



REQUEST FOR OFFERS TO PURCHASE

FOR

THE SALE OF REAL PROPERTY

**Fort Monmouth
Parcel B – 82.2± Acre Mixed Use Development Site
Eatontown, New Jersey**

Issued by the

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

March 19, 2021

Responses due by 12:00 P.M. EST on June 16, 2021

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SUMMARY

The Fort Monmouth Economic Revitalization Authority (“FMERA” or the “Authority”), a state authority created pursuant to P.L. 2010, c.51 (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 terms and provisions of the Sales Rules and [the Phase 1 & 2 Economic Development Conveyance Agreements \(“EDC Agreements”\)](#) between FMERA and the U.S. Army. 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 and redeveloping Parcel B, an approximately 82.2± acre tract of land fronting State Highway 35 in the Borough of Eatontown on Fort Monmouth’s Main Post (the “Property”). The Property contains approximately 1,000,000 sf of existing buildings that are to be demolished by the successful Potential Purchaser. The westernmost 51.1 acres of the Property lie within the Phase 1 area of Fort Monmouth. The remaining 31.1 acres of the Property lie within the Phase 2 area of Fort Monmouth. Phase 1 and Phase 2 have individual deeds and were transferred to FMERA at different dates. The phase the Property was transferred by will not impact the subdivision of the Property at closing.

With approximately 1,800 feet of frontage on State Highway 35, Parcel B is the former Fort’s “front door.” Accordingly, FMERA’s expectations for the Property are high. The Reuse Plan allows this important parcel to be developed as a high-quality Lifestyle Center and Eatontown Gateway. It envisions a “vibrant pedestrian environment” and “exciting gateway,” with connectivity and interaction between the parcel’s commercial and residential components. Offers proposing projects that meet these objectives will receive greater weight than those that do not.

In addition to a price proposal, the Offers must include a plan for the redevelopment of the Property for the uses specified in this RFOTP. The Property can support approximately 250,000 sf of lifestyle retail and related commercial uses and 302 medium density residential units. While Potential Purchasers may propose to build less than 250,000 sf of commercial uses within the

parameters outlined below, all Offers must commit to build 302 residential units. All buildings must be demolished at the sole expense of the Potential Purchaser.

A map of the Property can be found in ATTACHMENT #1 of this RFOTP.

The Authority is requesting Offers that are consistent with certain allowable uses set forth in FMERA's Land Use Rules, or for alternate uses, as more fully described in Section 1.4 below. Any Reuse Plan amendment or "use-type" variance is subject to a separate approval by the FMERA Board, in its sole discretion, in accordance with the Land Use Rules.

The Property will be sold "As Is – Where Is." The Property is within the "Project area" eligible for a plenary retail consumption license to sell alcoholic beverages pursuant to N.J.S.A. 33:1-12.52. Six special licenses were apportioned to the Borough of Eatontown. To date, two have been sold and four remain. The Authority makes no representation as to the availability or eligibility of a special license to the Potential Purchaser. The issuance or a letter of consent pursuant to N.J.S.A. 33:1-12.53 is subject to approval by the FMERA Board, in its sole discretion.

The minimum purchase price proposal that FMERA will accept for the Property is Twenty-One Million (\$21,000,000.00) Dollars. This minimum purchase price proposal shall have no associated contingencies based on the environmental condition of the Property, utility and/or infrastructure requirements, or otherwise, as the Property is being sold in "As Is" condition.

Planning, Design and Development

Parcel B redevelopment is a forward-looking and transformative project that aims to meet the highest standards of healthy living and sustainable development. Parcel B is planned as a mixed-use neighborhood village, with integrated residential, retail, commercial uses and public spaces & amenities. Proposals will be evaluated with an emphasis on planning and design considerations as the location, types and mix of uses developed on Parcel B will not only affect the property's value and its economic impact on adjacent areas of the Fort and the Borough of Eatontown, but also the overall quality of life of the current and future residents in the region.

Commercial Development

FMERA is seeking Offers that propose to redevelop the Property as a vibrant, live-work-play community featuring residential units accompanied by a diverse mix of commercial uses. The project design should incorporate high quality urban design with a pedestrian-friendly, amenity-based, mixed-use development containing up to 250,000 sf of high-quality commercial uses. FMERA envisions Parcel B, with its frontage on State Highway 35, transformed into an exciting and attractive gateway into the Fort.

The project should include a pedestrian-oriented retail & commercial center, featuring a dynamic mix of uses. The Property should be redeveloped as an inviting destination with open space, landscaping and improved streetscapes, and providing connectivity and interaction between the Property's commercial and residential components. Parking should be screened from State Highway 35 and a portion of the commercial redevelopment should front on the Avenue of Memories in a town center format, enhancing the main vehicular artery and gateway into the

former Fort. Proposals, which include greater variety of complementary commercial uses including those that help to activate the ground floor, will be scored higher in the respective scoring rubric category. The RFOTP will allow for a mix of uses within the below parameters:

- A combination of traditional retail and restaurant uses: a minimum of 30,000 sf and a maximum of 150,000 sf (limited number of large pad sites in excess of 50,000 sf)
- Other commercial space - a minimum of 50,000 sf
 - Office (general office, coworking, medical office - any one type not exceeding 50% of the total office space)
 - Business lofts/flex space/craft production/makerspace
 - Hospitality – short term and extended stay permissible
 - Community and cultural spaces such as libraries, community rooms, entertainment, performance spaces, museums, etc. Museums featuring automobiles or other vehicles may be displayed indoors only, with limited exceptions for temporary staging and maintenance purposes.
- Commercial aggregate square feet not to exceed 250,000 sf.
- Excluded uses: Medical or institutional uses requiring an overnight stay, self-storage, gas stations, industrial/manufacturing, warehouse (as primary use), and automobile or vehicle sales

In addition, proposals should encourage sustainable and creative design that promotes the following:

a. Walkability and Connectivity

- Enhances walkability and creates a compelling pedestrian experience based on the Reuse Plan Town Center concept, however with the retail limitations noted herein.
- Enhances multimodal connectivity between uses (within the project and adjacent parcels).
- Create Main Street like streetscape with wide sidewalks, street furniture, vegetation and lighting.

b. Open Space and Placemaking

- Promotes placemaking, incorporates open space including green space, trails and places for outdoor activities such as plazas, public squares, amphitheaters and other forms of outdoor open spaces.
- Design open spaces to encourage indoor and outdoor physical activity in all seasons.
- Incorporates appropriate hard and soft landscaped surfaces, furniture, lighting, waterbodies and art works into open space planning and design.
- Includes and emphasizes vegetation, manicured areas, pleasing site lines.

c. Building Design and Architecture

- Features buildings with modern architecture, emphasizing unique building forms and material treatments such as glass, brick, & stone.
- Incorporates innovative design elements such as living wall, green roof and light well-solar atrium to take advantage of natural lighting.
- Aims to achieve unique, experiential shopping atmosphere.

d. Sustainability and Resiliency

- Incorporates appropriate sustainability design principles, and Low Impact Development (LID) strategies such as rain garden, bio-retention pond or other appropriate green infrastructure.
- Incorporates renewable energy system such as roof top solar panels and solar canopies in the parking area.
- Promotes healthy, energy efficient and cost-saving and green design and strives for LEED or similar accreditations.

e. Access

- The development should promote the connectivity of roadway systems throughout the site and to major access points.
- Site plans should consider the reuse of North Drive, along the northern boundary of the site, as a possible future dedicated roadway for the Borough of Eatontown or Monmouth County.

Residential Development

All Offers shall be required to commit to the construction of 302 residential units, 20% of which must be affordable to low- and moderate-income households. With the exception of the affordable housing component, proposed housing should be planned as owner-occupied, for sale units. The affordable units should be interspersed with the market-rate units wherever possible. While FMERA encourages the use of Low Income Housing Tax Credits (“LIHTCs”) or other public financing or subsidies as part of the Potential Purchaser’s funding mix, FMERA will reject any Offer that seeks to make the closing of title contingent on the Potential Purchaser’s receipt of LIHTCs or other financing or subsidies. The affordable housing component of the redevelopment may be accomplished directly by the Potential Purchaser or through a subcontract/joint venture arrangement with an affordable housing developer. Additional information is available in Section 1.8.

FMERA’s preference is that the residential portion of the project include a mix of housing types that would be attractive to varying demographics, such as single-family homes, carriage homes, townhomes, and other housing types. Consideration of a Main Street design that incorporates first floor commercial space and second story-residential space is highly encouraged. Proposals should include clear integration between the residential community and commercial development.

FMERA’s preference is that the residential and commercial components are developed on parallel paths; however, FMERA is open to consider a phased approach to development, so long as the proposal includes a commitment to demolish all existing improvements across the entirety of the site, to clear all debris, and a plan to improve the commercial site for public use as parkland, recreation areas, or other comparable uses in the short term. Potential Purchaser’s Offer shall include a timeline for each phase, including how long comparable uses will remain.

Additionally, the Potential Purchaser should be aware that FMERA has transferred the iconic Johnston Gate arches and the surrounding intersection to Monmouth County. The monuments that

line the Avenue of Memories shall remain in their current locations. The fencing along State Highway 35 may be removed.

The Reuse Plan & Zoning

The Reuse Plan currently calls for the westernmost 51.1± acres of the Property (i.e. closest to State Highway 35) to be developed as a lifestyle/mixed-use center, with the Property's remaining 31.1± acres redeveloped as a technology incubator campus. FMERA's intended reuse of the Property, as reflected in this RFOTP, now calls for the entire 82.2± acres to be developed as a lifestyle/mixed-use center, with all existing buildings to be demolished, including those that were to be devoted to the technology incubator campus.

Additionally, the Mallette Hall area is currently identified in the Reuse Plan as the future municipal complex for the Borough of Eatontown. The Borough determined that Mallette Hall, at 57,000 gsf, is larger than needed for this purpose; consequently, it no longer intends to acquire this property from FMERA, and Mallette Hall is now intended for demolition along with the outdoor amphitheater.

After reviewing all Offers, and in consultation with the successful Potential Purchaser, FMERA plans to undertake a Reuse Plan amendment for incorporating the above described uses. Approval of a Reuse Plan amendment will be at the sole discretion of the FMERA Board.

Pursuant to FMERA's Land Use Rules, the permitted land uses for the westernmost 51.1± acres of the Property are medium density residential, open space/recreation, mixed use and retail. Mixed use buildings have a three-story (45 feet) height limitation; retail buildings have a two-story (30 feet) limitation. No minimum lot area is required, but maximum permitted lot coverage is 75 percent. The requirements for medium density residential districts is as follows:

- Stacked flats (2 to 3 units stacked vertically in attached structures providing up to eight horizontal stacks per structure, total of 16 to 24 units per structure). Up to three stacked flat units may share one entrance at the first level.
- Apartment buildings with four or more units per building and with at least four units sharing each ground-level entrance.
- The maximum height for multi-family stacked flats and apartments buildings is three stories (45 feet).

Per the Land Use Rules, the recommended street facing building setback is 0-10 feet and for buildings adjoining Avenue of Memories, a minimum 30-foot setback should be provided. The side lot line setbacks are 10 feet minimum for each side for the residential uses (except that the side lot line setback between two attached structures constructed on individual lots shall be zero), 7 feet for retail and 0 feet for mixed use. Rear lot setbacks for residential are 20 feet minimum (garages may be located within the setback if they open in the rear alley), 25 feet for retail and 20 feet for mixed-use. The Rules specify that all lots shall have frontage on the street, rather than a rear parking lot or open space with no intervening street.

