

**Fort Monmouth Economic Revitalization Authority
In-Person & Telephonic Board Meeting
502 Brewer Avenue, Oceanport, N.J. 07757
Dial In: 888-431-3598 Access Code: 1123026
Agenda – May 17, 2023**

1. **Call to Order**
2. **Notice of Public Meeting**
3. **Pledge of Allegiance**
4. **Roll Call**
5. **Welcome – Mayor Anthony Talerico, Jr., Vice-Chairman**
6. **Approval of Previous Month’s Board Meeting Minutes**
7. **Public Comment Regarding Board Action Items**
8. **Executive Director/Secretary Report & Update**
9. **Committee Reports**
 - Audit Committee – Anthony Talerico, Jr., Chairman
 - Real Estate Committee – Anthony Talerico, Jr., Chairman
 - Environmental Staff Advisory Committee – Elizabeth Dragon, Chairwoman
 - Historical Preservation Staff Advisory Committee – Jay Coffey, Chairman
 - Housing Staff Advisory Committee – Robert Long, Chairman
 - Veterans Staff Advisory Committee – Lillian Burry, Chairwoman
10. **Board Actions**
 1. Consideration of Approval of a Memorandum of Understanding between FMERA and the Eatontown Sewerage Authority regarding an interagency agreement for funding and construction.
 2. Consideration of Approval of the First Amendment to the Purchase and Sale and Redevelopment Agreement with Netflix, Inc. for the Mega Parcel in Eatontown and Oceanport.
 3. Consideration of Approval of the Sixth Amendment to the Purchase and Sale and Redevelopment Agreement with US Home LLC, a wholly owned subsidiary of Lennar Corporation for the Howard Commons Parcel in Eatontown.
 4. Consideration of Approval of the Ninth Amendment to the Purchase and Sale and Redevelopment Agreement with the Borough of Eatontown for a Department of Public Works Complex on the 1123 Parcel.
 5. Consideration of Approval of the Reinstatement and Third Amendment to the Purchase and Sale and Redevelopment Agreement with RWJ Barnabas Health, Inc. for the Tinton Falls Commercial Parcel in Tinton Falls.
11. **Other Items**
12. **Public Comment Regarding any FMERA Business**
13. **Adjournment**



**Fort Monmouth Economic Revitalization Authority
Board Meeting
April 19, 2023
Public Meeting and Teleconference**

MINUTES OF THE MEETING

Members of the Authority and/or Designees present:

- Anthony Talerico, Jr. – Mayor of Eatontown – V (Serving as Vice-Chairperson)
- Jay Coffey – Mayor of Oceanport – V
- Tracy Buckley – Tinton Falls Councilwoman – V - Designee
- Jamera Sirmans – Associate Counsel, Governor’s Authorities Unit – V – Designee
- Jorge Santos – Chief Real Estate Development Officer, NJEDA – V – Designee
- Elizabeth Dragon – Assistant Commissioner Community Investment and Economic Revitalization - Designee
- Robert Long – Deputy Commissioner, NJ Department of Community Affairs – Designee
- William Riviere – Principal Planner, NJ Department of Transportation – Designee

V – Denotes Voting Member

Members of the Authority and/or Designees not present:

- Lillian Burry – Monmouth County Commissioner – V
- Stephen Gallo – Public Member – V
- Wayne Smith – State Veterans Program Coordinator, NJ Department of Labor & Workforce Development – Designee

Also present:

- Kara Kopach, Executive Director
- FMERA staff:
 - Regina McGrade – Administrative Manager
 - Jennifer Lepore – Accounting Manager
 - Sarah Giberson – Senior Project Officer Marketing & RE Development
 - Upendra Sapkota – Senior Project Officer, Planning & Development
 - Kristy Dantes – Director of Facilities & Infrastructure
 - Joe Fallon – Senior Environmental Officer
 - Laura Draushak – Director of Legal Affairs
- Matt Reagan, Deputy Attorney General (DAG)

The meeting was called to order by Mayor Anthony Talerico, Jr. at 5:06p.m. and followed by the Pledge of Allegiance.

Kara Kopach announced that in accordance with the Open Public Meetings Act, notice of the meeting was sent to the Asbury Park Press and the Star Ledger at least 48 hours prior to the meeting, and that the meeting notice has been duly posted on the Secretary of State’s bulletin board at the State House, and the FMERA website.

WELCOME

Anthony Talerico, Jr. welcomed attendees to the Authority’s meeting. Mr. Talerico stated that a copy of the Board package was posted to the FMERA website to give the public the opportunity to review the information in advance of the meeting. Mr. Talerico stated that there are 2 public comment periods, the first being public comment regarding any of the Board actions and the second being any FMERA business.

The first item of business was the approval of the March 15th regular meeting minutes. A motion was made to approve the minutes by Jay Coffey and seconded by Jamera Sirmans.

Kara Kopach conducted a roll call vote.

NAME	YES	NO	ABSTAIN
Anthony Talerico	X		
Jay Coffey	X		
Tracy Buckley	X		
Jamera Sirmans	X		
Jorge Santos	X		

Motion to Approve: JAY COFFEY Second: JAMERA SIRMANS
Ayes: 5

PUBLIC COMMENT REGARDING BOARD AGENDA ITEMS (3 minutes re: Agenda Items)

There was no public comment.

EXECUTIVE DIRECTOR/SECRETARY’S REPORT & UPDATE

FMERA continues to make significant progress on the redevelopment at Fort Monmouth. As most of you have seen, there are numerous infrastructure projects in the pipeline. The largest sewer project is scheduled to finish over the next few months and a new one is anticipated to start soon. We anticipate demolishing a few buildings by the fall and also expect developers to construct new residential and commercial facilities in the coming months. This is an exciting time to be part of the Fort Community. We are extremely grateful for the Boroughs and the County and our State stakeholders for all of their assistance in moving this development in a positive direction. This redevelopment will continue to thrive with the help of the community at large.

COMMITTEE REPORTS

1. AUDIT COMMITTEE

Anthony Talerico, Jr. stated that the Committee met on April 11th and discussed the following:

- Discussion regarding the Authority’s 2022 Comprehensive Annual Report. The Annual Report is combined with the audited financial statements and serves as FMERA’s comprehensive annual report to meet the requirements of Executive Order No. 37 and the June 2012 Phase 1 and October 2016 Phase 2 EDC agreements with the Army. The independent accounting firm of CliftonLarsonAllen LLP has issued an unmodified opinion with regard to the 2022 financial statements which is their highest opinion. The Committee reached a consensus and agreed to recommend to the Board for approval.

2. REAL ESTATE COMMITTEE

Anthony Talerico, Jr. stated that the Real Estate Committee met on April 11th and discussed the following:

- Discussion regarding a MOU between FMERA and the County of Monmouth regarding property maintenance and landscaping services for the Mega Parcel properties in Oceanport and Eatontown. FMERA will enter into this MOU with the County for the sole purpose of Monmouth County District 6 Public Works performing the services and other associated work on the Mega Parcel at a not-to-exceed cost of One Hundred Thousand per year of which FMERA is holding from Netflix in escrow for the payment for the 2023 Project costs and expenses. The Committee reached a consensus and agreed to recommend to the Board for approval.
- Discussion regarding Interagency Agreement between FMERA and Oceanport to contract for civil and environmental engineering services for Building 886, which is located in the Oceanport on the future JCP&L substation parcel, and the grant of delegated authority to the Executive Director to increase Project Funding by an amount not to exceed 10% for unforeseen costs. The Committee reached a consensus and agreed to recommend to the Board for approval.

Other Items:

- 1. 2022 Annual Report & Financials
- 2. JCP&L Distribution Agreement
- 3. Howard Commons

3. ENVIRONMENTAL STAFF ADVISORY COMMITTEE (ELIZABETH DRAGON, CHAIRWOMAN)

Elizabeth Dragon stated that the Committee did not meet this month.

4. HISTORICAL PRESERVATION STAFF ADVISORY COMMITTEE (JAY COFFEY, CHAIRMAN)

Jay Coffey stated that the Committee did not meet this month.

5. HOUSING STAFF ADVISORY COMMITTEE (ROBERT LONG, CHAIRMAN)

Robert Long stated that the Committee did not meet this month.

6. VETERANS STAFF ADVISORY COMMITTEE (LILLIAN BURRY, CHAIRWOMAN)

Anthony Talerico, Jr. stated that the Committee did not meet this month.

BOARD ACTIONS

- 1) Consideration of Approval of the 2022 Comprehensive Annual Report with Audited Financial Statements

Laura Drahushak read a summary of the Board memo.

The resolution is attached hereto and marked Exhibit 1.

A motion was made by Jay Coffey and was seconded by Anthony Talerico.

Kara Kopach conducted a roll call vote.

NAME	YES	NO
Anthony Talerico	X	
Jay Coffey	X	
Tracy Buckley	X	
Jamera Sirmans	X	
Jorge Santos	X	

Motion to Approve: JAY COFFEY Second: ANTHONY TALERICO

Ayes: 5

- 2) Consideration of Approval of a Memorandum of Understanding between FMERA and the County of Monmouth regarding property maintenance and landscaping services.

Laura Drahushak read a summary of the Board memo.

The resolution is attached hereto and marked Exhibit 2.

A motion was made by Jay Coffey and was seconded by Anthony Talerico.

Kara Kopach conducted a roll call vote.

NAME	YES	NO
Anthony Talerico	X	
Jay Coffey	X	
Tracy Buckley	X	
Jamera Sirmans	X	
Jorge Santos	X	

Motion to Approve: JAY COFFEY Second: ANTHONY TALERICO
Ayes: 5

- 3) Consideration of Approval of an Interagency Agreement between FMERA and the Borough of Oceanport to contract for civil and environmental engineering services.

Laura Drahushak read a summary of the Board memo.

The resolution is attached hereto and marked Exhibit 3.

A motion was made by Jay Coffey and was seconded by Anthony Talerico.

Kara Kopach conducted a roll call vote.

NAME	YES	NO
Anthony Talerico	X	
Jay Coffey	X	
Tracy Buckley	X	
Jamera Sirmans	X	
Jorge Santos	X	

Motion to Approve: JAY COFFEY Second: ANTHONY TALERICO
Ayes: 5

OTHER ITEMS

There were no other items before the Board.

PUBLIC COMMENT REGARDING ANY FMERA BUSINESS (5 minutes re: any FMERA business)

There was no public comment.

There being no further business, on a motion by Jamera Sirmans and seconded by Jay Coffey and unanimously approved by all voting members present, the meeting was adjourned at 5:18p.m.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the Fort Monmouth Economic Revitalization Authority at its Board meeting.

Kara Kopach

Kara Kopach – Secretary

Resolution Regarding
Approval of Fort Monmouth Economic Revitalization Authority 2022 Comprehensive Annual Report

WHEREAS, the Legislature enacted the Fort Monmouth Economic Revitalization Authority Act (Act), P.L. 2010, c. 51, to create the Fort Monmouth Economic Revitalization Authority (FMERA or Authority); and

WHEREAS, the Authority selected its independent auditors, CliftonLarsonAllen LLP, pursuant to Executive Order No. 122 (McGreevey); and

WHEREAS, the Authority's independent auditors audited and accepted the Authority's financial statements for January 1, 2022 to December 31, 2022 and issued an unmodified opinion regarding the financial statements; and

WHEREAS, the certification and accompanying financial statements have been executed by the Executive Director and the Accounting Manager confirming that FMERA has followed its standards, procedures and internal controls; and

WHEREAS, on April 11, 2023, per its Charter as well as section 9 of Executive Order 122 (2004), the Audit Committee reviewed the draft comprehensive annual report, including the 2022 audited financial statements prior to release and considered the relevancy, accuracy and completeness of the information presented. Also, pursuant to Executive Order 122 (2004), the independent auditor met with the Audit Committee, where it was reported that the financial audit resulted in no negative findings or internal control deficiencies. Subsequent to its review of the report, the Committee recommended that the report be presented to the Board for approval; and

WHEREAS, pursuant to Executive Order No. 37 (Corzine) the Authority is required to submit its Comprehensive Annual Report for review from its Members; and

WHEREAS, the Audit Committee has reviewed the 2022 Comprehensive Annual Report and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Members of the Authority approve the Authority's 2022 Comprehensive Annual Report and approve submitting the Report to the Governor's Authorities Unit, the United States Department of the Army and posting it on the Authority's website.
2. The Executive Director and/or any individual authorized to execute documents pursuant to the Operating Authority is authorized to do and perform all acts necessary to effectuate the above.
3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Dated: April 19, 2023

EXHIBIT 1

Resolution Regarding
Approval of a Memorandum of Understanding between FMERA and the County of Monmouth
regarding property maintenance and landscaping services

WHEREAS, in November 2016, FMERA and the County entered into a Purchase and Sale Agreement and Redevelopment Agreement (“PSARA”) for the purchase of land and buildings to utilize the property as Monmouth County’s District 6 Public Works and Motor Pool complex and to provide in-kind services, including landscaping and snow plowing and removal, as requested by FMERA and for the benefit of FMERA’s efforts of the redevelopment at Fort Monmouth; and

WHEREAS, as the development on Fort Monmouth has continued to grow, the County’s assistance has extended to third party developers. On January 13, 2023, FMERA entered into a Purchase and Sale and Redevelopment Agreement with Netflix, Inc. (the “Purchaser”) conveying in part, the approximately 292-acre parcel known as the Mega Parcel (“NF PSARA”); and

WHEREAS, the Purchaser has agreed to reimburse FMERA for costs related to the utilities and property maintenance of the property identified in Exhibit A pursuant to Section 47(h)(i) of the NF PSARA beginning on April 13, 2023 and continuing until such time Purchaser terminates the NF PSARA or closes on the Property. FMERA seeks to continue to utilize the County’s services and wishes to enter into an MOU to pay the County directly for the Project which will allow for the property maintenance and landscaping of the Mega Parcel during the pre-closing time period; and

WHEREAS, the Project Sites are located within the boundaries of the Boroughs of Eatontown and Oceanport of the Main Post Area of Fort Monmouth; and

WHEREAS, FMERA will enter into this MOU with the County for the sole purpose of Monmouth County District 6 Public Works performing property maintenance and landscaping services and other associated work on the Mega Parcel at a not-to-exceed cost of One Hundred Thousand (\$100,000.00) Dollars (the “Project Funds”) per year. The Project consists of the property maintenance and landscaping tasks as detailed in County’s proposal attached as Exhibit B; and

WHEREAS, FMERA hereby confirms to the County that FMERA is holding One Hundred Thousand (\$100,000.00) Dollars from the Purchaser in escrow for the payment for the 2023 Project costs and expenses based on the proposal to perform the work by Monmouth County. Beginning January 1, 2024, Purchaser shall remit to FMERA the reasonable estimate of the annual property maintenance costs by the first of the month. Upon receipt of the County’s monthly invoice on the last day of each month, FMERA will remit payment to the County within seven days. Upon notification from Purchaser that other services as defined in Exhibit B are requested, FMERA will notify the County within twenty-four hours during the week or on the next business day if the request is received on the weekend; and

WHEREAS, the County shall use Project Funds disbursed by FMERA to the County to pay the property maintenance and landscaping (i.e., mowing, weedwacking, etc.) costs to complete the Project. The County shall not be required to utilize any of its own funds to pay for the costs or expenses of the Project but shall notify FMERA if they incur costs or expenses beyond the maximum not to exceed contract value of One Hundred Thousand (\$100,000) Dollars per year. FMERA will have no obligation to reimburse or otherwise pay the County should the County incur costs beyond the \$100,000 per year without FMERA’s written consent; and

WHEREAS, the County shall perform the tasks as outlined in Exhibit B during the thirty-one week property maintenance and landscaping season and will perform other services (i.e., snow plowing and removal) on a per request basis. The County shall provide FMERA with monthly invoices on the last day of each month the services are performed. FMERA shall notify the County at least five days before the next billing cycle if any/all

of the work is to be completed outside of this MOU. Upon notification of FMERA utilizing an alternate means to complete the work, the County shall return any unused monies under this agreement; and

WHEREAS, it is agreed that nothing in this Memorandum of Understanding shall obligate or require the County to enter into or continue any agreement or contract for the Project or to expend the County personnel time or other administrative costs for the Project unless sufficient funds are readily available to the County for expenses that would be incurred in connection with the Project. The County shall at all times have the right to terminate or discontinue any agreement, contract or work for the Project if the County determines that sufficient funds are not readily available to the County for the expenses that would be incurred in connection with the Project; and

WHEREAS, this Memorandum of Understanding will commence immediately upon execution by the Parties for a period of twelve months. The Parties agree that there shall be three one-year renewal options available to the Parties and these extensions may be exercised based on the mutual agreement of the parties. Any Party shall have the right to terminate this MOU upon written notice to the other party. Upon termination, the County shall make reasonable efforts not to incur any additional expenses or administrative costs; provided, however, the County shall be permitted to continue to use the Project Funds to pay for any expenses or fees actually incurred in connection with the Project; and

WHEREAS, in addition, delegated authority shall be granted to FMERA's Executive Director to approve additional property maintenance and landscaping costs in an amount not to exceed 10% of the approved One Hundred Thousand (\$100,000); and

