



**REQUEST FOR OFFERS TO PURCHASE**

**FOR**

**THE SALE OF REAL PROPERTY**

**Fort Monmouth  
Expo Theater – 7.8± Acre Commercial Arts, Entertainment &  
Recreation Site  
and  
26.9± Acres of Open Space  
Eatontown, New Jersey**

Issued by the

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

Date Issued: June 17, 2019

**Responses due by 12:00 P.M. EST on August 16, 2019**

# REQUEST FOR OFFERS TO PURCHASE FOR THE SALE OF REAL 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 orderly and comprehensive redevelopment of Fort Monmouth. In furtherance of its mission, FMERA is hereby seeking offers from individuals or entities to acquire property that will be sold by the Authority. This request for offers to purchase (“RFOTP”) 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 purchase agreement between the Authority and the successful Potential Purchaser shall be subject to the U.S. Army and FMERA’s Phase 2 Economic Development Conveyance Agreement (“EDC Agreement”) covering this portion of the Main Post. The successful Potential Purchaser as defined below shall be subject to the terms and provisions of the Sales Rules and the EDC Agreement. Redevelopment 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.

## 1.0 PURPOSE

The Authority is requesting offers to purchase (the “Offer”) from qualified individuals or entities (“Potential Purchaser(s)”) interested in purchasing or ground leasing an approximately 7.8± acre parcel of land containing a portion of North Drive and Building 1215, also known as the Expo Theater, totaling approximately 18,883 gsf, located on Avenue of Memories in the Eatontown section of the Main Post Area of the Fort (“the Property”). The parcel map can be found in **Attachment #1** of this RFOTP. In addition, Potential Purchasers may, but are not required to, propose to purchase two optional parcels totaling approximately 27± acres located to the north and east of the 7.8± acre Property. The first contains Dean Field, a portion of North Drive and portions of one delineated landfill (the “Optional Property”), and the second contains six additional environmental carve-out sites as further described in this RFOTP (“the Optional Carve-Out Property”). All parcels are located within the Phase 2 portion of Fort Monmouth.

The Authority is requesting proposals that are consistent with certain allowable uses set forth in FMERA’s Land Use Rules but excluding residential uses, as more fully described in Section 1.1 below.

**The Property will be sold “As Is – Where Is.”**

The Fort Monmouth Reuse & Redevelopment Plan (“Reuse Plan”) contemplates reuse of the 18,883 sq ft Expo Theater as a community theater. FMERA will accept proposals that include either the reuse of the Expo Theater as a community theater or an alternate use of the Property consistent with or complementing the planned uses in the area. Greater weight will be given to proposals that envision the reuse of the facility as a community theater, per the Reuse Plan. Regardless of the use(s) contemplated, all proposals should include adequate parking per FMERA’s Land Use Rules.

Proposals that include the alternate uses of the Property as described more fully in Section 1.1 below will require an amendment to the Reuse Plan or a “use-type variance”. Any Reuse Plan amendment or “use-type” variance is subject to approval by the FMERA Board, in its sole discretion, in accordance with the Land Use Rules.

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 Potential Purchaser 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 Potential Purchaser's ability to obtain a State Concessionaire Permit or liquor license, and FMERA will reject any Offer that seeks to condition the sale and ground lease on any such contingency. Potential Purchasers 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 Offers. FMERA is willing to sell the improvements on the Property, and lease the ground to the selected Potential Purchaser 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 Potential Purchaser 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 Potential Purchaser. A Specimen form of Ground Lease Agreement is attached as **Attachment #4**. Potential Purchasers who plan to apply for a State Concessionaire Permit will be responsible for obtaining the Permit, at the Potential Purchaser’s sole cost and expense, in order to serve alcoholic beverages within the building(s). Notwithstanding anything in this paragraph or the previous paragraph, FMERA makes no representation regarding the possibility of the selected Potential Purchaser obtaining a State Concessionaire Permit, and no Potential Purchaser is entitled to rely on any statements made herein regarding a State Concessionaire Permit. Nothing contained in this RFOTP shall be deemed legal advice and all Potential Purchasers are encouraged to consult with legal counsel. Potential Purchasers should note that if FMERA retains ownership of any portion of the Property and ground

leases it to the selected Potential Purchaser, the selected Potential 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.

**A Potential Purchaser who opts to propose a ground lease for the Property should offer to pay the full value it ascribes to the Property at the closing of title. Potential Purchasers seeking to ground lease the Property should also propose an ongoing annual ground lease payment and a minimum ground lease term (in years) in their Offer. Final ground lease terms are subject to negotiation between the parties.**

**The minimum bid that FMERA will accept for the Property is One Million One Hundred Thirty-Five Thousand (\$1,135,000.00) Dollars.**

## **1.1 THE PROPERTY**



***Building 1215, Expo Theater***

The Property consists of approximately 7.8± acres of land and a 18,883 sf entertainment facility with a 995-seat auditorium. The circa 1968 building is located in the Eatontown section of the Fort on the Avenue of Memories. The Expo Theater is contemplated for renovation and reuse as per the Reuse Plan. Based on its proximity to the planned Eatontown Lifestyle Town Center, the Bowling Center, and Artist/Live Work Space, FMERA believes the highest and best use of the



Property is continued use as a similar arts, cultural, or entertainment facility regardless of whether the building is adaptively reused or demolished. However, as described above in Section 1.0, a proposal that entails the Purchaser's demolition of the Expo Theater (Building 1215) will require an amendment to the Reuse Plan.

Potential Purchasers bidding on both the Expo Theater and the Optional Property OR Expo Theater, the Optional Property and the Optional Carve-Out Property will take ownership of North Drive, which runs east to west beginning at Wilson Avenue. Potential Purchasers bidding on only the Expo Theater parcel will be obligated to take ownership of five hundred eighty-five feet (585') of North Drive running between the eastern and western boundaries of the Expo Theater Property. North Drive must remain and is anticipated as a future, dedicated municipal or county public right of way ("ROW") subject to the County's ROW width requirements. The roadway is to be dedicated by the selected Potential Purchaser for no additional cost or consideration to either the Borough of Eatontown or Monmouth County. FMERA will retain an eighty-foot (80') utility and access easement on North Drive. Please note, Potential Purchasers do not have the option to purchase Expo Theater and the Optional Carve-Out Property, exclusive of the Optional Property.