1.1 THE PROPERTY

The Property provides Potential Purchasers excellent visibility from State Highway 35, a well-traversed artery through Monmouth County, and ready access to and from the Garden State Parkway, one of the most traveled highways in the State. In addition, the Property is well situated with respect to public transportation, the local road network and area amenities. The Property consists of 82.2± acres of land currently improved with 21 commercial buildings. Most of the buildings were constructed in 1953 and may contain asbestos and lead-based paint. The successful Potential Purchaser will be responsible for demolishing these improvements at its sole cost and expense. Potential Purchasers should take demolition costs into account in formulating their Offers. In addition, there is a geo-thermal well field on the Property which cannot be reused and may be abandoned or removed at the successful Potential Purchaser's discretion.

With the exception of the Carve-out Parcels as described in Section 1.2, title to the Property is currently held by FMERA. Prior to transfer, the Army 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.

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 consistent with the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, et seq., and other applicable laws and regulations. If the Selected 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.

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.

The Army has conveyed title to the Property via quitclaim deed; accordingly, FMERA will also convey title to the Property to the Selected Potential Purchaser via quitclaim deed.

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 that commit to realistic timelines that seek to expedite the time between submission of their Offers and closing on the Property. Potential Purchasers should carefully consider their proposed timelines (due diligence/approval period/construction timelines) as modification of these timelines during

negotiations could lead to loss of the award of the contract to the Selected Potential Purchaser. Additionally, the Selected Potential Purchaser will not be able to recover its Initial Deposit should it request an additional extension beyond the Due Diligence Period/Due Diligence Extension Period, and/or it will not be able to recover its Second Deposit (first extension) or Deposit (second extension) should it request an additional extension(s) to the Approval Period/Approval Extension Period as agreed to in the contract and later seek to terminate the contract. See PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT TEMPLATE Attachment #5 for terms. Purchaser may submit examples of prior timelines for past projects that it was able to meet for consideration by the Authority. See the Evaluation Score Sheet at Attachment #3 of this RFOTP.

1.2 CARVE-OUT PARCELS

Title to Carve-out Parcels are currently held by the Army, and FMERA is the contract purchaser through the DOD-approved EDC Agreement with the Army.

| Carve-Out | Acreage within Parcel B | Use | Status |
|-------------|-------------------------|-----------------------------|---|
| ECP-38 | .57 acres | Former Outdoor Firing Range | No Further Action Letter issued by NJDEP, Awaiting Transfer from Army to FMERA via Group 5 deed |
| Parcel 102B | 0.7 acres | Former Skeet Range | No Further Action Letter issued by NJDEP, Awaiting Transfer from Army to FMERA via Group 5 deed |

Parcel B includes two environmental Carve-out Parcels that remain the property of the Army, Part 2 of ECP 38 and ECP 102B. Additional environmental carve-outs were previously transferred to FMERA. ECP 38 is located in the northwestern portion of the Main Post (MP), northwest of Building 200. ECP 38 consists of the Former Outdoor Firing Range, which was used by the U.S Army from approximately 1940 to 1955. Former range structures, including the backstop berm, have been demolished or removed (U.S. Army BRAC, 2008). Through approved sampling and monitoring commissioned by the Army, the results of the soil and groundwater sampling were submitted through an SI Addendum Letter Report (September 2016) for Parcel 38 to the NJDEP recommending NFA for both soils and groundwater. In a letter dated November 16, 2016, the NJDEP issued an “unrestricted use”, NFA determination for Parcel 38.

On October 13, 2017, 0.396 acres of the total 0.569 acres making up Parcel 38 was transferred to the FMERA. The U.S. Army held back 0.173 acres due to its proximity to Parcel 102B which was still under investigation at the time. Parcel 102B has since received an “unrestricted use” NFA determination from the NJDEP and as a result, the FMERA has requested the remaining balance

of Parcel 38 (0.173 acres) be included in the Group 5 FOST and deed. A FOST (Finding of Suitability to Transfer) document is prepared for each group of carve-outs prior to transfer to FMERA. The Group 5 FOST and deed is the fifth group of environmental carve-outs to be transferred to FMERA.

ECP 102B was a former skeet range located in the west-central portion of the Main Post. The site is located south of Lafetra Creek and north of North Drive. The former skeet range was largely situated on what is now the M-3 landfill, adjacent to the Parcel B property. As a result of investigations commissioned by the Army, it was concluded that Parcel 102B was well outside of the cleared area used as the former skeet range, and therefore outside of the area potentially impacted by clay targets and shot fall.

Subsequently, an SI report was prepared (October 2017) for Parcel 102B, seeking an NFA determination from the NJDEP. In a letter dated December 12, 2017, the NJDEP issued an “unrestricted use,” NFA determination for Parcel 102B.

Due to potential boundary overlaps with the adjacent M-3 landfill, Parcel 102B has not been transferred to FMERA and may be transferred as a part of the Group 5 deed. If the Carve-out Parcel is not transferred via the Group 5 Deed, it will otherwise be transferred to FMERA as a part of a later Group.

All other carve-outs on the site have been remediated and transferred to FMERA. More information is available upon request.

Pursuant to CERCLA, the Army will retain 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 Carve-out Parcels outside of the delineated and capped landfill as of the date of closing with FMERA. Subject to the Army’s prior approval, the Selected Potential Purchaser will be afforded the opportunity to perform due diligence investigations on the Carve-out Parcels prior to closing at its sole cost and expense. Although closings on the Carve-out Parcels may occur separately, the Selected Potential Purchaser is obligated to take title to the Carve-out Parcels within forty-five (45) days of transfer from the Army to FMERA.

Potential Purchasers are hereby notified that registered pesticides may have been applied to the Carve-out Parcels 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 FIFRA, 7 U.S.C. § 136, et seq., and other applicable laws and regulations. If the Purchaser takes any action with regard to the Carve-out Parcels, 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.

Copies of the Army’s environmental reports relating to the Carve-out Parcels can be found at www.fortmonmouthrecords.com.

1.3 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.

1.4 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 55-acre tract of property in January 2013. FMERA entered into a second EDC agreement in October 2016 and took title to Phase II of the property in November 2016.

At full buildout in approximately ten 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
- 2,000,000 sf of health care facilities

Total development costs are estimated at \$2 billion, generating over 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/or multi-purpose trails
- dedication of an interconnected blue/green belt spanning the Fort
- a shuttle system linking the Fort with mass transit, including the Little Silver train station
- improved access to the Garden State Parkway via a new interchange (completed 2017)

Please see ATTACHMENT #4 for further information on Fort Monmouth’s redevelopment status.

1.5 UTILITIES

When the Fort was active, the Army provided utility service via government-owned systems. In the 1990s, the Army entered into an agreement with New Jersey Natural Gas to install gas mains on the Fort, including the streets abutting and traversing the Property. Gas service is available along the Rt. 35 frontage. The Selected Purchaser shall be responsible for establishing service directly with NJNG.

Water service will be provided by New Jersey American Water via a 24” water main along the frontage of Avenue of Memories.

Sewer service will be provided by the Eatontown Sewerage Authority via an existing sanitary line along the frontage of Avenue of Memories. **The Selected Potential Purchaser will be required to repair or replace the existing sanitary line running from Wilson Avenue to Avenue of Memories.**

Electrical power will be available via the FMERA owned and operated power grid unless or until an alternative source can be established with Jersey Central Power and Light.

The Selected Potential Purchaser will be responsible for making any needed improvements or upgrades to utility infrastructure within the footprint of the Property. The Selected Potential Purchaser will also be expected to contribute toward off-site improvements to the extent required by its proposed development. **The Selected Potential Purchaser will be responsible for a FIVE HUNDRED THOUSAND DOLLAR (\$500,000) contribution towards off-site infrastructure improvements made by FMERA, which shall be due at closing.**

The intersection of State Highway 35 and Avenue of Memories is signalized, with four traffic lanes in each direction and a dedicated left turn lane. In addition, there is a right-turn only exit from the Property onto State Highway 35 which is located about 1,000 feet north of the Johnston Gate. FMERA will work cooperatively with the Selected Potential Purchaser to evaluate any necessary upgrades to access from State Highway 35.

1.6 ACCESS

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

1.7 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 Selected Potential Purchaser will require that, in the event FMERA creates an infrastructure district that includes the

Property within its boundaries, the Potential Purchaser and any tenants operating a retail business on the Property will apply to be a certified retail vendor.

1.8 AFFORDABLE HOUSING REQUIREMENT

If the Offer includes residential use on any portion of the Property, it must include a commitment that the Selected Potential Purchaser will comply with any and all legally imposed affordable housing requirements, including but not limited to setting aside at least twenty (20%) percent of the housing units developed on the Property as affordable housing. These units shall be affordable to low- and moderate-income households as determined by New Jersey law. FMERA will reject any Offer that seeks to make the Offer price or the closing of title contingent on the Selected Potential Purchaser's receipt of Low Income Housing Tax Credits ("LIHTCs") or other public financing or subsidies. The affordable housing component of the redevelopment may be accomplished directly by the Selected Potential Purchaser or through a subcontract/joint venture arrangement with an affordable housing developer. If the Selected Potential Purchaser intends to subcontract or joint venture with a housing developer or affordable housing developer, the Offer should so indicate.

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. Additionally, any infrastructure improvements installed by the Selected Potential 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 purchasers 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 commitment to its project commencement and completion and job creation obligations by posting bonds or providing other assurances. See section 5.1(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.fortmonmouthrecords.com. Interested Potential Purchasers may also make copies of certain paper documents held by FMERA during normal business hours. Interested Potential Purchasers should schedule an appointment and follow all current social distancing protocols. Interested Potential Purchasers may also request digital copies of certain paper documents held by FMERA during normal business hours. Interested Potential Purchasers should be advised that a response may take up to five (5) business days. **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 4.0 below.

Materials made available by FMERA for public inspection are offered “as is” and “where is” and they may include pertinent information regarding 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 Purchasers 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 March 24, 2021 at 10:00 A.M. The last day to request a walk-through tour of the Property is June 7, 2021 at 4:00 P.M. Please schedule a walk-through tour by contacting Regina McGrade at rmcgrade@njeda.com or 732-720-6350. Please note, due to the ongoing COVID-19 pandemic, all visitors will be required to wear a mask and practice social distancing at all times. Interested Potential Purchasers are required to cancel and reschedule any planned tours in the event any member of the tour group has been or may have been exposed to COVID-19 within the past fourteen (14) days. All Potential Purchasers shall abide by, at their own cost and expense, any and all Executive Order(s) pertaining to safety precautions required as a result of Coronavirus disease 2019 (“COVID-19”) throughout the proposal, negotiation, purchase and redevelopment processes.

FMERA will be hosting a virtual TEAMS pre-proposal presentation on March 30, 2021 at 10:00a.m. for a virtual overview of the Property and discussion of its planned development for Interested Potential Purchasers. If you are interested in participating in the pre-proposal

presentation please email Regina McGrade at rmcgrade@njeda.com by March 29, 2021 at 3:00p.m. A meeting link will be emailed to all registrants. The presentation will be recorded and posted to the FMERA website for public access at any time.

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 June 16, 2021 at 12:00 P.M. Eastern Standard Time.

Offers must be received by June 16, 2021 at 12:00 P.M., Eastern Standard Time (EST). Offers may be delivered via an overnight service (FedEx or UPS) to 100 Barton Avenue, Oceanport, NJ 07757.

Hand delivered Offers must be received at the FMERA Offices located at 502 Brewer Avenue (a.k.a. Caren Franzini Way), within the former Fort Monmouth Army Post by June 16, 2021 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 June 16, 2021 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.

