



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT:** Agenda for Board Meeting of the Authority September 22, 2021

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**CEO's Report to the Board**

**Authority Matters**

**Economic Growth**

**Incentives**

**Loans/Grants/Guarantees**

**Bond Projects**

**Real Estate**

**Board Memoranda**

**Public Comment**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**August 11, 2021**

**MINUTES OF THE MEETING**

*The Meeting was held by teleconference call.*

Members of the Authority present via conference call: Chairman Kevin Quinn, Commissioner Marlene Caride of the Department of Banking and Insurance; Brian Wilton representing the Governor's Office; Jennifer Maloney representing State Treasurer Elizabeth Muoio of the Department of Treasury; Paul Yuen representing Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Philip Alagia, Virginia Bauer, Fred Dumont, Aisha Glover, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

Also present via conference call: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; and staff.

Members of the Authority absent: Public Members, Charles Sarlo, Vice Chairman; and Massiel Medina Ferrara.

Mr. Quinn called the meeting to order at 10:00 am.

In accordance with the Open Public Meetings Act, Mr. Sullivan announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board.

**MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the July 14, 2021 meeting minutes. A motion was made to approve the minutes by Commissioner Caride, seconded by Ms. Dragon, and was approved by the 13 voting members present.

**FOR INFORMATION ONLY:** The next item was the presentation of the Chairman's remarks to the Board.

**FOR INFORMATION ONLY:** The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board.

### **AUTHORITY MATTERS**

#### **ITEM: Special Adopted New Rules and Concurrent Proposed New Rules**

##### **Main Street Recovery Finance Program (N.J.A.C. 19:31-5)**

**REQUEST:** To approve 1.) special adopted new rules and concurrent proposed new rules for the new Main Street Recovery Finance Program; to authorize staff to submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register; to submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received, subject to final review and approval by the Office of the Attorney General; 2.) the creation of the Main Street Recovery Finance Program as initially authorized by the New Jersey Economic Recovery Act of 2020 to fund individual financial assistance products that support small businesses in New Jersey; 3.) the utilization of \$10 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Lease Assistance Grant, with delegation to the CEO to increase funding to \$20 million in the event that demand exceeds available funding; 4.) utilization of \$15 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Improvement Grant, with delegation to the CEO to increase funding to \$30 million in the event demand exceeds available funding; 5.) Utilization of \$500,000 of Main Street Recovery Finance Program funding to cover administrative costs associated with administering the grant products and approval to issue one or more purchase orders to 22<sup>nd</sup> Century Technologies, Inc. to hire temporary employees to administer the grant products; 6.) Delegation to staff to approve individual applications to either the Small Business Lease Assistance Grant Program or Small Business Improvement Grant Program, and delegated authority to decline applications that do not meet eligibility requirements; 7.) Delegation to staff to issue final administrative decisions for appeals on non-discretionary declinations; and 8.) Delegation to the CEO to reallocate funding between the Small Business Lease Assistance Grant and the Small Business Improvement Grant based on application demand.

**MOTION TO APPROVE:** Ms. Bauer   **SECOND:** Mr. Yuen   **NAY:** 1   **AYES:** 12

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

#### **ITEM: MOU with Rutgers University for Research Grant**

**REQUEST:** To approve an MOU with Rutgers University to create a grant fund to support research by Rutgers University faculty and staff in conjunction with a leading Israeli university.

**MOTION TO APPROVE:** Commissioner Caride   **SECOND:** Mr. Alagia   **AYES:** 13

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

### **PORT INFRASTRUCTURE**

#### **ITEM: PSEG Wind Port Ground Lease**

**REQUEST:** Request to approve a long-term Ground Lease for approximately 122 acres of property in Lower Alloways Creek, Salem County for use as the New Jersey Wind Port, and request for up to \$10.25 million in initial funding to cover obligations under the Lease.

**MOTION TO APPROVE:** Mr. Dumont   **SECOND:** Mr. Shimko   **AYES:** 12

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

Ms. Dragon abstained due to pending permit reviews before the NJDEP.

**ITEM: Request for Additional Early Works Funding for the New Jersey Wind Port (NJWP)**

**REQUEST:** To approve \$2.6 million in additional funding for early site works for the New Jersey Wind Port project, for critical path works, including the removal, processing and crushing of subsurface concrete from the leased premises.

**MOTION TO APPROVE:** Commissioner Caride **SECOND:** Mr. Yuen **AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

Ms. Dragon abstained due to pending permit reviews before the NJDEP.

**LOANS, GRANTS, GUARANTEES**

**Petroleum Underground Storage Tank (PUST)**

**ITEM:** Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.

**MOTION TO APPROVE:** Commissioner Caride **SECOND:** Mr. Alagia **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

**Commercial:**

**PROJECT:** James Thoma

PROD. #00258517

**LOCATION:** East Rutherford Borough, Bergen County

**PROCEEDS FOR:** Remediation, Upgrade and Closure

**FINANCING:** \$111,596.58

**REAL ESTATE**

**ITEM: Camden Office Lease – One Port Center**

**REQUEST:** To approve execution of a five-year lease for Camden office space with the Delaware River Port Authority for a 3,618 square foot suite on the 4<sup>th</sup> floor of One Port Center in downtown Camden commencing as of October 1, 2021, and expending up to \$312,000 for furniture, fixtures and equipment, tenant improvements, and other costs related to the occupancy of the Leased Premises.

**MOTION TO APPROVE:** Ms. Dragon **SECOND:** Ms. Bauer **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

**BOARD MEMORANDA**

**FYI ONLY: Credit Underwriting Projects Approved Under Delegated Authority – July 2021**

**FYI ONLY: Economic Growth Products – Delegated Authority Approvals, 2<sup>nd</sup> Quarter, 2021**

**FYI ONLY: Post-Closing Incentives Modifications under Delegated Authority– 2<sup>nd</sup> Quarter, 2021**

**FYI ONLY: Post-Closing Credit Delegated Authority Approvals, 2<sup>nd</sup> Quarter, 2021**

**FYI ONLY: Post-Closing Bond Modifications under Delegated Authority, 2<sup>nd</sup> Quarter, 2021**

**PUBLIC COMMENT**

Mr. Frederick Byram, addressed the board regarding the Main Street Recovery Finance Program.

Ms. Marley left the call at this time

Ms. Dragon left the call at this time.

**EXECUTIVE SESSION**

The next item was to adjourn the public session of the meeting and enter into Executive Session to discuss a real estate project where disclosure could adversely impact the public interest.

**MOTION TO APPROVE:** Mr. Quinn      **SECOND:** Mr. Dumont      **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

The Board returned to Public Session.

**REAL ESTATE**

**ITEM: FAIR MARKET VALUES FOR PORT SUBLEASES**

**REQUEST:** To approve Fair Market Rents for the proposed leasing of four parcels at the New Jersey Wind Port.

**MOTION TO APPROVE:** Mr. Quinn      **SECOND:** Commissioner Caride      **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

There being no further business, on a motion by Mr. Quinn, and seconded by Ms. Bauer, the meeting was adjourned at 11:17 am.

Certification:      The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.

  
Danielle Esser, Director  
Governance & Strategic Initiatives  
Assistant Secretary

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**September 8, 2021**

**MINUTES OF THE SPECIAL MEETING**

*The Meeting was held by teleconference call.*

Members of the Authority present via conference call: Charles Sarlo, Vice Chairman; Commissioner Marlene Caride of the Department of Banking and Insurance; Brian Wilton representing the Governor's Office; State Treasurer Elizabeth Muoio of the Department of Treasury; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Philip Alagia, Virginia Bauer, Fred Dumont, Marcia Marley, and Rosemari Hicks, Second Alternate Public Member.

Also present via conference call: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; and staff.

Members of the Authority absent: Public Members Chairman Kevin Quinn, Massiel Medina Ferrara, Aisha Glover, and Robert Shimko, First Alternate Public Member.

Mr. Sarlo called the meeting to order at 11:00 am.

In accordance with the Open Public Meetings Act, Mr. Sullivan announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board.

**MINUTES OF AUTHORITY MEETING**

**FOR INFORMATION ONLY:** The next item was the presentation of the Chairman's remarks to the Board.

**FOR INFORMATION ONLY:** The next item was the presentation of the CEO's remarks to the Board.

**AUTHORITY MATTERS**

**ITEM: Use of Economic Recovery Fund or NJEDA general operating funds for the Creation of the Ida Business Assistance Grant Program**

**REQUEST:** To approve:

1. The creation of an initial pilot Ida Business Grant Program (“Ida Grant Program”) to make up to \$10 million in grant funding available for rent or mortgage reimbursement to support New Jersey small and medium sized businesses and non-profits (collectively “SMEs” or “businesses”) that have suffered physical damage to their commercial location as a result of Tropical Storm Ida; and
2. Delegation to Authority staff to contribute up to an additional \$5 million of Economic Recovery Fund or NJEDA general operating funds and to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, to fund the Ida Grant program and enter into any related MOUs up to \$100 million; and
3. Delegation to Authority staff to impose additional requirements as may be required by law as a condition of accepting governmental (Federal, State or County) funding, provided that the requirements are consistent with the parameters of the program; and
4. Delegation to Authority staff to approve individual applications to the Ida Grant Program in accordance with the terms set forth in the board memo and program specifications, which includes the authority to decline applications, and in the event of appeals from those declinations, issue final administrative decisions.

**MOTION TO APPROVE:** Mr. Dumont     **SECOND:** Commissioner Caride **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

**PUBLIC COMMENT**

Mr. Charles Kratovil, Editor, New Brunswick Today, and New Brunswick resident, thanked the Board for having a special meeting to assist business owners who sustained damage due to Tropical Storm Ida and Henri. He also thanked all responsible for recording the board meetings, as he previously requested.

There being no further business, on a motion by Ms. Bauer and seconded by Ms. Hicks, the meeting was adjourned at 11:24 am.