WHEREAS, the attached MOU is in substantially final form. The final terms of the MOU will be subject to the approval of the Executive Director, the County of Monmouth and a review as to form by the Attorney General's Office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves a Memorandum of Understanding between the Fort Monmouth Economic Revitalization Authority and the County of Monmouth, regarding property maintenance and landscaping services to be performed by the Monmouth County District 6 Department of Public Works for the Mega Parcel property located in the Boroughs of Eatontown and Oceanport of Fort Monmouth with final terms acceptable to the Executive Director and a review as to form by the Attorney General's Office and authorizes the Executive Director to execute the Agreement.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

ATTACHMENT

Dated: April 19, 2023

EXHIBIT 2

Resolution Regarding
Approval of an Interagency Agreement between FMERA and the Borough of Oceanport to contract for civil and environmental engineering services

WHEREAS, the identified buildings on the Main Post of Fort Monmouth are outdated and not suitable for future use. All four buildings are in locations targeted for utility and infrastructure improvements and/or blight removal. This interagency agreement will enable FMERA to move forward with the blight removal and improvements to the Main Post infrastructure, which will serve both sold properties and future redevelopment projects on the Main Post; and

WHEREAS, in particular, FMERA is obligated to demolish Building 886 under its current agreement with Jersey Center Power & Light for buildout of a new substation, while Buildings 550 and 551, and 555 are located near current development and the Project Site containing Buildings 550 and 551 may be used for future public parking. Therefore, demolition will support redevelopment at the Fort including current and future property owners; and

WHEREAS, at its June 2022 meeting, the Board approved a Memorandum of Understanding (“MOU”) with the Borough of Oceanport (“Borough”) to contract for civil and environmental engineering services for demolition plans and specification including abatement, demolition and site improvements. The Borough selected Colliers as its engineering firm via a formal RFQ process for the calendar year. Accordingly, the Borough retained Colliers to prepare plans and a scope of work (the “Plans”) for the Project; and

WHEREAS, the Project scope included one set of demolition plans for the three Project Sites and three additional demolition plans and specification for each of the three Project Sites. The Plans also included surveying services and field/building reconnaissance. Under the terms of MOU, the Plans were to be used by FMERA to bid out environmental abatement and demolition contracts for portions of the Main Post, and FMERA may choose to bid out each of the three identified Project Site either together or separately; and

WHEREAS, draft plans were to be provided within sixty days of receiving notice from FMERA to proceed with the Project with 14 days for FMERA to review and comment, and then 14 days for the Borough’s engineer to finalize and deliver the four sets of Plans. Costs for the work were estimated to be \$19,000, with the Board approving a delegation to FMERA’s Executive Director to increase the cost by an amount not to exceed 10% for unforeseen design costs for demolition or environmental abatement. In the event the amount due to the Borough’s contractor for the work described within the MOU was expected to be greater than \$19,000, the Borough was required to notify FMERA that additional Project Funds are required. Any increase in costs is subject to FMERA’s Board approval. The MOU with the Borough was executed on July 6, 2022; and

WHEREAS, upon initiating work under the original MOU, Colliers concluded that the amount allocated to the Project did not capture the full cost to complete the work under the MOU. In particular, Colliers found that the asbestos and environmental testing performed by the Army that was relied on to form the basis of the initial Project funding costs was insufficient to meet demolition standards and additional testing was required far beyond what was originally anticipated; and

WHEREAS, additionally, FMERA’s original civil engineering cost estimate did not include the necessary manhours to identify each type of construction material (concrete, steel, wood, sheetrock, fiberglass, etc.) found in the four referenced buildings. The scope of work has been amended to indicate the construction material needs to be quantified in terms of the amount of material (linear feet or square feet) and then converted into pounds for each material present and incorporated into the demolition specifications for each building; and

WHEREAS, upon the Borough’s notification to FMERA that the funds under the original MOU would not be sufficient to complete the scope of work, FMERA requested an updated estimate for the scope of the work to include the additional asbestos and environmental testing and surveying work. Under the expanded estimate, the

Project funding costs were estimated to be One Hundred and Ninety-Five Thousand Three Hundred and Sixty-Five (\$195,365.00) Dollars. This increase reflects the inclusion of additional hours for identification of material quantities and required asbestos and environmental testing; and

WHEREAS, at its January meeting, the FMERA Board approved the amendment to the MOU for increased funding, as well as the Executive Director's delegated authority to increase the Project Funding by an amount not to exceed 10% for unforeseen design costs for demolition or environmental abatement. All other terms of the MOU remained the same. The Amended MOU was executed on February 23, 2023; and

WHEREAS, on March 11, 2023, FMERA received the demolition plans for Project Site, as defined in the attached MOU, containing Building 886 from Colliers and wishes to enter into a separate MOU with Oceanport for the Borough's engineer to oversee the public bidding for the demolition and remediation of Building 886, one of three identified Project Sites. It is FMERA's intention to enter into a separate MOU for abatement and demolition work for Buildings 550/551 and Building 555 upon receipt of the two additional scopes of work; and

WHEREAS, the purpose of the "Project" consists of the retention of the Borough's engineer, Colliers, for the abatement and demolition of Building 886 located on the Project Site. Colliers services shall include: bidding services for abatement and demolition contracts and the oversight of those tasks as detailed in the attached memorandum; and

WHEREAS, the cost for the Project is estimated to be One Hundred and Sixty-Five Thousand Nine Hundred and Fifty (\$165,950.00) Dollars with the Board approving a delegation to FMERA's Executive Director to increase the cost by an amount not to exceed 10% for unforeseen costs for abatement or demolition. In the event the amount due to the Borough's contractor for the work described within the MOU is expected to be greater than \$165,950.00, the Borough is required to notify FMERA that additional Project Funds are required. Any increase in costs beyond this amount is subject to FMERA's Board approval; and

WHEREAS, the attached amended MOU is in substantially final form. The final terms of the MOU will be subject to the approval of the Executive Director, the Borough of Oceanport and as to form by the Attorney General's Office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves the interagency agreement between FMERA and the Borough of Oceanport for funding, asbestos abatement (including removal, monitoring, and associated reporting), demolition, and site restoration activities (including preparation of all applications and associated, prerequisite environmental, engineering services and demolition permits) for Building 886 and grant of delegated authority to the Executive Director to increase Project Funding by an amount not to exceed 10% for unforeseen costs associated with the Project with final terms acceptable to the Executive Director and a review as to form by the Attorney General's Office and authorizes the Executive Director to execute the Agreement.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

ATTACHMENT

Dated: April 19, 2023

EXHIBIT 3

MEMORANDUM

To: Members of the Board

From: Kara Kopach
Executive Director

Date: May 17, 2023

Subject: Monthly Status Report

Summary

The following are brief descriptions of the Fort Monmouth Economic Revitalization Authority (FMERA) staff's monthly activities which include the Treasurer's Report, and Update on Utilities and Infrastructure, Update on Development & Marketing and Update on the Fort Monmouth Redevelopment

Treasurer's Report

The 2022 Comprehensive Annual report of the Authority, approved by the Board at the April 19, 2023 meeting, has been issued, distributed and posted to the Authority's website in accordance with Executive Order No. 37.

On a quarterly basis, staff compares actual expenditures to the approved budget, as well as projecting out to year-end to monitor spending and ensure the Authority stays on or under budget. FMERA controls spending to the extent possible, until land sales occur, and proceeds are received, at which point, we determine which projects in our budget can be completed. As of the end of the 1st quarter, FMERA is targeted to remain on or under budget through year-end.

Executive Director's Report

1. **Update on Utilities and Infrastructure**

- Construction on the new sanitary pump station, east interceptor, and force main along Oceanport Avenue continues with an expected completion by the 3rd quarter of 2023. The gravity main along Oceanport Avenue is complete with the exception of a section under Oceanport Avenue at Signal Avenue that will be installed in early June. The completion of the remaining force main in Little Silver is expected to be completed by next week. The new pump station is substantially complete and projected to go online in June.
- The Phase II sanitary project, which includes the Barker Circle and South Interceptor lines, and the Malterer Avenue main, has begun with PM Construction installing the first segment across the Barker Circle parcel. The completed project, along with the East Interceptor and Pump Station, will receive sanitary outfall from the majority of the Oceanport portion of the main post, and allow FMERA to decommission five of the six remaining FMERA operated sanitary pump stations on the main post. The last pump station, though not decommissioned, was shut down in September 2022.
- In Eatontown, the design work that will serve the Monmouth County Motor Pool, Tech Campus B, the Eatontown Parks parcel, and Barracks parcel, and the Tech B parcel with sanitary outfall to the Eatontown Sewerage Authority owned main along Mill Creek has been completed and FMERA is now working with the ESA to construct and install the necessary sewer improvements to divert flow into Eatontown.
- FMERA & JCP&L contracted in 2022 for the proposed electrical substation parcel and staff continues to work with JCP&L toward finalizing the plans of the proposed electrical 15KVA distribution system.
- The Facilities and On-site Maintenance Teams continues to maintain and repair heat systems and fire suppressions systems of buildings to be reused by a potential Mega Parcel purchaser.

2. Update on the Fort's Redevelopment

The following is a town-by-town summary of the status of our redevelopment projects.

In **Oceanport**, FMERA has closed on the following seventeen properties:

- Former Patterson Army Hospital on December 13, 2013, with AcuteCare Systems.
- Officer Housing Parcels on January 13, 2017, with RPM Development, LLC. RPM Development renovated the 116 historic housing units, creating 68 market-rate for sale units, and 48 rental units; twenty percent of the total units are available to low- and moderate-income households.
- Main Post Chapel on February 27, 2017, with Triumphant Life Assembly of God Church who purchased the approximately 16,372 sq. ft. building for use as a house of worship.
- Russel Hall on June 23, 2017, with TetherView Property Management, LLC, a private cloud computing services company who occupies the 40,000 sq. ft. building. Russel Hall currently houses a variety of businesses including tech companies, medical offices, and an architecture firm.
- Oceanport Municipal Complex on August 16, 2017, where the Borough of Oceanport purchased the property for their new municipal complex.
- Fitness Center on September 26, 2017, enabling Fort Partners Group, LLC, to renovate and expand the facility to emphasize basketball and medically based fitness and wellness programs, and individualized group training and classes. The Fitness Center now boasts over 2,100 members.
- Dance Hall parcel on April 4, 2018, to The Loft Partnership, LLC. The developer renovated the Dance Hall as a wedding banquet facility. They have booked over 172 weddings.
- Building 501, on April 24, 2019, with Family Promise of Monmouth County, an approximately 1.7-acre site, via a Legally Binding Agreement (LBA). Lunch Break has now merged with Family Promise and will expand the services offered on the site.
- Telecommunications Tower and Land on October 25, 2019, with Global Signal Acquisitions, LLC for an approximately 0.58 parcel of land containing the Telecommunications Tower and adjacent land.
- Squier Hall Complex, on December 19, 2019, with KKF University Enterprises, LLC, an approximately 31-acre site. The developer has secured a commitment from New Jersey City University for use of the site as a satellite campus. The campus opened in the Fall 2020 and continues to have both an academic and community events presence.
- Commissary, Post Exchange (PX) complex, Warehouse District and a 1000 Area Parking parcel, on October 16, 2020, with OPort Partners, LLC. The Commissary/PX parcel shall permit, Food Service, Flex space, Office, R&D and Instructional Schools and Studios. The Warehouse District will permit Flex Space, Medical Office, Office, and Research & Development. Birdsmouth, a brewery opened last year and a restaurant and food distributor is planned this summer in the old Commissary space.
- Marina, on March 25, 2021, with AP Development Partners, LLC, which will continue to operate as a marina/public boat ramp and restaurant.
- Barker Circle, with Barker Circle Partnership, LLC, an approximately 19.5-acre parcel in the historic district which includes the repurposing of buildings 205-208, and 287, as well as the Main Post Firehouse and Kaplan Hall, for residential, office and other commercial uses.
- Lodging Area, on November 24, 2021, with Somerset Development, LLC, a 15-acre site located on Parkers Creek, to be developed with up to 185 new and renovated housing units. Townhouses are for sale and some have already been sold and are occupied.
- Allison Hall, on May 20, 2022, with Fort Monmouth Business Center, LLC, a 13-acre parcel which includes the reuse of the historic building, as well as retail, office/research & development and open space/recreation uses.

Also in **Oceanport**, FMERA has executed or approved contracts on the following property:

- Nurses Quarters, with RPM Development, LLC for the 24-unit residential complex on Main Street adjacent to the former Patterson Army Hospital.

In **Eatontown**, FMERA has closed on the following three properties:

- Suneagles Golf Course, on December 18, 2020, with Martelli Development, LLC, to maintain and upgrade the existing Golf Course, renovate historic Gibbs Hall, and construct 75 new housing units. Martelli continues to operate the course and restaurant in the interim, so it remains open to the public as the redevelopment progresses. The Developer has constructed and sold numerous townhouses in the middle of the course and continues to construct housing units.
- New Jersey American Water Tank Parcel, on April 23, 2021, a parcel located on a 3.945-acre tract on the Howard Commons parcel to install a water tank to serve NJAW's needs by providing approximately four acres of land

surrounded on two sides by undeveloped preserved forest, a municipal road on another and a fourth side that encompasses soon to be built residential units which will be buffered by trees. NJAW has demolished the existing structures on the site and will start construction in the first quarter of 2024.

- Eatontown Parks Parcel, on March 7, 2022, with the Borough of Eatontown, a 3.82-acre tract known as the Nicodemus Avenue Park Parcel located on Nicodemus Avenue for active recreation uses. The Borough has demolished all of the existing structures and is designing the park for a splash pad and accompanying bathrooms.

Also in **Eatontown**, FMERA has executed or approved contracts on the following parcel:

- Building 1123, a former general office building at Avenue of Memories and Wilson Avenue with the Borough of Eatontown for the reuse by the Borough's Department of Public Works.

In **Tinton Falls**, FMERA has closed on the following nine properties:

- Parcel E, on January 13, 2013, with Commvault for the headquarters. Commvault announced in March 2023 that they will be selling this building. The new developer anticipates providing lease backed space to Commvault and will also provide additional tenant space to other end users.
- Building 2525, on February 5, 2016, with Aaski Technologies who leases the building to other tenants for technology and office uses.
- Child Development Center, on March 18, 2016, with Trinity Hall, for the all-girl high school. Trinity Hall completed their second generation project on the site to expand the building's footprint twofold.
- Fort Monmouth Recreation Center and Swimming Pool, on January 6, 2017, with the Monmouth County Park System and being used for programs which include arts & crafts, sports, exercise classes and a variety of amenities including classrooms, gymnasium and a game room.
- Parcel F-3 on February 23, 2017, with the Monmouth County Park System in conjunction with the adjacent Recreation Center and Swimming Pool. Located along Hope Road, the County has expanded its services and public open space amenities currently offered at the Recreation Center.
- Charles Wood Fire Station, on May 22, 2018, transferring the property to Commvault Systems, Inc. for use as corporate office and training space.
- Parcel C with Lennar Corporation, on August 2, 2018, approved for 243 residential units and up to 58,000 sq. ft. of retail development. Lennar has completed the residential portion of this site but the commercial deliverables remain and have been adversely impacted due to the changing market conditions for retail.
- Parcel C1 with Lennar Corporation, on August 2, 2018. Lennar has constructed and sold all 45 single family homes.
- Parcel F-1 – Myer Center and Building 2705, on December 16, 2022, an approximately 36-acre parcel in Tinton Falls where RWJ Barnabas Health (RWJBH) plans to create a health campus to include a cancer center, medical offices, and a future hospital. RWJBH anticipates starting construction on the site this year.

Also in **Tinton Falls**, FMERA has executed contracts on two properties:

- Fabrications Shops (Pinebrook Road Commerce Center), 45,000 sq. ft. of light industrial and flex office space buildings along Pinebrook Road for sale to Pinebrook Commerce Center, LLC.
- Tinton Falls Commercial Parcel (Pulse Power, Building 2719, and the Pistol Range) with RWJBH for 1) construction of a three-story Medical Office Building; 2) installation of a grid-supply solar energy system; 3) construction of active recreational facilities, including two (2) multi-purpose grass or turf athletic fields, one (1) baseball/softball field, up to five (5) tennis courts, and a field house; 4) passive recreation, including a community walking/nature trail that enhances walkability and interconnectedness of the Tinton Falls section of Fort Monmouth; and 5) open space to benefit the surrounding area.

3. **Development & Marketing Update**

FMERA continues to make good progress on the Fort's redevelopment, with about 86 percent of the Fort's 1,126 acres sold, under contract, in negotiations, or entering the request for proposals process. To date, FMERA has sold 34 parcels, and another 5 parcels are under contract or have Board-approved contracts.

Somerset Development and Pulte Group continue to make incredible progress on the Parkers Creek residential development in Oceanport, with model homes open to the public. Nearby, the Allison Hall project has completed extensive demolition, paving the way for the construction of new business lofts, retail, and a waterfront restaurant, among other amenities. A groundbreaking ceremony is planned for June 3, 2023. The remainder of FMERA's projects are in various stages of

development, many of which are still in the due diligence, design, and approvals phases. Continuous demolition and construction are underway at the Main Post, with several businesses slated to open prior to year-end.

The development team is focusing its efforts on the development of the Mega Parcel. Netflix is currently conducting its due diligence investigations, as the FMERA team continues to complete survey and easement work for the project. Additionally, in conjunction with the Facilities & Infrastructure team, the development team is supporting efforts to have infrastructure updated Fort-wide and for the Mega Parcel, as well as to expend grant funds in support of the same.

Please visit our website, www.fortmonmouthnj.com and follow us on Instagram at @fortmonmouthnj for our latest updates.