Offers will be publicly opened on June 16, 2021 at 12:30 P.M. at the FMERA Offices located at 502 Brewer Avenue (a.k.a. Caren Franzini Way), Oceanport, NJ, on the former Fort Monmouth Army Post. Due to the ongoing COVID-19 pandemic, and subject to any applicable Executive Orders, all attendees will be required to wear a mask and practice social distancing at all times. Additionally, only one (1) representative per Offer will be permitted to attend the public opening due to capacity restrictions.

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 all Offers pursuant to N.J.A.C. 19:31C-2.13, and, in its sole discretion, in accordance with applicable

laws, waive any irregularities or informalities, in the Offers submitted. The Authority further reserves the right to make such investigations, in accordance with applicable laws, 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 shall 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 response due by 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 response due by 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 common laws or 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 4 above and Section 6 below or through 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 Offerors and 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 venture¹ or a governmental entity. The cover letter must also indicate the state of incorporation of the Potential Purchaser.²
- 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.

The minimum purchase price proposal that FMERA will accept for the Property is Twenty Million One (\$21,000,000.00) Dollars.

- c. **Offer Deposit.** A payment of five (5%) percent of the purchase price offered by the Potential Purchaser 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 & Sale Agreement and Redevelopment Agreement (“PSARA”) with FMERA being fully negotiated and signed by the Potential 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 or 732-720-6350 for wiring instructions.

- d. **Conceptual Redevelopment Plan.** A conceptual redevelopment plan, including a schematic site plan, 3-D/artists’ rendering or elevations showing typical building design, open space design or other key design improvements, if any, at the Property, as well as

¹ A joint venture must identify a single point of contact. The person identified will be the senior contact person for the joint venture and will be the main point of contact for any matters pertaining to the joint venture’s work and will also be responsible for the performance of the contract, overseeing the jobsite, and reporting to and implementing the instructions of the joint venture. In addition, the Offer must identify the scope of work for each firm in the joint venture. The Authority will not accept an Offer from separate firms without a joint venture agreement, and all contract compliance forms from each business entity participating the joint venture.

² A Selected Potential Purchaser shall not be permitted to assign the redevelopment project, or any portion thereof, to any entity that is not an Affiliate (as that term is defined in Attachment #5 – PSARA Template) at any stage prior to the issuance of a Certificate of Completion, N.J.A.C. 19:31C-3.24(f) by FMERA.

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 an Offer 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. If the Potential Purchaser is relying on any owner or member to meet its financial requirements, that person must be identified and cannot be substituted without FMERA's prior written consent. **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 time to complete purchase (including required due diligence and approval periods), construction schedules,³ 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. **Planning, Design, 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. Also, include a list of potential planning and design consultants outside the Potential Purchaser's organization with specific information documenting the consultants' work on similar projects. Following the contract award, if any individual identified for managerial experience or experience needs to be substituted, the Selected Potential Purchaser shall notify FMERA's Executive Director, in writing, and provide a detailed justification documenting the need for the substitution.
- 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. **Selected Potential Purchaser will be held to a minimum permanent jobs creation number based on this estimate which will be a condition of the PSARA with the Selected Potential Purchaser. The PSARA will provide for liquidated damages should the Selected Potential Purchaser fail to meet its permanent job creation estimate.**
- i. **Disclosure of Investment Activities in Iran.** A completed and signed Disclosure of Investment Activities in Iran form.

³ It is a requirement that the contract include commencement and completion deadlines for the development project, or any portion thereof. See Attachment #5.

- j. **Chapter 51 Form.** A completed and signed Chapter 51 form, as discussed in Section 7.1.

6.0 QUESTIONS AND ANSWERS

The Authority will accept questions from Potential Purchasers regarding any aspect of this RFOTP via e-mail only until 5:00 p.m. Eastern Daylight/Standard Time on June 4, 2021. Questions should be directed via e-mail to:

sgiberson@njeda.com

All answers to questions posed will be posted on the Authority website at www.fortmonmouthnj.com through addenda (if any) to this RFOTP made available to all Potential Purchasers at the Authority website. Other forms of communications regarding questions to the RFOTP will not be permitted, and as discussed in Section 5, will result in the immediate rejection of the Potential Purchaser's Offer.

7.0 COMPLIANCE WITH STATE LAW REQUIREMENTS

7.1 Chapter 51, Executive Order No. 117

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, then-Governor James E. McGreevey issued Executive Order 134 on September 22, 2004. To this end, Executive Order 134 prohibited State departments, agencies and authorities from entering into contracts exceeding \$17,500 with individuals or entities that made certain political contributions. Executive Order 134 was superseded by Public Law 2005, c. 51, which was signed into law on March 22, 2005 ("Chapter 51").

On September 24, 2008, Governor Jon S. Corzine issued Executive Order No. 117 ("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. The Executive Orders and the legislation itself contain additional restrictions and reporting requirements that necessitate a thorough review of the provisions. Pursuant to the requirements of Chapter 51, EO 117 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.

Currently, 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 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 P.L. 2005, c. 51;
- (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 P.L. 2005, c. 51;
- (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 P.L. 2005, c. 51;
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 P.L. 2005, c 51.

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 Offer. The Potential Purchaser selected to provide services to the Authority shall maintain compliance with Chapter 51, EO 117 during the term of its engagement.

- (e) Political Campaign Contribution provisions will be included in and be a part of the contract that the selected entity will be required to sign.

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.

7.3 Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, all Offers 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 Offer.**

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-13(g).
- (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 for a period of five (5) years from the date of completing the development of the Property. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

8.0 EVALUATION CRITERIA

FMERA will evaluate each 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; and prior experience with the Potential Purchaser. Please note, all Potential Purchasers shall receive an initial score of five (5) for Score Sheet Evaluation Criteria #6 – Prior Experience with Potential Purchaser. Points will only be further deducted if FMERA's prior experience with the Potential Purchaser has been negative. **Attachment #3** contains the proposed evaluation score sheet and weightings.

Potential Purchasers must 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 it, 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.

9.0 PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT TEMPLATE

Attachment #5 contains the template Purchase and Sale Agreement and Redevelopment Agreement (PSARA template). The business terms of the PSARA are negotiable, subject to the mandatory terms of this RFOTP. Non-business terms may be negotiated in cases where the Property or some other related aspect of the redevelopment requires modification. This PSARA Template shall be the basis for the final contract, subject to approval by the FMERA Board, in its sole discretion. FMERA reserves the right to update the PSARA template without notice.

ATTACHMENT #1 Description of Property

The Property totals approximately 82.2± acres and fronts on Route 35 and Avenue of Memories in Eatontown. This parcel also includes 1.27± acres of environmental Carve-out area. Please review Sections 1.1 and 1.2 for greater detail.



**ATTACHMENT #2
REQUIRED FORMS**



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230**

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

BID SOLICITATION #: _____

VENDOR/BIDDER: _____

PART 1

CERTIFICATION

**VENDOR/BIDDER MUST COMPLETE PART 1 BY CHECKING ONE OF THE BOXES
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 nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of the Treasury’s Chapter 25 list as a person or entity engaged 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>. Vendors/Bidders **must** review this list prior to completing the below certification. **Failure to complete the certification will render a Vendor's/Bidder’s proposal non-responsive.** If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the 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.

CHECK THE APPROPRIATE BOX

- OR**
- A. I certify, pursuant to Public Law 2012, c. 25, that neither the Vendor/Bidder listed above nor any of its 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”). Disregard Part 2 and complete and sign the Certification below.
- B. I am unable to certify as above because the Vendor/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 information will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2

PLEASE PROVIDE ADDITIONAL INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

If you checked Box “B” above, provide a detailed, accurate and precise description of the activities of the Vendor/Bidder, or one of its parents, subsidiaries or affiliates, engaged in the investment activities in Iran by completing the boxes below.

ENTITY NAME: _____

RELATIONSHIP TO VENDOR/BIDDER: _____

DESCRIPTION OF ACTIVITIES: _____

DURATION OF ENGAGEMENT: _____

ANTICIPATED CESSATION DATE: _____

VENDOR/BIDDER CONTACT NAME: _____

VENDOR/BIDDER CONTACT PHONE No.: _____

Attach Additional Sheets If Necessary.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) 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. If I do so, I will be subject to criminal prosecution under the law, and 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.

Signature

Date

Print Name and Title

INFORMATION AND INSTRUCTIONS

For Completing the “Two-Year Vendor Certification and Disclosure of Political Contributions” Chapter 51 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 use NJSTART (<https://www.njstart.gov/bsol/>) to check the status of a vendor’s Chapter 51 certification before contacting the Review Unit’s mailbox at CD134@treas.nj.gov. If the State Agency does not find any Chapter 51 Certification information in NJSTART and/or the vendor is not registered in NJSTART, then the State Agency should send an e-mail to CD134@treas.nj.gov to verify the certification status of the vendor. If the response is that the vendor is NOT within an approved two-year period, then forms must be obtained from the vendor and forwarded for review. If the response is that the vendor is within an approved two-year period, then the response so stating should be placed with the bid/contract documentation for the subject project.

Instructions for Completing the Form

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.

State Agency Procedure for Submitting Form(s)

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

Business Entity Procedure for Submitting Form(s)

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

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

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

Questions & Information

Questions regarding 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>.



Division of Purchase and Property

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

FOR STATE 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 (If the corporation only has one officer, please write "sole officer" after the officer's name.)
- 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.

Also Note: "N/A will not be accepted as a valid response. Where applicable, indicate "None."

All Officers of a Corporation or PC

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

All Equity partners of a Partnership

All Equity members of a LLC

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

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. 19:44A-3(n)

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 _____ |
| If this form is not being completed electronically, please attach additional contributions on separate page. Click the "Add a Contribution" tab to enter additional contributions. |

Remove Contribution

Add a Contribution

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

Part 3: Certification (Check one box only)

- (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:

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

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

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

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

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

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

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

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

Signed Name _____ Print Name _____

Title/Position _____ Date _____

Procedure for Submitting Form(s)

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

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

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

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

**ATTACHMENT #3
EVALUATION SCORE SHEET**

**Fort Monmouth Economic Revitalization Authority (FMERA)
Request for Offers to Purchase
Fort Monmouth -- Parcel B RFOTP**

Potential Purchaser: _____

Evaluator #: _____

| <u>Sample Score Sheet</u> | <u>Score 0-10</u> x | <u>Weight</u> = | <u>Criterion</u> <u>Score</u> |
|--|------------------------|--------------------|----------------------------------|
| 1. Purchase price | | 30 | |
| 2. Estimated permanent jobs to be created at or relocated to the parcel | | 10 | |
| 3. Purchase term including due diligence period and time needed to obtain approvals as well as payment for such period | | 10 | |
| 4. Proposed project capital investment | | 15 | |
| 5. Potential Purchaser(s) financial capability to meet the proposed terms of purchase and project completion | | 10 | |
| 6. Prior experience with the Potential Purchaser | | 5 | |
| 7. Impact to host municipality including commitment to create an exciting gateway into the Fort; develop portion of site as a town center with a vibrant pedestrian environment; include diverse mix of use types including retail and other amenities; and provide owner-occupied housing | | 20 | |
| | | | |
| Total Score | | 100 | |

**ATTACHMENT #4
REDEVELOPMENT STATUS**

FORT MONMOUTH REDEVELOPMENT STATUS



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

FMERA 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 and has also purchased the former Charles Wood Fire House for redevelopment.



AcuteCare's renovated facility in the Oceanport 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 1st Quarter of 2015 and subsequently added 81 senior-living units to the property.



Building 2525 in Tinton Falls, home of Aaski Technology

FMERA acquired Building 2525 in Tinton Falls from the Army and sold it to RADAR Properties in February 2016. RADAR leased 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 2290 in Tinton Falls, Trinity Hall

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 was completed in January 2019 and includes new classrooms, office and administrative space, a multipurpose room, a chapel, and a new entrance lobby.