Certification:                      The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.

  
Danielle Esser, Director  
Governance & Strategic Initiatives  
Assistant Secretary



## MEMORANDUM

**To:** Members of the Authority

**From:** Tim Sullivan

**Date:** September 22, 2021

**Re:** September 2021 Board Meeting

The New Jersey Economic Development Authority's (NJEDA's) efforts to ensure a robust and equitable recovery from the COVID-19 pandemic continued over the last month, with an added challenge for small businesses impacted by severe weather. The remnants of Hurricane Henri on August 25<sup>th</sup> and Hurricane Ida on September 1<sup>st</sup> and 2<sup>nd</sup> caused a setback in the recovery of many small businesses across the state. Thanks to quick action by staff and the support of this Board, we were able to stand up a \$10.5 million Henri/Ida Business Assistance Grant Program within a week to provide immediate relief to New Jersey businesses and non-profits that suffered physical damage. Applications for the program opened on Friday, September 17<sup>th</sup> and will close this Friday, September 24<sup>th</sup> at 5:00 p.m.

Friday also marked the conclusion of National Small Business Week, an annual celebration of small businesses' important role in our communities. To date, the NJEDA has approved more than 91,000 COVID-19 support awards totaling a remarkable \$649 million, and we used the week as an opportunity to shine a spotlight on businesses that we have supported as they implemented creative new solutions to stay open and keep their customers and employees safe during the pandemic. We also hosted three Small Business Resource Workshops that highlight State supports for small businesses, including the Main Street Recovery Program, lending and technical assistance programs, and other resources offered through NJEDA and partners.

Within the small business community, the restaurant sector has taken a particularly hard hit throughout the pandemic. To support restaurants and the communities they call home, the NJEDA launched Sustain and Serve NJ, a unique program that provides grants to nonprofits to purchase and distribute pre-made meals from local restaurants. Through Phase 1 of the program, \$14 million in grants to 28 organizations supported the purchase of 1.5 million meals from more than 340 restaurants. Phase 2 of the program is ongoing, and in August, the NJEDA announced plans to award an additional \$20 million in grants to 29 organizations statewide. This funding is expected to support the purchase of two million meals from nearly 300 New Jersey restaurants in more than 120 municipalities.

In addition to supporting communities' short-term recovery needs, the NJEDA is also working to achieve Governor Phil Murphy's long-term vision for a stronger, fairer New Jersey. Last Wednesday, Governor Murphy announced that Princeton-based venture capital firm SOSV has selected Newark as the U.S. headquarters and newest location for its HAX startup development program. The HAX program provides complete support for emerging companies, including a \$250,000 initial investment in each participating company, 180 days of hands-on collaboration, and a global founder community for early stage founders building hard tech startups. SOSV intends to commit to take 100 companies through the HAX program over the next five years and invest \$25 million in these startups. With this support, companies participating in the HAX program are expected to create at least 2,500 new, high-paying jobs in the decade ahead as well as attract millions in new capital. Today this Board will consider an investment of \$25 million in HAX LLC to support these efforts.

On September 9<sup>th</sup>, Governor Murphy led the celebration for a groundbreaking at the site of the New Jersey Wind Port in Lower Alloways Creek in Salem County. The Governor was joined by U.S. Secretary of Labor





Marty Walsh for the event, which represented the start of a new chapter for the New Jersey Wind Port, a first-in-the-nation infrastructure investment that will provide a location for essential staging, assembly, and manufacturing activities related to offshore wind projects on the East Coast. The event also included the signing of a project labor agreement (PLA) for the project and was followed by the signing of a 78-year lease between the NJEDA and PSEG for the site. The New Jersey Wind Port has the potential to create up to 1,500 manufacturing, assembly, and operations jobs, as well as hundreds of union construction jobs in New Jersey, and projects supported by the Wind Port will drive billions of dollars in economic growth.

Last week, Governor Murphy and the NJEDA announced our participation in four regional coalitions preparing applications for the U.S. Economic Development Authority (U.S. EDA) Build Back Better Regional Challenge (BBBRC). The Challenge is a federal grant program to help communities adopt and implement transformational, industry-based economic development strategies that strengthen economic diversity and resiliency in the wake of the COVID-19 pandemic. The four coalitions that NJEDA has joined focus on regional industry clusters that are part of Governor Murphy's Stronger and Fairer Economic Plan, including biomanufacturing, clean energy, aviation, and smart ports. Yesterday, we held a public information and idea gathering session on the Challenge and we are also accepting input and project ideas via email through September 24<sup>th</sup>.

While supporting the immediate relief needs created by COVID-19 and the recent extreme weather events remains our top priority, I am glad to report the NJEDA team has been able to shift some of our focus to long-term efforts to achieve Governor Murphy's vision for a strong and equitable recovery. The future looks bright for New Jersey, and I am excited to work with you to build a better future for our state.

A handwritten signature in dark ink, appearing to be "T. A.", is written above a solid horizontal line.

## **AUTHORITY MATTERS**



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Kevin A. Quinn  
Chairman

**DATE:** September 22, 2021

**RE:** Annual Organizational Meeting

### **Summary**

The New Jersey Economic Development Authority's By-Laws provide that an annual reorganization meeting be held in September of each year.

The Members are asked to consider the following recommendations associated with the annual reorganization meeting:

### **Officers**

Charles Sarlo has been serving in the role of Vice Chairman, and it is recommended that the Members approve Charles Sarlo to continue to serve in the position of Vice Chairman.

Traditionally, the position of the Board Treasurer has been held by the New Jersey State Treasurer, who serves on the EDA Board in an ex-officio capacity. To remain consistent with that practice, it is recommended that the Members approve the position of Board Treasurer to be held by State Treasurer Elizabeth Maher Muoio.

As per the By-Laws, Tim Sullivan, in his role of CEO, will serve as Board Secretary. The By-Laws also authorize the appointment of Assistant Secretaries to the Board to act in place of the Secretary in the Secretary's absence or at the request of the Secretary. It is recommended that the Members approve Chris Baker, Bruce Ciallella, Fred Cole, Lori Matheus, Rich LoCascio, Patience Purdy and Danielle Esser to serve as Assistant Secretaries.

### **Committees**

Per the By-Laws, the Authority has five committees that meet throughout the year. Additionally, in the wake of the COVID-19 pandemic, the Board authorized the creation of an ad hoc committee known as the COVID-19 Response Committee. I am requesting that the Members approve the following Members to participate in the following committees, with the appointment of individual Members to Chair each committee as indicated:

**NJEDA COMMITTEES - SEPTEMBER 2021**

**AUDIT COMMITTEE**

**Chair:** Kevin A. Quinn  
Charles Sarlo  
State Treasurer Elizabeth Maher Muoio (or designee)  
Virginia Bauer

**Charge:** The Audit Committee monitors the financial operations of the Authority including the review of the annual operating budget and those responsibilities outlined in the committee Charter. The committee will meet quarterly and at such other times as determined by the Chair.

**DIRECTOR'S LOAN REVIEW COMMITTEE**

**Chair:** Marcia Marley  
Marlene Caride (or designee), Commissioner of the Department of Banking and Insurance  
Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
State Treasurer Elizabeth Maher Muoio (or designee)  
Fred Dumont  
Rosemari Hicks

**Charge:** The DLRC will meet monthly to review all non-real estate development Authority exposure requests, including, but not limited to, direct and loan guarantee requests.

**REAL ESTATE COMMITTEE**

**Chair:** Charles Sarlo  
Fred Dumont  
Shawn LaTourette (or designee), Commissioner of the Department of Environmental Protection  
State Treasurer Elizabeth Maher Muoio (or designee)  
Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
Robert Shimko

**Charge:** The Real Estate Committee reviews all monthly real estate matters with Authority exposure prior to the Board meeting.

## **POLICY COMMITTEE**

**Chair:** Kevin A. Quinn  
Charles Sarlo  
State Treasurer Elizabeth Maher Muoio (or designee)  
Virginia Bauer  
Aisha Glover  
Marcia Marley

**Charge:** The Policy Committee provides advice on policy matters, the formulation of the Authority's annual strategic business plan and marketing strategy. The committee will meet monthly and at such other times as determined by the Chief Executive Officer (CEO) in consultation with the Chair.

## **INCENTIVES COMMITTEE**

**Chair:** Virginia Bauer  
Kevin A. Quinn  
Noreen Giblin, Executive Representative (or designee)  
State Treasurer Elizabeth Maher Muoio (or designee)  
Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
Rosemari Hicks

**Charge:** The Incentives Committee will meet monthly to review all significant non-direct exposure incentive requests, including but not limited to tax credits.

## **COVID-19 RESPONSE AD HOC COMMITTEE**

**Chair:** Aisha Glover  
Kevin A. Quinn  
State Treasurer Elizabeth Maher Muoio (or designee)  
Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
Rosemari Hicks  
Marcia Marley

**Charge:** The COVID-19 Response Committee will meet on a monthly basis, or more frequently if needed, to review all COVID-19 related Authority programs and related board actions to ensure thorough and timely program development and response to support the needs of New Jersey's business community.

**Staff Appointments**

The Members are requested to reaffirm the appointment of Marcus Saldutti as the Authority's Records Custodian and to appoint a new Assistant Records Custodian, David Russak.

The Members are also requested to reaffirm the appointment of Fred Cole as the Authority's Ethics Liaison Officer.

**Board Schedule**

The Members are requested to approve the attached Calendar of Board Meetings through September 2022.

**Recommendation**

By resolution, the Board will be adopting the attached schedule of Board Meeting dates from October 2021 through September 2022.

The Members' approval is requested for the following actions:

- 1) Election of a Vice Chair and Treasurer;
- 2) Appointment of Assistant Secretaries;
- 3) Committee appointments as noted herein;
- 4) Reaffirmation of the Authority's Records Custodian, appointment of a new Assistant Records Custodian and reaffirmation of the Authority's Ethics Liaison Officer; and
- 5) Adoption of the Calendar of Meetings through September 2022.