Kara Kopach
Kara Kopach

Prepared by: Regina McGrade

Resolution Regarding
Memorandum of Understanding between the Fort Monmouth Economic Revitalization Authority and the
Eatontown Sewerage Authority

WHEREAS, the Eatontown Sewerage Authority (“ESA”), by a certain ordinance dated February 9, 1955, is the duly designated sewerage authority for the Borough of Eatontown. On November 17, 2016, FMERA acquired ownership of the Main Post of the former Fort Monmouth US Army military post including lands and improvements located in the Borough of Eatontown (“Borough”). The existing Army gravity sanitary lines fronting on Wilson and Nicodemus Avenues currently services the ESA service area but drain into a Two Rivers Water Reclamation Authority (“TRWRA”) meter located in Oceanport; and

WHEREAS, on October 28, 2022, FMERA and TRWRA entered into a memorandum of understanding for the design and engineering of a replacement gravity sanitary sewer lines along Wilson and Nicodemus Avenue in the Eatontown Section of Fort Monmouth to untangle the comingled Army gravity sanitary lines (“Design MOU”). The Design MOU intended to provide the final form for a design plan for Construction and Installation Work that is to be bid, constructed and owned by ESA. FMERA received the plans on April 12, 2022, which were prepared by Collier’s Engineering & Design (“Colliers”) on behalf of TRWRA and FMERA. The ESA and the Borough’s engineer firm T&M Associates (“T&M”) have since reviewed the Plans; and

WHEREAS, the Parties enter into this MOU to reflect the mutual understanding of the Parties relative to the Construction and Installation Work of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines serving Wilson Avenue, the Monmouth County Department of Public Works (District 6), the Eatontown Parks Parcel, the proposed Eatontown Department of Public Works site, and the Tech Campus A & B portions of the Eatontown section of Fort Monmouth. The Parties intend this Project to be only the installation of the New Wilson Avenue Gravity Lines needed to service the areas in the Eatontown section of the former Fort Monmouth military post. All future ties shall be the responsibility of any developer(s) of adjacent properties; and

WHEREAS the Parties agree that the statements contained in the Colliers Engineering & Design, Engineering Plans and Specifications for the Project entitled “Wilson Avenue Sanitary Sewer Extension” dated February 14, 2023, and any amendments thereafter be and are hereby incorporated into this MOU; and

WHEREAS, FMERA shall pay 100% of the costs of the Project not to exceed Seven Hundred and Thirty Thousand Six Hundred and Sixteen Dollars and Sixty Cents (“Project Costs”), including but not limited to consulting fees, design fees, permit costs, and all construction costs associated with or arising from the Project. The Parties reserve the right to reject all bids should the costs for construction and construction observation engineering services exceed the Project Costs. ESA shall not be required to utilize any of its own funds to pay costs or expenses for the Project and will return to FMERA upon completion of the Project any amount of the Project Costs that is not expended for the Project; and

WHEREAS, FMERA will grant to ESA such sanitary sewer easements across its lands as the final approved design for the Project as may be required. FMERA shall issue a non-exclusive easement, without charge, to ESA for construction and maintenance of the new gravity sewer lines; and

WHEREAS, in addition, staff requests delegated authority to FMERA’s Executive Director to increase the Project Costs by an amount not to exceed 10% of the Project Costs for unforeseen costs associated with this Project. Any increase in costs beyond this amount is subject to FMERA’s Board approval; and

WHEREAS, the attached MOU between FMERA and the ESA is in substantially final form. The final terms of the MOU will be subject to the approval of ESA, FMERA’s Executive Director and a review as to the form by the Attorney General's Office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves a Memorandum of Understanding between the Fort Monmouth Economic Revitalization Authority and the Eatontown Sewerage Authority forming an interagency agreement for the funding and construction of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines to provide sewer service for the portions of the former Fort Monmouth US Army military post located within the Borough of Eatontown and the grant of delegated authority to the Executive Director to increase Project Costs by an amount not to exceed 10% for unforeseen costs associated with the Project with final terms acceptable to the Executive Director and a review as to form by the Attorney General's Office and authorizes the Executive Director to execute the Agreement.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Attachment

Dated: May 17, 2023

EXHIBIT 1

MEMORANDUM

TO: Members of the Board

FROM: Kara Kopach
Executive Director

RE: Memorandum of Understanding between FMERA and the Eatontown Sewerage Authority.

DATE: May 17, 2023

Request

I am requesting that the Board (1) approve a Memorandum of Understanding (“MOU”) between the Fort Monmouth Economic Revitalization Authority (“FMERA”) and the Eatontown Sewerage Authority (“ESA”) (collectively the “Parties”) forming an interagency agreement for the funding and construction (including preparation of all applications and associated, prerequisite environmental, engineering services and construction permits), of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines (the “Project”) to provide sewer service for the portions of the former Fort Monmouth US Army military post located within the Borough of Eatontown and (2) the grant of delegated authority to the Executive Director to increase Project Costs by an amount not to exceed 10% of the Project Costs for unforeseen costs associated with the Project.

Background

The Eatontown Sewerage Authority (“ESA”), by a certain ordinance dated February 9, 1955, is the duly designated sewerage authority for the Borough of Eatontown. On November 17, 2016, FMERA acquired ownership of the Main Post of the former Fort Monmouth US Army military post including lands and improvements located in the Borough of Eatontown (“Borough”). The existing Army gravity sanitary lines fronting on Wilson and Nicodemus Avenues currently services the ESA service area but drain into a Two Rivers Water Reclamation Authority (“TRWRA”) meter located in Oceanport.

On October 28, 2022, FMERA and TRWRA entered into a memorandum of understanding for the design and engineering of a replacement gravity sanitary sewer lines along Wilson and Nicodemus Avenue in the Eatontown Section of Fort Monmouth to untangle the comingled Army gravity sanitary lines (“Design MOU”). The Design MOU intended to provide the final form for a design plan for Construction and Installation Work that is to be bid, constructed and owned by ESA. FMERA received the plans on April 12, 2022, which were prepared by Collier’s Engineering & Design (“Colliers”) on behalf of TRWRA and FMERA. The ESA and the Borough’s engineer firm T&M Associates (“T&M”) have since reviewed the Plans.

Memorandum of Understanding

The Parties enter into this MOU to reflect the mutual understanding of the Parties relative to the Construction and Installation Work of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines serving Wilson Avenue, the Monmouth County Department of Public Works (District 6), the Eatontown Parks Parcel, the proposed Eatontown Department of Public Works site, and the Tech Campus A & B portions of the Eatontown section of Fort Monmouth. The Parties intend this Project to be only the installation of the New Wilson Avenue Gravity Lines needed to service the areas in the Eatontown section of the former Fort Monmouth military post. All future tie-ins shall be the responsibility of any developer(s) of adjacent properties.

The Parties agree that the statements contained in the Colliers Engineering & Design, Engineering Plans and Specifications for the Project entitled “Wilson Avenue Sanitary Sewer Extension” dated February 14, 2023, and any amendments thereafter be and are hereby incorporated into this MOU.

FMERA shall pay 100% of the costs of the Project not to exceed Seven Hundred and Thirty Thousand Six Hundred and Sixteen Dollars and Sixty Cents (\$730,606.60) ("Project Costs"), including but not limited to consulting fees, design fees, permit costs, and all construction costs associated with or arising from the Project. The Parties reserve the right to reject all bids should the costs for construction and construction observation engineering services exceed the Project Costs. ESA shall not be required to utilize any of its own funds to pay costs or expenses for the Project and will return to FMERA upon completion of the Project any amount of the Project Costs that is not expended for the Project.

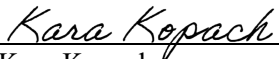
FMERA will grant to ESA such sanitary sewer easements across its lands as the final approved design for the Project as may be required. FMERA shall issue a non-exclusive easement, without charge, to ESA for construction and maintenance of the new gravity sewer lines.

In addition, staff requests delegated authority to FMERA's Executive Director to increase the Project Costs by an amount not to exceed 10% of the Project Costs for unforeseen costs associated with this Project. Any increase in costs beyond this amount is subject to FMERA's Board approval.

The attached MOU between FMERA and the ESA is in substantially final form. The final terms of the MOU will be subject to the approval of ESA, FMERA's Executive Director and a review as to the form by the Attorney General's Office. The Real Estate Committee has approved the request and recommends it to the Board for approval.

Recommendation

In summary, I am requesting that the Board (1) approve a Memorandum of Understanding between the Fort Monmouth Economic Revitalization Authority and the Eatontown Sewerage Authority forming an interagency agreement for the funding and construction of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines to provide sewer service for the portions of the former Fort Monmouth US Army military post located within the Borough of Eatontown and (2) the grant of delegated authority to the Executive Director to increase Project Costs by an amount not to exceed 10% of the Project Costs for unforeseen costs associated with the Project.


Kara Kopach

Attachments: FMERA & ESA Memorandum of Understanding
Exhibits A, B, C, & D
Prepared by: Regina McGrade

MEMORANDUM OF UNDERSTANDING
Concerning the Construction of the New Wilson Avenue Gravity Sanitary Sewer
Lines Servicing the Eatontown Section of the Fort Monmouth US Army Military Post

This Memorandum of Understanding ("MOU") dated the _____ day of _____ 2023, will confirm the mutual understanding and intention between the Fort Monmouth Economic Revitalization Authority ("FMERA") and the Eatontown Sewerage Authority ("ESA") forming an interagency agreement for the funding and construction (including preparation of all applications and associated, prerequisite environmental, engineering services and construction permits), of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines to provide sewer service for the portions of the former Fort Monmouth US Army military post located within the Borough of Eatontown. FMERA and ESA are collectively referred to herein as the "Parties."

WHEREAS, ESA, by that certain ordinance dated February 9, 1955, is the duly designated sewerage authority for the Borough of Eatontown; and

WHEREAS, on November 17, 2016, FMERA acquired ownership of the Main Post of the former Fort Monmouth US Army military post including lands and improvements located in the Borough of Eatontown ("Borough"); and

WHEREAS, existing Army gravity sanitary lines fronting on Wilson and Nicodemus Avenues currently services the ESA service area but drain into a Two Rivers Water Reclamation Authority ("TRWRA") meter located in Oceanport; and

WHEREAS, on October 28, 2022, FMERA and TRWRA entered into a memorandum of understanding for the design and engineering of a replacement gravity sanitary sewer lines along Wilson and Nicodemus Avenue in the Eatontown Section of Fort Monmouth to untangle the comingled Army gravity sanitary lines ("Design MOU"); and

WHEREAS, the Design MOU intended to provide the final form for a design plan for Construction and Installation Work that is to be bid, constructed and owned by ESA; and

WHEREAS, FMERA received the Plans (defined below) on April 12, 2022 which were prepared by Collier's Engineering & Design ("Colliers") on behalf of TRWRA and FMERA; and

WHEREAS, ESA and the Borough's engineer firm, T&M Associates ("T&M"), have since reviewed the Plans (defined below); and

NOW THEREFORE, the Parties enter into this MOU to reflect the mutual understanding of the Parties relative to the Construction and Installation Work (defined below) of the necessary New Wilson Avenue Gravity Sanitary Sewer Lines to service the portions of the Eatontown section of the former Fort Monmouth US Army military post.

1. INCORPORATION OF RECITALS. The Parties hereto agree that the statements contained in the foregoing recitals be and are hereby incorporated into this MOU as if more fully set forth herein at length.

2. INCORPORATION OF PLANS. The Parties hereto agree that the statements contained in the Colliers Engineering & Design, Engineering Plans and Specifications for the "Project" entitled "Wilson Avenue Sanitary Sewer Extension" dated February 14, 2023 and any amendments thereafter be and are hereby incorporated into this MOU as if more fully set forth herein at length. The aforesaid Wilson Avenue Sanitary Sewer Extension for the Project (hereinafter "the Plans"), is attached to this MOU as Exhibit "A". Any future amendment to the Plans shall become effective upon mutual agreement by the Parties expressed in writing.

3. PROJECT. The purpose of the "Project" is to construct and install the New Wilson Avenue Gravity Sanitary Sewer Lines serving Wilson Avenue, the Monmouth County Department of Public Works (District 6), the Eatontown Parks Parcel, the proposed Eatontown Department of Public Works site, and the Tech Campus A & B portions of the Eatontown section of the former Fort Monmouth US Army military base. The "Project" consists of the Construction and Installation Work (defined below) of the New Wilson Avenue Gravity Sanitary Sewer Lines in accordance with the "Plans" prepared by Colliers Engineering & Design.

The Parties intend this Project to be only the installation of the New Wilson Avenue Gravity Lines needed to service the areas in the Eatontown section of the former Ft. Monmouth military post. All future tie-ins shall be the responsibility of any developer(s) of adjacent properties.

4. **PROJECT SITE.** The Project Site is located in the portion of the former Fort Monmouth US Army military base located within the Borough of Eatontown as shown in the Plans set entitled “Wilson Avenue Sanitary Sewer Extension for Fort Monmouth Economic Revitalization Authority, Borough of Eatontown, Monmouth County, New Jersey”, by Collier’s Engineering and Design, Project Number 22011437A, dated 2/14/2023 set forth in **Exhibit A**.

5. **CONSTRUCTION AND INSTALLATION WORK.**

a. The "Construction and Installation Work" consists of the following tasks:

Mobilize, excavate and install all sewer infrastructure needed to convey sewage along the New Wilson Avenue Gravity Sewer lines along the following defined areas: Monmouth County Department of Public Works (District 6), the Eatontown Parks Parcel and the proposed Eatontown Department of Public Works site and the Tech Campus A & B in the Eatontown Section of Fort Monmouth.

b. The Construction and Installation Work shall be performed on the Project in accordance with industry standards and specifically in accordance the Eatontown Sewerage Authority Rules and Regulations and regulations, standards of the NJDEP, and the Freehold Soil Conservation District.

c. Comply with seasonal work restrictions due to the presence of breeding bald eagles located on the communications tower at Monmouth County’s Highway District 6 property.

d. Comply with seasonal work restrictions due to the presence of breeding ospreys found on a nesting platform (i.e. platform 083-B-011 as recorded with the NJDEP) located on the Tech Campus B parcel.

6. **FMERA'S ROLE AND RESPONSIBILITIES.** FMERA will be responsible for performing the following tasks under this MOU:

a. FMERA shall pay 100% of the costs of the “Project” not to exceed Seven Hundred and Thirty Thousand Six Hundred and Sixteen Dollars and Sixty Cents (\$730,616.60) (“Project Costs”), including but not limited to consulting fees, design fees, permit costs, and all construction costs associated with or arising from the “Project.” Construction Costs Estimates are attached hereto as **Exhibit B**, the T&M Cost estimates are attached hereto as **Exhibit C**, and the TWA Permitting Cost Estimates are attached hereto as **Exhibit D**. The Parties will reserve the right to reject all bids should the costs for construction and construction observation engineering services exceed the Project Costs. FMERA hereby confirms that FMERA will pay the Project Cost associated with the Construction and Installation Work that result from the award of a contract by ESA pursuant to the Bid Specifications agreed to by the Parties in an amount not to exceed the Project Costs.

b. In consultation with ESA, review and approve the Scope of Services for the Construction and Installation Work as prepared by T&M based on the Plans provided by Colliers under the Design MOU to prepare the same for public bidding in accordance with the Local Public Contracts Law.

c. Grant to ESA and its consultants and contractors a license to enter the Project Site (lands owned and controlled by FMERA) as needed to perform the Construction and Installation Work.

i. Each contract that ESA enters into for the Construction and Installation Work shall include provisions that the consultant or contractor will: (i) indemnify and hold FMERA, T&M Associates, Colliers Engineering and Design, the United States Army and ESA harmless against any and all claims related to or arising out of said consultant or contractor entering upon Fort Monmouth; and (ii) require the consultant/contractor to maintain adequate insurance coverage naming FMERA and the United States Army as additional insured parties.

d. Provide ESA with copies of plans, drawings, reports and any other information related to the Local Sewer System located within the Project Site to the extent such plans, drawings, reports and information are available to FMERA and may be needed to perform the Construction and Installation Work.

e. In consultation with ESA, review and approve the final form of the Scope of Services for the bid package for the Construction and Installation Work before the same are put out to bid by ESA.

f. FMERA will grant to ESA such sanitary sewer easements across its lands as the final approved design for the "Project" may require. FMERA shall issue a non-exclusive easement, without charge, to ESA for construction and maintenance of the new gravity sewer lines.

g. FMERA shall operate the Army Sewer System until such a time as the entire replacement system has been fully constructed and accepted by ESA. Nothing herein shall make ESA responsible for the Army Sewer System under any circumstance. However, ESA shall assume ownership, operation and maintenance of the Project upon completion and shall be responsible for service to end users to the Project.

7. **ESA'S ROLE AND RESPONSIBILITIES**. ESA will be responsible for the following tasks under this MOU:

a. Construction and Installation Funds. ESA will use the Project Costs remitted by FMERA to ESA to pay the costs of contractors and consultants hired to complete the Construction and Installation Work. ESA shall not be required to utilize any of its own funds to pay costs or expenses of the Construction and Installation Work and associated construction observation engineering services.

b. Construction and Installation Contract. The Parties acknowledge that ESA will enter into a contract(s) with the lowest responsible bidder for the Construction and Installation Work as required by the Local Public Contracts Law. Any and all contracts with consultants or contractors entered into by ESA in connection with the Construction and Installation Work shall be publicly advertised, solicited and selected by ESA in accordance with the Local Public Contracts Law.