Anthem Place by Lennar in Tinton Falls

FMERA sold Parcels C and C-1 to Lennar Corporation for the development of 288 residential units and limited commercial, including single family homes, townhomes, and a 20% affordable housing component.



Rendering of The Loft, formerly Fort Monmouth's Dance Hall

In 2019, FMERA transferred the former Dance Hall in Oceanport along with adjacent parkland to The Loft Partnership, for renovation as an entertainment and events space. The Loft is planned to serve as a wedding and events space, complete with a microbrewery and is anticipated to be complete by the end of 2021.



Renderings of Office/Flex/Commercial Space to be Constructed by OPort Partners

In 2020, FMERA transferred approximately 25 acres of property and existing improvements in Oceanport to Red Bank-based OPort Partners for the reuse of the former Commissary, demolition of existing buildings, and new construction of additional commercial space for innovative food uses, high-tech, office, flex, and other complementary commercial uses and plans to create approximately 750 jobs. OPort will invest \$54.4 million in the property.

**ATTACHMENT #5
PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT
TEMPLATE**

**PURCHASE AND SALE AGREEMENT
AND REDEVELOPMENT AGREEMENT**

BETWEEN

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY

As Seller,

AND

_____,
As Purchaser

As of _____, 20__

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EXHIBIT LIST

A – Conceptual Site Plan

B – Boundary Survey & Description of Property (to be provided at a later date)

C – Job Creation Promissory Note (to be provided at execution)

D – Quitclaim Deed from Army to FMERA

**PURCHASE AND SALE AGREEMENT AND
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of _____, 20__ (the “**Effective Date**”) between **Fort Monmouth Economic Revitalization Authority** (“**FMERA**” or “**Seller**”), a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and _____ (“_____” or “**Purchaser**”), a _____ of the State of New Jersey, whose address is _____. Seller and Purchaser are collectively referred to herein as the “**Parties**”.

WITNESSETH:

WHEREAS, pursuant to the Defense Base Closure and Realignment Act of 1990, Pub.L.101-510 (10 U.S.C. § 2687), on behalf of the United States Secretary of Defense, the Office of Economic Adjustment recognizes the Seller as the local redevelopment authority for Fort Monmouth, located in the Boroughs of Tinton Falls, Eatontown and Oceanport, New Jersey; and

WHEREAS, FMERA has adopted the Fort Monmouth Reuse and Redevelopment Plan, as same may be amended from time to time (the “**Reuse Plan**”) which governs land use at the Property in conjunction with the land use regulations set forth at N.J.A.C. 19:31C-3.1 et seq. (the “**Land Use Regulations**”); and

WHEREAS, the United States Department of the Army (the “**Army**”) and Seller executed an Economic Development Conveyance Agreement (“**EDC Agreement**”) dated (Phase 1- June 25, 2012 or Phase 2-October 25, 2016) outlining the terms and conditions of the transfer of certain portions of Fort Monmouth, which includes the transfer of the “**Property**” (hereinafter defined) from the Army to Seller; and

WHEREAS, Seller acquired title to certain property identified on the official tax map of ^_____ as a portion of Block ____, Lot ____, and more commonly known as _____ (“_____”), from the Army via a quitclaim deed recorded with the Monmouth County Clerk on

_____ in Book _____ at Pages _____ et seq., incorporated herein by reference (the “**Army Quitclaim Deed**”) along with sufficient adjoining property in order to provide for free and unencumbered ingress and egress to and from the Property to and from adjoining dedicated and proposed public streets so that Seller is able to convey the Property to Purchaser, in accordance with the terms, conditions, covenants and restrictions as set forth in the Army Quitclaim Deed; and

WHEREAS, FMERA publicly advertised a Request for Offers to Purchase (“**RFOTP**”) the ^_____ consisting of buildings and land located at ^_____ situated on an approximately ^_____ (the “**Property**” as further identified, described and defined herein), in accordance with FMERA’s Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq.; and

WHEREAS, FMERA selected _____ as the Purchaser based upon the following factors concerning the Project that are material to Seller’s selection of the Purchaser: i) Purchase Price; ii) estimated jobs to be created at or relocated to the Property; iii) the purchase terms, including Due Diligence Period (hereinafter defined) as well as payment for such period; iv) the proposed Capital Investment (hereinafter defined); v) Purchaser’s financial capability to meet the proposed terms of purchase and Project completion; vi) the future use of the Property; and vii) the impact upon the Municipality; and

WHEREAS, as of the Effective Date or upon New Jersey Economic Development Authority’s (“**NJEDA**”) approval of this Agreement (whichever occurs later), Purchaser is the designated redeveloper of the Property pursuant to N.J.S.A. 52:27I-38; and

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

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

1. Recitals.

The Recitals are imported by reference into this Agreement as if set out and repeated in full herein.

2. Definitions.

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

- a. **"Affiliate"** means with respect to Purchaser, any other Person directly controlling or controlled by, or under direct common Control with _____. For purposes of this definition the term ("**Control**") (including the correlative meanings of the term "controlled by" and "under common control with" as used with respect to Purchaser), shall mean the possession, directly, of the power to direct or cause the direction of the management, operations and policies of the Purchaser, whether through the ownership of voting securities or by contract or otherwise.
- b. **"Affiliate Urban Renewal Entity"** means an entity meeting the requirements of Section 27 and qualifying under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.
- c. **"Affordable Home"** shall mean a residential rental or a for-sale unit with affordability controls as defined by the Affordable Housing Regulations, and as approved and administered by the Municipality or the administrative agent appointed under the Affordable Housing Regulations, that meets the following requirements: (a) is reserved for occupancy by low or moderate income households in accordance with Affordable Housing Regulations; (b) has a restriction on the rental or sale prices as determined in accordance with the Affordable Housing Regulations, (c) can only be rented to Qualified Persons and (d) contains the number of bedrooms as required by the Affordable Housing Regulations.)
- d. **"Affordable Housing Regulations"** shall mean the requirements established pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), the Federal Fair Housing Act (42 U.S.C. §§ 3601, et seq.), and N.J.S.A. 45:22A-46.3 et seq. (the "Sarlo Act") subject to confirmation by the New Jersey Housing and Mortgage Finance Agency that the Sarlo Act applies to the Project, and all other applicable laws, court

decisions and regulations relating to the establishment and regulation of Affordable Homes.)

- e. **“Agreement”** means this Purchase and Sale Agreement and Redevelopment Agreement dated as of the Effective Date, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- f. **“All Approvals”** means all Non-Appealable Final Approvals, permits, decisions, reviews and agreements issued by municipal, county, state, federal and quasi-governmental authorities needed to obtain building permits for all of the commercial ^ (residential) and other uses on the Property and related off-site improvements so as to allow the continuous development of the Project and which Approvals shall contain terms and conditions acceptable to Purchaser in its reasonable discretion, including but not limited to, the following Non-Appealable Final Approvals:
 - i. the mandatory conceptual review approval of the Project by FMERA which is required pursuant to N.J.A.C. 19:31C-3.20(c) (**“Mandatory Conceptual Review”**);
 - ii. preliminary and final subdivision approval, if applicable;
 - iii. preliminary and final site plan approval, if applicable, including the required review by FMERA in connection with “use-type” variances;
 - iv. a confirmation that there is no evidence of areas of concern (**“AOC”**) or a Final Remediation Document issued to Purchaser by either the New Jersey Department of Environmental Protection (**“NJDEP”**) or Purchaser’s licensed site remediation professional that documents that the Property has been remediated and which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2;
 - v. ^ (a representation from the Municipality or the administrative agent appointed under the Affordable Housing Regulations, that all of the proposed Affordable Homes adhere to all Affordable Housing Regulations;)
 - vi. such permits or approvals as may be needed from the NJDEP which may include, but are not limited to, a sewer extension permit, stream encroachment permit, and fresh water wetlands permit, and any approvals or permits required

pursuant to the Coastal Area Facilities Review Act (“CAFRA”) N.J.S.A. 13:19-1 et seq.

Each such approval shall be referred to herein as an “**Approval**” or collectively as the “**Approvals**”.

- g. “ALTA Survey”** shall mean a comprehensive boundary survey that adheres to the national standards adopted by the American Land Title Association and National Society of Professional Surveyors.
- h. “Approval Costs”** shall mean all costs and expenses including, without limitation, attorneys’, consulting, engineering, and application fees associated with obtaining All Approvals.
- i. “Approval Period”** shall be ^_____ (___) months commencing upon the completion of the Due Diligence Period in which Purchaser will diligently seek to obtain All Approvals.
- j. “Approval Extension Period”** shall be as defined in Subsection 7(c)(i).
- k. “Army”** means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- l. “Army Quitclaim Deed”** means the quitclaim deed that FMERA received from the Army and recorded with the Monmouth County Clerk on _____ in Book _____ at Pages _____ et seq. attached hereto as **Exhibit D**, whereby the Army conveyed all right, title and interest to the Property to FMERA, subject to the terms, conditions, covenants and restrictions set forth in the Army Quitclaim Deed.
- m. “Boundary Survey”** is a means to formally define the boundaries of a property, showing the corners of a parcel of land described in a deed, attached hereto as **Exhibit B**.
- n. “Capital Investment”** means demolition & site work, off-site improvement costs, construction costs, labor, and all other costs included in construction of the Project, exclusive of Property acquisition and the costs of obtaining All Approvals.
- o. “Certificate of Completion”** means a document issued by FMERA constituting a recordable, conclusive determination of the Completion of the Project and satisfaction and termination of this Agreement and the Declaration of Covenants with respect to the Project pursuant to N.J.A.C. 19:31C-3.24(f).

- p. **“Certificate of Occupancy”** means a document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed and will be used in compliance with all applicable municipal codes and ordinances.
- q. **“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended.
- r. **“CERCLA Covenants”** means those certain covenants required by CERCLA which are contained in the Army Quitclaim Deed.
- s. **“Closing”** shall mean the transfer of the Property [^](, or portion thereof in accordance with this Agreement,) from the Seller to the Purchaser and the transfer of the Purchase Price [^](, or portion thereof in accordance with this Agreement,) from the Purchaser to the Seller which shall occur after the satisfaction or the waiver of the Conditions Precedent to Closing set forth in Section 13.
- t. **“Commence Construction”**, **“Commenced Construction”**, **“Commence the Construction”** or **“Commencement of the Construction”** shall mean the receipt of building permits by the Purchaser and any two of the following items (i.) mobilization of contractors on site, (ii.) demolition of existing structures, if applicable, (iii.) installation of infrastructure on site, (iv.) site work, or (v.) building renovation work.
- u. **“Complete”**, **“Completed”** or **“Completion”** means the issuance of a Certificate of Occupancy by the Municipality for a building to be occupied for the intended commercial use as part of the Project. Thereafter, Purchaser may apply to Seller for a Certificate of Completion subject to the requirements of N.J.A.C. 19:31C-3.24(f), if all other requirements of this Agreement have been satisfied.
- v. **“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Section 13.
- w. **“Deposit”** shall mean collectively the Initial Deposit and Second Deposit described in Section 5 herein.
- x. **“Discharge”** pursuant to N.J.S.A. 58:10-23.11b, as same may be amended, means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of

the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

- y. **“Due Diligence Period”** means the ^_____ (___) day period commencing on the Effective Date of this Agreement and ending at five o’clock (5:00) p.m. on the _____ (___) day thereafter, during which the Purchaser upon prior written notice to Seller, at its sole cost and expense, may investigate the Property to determine whether the as-is condition of the Property is satisfactory to the Purchaser. The Due Diligence Period shall at Purchaser’s written request, may be extended for one (1) additional thirty (30) day period with FMERA’s approval (“**Due Diligence Extension Period**”), to complete any environmental investigations.
- z. **“EDC Agreement”** shall mean the Agreement between the Army and FMERA, dated (^Phase 1- June 25, 2012 or Phase 2-October 25, 2016), which sets forth the terms by which the Army conveyed portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA acquired same from the Army.
- aa. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement, if no date is set forth in the introductory paragraph, the Effective Date shall mean the date upon which the last party to sign this Agreement executes this Agreement.
- bb. **“Environmental Laws”** or **“Environmental Law”** shall mean each and every applicable federal, state, county or municipal environmental and/or health and safety statute, ordinance, rule, regulation, order, code, directive or requirement.
- cc. **“Escrow Agent”** shall mean the attorney or law firm designated by FMERA as outside counsel for purposes of this transaction and is responsible for holding all deposit monies.
- dd. **“Final Remediation Document”** pursuant to N.J.S.A. 58:10-23.11b, as it may be amended, means a no further action letter (“**NFA**”) issued by the NJDEP pursuant to N.J.S.A. 58:10B-1 et seq., or a response action outcome (“**RAO**”) issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.
- ee. **“Finding of Suitability to Transfer”** or **“FOST”** means the document issued by the Army, dated ^_____. The purpose of the FOST is to document the environmental suitability of the Property for transfer to FMERA consistent with CERCLA Section