---

Kevin A. Quinn

Attachment

Prepared by: Danielle Esser



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**  
**BOARD MEETING DATES 2021 - 2022**

**Wednesday, October 13, 2021**

**Wednesday, November 10, 2021**

**Wednesday, December 8, 2021**

**Wednesday, January 12, 2022**

**Wednesday, February 9, 2022**

**Wednesday, March 9, 2022**

**Wednesday, April 13, 2022**

**Wednesday, May 11, 2022**

**Wednesday, June 8, 2022**

**Wednesday, July 13, 2022**

**Wednesday, August 10, 2022**

**Wednesday, September 14, 2022 (Annual Meeting)**

**All meetings begin at 10:00 AM and are held virtually until further notice.**

**SCHEDULE IS SUBJECT TO CHANGE**



**Memorandum**

**To:** Members of the Authority

**From:** Tim Sullivan  
Chief Executive Officer

**Date:** September 22, 2021

**RE:** Recommendation for Grant Awards – 21<sup>st</sup> Century Redevelopment Challenge

**Request**

The Members are requested to approve 21st Century Challenge Program grants of \$50,000 each to the communities listed below in order to develop or accelerate the implementation of plans for repurposing or removing "stranded assets" in their communities.

- County of Passaic,
- Pemberton Township,
- White Township,
- Willingboro Township
- Borough of Raritan,
- City of Atlantic City,
- City of Jersey City,
- City of Millville,

**Background**

Over the last two decades, a number of demographic and economic trends have reshaped where people in New Jersey live and work, with the suburbs experiencing an outmigration of jobs and population similar to those that cities have experienced. Suburban offices and shopping malls boomed during the 1980s and 1990s, when the supply of cheap land and easy access to highways were a strong attraction. These buildings are now over a quarter-century old, outmoded and less desirable, and many are sitting empty or are otherwise underutilized. Most importantly, the real estate market has shifted, with corporations seeking locations close to transit and that attract a younger talent pool.

Many of New Jersey's suburban municipalities with no town centers (or multiple small "centers") that are car-dependent and largely made up of single-family detached homes, are at risk. These municipalities must strategically plan their land use to attract or keep young residents and employers. Empty corporate campuses, underutilized malls and shopping centers, and vacant office buildings left behind by the 1980-1990s building boom have become a drain on many New Jersey communities. As a result, these communities are dealing with the loss of tax revenues, the costs of maintaining infrastructure and roads around these properties, and a lack of resources to solve the issues.



### **21st Century Challenge**

The 21st Century Redevelopment Program was created in October 2018 in response to the demographic and economic trends that resulted in suburban offices and shopping malls emptying out, leaving communities that contain these facilities stuck with the costs of maintaining infrastructure and roads around them and a lack of resources with which to do that. In response to stakeholder feedback, the New Jersey Economic Development Authority (NJEDA) adjusted the eligibility criteria for the program in 2019 to make more properties eligible while ensuring that properties of significant scope and scale remain prioritized. To accommodate the significant business disruptions resulting from the COVID-19 pandemic and in response to Governor Murphy's Executive Orders declaring a public health emergency and implementing work-from-home directives, the NJEDA put the Program on hold in April 2020.

At its April 14, 2021 meeting, the NJEDA Board approved the reopening of the 21<sup>st</sup> Century Redevelopment Program. The program makes grants up to \$50,000 available to New Jersey municipalities, counties and redevelopment agencies to help them redevelop, repurpose, or regreen vacant and underutilized retail or office park properties. Potential uses of the grant funding include, but are not limited to:

- Legal analysis to explore the appropriateness of designating one or more relevant properties in the community as an “area in need of redevelopment.”
- Stakeholder engagement and facilitation to identify community desires and needs.
- The identification of appropriate funding sources to support community led re-use of one or more properties.
- Cataloging relevant retail and office properties in a community and identifying priority sites when considering community needs.
- Economic analysis relating to the feasibility of various redevelopment and/or reuse scenarios.
- Land-use planning identifying the most suitable re-use scenarios.

The NJEDA used a scoring process to award 21st Century Redevelopment Program grants. Applicants had 45 days from the date of application launch (May 24, 2021) to submit applications. Applications were accepted on a rolling basis and scored by an evaluation committee based on scoring criteria made publicly available in the application instructions, which were posted to the Authority's website at <https://www.njeda.com/21stcentury/>.

The NJEDA received nine (9) applications by the stated deadline. Of those nine (9) applications, three applications were submitted prior to the pause and were updated, three applications were submitted prior to the pause and were not updated, and three new applications were received as a result of the 2021 restart reopening. Applications with scores of at least 65 would be recommended to the Board for grants. The following is a list of the nine applications that were received:

- City of Atlantic City,
- City of Jersey City,
- Borough of Manville,
- City of Millville,
- County of Passaic,
- Pemberton Township,
- Borough of Raritan,
- White Township, and
- Willingboro Township

An evaluation committee (“the Committee”); comprised of staff from Policy and Data Analytics, Brownfields and Sustainable Systems, Special Projects and Office of Economic Transformation, reviewed and scored the applications. Applications were reviewed and scored after the deadline.

As part of its review and evaluation of the applications, the Committee considered a set of pre-established evaluation criteria, which included seven (7) factors. The factors, and the maximum points associated with each, are listed here:

1. Identification of project purpose and merits – identification of opportunities for creating vibrancy in the community (20 points)
2. Scope and scale – identification of size of site, relative economic impact on the municipality or greater area (20 points)
3. Commitment to social impacts – inherent structural challenges (20 points)
4. Previous record – demonstration of track record (10 points)
5. Regional partnership – leadership and collaborations toward re-development efforts (10 points)
6. Community engagement – efforts to engage local residents and businesses in planning efforts (10 points)
7. Municipal Revitalization Index Score (10 points)

Based on the scores assigned by the Committee, it was determined that eight (8) applications should be recommended to the Members for approval as they achieved or exceeded the requisite overall evaluation criteria of 65 points on a scale of 0-100. Evaluation Committee Summary matrix form is attached. The application submitted by the Borough of Manville did not achieve the requisite overall evaluation criteria of 65 points.

### **Overview of Applications Recommended for Grant Award**

The following is a brief overview of the applications recommended for grant awards.

#### **County of Passaic**

The County of Passaic, in conjunction with Township of Wayne, will focus on a 193-acre site that was formerly the home to the Toys-R-US world headquarters. In partnership with the Township of Wayne, the William Patterson University Small Business Development Center, Point View Wayne Properties, and Dobco, the County along with its partners will hire a planning consultant to deliver an Adaptive Reuse Plan with a focus on the adaptive reuse of existing commercial structures.

#### **City of Millville**

The City of Millville will utilize 21<sup>st</sup> Century Redevelopment Grant funds to develop a plan and roadmap for assessing and addressing the distressed retail and commercial assets in the Glasstown Arts District. The distressed assets have both hindered efforts to grow creative economy jobs and impacted local ratables for several years.

#### **White Township**

White Township will analyze the long-term viability and economic sustainability of White Township Plaza, a 1960s-era retail center with abandoned supermarket anchor that was a historically significant ratable for the Township. The analysis and focus will combine a retail viability study, early stage efforts to create an Area in Need of Redevelopment plan, and a community engagement plan for the site's future use.

#### **Pemberton Township**

Pemberton Township will fund a market study focused on the redevelopment of the former Burlington County College – Pemberton Campus. The study will provide recommendations for the development of the site with a dual focus on community needs and market demands.

**Borough of Raritan**

Raritan Borough will conduct a Preliminary Investigation of the Raritan Mall site. The investigation will set the stage for the authorship of an Area In Need of Redevelopment Plan, provide information that will assist in proposed redevelopment studies, and advance plans that will allow borough officials to reassess municipal zoning and planning ordinances in order to promote adaptive reuse of the mall site.

**Willingboro Township**

The Township of Willingboro will execute an analysis of the Willingboro Grand Marketplace site, a former 1970s mall complex on a major commercial corridor, with an aim to identify sustainable, community focused reuse. The analysis will include a marketing study, resident and stakeholder surveys, evaluation of potential reuses, economic feasibility analysis and conceptual design ideas for the property as well as amendments to the Township's redevelopment plan.

**City of Atlantic City**

The City of Atlantic City in conjunction with Casino Reinvestment Development Authority will author a plan on the redevelopment of the Plaza Hotel Site, a 1980s era casino resort and adjacent properties. The plan will work towards the creation of a development corridor that connects the Convention Center and Walk-a new retail development to the boardwalk and the beach.

**City of Jersey City**

The City of Jersey City will fund the redevelopment planning of a former bank building in the Journal Square Commercial District. The planning process will deliver a plan that includes a draft redevelopment plan, market feasibility analysis, retail market analysis, draft Owner Participation Agreement/Owner Participation Rules (OPA/OPR), a final redevelopment plan, and draft ordinances to adopt the redevelopment plan. The goal of repurposing the property is to maximize economic growth in distressed neighborhoods.

**Recommendation**

The Members approval is requested to approve 21<sup>st</sup> Century Redevelopment Challenge grants of \$50,000 each to City of Atlantic City, the City of Jersey City, the City of Millville, the County of Passaic, Pemberton Township, the Borough of Raritan, White Township, and Willingboro Township to develop or accelerate the implementation of plans for repurposing or removing "stranded assets" in their communities.