- i. ESA, in consultation with FMERA and T&M, will develop the Scope of Service for the bid package for the Construction and Installation Contract.
- ii. ESA, in consultation with T&M Associates, will prepare and issue the Plans and Specifications for the Bid Package for the Construction and Installation Contract(s).
- iii. All requests for bids will state that any award of the contract shall be subject to the availability of FMERA funds. No contract will be awarded unless and until FMERA has deposited all the Project Costs pursuant to Section 6.a. above.
- iv. Before awarding the Construction and Installation Contract, ESA will, in consultation with FMERA, review the public bids for compliance with the Local Public Contracts Law and award the contract in accordance with the same.
- v. In the event the contract price for the Construction and Installation Work should exceed the Project Costs, the Parties reserve the right to reject all bids as exceeding the estimate in accordance with the Local Public Contracts Law.
- vi. In the event the contract price for the Construction and Installation work should exceed the Project Costs, the FMERA Board may agree at its sole discretion to proceed with the bid exceedance.
- vii. ESA will award and administer the Construction and Installation Contract.
- viii. ESA is responsible for payment of the associated TWA submission fee.

c. Construction and Installation Schedule. ESA through its consultants and contractors will prepare an estimated project schedule that includes bidding, permitting, and any necessary approvals for construction of the Project, which shall be reviewed by FMERA.

d. Approvals. ESA, through its consultants and contractors, will obtain any and all permits and approvals needed to complete the Project. Any fees associated with such permits or approvals shall be paid by FMERA, subject to the maximum amount of Project Costs.

e. Prevailing Wage Requirement. ESA will enter into a contract that provides that each worker employed on the Project shall be paid not less than the prevailing wage rate for worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25.

f. Compliance with Law. ESA will oversee the work of its consultants and contractors to have the Construction and Installation Work performed in a safe and professional manner and in accordance with any and all applicable rules, regulations, ordinances, statutes, laws and requirements of any governmental office having jurisdiction over the Project. Nothing herein shall be construed as making ESA or FMERA responsible for the negligence, malpractice or malfeasance of any professional, consultant or contractor.

8. COMPENSATION AND PAYMENT. In accordance with Section 6.a. above, FMERA shall provide 100% of the Project Costs to ESA to be kept in escrow and utilized as necessary to complete the Construction and Installation Work. ESA is not entitled to any fee or charge for its role in awarding, overseeing and administering the Construction and Installation Contract. However, ESA shall not be required to utilize any of its own funds to pay costs or expenses of the Construction and Installation Work, including any and all permit fees, license fees, construction observation engineering fees and such attorney's fees as are related to the administration of the Construction and Installation Work. ESA will return to FMERA upon completion of the Project any amount of the Project Costs that is not expended for the Project.

9. MAINTENANCE AND OPERATION DURING CONSTRUCTION PHASE. FMERA, at its sole cost and expense, will be responsible for maintaining and operating the Army Sewer System within the Project Site throughout the term of this MOU.

10. REDEVELOPERS OF THE PROJECT SITE.

a. The Parties understand that ESA shall charge a connection fee to the owner of any and all Units seeking to connect to the sewerage system at the Project Site or located anywhere within the Eatontown Section of Fort Monmouth.

b. ESA agrees that it will not charge sewer fees to any purchaser of property within the Project Site until an owner or Developer has obtained a final Certificate of Occupancy¹ for the building(s) located in the project area.

11. ADDITIONAL PROVISIONS.

a. Environmental Liability. It is expressly understood that this MOU and all subsequent, associated agreements will not obligate ESA or FMERA to incur any liability for any known or unknown environmental conditions that existed in the Local Sewer System or the lands within the Eatontown Section of Fort Monmouth, prior to the date of this MOU.

b. Sufficient Funds. Both Parties recognize and agree that the initial provision of funding and the continuation of such funding is expressly dependent upon the availability of funding. It is agreed that nothing in this MOU will obligate or require ESA to enter into or continue any agreement or contract for the Construction and Installation Work or to expend ESA personnel time or other administrative costs for the Construction and Installation Work unless sufficient funds, such as grant funding, (other than ESA's own funds) becomes readily available to ESA for expenses that would be incurred in connection with the Construction and Installation Work. ESA will at all times have the right to terminate or discontinue

1. The issuance of any "Temporary" Certificate of Occupancy shall not entitle a purchaser or Developer to sewerage service, hence no fees will be charged until a full and final Certificate of Occupancy, as distinguished from any "Temporary" Certificate of Occupancy, has been issued within the Project Site.

any agreement, contract or work for the Construction and Installation Work if ESA determines that sufficient funds are not readily available to ESA for the expenses that would be incurred in connection with the Construction and Installation Work. ESA shall not be required to utilize any of its own funds to pay any costs or expenses of the Construction and Installation Work under any circumstances.

c. Right of Entry and License. This MOU constitutes a license from FMERA to ESA, its employees, officers, agents, consultants and contractors for access to all portions of Fort Monmouth in order to carry out the Construction and Installation Work. Any work within the Army owned environmental carveouts will require approval of the Army. Any and all consultants and contractors hired by ESA who enter upon the Project Site shall: (i) indemnify and hold FMERA, Army and ESA harmless from any and all claims related to or arising from said consultant or contractor entering Fort Monmouth; and (ii) maintain adequate insurance coverage naming FMERA and the United States Army as additional insured parties.

d. Other Approvals. Each Party will obtain all applicable approvals, permits, and authorizations necessary to effectuate their respective responsibilities under this MOU.

e. Commencement and Duration. This MOU will commence immediately upon execution by the Parties after authorization by Resolution of their respective governing councils. Unless terminated earlier, this MOU will remain in effect from the date of its execution until the Construction and Installation Work on the "Project" is complete. For the purposes of this MOU, the same will be "Complete" when ESA concludes that the "Project" has been fully built and that the construction work meets its design standards. The Project shall be completed within two (2) years of execution of this MOU but may be extended by mutual agreement of the Parties by an additional one (1) year.

f. Amendments. This MOU may only be amended in a writing executed by the Parties.

g. Termination. Any Party will have the right to terminate this MOU upon sixty (60) days written notice to the other party; however, should ESA enter into a third-party contract for the Construction and Installation Work in reliance upon FMERA's fulfillment of the Role and Responsibilities in provision 6, the Parties agree that ESA will have access to the funds contained in escrow in fulfillment of the third-party contract subject to the availability of funds. Upon notice of FMERA's intent to terminate this MOU, ESA will not incur any additional expenses or administrative costs.

h. Notices. All notices required to be served or given hereunder will be in writing and will be deemed given when received by personal delivery, by an overnight delivery service which issues a receipt from delivery, or three business days after having been mailed by certified mail, return receipt requested, and addressed as follows:

If to ESA: Eatontown Sewerage Authority
47 Broad Street
Eatontown, New Jersey 07724
Attention: Theodore F. Lewis, Executive Director

If to FMERA: Fort Monmouth Economic Revitalization Authority
502 Brewer Avenue
P.O. Box 267
Oceanport, New Jersey 07757
Attention: Kara Kopach, Executive Director

i. Reasonable Diligence. Each of the Parties will act with reasonable diligence for the purpose of satisfying the conditions set forth herein.

j. Titles and Headings. Titles and headings are included for convenience only and will not be used to interpret the MOU.

k. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of New Jersey.

1. Counterparts. This MOU may be executed in any number of counterparts, all of which counterparts, taken together, shall constitute but one and the same MOU.

The foregoing correctly reflects the Parties' understanding and intent.

Exhibits: <https://njfmera.sharefile.com/d-f5763a9817954d34>

IN WITNESS WHEREOF, the Parties have caused this Addendum of the original New Wilson Avenue Gravity Sewer Lines Memorandum of Understanding to be duly executed and delivered as of the date and year first above written and by so executing, represent and warrant they have the authority to do so.

ATTEST

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY

By: _____

Kara Kopach
Executive Director

Dated: _____

Dated: _____

ATTEST

EATONTOWN SEWERAGE
AUTHORITY

By: _____

Theodore F. Lewis, Jr.
Executive Director

Dated: _____

Dated: _____

Resolution Regarding
1st Amendment to the Purchase and Sale & Redevelopment Agreement with Netflix, Inc. for the
Mega Parcel in Eatontown and Oceanport

WHEREAS, on January 13, 2023 FMERA and Netflix executed a PSARA for the Mega Parcel, an approximately 292± acre parcel) of land containing former residential, administrative and R&D buildings, warehouses, workshops and additional general-purpose facilities in the Boroughs of Eatontown and Oceanport, within the Main Post section of Fort Monmouth. The Mega Parcel is conveniently located adjacent to State Route 35, providing easy access to the Garden State Parkway, Route 18, NJ Transit Bus Lines & adjacent to County Route 11 (Oceanport Avenue), which provides direct access to the Little Silver NJ Transit Train Station. The westernmost 51.1 acres of the Mega Parcel lie within the Phase 1 area of Fort Monmouth, which requires profit sharing with the U.S. Department of the Army. The remaining Mega Parcel acreage lies within the Phase 2 area of Fort Monmouth; and

WHEREAS, pursuant to the terms of the PSARA, Netflix will pay Forty-Seven Million Dollars for the Mega Parcel. Additionally, Netflix has agreed to pay a utility contribution of Five Million Dollars, and the FMERA office relocation fee of Three Million Dollars. The Total Amount due at Closing shall be Fifty-Five Million Dollars, subject to any adjustment relative to the Environmental Carve-Out Holdback. Netflix's total Capital Investment is estimated at Eight Hundred and Forty-Eight Million Dollars which shall be allocated between Phase 1 representing Eight Hundred Six Million Dollars of investment and Phase 2 representing Forty-Two Million Dollars of investment in furtherance of the Redevelopment Project; and

WHEREAS, the Due Diligence Period will run for ninety days from the PSARA execution date and may be extended under the Executive Director's delegated authority for two additional thirty day periods to complete the due diligence tests, inspections, and reviews; and

WHEREAS,; on March 29, 2023, Netflix requested permission to exercise the first thirty day Due Diligence Extension Period until May 15, 2023, which FMERA's Executive Director granted on April 5, 2023. Subsequently, on April 25, 2023, Netflix sent a letter requesting: 1) permission to exercise the second thirty day Due Diligence Extension Period provided via the original terms of the PSARA until June 14, 2023 subject to approval of FMERA's Executive Director; 2) requesting a new, additional forty-five day extension of the Due Diligence Period from June 14, 2023 until July 31, 2023, and 3) requesting a new, additional forty-five day extension of the Due Diligence Period from July 31, 2023 until September 14, 2023 which may be requested by Netflix prior to the expiration of the Third Due Diligence Extension Period and may be granted by FMERA's Executive Director; and

WHEREAS, FMERA granted the request for the Second Due Diligence Period Extension on April 28, 2023, and the Due Diligence Period is currently scheduled to expire on June 14, 2023 at 5:00p.m.; and

WHEREAS, Netflix's letter cited the size of the transaction contemplated in the Agreement and the complex nature of the Mega Parcel as reasons for the extension request and stated that, among other things, Netflix required additional time to perform and finalize aspects of its due diligence related to: (i) title, survey and traffic mitigation issues, (ii) environmental testing and reports, and (iii) energy and power, and (iv) emergency services arrangements. As Netflix has been proceeding in good faith, staff recommends that the Board approve two additional forty-five day extensions, the second of which may be granted under the Executive Director's delegated authority; and

WHEREAS, subject to the terms of the PSARA, Netflix's first deposit shall become non-refundable upon the conclusion of the Second Due Diligence Extension Period at 5:00pm on June 14, 2023; and

WHEREAS, the attached First Amendment to the PSARA between FMERA and Netflix is in substantially final form. The final terms of the First Amendment to the PSARA are subject to the approval of FMERA's Executive Director, Netflix, Inc., and a review as to form by the Attorney General's office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves the First Amendment to the Purchase and Sale & Redevelopment Agreement with Netflix, Inc. for the Mega Parcel in Eatontown and Oceanport to extend the Due Diligence Extension Periods and grant Delegated Authority to the Executive Director to approve the Due Diligence requests on terms substantially consistent to those set forth in the attached memorandum and with final terms acceptable to the Executive Director and the Attorney General's Office and authorizes the Executive Director to execute the Amendment.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Attachment

Dated: May 17, 2023

EXHIBIT 2

MEMORANDUM

TO: Members of the Board

FROM: Kara Kopach
Executive Director

RE: First Amendment to the Purchase and Sale & Redevelopment Agreement with Netflix, Inc. for the Mega Parcel in Eatontown and Oceanport.

DATE: May 17, 2023

Request

I am requesting that the Board approve 1) the execution of the First Amendment to the Purchase and Sale & Redevelopment Agreement (“PSARA”) with Netflix, Inc. (“Netflix” or “Purchaser”) for the Mega Parcel in Eatontown and Oceanport to extend the Due Diligence Extension Periods and 2) grant Delegated Authority to the Executive Director to approve the Due Diligence requests.

Background

On January 13, 2023, FMERA (the “Seller”) and Netflix executed a PSARA, an approximately 292± acre parcel of land containing former residential, administrative and R&D buildings, warehouses, workshops and additional general-purpose facilities in the Boroughs of Eatontown and Oceanport (the “Mega Parcel”), within the Main Post section of Fort Monmouth. The Mega Parcel is conveniently located adjacent to State Route 35, providing easy access to the Garden State Parkway, Route 18, NJ Transit Bus Lines & adjacent to County Route 11 (Oceanport Avenue), which provides direct access to the Little Silver NJ Transit Train Station. The westernmost 51.1 acres of the Mega Parcel lie within the Phase 1 area of Fort Monmouth, which requires profit sharing with the U.S. Department of the Army. The remaining Mega Parcel acreage lies within the Phase 2 area of Fort Monmouth.

Purchase and Sale & Redevelopment Agreement

Pursuant to the terms of the PSARA, Netflix will pay Forty-Seven Million (\$47,000,000) Dollars for the Mega Parcel. Additionally, Purchaser has agreed to pay a utility contribution of Five Million (\$5,000,000.00) Dollars, and the FMERA office relocation fee of Three Million (\$3,000,000.00) Dollars. The Total Amount due at Closing shall be Fifty-Five Million (\$55,000,000.00) Dollars, subject to any adjustment relative to the Environmental Carve-Out Holdback, as further described below. The Purchaser’s total Capital Investment is estimated at Eight Hundred and Forty-Eight Million (\$848,000,000) Dollars which shall be allocated between Phase 1 representing Eight Hundred Six Million (\$806,000,000) Dollars of investment and Phase 2 representing Forty-Two Million (\$42,000,000) Dollars of investment in furtherance of the Redevelopment Project.

The Due Diligence Period ran for ninety (90) days from the PSARA execution date and was extended under the Executive Director’s delegated authority for two (2) additional thirty (30) day periods to complete the due diligence tests, inspections, and reviews.

First Amendment to the PSARA

On March 29, 2023, Purchaser requested permission to exercise the first thirty (30) day Due Diligence Extension Period until May 15, 2023 (the “First Due Diligence Extension Period”), which FMERA’s Executive Director granted on April 5, 2023. Subsequently, on April 25, 2023, Purchaser sent a letter requesting: 1) permission to exercise the second thirty (30) day Due Diligence Extension Period provided via the original terms of the PSARA until June 14, 2023 subject to approval of FMERA’s Executive Director (the “Second Due Diligence Extension

Period”); 2) requesting a new, additional forty-five (45) day extension of the Due Diligence Period from June 14, 2023 until July 31, 2023 (the “Third Due Diligence Extension Period”), and 3) requesting a new, additional forty-five (45) day extension of the Due Diligence Period from July 31, 2023 until September 14, 2023 (the “Fourth Due Diligence Extension Period”) which may be requested by Purchaser prior to the expiration of the Third Due Diligence Extension Period and may be granted by FMERA’s Executive Director.

FMERA granted the request for the Second Due Diligence Period Extension on April 28, 2023 and the Due Diligence Period is currently scheduled to expire on June 14, 2023 at 5:00p.m.

Purchaser’s letter cited the size of the transaction contemplated in the Agreement and the complex nature of the property as reasons for the extension request and stated that, among other things, Purchaser required additional time to perform and finalize aspects of its due diligence related to: (i) title, survey and traffic mitigation issues, (ii) environmental testing and reports, and (iii) energy and power, and (iv) emergency services arrangements. As Purchaser has been proceeding in good faith, staff recommends that the Board approve two additional forty-five (45) day extensions, the second of which may be granted under the Executive Director’s delegated authority.

Subject to the terms of the PSARA, Purchaser’s first deposit shall become non-refundable upon the conclusion of the Second Due Diligence Extension Period at 5:00pm on June 14, 2023.

The attached First Amendment to the PSARA between FMERA and Netflix is in substantially final form. The final terms of the First Amendment to the PSARA are subject to the approval of FMERA’s Executive Director, Netflix, Inc. and a review as to form by the Attorney General’s office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

Recommendation

In summary, I am requesting that the Board approve 1) the First Amendment to the Purchase and Sale & Redevelopment Agreement with Netflix, Inc. for the Mega Parcel in Eatontown and Oceanport to extend the Due Diligence Extension Periods and 2) grant Delegated Authority to the Executive Director to approve the Due Diligence requests.