FMERA seeks to sell or ground lease the Property to a Potential Purchaser who will use the Property for the allowable uses under the Reuse Plan, or for an alternate use as described below. FMERA will accept proposals for either a community theater (for-profit or non-profit) or an alternate non-residential use consistent with or complementing the planned uses in the area, including arts, culture, entertainment and active recreation related uses, which must include theater or multipurpose event space. Ancillary retail, restaurant, office, and/or limited passive recreation uses would also be permitted. FMERA will also allow for the demolition and redevelopment of the parcel. One possible option is to incorporate Expo Theater into a combined project with the nearby optional parcels containing Dean Field, portions of three delineated landfills, and multiple environmental carve-outs as further described in the RFOTP. **Residential uses will not be considered.**

Title to the Expo Theater is currently held by FMERA. The Army has completed a Finding of Suitability to Transfer, which documents the environmental suitability of the Property for transfer to FMERA consistent with Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 120(h) and Department of Defense ("DOD") policy. Pursuant to 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 Potential Purchaser will be afforded the opportunity to review the Army's Finding of Suitability to Transfer and perform its own due diligence investigations prior to closing at its sole cost and expense.

Potential Purchasers 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 ("FIRA"), 7 U.S.C. § 136, et seq., and other applicable laws and regulations. If the successful Potential Purchaser 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, it would assume all responsibility and liability therefore.

FMERA will convey title to the Property via quitclaim deed (sale) or bill of sale (lease). **FMERA is looking to accelerate closing and redevelopment of the Property to the extent possible. Accordingly, through its evaluation and scoring process, FMERA will give additional consideration to Potential Purchasers who commit to minimizing the time between submission of their purchase offers and closing on the Property.** See the Evaluation Score Sheet at **Attachment #3** of this RFOTP.

## **1.2 THE OPTIONAL PROPERTY: DEAN FIELD & CARVE OUT PARCEL (M4)**

Potential Purchasers have the option to purchase an additional 12.6± acres (the “Optional Property”) consisting of Dean Field, a portion of North Drive, and an adjacent parcel where the Army is currently addressing an area of environmental concern located on a portion of the Optional Property (the “Carve-Out Parcel”). Carve-Out M4 is an approximately 2± acre landfill located east of Mill Creek. The Army is currently pursuing the capping and closure of the M4 carve-out, in accordance with CERCLA standards, as further detailed below. Dean Field, an approximately 8.6± acre parcel, is currently zoned for open-space recreational use per the Reuse Plan. Allowable uses would be limited to recreation, outdoor seating, passive open space or temporary parking. FMERA seeks to sell the Optional Property to a Potential Purchaser who will use the Optional Property for the allowable uses under the Reuse Plan, current zoning, and deed restrictions set forth below. Therefore, FMERA will only accept proposals for such allowable uses regarding the Optional Property.

Additionally, a sanitary pump station identified as Building 1221 is found within the Optional Property along the northern boundary of Avenue of Memories at the western boundary of Mill Creek, as shown in **Attachment #1**. The lift station is currently operational and FMERA will retain a 60’ x 120’ easement surrounding the facility. The lift station is intended to remain in perpetuity as further described in section 1.6.

Title to the portion of the Optional Property known as Dean Field (i.e. exclusive of the Carve-Out Parcels), is currently held by FMERA. The Army has completed a Finding of Suitability to Transfer, which documents the environmental suitability of the Property for transfer to FMERA consistent with Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) Section 120(h) and Department of Defense (“DOD”) policy. Pursuant to CERCLA, the Army retains responsibility for any environmental contamination (other than asbestos, lead-based paint, mold, petroleum products and their derivatives, PAHs associated with Diffuse Anthropogenic Pollution (DAP) and commercially-applied pesticides and termiticides) that may be present on the property as of the date of closing with FMERA. The selected Potential Purchaser will be afforded the opportunity to review the Army’s Finding of Suitability to Transfer and perform its own due diligence investigations prior to closing at its sole cost and expense. Title to the Carve-Out Parcels is currently held by the Army. The Army will convey the property to FMERA upon completion of a Finding of Suitability to Transfer, which documents the environmental suitability of the property for transfer to FMERA consistent with CERCLA

standards, as further detailed below. Carve-Out Parcels falling within the boundaries of a delineated landfill will be encumbered with Environmental Deed Restrictions upon conveyance.

**The minimum bid that FMERA will accept for the Optional Property is Two Hundred Fifty Thousand (\$250,000.00) Dollars.**

Potential Purchasers who are interested in acquiring the Optional Property should so indicate in their Offer(s) and state the price they are proposing to pay for the Optional Property.

Potential Purchasers whose Offers for the Property are contingent on acquisition of the Optional Property must so state in their Offers.

### **1.3 THE OPTIONAL CARVE-OUT PROPERTY: M3, M5, 102A, 102B, 102C & 102D and ADJACENT GREEN SPACE**

Potential Purchasers have the option to purchase portions of the M3 and M5 landfills, as well as portions of carve-outs 102A, 102B, 102C, and 102D (“Optional Carve-Out Property”) located to the north of North Drive as additional, optional sub-parcels. The M3 and M5 landfills, carve-outs 102A, 102B, 102C and 102D and adjacent green space area consist of approximately 14.4±acres and use of these areas would be limited to uses such as recreation, outdoor seating, passive open space or temporary parking. Details on each of these landfills and carve-outs are further described below. FMERA seeks to sell the Optional Carve-Out Property to a Potential Purchaser who will use the Property for the allowable uses under the Reuse Plan, current zoning, and deed restrictions set forth below. Therefore, FMERA will only accept proposals for such allowable uses regarding the Optional Carve-Out Property. **Temporary parking is an allowable use, however, additional improvements to landfill areas, at the Purchaser’s sole cost and expense, may be required to accommodate parking and maintain the integrity of capped landfills.**

The following Carve-Out Parcels, totaling approximately 11.9±acres, are located within the Optional Property:

- **A portion of Carve-Out M3**, a landfill located north of North Drive. The Army is currently pursuing the capping and closure of the M3 carve-out, in accordance with CERCLA standards, as further detailed below.
- **A portion of Carve-Out M5**, a landfill located north of North Drive and east of Mill Creek. The Army is currently pursuing the capping and closure of the M5 carve-out, in accordance with CERCLA standards, as further detailed below.
- **A portion of Carve-Out 102A**, acres within the footprint of a former Army skeet range, where the Army determined the area fell outside of the Surface Danger Zone (“SDZ”). The NJDEP has issued an Unrestricted Use and No Further Action Letter.
- **A portion of Carve-Out 102B**, within the footprint of a former Army skeet range, where the Army determined the area fell outside of the SDZ. The NJDEP has issued an Unrestricted Use and No Further Action Letter.
- **Carve-Out 102C**, 0.6± acres within the footprint of a former Army skeet range and also within the M3 landfill, where the Army is currently pursuing the capping and closure of the M3 landfill carve-out, in accordance with CERCLA standards, as further detailed below.

- **A portion of Carve-Out 102D**, within the footprint of a former Army skeet range, where the Army determined the area fell outside of the SDZ. The NJDEP has issued an Unrestricted Use and No Further Action Letter.

Title to the **Optional Carve-Out Property** is currently held by the Army. The majority of the Optional Carve-Out Property (11.9± acres) is made up of portions of two delineated landfills, carve-out 102C and portions of environmental carve-outs 102A, 102B, and 102D that the Army will convey to FMERA upon completion of a Finding of Suitability to Transfer, which documents the environmental suitability of the property for transfer to FMERA consistent with CERCLA standards. Therefore, FMERA's conveyance of the Optional Carve-Out Property to the Potential Purchaser may occur subsequent to the closing on the Expo Theater Property and the Optional Property. The two landfill carve-outs and any portion of carve-outs 102A, 102B, 102C, or 102D that overlaps with a landfill will be encumbered with Environmental Deed Restrictions upon conveyance. The Optional Carve-Out Property is joined with an additional 2.5± acres of unencumbered green space zoned for open-space recreational use for a total of 14.4± acres.

Note that a .37± acre portion of the M3 landfill (the "M3 Sub-parcel") extends onto the northeast corner of the abutting Parcel B development site. In the event the Parcel B redeveloper opts to exclude some or all of the M3 Sub-parcel from its development, FMERA will merge it with the balance of the M3 landfill and convey it in connection with the Expo Theater sale for no additional cost or consideration. If that occurs, the total acreage of the optional landfill area will increase up to approximately 14.77± acres.

The Army has developed a conceptual plan for the closure of the 8 landfills in the Phase 2 property. The conceptual plan for the landfills will be funded and implemented by the Army to CERCLA standards and is expected to include the cutting and clearing of all vegetation; grading of the site; application, compacting and grading of 2 feet of cover material; and planting of vegetation. Upon completion of the closure and subsequent transfer of the landfills to FMERA, Environmental Deed Restrictions will be recorded to delineate future use, maintenance, monitoring and reporting requirements. FMERA will provide any reports or information on the Optional Carve-Out Property as made available by the Army via addenda to this RFOTP. The Army maintains responsibility for long term monitoring and maintenance for the landfills, including installation, sampling, and maintenance of monitoring wells if/as needed; routine inspection of cover and stabilization materials; maintenance of cover and stabilization materials, including along stream banks or other bodies of water; completion and submission of biennial reviews to the NJDEP; and completion of five-year reviews under CERCLA to evaluate the protectiveness of the remedy. Long-term monitoring, operation and maintenance obligations will be the responsibility of the Army until such action is no longer needed. The Reuse Plan envisions that the landfills will be available for passive recreational uses, including multi-purpose trails. The Army will construct a multi-purpose trail during the capping process. The selected Potential Purchaser will have an obligation to allow continued public access to the trail in perpetuity.

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Army will retain responsibility for any environmental contamination (other than asbestos, lead-based paint, mold, petroleum products and their derivatives, PAHs associated with



Diffuse Anthropogenic Pollution (DAP) and commercially-applied pesticides and termiticides) that may be present on the Carve-Out Property as of the date of closing with FMERA. The selected Potential Purchaser will be afforded the opportunity to perform due diligence investigations prior to closing at its sole cost and expense.

Potential Purchasers are hereby notified that registered pesticides may have been applied to the Optional Carve-Out 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 (“FIRA”), 7 U.S.C. § 136, et seq., and other applicable laws and regulations. If the successful bidder takes any action with regard to the Optional Carve-Out 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, it would assume all responsibility and liability therefore.

The Army will convey title to the Optional Carve-Out Property to FMERA via quitclaim deed; accordingly, FMERA will also transfer title to the selected Potential Purchaser by quitclaim deed. The closing on the Optional Carve-Out Property between the Army and FMERA is currently anticipated to occur in late 2019. The closing on the Optional Carve-Out Property between FMERA and the selected Potential Purchaser can be scheduled to occur simultaneously or at any time thereafter.

Potential Purchasers who are interested in acquiring the Optional Carve-out Property should so indicate in their Offer(s) and state the price they are proposing to pay for the Optional Carve-out Property.

Potential Purchasers whose Offers for the Property are contingent on acquisition of the Optional Carve-out Property must so state in their Offers.

## **1.4 PERSONAL PROPERTY**

Consistent with federal Base Realignment and Closure (“BRAC”) law, FMERA may opt to sell the remaining furniture, fixtures and equipment located within the Property by public auction prior to closing. Any such furniture, fixtures and equipment remaining after completion of the auction(s) will be conveyed in as-is where-is condition.

FMERA reserves the right to retain certain utility equipment (including but not limited to transformers, electric distribution equipment, utility poles, generators, and pumping stations) that may be present on the Property and that FMERA deems necessary to provide interim or permanent utility service to the Fort. Utility easements will be established upon formal survey of the Property.

## **1.5 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 BRAC round, and formally closed in September 2011. FMERA entered into the 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. The company has approvals in hand to develop up to 650,000 sf for an estimated 2,500 employees.