---

**Attachments:**

- 21<sup>st</sup> Century Challenge – Evaluation Score Summary

**Evaluation Score Summary-21st Century Redevelopment Challenge**

Community	Total Score	Criteria #1-	Criteria #2-	Criteria #3 –	Criteria #4 -	Criteria #5 -	Criteria #6 -	Criteria #7 -
		Identification of Project Purpose & Merits	Scope and Scale	Commitment to Social Impacts	Previous Record	Regional Partnership	Community Engagement	MRI
Atlantic City	72.0	11.5	16.3	14.3	6.7	7.5	5.7	10.0
Jersey City	66.2	15.7	12.2	10.7	7.7	6.0	7.0	7.0
Manville	49.8	9.7	7.7	10.0	5.2	6.7	5.7	5.0
Millville	76.8	14.8	14.3	14.5	7.5	7.5	8.2	10.0
Passaic County	69.3	16.8	17.8	11.8	7.0	9.0	6.8	0.0
Pemberton Township	73.0	15.8	16.5	14.3	7.5	7.8	6.0	5.0
Raritan Borough	65.3	16.3	15.5	11.7	6.8	7.3	7.7	0.0
White Township	65.5	13.8	16.2	17.3	5.8	5.2	7.2	0.0
Willingboro	70.0	15.7	14.0	13.8	7.2	7.7	6.7	5.0

## **ECONOMIC GROWTH**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**RE:** NJ Wind Turbine Tech Training Challenge Award

### **Summary**

The Members are requested to approve the application and grant award of \$819,019 to Rowan College of South Jersey as the winner of the NJ Wind Turbine Tech Training Challenge.

At the May 2021 NJEDA Board Meeting, Members approved the creation of the NJ Wind Turbine Tech Training Challenge – a competitive grant program to award a grant of up to \$1,000,000 to a New Jersey community college to establish an offshore wind turbine technician training program that includes an industry-recognized, credit-bearing certificate program and pathway to an Associate degree or higher. The grant utilizes funding from the Offshore Wind Sector Initiatives Memorandum of Understanding between NJEDA and NJBPU that was executed on September 28, 2020 to support wind turbine technician training.

### **Background**

Governor Murphy's economic development plan, "The State of Innovation: Building a Stronger and Fairer New Jersey Economy" identifies offshore wind as one of the State's strategic sectors for accelerating growth in New Jersey's economy. In addition, the plan asserts a commitment to investing in people in order to empower New Jersey students and workers to take advantage of high-growth, high-wage jobs. Governor Murphy's talent development plan, "JobsNJ: Developing Talent to Grow Business in the Garden State" emphasizes the need to bolster industry recognized post- secondary credential programs that support career pathways. The growth of the offshore wind turbine technician occupation in New Jersey represents an opportunity to realize each of these priorities.

Offshore wind turbine technicians maintain and repair wind turbines. They apply mechanical, hydraulic, and electrical and information technology skills to ensure the turbines operate effectively. Industry places significant value on having a local workforce that is equipped to carry out these critical functions throughout the installation and operation of wind farms. The

workforce need for offshore wind turbine technicians was underscored by industry in discussions organized by the Governor's WIND Council, per Executive Order No. 79, as well as defined in the New Jersey Offshore Wind Strategic Plan released by NJBPU in September 2020 as offshore wind turbine technician training does not currently exist in New Jersey.

In addition, the development of an offshore wind turbine technician training program in New Jersey creates promising career opportunities for New Jersey students and workers. The profession is growing rapidly; as more turbines are installed, more wind turbine technicians are needed. According to the U.S. Bureau of Labor Statistics, employment of wind turbine service technicians (including onshore and offshore) is projected to grow 61% from 2019 to 2029, significantly outpacing most professions. Establishing a New Jersey based training program will support the development of a locally based, skilled workforce that can meet this demand.

The State has a unique opportunity to lay the groundwork for driving the growth of the State's offshore wind turbine technician occupation by helping to establish training that creates new career opportunities for New Jerseyans, promotes diversity and inclusion in the workforce, harnesses the best-in-class training capabilities of New Jersey's community colleges and their partners, meets the workforce needs of industry, and prepares the State to achieve its goal of generating 7,500 MW of offshore wind energy by 2035.

### **The NJ Wind Turbine Tech Training Challenge**

The NJ Wind Turbine Tech Training Challenge was created in June 2021 to address the need for an industry recognized training program that would prepare New Jerseyans for careers in the offshore wind industry. All New Jersey community colleges were eligible to apply. The application window opened on June 16, 2021 and applications were due by July 23, 2021. Applicants were asked to propose a solution to:

- Develop and operate an industry-recognized offshore wind turbine technician training program utilizing facilities and equipment that are conducive and sufficient to providing the training, and that includes a credit-bearing certificate and pathway to an Associate degree or higher;
- Collaborate with labor unions and industry stakeholders to develop a targeted curriculum that meets industry needs;
- Utilize outreach and recruitment practices and program design approaches that target and support a diverse and inclusive pool of training participants to enroll in and complete the program;
- Create clear and inclusive career pathways for students to enter and grow in the offshore wind industry; and
- Launch the certificate program by the first quarter of 2023.

NJEDA received applications from Rowan College of South Jersey and Atlantic Cape Community College. Proposals were evaluated, scored, and ranked by an Evaluation Committee comprised of staff from NJEDA, Office of the Secretary of Higher Education, and Department of Labor & Workforce Development (Evaluation Committee). The Evaluation Committee utilized the scoring criteria established and outlined in the Notice of Funding Availability and the

Application Instructions posted on the Authority's website at [www.njeda.com/wind-turbine-training/](http://www.njeda.com/wind-turbine-training/). The highest score possibility was 100 points. A minimum score of 80 points was required to be considered as a Challenge winner. The scoring framework was comprised of the following criteria:

### **I. Demonstrated ability to develop and deliver industry-recognized training**

#### **Description of Scoring Components & Maximum Points for Each Component**

Provides a detailed and realistic plan for building and delivering an offshore wind turbine technician training program that will be recognized by industry	15
Has significant experience delivering best-in-class programs that equip students with the necessary skills needed to be successful in the industry	10
Outlines a plan that demonstrates a strong understanding of what is required from the training to meet the needs of industry and strategies to engage with industry in the program development	5
Details a clear plan for securing qualified instructors that includes evidence of relevant experience securing instructors with specific skill sets for new programs	5
<b>Total</b>	<b>35</b>

### **II. Demonstrated ability to create career pathways for New Jerseyans**

#### **Description of Scoring Components & Maximum Points for Each Component**

Details a compelling approach for delivering a stackable credential, including a credit-bearing certificate and pathway to higher degree(s), with opportunities for hands-on learning	10
Demonstrates an ability and plan for creating synergies between offshore wind programming and that of other clean energy sectors to broaden opportunities for students	3
Details a convincing plan for driving equity, diversity and inclusion, including a reporting strategy	10
Details an effective plan to collaborate with labor union(s) to meet program goals	5
Details a realistic and sustainable plan for ensuring affordability for students	7
<b>Total</b>	<b>35</b>

### **III. Demonstrated ability to implement**

#### **Description of Scoring Components & Maximum Points for Each Component**

Details a realistic timetable with clear milestones and a convincing path to target launch	5
	3



---

of the certificate program by first quarter of 2023

Has requisite internal expertise assigned specifically to this project	5
Demonstrates capacity to provide requisite facilities to successfully meet program goals	5
<b>Total</b>	<b>15</b>

---

#### IV. Resources required

##### Description of Scoring Components & Maximum Points for Each Component

Grant funds requested up to \$1 million <i>Application with the lowest amount of requested funds will be awarded 3 points; all other applications will be awarded a pro-rated number of points based on the percent difference from the lowest requested grant amount.</i>	3
Defines a clear project budget and financing strategy for development and long-term sustainable operation of the program, including outlining costs to be covered by grant and defining funding sources for project costs that exceed the grant amount <i>Applications that require funding in excess of the grant must clearly demonstrate the applicant's ability, including timing, to secure all necessary funding required to deliver the program and meet program goals.</i>	12
<b>Total</b>	<b>15</b>

---

**Total score:** Maximum 100 points

Based on the scores assigned by the Committee, the Committee determined that Rowan College of South Jersey was the highest scorer, with a total score of 85. Atlantic Cape Community College had a total score of 69.64.

#### Overview of Application Recommended for Grant Award

Rowan College of South Jersey (RCSJ) has committed to developing a stackable credential training program that includes two certificates linked to a Registered Apprenticeship and an Associate Degree for wind turbine technology. These stackable programs, which will be offered at the College's campus, include:

- **Wind Turbine Technician Career & Technical Education (CTE) Certificate:** In partnership with Maersk Training, a leading provider of Global Wind Organization (GWO) trainings globally, Rowan College of South Jersey will develop and offer the mechanical, electrical, hydraulics and installation modules that comprise GWO's Basic Technical Training (BTT) program. Students in this certificate program will complete the

BTT modules as well as an OSHA10 course and the GWO Basic Safety and Sea Survival Training (BST) modules to be offered by Atlantic Cape Community College at their campus in Atlantic City.<sup>1</sup> Graduates will receive the CTE Certificate plus 3 college credits that can be applied to the Wind Turbine Technician Academic Certificate. Additionally, Maersk will provide its Train the Trainer program to prepare a core team of instructors for RCSJ's wind turbine technician programs.

- **Wind Turbine Technician Academic Certificate:** RCSJ will offer a 36-credit academic certificate in Wind Power and Turbine Technology through a combination of classroom and hands-on laboratory learning that provides students with knowledge and understanding of fluid hydraulic systems, electrical machinery, mechanical operations, computer and information technology skills, wind turbine operations, safety training, and soft skills. The Academic Certificate includes a 3-credit course that is the equivalent to Wind Turbine CTE Certificate described above. The certificates will be linked to a U.S. Department of Labor registered **Wind Turbine Technician Apprenticeship** to be developed by RCSJ.
- **Associate of Applied Science (AAS) degree in Wind Power and Turbine Technology:** RCSJ is committing to developing a full AAS degree in Wind Power and Turbine Technology that will include all of the credits accumulated in the two certificate programs plus an additional 24 credits for further studies in wind energy.

Additionally, RCSJ has committed to working with Rowan University to stacking the Wind Turbine programs into a bachelor's degree, and potentially to the masters and Ph.D levels in related trades and science and technology fields.

