorized to do business in the State of New Jersey, Lessee shall provide evidence of insurance of the prescribed types and minimum amounts set forth below. Unless otherwise specifically noted below, all required insurance policies shall be maintained in full force and effect until the expiration or termination of this Agreement. Each policy shall contain the provision that there will be ten (10) days' prior written notice given to Lessor in the event of any cancellation of, or material change in, the policy. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the insurance company, its agents or representatives" shall be deleted from the certificate form's cancellation provisions. The failure of FMERA to demand such certificate or other evidence of full compliance with the insurance requirements set forth in this Lease or the failure of FMERA to identify a deficiency in the evidence of insurance that is provided hereunder shall not be construed as a waiver of Lessee's obligation to maintain such insurance. If Lessee fails to maintain the insurance as required in this Lease, FMERA shall have the right, but not the obligation, to purchase said insurance at Lessee's cost and expense, after the delivery of five (5) days' advance written notice to Lessee and Lessee's failure to so acquire such insurance. By requiring the insurance herein, FMERA does not represent that the coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed to be a limitation on Lessee's liability under the indemnities granted to FMERA in this Lease.

A. Certificates and Policies: Prior to commencing any activities or services under this Agreement, Lessee shall furnish Lessor with insurance certificates evidencing that the required coverages are in effect. Lessee may be required, at a later date and upon specific written request by Lessor, to furnish certified copies of any or all insurance policies. Lessor shall not be liable for the payment of any premiums, deductibles, claims or co-insurance under the foregoing.

B. Insurance Companies: The insurance companies indicated in the certificates shall be authorized to do business in the State of New Jersey, shall have a current A.M. Best rating of no less than A-, VI, and shall be acceptable to Lessor. Neither the approval by Lessor, nor the failure to disapprove, the insurance certificates furnished by Lessee shall release Lessee of and from full responsibility for all liabilities and obligations under this Lease.

C. Minimum Insurance Coverage Amounts: The minimum requirements of insurance to be carried by Lessee shall be as follows:

a. Workers' Compensation and Employers Liability Insurance:

(i) Coverage A, Workers' Compensation - Statutory benefits as required by the Workers' Compensation Laws of the State of New Jersey, and reference to such compliance to be made on all certificates of insurance.

b. Commercial General Liability Insurance:

(i) Commercial General Liability Insurance in an amount not less than Three Million Dollars (\$3,000,000.00) each occurrence, or the equivalent, as respects Bodily

and Personal Injury and Property Damage in any one occurrence, and Five Million Dollars (\$5,000,000.00) in the aggregate.

c. Builder's Risk Insurance:

(i) Lessee shall purchase and maintain, throughout the period of renovation of the Improvements and until a certificate of occupancy is issued, a Builder's Risk Policy, covering the interests of Lessor, Lessee, and Lessee's contractors, as their interests may appear, which shall insure against physical loss or damage to all property incorporated or to be incorporated in the Improvements, including temporary buildings used for the storage of property to be incorporated into the Improvements. Such insurance shall be in an amount equal to the value of the Improvements on a replacement cost basis. Such insurance shall also cover all property to be incorporated into the Improvements which is stored off-site or in transit.

d. Property Insurance:

(i) Immediately upon the execution and delivery of the certificate of occupancy for the Facility, and thereafter during the entire Term of this Lease, Lessee agrees to provide, without cost or expense to Lessor, property insurance in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and providing for protection against the perils insured under the ISO special causes of loss form CP 10 30 00 (or a substitute form providing for equivalent terms and conditions), including flood and earthquake, with a deductible amount of not more than Twenty Five Thousand Dollars (\$25,000.00). All of the policies required by this subparagraph shall name Lessor as loss payee as its interest may appear. Any co-insurance requirements in such policy shall be eliminated through the attachment of an agreed-amount endorsement, the activation of an agreed-value option, or as is otherwise appropriate under the particular policy form.

e. Excess Liability Insurance:

(i) Excess Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000.00).

f. Dram Shop Liquor Liability Insurance:

(i) If alcoholic beverages will be served or sold at the Building, Lessee shall obtain and maintain a commercially reasonable amount 'Dram Shop' liquor liability insurance coverage.

D. Additional Insured Provision: The insurance policies identified above shall include an endorsement naming Lessor as an additional insured on all such policies, including Excess or Umbrella Liability Policies, if applicable.