*CommVault's new headquarters located in the Tinton Falls Reuse Area*

FMERA acquired the former Patterson Hospital from the Army and sold it to AcuteCare Health System in March 2014. AcuteCare renovated the 100,000 sf building for use as an outpatient health clinic. The facility opened in the 1<sup>st</sup> Quarter of 2015 and has recently added 82 senior-living units to the property.



***AcuteCare's renovated facility in the Oceanport Reuse Area***

FMERA acquired Building 2525 in Tinton Falls from the Army and sold it to RADAR Properties in February 2016. RADAR is leasing approximately 30,000 square feet of the building to Aaski Technology, Inc., a defense contractor and communications engineering firm, and sold the remaining portion of the building to J. F. Kiely, a family of companies offering extensive construction and engineering services.



***Building 2525 in Tinton Falls, home of Aaski Technology***

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 19,600 sf



former child development center building for use as a private high school for girls. The facility opened in September 2016 for the 2016-2017 school year. The school received approvals in January 2018 for its Phase 2 expansion, a two-story edition, which will include new classrooms, office and administrative space, a multipurpose room, a chapel, and a new entrance lobby.



***Building 2290 in Tinton Falls, Trinity Hall***

In November 2016, FMERA acquired title to Fort Monmouth's Main Post from the Army, and shortly after, FMERA sold 117 historic housing units adjacent to Barker Circle to RPM Development, which is renovating the units as for-sale and rental housing. Units went on the market in 2018. Additional sold properties include historic Russel Hall to Tetherview, Fort Monmouth Fitness Center to Fort Partners, LLC and the former Fort Monmouth Chapel to Triumphant Life Church.

FMERA is currently under contract or in negotiations with developers for the sale or lease of twenty-four other parcels. Another six parcels, ranging from individual buildings to large land tracts, will be released for proposals this year.

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

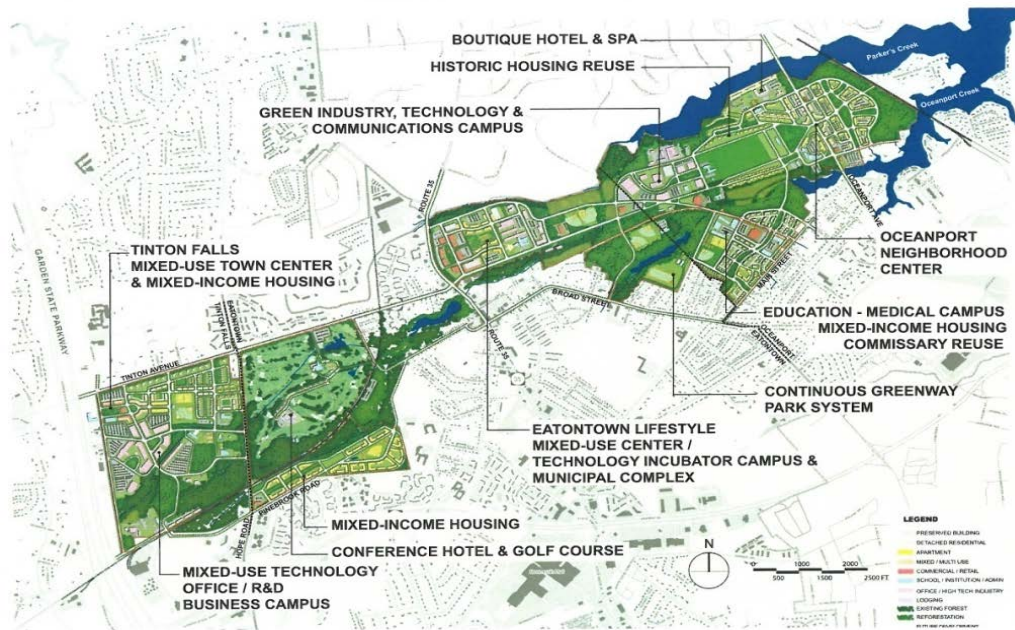
- 1,585 housing units, with over 4,000 new residents
- 300,000 sf of non-profit, civic, government and educational uses
- 500,000 sf of retail space
- 2,000,000 sf of office, research & development and other commercial uses

Total development costs are estimated at \$2 billion, generating 10,000 permanent jobs.

Fort amenities are anticipated to include:

- preservation of over 40% of the Fort's land area as recreational and passive open space
- creation of a system of bicycle lanes, pedestrian paths and 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 (completed 2017)

In addition to the above amenities, the Fort plans to be home to a bowling alley, golf course and marina among other amenities.



*Fort Monmouth's 20-Year Concept Plan as depicted in 2007 Reuse Plan*

## 1.6 UTILITIES

The potential Purchaser is responsible for establishing an account with New Jersey Natural Gas Company. Electric power, non-potable water and sanitary sewer service are currently provided by FMERA over former Army owned systems. For a transitional period FMERA will continue to service the building over these systems. Electric and water must be metered by the selected Potential Purchaser, at no cost or expense to FMERA. The selected Potential Purchaser will be responsible to make any needed improvements or upgrades to utility infrastructure within the footprint of the Property. The selected Potential Purchaser, at its sole cost and expense, will be required to relocate laterals and to reconnect utilities as new trunk infrastructure is installed. The selected Potential Purchaser, at its sole cost and expense, may also be required to connect new laterals into new water and sanitary sewer mains, as well as establish metered electric service with an alternative electric power provider at some time in the future.



A sanitary pump station identified as Building 1221 is found within the Optional Property along the northern boundary of Avenue of Memories at the western boundary of Mill Creek, as shown in **Attachment #1**. The lift station is currently operational and FMERA will retain a 60' x 120' easement surrounding the facility. The lift station is intended to remain in perpetuity and cannot be abandoned.

**The successful Potential Purchaser will also be required to fund or install, at its sole cost and expense, approximately one thousand two-hundred and fifty (1250') linear feet of new water main along Avenue of Memories. All work in public rights of way is subject to prevailing wage.** Potential Purchasers should take these costs into account when preparing their price proposals for the Property.

## **1.7 ACCESS**

FMERA will grant any reasonably necessary easements for access from the Property to currently existing public roads.