RCSJ will form a Wind Turbine Technician Program Advisory Board comprised of industry representatives, labor organizations, regional workforce representatives, subject matter experts in workforce training and RCSJ's offshore wind academic team. The Advisory Board will support and advise on curriculum development and establish pathways for employment for program graduates. RCSJ outlined several tactical strategies it will employ to drive diversity, equity and inclusion in its Wind Turbine Technician programs, including partnering with labor unions, community-based organizations, and others to recruit a diverse student population and provide wrap around and other services to support students during their training. RCSJ anticipates the two wind certificate programs to launch in January 2023 and the AAS degree program to launch in the Fall semester of 2023.

### **Recommendation**

The Members are asked to approve \$819,019 in NJ Wind Turbine Tech Training Challenge grant funding to Rowan College of South Jersey to develop industry recognized wind turbine technician training that will support the development of the offshore wind industry and workforce in New Jersey.

---

<sup>1</sup>Atlantic Cape Community College is the winner of the NJ Offshore Wind Safety Training Challenge issued by NJEDA and the Office of the Secretary of Higher Education (OSHE). The BST training program is expected to be operational by the end of 2022.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', positioned above a horizontal line.

Tim Sullivan  
Chief Executive Officer

Prepared by Jen Becker, Managing Director, Wind Institute Development



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**Subject:** Third Amendment to the Memorandum of Understanding between the Authority and the New Jersey Commission on Science, Innovation and Technology (CSIT) and Alignment of Research with NJ (RwNJ) with CSIT

### Summary:

Members of the Board are requested to approve:

1. A third amendment to the existing Memorandum of Understanding (MOU) between the Authority and the New Jersey Commission on Science, Innovation and Technology ("Commission" or "CSIT") updating the support services and rates for which CSIT will compensate NJEDA; and
2. The receipt of up to \$300,000 in CSIT funds to support the ResearchwithNJ (RwNJ) program.

### NJEDA-CSIT Memorandum of Understanding

In June 2019, the Members approved a Memorandum of Understanding (MOU) with the Commission, effective in July 2019, which laid out the parameters by which the NJEDA will provide support to the Commission in the areas of:

- Administrative support such as access to office space, IT equipment, accounting, records management, and board management support
- Fiscal management support including encumbering and disbursing State funds appropriated for CSIT purposes at the Commission's direction

As part of that agreement, the NJEDA agreed not to charge the Commission for office space or administrative and support services, thereby enabling the Commission to operate efficiently – maximizing the amount of funding that is dedicated to program related activities. CSIT would reimburse EDA for pro-rated time of NJEDA staff working on direct CSIT program support. EDA incubated CSIT during its earliest reformation years and this agreement allowed the Commission to ramp-up programs more quickly than if it were operating on its own and better coordinate and market programs to innovation community stakeholders in the State. These activities complement the Authority's

Economic Growth and Technology and Life Science activities and support the goals of the Governor's strategic plan for economic development.

In August 2019, the MOU was amended and re-adopted by the NJEDA and the Commission, effective in September 2019, to allow for the Executive Director of the CSIT to be an employee of the NJEDA.

In January 2021, the Members approved a second amendment to the MOU, effective June 2021, to allow for other personnel hires of the Commission to be NJEDA employees. The amendment specified that NJEDA would provide support to CSIT in recruiting and selecting other personnel. The amendment also specified that all personnel hires would report solely to CSIT who would be responsible for all salaries, fringe benefits, and expenses for these additional personnel to be paid out of the Commission's appropriated funds which are currently being managed by the NJEDA.

### **CSIT Programming and Personnel**

CSIT's responsibility continues to grow and expand, and the Commission continues to be a have ownership over the long-term implementation of new programs, including multiple launches over the last quarter of 2020 and first half of 2021. The Commission was recently appropriated \$4.7 million in the FY2022 State Budget. With the changes made in the second amendment to the MOU, the Commission was also able to hire its first full-time staff apart from the Executive Director, to directly support the implementation of these existing and several upcoming programs. The implementation of these programs has been undertaken consistent with the recently instituted NJEDA policies and procedures aimed at improving their operations to enhance their ability to effectively roll out the extensive array of COVID-19 economic relief programs.

Due to the success and maturation of the Commission's programs over the past several years, it became prudent to re-evaluate the cost structure set forth between NJEDA and the Commission as part of the initial MOU. In 2021, CSIT and EDA conducted a cost analysis of EDA staff time for various CSIT programs. The analysis consisted of assessing NJEDA staff time for the SBIR/STTR Round 1 and 2, Clean Tech Seed Grant, and Cleaned Tech Voucher (BPU funded) programs. The analysis also included the cost of CSIT space, telecom (cell phone plans, laptop software, etc.), and IT lease per CSIT staff. There are currently two full-time CSIT staff members.

### **Current Compensation Cost Structure between CSIT and NJEDA**

The MOU currently directs NJEDA to bill CSIT for NJEDA staff who are made available to the CSIT Executive Director to utilize a portion of their time working on direct CSIT program support. NJEDA bills CSIT quarterly based on staff salaries including fringe benefits and pension contributions, prorated by the number of hours staff dedicates to the CSIT. Examples of types of tasks that have been reimbursed under this parameter are early-stage program design, stakeholder engagement, and initial application compliance checks

Additionally, for NJBPU-funded programs such as the Clean Tech R&D Voucher Program, NJEDA retains 5 percent of the allocated amount for administrative purposes.

Outside of individual NJEDA staff dedicating a portion of their time working on direct CSIT program support as described above, the current MOU structure did not envision that CSIT would compensate NJEDA for the various other program design, implementation, and operations functions during the initial startup of CSIT. This includes support such as product operations, application compliance review, interagency compliance review coordination, program IT support, marketing, business operations, applicant legal review, closing services, post award compliance, and award disbursement.

Through the recent cost analysis of NJEDA staff time for various CSIT programs as discussed above, it is estimated that each CSIT program requires approximately:

- 150-160 hours of staff time for new program launch and implementation;
- 2 hours of staff time to process and review each program application; and
- 13 hours of staff time for the processing and ongoing compliance of each program award, assuming a post award compliance period of two years

When pricing each staff hour off of the hourly rate for a project officer's salary plus benefits and averaging across the five current or recent CSIT programs, NJEDA's program support for running a new CSIT program as outlined above costs approximately 5% of a CSIT program's total budget for projects that require two or less years of post-award compliance verification.

Based on the current MOU, NJEDA is not compensated for providing the office space or personal technology (IT) products and services (i.e., laptop computers and associated equipment, cell phones, and cell phones plans, etc.) for CSIT personnel. It is estimated that each CSIT personnel costs NJEDA approximately \$11,275 annually for office space and these ancillary equipment and services.

Additionally, based on the current MOU, NJEDA provides human resources, communications, accounting, marketing, ethics, governance, or public records support to include OPRA at no charge to CSIT. Given CSIT's sister agency relationship within NJEDA and the anticipated low additional per-capita cost of these services, establishing compensation for these services and will continue to provide these services gratuitous.

### **Proposed Cost Sharing Changes to the MOU**

Having NJEDA continue to provide these services the Commission allows for greater operational efficiency and minimize administrative waste compared to the Commission providing those programmatic, administrative, and facility support functions themselves. However, given that the Commission has now successfully demonstrated their ability to launch new programs and hire staff, it is prudent to determine an equitable and sustainable cost sharing structure to ensure NJEDA and the Commission are accurately portraying their expenses.

The third amendment to the MOU between CSIT and NJEDA updates the cost sharing structure between CSIT and NJEDA as follows:

- For any CSIT grant programs where NJEDA provides program support, such product operations, marketing, IT support, closing, or compliance services, CSIT will compensate

NJEDA 5 percent of the program's overall budget in program implementation fees which will be reduced by any funds retained by NJEDA from the awarded budget of any NJBPU-funded programs.

- For every CSIT employee, to include the Executive Director, CSIT will compensate \$11,275 per year in general administrative and facility support to cover office space and IT support.
- NJEDA will continue to bill CSIT quarterly for any NJEDA program officer employees assigned to CSIT providing staff time on direct support of CSIT and its programs and any NJEDA staff providing procurement support for major initiatives including RwNJ. Of note, during this last transition year of the RwNJ contract, EDA will not bill CSIT for staff time on this existing contract (see below for further details).

The amendment to the MOU also directs CSIT and NJEDA to reassess the cost sharing structure every two years.

### **Background on ResearchwithNJ (RwNJ)**

RwNJ is a free, online database that provides public visibility to the experts, publications, equipment, academic profiles, etc. at New Jersey's five major research universities. RwNJ helps entrepreneurs and researchers discover thousands of experts in science, technology, engineering and mathematics (STEM) as well as their professional backgrounds, publications, and achievements. It also provides the accessibility to learn about various research departments and specializations of the five participating universities: Montclair State University, New Jersey Institute of Technology, Princeton University, Rowan University, and Rutgers University.

In June 2017, The NJEDA and Office of the Secretary of Higher Education (OSHE) joined in partnership to develop RwNJ under an appropriation of \$1.5 million from the State budget to OSHE. After a competitive RFP process, The Netherlands-based Elsevier BV was selected as the contractor to build the RwNJ database and portal using the company's off-the-shelf software platform Pure. Because of Elsevier's ownership of multiple research-related databases and tools (Pure, Scopus, Mendeley, PlumX, Digital Commons, etc.) they have access to a massive amount of research data. Elsevier provides numerous tools through their reporting and dashboard functions that allow users to filter and analyze characteristics of a university's or RwNJ's research assets such as existing collaborations with public and private institutions and researchers, quantity and frequency of published publications by category or researcher, and cumulative grants received across research areas. To date, the platform has sourced a total of 214,593 outputs from all participating universities, incorporated 4,906 individual profiles, 155 core facilities, and 5,517 grants/projects.