120(h) and Department of Defense Policy. In addition, the FOST includes the CERCLA Notice, Covenant and Access Provisions and other Deed Provisions and the Environmental Protection Provisions necessary to protect human health or the environment after transfer of the Property from the Army to FMERA.

- ff. “Fixtures”** means items of property that become so attached to a building or other real property that they become a part of it. They include such items as fireplaces, patios and built-in shelving.
- gg. “Force Majeure”** shall mean the failure or delay of performance by Seller or Purchaser of any provision of the Agreement by reason of the following: labor disputes, strikes, picket lines, boycott efforts, war (whether or not declared), riots, moratorium regarding sewer, water or any other utilities, litigation filed against either Seller or Purchaser affecting the Property, or acts of God.
- hh. “Hazardous Substances”** means all substances set forth in N.J.A.C. 7:1E-1.7 as same may be amended from time to time.
- ii. “Home”** shall mean a residential unit sold or rented, for which there are no restrictions or limitations on the sale or rental price.)
- jj. (“Housing Unit”** means a Home or Affordable Home.)
- kk. “Improvements”** shall mean the buildings, fixtures and structures located on the Property.
- ll. “Interested Parties”** means Purchaser’s Mortgagee, Purchaser’s Lender and/or Purchaser’s Tax Credit Investor.
- mm. “Jobs Report”** means the periodic reports to be provided by the Purchaser to the Seller as required by Subsection 7(e)(i) herein that provides the Seller with information concerning the number of temporary and permanent jobs created by the Purchaser during the construction of the Project and within a certain time period after Completion of the Project as further described in Subsection 7(e)(i).
- nn. “Municipality”** shall mean the Borough of ^ (Oceanport/Eatontown/Tinton Falls), in the County of Monmouth, State of New Jersey.
- oo. “Non-Appealable Final Approval”** shall mean an Approval where the time to challenge or appeal the grant or denial of the Approval or a term or condition of the Approval that is before any administrative body or court of law has expired, and no

challenge or appeal is pending. The term shall also mean an Approval decided after a challenge or appeal has been filed where the challenge or appeal has been decided in Purchaser's favor, and all terms and conditions contained in the Approval are acceptable to the Purchaser in its reasonable discretion.

- pp. "Person"** means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, government authority, or other entity of whatever nature.
- qq. "Personal Property"** means property that is movable and is not affixed to or associated with the land.
- rr. "Project"** the Project is as described herein at Subsection 7(b) and depicted in the conceptual site plan attached hereto as **Exhibit A** ("**Conceptual Site Plan**").
- ss. "Property"** shall mean the land as described and defined in Section 4 of this Agreement and as depicted and described in the Boundary Survey by metes and bounds description located in **Exhibit B**.
- tt. "Purchaser"** shall mean _____ or its authorized assigns or successors pursuant to Section 27.
- uu. "Purchase Price"** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Section 5.
- vv. "Purchaser's Utility Obligation"** shall mean the Purchaser's obligation to undertake infrastructure improvements as defined in Section 47.
- ww. "Qualified Persons"** shall mean those low and moderate-income households who have been approved in advance and in writing by an administrative agent appointed under the Affordable Housing Regulations.)
- xx. "Reuse Plan Amendment"** means a final and unappealable amendment to the Fort Monmouth Reuse and Redevelopment Plan adopted by FMERA pursuant to N.J.A.C. 19:31C-3.27(c).
- yy. "Reversion Cure Period"** shall mean ninety (90) days after Seller's written notice of Seller's intent to exercise its right of reversion during which the Purchaser and/or Interested Parties shall have the opportunity to cure.
- zz. "Reversion Purchase Price"** shall mean the cash to Seller amount on the HUD-1 Settlement Statement/Closing Statement executed at closing.

- aaa.** “Seller’s Net Sale Proceeds” shall mean the entirety of sales proceeds net of real estate commissions, NJEDA working capital loan payoff, if applicable, and homeless trust fund payments (^).
- bbb.** “Seller’s Utility Obligation” shall mean the Seller’s obligation to undertake infrastructure improvements as defined in Section 47.
- ccc.** “Toll”, “Tolled” or “Tolling” shall mean a period of time during which all time frames and obligations of Purchaser or Seller as set forth in this Agreement are suspended in accordance with the terms of this Agreement and which suspension of time frames and obligations shall continue until the event causing the Tolling is resolved to the reasonable satisfaction of the Party seeking the benefit of a Tolling period.

3. Purchase and Sale Agreement.

Subject to the terms and conditions set forth in this Agreement and the performance by the Parties of all of the obligations hereunder, the Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to purchase and acquire from Seller, the Property. The Seller will sell and convey to the Purchaser the Property in its as-is condition, which consists of: (a) the land and all the buildings, Fixtures and other improvements on the land; (b) all of the Seller’s rights relating to the Property; and (c) all Personal Property specifically included in this Agreement.

4. The Property.

The approximately _____ acre parcel that is formally identified as a portion of Block _____, Lot _____, that is located along _____, and that is depicted in greater detail on the Boundary Survey, Block _____, Portion of Lot _____, prepared by _____, dated _____, attached as **Exhibit B**. The Property is improved with _____. The redevelopment and use of the Property by Seller is subject to N.J.A.C. 19:31C-3.1 et seq. (Insert other restrictions as applicable such as Historic District, Tidelands claim, CAFRA, easements, etc.)

5. The Purchase Price.

Subject to any adjustments as called for in Section 24, the price that the Purchaser will pay the Seller as consideration for the Property is _____ (\$) as follows:

At the time of submission of its offer to purchase, Purchaser deposited an **Initial Deposit** with the Seller and the Seller has transferred said Initial Deposit, with interest, to the Escrow Agent, in the amount of: _____ \$

The **Second Deposit** shall be deposited with Escrow Agent by Purchaser upon the execution of this Agreement by the Parties, and shall be transferred, with interest, to the Escrow Agent, in the amount of: _____ \$^

Balance to be paid at closing of title, by wire transfer, in cash or by certified check _____ \$

(insert language regarding Affordable Homes if needed).

6. Purchaser Financially Able to Close.

The Purchaser represents that it has or will have sufficient cash available at Closing to complete the purchase without financing. The Closing shall not be contingent upon the Purchaser or any other Person obtaining financing to pay the Purchase Price. Notwithstanding Purchaser’s representation that it has or will have sufficient cash available at Closing to complete the purchase without financing, Purchaser may in Purchaser’s sole discretion choose to seek and obtain financing to complete the purchase.

7. Capital Investment, Redevelopment Project, Project Approvals, Completion Bond, Job Creation; Security, and Reuse Plan Amendment.

a. **Capital Investment.** Purchaser’s total Capital Investment is estimated at _____ dollars (\$_____). Purchaser shall render progress reports annually

to FMERA following Commencement of Construction as to its cumulative Capital Investment expenditures.

b. Redevelopment Project.

- i. Purchaser represents that it is purchasing the Property with the intent to construct the Project, which consists of _____ (if residential, add affordable housing) The Purchaser’s Conceptual Site Plan for the Project is attached hereto as **Exhibit A**. The Purchaser’s site plan and subdivision plan are subject to (i) Seller’s Mandatory Conceptual Review and (ii) the planning board review process of the Borough of _____. The Project may be amended upon mutual agreement of Seller and Purchaser if Purchaser is unable to obtain the same, subject to FMERA Board approval and Reuse Plan Amendment, as applicable.
- ii. Purchaser shall comply with the following Project schedule:
 1. Purchaser will Commence the Construction of the Project no later than _____ (____) days after Closing.
 2. Purchaser will Complete Construction of the Project no later than _____ (____) months from Commencement of the Construction of the Project.
- iii. It shall be a default under this Agreement for Purchaser to fail to Commence the Construction or Complete the Project timely, as required herein.
- iv. The provisions of this Subsection 7(b) shall survive Closing and run with the land.

c. Project Approvals.

- i. Purchaser shall obtain All Approvals within the Approval Period. In the event that Purchaser is unable to obtain All Approvals within the Approval Period, Seller may grant, at its sole discretion, an extension of the Approval Period for ^an additional _____ (____) month period(s) (“**Approval Extension Period**”) which shall be granted if Seller determines that the Purchaser is diligently and in good faith pursuing All Approvals. Any additional Approval Extension Period shall run from the expiration of the Approval Period. Despite anything to the contrary herein, Purchaser may elect to waive receipt of All Approvals

within the Approval Period or Approval Extension Period and close on the Property without said Approvals as further described in Subsection 13(a)(ii).

- ii. Seller agrees to reasonably cooperate with Purchaser in obtaining any required FMERA signatures or consents in connection with Purchaser's efforts to obtain the Approvals for the development of the Project on the Property and shall endeavor to obtain same from its Executive Director, within one (1) week of presentment; from the FMERA Real Estate Committee, within thirty (30) days from presentment; and from the FMERA Board, within forty five (45) days of presentment, subject to the Governor's ten (10) day veto period. Where required by law, FMERA will sign as owner or applicant on applications made by the Purchaser. Any delay beyond these time periods shall constitute an event entitling Purchaser to Tolling of the time periods set forth herein for performance by the Purchaser. At Closing Seller shall assign any permits or approvals related to the Project to the Purchaser.

d. Financial Assurances and Guarantees.

- i. Prior to the Commencement of the Construction, Purchaser shall post all financial assurances and guarantees required pursuant to municipal ordinances for performance, maintenance and site restoration with the municipality and name FMERA as a beneficiary.
- ii. The provisions of this Subsection 7(d) shall survive Closing.

e. Job Creation; Security.