## **1.8 INFRASTRUCTURE DISTRICT; SALES TAXES**

The state statute creating FMERA, P.L. 2010, c.10 (N.J.S.A. 52: 27I-18 et seq.), allows FMERA to create infrastructure districts to support the redevelopment of the Fort. Retail sales within the districts will be exempt to the extent of 50% 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 50% 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 50% of normal sales taxes through the franchise assessment, effectively allowing retailers to charge less than the sales tax rate imposed under the New Jersey Sales and Use Tax Act.

The Purchase and Sale & Redevelopment Agreement between FMERA and the prospective Purchaser will require that, in the event FMERA creates an infrastructure district that includes the Property and the Optional Property within its boundaries, the Potential Purchaser and any tenants operating a retail business on the Property or the Optional Property will apply to be a certified retail vendor.

## **1.9 PREVAILING WAGE REQUIREMENT**

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 applicant receives financial assistance from FMERA, the State or any other State entity. Notwithstanding the foregoing, any work (including but not limited to demolition, renovation or utility work) performed on the Property prior to the transfer of title to the selected Potential Purchaser shall also be subject to prevailing wage requirements.

Potential Purchasers should note that if FMERA retains ownership of any portion of the Property and ground leases it to the selected Potential Purchaser, the selected Potential 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. Additionally, any infrastructure improvements installed by the Purchaser on FMERA-owned property or within public rights of way shall also be subject to prevailing wage obligations.

## **2.0 ADDITIONAL TERMS OF SALE**

Pursuant to FMERA's Land Use Rules, all purchaser of real estate on Fort Monmouth must enter into a redevelopment agreement, which FMERA addresses through a combined purchase and sale/redevelopment agreement ("PSARA"). The PSARA will contain the following provisions, which will be covenants running with the land until the redeveloper completes the project:

- i. A provision limiting the use of the property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by the Land Use Rules;
- ii. A provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and
- iii. A provision restricting the transfer of the property or the redeveloper's rights under the PSARA prior to completion of the project.

The PSARA will require the redeveloper to guaranty its project commencement and completion and job creation obligations by posting bonds or providing other assurances or penalties. See section 4.1(h) below for additional information regarding job creation requirements.

## **3.0 PUBLIC INSPECTION OF DOCUMENTS**

Due diligence material and documents pertaining to the Property and/or building(s) are available for the review by Potential Purchaser(s) at [www.pica.army.mil/ftmonmouth/](http://www.pica.army.mil/ftmonmouth/). Interested Potential Purchasers may also make copies of certain paper documents held by FMERA during normal business hours. **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 Potential Purchaser. 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 3.0 below.

Materials made available by FMERA for public inspection are offered "as is" and "where is" and they may include pertinent information regarding building plans, 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 Potential Purchaser(s) shall be wholly responsible for their own due diligence efforts.

Any information obtained by the Potential Purchaser(s) shall become the property of the Authority immediately upon the Potential Purchaser's submission of its offer and the release of such information by the Potential Purchaser to a third party shall only be made with the written approval of the Authority.

#### **4.0 TOURS**

Walk-through tours will commence on June 20, 2019 at 10:00 A.M. The last day to request a walk-through tour of the Property and the Optional Property is August 9, 2019 at 4:00 P.M. Please schedule a walk-through tour by contacting Regina McGrade at [rmcgrade@njeda.com](mailto:rmcgrade@njeda.com) or 732-720-6350.

#### **5.0 OFFER SUBMISSION**

**Five (5) copies** of the Offer (one (1) unbound, original; three (3) bound copies and one (1) copy in PDF format on a CD or flash drive) must be submitted marked "REQUEST FOR OFFERS TO PURCHASE FOR THE SALE OF REAL AND PERSONAL PROPERTY" in a sealed package and addressed to:

Bruce Steadman  
Executive Director  
Fort Monmouth Economic Revitalization Authority

**Offers must be received by August 16, 2019. Eastern Standard Time.**

**Proposals must be received by August 16, 2019 at 12:00 P.M., Eastern Standard Time (EST). Proposals may be delivered via an overnight service (FedEx or UPS) to 100 Barton Avenue, Oceanport, NJ 07757.**

**Hand delivered proposals must be received at the FMERA Offices located at 502 Brewer Avenue (aka Caren Franzini Way), within the former Fort Monmouth Army Post by August 16, 2019 at 12:00 P.M. EST. Access to the FMERA Staff Office is via County Route 537. Enter the Fort from either Route 35 in Eatontown or Oceanport Avenue in Oceanport.**

**For USPS mail delivery, please mail to FMERA, P.O. Box 267, Oceanport, NJ 07757. All USPS mail deliveries must be received by August 16, 2019 at 12:00 P.M. EST.**

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

**Proposals will be publicly opened on August 16, 2019 at 12:30 P.M. at the FMERA Offices located at 502 Brewer Avenue (aka Caren Franzini Way), Oceanport, NJ, on the former Fort Monmouth Army Post.**

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

The Authority reserves the right to request additional information if necessary, or to reject any and all Offers 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 RFOTP, in the Offers 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 Offers. In the event that all Offers are rejected, the Authority reserves the right to re-solicit Offers.

The Authority also may seek to obtain business terms that better suit the interests of the Authority and the redevelopment plans for Fort Monmouth, price and other factors considered, by negotiating with the Potential Purchaser(s) that submit the best Offer(s) in accordance with the evaluation criteria set forth in this RFOTP. The Authority reserves the right to exclude from negotiations any and/or all Offers received based on the initial submissions. Negotiations with a Potential Purchaser will not preclude the Authority from negotiating with other Potential Purchasers unless the Authority has entered into an exclusive negotiating period with a Potential Purchaser in accordance with rule N.J.A.C. 19:31C-2.16.

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

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

By submitting an Offer in response to this RFOTP, each Potential Purchaser agrees to hold its Offer open for at least ninety (90) days after the response due date. Any provision in a submitted Offer that attempts to limit or condition the time that an Offer 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 Potential Purchaser to withdraw its Offer after Offers have been opened.