NJEDA's initial contract with Elsevier in August 2017 was for two years with three one-year extension periods. NJEDA has since exercised two of the three one-year extensions periods, with one remaining extension period available and currently being finalized that would extend the contract to August 2, 2022.

### **ResearchwithNJ Alignment with CSIT**

At the time of launching RwNJ in 2017, CSIT had not been re-established. However, given the mission of CSIT and their focus on University commercialization it is appropriate to begin to transition RwNJ from NJEDA to CSIT. The goals of RwNJ aligns with the mission of the Commission; to expand connections between early-stage industries, entrepreneurs, and universities. The Commission currently works with all five participating universities and aims to (1) utilize its institutional and private STEM-based partners to support expansion of new schools and partnerships (2) integrate RwNJ with existing CSIT products (3) market RwNJ on the CSIT website to increase the number of site visitors and school usage.

RwNJ is also already aligned with several of the programs run in CSIT. Similar to CSIT's Clean Tech R&D Voucher Program, aimed at providing funding support to early-stage startups to access testing facilities at higher education institutions, RwNJ includes a vast database of New Jersey's core research facilities and their associated researchers and research outputs. Additionally, there have been discussions to expand RwNJ to include non-academic research being conducted at large and small private institutions and hospitals, another potential alignment to CSIT's work with smaller R&D startup companies in the State.

### **Transitioning ResearchwithNJ to CSIT**

The existing RwNJ contract, to include the final remaining one-year extension, is between Elsevier and NJEDA. A new RFP must be issued and bid on for a follow-on contract to continue RwNJ beyond August 2022. NJEDA will continue to manage the day-to-day implementation of RwNJ for the remainder of the current contract with Elsevier. The management of RwNJ will transition to CSIT, with CSIT managing the procurement of a new RFP and subsequent contract for RwNJ. During the procurement period for a new RwNJ contract, NJEDA will bill CSIT quarterly based on staff salaries including fringe benefits and pension contributions and pro-rated by the number of hours staff dedicates to the CSIT, for the portion of the time NJEDA staff provide direct support to manage the procurement of a new RwNJ contract. As noted above however, staff support for the project management in the last contract year of RwNJ will not be billed to CSIT.

To date, NJEDA has paid Elsevier approximately \$1,500,000 for RwNJ, \$720,000 of which was required to launch RwNJ in 2017 and 2018. The remaining \$780,000 in costs has been from annual implementation fees and subscriptions since 2017 for each of the nearly 5,000 faculty profiles being showcased in the database. In 2020, funding issues due to the COVID-19 pandemic ultimately resulted in Elsevier issuing a reconciliation for profiles entered into the database during the previous year and agreeing to extend the agreement for one year (August 3, 2020 through August 2, 2021) at no cost to NJEDA. The duration of the final one-year contract extension with Elsevier will be from August 3, 2021 through August 2, 2022. In support of transitioning RwNJ to CSIT, CSIT's board will be asked to approve funding up to \$300,000 from its FY22 budget to support the third and final year contract extension. While final billing discussions are underway with Elsevier, it is anticipated this amount should cover the costs of profile subscriptions and general platform management.



Approval for CSIT to transfer up to \$300,000 to NJEDA to support this extension is being brought before the Commission's September 24, 2021 Board. It is recommended that NJEDA approve receipt of the transfer of up to \$300,000 to support the final one-year contract extension with Elsevier for RwnJ pending the Commission's Board's approval.

**Recommendation:**

Members of the Board are requested to approve:

1. A third amendment to the existing Memorandum of Understanding (MOU) between the Authority and the New Jersey Commission on Science, Innovation and Technology ("Commission" or "CSIT") updating for what support services and at what rates CSIT will compensate NJEDA; and
2. The receipt of up to \$300,000 in CSIT funds to support the ResearchwithNJ (RwnJ) program.



---

Tim Sullivan, CEO

Attachment:

Amended Memorandum of Understanding between NJEDA and the CSIT

**THIRD AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NEW JERSEY COMMISSION ON SCIENCE, INNOVATION AND TECHNOLOGY  
AND  
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

This Third Amendment (“Third Amendment”) to the Memorandum of Understanding (Original MOU”) made by and between the NEW JERSEY COMMISSION ON SCIENCE, INNOVATION AND TECHNOLOGY (“CSIT”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“NJEDA”), instrumentalities of the State of New Jersey (“the State”). The CSIT and the NJEDA may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party.” Except as otherwise defined herein, all capitalized terms shall have their meaning as set forth in the Original MOU.

**WHEREAS**, the Parties entered into the Original MOU between the CSIT and NJEDA effective July 2, 2019 which committed to provide support services and staff to the CSIT and CSIT would reimburse the NJEDA for the cost of such services; and

**WHEREAS**, the Parties amended the Original MOU by way of a First Amendment and Restatement to the Memorandum of Understanding (“Amended and Restated”) effective on September 23, 2019 to allow the NJEDA to commence the hiring process for the CSIT Executive Director, for the CSIT to have ultimate approval over who was to be hired, and to allow for the CSIT Executive Director to be an employee of the NJEDA, and for CSIT to reimburse the NJEDA for actual costs to the NJEDA of the CSIT Executive Director’s employment; and

**WHEREAS**, the Parties amended the Original MOU by way of a Second Amendment effective on June 7, 2021 to allow CSIT to recruit and hire additional staff as NJEDA employees with compensation and hiring decisions made jointly by NJEDA and CSIT, for the CSIT personnel to report solely to CSIT and paid from State funds appropriated to the CSIT unless otherwise agreed upon among the Parties, and for NJEDA to provide office space and ancillary support and services to the CSIT personnel; and

**WHEREAS**, the success and expansion of programming under the CSIT in the two years since the signing of the Original MOU has substantially increased the support required for programmatic implementation that is currently provided by NJEDA staff at no-cost to CSIT; and

**WHEREAS**, the NJEDA and CSIT have agreed that it would be in the best interest of the State to re-assess what services CSIT should reimburse NJEDA for providing and at what cost; and

**NOW THEREFORE**, in consideration of the foregoing the Parties hereby agree as follows:

1. Section 5 of the Amended and Restated MOU is hereby amended to read as follows:

*CSIT will compensate EDA for the cost incurred on behalf of CSIT for the services provided for in paragraph 1 as follows:*

- a. *For NJEDA staff who are made available to the Executive Director to utilize a portion of their time working on direct CSIT program support, NJEDA will bill CSIT quarterly based on staff salaries, including fringe benefits and pension contributions, pro-rated by the number of hours staff dedicates to the CSIT.*
- b. *For NJEDA staff who provide procurement assistance to CSIT, NJEDA will bill CSIT quarterly based on staff salaries, including fringe benefits and pension contributions, pro-rated by the number of hours staff dedicates to the CSIT.*
- c. *For each CSIT program that will require NJEDA program support services such as but not limited to application compliance review, interagency compliance review, website design, application design, business operations, marketing, New Jersey register publication, closing, and post-award closing services, CSIT will compensate NJEDA 5 percent of each applicable program's total budget provided that NJEDA has not already received compensation for services for that specific .*
- d. *For CSIT programs that have a post-award compliance period of greater than two years, the Parties may agree in writing to additional compensation on an individual program basis.*
- e. *For office space and personal information technology (IT) products and services, CSIT will compensate NJEDA \$11,275 per CSIT personnel to include the Executive Director, quarterly based on the average number of CSIT personnel during the preceding quarter.*
- f. *NJEDA will not bill CSIT for any NJEDA staff time spent on human resources, communications, accounting, or similar activities unrelated to a specific CSIT program on behalf of CSIT, or other activities outlined in section 1 but not detailed in this section.*
- g. *The Parties will revisit the compensation for NJEDA staff as described in this section at least every two years.*

*NJEDA will not be financially responsible for any costs incurred by CSIT other than those provided for in paragraphs 1 as described in this paragraph, and all award funding for CSIT's innovation partnership grants and other financial assistance awarded by CSIT will be paid from funds of CSIT. Other costs not contemplated in this Agreement arising from the Parties' joint activities will be mutually agreed upon in writing before incurring them.*

2. Except as otherwise provided in this Third Amendment, all of the terms, covenants and conditions of the Original MOU, and the Amended and Restated MOU, and the Second Amendment shall remain in full force and effect.

3. All references to the term “MOU” in the Original MOU shall be deemed to refer to the Original MOU, as modified by this Third Amendment.
4. The Third Amendment shall be effective as of July 01, 2021 (“the Effective Date”).

**IN WITNESS WHEREOF**, the Parties have executed and delivered this THIRD AMENDMENT on the date set forth next to their respective signatures below, but effective as of the date set forth above. The Parties agree to accept electronic signatures.

**New Jersey Commission on Science, Innovation and Technology**

\_\_\_\_\_  
By: Judith Sheft, Executive Director

Date: \_\_\_\_\_

**New Jersey Economic Development Authority**

\_\_\_\_\_  
By: Tim Sullivan, Chief Executive Officer

Date: \_\_\_\_\_



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** September 22, 2021

**RE:** Approve funding support and delegated authority for NJEDA engagement in membership organizations

### **Summary**

Members of the Board are asked to approve:

1. An initial allocation of up to \$200,000 from the Economic Recovery Fund (ERF) for the 2021 Authority budget year to support memberships in innovation-oriented organizations that align with “targeted industries” as defined and approved by the Board on July 14, 2021 or that support increasing diversity and inclusion within the State’s entrepreneurial economy;
2. Delegated authority to the CEO of NJEDA to enter into membership agreements, provided that the membership fee is no more than \$50,000 per year and the relevant organization supports the development of targeted industries or increasing diversity and inclusion within the State’s entrepreneurial economy.

### **Background**

Through strategic partnerships with a diverse range of innovation-oriented stakeholders within targeted industries and in the State’s entrepreneurial community, the NJEDA aims to create new economic opportunities for New Jerseyans and promote its initiatives, products, and strategies among individuals and stakeholders that are vital to the State’s economic development. These strategic partnerships may include, but are not limited to, annual memberships in industry associations, innovation centers, and industry–university cooperative research centers.