Kara Kopach

Attachments: Mega Parcel Purchase and Sale & Redevelopment Agreement
Prepared by: Sarah Giberson

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT (“**First Amendment**”), made and entered into as of this ____ day of ____ 2023, by and between FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY (“**Seller**” or “**FMERA**”), 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. (“**FMERA Act**”), whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and NETFLIX, INC. (“**Purchaser**” or “**Netflix**”), a corporation of the State of Delaware, whose address is 121 Albright Way, Los Gatos, California 95032. Seller and Purchaser are collectively referred to herein as the “Parties” and individually as a “Party”.

WHEREAS, Seller and Purchaser have heretofore entered into a certain Purchase and Sale Agreement and Redevelopment Agreement dated as of January 13, 2023 (the “**Agreement**”), whereby Seller agreed to sell and Purchaser agreed to purchase and redevelop approximately 292 acres of land containing several contiguous and noncontiguous parcels within Fort Monmouth, and located within the Boroughs of Eatontown and Oceanport, New Jersey. The area is positioned between Route 35 to the west; New Jersey Transit’s North Jersey Coast Line to the east; Sherrill Avenue and Parkers Creek to the North; a JCP&L right of way, Nicodemus Avenue and Riverside Avenue to the South and is intersected by Oceanport Avenue toward the eastern portion of the property, Avenue of Memories toward the southern portion of the property and several smaller cross streets (collectively, the “**Property**”); and

WHEREAS, Purchaser proposed to build a sustainable and integrated film studio campus consisting of two phases and as more particularly described in Section 7(b) of the Agreement; and

WHEREAS, Purchaser’s Original Due Diligence Period was to expire on April 13, 2023; and

WHEREAS, on March 29, 2023, Purchaser requested permission to exercise the first thirty (30) day Due Diligence Extension Period until May 15, 2023 (the “**First Due Diligence Extension Period**”), and Seller granted the request on April 5, 2023; and

WHEREAS, on April 25, 2023, Purchaser sent a letter requesting: 1) permission to exercise the second thirty (30) day Due Diligence Extension Period until June 14, 2023 (the “**Second Due Diligence Extension Period**”); 2) an additional forty-five (45) day extension of the Due Diligence Period from June 14, 2023 until July 31, 2023 (the “**Third Due Diligence Extension Period**”); and 3) a further forty-five (45) day extension of the Due Diligence Period from July 31, 2023 until September 14, 2023 (the “**Fourth Due Diligence Extension Period**”) which may be requested by Purchaser prior to the expiration of the Third Due Diligence Extension Period and may be granted by FMERA’s Executive Director (which grant shall not be unreasonably conditioned or delayed) without the need to obtain approval from FMERA’s Board; and

WHEREAS, Seller granted the request for the Second Due Diligence Period Extension on April 28, 2023 and the Due Diligence Period is currently scheduled to expire on June 14, 2023 at 5:00 p.m.; and

WHEREAS, Purchaser cited the size of the transaction contemplated in the Agreement and the complex nature of the Property as reasons for the extension request and stated that, among other things,

Purchaser required additional time to perform and finalize aspects of its due diligence related to: (i) title, survey and traffic mitigation issues, (ii) environmental testing and reports, and (iii) energy and power, and (iv) emergency services arrangements; and

WHEREAS, Purchaser has been proceeding in good faith.

NOW, THEREFORE, in consideration of the foregoing and other good and other valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated herein as set forth in full in the body of this First Amendment. Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Agreement.
2. Due Diligence Period. Section 2(y) of the Agreement is hereby amended and modified to provide that:

Seller's request for the Third Due Diligence Extension Period is hereby granted and the Due Diligence Period shall now expire on July 31, 2023 at 5:00 p.m. Additionally, Seller may extend the Due Diligence Period for the Fourth Due Diligence Extension Period at Purchaser's written request, which shall not be unreasonably conditioned or denied, for an additional forty-five (45) days until September 14, 2023 at 5:00 p.m. to allow Purchaser more time to complete its due diligence tests, inspections or reviews. Extension of the Due Diligence Period for the Fourth Due Diligence Extension Period may be granted by FMERA's Executive Director without the need to obtain approval from FMERA's Board and shall not be unreasonably conditioned or delayed. For purposes of clarification:

- (i) The Due Diligence Extension Period (as defined in the Agreement) shall not be deemed to include the Third Due Diligence Extension Period or the Fourth Due Diligence Extension Period, it being understood and agreed that if Purchaser terminates this Agreement at any time during the First Due Diligence Extension Period or the Second Due Diligence Extension Period, Purchaser shall receive a full refund of both the Initial Deposit and the Second Deposit and all interest accrued thereon, and if Purchaser terminates this Agreement at any time during the Third Due Diligence Extension Period, the Fourth Due Diligence Extension Period or any subsequent further extension of the Due Diligence Period, Purchaser shall receive a full refund of the Second Deposit and all interest accrued thereon.
- (ii) Subject to the provisions of Section 2(i) above, the term "Due Diligence Period" as used in this Agreement shall for all purposes hereafter mean and refer collectively to the Original Due Diligence Period as extended by the First Due Diligence Extension Period, the Second Due Diligence Extension Period, the Third Due Diligence Extension Period and, if requested and granted, the Fourth Due Diligence Extension Period. For avoidance of doubt, if Purchaser terminates this Agreement at any time during the Third Due Diligence Extension Period, the Fourth Due Diligence Extension Period or any subsequent

further extension of the Due Diligence Period, Purchaser shall receive a full refund of the Second Deposit and all interest accrued thereon.

3. Entire Agreement, Ratifications and Reconciliation. The Agreement and this First Amendment contain the final and entire Agreement between the Parties with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. Except as modified in this First Amendment, the Agreement is hereby ratified and remains in full force and effect. The terms and provisions of this First Amendment shall be reconciled with the terms and provisions of the Agreement to the fullest extent possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this First Amendment and any terms or provisions of the Agreement, such term or provision of this First Amendment shall control.
4. Authority to Execute. Each of Seller and Purchaser covenants, represents and warrants to the other that the individual(s) executing this First Amendment on such party's behalf is authorized to do so.
5. Governing Law. This First Amendment shall be governed by the laws of the State of New Jersey.
6. Counterparts. This First Amendment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are no signatories to the original or the same counterpart. Each counterpart may be delivered by facsimile or electronic mail transmission and a faxed or electronically mailed counterpart of this First Amendment containing either the original and/or copy of any signature of any party hereto shall have the same force and effect as an original counterpart signature.
7. Successors and Assigns. This First Amendment shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first written above.

ATTEST:

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY, Seller

By:

Kara Kopach,
Executive Director

WITNESS:

NETFLIX, INC., Purchaser

By:

Matthew J. Tevenan,
VP, CREWS

**Resolution Regarding
Sixth Amendment to the Purchase and Sale & Redevelopment Agreement with US Home LLC, a wholly owned
subsidiary of Lennar Corporation, for the Howard Commons Parcel in Eatontown**

WHEREAS, on November 30, 2021, FMERA and Lennar executed a PSARA for Howard Commons, an approximately 59.62-acre parcel of land on Pinebrook Road in the Fort's Charles Wood Area in Eatontown; and

WHEREAS, pursuant to the terms of the PSARA, Lennar will pay One Million Eight Hundred Thousand (\$1,800,000) Dollars for the Parcel; FMERA may agree to reduce the Purchase Price to cover the cost of the remediation of any newly discovered environmental issues in an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00). The Purchaser's total Capital Investment is estimated at Sixty-Six Million Dollars (\$66,000,000); and

WHEREAS, the Redevelopment Project shall include the construction of 275 Housing Units along Pinebrook Road, together with a retail component consisting of a maximum building square footage of 33,800 fronting on Hope Road and the paved and parking areas located within the Property with a capital investment of Sixty-Six Million Dollars (\$66,000,000); the Redevelopment Project shall include the buildout of twenty units of supportive housing ("Supportive Housing Units") in the Borough of Eatontown as set forth in a Legally Binding Agreement ("LBA") with the non-profit organization Affordable Housing Alliance ("AHA"); and

WHEREAS, in the First Amendment to the PSARA, executed on January 14, 2022, FMERA and Purchaser agreed to amend the PSARA to provide a 150 square foot office with an adjacent bathroom within the permanent supportive housing unit build out; FMERA will contribute up to \$50,000 toward this addition; and

WHEREAS, in the Second Amendment, executed on January 15, 2022, FMERA's executive director, under his delegated authority, agreed to the extension of the due diligence until March 30, 2022 and memorialized the extension via an administrative amendment; and

WHEREAS, the Third Amendment to the PSARA, executed on April 20, 2022, memorialized the incorporation of the Second Administrative Letter as Exhibit I and the Supportive Housing PSA as Exhibit J, as an administrative amendment; the Third Amendment also acknowledged that U.S. Home Corporation d/b/a/ Lennar had submitted a certificate of conversion from a corporation into and LLC. U.S. Home, LLC d/b/a/ Lennar retains all of the same rights and responsibilities under the terms of the PSARA; and

WHEREAS, the Fourth Amendment to the PSARA, executed on May 17, 2022 reinstated the PSARA and extended the Due Diligence Period by an additional ninety days until June 30, 2022; and

WHEREAS, the Fifth Amendment to the PSARA, executed on June 10, 2022, modified the definition of the Retail Phase of the Redevelopment Project to permit a retail component of up to 40,000 square feet of retail space with a limit of two-stories, 35 feet in height, maximum permitted lot coverage of seventy-five percent, and a maximum floor area ratio of 0.25; and

WHEREAS, by email dated January 19, 2023, Purchaser requested to modify the Redevelopment Project to permit an increase in the amount of contaminated soil to be relocated to the Receiving Parcel from 36 inches above adjacent Pinebrook Road top of curb grade to 60 inches above the adjacent Pinebrook Road top of curb grade. Purchaser found that after completion of environmental Due Diligence, which expired on June 30, 2022, the amount of soil with pesticide exceedances was larger than expected and, therefore, required the additional height to cap all the soil and the expansion of Receiving Parcel to approximately 7.4 acres.; and

WHEREAS, the PSARA permits Purchaser, upon New Jersey Department of Environmental Protection's (NJDEP) concurrence, to convey the Receiving Parcel to the Borough of Eatontown. Eatontown was informed of the request on January 20, 2023, and by way of email dated February 7, 2023 approved of the height increase, which shall be compliant with all necessary requirements for ADA accessibility, relevant NJDEP approvals, FMERA's Mandatory Conceptual Review and Eatontown's planning board review; and

WHEREAS, staff requests that the Board approve the following modifications to the PSARA as described in the attached memorandum; and

WHEREAS, all other terms of the PSARA will remain unchanged. Attached in substantially final form is the Sixth Amendment to the PSARA between FMERA and Lennar. The final terms of the Sixth Amendment are subject to the approval of FMERA's Executive Director and a review as to form by the Attorney General's office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves the Sixth Amendment to the Purchase and Sale & Redevelopment Agreement with U.S. Home, LLC a wholly owned subsidiary of Lennar Corporation, for the Howard Commons Parcel in Eatontown on terms substantially consistent to those set forth in the attached memorandum and with final terms acceptable to the Executive Director and the Attorney General's Office and authorizes the Executive Director to execute the Amendment.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Attachment

Dated: May 17, 2023

EXHIBIT 3

MEMORANDUM

TO: Members of the Board

FROM: Kara Kopach
Executive Director

RE: Sixth Amendment to the Purchase and Sale & Redevelopment Agreement with US Home LLC, a wholly owned subsidiary of Lennar Corporation, for the Howard Commons Parcel in Eatontown

DATE: May 17, 2023

Request

I am requesting that the Board approve the execution of the Sixth Amendment to the Purchase and Sale & Redevelopment Agreement (“PSARA”) with U.S. Home, LLC a wholly owned subsidiary of Lennar Corporation (“Lennar” or “Purchaser”) for the Howard Commons Parcel (the “Property”) in Eatontown.

Background

On November 30, 2021, FMERA and Lennar executed a PSARA for Howard Commons, an approximately 60-acre parcel of land on Pinebrook Road in the Fort’s Charles Wood Area in Eatontown. The property is currently improved with 486 townhouse units, along with 3,853 square feet of general-purpose buildings. The Fort Monmouth Reuse and Redevelopment Plan (“Reuse Plan”) calls for the demolition of the existing improvements due to their age, condition, density and design, and their replacement with 275 dwelling units and approximately 15,000 square feet of ancillary retail/commercial space. Howard Commons is a Phase One property in FMERA’s June 25, 2012 Economic Development Conveyance Agreement (“EDC Agreement”) with the Army. Title to the approximately 60-acre tract was transferred to FMERA in June 2014.

Purchase and Sale & Redevelopment Agreement

Pursuant to the terms of the PSARA, Lennar will pay One Million Eight Hundred Thousand (\$1,800,000) Dollars for the Parcel. FMERA may agree to reduce the Purchase Price to cover the cost of the remediation of any newly discovered environmental issues in an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00).

The Redevelopment Project shall include the construction of 275 Housing Units along Pinebrook Road (“Residential Phase”), together with a retail component consisting of a maximum building square footage of 33,800 fronting on Hope Road (“Retail Phase”) and the paved and parking areas located within the Property with a capital investment of Sixty-Six Million Dollars (\$66,000,000). The Retail Phase has been modified to permit a maximum building square footage of 40,000. Seller has an obligation to provide twenty (20) units of supportive housing (“Supportive Housing Units”) in the Borough of Eatontown as set forth in a Legally Binding Agreement (“LBA”) with the Affordable Housing Alliance (“AHA”) a non-profit organization executed on June 19, 2020 and amended by the Administrative Letter and First Amendment to the LBA on June 19, 2020. The Parties agree that at the Seller’s sole discretion, Seller or AHA shall have an option to purchase twenty (20) of the newly constructed Supportive Housing Units, to be developed in accordance with the Second Administrative Letter (“Administrative Letter”), and a form of Purchase & Sale Agreement between AHA and Purchaser (“Supportive Housing PSA”) and that if AHA fails to exercise its option, Seller shall have an option to purchase the Supportive Housing Units. The Second Administrative Letter and the Purchase and Sale Agreement were executed on March 17, 2022.

The Redevelopment Project will also consist of the removal of pesticide-contaminated soil found on the Property. Purchaser shall have two options for removal of contaminated soil, a selection of which must occur prior to the



conclusion of Due Diligence. Either Purchaser will dispose of any pesticide-contaminated soil found to an off-site location, or Purchaser shall relocate any pesticide-contaminated soil to a portion of the Property identified as the Receiving Parcel. The Receiving Parcel is an approximately six (6) acre portion of the Property on the south side of Pinebrook Road (the “Receiving Parcel”), where Purchaser intends to dispose of pesticide-contaminated soil found on the Property, subject to conditions set forth in the Agreement and as required by the New Jersey Department of Environmental Protection (“NJDEP”), and convert the Receiving Parcel to passive or active recreation space or a small solar energy system. Removal will be subject to NJDEP concurrence.

If Purchaser elects to remove contaminated soil to the Receiving Parcel, Purchaser will cap the affected portion of the Receiving Parcel with certified clean fill, or such other hard cap material as may be approved by the NJDEP at a height to exceed 36 inches above the adjacent Pinebrook Road top curb grade. The Receiving Parcel is depicted in the Conceptual Site Plan, and any relocation of the Receiving Parcel shall require FMERA’s written consent. Upon completion of the cap to the Receiving Parcel, and upon NJDEP concurrence, Purchaser will be permitted to convey the Receiving Parcel to the Borough of Eatontown.

Purchaser shall commence the abatement and demolition of the existing improvements within forty-five (45) days of Closing. Purchaser completion of abatement and demolition of the existing improvements shall occur within 12 months of Closing, and Purchaser shall Complete Construction of the Project no later than 72 months from Closing. Purchaser also covenants to create a minimum of 26 part-time and/or full-time jobs within 12 months of the Completion of the Project completion or pay a penalty of \$1,500 for each job not created.

In addition, Purchaser is obligated to improve access to the ball fields located near the southeast portion of the Property by paving and widening, if required, to accommodate emergency vehicles and to grant an access easement to the Eatontown Board of Education. The PSARA was executed on November 30, 2021.

First Amendment

In order to provide additional support services to future residents of the Supportive Housing Units, AHA requested that one of the Supportive Housing Units include office space. To satisfy this request, FMERA and Purchaser agreed to amend the PSARA to provide a 150 square foot office with an adjacent bathroom within the permanent supportive housing unit build out. As part of the addition, FMERA will contribute up to \$50,000 toward this addition. The First Amendment was executed on January 14, 2022.

Second Amendment

Under the terms of the PSARA, Purchaser’s Due Diligence Period was set to expire on January 30, 2022. On, January 3, 2022, Purchaser requested that FMERA approve the additional sixty (60) days extension period to perform due diligence. As Purchaser was proceeding diligently and with good faith, FMERA staff, under its delegated authority, agreed to the extension of the due diligence until March 30, 2022, and memorialized the extension via an administrative second amendment. The Second Amendment was executed on January 14, 2022.

Third Amendment

Under the terms of the PSARA, the Second Administrative Letter to the Legally Binding Agreement between FMERA and AHA identified as Exhibit I, and the Supportive Housing PSA between AHA and Lennar for purchase of the twenty (20) Supportive Housing Units under terms as set forth in the PSARA identified as Exhibit J were to be attached to the PSARA prior to the expiration of the Due Diligence.

The Third Amendment to the PSARA memorializes the incorporation of the Second Administrative Letter as Exhibit I and the Supportive Housing PSA as Exhibit J, as an administrative amendment. The Third Amendment also acknowledged that U.S. Home Corporation d/b/a/ Lennar had submitted a certificate of conversion from a corporation into and LLC. U.S. Home, LLC d/b/a/ Lennar retains all of the same rights and responsibilities under the terms of the PSARA. The Third Amendment was executed on April 20, 2022.