E. Primary and Non-Contributory Insurance: The insurance policies identified in Paragraphs 31(C)(a) through 31(C)(c) shall include an endorsement stating that the coverage afforded to the Additional Insured will be primary to any other coverage available to such Additional Insured. Additionally, the coverage specified in this Agreement will be non-contributory on the part of Lessor and, as such, Lessor shall not be liable for the payment of any premiums, deductibles, claims or co-insurance under the foregoing.

F. Certificates of Insurance: Certificates of insurance shall be provided to Lessor in accordance with this Paragraph 31. Lessor reserves the right to require Lessee to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) business days' prior written notice to Lessee. All certificates of insurance shall indicate, in the special items section, that the insurance policies outlined in this Paragraph 31 will contain the following endorsements, if applicable: (1) an Additional Insured Endorsement, and (2) a Primary Insurance Endorsement.

G. Mutual Waiver of Subrogation: Both Lessor and Lessee waive any and all rights of recovery, claim, action, or cause of action, against the other, their agents, officers, directors, members and employees, for any injury, loss or damage that may occur in or to the Premises and/or the Improvements or the contents thereof, by reason of fire, the elements or any other cause which could be insured against under the terms of a standard fire and extended coverage insurance policy or commercial umbrella liability insurance policy, regardless of cause or origin. Lessee shall cause any policies of insurance maintained by it hereunder, or required to be maintained by it hereunder, to contain a waiver by the insurers of any rights of subrogation against Lessor. In the event that there is an extra premium for such waiver, Lessee shall bear the cost thereof.

32. Quiet Enjoyment: Lessor covenants and agrees that Lessee, upon paying the rent and performing and observing all of the material covenants, conditions and agreements hereof, shall and may peaceably hold and enjoy the Premises during the Term of this Agreement.

33. Attornment: If Lessor's interest in the Premises is assigned or conveyed by Lessor, whether voluntarily or by operation of law or legislative act, then Lessee shall attorn to the transferee of, or successor to, Lessor's interest in the Premises and recognize such transferee or successor as its landlord under this Agreement. Lessee waives the protection of any statute or rule of law that gives or purports to give Lessee any right to terminate this Agreement or to surrender possession of the Premises upon the transfer of Lessor's interest.

34. Estoppel Certificates: Lessor and Lessee agree, from time to time, upon not less than fifteen (15) days' prior written notice from the other, to execute, acknowledge and deliver to the other a statement, in writing, certifying the following:

A. That this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications);

B. Whether or not there are then existing any off sets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of Lessor or Lessee to be performed (and, if so, specifying the same);

C. The dates to which the rent has been paid in advance, if any; and

D. Any other matters that may be requested by the other or a mortgagee or prospective purchaser, it being intended that any such statement that is delivered pursuant to this Paragraph 34 may be relied upon by any prospective purchaser or Leasehold Mortgagee of the Premises.

35. Force Majeure: Whenever a period of time is herein prescribed for the taking of any action, Lessor or Lessee, as the case may be, shall not be liable or responsible for any delays that are a result of governmental action or lack thereof, shortages or unavailability of materials and/or supplies, labor disputes, strikes, slow-downs, job actions, picketing, secondary boycotts, fire or other casualty, acts of God, requests of any governmental agencies or authorities, court or administrative orders or regulations, acts of declared or undeclared war, public disorder, riot, or civil commotion.

36. Assignment and Subletting: Except to a Leasehold Mortgagee pursuant to Paragraph 22 hereof, Lessee (and any subsequent Permitted Assignee) shall not, prior to completion of renovation of the Facility and the Improvements, (1) assign this Agreement, or sublet the Premises, or any interest herein or therein, in whole or in part, or (2) transfer, sell, convey or assign any right, title or interest in and to any of the Improvements or the Facility, without the prior written consent of Lessor in each instance, which consent may be granted or withheld in the sole and absolute discretion of Lessor. After the completion of renovation of the Facility and the Improvements, Lessee (and any subsequent Permitted Assignee) shall be permitted to assign this Agreement or any interest herein or to sublet the Premises, in whole or in part, to any assignee/subtenant that is first approved, in writing, by Lessor, which approval shall be commercially reasonable.