- i. Purchaser covenants that Purchaser will create a total of ____ (___) construction-related part-time and/or full-time temporary jobs during construction of the Project. Thereafter, Purchaser shall create a total of ____ (___) full-time equivalent permanent jobs at the Property, within ____ (___) months of the Completion of the Project. The Purchaser shall be obligated to provide the Seller with a Jobs Report within ____ (___) months after Completion of the Project. To the extent the Purchaser fails to achieve the required creation of full-time equivalent permanent jobs at the Property within the required time period after the Completion of Project, then on that date it shall be liable to pay to the Seller ____ (\$_____) dollars for each full-

time equivalent permanent job not created. It is understood and agreed that the aforesaid obligation does not apply to the creation of any of the construction-related part-time and/or full-time temporary jobs. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice to Purchaser of failure to achieve the required creation of jobs pursuant to this Section. Purchaser's total obligation shall not exceed _____ (\$_____) total.

ii. Prior to Closing, Purchaser shall secure its obligation to create the required number of full-time equivalent permanent jobs at the Property, or pay Seller the amount per job not created, through the granting of the Job Creation Promissory Note in a form substantially similar to **Exhibit C**. It is agreed and understood that upon receipt of notice of creation of the required full-time equivalent permanent jobs as set forth above or receipt of the payment of any monies for jobs not created, then Seller shall, within thirty (30) days of notice of creation or payment, release the bond, return the deposit or cancel or otherwise discharge the Job Creation Promissory Note which shall thereafter be null and void.

iii. The provisions of this Subsection 7(e) shall survive Closing.

f. Reuse Plan Amendment

i. Purchaser shall provide a refined version of the Conceptual Site Plan attached hereto as **Exhibit A** ("Final Conceptual Site Plan"), no later than forty-five (45) days after the expiration of the Due Diligence Period. FMERA agrees that it will obtain the Reuse Plan Amendment for the sole purpose of permitting the principal uses shown in the Final Conceptual Site Plan for the Project within six (6) months of the receipt of the Final Conceptual Site Plan. Notwithstanding anything in this paragraph, any time Purchaser submits a revised version of the Final Conceptual Site Plan, FMERA shall have the sole discretion whether to accept that revised version and the timeline provided in this paragraph shall start as if no Final Conceptual Site Plan had been provided previously.)

ii. Purchaser shall provide a refined version of the Conceptual Site Plan attached hereto as **Exhibit A** along with a detailed memo outlining the proposed changes to the Reuse Plan required to permit the development of the Project as proposed

by the Purchaser (together the refined Conceptual Site Plan and memo are the “Final Conceptual Site Plan”) no later than forty-five (45) days of the expiration of the Due Diligence Period. FMERA shall provide to Purchaser a draft Reuse Plan Amendment based upon Purchaser’s Final Conceptual Site Plan within thirty (30) days of receipt of Purchaser’s Final Conceptual Site Plan. Purchaser shall provide comments to FMERA on the draft Reuse Plan Amendment within seven (7) days of receipt of same. FMERA’s planner shall provide a final draft Reuse Plan Amendment to FMERA and Purchaser incorporating Purchaser’s comments to the extent accepted by FMERA within seven (7) days of receiving Purchaser’s comments. Purchaser shall have seven (7) days from receipt of the final draft Reuse Plan Amendment to advise FMERA if the final draft is acceptable. In the event that Purchaser does not accept the final draft Reuse Plan Amendment, Purchaser shall provide notice in writing to FMERA of the reasons the final draft Reuse Plan Amendment is unacceptable to Purchaser and of Purchaser’s intent to terminate this Agreement if the issues go unresolved. FMERA shall have seven (7) days from receipt of same to enter into discussions with Purchaser regarding the unresolved issues, and either revise or refuse to revise the final draft Reuse Plan Amendment. In the event the Parties cannot agree on an acceptable Reuse Plan Amendment, Purchaser shall have the right to terminate this Agreement and receive a return of its entire Deposit, and the Parties shall have no further obligations to each other except those that survive termination of this Agreement. Upon Purchaser’s approval of the final draft Reuse Plan Amendment, FMERA’s Board shall have thirty (30) days to introduce the final draft Reuse Plan Amendment. After the Board’s introduction of the final draft Reuse Plan Amendment and at the end of the Governor’s veto period, the host municipalities shall have forty-five (45) days to review and comment on the final draft Reuse Plan Amendment. FMERA shall have forty-five (45) days to adopt the Reuse Plan Amendment after the end of the municipal comment period. Notwithstanding anything in this paragraph, any time Purchaser submits a revised version of the Final Conceptual Site Plan (whether a revised site plan or a revised detailed memo), the timeline provided

in this paragraph shall start as if no Final Conceptual Site Plan had been provided previously.)

8. Declaration of Covenants.

The quitclaim deed from Seller to Purchaser shall include a declaration of covenants and restrictions upon the Property, which shall run with the land and shall be released upon the issuance of a Certificate of Completion issued by Seller. The Declaration shall indicate or otherwise contain:

- i.** The uses of the Property shall be limited to those uses permitted pursuant to the Reuse Plan, as amended.
- ii.** Purchaser, as the approved redeveloper, will Commence the Construction and Complete the Project within the period of time established in Subsections 7(b)(ii)(1) and (2) of this Agreement; and
- iii.** Purchaser, as the approved redeveloper, will not sell, lease or transfer the Property, the Project or this Agreement prior to the Completion of the Project without the written consent of FMERA, except as set forth in Section 27 of this Agreement. (^Notwithstanding the foregoing, nothing herein shall preclude the Purchaser from (i) engaging in marketing and leasing activities or from selling individual units for the Project provided that that Affordable Home or Home that is the subject of leasing or sale activity has been issued a Certificate of Occupancy prior to the lease or conveyance of the Home or Affordable Home, or (ii) assigning this Agreement to an Affiliate in accordance with the terms of Section 27 hereof.)

9. Reversion to Seller.

The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth in Subsections 7(b)(ii)(1) and (2) have not been met, then Seller, at its sole option and discretion, shall have the right of reversion of title to the Property. Such right of reversion shall be, by its terms as set forth in the quitclaim deed, subordinate to any and all land, construction, permanent or other lender whose lien shall have superiority over any such rights. Seller's reversion right shall

always be subject to and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage in favor of any Interested Parties or (ii) any rights or interests for the protection of Interested Parties.

- a. Seller agrees to provide Purchaser and Interested Parties with a Reversion Cure Period. During the Reversion Cure Period, any of the Interested Parties may either (a) cure the default identified by the Seller in their default notice or (b) agree with Seller on a proposal which must be acceptable to both Parties in both Parties' reasonable discretion, for one or more of the Interested Parties to cure Purchaser's default beyond the Reversion Cure Period. If following the Reversion Cure Period, the default is neither cured nor have the Parties agreed upon a proposal to cure the default, then Seller may move forward with its right of reversion.
- b. Should Seller exercise its right of reversion, Seller shall pay Purchaser a reversion purchase price (the "**Reversion Purchase Price**"). Any amount of the Reversion Purchase Price paid by Seller shall be applied first to reduce any outstanding balance of any mortgage or lien imposed on the Property by Purchaser. Purchaser shall, at no additional cost to Seller, convey ownership of all plans, studies, approvals, etc., along with its rights to the Property.
- c. Purchaser or its successors and assigns may request that the Seller execute a release evidencing the termination of Seller's right of reversion on any portion of the Property that has been Completed upon the presentation of (i) a valid Certificate of Completion and (ii) a form of release that shall be recorded at the sole cost and expense of the Purchaser or its successors and assigns.
- d. The provisions of this Section 9 shall survive Closing and/or termination of this Agreement and run with the land.

10. Prevailing Wage.

Prevailing wage will apply only to the extent that the Project includes "public work" as that term is defined in the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., or if the Purchaser receives financial assistance from FMERA, the State or any other State entity. The provisions of this Section 10 shall survive Closing.

11. Title and Survey Investigation.

- a.** As of the Effective Date, Seller has provided Purchaser with the Boundary Survey. Prior to Closing, Seller will cause the Boundary Survey to be certified to Purchaser, Purchaser's attorney, the title company and such additional parties as may be reasonably requested by Purchaser, unless Purchaser elects to obtain an ALTA Survey as described in Subsection 11(c).
- b.** Seller agrees to deliver title to the Property that is good, marketable, fee simple title, valid of record and insurable at regular rates.
- c.** Purchaser shall obtain and deliver a title commitment from the title company along with a list of title objections identified by Purchaser to Seller ("**Title Objections**") and may obtain an ALTA Survey no later than thirty (30) days from the Effective Date. Not later than ten (10) days after Seller receives the Title Objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either (i) terminate this Agreement within thirty (30) days of receipt of Seller's response (or within thirty (30) days of Seller's failure to respond) or (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the Title Objections by the Purchaser and the Seller shall have no further obligation to cure the Title Objections either prior to or at Closing.
- d.** Purchaser shall have the further right to order a run-down title examination(s) at any time prior to Closing, at Purchaser's cost and expense, and to submit to Seller any new objections to matters which may have arisen since Purchaser's initial title and survey examination ("**New Objections**") no later than ten (10) days after Purchaser receives the New Objections. Not later than ten (10) days after Seller receives the New Objections, Seller shall notify Purchaser which of the New Objections, if any, Seller shall cure prior to or at Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either (i) terminate this Agreement within thirty (30) days of receipt of Seller's response (or within thirty (30) days of Seller's failure to respond) or (ii) proceed under this

Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the New Objections by the Purchaser and the Seller shall have no further obligation to cure the New Objections either prior to or at Closing.

- e. If Seller fails to meet the requirements of Subsection 11(b), or if Seller has agreed to cure a title objection pursuant to Subsection 11(c) and fails to do so, or if Purchaser has New Objections and/or survey objections as a result of its run-down title examination pursuant to Subsection 11(d) and Seller fails to cure such objections, then the Parties may:
 - i. delay Closing to a date mutually agreed upon by the Parties until such time that the Seller or Purchaser removes or cures such non-permitted exception(s) at Seller's expense;
 - ii. proceed to Closing with sufficient sums from the Purchase Price (as determined by the title company as being necessary to cure or clear such non-permitted exception(s)) being placed into escrow with the title company to be used by Purchaser to cure or clear such non-permitted exception(s), provided that the amount to be placed into escrow (which shall include any funds to address any environmental remediation obligations as further described in Subsection 20(c)) shall not exceed Seller's Net Share of the Purchase Price; or
 - iii. terminate this Agreement, whereupon the Initial and Second Deposits and all interest accrued thereon shall be promptly returned to Purchaser by the Escrow Agent.
- f. From the date of this Agreement, Seller shall not permit any further encumbrance on the Property other than with respect to any working capital loan(s) Seller may receive from NJEDA without Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion.

12. Due Diligence Period.

- a. Purchaser and its officers, employees, agents, contractors, or licensees shall have the right, during the Due Diligence Period, and at all times during the term of this Agreement, to access the Property, to inspect the Property and to investigate all matters

relating thereto, including, but not limited to, existing zoning requirements, the physical condition of the Property, the environmental condition of the Property and its environs, and any other matters Purchaser deems relevant to its decision to purchase the Property.

- b. Purchaser may terminate this Agreement in its sole, absolute and unfettered discretion by delivering written notice of such termination to the Seller prior to five o'clock (5:00) P.M. on the last day of the Due Diligence Period or Due Diligence Extension Period, if applicable, and receive a full refund of the Initial and Second Deposits, and all interest accrued thereon so long as it has received no additional extensions. Should Purchaser request and the FMERA Board approve, in its sole discretion, an extension to the Due Diligence Period/Due Diligence Extension Period, Purchaser may terminate this Agreement by delivering written notice of such termination to the Seller prior to five o'clock (5:00) P.M. on the last day of the extended Due Diligence Period and receive its Second Deposit, and all interest accrued thereon.
- c. Purchaser and its officers, employees, agents, contractors, or licensees shall provide Seller with proof of the following insurances prior to being provided access to the Property:
 - i. **Comprehensive General Liability Policy** (including insurance with respect to owned or operated motor vehicles which may be provided under a separate policy) as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an additional insured endorsement (broad form) for contractual liability. Limits of liability shall be maintained at the level of Five Million Dollars (\$5,000,000.00) per occurrence of bodily injury, death and property damage liability except that automobile liability may be at a minimum of One Million Dollars (\$1,000,000.00) per occurrence of bodily injury, death and property damage liability. Seller shall be named an additional insured on this policy; and
 - ii. **Worker's Compensation and Employer's Liability Insurance** applicable to the Laws of the State of New Jersey with limits of not less than One Hundred Thousand Dollars (\$100,000.00) per occurrence for bodily injury liability and One Hundred Thousand Dollars (\$100,000.00) occupational disease per employee

with an aggregate limit of Five Hundred Thousand Dollars (\$500,000.00) occupational disease.