Documents and information submitted in response to this RFOTP 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 Potential Purchaser or the Potential Purchaser's representatives concerning this RFOTP are **NOT** permitted during the term of the submission and evaluation process. Communications regarding this RFOTP in any manner (except as set forth in Section 5 above and Section 6 below or negotiations initiated by the Authority) **will result in the immediate rejection** of the Potential Purchaser's Offer.

## 5.1 OFFER REQUIREMENTS

In order to be considered, all offers to purchase from the Authority must include the following:

- a. **Cover Letter.** A letter identifying the Offer and disclosing the documentation included. The Potential Purchaser must indicate the name and contact information for the individual who will be its senior contract person for its Offer. The Potential Purchaser must also indicate whether the firm is operating as an individual proprietorship, partnership, corporation, a joint venture or a governmental entity. The cover letter should also indicate the state of incorporation of the Potential Purchaser.
- b. **Price Submittal.** A signed document stating the proposed purchase price for the land and building(s). The proposed purchase price must be typewritten, photocopied or written in ink or some other indelible substance. Identify any closing contingencies and specify the time period required to complete due diligence and satisfy any closing contingencies. **A Potential Purchaser who opts to propose a ground lease for the Expo Theater should offer to pay the full value it ascribes to the Property at the closing of title. The minimum bid that FMERA will accept for the Property is One Million One Hundred Thirty-Five Thousand (\$1,135,000.00) Dollars.**

**Potential Purchasers opting to propose a ground lease should also propose an ongoing annual ground lease payment and a minimum ground lease term (in years) in their Offer. Final ground lease terms are subject to negotiation between the parties. Potential Purchasers should take the utility obligations set forth in Section 1.6 into account in formulating their Price Submittals.**

**Potential Purchasers seeking to acquire the Optional Property and/or the Optional Carve-Out Property should so indicate in their Offers and state whether their Offers are contingent on acquisition of the Optional Property and/or Optional Carve-Out Property. The minimum bid that FMERA will accept for the Optional Property is Two Hundred Fifty Thousand (\$250,000.00) Dollars. There is no minimum bid amount for the Optional Carve-Out Property.**

- c. **Offer Deposit.** A payment of five (5%) percent of the purchase price offered by the Potential Purchaser for the Property, and if applicable, the Optional Property and/or the Optional Carve-Out Property, which shall be held in an interest-bearing account as an initial deposit and applied to the purchase for the accepted Offer, and returned to all others. An additional deposit of ten (10%) percent of the offer price shall be payable to the Authority on the earlier of:
  - i. FMERA and the potential purchaser entering into an exclusive negotiating period in accordance with N.J.A.C. 19:31C-2.16; or
  - ii. a purchase agreement with FMERA being fully negotiated and signed by the purchaser. The initial deposit and the additional deposit shall be applied to the purchase price at closing.



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](mailto:rmcgrade@njeda.com) or 732-720-6350 for wiring instructions.

- d. **Conceptual Redevelopment Plan.** A conceptual redevelopment plan, including an elevation sketch, showing the general site or other improvements, if any, 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, or in the case of a proposal for an alternative use, the manner in which such improvements shall comply with the requirements of the Land Use Rules for the proposed alternative use
- e. **Financing Plan.** State your proposed capital investment and list your financial(s) and committed resources evidencing the Potential Purchaser's financial ability to meet the financial requirements of the proposed redevelopment plan. **Please note that if a Potential Purchaser fails to provide detailed and specific information in support of its Financing Plan, and FMERA is unable to evaluate Potential Purchaser's financial capability to meet the proposed terms of purchase and project completion using the information provided in the Offer and publicly available information, its Offer may receive a score as low as zero in category #5 of the Evaluation Score Sheet at Attachment #3 of this RFOTP.**
- f. **Schedule of Critical Paths.** A detailed summary of construction schedules, time to complete purchase and estimated leasing and/or resale timeframe if applicable. Please note that FMERA's 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 Potential Purchaser.
- h. **Jobs Generation.** Provide an estimated number of construction jobs and permanent jobs (specifying those new to New Jersey vs. those retained within the state) to be created at the Property. **Purchaser will be held to a minimum jobs creation number based on this estimate which will be a condition of the purchase and sale and redevelopment agreement ("PSARA") with the successful purchaser. The PSARA will provide for monetary penalties should Purchaser fail to meet its permanent job creation goals.**
- i. **Disclosure of Investment Activities in Iran.** A completed and signed Disclosure of Investment Activities in Iran form.

## 6.0 QUESTIONS AND ANSWERS

The Authority will also accept questions from firms regarding any aspect of this RFOTP via e-mail only until 5:00 p.m. Eastern Daylight/Standard Time on August 9, 2019. Questions should be directed via e-mail to:

[sgiberson@njeda.com](mailto:sgiberson@njeda.com)

All answers to questions posed will be posted on the Authority website at [www.fortmonmouthnj.com](http://www.fortmonmouthnj.com) and/or through an addendum (if any) to this RFOTP made available to all Potential Purchasers 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: The Chapter 51 form can be found online by going to the following web link and scrolling to “VENDOR FORMS REQUIRED FOR CONTRACT AWARD” under:

<http://www.state.nj.us/treasury/purchase/forms.shtml>

#### **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;

(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; and

(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 of 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 Potential Purchaser 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 an offer in response to the RFOTP are available for review on the Purchase Bureau website at:

<http://www.state.nj.us/treasury/purchase/forms.shtml>

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

(d) Potential Purchaser's failure to submit the required forms will prevent FMERA from entering into a Purchase and Sale Agreement with the Potential Purchaser. The State Treasurer or his designee shall review the Disclosures submitted by the Potential Purchaser pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Potential Purchaser, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Potential Purchaser violated Chapter 51 or EO 117 the State Treasurer shall disqualify the Potential Purchaser 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 Potential Purchaser 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 offer.** The Potential Purchaser 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 Requirement**

Prevailing wage will apply only to the extent that a project includes "public work" as that term is defined in 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, any work (including but not limited to demolition, renovation or utility work) performed on the Property prior to the transfer of title to the selected Potential Purchaser shall also be subject to prevailing wage requirements. Additionally, any infrastructure improvements installed by the Potential Purchaser on FMERA-owned property or within public rights of way shall also be subject to prevailing wage obligations.