37. Application of Laws and Regulations: By entering into this Agreement, Lessor does not consent, either expressly or impliedly, to the jurisdiction or application of any laws, regulations, procedures, or requirements of any governmental, quasi-governmental or other political entity which would otherwise not be applicable to Lessor. This Agreement shall be governed by, and interpreted under, the laws of the State of New Jersey.

38. Notices: Any notice, election, payment, or other communication (hereafter in this Paragraph 38 referred to as "Notices") which Lessor or Lessee shall desire or be required to give pursuant to the provisions of this Agreement must be in writing and shall be sent to the addresses or facsimile numbers set forth below by (a) registered or certified mail, return receipt requested, (b) national overnight courier service, or (c) facsimile transmission. The giving of such Notice shall be deemed complete and effective on the third (3rd) business day after the same is deposited in a United States Post Office with postage charges prepaid with respect to Notice given by part (a) of this Paragraph 38; the next business day after depositing same with a national overnight courier with respect to Notice given by part (b) of this Paragraph 38; and the day sent by facsimile transmission (as evidenced by fax machine confirmation of receipt) with respect to Notice given by part (c) of this Paragraph 38. Any party or Leasehold

Mortgagee may designate or change the address to which Notices are to be sent to it by Notice to the other party pursuant to the procedure set forth in this Paragraph 38. The addresses for Notice to each party shall be as follows (or to such other address as such party may theretofore have designated by Notice pursuant to this Paragraph 38):

If to Lessee:

Attn: _____

With a copy to:

Attn: _____

If to Lessor:

Fort Monmouth Economic Revitalization Authority
502 Brewer Avenue
P.O. Box 267
Oceanport, New Jersey 07757
Attn: Executive Director

With a copy to:

New Jersey Division of Law
Hughes Justice Complex
25 Market Street
P.O. Box 106

Trenton, New Jersey 08625-0106
Attn: Pension and Financial Transactions Section

39. Amendment: This Agreement may not be amended except upon the written consent of both Lessor and Lessee.

40. Incident Reporting: All accidents or injuries to persons, or any damage to property, occurring as a result of Lessee's use of the Premises pursuant to this Agreement must be reported promptly to FMERA's Executive Director or to another authorized representative of FMERA.

41. Waiver: The failure of either party to insist on the strict performance by the other party of any covenant, term or condition of this Agreement or the failure of any party to exercise any right or remedy under this Agreement shall not constitute a waiver by such party of such performance, right or remedy. The acceptance of rent by Lessor shall not constitute a waiver of any default, breach or failure to perform the covenants, terms and conditions of this Agreement. All waivers, alterations or modifications of any covenants, terms or conditions of this Agreement must be in writing and signed by both parties to be valid. A valid waiver shall be strictly construed and shall have no effect on the remainder of this Agreement. A waiver by any party of a breach or default by the other party of any provision of this Agreement shall not be deemed to be a waiver of future compliance therewith, and such provisions shall remain in full force and effect.

42. Captions: All headings preceding the text of the several sections and paragraphs hereof are inserted solely for the convenience and reference of the parties and shall not constitute a part of this Agreement, nor shall they affect the meaning or interpretation thereof.

43. Severability: If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, then such provision and this Agreement shall be deemed and construed to be modified or restricted to the extent, and in the manner, that is necessary to render such provision valid and enforceable, or shall be deemed excised from this Agreement, as the case may require.

44. Modification: Unless otherwise authorized by this Agreement, all modifications must be in writing and signed by both parties to be valid.

45. Entire Agreement: This Agreement and the documents referred to herein set forth all of the promises, agreements, conditions, and understandings between Lessor and Lessee relating to the Premises, and there is no promise, agreement, condition, or understanding, either oral or written, between them other than as is herein set forth.

46. Political Campaign Contributions:

46.1. For the purpose of this Section 46, the following shall be defined as follows:

(a) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" P.L. 1973, c. 83 (C.10:44A-1 et

seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

(b) "Business Entity" means: a for-profit entity as follows:

A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;

B. in the case of a general partnership: the partnership and any partner;

C. in the case of a limited partnership: the limited partnership and any partner;

D. in the case of a professional corporation: the professional corporation and any shareholder or officer;

E. in the case of a limited liability company: the limited liability company and any member;

F. in the case of a limited liability partnership: the limited liability partnership and any partner;

G. in the case of a sole proprietorship: the proprietor; and

H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

(ii) any subsidiary directly or indirectly controlled by the business entity;

(iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

(iv) with respect to an individual who is included within the definition of business entity, the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, P.L. 2005, c. 51 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

(c) PL 2005, c. 51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

46.2 The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Lessee shall be a material term of this Agreement.

46.3 Lessee hereby certifies to the Lessor that commencing on and after October 15, 2004, Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Lessee and the Lessor pursuant to P.L. 2005, c. 51. Lessee hereby further certifies to the Lessor that any and all certifications and disclosures delivered to the Lessor by Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Lessor shall have the right to declare this Agreement to be in default.