Fourth Amendment

During the course of its due diligence investigations, Purchaser identified additional groundwater and soil contamination in the Howard Commons parcel. As the Due Diligence Period was set to expire on March 30, 2022, Purchaser submitted

a letter dated March 25, 2022, conditionally terminating the PSARA and requesting that the Board grant an additional ninety (90) day extension so it could conduct additional environmental testing. Purchaser also requested that FMERA review documentation on whether the contamination qualified as a Newly Discovered Environmental Issue as that term is defined in the PSARA. As the Purchaser was continuing to finalize its site plans and proceeding in good faith, FMERA staff recommended, and the Board approved granting the extension to the Due Diligence Period until June 30, 2022. The Fourth Amendment was executed on May 17, 2022.

Fifth Amendment

Under the terms of the PSARA, Purchaser represented that it was purchasing the Property with the intent to construct a retail component consisting of a maximum building square footage of 33,800 fronting on the Property’s Hope Road (“Retail Phase”). Buildings within the Retail Phase are limited to two-stories of no more than thirty (30) feet, with a maximum lot coverage of no more than sixty percent and a maximum Floor Area Ratio (FAR) of 0.20.

The Fifth Amendment to the PSARA modified the definition of the Retail Phase of the Redevelopment Project to permit a retail component of up to 40,000 square feet of retail space with a limit of two-stories, 35 feet in height, maximum permitted lot coverage of seventy-five percent, and a maximum floor area ratio of 0.25. The Fifth Amendment was executed on June 10, 2022.

Sixth Amendment

By email dated January 19, 2023, Purchaser requested to modify the Redevelopment Project to permit an increase in the amount of contaminated soil to be relocated to the Receiving Parcel from 36 inches above adjacent Pinebrook Road top of curb grade to 60 inches above the adjacent Pinebrook Road top of curb grade. Purchaser found that after completion of environmental Due Diligence, which expired on June 30, 2022, the amount of soil with pesticide exceedances was larger than expected and, therefore, required the additional height to cap all the soil and the expansion of Receiving Parcel to approximately 7.4 acres. The PSARA permits Purchaser, upon New Jersey Department of Environmental Protection’s (NJDEP) concurrence, to convey the Receiving Parcel to the Borough of Eatontown. Eatontown was informed of the request on January 20, 2023, and by way of email dated February 7, 2023 approved of the height increase, which shall be compliant with all necessary requirements for ADA accessibility, relevant NJDEP approvals, FMERA’s Mandatory Conceptual Review and Eatontown’s planning board review.

Therefore, staff requests that the Board approve the following modifications to the PSARA: a) Section 2(ccc), the definition of the “Receiving Parcel” shall be revised to include approximately 7.4 acres of land and b) Section 7(b) “Redevelopment Project” shall be revised to capture that the height of the soil on the Receiving Parcel shall not exceed 60 inches above adjacent Pinebrook Road top of curb grade, including the pesticide contaminated soil plus any cap material. Additionally, the increase to 60 inches shall be gradual from the curb to the 60-inch height limit and shall provide for appropriate ADA accessibility, stormwater management and any other requirements identified by NJDEP, FMERA and Borough of Eatontown, in accordance with Exhibit A-1.

All other terms of the PSARA will remain unchanged. Attached in substantially final form is the Sixth Amendment to the PSARA between FMERA and Lennar. The final terms of the amendment will be subject to the approval of Lennar, FMERA’s Executive Director and a review as to the form by the Attorney General's Office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

Recommendation

In summary, I am requesting that the Board authorize the execution of the Sixth Amendment to the Purchase and Sale & Redevelopment Agreement with U.S. Home, LLC a wholly owned subsidiary of Lennar Corporation, for the Howard Commons Parcel in Eatontown.



Kara Kopach

Attachment: Sixth Amendment to the Purchase and Sale & Redevelopment Agreement
Prepared by: Regina McGrade

**SIXTH AMENDMENT TO PURCHASE AND SALE AGREEMENT AND
REDEVELOPMENT AGREEMENT**

THIS SIXTH AMENDMENT TO PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT (“Sixth Amendment”), made and entered into as of this ___ day of _____ 2023 by and between FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY, 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. (“Seller”), whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and U.S. HOME, LLC, a Delaware limited liability company (f/k/a U.S. Home Corporation d/b/a Lennar) (“Purchaser”), whose address is 2465 Kuser Road, Floor 3, Hamilton, New Jersey 08690. Seller and Purchaser are collectively referred to herein as the “Parties”.

WHEREAS, the Parties entered into that certain Purchase and Sale Agreement and Redevelopment Agreement dated as of November 30, 2021, as amended by that certain First Amendment to Purchase and Sale Agreement and Redevelopment Agreement dated as of January 14, 2022, that certain Second Amendment to Purchase and Sale Agreement and Redevelopment Agreement dated as of January 14, 2022; that certain Third Amendment to Purchase and Sale Agreement and Redevelopment Agreement dated as of April 20, 2022; and that certain Fourth Amendment to the Purchaser and Sale Agreement and Redevelopment Agreement dated May 17, 2022 (collectively, the “**Agreement**”); and

WHEREAS, pursuant to the First Amendment to the Agreement, the Parties agreed to amendment Section 49(c) of the Agreement to include Purchaser’s obligation to include a 150 square foot office space with adjacent bathroom on the ground floor of one of the two Supportive Housing units and Seller agreed to pay up to and not in excess of Fifty Thousand (\$50,000) Dollars toward the buildout of the office space; and

WHEREAS, pursuant to the Second Amendment to the Agreement, the Parties agreed to exercise the Due Diligence Extension and extend the Due Diligence Period until March 30, 2022; and

WHEREAS, pursuant to the Third Amendment to the Agreement, the Parties, among other things, agreed to incorporate Exhibit I and J to the Agreement; and

WHEREAS, pursuant to the Fourth Amendment to the Agreement the Parties agreed to reinstate the Agreement and extend the Due Diligence Period until June 30, 2022; and

WHEREAS, pursuant to the Fifth Amendment to the Agreement the Parties agreed to a modification to the Retail Phase of the Redevelopment Project; and

WHEREAS, Purchaser has requested, and Seller has agreed, to

NOW, THEREFORE, in consideration of the foregoing and other good and other valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated herein as set forth in full in the body of this Sixth Amendment. Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Agreement.
2. Redevelopment Project. Subsection 7(b) of Agreement is hereby modified after the phrase (“**Residential Phase**”), to say:

together with a retail component consisting of up to a maximum building square footage of 40,000 fronting on the Property’s Hope Road or Pinebrook Road (“**Retail Phase**”). The buildings on the Retail Phase shall have a limit of two-stories but in no case more than 35 feet in height; additionally, the Retail Phase shall have a maximum permitted lot coverage of seventy-five percent (75%) and the maximum Floor Area Ratio (FAR) of 0.25.

Notwithstanding the above, everything else in Section 7(b) shall remain the same.

3. Entire Agreement, Ratifications and Reconciliation. The Agreement and this Sixth Amendment contain the final and entire Agreement between the Parties with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. Except as modified in this Sixth Amendment, the Agreement is hereby ratified and remains in full force and effect. The terms and provisions of this Sixth Amendment shall be reconciled with the terms and provisions of the Agreement to the fullest extent possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this Sixth Amendment and any terms or provisions of the Agreement, the terms of this Sixth Amendment shall control.
4. Authority to Execute. Both Seller and Purchaser covenants, represents and warrants to the other that the individual(s) executing this Sixth Amendment on such party’s behalf is authorized to do so.
5. Governing Law. This Sixth Amendment shall be governed by the laws of the State of New Jersey.
6. Counterparts. This Sixth Amendment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are no signatories to the original or the same counterpart. Each counterpart may be delivered by facsimile or electronic mail transmission and a faxed or electronically mailed counterpart of this Sixth Amendment containing either the original and/or copy of any signature of any party hereto shall have the same force and effect as an original counterpart signature.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first written above.

ATTEST:

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY, Seller

By:

Kara Kopach
Executive Director

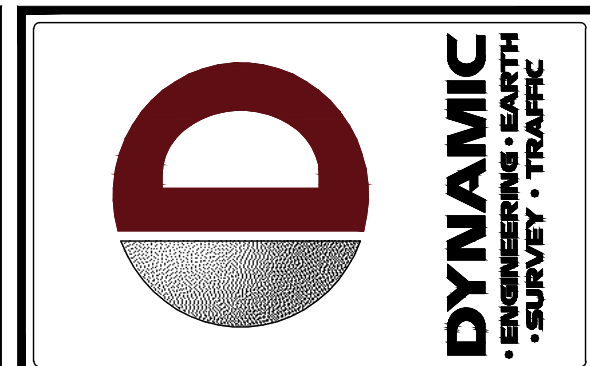
WITNESS:

U.S. HOME, LLC (F/K/A U.S. HOME
CORPORATION D/B/A LENNAR), a
wholly owned subsidiary of LENNAR
CORPORATION, Purchaser

By:

Robert Calabro,
Vice President

Plotted: 03/21/23 - 4:05 PM, By: scottani
File: P:\DCEPC PROJECTS\0716 Lennar\09-007 Eatontown\09\Exhibits (Misc)\2023-02-14_Open_Space\Space\071699007051.dwg, -----> OPEN SPACE EXHIBIT



REV.	DATE	COMMENTS
1	3/6/23	ADDED ACCESSIBLE PATH LOCATIONS
2	3/21/23	ADDED SLOPE AREAS

THIS PLAN SET IS FOR PERMITTING PURPOSES ONLY AND MAY NOT BE USED FOR CONSTRUCTION

OWNER: YL
DESIGNED BY: SM
CHECKED BY: SRC
CREATED BY: SRC

PROJECT: U.S. HOME, LLC. (DBA LENNAR)
LIBERTY POINTE RESIDENTIAL & RETAIL DEVELOPMENT
BLOCK 601, LOT 1 & BLOCK 701, LOT 1
PINEBROOK ROAD AND HOPE ROAD
BOROUGH OF EATONTOWN, MONMOUTH COUNTY, NJ

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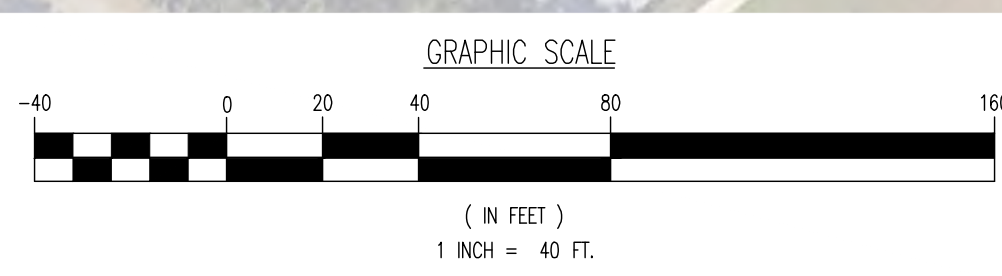
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PROFESSIONAL ENGINEER
NEW JERSEY LICENSE No. 41985

TITLE: **OPEN SPACE EXHIBIT**

SCALE: (H) 1" = 40' (V)	DATE: 2/14/2023
PROJECT No: 0716-99-007	Rev. #:
SHEET No: 1	OF 1 2



ADOPTED
May 17, 2023

Resolution Regarding
Ninth Amendment to the Purchase and Sale Agreement & Redevelopment Agreement with the Borough of Eatontown for a Department of Public Works Complex on the 1123 Parcel

WHEREAS, on May 18, 2016, the Board approved Evaluation Scoring for Local Beneficial Use Requests for the Borough's request to purchase a 7.2-acre tract known as the 1123 Parcel ("the Property") including Buildings 1123, 1124, 1108, 1109 and 1110 located on Echo Avenue, in Eatontown, New Jersey for municipal uses including the relocation of Eatontown's Department of Public Works; and accordingly, the Borough's proposed use of the Property was reviewed and scored by FMERA staff utilizing the Board approved LBU criteria, resulting in a 40% price reduction and sale price of \$886,461.00; and

WHEREAS, on January 16, 2019, the Board authorized the execution of the PSARA between FMERA and the Borough for the Property, and the PSARA was executed on May 8, 2019; and

WHEREAS, pursuant to the terms of the PSARA, the Borough was provided a ninety-day Due Diligence Period commencing on the Effective Date of the PSARA; an Initial Approval Period of twelve months commencing at the end of the Due Diligence period; and a six-month Approval Extension Period, subject to FMERA approval, with Closing to occur within thirty days of satisfaction or waiver of the Conditions Precedent to Closing; and

WHEREAS, under the terms of the First Amendment, executed September 2, 2019, Purchaser agreed to: i) amend the Approval Period to run for a total period not to exceed six months, beginning at the expiration of the Due Diligence Period; and ii) Close within thirty days of the expiration of the amended six month Approval Period, subject to receipt of a NFA letter from the NJDEP for the two environmental carve-out parcels located within the Property and regardless of whether other Conditions Precedent to Closing have been waived or satisfied; and

WHEREAS, under the terms of the Second Amendment to the PSARA, the Executive Director agreed to retroactively extend the Approval Period under his Delegated Authority for five months or until October 30, 2020; the Second Amendment was executed on July 30, 2020; and

WHEREAS, under the terms of the Third Amendment to the PSARA, an additional five-month extension to the Approval Period, or until April 1, 2021 was approved and the PSARA reinstated; Third Amendment was executed November 29, 2020; and

WHEREAS, under the terms of the Fourth Amendment to the PSARA, the Project as set forth in the PSARA was amended to permit the demolition of Building 1124; the Fourth Amendment was executed April 8, 2021; and

WHEREAS, on March 30, 2021, via letter correspondence, the Borough requested an additional extension to the Approval Period, set to expire on April 1, 2021, indicating that the Borough needed additional time to respond to its incomplete Mandatory Conceptual Review (MCR) letter and resubmit a revised MCR package for FMERA's review; the Borough was granted an additional four month extension to the Approval Period at the FMERA Board's April 2021 meeting and the Fifth Amendment was executed June 7, 2021; and

WHEREAS, on July 8, 2021, via letter correspondence, the Borough requested a one year or twelve-month extension to the Approval Period, set to expire on August 1, 2021, citing outstanding environmental approvals from the NJDEP; the Borough indicated that any potential environmental issues that may arise and/or require additional funding to investigate or resolve would pose financial concerns for the approved 2021 budget and would be considered in the next fiscal year; and

WHEREAS, at FMERA's July 2021 Board meeting, the Borough requested and was granted an additional one year or twelve month extension to the Approval Period and the Sixth Amendment was executed on October 14, 2021; and

WHEREAS, on June 22, 2022, via letter correspondence, the Borough requested a six-month extension to the Approval Period, set to expire on August 1, 2022, citing unexpected delays that have significantly impacted the Borough's overall timeline; the Borough indicated that it has experienced numerous delays on the DPW project, beginning with pandemic related challenges that prevented the Borough from adhering to its anticipated timeline; and

WHEREAS, although the Borough had proceeded in good faith, delays caused the existing improvements, which are intended for reuse, to deteriorate significantly. The Borough wished to further investigate the condition of the buildings and reevaluate the costs associated with remediation and renovation of these facilities, noting that should those costs exceed the current budget for the Project, the Borough would need additional time to approve such expenses; and

WHEREAS, the Borough requested and was granted an additional month extension to the Approval Period at the FMERA Board's July 2022 meeting. The Seventh Amendment was executed August 9, 2022; and

WHEREAS, on January 9, 2023, via letter correspondence, the Borough requested a four-month extension to the Approval Period, set to expire on February 1, 2023, citing the continued, compound effect of unexpected delays that have significantly impacted the Borough's overall timeline. At its January 2023 meeting, the Board approved the Eighth Amendment for an extension to the Approval Period to June 1, 2023. The Eighth Amendment was executed on February 23, 2023; and

WHEREAS, on May 9, 2023, via letter correspondence, the Borough requested a seven-month extension to the Approval Period until December 31, 2023, to further evaluate the Project's viability as a DPW site and to investigate potential grant funding for the Project. At this time, the application period for the New Jersey Economic Development Authority's Film & Digital Media Studio Infrastructure Grant PILOT program has not yet begun and the Borough requires additional time to apply; and

WHEREAS, while FMERA wishes to support the Borough's pursuit of additional grant funding for the project to offset the associated expenses, both parties acknowledge that Closing shall not be contingent upon, or delayed by, the receipt of any grant funding, and that upon expiration of the Approval Period, the Borough may proceed with Closing within thirty days or terminate the Agreement. Further, the Borough has represented that this will be final request for an extension to the Approval Period; and

WHEREAS, all other terms of the PSARA will remain unchanged. The attached Ninth Amendment to the PSARA is in substantially final form. The final terms of the amendment will be subject to the approval of FMERA's Executive Director, the Borough of Eatontown, and as to form by the Attorney General's Office. On May 15, 2023, via email, the Real Estate Committee reviewed the request and recommends it to the Board for approval.