- d. If, at or before Closing, Purchaser elects to terminate this Agreement and not purchase the Property, Purchaser shall repair any damage caused by its investigations and shall restore the Property to substantially the same condition as existed immediately prior to such investigations. Purchaser hereby indemnifies and holds Seller harmless from any liability to the extent related to any negligent act or omission of Purchaser or Purchaser's officers, employees, agents, contractors, or licensees in the performance of any and all activities conducted on the Property by Purchaser until Closing, unless such liability is the result of Seller's gross negligence or intentional acts or omissions.

13. Conditions Precedent to Closing.

- a. Closing is subject to and conditioned upon the following conditions, which are agreed by the Parties to be included for the protection of the Parties:
 - i. Approval of Purchaser as redeveloper of the Property by the NJEDA Board;
 - ii. The receipt by Purchaser of All Approvals within the timeframes set forth in Subsection 7(c). Despite anything to the contrary herein, Purchaser may elect to waive All Approvals and close on the Property without said Approvals (provided that Purchaser will still be required to obtain *(receipt of a representation from the Municipality or the administrative agent appointed under the Affordable Housing Regulations, that all of the proposed Affordable Homes adhere to all Affordable Housing Regulation, and)* a Mandatory Conceptual Review approval of the Project by FMERA prior to seeking preliminary and final site plan approval from the Borough) with the understanding that any such waiver will not Toll or delay in any way the Purchaser's obligation to comply with the Project Schedule set forth in Section 7 herein;
 - iii. Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of Closing and shall have cured all defaults;

- iv. Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 11; and
 - v. (^Seller shall have obtained a Reuse Plan Amendment for the Property pursuant to Subsection 7(f) hereof.)
 - vi. ^ (insert any transaction specific conditions)
- b. The Parties mutually agree as follows concerning the Conditions Precedent to Closing:
- i. Each Party shall use its best efforts to perform all conditions required by this Agreement diligently prior to or as of Closing and each Party shall have cured any of its respective defaults prior to Closing or at Closing; and
 - ii. Either Party may waive any Conditions Precedent to Closing that is specifically for such Party's benefit or may waive the cure of the other Party's default at any time prior to Closing or at Closing, subject to the terms of Subsection 13(a)(ii). Such waiver shall be in writing and acknowledged by both Seller and Purchaser.

14. Time and Place of Closing.

- a. The Closing shall occur no later than ____ (____) days after satisfaction or waiver of the Conditions Precedent to Closing as detailed in Section 13 (“**Closing Date**”).
- b. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and the title company:
 - i. quitclaim deed;
 - ii. entity resolution;
 - iii. paid receipt of Real Estate Broker;
 - iv. tax and utility bill adjustments, if any;
 - v. Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA);
 - vi. Bill of Sale for any personalty;
 - vii. IRS Form 1099;
 - viii. a post-Closing adjustments letter whereby the Parties agree to readjust the pro-rations should any error or mistake be discovered within twelve (12) months of Closing;

- ix. (insert any other documents needed, i.e. mortgage release); and
- x. such other documentation as reasonably requested by the Title Company to complete Closing.
- c. At Closing, Purchaser shall deliver the Purchase Price and a title closing statement.
- d. At Closing, Purchaser shall pay to Seller the balance of the Purchase Price due at Closing in accordance with Section 5. Purchaser shall make payment at Purchaser's option by either certified check or attorney trust account check or with the consent of Seller by wire transfer.

15. Transfer of Ownership.

Upon receipt of payment of the balance of the Purchase Price at Closing, the Seller shall transfer ownership of the Property to the Purchaser via a properly executed quitclaim deed. The quitclaim deed shall be in a form reasonably acceptable to Purchaser and the title company. The quitclaim deed between the Parties shall include a metes and bounds description of the Property being transferred that shall be based upon the Boundary Survey. The quitclaim deed between the Purchaser and Seller shall be subject to all notices, CERCLA Covenants, covenants, access provisions, deed provisions and environmental protection provisions recorded upon the Property as set forth in the Army Quitclaim Deed, and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24. (^ if subdivision required - The Seller will deliver at Closing quitclaim deed(s) that provide for the subdivision of the Property into ___ lots for _____. Seller will cooperate to the extent feasible to achieve such subdivision by deed, but shall not be obligated to deliver deeds that subdivide the Property into individual Home or Affordable Home lots. Seller may however in its sole discretion elect to deliver deeds that subdivide the Property into individual Home or Affordable Home lots.)

16. Personal Property and Fixtures.

All Personal Property and Fixtures are **INCLUDED** in this sale unless they are listed below as being **EXCLUDED**.

- a. The following Fixtures are **EXCLUDED** from this sale: **none**.
- b. The following Personal Property is **EXCLUDED** from this sale: **none**.

17. Physical Condition of the Property.

This Property is being sold “AS IS”. The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Purchaser has inspected the Property and relies on this inspection and any rights, if any, which may be provided for elsewhere in this Agreement. Until Closing, the Seller agrees (subject to Purchaser’s obligation to assume certain property management and utility obligations as provided in the Purchaser’s Utility Obligations) to maintain the grounds and secure, but not maintain, the buildings and improvements.

18. Acknowledgment and Covenants Regarding FOST.

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

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

19. Risk of Loss.

Seller shall be responsible for all losses and damages to the Property by fire, windstorm, casualty or other cause, and for all damages or injuries to persons or property occurring thereon or

relating thereto (except as may be caused by acts of the Purchaser or its officers, employees, agents, contractors, or licensees) prior to Closing. Notwithstanding the foregoing, Seller shall have no obligation to repair, replace or demolish any portion of the Property that is damaged or destroyed prior to Closing which is intended to be demolished by Purchaser. Seller shall take reasonably appropriate measures to ensure that the Property is secure prior to Closing. Seller and Purchaser agree that any damage or destruction to the Property shall not otherwise affect the rights and responsibilities under this Agreement, and that Purchaser shall not be entitled to any offset against the Purchase Price for any damage or destruction to the building, structures, fixtures or improvements located on, under or above the Property that might occur prior to Closing.

20. Environmental Matters.

- a.** Purchaser and Seller acknowledge that pursuant to CERCLA, the Army will retain responsibility for any Army caused environmental contamination (other than mold, asbestos containing materials, lead-based paint and commercially-applied pesticides and termiticides) that may be present on the Property as of the date of the Army Quitclaim Deed and as otherwise set forth in the RFOTP. The Parties acknowledge that the quitclaim deed between Seller and the Purchaser shall contain the CERCLA Covenants contained in the Army Quitclaim Deed and the FOST for the Property. The Seller shall not bear any responsibility or liability to the Purchaser or its successors or assigns for the presence of mold, asbestos containing materials, lead-based paint or commercially applied pesticides and termiticides on the Property as of or after the Closing. Purchaser shall be solely responsible for the proper disposal of any mold, asbestos containing materials, lead-based paint or commercially applied pesticides encountered during the renovation or demolition of the building(s) and improvements on the Property, if applicable.
- b.** If Seller receives notice from any Person at any time prior to the Closing that any Discharge of a Hazardous Substance has occurred on the Property which has not already been documented in the FOST, then Seller shall provide Purchaser with notice of the Discharge on the Property within three (3) days of Seller receiving notice of the Discharge. Seller shall also advise Purchaser within thirty (30) days of receiving the notice of Discharge whether Seller or the Army or other responsible third party shall

remediate such Discharge and obtain a Final Remediation Document. If Seller advises Purchaser that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge and obtain a Final Remediation Document, then Purchaser shall have thirty (30) days from the receipt of this notice from the Seller to elect to either (i) terminate this Agreement and receive a full refund of the Deposit, and all interest accrued thereon, or (ii) proceed to Closing under this Agreement. If Purchaser fails to notify Seller by written notice of its election under the preceding sentence within thirty (30) days of receipt of notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge, then the Purchaser shall have waived the right to terminate the Agreement due to the Discharge. If Purchaser waives the right to terminate the Agreement after receiving notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge of a Hazardous Substance on the Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at Closing.

- c. If Seller or the Army or the other responsible third party agree to remediate the Property by delivering a Final Remediation Document and Seller or the Army or the other responsible third party subsequently fails to provide the Final Remediation Document prior to the date set for the Closing, then Purchaser may (i) terminate this Agreement and receive a refund of the Deposit, and all interest accrued thereon, (ii) delay Closing to a date reasonably specified by Purchaser to allow sufficient time for Seller or the Army or the other responsible third party to obtain the Final Remediation Document, or (iii) proceed to Closing with sufficient sums from the Purchase Price (as reasonably determined by agreement between Purchaser's and Seller's respective environmental consultants), being placed into escrow with the title company to be used by Purchaser to address or remediate such Discharge and obtain a Final Remediation Document provided that the total amount placed into escrow (which shall include any funds to cure or clear non-permitted title exceptions pursuant to Subsection 11(e)(ii)) shall not exceed Seller's Net Sale Proceeds of the Purchase Price.

21. Termination of Agreement.

If this Agreement is legally and rightfully terminated in accord with any provision herein (excluding termination resulting from a default by either Party as specified in Sections 22 and 23) or by mutual agreement of the Parties, the Parties shall be released from any liability to each other, except that Seller shall direct the Escrow Agent to return the Initial and Second Deposit except as otherwise provided herein, and all interest accrued thereon, to the Purchaser and that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.

22. Default by Seller.

- a. The following occurrences shall be a default by Seller of the terms of this Agreement:
 - i. Failure to convey the Property in accordance with the terms of this Agreement.
- b. The Purchaser agrees that prior to declaring the Seller in default as described in Subsection 22(a), Purchaser shall provide Seller with sixty (60) days advance written notice of such default and Seller shall have the right to cure such default within said sixty (60) day period.
- c. In the event that Seller does not cure said default in said sixty (60) day period then the Purchaser may terminate this Agreement at which time the Escrow Agent shall return the Purchaser's Initial and Second Deposits and all interest accrued thereon. Purchaser acknowledges that the remedies set forth in this Subsection 22(c) are Purchaser's sole and exclusive remedies in the event of any breach of or default under this Agreement by Seller or the inability or unwillingness of Seller to consummate the Closing as provided in this Agreement and the Parties shall be free of liability to each other, except that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.
- d. The terms of this Section 22 shall survive the Closing and/or any termination of this Agreement for ninety (90) days.