46.4 Lessee hereby covenants that Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any Contributions of money, or pledge of a Contribution, including in-kind Contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 46.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Lessee (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Lessor shall have the right to declare this Agreement to be in default.

46.5 In addition to any other Event of Default specified in this Agreement, the Lessor shall have the right to declare an event of default under this Agreement if: (i) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Lessee (or any of its principals, subsidiaries and political

organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Lessee (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Lessee to the Lessor in connection with this Agreement.

47. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one and the same document. The transmission by facsimile of an executed counterpart of this Lease shall be deemed to constitute due and sufficient delivery of such counterpart.

48. Broker's Commission: Lessee and Lessee each represent and warrant to the other that it has had no dealings with any broker, salesperson or agent in connection with the lease of the Premise, except for Lessor's broker, Cushman & Wakefield ("Seller's Broker"). Lessor shall be solely responsible for the payment of all fees and commissions due to Seller's Broker. Each party agrees to pay and settle any claims of brokers or agents for fees or commissions arising out of this transaction attributable to a breach by such party of its representations under this Section 48. The provisions of this Paragraph 48 shall survive the expiration or termination of this Agreement.

49. Successors and Assigns: This Agreement shall bind and inure to the benefit of Lessor and Lessee and their respective successors and assigns.

50. Memorandum of Lease: Upon the execution and delivery of this Lease, Lessee and Lessor shall execute and record against the Premise a memorandum of lease in the form attached hereto as Exhibit "C".

IN WITNESS WHEREOF, and intending to be bound hereby, the parties hereto have caused this Ground Lease Agreement to be duly executed, effective as of the day and year first above written.

LESSOR:

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

By: _____

LESSEE:

By: _____

EXHIBIT "A"

DESCRIPTION OF PREMISES

EXHIBIT "B"

ENVIRONMENTAL PROTECTION PROVISIONS

1. NOTICE OF PRESENCE OF ASBESTOS AND COVENANT – WARNING!

A. The LESSEE is warned that the Premises contain friable and non-friable asbestos or asbestos-containing material (hereinafter referred to as "ACM"). Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

B. The LESSEE acknowledges that it has been invited, urged and cautioned to inspect the Premises prior to accepting the conveyance herein. More particularly, the LESSEE acknowledges that it has been invited, urged and cautioned to inspect the Premises as to its asbestos and ACM content and condition and any hazardous or environmental conditions relating thereto. Notwithstanding the foregoing notice, the LESSEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Premises including, without limitation, any asbestos and ACM hazards or concerns.

C. Any description of the Premises or other information relating to the condition of the Premises provided by the LESSOR to the LESSEE is based on the best information available to the LESSOR from the Department of the Army and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to the Department of the Army and/or any other Federal agency, shall not constitute grounds or reason for any claim by the LESSEE against the LESSOR, including, without limitation, any claim for allowance, refund, or deduction from the rent.

D. The LESSOR assumes no liability for damages for personal injury, illness, disability, or death, to the LESSEE, or to the LESSEE's successors, assigns, employees, invitees, or any other person subject to LESSEE's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Premises that is the subject of this Agreement, whether the LESSEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

E. Building 689 has been determined by the Department of the Army to contain a limited quantity of non-friable asbestos. Pursuant to the PSA, the LESSEE is obligated to demolish Building 682, which is located on the Premises. Building 682 has been determined by the Army to contain limited quantities of both friable and non-friable asbestos. The LESSEE covenants and agrees to undertake any and all asbestos remediation or abatement in said buildings that may be required under applicable law or regulation at no expense to the LESSOR. The LESSOR has agreed to lease the said buildings to the LESSEE prior to remediation or abatement of asbestos and/or ACM hazards in reliance upon the LESSEE's express representation and covenant to perform the required asbestos abatement or remediation of the said buildings. The LESSEE further covenants and agrees that, in its use and occupancy of the Premises, it will comply with all Federal, State, and local laws and regulations relating to asbestos and ACM and to be responsible for any future remediation or abatement of asbestos and/or ACM, including asbestos and/or ACM in or on buried pipelines, found to be necessary under applicable laws or regulations.

2. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT LIMITING THE USE OF THE PREMISES FOR RESIDENTIAL PURPOSES

A. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

B. The LESSEE is hereby informed and does acknowledge that all buildings, residential and other real property improvements, located on the Premises, which were constructed or rehabilitated prior to 1978, are known or presumed to contain lead-based paint.

C. The LESSEE hereby acknowledges that it has conducted or has had the opportunity to conduct the risk assessment or inspection required by 24 C.F.R. § 35.90(a) with regard to the Premises. The LESSEE shall be deemed to have relied solely on its own judgment in assessing the condition of the Premises with regard to lead-based paint and any lead-based paint hazards.

D. The LESSEE for itself, its successors and assigns hereby covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Premises as a residential dwelling, as defined under 24 C.F.R. § 35.86, without complying with all applicable laws and regulations pertaining to lead-based paint and lead-based paint hazards. Prior to permitting the occupancy of any building or structure on the Premises where its use subsequent to the conveyance herein is intended for residential habitation, the LESSEE specifically agrees to perform, at its sole expense, the Department of the Army's abatement responsibilities under title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992), as amended.

3. NOTICE OF PRESENCE OF PESTICIDES AND COVENANT

A. The LESSEE is hereby notified and acknowledges that registered pesticides have been applied to the Premises and may continue to be present thereon. The LESSOR and LESSEE know of no use of any registered pesticide in a manner (1) inconsistent with its labeling or with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136, et seq.) and other applicable laws and regulations, or (2) not in accordance with its intended purpose.

EXHIBIT "C"

MEMORANDUM OF LEASE

Prepared by:

THIS MEMORANDUM (this "Memorandum") is made this ____ of _____, 201_, between the FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY ("Lessor"), an instrumentality of the State of New Jersey, and _____ ("Lessee"), a _____, with an office at _____, to reflect certain terms and conditions of that certain Ground Lease Agreement, dated _____, 201_, by and between Lessor and Lessee (the "Lease").

LEASED PROPERTY: That portion of the real property described in Exhibit "A" attached hereto and made a part hereof, known and designated on the official tax map of the Borough of Oceanport, County of Monmouth, State of New Jersey as a portion of Block __, Lot __, and more fully depicted on Exhibit "A" attached hereto and incorporated herein (the "Premises").

LEASE DATE: _____, 201_

TERM COMMENCEMENT DATE: _____, 201_

TERM EXPIRATION DATE: Unless sooner terminated as provided in the Lease, _____ (___) years after the Commencement Date.

All of the terms and conditions of the Lease are incorporated herein by reference as though set forth fully herein. All capitalized terms not specifically defined herein shall have the meaning set forth in the Lease. In the event of any conflict between the terms hereof and the terms of the Lease, the Lease shall control, govern and prevail. Nothing contained herein is intended to modify or alter the terms, conditions or provisions of the Lease.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Memorandum of Lease as of the date first above written.

LANDLORD:

ATTEST:

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

By: _____

Name:

Title:

TENANT:

ATTEST:

By: _____

Name:

Title:

State of New Jersey :

: SS

County of _____ :

BE IT REMEMBERED, that on this _____ day of _____, 201_, before me, the undersigned, personally appeared _____, who I am satisfied is the _____ of the Fort Monmouth Economic Revitalization Authority, an instrumentality of the State of New Jersey, the party whose name is subscribed to the within Memorandum of Lease, and as such officer, he did acknowledge that he signed, sealed and delivered the same as such officer and as the voluntary act and deed of such entity for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 201_.

Notary Public

My commission expires:

State of _____ :

: SS.

County of _____ :

BE IT REMEMBERED, that on this _____ day of _____, 201_, before me, the undersigned, personally appeared _____, who I am satisfied is the _____ of _____, a _____, the party whose name is subscribed to the within Memorandum of Lease, and as such officer, he did acknowledge that he signed, sealed and delivered the same as such officer and as the voluntary act and deed of such entity for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 201_.

Notary Public

My commission expires