Pursuant to **Section 1.0** above, Potential Purchasers should note that if FMERA retains ownership of any portion of the Property and ground leases it to the selected Purchaser, the selected 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.**



### **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 RFOTP must include the Potential Purchaser's certification that neither the Potential Purchaser, 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 Potential Purchaser is unable to so certify, the Potential Purchaser 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 Potential Purchaser with its Proposal.

### **7.4 Standards Prohibiting Conflicts of Interest**

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

- (a) No Potential Purchaser 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 Potential Purchaser shall be reported in writing forthwith by the Potential Purchaser to the State Attorney General.
- (c) No Potential Purchaser 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 Potential Purchaser 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 Potential Purchaser 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 Potential Purchaser 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 Potential Purchaser 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 Potential Purchaser shall maintain all documentation related to the purchase and development of the Property, the Optional Property and/or the Optional Carve-out Property for a period of five (5) years from the date of completing the development of the Property, the Optional Property and/or the Optional Carve-out 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 Offer received in accordance with this RFOTP and shall identify the Offer(s) determined to be responsive to all material elements set forth in the notice, including, but not limited to: purchase price; estimated permanent jobs to be created at or relocated to the Property; purchase term including due diligence period and time needed to obtain approvals as well as payment for such period; proposed project capital investment; Potential Purchaser's financial capability to meet the proposed terms of purchase and project completion; impact to host municipality; prior experience with the Potential Purchaser; whether the Potential Purchaser is also proposing on the Optional Property and the Optional Carve-Out Property; and whether the proposed use is consistent with the Reuse Plan and complies with FMERA's Land Use Rules. **Attachment #3** contains the proposed evaluation score sheet and weightings.

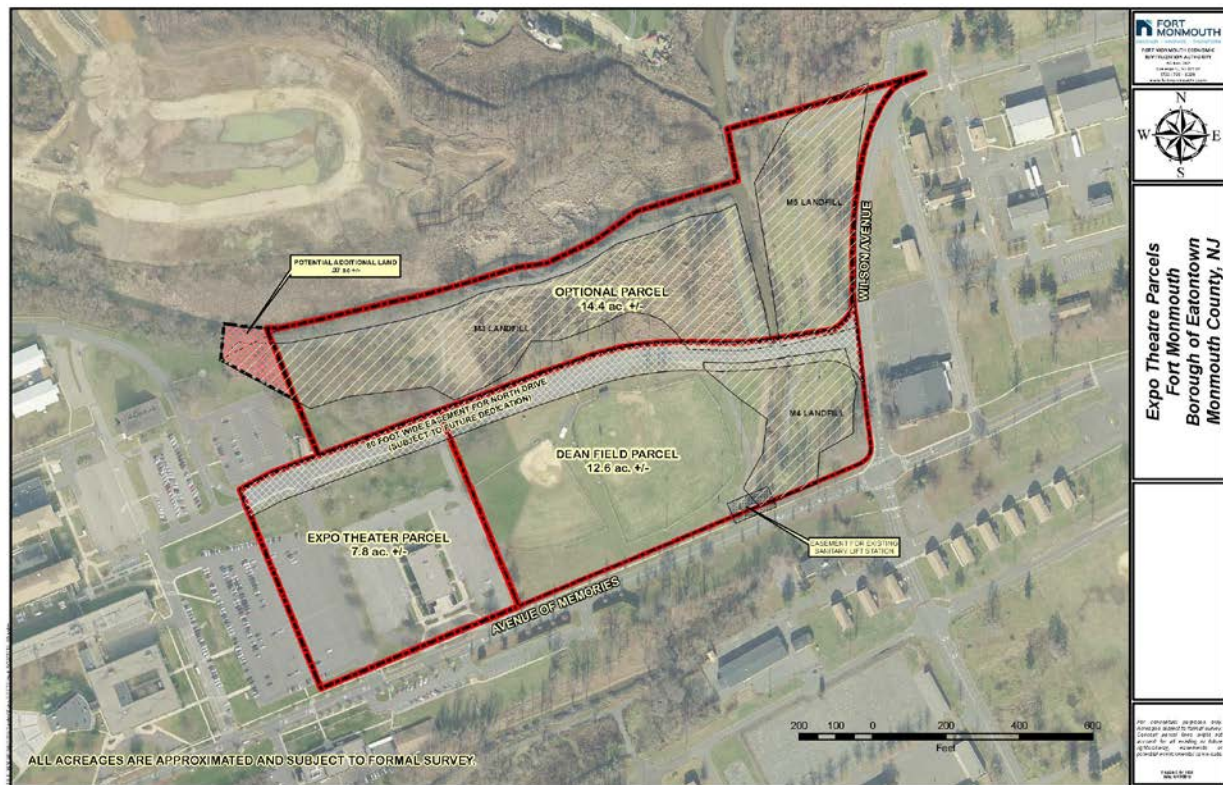
Potential Purchasers should be prepared to commit to their job creation estimate in the PSARA. FMERA is looking to accelerate closing and redevelopment to the extent possible. FMERA shall be under no obligation whatsoever, legal or otherwise, to sell or convey the Property, or any interest in them, unless and until a Purchase and Sale Agreement and Redevelopment Agreement ("PSARA") is fully negotiated with a Potential Purchaser and approved for execution by the FMERA Board of Members in its sole and absolute discretion. No Potential Purchaser or other party shall have any legal right or interest in the Property unless and until a PSARA is properly executed and delivered by FMERA.

## ATTACHMENT #1 Description of Property

The Expo Theater, also known as Building 1215, is an 18,883 sf entertainment facility built in 1968. The 995-seat auditorium was used previously as a live theater and cinema. Located on the Fort's main thoroughfare, the 7.8± acre Expo Theater parcel is conveniently situated near the Bowling Center and the planned artist live/work space on the Avenue of Memories.

The Optional Property, adjacent to the Expo Theater parcel, totals 12.6± acres and includes a portion of North Drive and Dean Field, currently zoned for open-space recreational use. The Optional Property also includes a 2.14± acre portion of the M4 landfill and a sewage lift station, as shown below. Use of this area will be limited to open space, passive recreation, and alternative temporary uses such as parking.