23. Default by Purchaser.

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

i. Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement as set forth in this Agreement.

ii. Purchaser has:

1. applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets or if a custodian is legally appointed with or without consent of Purchaser; or

2. made a general assignment for the benefit of creditors or filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or

3. filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding or a petition in bankruptcy shall have been filed against Purchaser, and shall not have been dismissed for a period of ninety (90) consecutive days; or

4. suspended the transaction of its usual business.

iii. If:

1. an Order for Relief is entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code;

2. an Order, judgment or decree is entered, without the application, approval or consent of Purchaser, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Purchaser, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days.

iv. Purchaser has abandoned or substantially suspended any pursuit of All Approvals. If Purchaser fails to obtain All Approvals within the Approval Period/Approval Extension Period, Seller shall be entitled to terminate this Agreement and shall be entitled to receive the Initial and Second Deposits and

all interest accrued thereon. However, if Seller determines that the Purchaser has pursued All Approvals diligently and in good faith but fails to obtain them, FMERA shall refund: 1) Purchaser's Second Deposit if no extension to the Approval Period/Approval Extension Period was granted by FMERA's Board in its sole discretion; or 2) Purchaser's Initial Deposit if one extension to the Approval Period/Approval Extension was approved by FMERA's Board in its sole discretion. If, Purchaser requests and the FMERA Board in its sole discretion approves two or more extensions to the Approval Period/Approval Extension Period, Seller shall retain the Initial and Second Deposits and all interest accrued regardless if Purchaser has pursued All Approvals diligently and in good faith but failed to obtain them.

- v. The Purchaser places any unauthorized encumbrance or lien on the Property prior to Closing, or shall suffer any levy or attachment to be made on the Property prior to Closing, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Property prior to Closing.
 - vi. Purchaser fails or refuses to consummate the Closing (where no default by Seller has occurred under the Agreement and all Conditions Precedent to Closing have been satisfied or waived as detailed in Section 13).
- b. The Seller agrees that prior to declaring the Purchaser in default as described in Subsection 23(a), Seller shall provide Purchaser with sixty (60) days advance written notice of such default and Purchaser shall have the right to cure such default within said sixty (60) day period. In the event that Purchaser does not cure said default in said sixty (60) day period then the Seller may terminate this Agreement at which time the Escrow Agent shall pay the Seller the Initial and Second Deposits and all interest accrued thereon as liquidated damages. Seller acknowledges that the remedies set forth in this Subsection 23(b) are Seller's sole and exclusive remedies (except as provided for in Section 9 herein) in the event of any breach of or default under this Agreement by Purchaser prior to Closing or the inability or unwillingness of Purchaser to consummate the Closing as provided in this Agreement.
- c. Notwithstanding anything in this Section 23 to the contrary, in the event Purchaser records this Agreement without having obtained the prior written consent of Seller

- thereto, then Purchaser shall be deemed in material incurable default under this Agreement and Seller shall be authorized without any notice whatsoever to terminate this Agreement and shall be entitled to receive the Initial and Second Deposits and all interest accrued thereon as liquidated damages.
- d. The terms of this Section 23 shall survive the Closing and/or any termination of this Agreement.

24. Adjustments at Closing/Assessments for Municipal Improvements.

- a. Purchaser and Seller agree to adjust the following expenses as of the Closing Date:
 - i. water charges and sewer charges, if any.
 - ii. (Add additional expenses here, if any)
- b. Purchaser or Seller may require that any person with a valid claim or right affecting the Property be paid from the proceeds of this sale.
- c. The Parties acknowledge that certain municipal improvements, including, but not limited to, sidewalks and sewers, may result in the Municipality charging property owners to pay for the improvement. Accordingly, the Parties agree that:
 - i. all unpaid charges/assessments against the Property for work completed before the date of Closing will be paid by the Seller at or before Closing(unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such assessments).
 - ii. If the improvement is not completed before the date of Closing then only the Purchaser will be responsible.
 - iii. If the improvement is completed at or before Closing, but the amount of the charge/assessment has not been determined by the Municipality, the Seller will pay an estimated amount at Closing (unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such assessments). When the amount of the charge is finally determined by the Municipality, the Seller will pay any deficiency to the Purchaser (if the estimate proves to have been too low), or the Purchaser will return any excess to the Seller (if the estimate proves to have been too high).

25. Possession.

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

26. Liens.

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

27. Assignment; Assignment of Interest.

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

- f. The Parties agree that if Seller authorizes an assignment in accordance with the terms herein, then Seller shall enforce this Agreement against the assignee and Seller shall release Purchaser from any and all duties, obligations, claims and damages arising under this Agreement to the extent that they relate to the portion of the Property and Project being assigned.

28. Successors and Assigns.

This Agreement shall inure to the benefit of and shall bind the Parties, their successors and assigns.

29. Entire Agreement.

It is understood and agreed that all understandings and agreements between the Parties regarding purchase, sale and conveyance of the Property are merged in this Agreement which alone fully and completely expresses their agreement. This Agreement replaces and supersedes any previous agreements between the Purchaser and the Seller regarding the purchase, sale and conveyance of the Property. This Agreement can only be changed by an agreement in writing signed by both Purchaser and Seller. The Seller states that the Seller has not made any other Agreement to sell the Property to anyone else.

30. Governing Law.

- a. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of New Jersey without respect to any principles of conflict of law, both as to interpretation and performance. Seller and Purchaser waive any statutory or common law presumption which would serve to have this document construed in favor and against either party as the drafter.
- b. The Parties agree that any and all claims made or to be made against the Seller based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The Parties also agree that any and all claims for damages made or to be made against the Seller based in tort law, including but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

31. Partial Invalidity.

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

32. Headings.

The headings of the various Sections and Exhibits of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.

33. No Partnership or Joint Venture.

Nothing contained in this Agreement will make or will be construed to make the Parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between Purchaser and Seller hereunder is that of Seller and Purchaser. Nor should anything in this Agreement render or be construed to render either of the Parties hereto liable to the other for any third party debts or obligations due the other party.

34. No Third-Party Rights or Benefits.

Nothing in this Agreement shall be construed as creating any rights of enforcement against any person or entity that is not a party to this Agreement, nor any rights, interest or third-party beneficiary status for any entity or person other than Purchaser and Seller. This Agreement is not an obligation of the State of New Jersey or any political subdivision thereof (other than FMERA) nor shall the State or any political subdivision thereof (other than FMERA) be liable for any of the obligations under this Agreement. Nothing contained in this Agreement shall be deemed to pledge the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).

35. No Waiver.

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

36. Time Periods.

All time periods contained in this Agreement shall expire at five o'clock (5:00) p.m. Eastern Time on the date performance is due and any performance after such time and any notice received after such time shall be deemed to have occurred on the next business day. In the event that any date falls on a weekend or any other day which commercial banks in the State of New Jersey are closed or permitted to be closed, the date shall be deemed to extend to the next business day.

37. Force Majeure.

Neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of a Force Majeure event or condition. Any extension of the timeframes for performance of obligations set forth in this Agreement for Force Majeure shall be contingent upon the Party claiming a Force Majeure notifying the other Party in writing within thirty (30) days of the occurrence of the event resulting in the failure or delay of performance. The time of performance shall be extended for the period of the delay occurring as a result of the Force Majeure event; provided, however, that in no event shall the extension of the timeframe exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.

38. Publication.

Purchaser and Seller agree to consult with and cooperate with each other on the content and timing of all press releases and other public announcements relating to the transactions

contemplated by this Agreement and that Purchaser shall not issue any announcement or statement without the express written approval of Seller as to the text of the announcement.

39. Recording.

- a. Purchaser shall not record nor attempt to record this Agreement; however, Purchaser may record the following:
 - i. a memorandum or “short form” of this Agreement;
 - ii. a Notice of Settlement; or
 - iii. other reporting requirements under the Federal Securities Laws or other securities laws applicable to the Purchaser, provided that the documents that Purchaser proposes to record are provided to the Seller for review and approval, which shall not be unreasonably delayed or withheld, prior to recording.
- b. This Section shall survive the termination of the Agreement.

40. Lis Pendens.

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

41. Authority Representations of Purchaser and Seller.

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

accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchase or Seller is bound.

42. Political Campaign Contributions.

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

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

ii. “Business Entity” means:

1. A for-profit entity as follows:

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

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

- c. Purchaser hereby certifies to FMERA that commencing on and after October 15, 2004, Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Purchaser and Seller pursuant to P.L. 2005, c. 51. Purchaser hereby further certifies to the Seller that any and all certifications and disclosures delivered to the Seller by Purchaser (and each of its Principals, subsidiaries and political organization included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Seller shall have the right to declare this Agreement to be in default.
- d. Purchaser hereby covenants that Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any Contributions of money, or pledge of a Contribution, including in-kind Contributions, to a candidate, committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Section 42 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Seller shall have the right to declare this Agreement to be in default.
- e. In addition to any other event of default specified in this Agreement, the Seller shall have the right to declare an event of default under this Agreement if: (i) Purchaser (or any of its Principals, subsidiaries and political organization included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the Definition of Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Purchaser (or any of its Principals, subsidiaries and

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

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

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

43. Notices.

- a.** Any notices required to be given under this Agreement must be in writing and shall be addressed as follows:

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

CC: (FMERA's Counsel)
Attention:

AND

TO: (Purchaser)
Attention:

CC: (Purchaser's Counsel)
Attention:

- b.** All notices which must be given under this Agreement are to be given either by:
- i.** personal service,
 - ii.** certified mail, return receipt requested, addressed to the other party at their address specified above, or
 - iii.** overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail); and
 - iv.** with a copy by facsimile and/or electronic mail.
- c.** Either party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.

- d. Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

44. Brokerage Commissions.

Seller and Purchaser represent to each other that each has had no dealings with any other broker, salesperson or agent in connection with the sale of the Property. In no event shall Seller be responsible for a commission to any broker. The provisions of this Section shall survive Closing and/or any termination of this Agreement.

45. Counterparts.

This Agreement may be simultaneously executed in several counterparts, or with counterpart signature pages, and may be delivered by facsimile or electronic mail, it being understood that all such counterparts or counterpart signature pages, taken together, shall constitute one and the same instrument.

46. Exhibits.

By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in and attached to this Agreement.

47. Utilities.

- a. Non-potable water and sanitary sewer service are currently provided over former Army owned systems. For a transitional period FMERA will continue to service the Property over these systems which must be metered by the Purchaser, at no cost or expense to FMERA. The Purchaser, at its sole cost and expense, will be required to relocate laterals and to reconnect utilities as necessary as new trunk infrastructure are installed and will be responsible for establishing service connections and accounts at Purchaser's cost with New Jersey Natural Gas Company, New Jersey American Water Company and the ^{Two Rivers Water Reclamation Authority/Borough of Tinton Falls Sewer Authority) as required for the Project.

- b. Electricity is currently provided by FMERA over the former Army system. For a transitional period FMERA will continue to service the Property over these systems. Purchaser shall, at its sole cost and expense, be required to establish metered electric service directly with Jersey Central Power & Light Company (“JCP&L”) at the earliest possible date, but no later than Seller’s conveyance of the Main Post electric distribution system to JCP&L. Any existing transformers and electric distribution lines on the Property that are not needed by JCP&L will become the property of the Purchaser.
- c. Purchaser responsible for replacement, repair, maintenance and/or relocation of utilities within the Property, subject to Seller’s review and approval, as required for the Project.
- d. Beginning three (3) months after the Effective Date of this Agreement, Purchaser shall be responsible for utility costs and property maintenance expenses associated with the Property regardless of whether the Purchaser has closed on the Property. At Purchaser’s election, Purchaser shall either install electric and water meters or disconnect these services within three (3) months of PSARA execution.
- e. During the Due Diligence Period, the Purchaser shall make every effort to ensure that all utilities serving and/or traversing the Property are accounted for in its conceptual development plan.
- f. Purchaser shall be responsible to fund or install, at its sole expense, ^_____ linear feet of new water main and _____ linear feet of new sewer main in off-site locations, as directed by Seller. Purchaser shall fund or install said water and sewer mains within _____ months of the Closing.

48. Miscellaneous.

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

ATTEST:

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY, Seller

By:
Bruce Steadman
Executive Director

ATTEST:

^ _____, Purchaser

By: _____