As part of the New Jersey Economic Recovery Act of 2020 (ERA), the permitted uses of Economic Recovery Fund (ERF) monies were amended to include financing, grants, investments, and memberships related to Authority projects and programs in targeted industries or that support

increasing diversity and inclusion within the State's entrepreneurial economy. The statute requires that the Board approve the list of targeted industries prior to utilizing ERF funds for these purposes.

The Board approved the list of Targeted Industries definitions for the Economic Recovery Fund on July 14, 2021. This approval standardizes the definition of targeted industries across multiple Authority efforts. Over the coming months, Staff intends to develop new policies and programs around these targeted industries.

### **Policy Alignment**

As part of Governor Murphy's Economic Development Strategic Plan and NJEDA's purpose, NJEDA seeks opportunities to support innovation that:

- 1) supports and grows emerging, innovative industries in New Jersey,
- 2) leverages the relevant expertise of New Jersey academic institutions,
- 3) includes the necessary infrastructure to serve as a physical hub for R&D and innovation,
- 4) has the potential for positive social and economic impact in the communities in which they are located, and
- 5) includes a focus on strengthening diversity and equity within an innovative industry.

Periodically, NJEDA identifies membership opportunities that align to Governor Murphy's economic development plan and provides NJEDA with valuable exposure within the Authority's defined strategic sectors or allows the NJEDA to further support increasing diversity in the entrepreneurial economy. As such, NJEDA proactively engages industry leaders, academic institutions, and government agencies to pursue coordinated approaches to sector-based growth. This outreach has yielded a wide range of opportunities for NJEDA to partner with stakeholders in new ways to enhance the State's economic competitiveness and increase diversity and inclusion in the innovation economy.

Through general NJEDA funding or through the Economic Recovery Fund, as amended by the ERA, NJEDA may pay for memberships in entities that further NJEDA's statutory purpose. NJEDA may also engage in non-paid memberships that support the execution of NJEDA's strategic goals, including but not limited to, marketing of NJEDA products, strategic agenda development, and positive social impact. The goal of these memberships is to create new economic opportunities for New Jerseyans and promote the Authority's initiatives, products, and strategies among individuals and stakeholders that are vital to the State's economic development.

### **Proposed activities and focus of Membership Engagement**

As part of the proposed Authority memberships, staff will undertake the activities including, but not limited to, the following:

- I. **Positioning New Jersey as an industry leader:** convene industry events that highlight opportunities and leading-edge developments in innovative industries and support related research at New Jersey academic institutions
- II. **Promoting and strengthening diversity, equity, and inclusion, as essential components of industry culture:** promote opportunities for underrepresented groups
- III. **Accelerating innovation:** identify industry-wide technology development opportunities, promote research and development, and attract private sector investment
- IV. **Supporting businesses and workforce development:** serve as a resource for workforce development and high value job creation, working with private sector companies and universities to develop programs teaching the skills most in-demand in the related industries
- V. **Identifying and promoting best practices for state regulation:** position New Jersey as a national leader in technical infrastructure, regulation, and integrity practices

### **Framework for Reviewing Engagement in Membership Organizations**

Staff have developed an internal NJEDA policy for vetting Authority membership engagements to ensure a consistent and replicable approach for selecting membership engagements to support.

The process for evaluating membership engagements provides staff with a roadmap to assess all membership opportunities. Evaluation criteria may evolve with additional experience evaluating opportunities, but initially includes:

1. Alignment with the State's overall prevailing economic development plan (for example the Stronger and Fairer Economic Development Plan released in October 2018 as amended);
2. Whether the membership organization supports one of the Authority's targeted industries or increasing diversity and inclusion in the state's entrepreneurial economy;
3. Confirmation that the membership organization does not unduly promote any one public or private party's specific products or services; and,
4. Whether the organization is operated by a credible, experienced team.

The vetting of Authority membership engagements will include an ethics check by the Ethics Liaison Officer and a review of any agreements by the Attorney General's Office.

The initial allocation request will support membership engagements in the current 2021 budget year. In subsequent years, an allocation to support membership engagements will be incorporated into the annual budget process for approval by the Board.

**Recommendation**

1. An initial allocation of up to \$200,000 from the Economic Recovery Fund (ERF) for the 2021 Authority budget year to support memberships in innovation-oriented organizations that align with “targeted industries” as defined and approved by the Board on July 14, 2021 or that support increasing diversity and inclusion within the State’s entrepreneurial economy;
2. Delegated authority to the CEO of NJEDA to enter into membership agreements, provided that the membership fee is no more than \$50,000 per year and the relevant organization supports the development of targeted industries or increasing diversity and inclusion within the State’s entrepreneurial economy.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan  
Chief Executive Officer

Prepared by: W. Penders / C. Coronato / D. Ramsay



## **INCENTIVE PROGRAMS**

## **EMERGE PROGRAM**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT:** Revisions to Net Benefit Test Policy for Emerge Program

### **Request:**

The Members are asked to approve the attached, as Appendix A, revised policy memo detailing Net Positive Economic Benefit Test approaches to be employed by the Authority when evaluating projects for consideration within the Emerge Program.

### **Background**

On May 12, 2021, Members approved new rules for the Emerge Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (ERA) to encourage economic development, targeting the Governor's priority sectors through job creation and the retention of a significant number of jobs. The ERA requires Emerge Program projects to yield a net positive economic benefit to the State and directs the Authority to perform the economic benefit analysis on each project under consideration within the Emerge Program. Included in the materials considered and approved by the Members on May 12, 2021 was a policy memo detailing the Net Positive Economic Benefit Test approach to be employed by the Authority for these purposes.

### **Changes**

#### **1. Added language to explain how Authority staff will assign North American Industry Classification System (NAICS) codes to projects**

Critical to the net economic positive benefit test is the assignment of an industry, as the Input-Output analysis performed within IMPLAN described in the attached memo relies upon sets of industry level multipliers when modeling economic impacts of the company's expected business activities. While every applicant will be required to provide its own NAICS code, companies generally self-select the code and there is no authoritative source on what the actual NAICS code for a specific business should be. Furthermore, in the case of large integrated businesses, the single code selected by the company may accord with the primary company activity but not the specific characteristics of the Emerge project. Additionally, the IMPLAN model can use multiple industry codes as inputs, in which case IMPLAN model multipliers are blended to represent the mix of industries. This permits staff to more appropriately select multiple NAICS codes for projects that include different

industry characteristics, such as different affiliates with different NAICS codes. The attached revised memo explains when the Authority will depart from or add to the NAICS code provided by the applicant.

**2. Revision to allow for the inclusion of all at-risk jobs related to a project in the Net Positive Economic Benefit Test**

The policy memo approved on May 12, 2021 limited the inclusion of jobs in the Net Positive Economic Benefit Test to those directly incented by the award. Staff proposes revising this to include all jobs retained by the project through the award of tax credits. In practice, applicants may have jobs that are at-risk of leaving the State absent the award but that are not eligible for an award. This could be the case where the applicant does not meet a relevant retained job minimum or the at-risk jobs were incented by a previous award from the Authority. The proposed revision would allow for the inclusion of these jobs in the Net Positive Economic Benefit Test so long as the applicant fills full-time positions as follows: first, any jobs that are subject to an existing award (which is required by the regulations); second, the non-incented at-risk position (to be included in the net positive economic benefit analysis); third, the incented at-risk (“retained”) positions (required by regulations to be filled before new positions); and fourth, the incented new positions. As such, the at-risk non incented jobs are encumbered for the duration of the commitment period, and therefore the Authority has the assurance to account for the economic benefit associated with these positions when performing the Net Positive Economic Benefit Test.

**Recommendation:**

The Members are requested to approve the attached revised memo with the changes detailed above to better align the Net Positive Economic Benefit Test approaches with operational realities of the program.



---

Tim Sullivan, CEO

Prepared by: Kevin DeSmedt

Attachments:

Appendix A – Net Benefit Analysis – Revised

## **Appendix A**

### **Economic Recovery Act Programs – Net Benefit Analysis Overview – as revised September 22, 2021**

#### **Introduction**

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law on January 7, 2021. The ERA creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy. Included in the ERA is the creation of the Emerge program which will serve as the State's primary job creation incentive.

As with prior incentive programs, such as Grow NJ and ERG, a key statutory requirement within Emerge is that the Authority must ensure fiscal prudence by determining that the award of tax credits creates a net positive economic benefit to the State. Unlike prior incentive programs, Emerge requires a significantly greater economic benefit to the State to offset the award. For prior programs, the Authority relied upon a proprietary model that was developed by a third party but largely managed in-house. In the interest of greater transparency and consistency the Authority has determined the best approach for new programs for such analysis is to rely upon an external third-party model that would not need to be updated or maintained by the NJEDA.

To increase transparency and consistency, NJEDA staff determined that it would be important to utilize a third-party economic development model that is widely known, understood and utilized at the state, federal, and international levels. In addition, after evaluating several widely-known, national level models, staff determined that utilizing a tool that was more easily understood by a broader set of stakeholders would be beneficial. Based on a thorough analysis of available alternatives that would meet the Authority's requirements, staff is proposing to use the IMPLAN model to calculate the expected net economic benefit from projects awarded within the Emerge Program (and other ERA programs). This memo provides background on the fundamental theory underpinning IMPLAN's model, the history of EDA's work with the net benefit test, a brief overview of IMPLAN and its features, and an overview of the application of IMPLAN to calculate the net benefit for the Emerge program.

#### **Overview & History of Input-Output Analysis**

IMPLAN's model is built on a macroeconomic analysis known as Input-Output analysis (I-O), which estimates the interdependence between economic sectors and industries. A product of I-O is an input-output table, which is a data matrix that shows the inputs from industries and sectors of the economy necessary to create the output of a given industry. As an example, Table 1 shows the intermediate input (inputs from other firms and industries) and within-firm factors of production (calculated as income going to labor, capital, and taxes) that go into producing an industry's output.