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves the Ninth Amendment to the PSARA with the Borough of Eatontown for the 1123 Parcel for an extension of the Approval Period on terms substantially consistent to those set forth in the attached memorandum and with final terms acceptable to the Executive Director and the Attorney General's Office and authorizes the Executive Director to execute the Agreement.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Attachment

Dated: May 17, 2023

EXHIBIT 4

MEMORANDUM

TO: Members of the Board

FROM: Kara Kopach
Executive Director

RE: Ninth Amendment to the Purchase and Sale Agreement & Redevelopment Agreement with the Borough of Eatontown for a Department of Public Works Complex on the 1123 Parcel

DATE: May 17, 2023

Request

I am requesting that the Board approve the execution of the Ninth Amendment to the Purchase and Sale & Redevelopment Agreement (“PSARA”) with the Borough of Eatontown (“Borough”) providing for an amendment to the Approval Period.

Background

On May 18, 2016, the Board approved Evaluation Scoring for Local Beneficial Use Requests for the Borough of Eatontown’s request to purchase a 7.2-acre tract known as the 1123 Parcel (the “Property”) including Buildings 1123, 1124, 1108, 1109 and 1110 located on Echo Avenue, in Eatontown, New Jersey for municipal uses including the relocation of Eatontown’s Department of Public Works. Accordingly, the Borough’s proposed use of the Property was reviewed and scored by FMERA staff utilizing the Board approved LBU criteria, resulting in a 40% price reduction and sale price of \$886,461.00.

On January 16, 2019, the Members of the Board authorized the execution of the PSARA between FMERA and the Borough of Eatontown for the Property. The PSARA was executed on May 8, 2019.

Pursuant to the terms of the PSARA, Purchaser was provided a ninety (90) day Due Diligence Period commencing on the Effective Date of the PSARA, an Initial Approval Period of twelve (12) months commencing at the end of the Due Diligence period, and a six (6) month Approval Extension Period, subject to FMERA approval. Closing would occur within thirty (30) days of satisfaction or waiver of the Conditions Precedent to Closing.

Due Diligence & First Amendment

Due to the existing constraints of the site and a need to further investigate two (2) Army-owned environmental carve-out parcels known as ECP Parcel 41 and ECP Parcel 43, environmental contractor T&M Associates made a recommendation to the Borough of Eatontown to request an extension of the Due Diligence Period, which expired on August 8, 2019 per the terms of the PSARA. A request to extend the Due Diligence Period to November 29, 2019 was subsequently submitted to the FMERA Board and approved at the July 2019 meeting.

Under the terms of the First Amendment, executed September 2, 2019, Purchaser agreed to: i) amend the Approval Period to run for a total period not to exceed six (6) months, beginning at the expiration of the Due Diligence Period; and ii) Close within thirty (30) days of the expiration of the amended six (6) month Approval Period, subject to receipt of a NFA letter from the NJDEP for the two environmental carve-out parcels located within the Property and regardless of whether other Conditions Precedent to Closing have been waived or satisfied.

Delegated Authority & Second Amendment

Following the expiration of the Due Diligence Period, the Borough entered the Approval Period that was set to expire on May 30, 2020. On May 15, 2020, via email correspondence, Purchaser requested an extension to the Approval Period due to challenges navigating COVID-19 at the Borough and turnover in Borough staff.

Per the Board's action on April 15, 2020, the Executive Director was granted Delegated Authority to approve any pre-closing or post-closing extensions for up to five months for delays for COVID-19 related reasons so long as the developer has requested such an extension in writing and satisfied FMERA's request for any supporting documentation. The FMERA staff reviewed the Borough's request and the Executive Director agreed to retroactively extend the Approval Period under his Delegated Authority for five months or until October 30, 2020. The Second Amendment was executed on July 30, 2020.

Reinstatement & Third Amendment

On October 2, 2020, via letter correspondence, Purchaser requested an additional extension to the Approval Period, set to expire on October 30, 2020, citing delays in the Borough budget approval process for 2020. The budget approval was required in order for the Borough to authorize funds for the remaining environmental work to be completed by T&M Associates. The Borough requested an additional five (5) month extension to the Approval Period or until April 1, 2021. As the Approval Period was set to expire before the Third Amendment could be adopted, the Borough conditionally terminated and reinstated the PSARA under the Third Amendment, executed November 29, 2020.

Demolition of Building 1124 & Fourth Amendment

The Borough of Eatontown submitted its initial Mandatory Conceptual Review (MCR) packet to FMERA on October 28, 2020. During its review, FMERA staff identified Building 1124 as slated for demolition on the Borough's site plan. The Project as set forth in the PSARA identifies 1124 as slated for renovation. FMERA notified the Borough of this conflict and the Borough confirmed its position regarding the intended demolition of Building 1124. As amended, the Reuse Plan allows for the demolition of Building 1124 and FMERA agreed that this change supported the highest and best use of the property. The FMERA Board reviewed and approved this request via the Fourth Amendment to the PSARA at its January 2021 meeting. The Fourth Amendment was executed April 8, 2021.

Extension of Approval Period & Fifth Amendment

On March 30, 2021, via letter correspondence, the Borough requested an additional extension to the Approval Period, set to expire on April 1, 2021, indicating that the Borough needed additional time to respond to its incomplete MCR letter and resubmit a revised MCR package for FMERA's review. Although the Borough submitted a revised MCR package on March 26, 2021, FMERA had a forty-five (45) day period after the submission was deemed complete to review, which extended the review period beyond April 1, 2021. The Borough requested and was granted an additional four (4) month extension to the Approval Period at the FMERA Board's April 2021 meeting. The Fifth Amendment was executed June 7, 2021.

Extension of Approval Period & Sixth Amendment

On July 8, 2021, via letter correspondence, the Borough requested an additional extension to the Approval Period, set to expire on August 1, 2021, citing outstanding environmental approvals from the NJDEP. The Borough indicated that any potential environmental issues that may arise and/or require additional funding to investigate or resolve would pose financial concerns for the approved 2021 budget and would need to be considered in the next fiscal year. The Borough requested and was granted an additional one (1) year or twelve (12) month extension to the Approval Period at the FMERA Board's July 2021 meeting. The Sixth Amendment was executed October 14, 2021.

Extension of Approval Period & Seventh Amendment

On June 22, 2022, via letter correspondence, the Borough requested a six (6) month extension to the Approval Period, set to expire on August 1, 2022, citing unexpected delays that have significantly impacted the Borough's overall timeline. The Borough indicated that it has experienced numerous delays on the DPW project, beginning

with pandemic related challenges that prevented the Borough from adhering to its anticipated timeline. Although the Borough had proceeded in good faith, delays caused the existing improvements, which are intended for reuse, to deteriorate significantly. The Borough wished to further investigate the condition of the buildings and reevaluate the costs associated with remediation and renovation of these facilities, noting that should those costs exceed the current budget for the Project, the Borough would need additional time to approve such expenses.

The Borough requested and was granted an additional (6) month extension to the Approval Period at the FMERA Board's July 2022 meeting. The Seventh Amendment was executed August 9, 2022.

Extension of Approval Period & Eighth Amendment

On January 9, 2023, via letter correspondence, the Borough requested a four (4) month extension to the Approval Period, set to expire on February 1, 2023, citing the continued, compound effect of unexpected delays that have significantly impacted the Borough's overall timeline. Further, the Borough has noted that in the interim, FMERA's issuance of the Mega Parcel Request for Offers to Purchase and the subsequent selection of Netflix as the contract purchaser at the Board's December 2022 meeting may impact the Borough's DPW project, including potentially making the Borough eligible for New Jersey Economic Development Authority's Film & Digital Media Studio Infrastructure Grant PILOT program, which is designed to support the development of roadwork or transportation improvements, water and/or sewer lines/service, telecommunications, accessibility, safety improvements, and site remediation work on government owner property which supports the development of a film or digital media studio production facility. The Borough will be pursuing these grants funds, which could substantially offset costs associated with the property's redevelopment and will need additional time to do so.

At its January 2023 meeting, the Board approved the Eighth Amendment to the PSARA for an extension to the Approval Period by four (4) months to June 1, 2023. The Eighth Amendment was executed on February 23, 2023.

Extension of Approval Period & Ninth Amendment

On May 9, 2023, via letter correspondence, the Borough requested a seven (7) month extension to the Approval Period until December 31, 2023, to further evaluate the Project's viability as a DPW site and to investigate potential grant funding for the Project. At this time, the application period for the New Jersey Economic Development Authority's Film & Digital Media Studio Infrastructure Grant PILOT program has not yet begun and the Borough requires additional time to apply.

While FMERA wishes to support the Borough's pursuit of additional grant funding for the project to offset the associated expenses, both parties acknowledge that Closing shall not be contingent upon, or delayed by, the receipt of any grant funding, and that upon expiration of the Approval Period, the Borough may proceed with Closing within thirty (30) days or terminate the Agreement. Further, the Borough has represented that this will be final request for an extension to the Approval Period.

All other terms of the PSARA will remain unchanged. The attached Ninth Amendment to the PSARA is in substantially final form. The final terms of the amendment will be subject to the approval of FMERA's Executive Director, the Borough of Eatontown, and a review as to form by the Attorney General's Office. On May 15, 2023, via email, the Real Estate Committee reviewed the request and recommends it to the Board for approval.

Recommendation

In summary, I am requesting that the Board approve the proposed Ninth Amendment to the PSARA with the Borough of Eatontown for the 1123 Parcel for an amendment to the Approval Period.



Kara Kopach

Attachment: Ninth Amendment to the Purchase and Sale & Redevelopment Agreement
Prepared by: Sarah Giberson

**NINTH AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT**

THIS NINTH AMENDMENT TO PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT (this “**Ninth Amendment**”) is entered into and effective as of this _____ day of _____ 2023 by and 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. 52:271-18 et seq. (“**FMERA Act**”), whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, referred to as the Seller, and the Borough of Eatontown, (the “**Borough**” or “**Purchaser**”) a municipal corporation of the State of New Jersey, whose address is 47 Broad Street, Eatontown, New Jersey 07724, referred to as the Purchaser. Seller and Purchaser are collectively referred to herein as the “**Parties**”.

WHEREAS, the FMERA and the Borough entered into a certain Purchase and Sale Agreement And Redevelopment Agreement dated as of May 8, 2019, as amended by the First Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated September 2, 2019, and the Second Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated July 30, 2020, and the Third Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated November 29th, 2020, and the Fourth Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated April 8, 2021, 2021, and the Fifth Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated June 7, 2021, and the Sixth Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated October 14, 2021, and the Seventh Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated August 9, 2022, and the Eighth Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated February 23, 2023 (collectively, the “**Agreement**”) whereby FMERA agreed to sell and the Borough agreed to purchase and redevelop the property consisting of the approximately 7.2-acre parcel improved by Buildings 1123, 1124, 1108, 1109 and 1110, including Environmental Carve-Out Parcels ECP41 and ECP43, located on Fort Monmouth, Eatontown, New Jersey (“**Property**”); and

WHEREAS, the Borough requested a Due Diligence Extension prior to the August 8, 2019 Due Diligence expiration date and the Board approved the First Amendment to the Purchase and Sale and Redevelopment Agreement providing a Due Diligence Extension until November 29, 2019, and;

WHEREAS, thereafter the Borough requested by correspondence dated May 15, 2020, a five (5) month extension to the Approval Period until October 30, 2020; and

WHEREAS, on April 15, 2020 the Board granted Delegated Authority to FMERA’s to approve any pre-closing or post-closing extensions for up to five months for delays for COVID-19 related reasons so long as the developer has requested such an extension in writing and satisfied FMERA’s request for any supporting documentation; and

WHEREAS, the Borough satisfied FMERA’s request for supporting documentation and the Executive Director agreed to retroactively extend the Approval Period under his Delegated Authority for five months or until October 30, 2020 via the Second Amendment to the Agreement, dated July 30, 2020; and

WHEREAS, thereafter the Borough requested by correspondence dated October 2, 2020, the conditional termination of the Agreement and a five (5) month Approval Period extension until April 1, 2021, which was granted by the FMERA Board via the Third Amendment to the Agreement dated November 29th, 2020; and

WHEREAS, the Borough requested a modification to Redevelopment Project to permit the demolition of Building 1124, which the Board approved via the Fourth Amendment to the Agreement, dated April 8, 2021; and

WHEREAS, by correspondence dated March 30, 2021, the Borough requested a four (4) month extension to the Approval Period to be retroactively applied and extended until August 1, 2021, providing additional time to review and resubmit the Borough's MCR package, which was approved by the Board via the Fifth Amendment to the Agreement, dated June 7, 2021; and

WHEREAS, by correspondence dated July 7, 2021, the Borough requested a twelve (12) month extension to the Approval Period until August 1, 2022, due to outstanding approvals from the NJDEP and the potential need to seek additional funding approval in the following fiscal year, which the Board approved via the Sixth Amendment to the Agreement, dated October, 14, 2021; and

WHEREAS, by correspondence dated June 23, 2022, the Borough requested a six (6) month extension to the Approval Period until February 1, 2023, due to compacted delays resulting from the pandemic which impacted the Project's anticipated timeline and budget concerns related to the significant deterioration of Building 1123, which the Board approved via the Seventh Amendment to the Agreement, dated August 9, 2022; and

WHEREAS, by correspondence dated January 9, 2023, the Borough requested a four (4) month extension to the Approval Period until June 1, 2023 due to continued, compacted delays and to evaluate the impact of the proposed redevelopment of the MEGA parcel on the DPW site project and potentially seek funding sources, which the Board approved via the Eighth Amendment to the Agreement, dated February 23, 2023; and

WHEREAS, by correspondence dated May 9, 2023, the Borough requested a seven (7) month extension to the Approval Period until December 31, 2023 to further evaluate the Project's viability as a DPW site and to investigate potential grant funding for the Project; and

WHEREAS, the Parties understand and agree that Closing shall not be contingent upon, or delayed by, the receipt of any grant funding, and that upon expiration of the Approval Period, the Borough may proceed with closing within thirty (30) days or terminate the Agreement; and

WHEREAS, the Borough has represented that this will constitute the final request for an extension to the Approval Period; and

WHEREAS, Purchaser and Seller wish to, amend and modify the obligations of Purchaser and Seller under the Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing and other good and other valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals; Defined Terms. The recitals set forth above are hereby incorporated herein as if set forth in full in the body of this Ninth Amendment. Capitalized terms used but not otherwise defined shall have the respective meaning ascribed to such terms in the Agreement.

2. Approval Period. Section 1 of the Agreement is hereby amended and modified to provide that the Approval Period shall be extended and expire on December 31, 2023.

3. Entire Agreement, Ratifications and Reconciliation. The Agreement and this Ninth Amendment contain the final and entire Agreement between the Parties with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. Except as modified in this Ninth Amendment, the Agreement is hereby ratified and remains in full force and effect. The terms and provisions of this Ninth Amendment shall be reconciled with the terms and provisions of the Agreement to the fullest extent possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this Ninth Amendment and any terms or provisions of the Ninth, such term or provision of this Ninth Amendment shall control.

4. Authority to Execute. Both Seller and Purchaser covenants, represents and warrants to the other that the individual(s) executing this Ninth Amendment on such party's behalf is authorized to do so.