The Optional Carve-Out Property consists of portions of the M3 and M5 landfills; a portion of Carve-Outs 102A, 102B, and 102D; Carve Out 102C and adjacent green space area totaling 14.9± acres. Note that as detailed above, some or all of a .37± acre portion of the M3 landfill may be added, increasing the total acreage of the optional landfill area up to approximately 14.77 acres. Use of these areas would be limited to recreation, outdoor seating, passive open space or temporary parking.



**ATTACHMENT #2  
REQUIRED FORMS**



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

Quote Number: \_\_\_\_\_ Bidder/Offeree: \_\_\_\_\_

**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/Offeree _____
Description of Activities _____ _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeree 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: \_\_\_\_\_



## 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](mailto: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](mailto: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.<sup>1</sup>
- **"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.

<sup>1</sup>Contributions 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



State of New Jersey  
Department of the Treasury

**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**

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**All Equity partners of a Partnership**

**All Equity members of a LLC**

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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 ½ 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 _____
<b>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.</b>
<div>Remove Contribution</div>
<div>Add a Contribution</div>

☐ 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](mailto:cd134@treas.nj.gov) , or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625.**

**ATTACHMENT #3**  
**EVALUATION SCORE SHEET**

**Fort Monmouth Economic Revitalization Authority (FMERA)**  
**Request for Proposals**  
**Fort Monmouth Expo Theater RFOTF**

Potential Purchaser: \_\_\_\_\_

Evaluator #: \_\_\_\_\_

<b><u>Sample Score Sheet</u></b>	<b><u>Score 0-10</u></b> <b>x</b>	<b><u>Weight</u></b> <b>=</b>	<b><u>Criterion</u></b> <b><u>Score</u></b>
1. Purchase price		<b>30</b>	
2. Estimated jobs to be created at or relocated to the parcel – the focus is on permanent jobs		<b>15</b>	
3. Purchase term including due diligence period and time needed to obtain approvals as well as payment for such period		<b>10</b>	
4. Proposed project capital investment		<b>15</b>	
5. Potential Purchaser(s) financial capability to meet the proposed terms of purchase and project completion		<b>10</b>	
6. Prior experience with the Potential Purchaser		<b>5</b>	
7. Impact to host municipality		<b>5</b>	
8. Whether the potential purchaser's proposed use is consistent with the Reuse Plan as a community theater and confirmation that it complies with the FMERA land-use regulations		<b>10</b>	
9. Special consideration for proposal including the Optional Property and/or the Optional Carve-out Property		<b>10</b>	
<b>Total Score</b>		<b>110</b>	

**ATTACHMENT #4**  
**SPECIMEN FORM OF GROUND LEASE AGREEMENT**



## **FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY GROUND LEASE**

### **AGREEMENT**

**THIS GROUND LEASE AGREEMENT** (this “Lease” or this “Agreement”) made and executed this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 New Jersey limited liability company, with an address at 1215 Avenue of Memories, Eatontown, NJ 07724 \_\_\_\_.

### **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 Quitclaim Deeds from the Department of the Army to FMERA dated November 17, 2016 and recorded on November 28, 2016 and dated \_\_\_\_\_ and recorded on \_\_\_\_\_ (the “Army Deed”);

WHEREAS, Lessor and Lessee have entered into a certain Purchase and Sale & Redevelopment Agreement (the “PSARA”) dated \_\_\_\_\_, 2019 whereby Lessor agreed to sell and ground lease and Lessee agreed to purchase and ground lease the land and improvements situated on approximately 7.8 acres (the “Property”) as described more fully therein;

WHEREAS, by Bill of Sale and Quitclaim Deed given herewith and pursuant to the PSARA, Lessor conveyed to Lessee Building 1215 (the “Building”) and the balance of the Property, with the exception of the “Premises” (as that term is defined hereinbelow);

WHEREAS, the Premises is the land situated beneath the Building; 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 the Building situated upon a 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, expanding and operating an arts, entertainment, and/or recreational facility (the "Facility"), as set forth in greater detail in the PSARA.

B. The demise of the Premises is and shall at all times be subject and subordinate to the terms, restrictions and covenants of the PSARA dated\_\_\_\_\_, as well as 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.

C. Permissible Uses of the Premises: Lessee covenants that it will use the Premises solely for the renovation, expansion 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 One Dollar (\$1.00) 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. Lessee may prepay the rent due hereunder at any time.

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 limited liability company, and is duly formed and organized, validly existing, and

in good standing under the laws of the State of New Jersey;

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 ninety-nine (99) 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 as set forth in Section 7(b)(i) of the PSARA. Lessee shall be solely responsible for the design, renovation and expansion of the Improvements, including but not limited to the Facility, as well as all costs and expenses associated therewith. Lessee shall diligently renovate and expand, or cause the diligent renovation and expansion 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 Improvements and Facility to be completed in accordance with the timeframes set forth in Section 7(b)(ii)(2) of the PSARA.

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.

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. Conveyance of Title: At the earlier of the expiration of this Agreement or Lessee obtaining a plenary retail liquor license issued by the Borough of Eatontown, or at any time upon Lessee giving 30 days' notice to Lessor, Lessor shall convey ownership of the Premises to Lessee for One (\$1.00) Dollar, provided, however, that Lessor shall not convey ownership of the Premises prior to the completion of the Project by



Lessor as set forth in Section 7(b)(i) of the PSARA.

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 subparagraphs:

(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 notice;

B. Failure to renovate, expand and operate the Facility for the purposes and in the manner required by the PSARA or 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 the PSARA or 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 forty-five (45) day period, and Lessee commences such cure within the forty (45) 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 twenty (20) days 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 relating to Tenant's use or occupancy.

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 Lessor to demand such certificate or other evidence of full compliance with the insurance requirements set forth in this Lease or the failure of Lessor 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, Lessor 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, Lessor 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 Lessor 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;

partner;

- B. i  
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- ase of a general partnership: the partnership and any partner;
- C. in the case of a limited partnership: the limited partnership and any
- 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;
- (i) any subsidiary directly or indirectly controlled by the business entity;
- (ii) 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
- (iii) 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 Premises. 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

\_\_\_\_\_

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