5. Governing Law. This Ninth Amendment shall be governed by the laws of the State of New Jersey.

6. Counterparts. This Ninth Amendment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are no signatories to the original or the same counterpart. Each counterpart may be delivered by facsimile or electronic mail transmission and a faxed or electronically mailed counterpart of this Ninth Amendment containing either the original and/or copy of any signature of any party hereto shall have the same force and effect as an original counterpart signature.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date above written:

ATTEST

SELLER

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY

By: Kara A. Kopach
Title: Executive Director

ATTEST

PURCHASER
Borough of Eatontown

By: Anthony Talerico, Jr., Mayor
Borough of Eatontown

**Resolution Regarding
Third Amendment to the Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health,
Inc. for the Tinton Falls Commercial Parcel in Tinton Falls**

WHEREAS, the Tinton Falls Commercial Development Parcel is an approximately 31.25± acre parcel of land containing twelve structures located at Pearl Harbor Avenue and Pinebrook Road in the Tinton Falls Reuse Area of the Charles Wood Area of the Fort (the “Property”), and on August 27, 2021, the Members authorized the execution of the PSARA between FMERA and RWJ Barnabas for the Property. The PSARA was executed on October 25, 2021; and

WHEREAS, pursuant to the terms of the PSARA, RWJ Barnabas will pay Five Million One Hundred Thousand (\$5,100,000) Dollars for the Parcel and Purchaser’s total Capital Investment is estimated at One Hundred Million Dollars (\$100,000,000); and

WHEREAS, the Project shall consist of the demolition of existing improvements and the redevelopment of the parcel as described in the attached memorandum; and

WHEREAS, pursuant to the PSARA, the Due Diligence Period was to run for one hundred and twenty days from the later to occur of 1) the PSARA execution date, or 2) the date on which FMERA delivers to Purchaser a Boundary Survey and may be extended for two additional thirty-day periods, if necessary, to complete environmental investigations; and

WHEREAS, Purchaser’s initial Due Diligence period expired on February 25, 2022; by way of a letter dated February 21, 2022, Purchaser requested and was granted the first thirty-day extension; and

WHEREAS, on March 24, 2022, Purchaser requested and was granted the second additional thirty-day extension until April 27, 2022; and

WHEREAS, as environmental testing had not yet been completed and Purchaser’s Due Diligence Period was set to expire, Purchaser issued a letter on April 27, 2022, conditionally terminating the PSARA and requesting that the staff seek Board approval for an extension to the Due Diligence Period; and

WHEREAS, on May 18, 2022, the Board approved the reinstatement of the PSARA and an extension to the Due Diligence Period for ninety days or until July 26, 2022, as well as to permit upon written approval of FMERA an additional ninety-day extension if the Purchaser was proceeding diligently and in good faith. The First Amendment was executed on July 20, 2022. Staff approved the additional ninety-day extension via letter dated July 11, 2022; and

WHEREAS, the Purchaser’s Due Diligence was set to expire on October 24, 2022. On September 2, 2022, via letter, the Purchaser requested a six-month extension to the Due Diligence Period. Purchaser stated that it had undertaken additional environmental testing at the Property related to contamination in the groundwater and soils, and that the findings from these studies required additional time to analyze and finalize; and

WHEREAS, on September 21, 2022, the FMERA Board granted an extension of the Due Diligence Period for an additional ninety days until January 22, 2023 with the option to extend for an additional ninety days if Purchaser was proceeding diligently and in good faith. Purchaser requested via letter dated January 18, 2023 and FMERA granted, the additional ninety day extension until April 21, 2023, as permitted under the Second Amendment. The Second Amendment was executed on November 14, 2022; and

WHEREAS, purchaser's analysis of its environmental investigations detected the presence of Per- and Polyfluoroalkyl Substances (PFAS), which is an emerging contaminate with developing remediation standards. As the U.S. Army was the prior owner of the Property, the Army may potentially be responsible for any contamination, therefore the Army has agreed to perform a Preliminary Assessment (PA) and Remedial Investigation (RI). The Army has awarded a contract for the PA and anticipates a draft of the PA report will be delivered by June of 2023 and further represented that it will seek to retain a contractor for the RI by October; and

WHEREAS, Army investigations will substantially delay due diligence and Purchaser's progress on the Property. As Purchaser's Due Diligence Period was set to expire, Purchaser submitted a letter dated April 21, 2023, requesting the conditional termination of the Agreement and an extension of the Due Diligence Period to allow the Army additional time to perform its investigations and determine a course forward; and

WHEREAS, FMERA recommends that the Board approve the Reinstatement of the PSARA and an extension to the Due Diligence Period for ninety days or until July 20, 2023. In the event the Army has not completed its investigations or Purchaser is completing its due diligence activities based on the results of the Army's investigation, staff recommends FMERA's Executive Director have authority to extend the Due Diligence period for three additional ninety-day periods. Should the Army complete its investigation prior to the expiration of the Due Diligence Period, Purchaser may request, via written notice, to exercise the remaining due diligence extension periods set forth in this Agreement; and

WHEREAS, recognizing that the on-going environmental investigations will substantially delay the redevelopment of the Property, the parties further agree to work together in good faith to satisfy any additional obligations of the PSARA impacting adjacent parcels; and

WHEREAS, all other material terms of the PSARA will remain unchanged. Attached in substantially final form is the Third Amendment to the PSARA between FMERA and RWJ Barnabas. The final terms of the Third Amendment to the PSARA are subject to the approval of FMERA's Executive Director and a review as to the form by the Attorney General's Office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval; and

THEREFORE, BE IT RESOLVED THAT:

1. The Authority approves the Third Amendment to the Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health, Inc. for the Tinton Falls Commercial Parcel in Tinton Falls to extend the Due Diligence Period for an additional ninety days with the option to extend for three additional 90-day periods if necessary for the Army to complete environmental investigations.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Attachment

Dated: May 17, 2023

EXHIBIT 5

MEMORANDUM

TO: Members of the Board

FROM: Kara Kopach
Executive Director

RE: Third Amendment to the Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health, Inc. for the Tinton Falls Commercial Parcel in Tinton Falls

DATE: May 17, 2023

Request

I am requesting that the Board approve the Third Amendment to the Purchase and Sale Agreement & Redevelopment Agreement (“PSARA”) with RWJ Barnabas Health, Inc. (“RWJ Barnabas” or “Purchaser”) for the Tinton Falls Commercial Parcel in Tinton Falls providing for the Reinstatement of the PSARA and an extension to the Due Diligence, as defined in the PSARA.

Background

The Tinton Falls Commercial Development Parcel is an approximately 31.25± acre parcel of land containing twelve structures (Buildings 2627, 2628, 2629, 2630, 2631, 2632, 2704, 2707, 2709, 2710, 2629, and 2719) located at Pearl Harbor Avenue and Pinebrook Road in the Tinton Falls Reuse Area of the Charles Wood Area of the Fort (the “Property”). On August 27, 2021, the Members authorized the execution of the PSARA between FMERA and RWJ Barnabas for the Property. The PSARA was executed on October 25, 2021.

Pursuant to the terms of the PSARA, RWJ Barnabas will pay Five Million One Hundred Thousand (\$5,100,000) Dollars for the Parcel. The Purchaser’s total Capital Investment is estimated at One Hundred Million Dollars (\$100,000,000).

The Project shall consist of the demolition of existing improvements, and 1) construction of a three-story Medical Office Building anticipated to be approximately 121,125 GSF; 2) installation of a grid-supply solar energy system which ground-mounted systems shall not to exceed 20% of the developable acreage and shall be placed at the back of the site and not front on Pinebrook Road or Pearl Harbor Avenue; 3) construction of active recreational facilities, including two (2) multi-purpose grass or turf athletic fields, one (1) baseball/softball field, up to five (5) tennis courts, and a field house; 4) passive recreation, including a community walking/nature trail that enhances walkability and interconnectedness of the Tinton Falls section of Fort Monmouth; and 5) open space to benefit the surrounding area. Additionally, the Purchaser shall design, fund and construct a roadway across the Property connecting Pearl Harbor Avenue and Satellite Road to provide access to and from the Fabrication Shops parcel located southeast of the Property within fifteen (15) months of closing on the Property. A Deed restriction (the “Open Space Deed Restriction”) for the benefit of FMERA preserving public access to the passive recreation and open space shall be recorded at Closing.

The Purchaser covenants to create three hundred (300) part-time and/or full-time jobs within twelve (12) months of the Completion of the Project completion or pay a penalty of \$1,500 for each job not created.

Pursuant to the PSARA, the Due Diligence Period was to run for one hundred and twenty (120) days from the later to occur of 1) the PSARA execution date, or 2) the date on which FMERA delivers to Purchaser a Boundary

Survey and may be extended for two (2) additional thirty (30) day periods, if necessary, to complete environmental investigations.

Reinstatement and First Amendment to the PSARA

Purchaser's initial Due Diligence period expired on February 25, 2022. By way of a letter dated February 21, 2022, Purchaser requested and was granted the first thirty-day extension. On March 24, 2022, Purchaser requested and was granted a second additional thirty-day extension until April 27, 2022.

As environmental testing had not yet been completed and Purchaser's Due Diligence Period was set to expire, Purchaser issued a letter on April 27, 2022, conditionally terminating the PSARA and requesting that the staff seek Board approval for an extension to the Due Diligence Period.

On May 18, 2022, the Board approved the reinstatement of the PSARA and an extension to the Due Diligence Period for ninety (90) days or until July 26, 2022, as well as to permit upon written approval of FMERA an additional ninety (90) day extension if the Purchaser was proceeding diligently and in good faith. The First Amendment was executed on July 20, 2022. Staff approved the additional ninety (90) day extension via letter dated July 11, 2022.

Second Amendment to the PSARA

The Purchaser's Due Diligence was set to expire on October 24, 2022. On September 2, 2022, via letter, the Purchaser requested a six (6) month extension to the Due Diligence Period due to the discovery of contamination in the groundwater and soils that required additional time to analyze. On September 21, 2022, the FMERA Board granted an extension of the Due Diligence Period for an additional ninety (90) days until January 22, 2023 with the option to extend for an additional ninety (90) days if Purchaser was proceeding diligently and in good faith. Purchaser requested via letter dated January 18, 2023 and FMERA granted, the additional ninety (90) day extension until April 21, 2023, as permitted under the Second Amendment. The Second Amendment was executed on November 14, 2022.

Third Amendment to the PSARA

Purchaser's analysis of its environmental investigations detected the presence of Per- and Polyfluoroalkyl Substances (PFAS), which is an emerging contaminate with developing remediation standards. As the U.S. Army (Army) was the prior owner of the Property, the Army may potentially be responsible for any contamination, therefore the Army has agreed to perform a Preliminary Assessment (PA) and Remedial Investigation (RI). The Army has awarded a contract for the PA and anticipates a draft of the PA report will be delivered by June of 2023 and further represented that it will seek to retain a contractor for the RI by October.

Army investigations will substantially delay due diligence and Purchaser's progress on the Property. As Purchaser's Due Diligence Period was set to expire, Purchaser submitted a letter dated April 21, 2023 requesting the conditional termination of the Agreement and an extension of the Due Diligence Period to allow the Army additional time to perform its investigations and determine a course forward. FMERA recommends that the Board approve the Reinstatement of the PSARA and an extension to the Due Diligence Period for ninety (90) days or until July 20, 2023. In the event the Army has not completed its investigations or Purchaser is completing its due diligence activities based on the results of the Army's investigation, staff recommends FMERA's Executive Director have authority to extend the Due Diligence period for three (3) additional ninety (90) day periods. Should the Army complete its investigation prior to the expiration of the Due Diligence Period, Purchaser may request, via written notice, to exercise the remaining due diligence extension periods set forth in this Agreement.

Recognizing that the on-going environmental investigations will substantially delay the redevelopment of the Property, the parties further agree to work together in good faith to satisfy any additional obligations of the PSARA impacting adjacent parcels.

All other material terms of the PSARA will remain unchanged. The attached Third Amendment between FMERA and RWJ Barnabas is in substantially final form. The final terms of the Third Amendment to the PSARA are

subject to the approval of FMERA's Executive Director and a review as to the form by the Attorney General's Office. The Real Estate Committee has reviewed the request and recommends it to the Board for approval.

Recommendation

In summary, I am requesting that the Board approve the Third Amendment to the Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health, Inc. for the Tinton Falls Commercial Parcel in Tinton Falls to Reinstate the PSARA and extend the Due Diligence Period for an additional ninety days with the option to extend for three additional 90-day periods if necessary for the Army to complete environmental investigations.



Kara Kopach

Prepared by: Sarah Giberson

Attachment: Third Amendment to the Purchase and Sale & Redevelopment Agreement

**REINSTATEMENT AND THIRD AMENDMENT TO PURCHASE AND SALE
AGREEMENT AND REDEVELOPMENT AGREEMENT**

REINSTATEMENT AND THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT (“Third Amendment”), made and entered into as of this ____ day of ____ 2023, by and between **FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY** (“Seller” or “FMERA”), 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. 52:271-18 et seq. (“FMERA Act”), whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and **RWJ BARNABAS HEALTH, INC.**, (“Purchaser” or “RWJ”), a not-for-profit corporation of the State of New Jersey, whose address is 95 Old Short Hills Road, West Orange, New Jersey 07052. Seller and Purchaser are collectively referred to herein as the “Parties”.

WHEREAS, the Seller and Purchaser have heretofore entered into a certain Purchase and Sale Agreement and Redevelopment Agreement dated as of October 25, 2021, and as amended by the Reinstatement and First Amendment to the Purchase and Sale Agreement and Redevelopment Agreement (“First Amendment”), dated July 20, 2022 and the Second Amendment to the Purchase and Sale Agreement and Redevelopment Agreement, dated November 14, 2022 (“Second Amendment”) (collectively the “Agreement”), whereby Seller agreed to sell and Purchaser agreed to purchase and redevelop an approximately 31.25 acre parcel of land within Fort Monmouth, Tinton Falls, New Jersey consisting of twelve structures including Buildings 2627, 2628, 2629, 2704, 2630, 2631, 2632, 2707, 2709, 2710, 2713 and 2719 located on Pearl Harbor Avenue and Pinebrook Road (collectively, the “Property”); and

WHEREAS, Purchaser proposed to demolish the existing improvements, and construct a three-story Medical Office Building, install a grid-supply solar energy system with ground-mounted systems that shall not to exceed 20% of the developable acreage, to construct active recreational facilities and passive recreation amenities, and to design, fund and construct a roadway across the Property to provide access to the adjacent properties with a capital investment of One Hundred Million Dollars (\$100,000,000); and

WHEREAS, as the Purchaser’s Due Diligence Period was set to expire on April 27, 2022, Purchaser issued a letter dated April 27, 2022 conditionally terminating the Agreement and requesting an extension to the Due Diligence Period; and

WHEREAS, at its May 2022 meeting the Board approved the First Amendment to the Agreement, which reinstated the Agreement and granted Purchaser an extension to the Due Diligence Period for ninety days with an option for FMERA to extend for an additional ninety (90) days with the written approval of FMERA; and

WHEREAS, as the Purchaser’s Due Diligence Period was set to expire on October 24, 2022, Purchaser requested an extension to Due Diligence Period to undertake additional environmental testing; and

WHEREAS, at its October meeting the Board approved the Second Amendment to the Agreement which granted Purchaser an extension to the Due Diligence Period of ninety (90) days until January 22, 2023 with an option for FMERA's Executive Director to grant an additional extension of ninety (90) days if Purchaser was proceeding in good faith to permit additional environmental testing; and

WHEREAS, Purchaser subsequently requested via a letter dated January 18, 2023 and was granted the additional ninety (90) day extension until April 21, 2023; and

WHEREAS, Purchaser's due diligence investigations detected the presence of Per- and Polyfluoroalkyl Substances (PFAS) in the groundwater and soil on the Property; and

WHEREAS, groundwater sampling conducted at the Property detected concentrations of PFAS that exceeded the New Jersey Department of Environmental Protection's ("NJDEP") Ground Water Quality Standards; and

WHEREAS, NJDEP has designated PFAS as a contaminant of emerging concern and continues to update its regulations and guidance and the analytical methods to accurately quantify these contaminants; and

WHEREAS, further evaluation or investigation of PFAS is required; and

WHEREAS, the U.S. Army as the prior owner of the Property is potentially responsible for the remediation of the PFAS contamination and has agreed to perform a Preliminary Assessment (PA) and Remedial Investigation (RI); and

WHEREAS, the Army has awarded a contract for the PA and anticipates a draft of the PA report will be delivered by June of 2023 and the Army has further represented that it will seek to retain a contractor for the RI by October; and

WHEREAS, the Army investigation activities will substantially delay due diligence on Purchaser's progress on the property and Purchaser's Due Diligence Period was set to expire, Purchaser submitted a letter dated April 21, 2023 conditionally terminating the Agreement in anticipation of seeking additional time for the Army to complete its investigations and determine a course of action; and

WHEREAS, the Parties recognize that additional due diligence investigations may substantially delay the build out of the roadway across the Property to provide access to the adjacent properties; the Parties will work in good faith toward creating a final roadway design and identify the roadway location (which takes into account the Purchaser's proposed Project and utility connections to and within the proposed roadway) and will determine at a later time if the Project remains delayed whether FMERA shall be given the option to construct all or a portion of the roadway prior to closing (as mutually agreed by the Parties); in the event FMERA constructs the mutually agreed upon roadway prior to closing, Purchaser shall be obligated to reimburse FMERA for the costs of the roadway construction subject to Purchaser closing on the Property; and

NOW, THEREFORE, in consideration of the foregoing and other good and other valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated herein as set forth in full in the body of this Third Amendment (“Third Amendment”). Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Agreement.
2. Reinstatement and Renewal. The Agreement is hereby reinstated, as if it was never terminated and modified only as to the limited terms provided in this Third Amendment, all other terms and conditions of the Agreement remain in full force and effect
3. Due Diligence Period. Section 2(w) of the Agreement is hereby amended and modified to provide that:

The Due Diligence Period is extended by ninety (90) days or until July 20, 2023. In the event the Army has not completed its investigations or Purchaser is completing its due diligence activities based on the results of the Army’s investigation, FMERA’s Executive Director shall have authority to extend the Due Diligence period for three (3) additional ninety (90) day periods. Should the Army complete its investigation prior to the expiration of the Due Diligence Period, Purchaser may request, via written notice, to exercise the remaining due diligence extension periods set forth in this Agreement. In the event that the Army investigations and/or the remedial action has not been finalized and agreed upon by the end of the aforesaid extensions, the Parties agree to discuss in good faith further extensions as may be mutually agreeable by the Parties, subject to the Board’s approval in its sole discretion.

4. Entire Agreement, Ratifications and Reconciliation. The Agreement and this Third Amendment contain the final and entire Agreement between the Parties with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. Except as modified in this Third Amendment, the Agreement is hereby ratified and remains in full force and effect. The terms and provisions of this Third Amendment shall be reconciled with the terms and provisions of the Agreement to the fullest extent possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this Third Amendment and any terms or provisions of the Agreement, such term or provision of this Third Amendment shall control.
5. Authority to Execute. Both Seller and Purchaser covenants, represents and warrants to the other that the individual(s) executing this Third Amendment on such party’s behalf is authorized to do so.

6. Governing Law. This Third Amendment shall be governed by the laws of the State of New Jersey.
7. Counterparts. This Third Amendment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are no signatories to the original or the same counterpart. Each counterpart may be delivered by facsimile or electronic mail transmission and a faxed or electronically mailed counterpart of this Third Amendment containing either the original and/or copy of any signature of any party hereto shall have the same force and effect as an original counterpart signature.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first written above.

ATTEST:

FORT MONMOUTH ECONOMIC
REVITALIZATION AUTHORITY, Seller

By:

Kara Kopach,
Executive Director

WITNESS:

RWJ BARNABAS HEALTH, INC.,
REDEVELOPER

By:

William Cuthill, Senior Vice President,
Facilities Management and Construction