**Table 1 – I-O for US Manufacturing in 2019, millions of dollars**

	<b>Commodities/Industries</b>	<b>Manufacturing</b>
A	Agriculture, forestry, fishing, and hunting	\$322,670
B	Mining	\$371,488
C	Utilities	\$55,663
D	Construction	\$14,197
E	Manufacturing	\$2,458,644
F	Wholesale trade	\$25,085
G	Retail trade	...
H	Transportation and warehousing	\$54,383
I	Information	\$22,650
J	Finance, insurance, real estate, rental, and leasing	\$108,329
K	Professional and business services	\$373,668
L	Educational services, health care, and social assistance	\$146
M	Arts, entertainment, recreation, accommodation, & food services	\$12,127
N	Other services, except government	\$21,587
O	Government	\$4,698
<b>Sum, A-O Total Intermediate</b>		<b>\$3,913,382</b>
P	Compensation of employees	\$1,131,337
Q	Other taxes on production	\$60,414
R	Gross operating surplus	\$1,125,415
<b>Sum, P-R GDP</b>		<b>\$2,317,167</b>
<b>Total industry output (Intermediate + GDP)</b>		<b>\$6,230,548</b>

This data provides two important sources of information. One is, when an industry's output is "shocked," or increased/decreased by a specified amount, an analyst can estimate the impact of that shock on all other associated industries and sectors of the economy. Another important source of information is the understanding and ability to estimate the ripple effects of any one shock through all the associated industries and sectors of the economy. These estimated impacts are known as multipliers, and they estimate the total change in output across all industries and sectors expected when a specified industry's final demand is shocked.

Moreover, these multipliers can be broken down into three categories, typically referred to as direct, indirect, and induced impacts, which are explained as follows:<sup>1</sup>

- Direct effects -- occur directly from the focus industry's shock.
- Indirect effects -- occur from impacts on other industries. They are akin to second-round impacts. For example, if we shock a pharmaceutical manufacturer, a second-round impact would be from an industry that produces an intermediate good for the pharmaceutical industry, such as a chemicals manufacturer. The economic impact of the shock on the chemicals manufacturer would be considered an indirect effect.

<sup>1</sup> <https://blog.implan.com/understanding-implan-effects>; <https://www.investopedia.com/terms/i/input-output-analysis.asp>

- Induced effects – occur through household spending from labor income generated by the shock. These effects are created by the spending of employees in the directly and indirectly impacted industries.

Expanding on the pharmaceutical industry shock explained above, using an economic impact model, we can estimate how this one focused shock impacts the economy through areas such as employment, consumer and industrial demand, and State tax revenues

## **IMPLAN**

IMPLAN was created in the 1970s, when the National Forest Management Act required the United States Forest Service to prepare a plan for alternative land management strategies and potential resource outputs. IMPLAN, short for “impact analysis for planning,” estimated the economic impacts of those resource outputs on local communities.<sup>2</sup> IMPLAN’s data is based on federal data sources from the Bureau of Labor Statistics, Bureau of Economic Analysis, and the Census Bureau.<sup>3</sup>

A distinguishing feature of IMPLAN is that it estimates tax revenue impacts from events. Taxes by level of government are sourced from the Census Bureau’s Annual Survey of State and Local Government Finances, state government tax collections, Census of Government Finance, and the Bureau of Economic Analysis’s National Income and Product Accounts.<sup>4</sup> The taxes are not estimated based on an analysis of what the specific company may pay, but is an estimate based on the general data. Therefore, the model does not incorporate such details about the company as individual salary or whether a company is already in the State.

IMPLAN’s methodology for tax estimates has been used by other states to evaluate their incentive programs as well as industries – examples include the following:

- Nevada Governor’s Office of Economic Development, which used IMPLAN to determine tax revenue estimates for the Tesla Gigafactory project in 2014<sup>5</sup>
- Oklahoma Incentive Evaluation Commission, which issued a report in 2016 on the effectiveness of several incentive programs and used IMPLAN to estimate the economic impacts of projects receiving tax credits<sup>6</sup>
- The Louisiana Economic Development Office & Legislative Fiscal Office has used IMPLAN to estimate the economic and fiscal impacts of entertainment-related industries in Louisiana<sup>7</sup>

---

<sup>2</sup> <https://www.implan.com/history/>

<sup>3</sup> <https://implanhelp.zendesk.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources>

<sup>4</sup> <https://implanhelp.zendesk.com/hc/en-us/articles/115009674528-Generation-and-Interpretation-of-IMPLAN-s-Tax-Impact-Report>

<sup>5</sup> Economic Impact of Tesla on Washoe and Storey Counties, September 2014

<sup>6</sup> State of Oklahoma Incentive Evaluation Commission, Tax Incentive Evaluation Report, 2016

<sup>7</sup> BaxStarr Consulting Group LLC, Fiscal & Economic Impact Analysis of Louisiana’s Entertainment Incentives.

Prepared in conjunction with the Louisiana Economic Development Office of Entertainment Industry Development & the Legislative Fiscal office, April 2011

- Maryland's Department of Commerce has used IMPLAN to estimate the economic impacts of incentive programs in annual reporting<sup>8</sup>

IMPLAN is also currently used by the California Governor's Office of Planning and Research, the California Research Bureau, and the Washington State Department of Transportation.

IMPLAN also counts federal agencies as clients, including the Bureau of Ocean Energy Management, NASA, US Department of Agriculture, US Department of Interior, and the US Geological Survey. IMPLAN's model outputs have been published in peer-reviewed academic journals and professional publications and have been used by economists for decades.<sup>9</sup>

### **IMPLAN & Net Benefit Test Application**

IMPLAN provides flexibility to model impacts at different levels of geographic region, including at the state, county, Metropolitan Statistical Area (MSA), ZIP code, and congressional district. To align with the distinction in the allocation of the Emerge, Aspire, and Community-Anchored Development tax credits in the Economic Recovery Act of 2020 and account for distinctly different labor and housing markets within the State, **there will be two regions in which projects will be modelled – Northern and Southern New Jersey.** Southern New Jersey comprises the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem , and Northern New Jersey is the counties of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren .

IMPLAN has several types of economic shocks that users can model, including industry output, industry employment, commodity output, and employee compensation. For the purposes of the NJEDA's net benefit test, the Authority will be shocking **industry employment** and **industry employee compensation**, as that information will be submitted by applicants when applying for the Emerge program and most closely align with outcomes to be directly incented by an award. Critical to this aspect of the net benefit test is specifying an industry, as the Input-Output analysis performed within IMPLAN relies upon sets of industry level multipliers when modeling economic impacts of the company's expected business activities. These industry determinations are made using the North American Industry Classification System (NAICS), which is used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. Applicants will provide a NAICS code at application and Authority staff will evaluate this NAICS code for appropriateness based upon an understanding of the business and the project in question. Where appropriate, staff may use additional NAICS codes to what is supplied by the applicant, effectively modeling average effects across multiple industries in IMPLAN. In limited instances where the business functions at the project in question are dramatically different than those inherent to the supplied NAICS code, a NAICS code more appropriate to the business functions in question will be used, this would include headquarters or office locations for industries such as manufacturing, retail trade, or transportation and logistics.

<sup>8</sup> Fiscal Year 2017, Consolidated Incentives Performance Report, As required by the Maryland Jobs Development Act Economic Development Article 2.5-109, February 2018, Maryland Department of Commerce

<sup>9</sup> <https://implanhelpp.zendesk.com/hc/en-us/articles/360044985833-About-IMPLAN>



Regarding employment, the analysis will include the number and total payroll of new and at-risk full-time jobs that will be created or remain in the State as a result of the incentive award (whether or not incented by the award). For non-incented at-risk jobs to be included in the analysis, the business's employees will fill full-time positions as follows: first, any jobs that are subject of an existing award (which is required by the regulations); second, the non-incented at-risk position (to be included in the net positive economic benefit analysis); third, the incented at-risk ("retained") positions (required by regulations to be filled before new positions); and fourth, the incented new positions.

Staff will also make net benefit test adjustments for small businesses that choose to grow jobs in a phased manner via a pre-determined growth plan, for example by running the model for each year of the project separately to account for the growing number of jobs. The IMPLAN model will further adjust these figures to account for expected seasonal or additional part-time workers that would be associated with the project based upon its industry. If at certification, any one of the key input factors to the model (i.e., the actual payroll, the number of full-time jobs, or the capital investment of the project) has been reduced by more than ten percent below the respective level provided by the applicant at approval, the net benefit analysis will be performed again and the award may be adjusted down accordingly.

For each applicant, two scenarios will be run: the **ongoing business activity** and any **up-front construction** associated with the business activity (for example, some projects awarded under the small business portion of the Emerge Program may not have any construction as there is no minimum required capital investment). IMPLAN's model includes estimates of federal, state, county, and municipal taxes. **Only the model's estimate of state taxes will be used to estimate the benefit to New Jersey**, as the ERA requires the determination of the net benefit to the State. Additionally, the vast majority of the tax benefit to New Jersey occurs at the state level. As proposed in the Emerge rules, **for the ongoing business activity, only direct and indirect state taxes will be used. For the construction work, direct, indirect, and induced state taxes will be used.**

As stated in the Emerge statute, the net economic benefit will be calculated for the commitment period of the project. For a phased project, the requested tax credit allocation amount shall be determined for the initial phase, and on a cumulative basis each phase thereafter. The Emerge statute also allows a company to commit to a period of time beyond the commitment period and the rules propose a maximum of 20 years, which an applicant may do if the net positive economic benefit is insufficient – based on the statutorily required net economic benefit percentages – to support the total amount of the award.

The Emerge statute requires the Authority to perform this analysis in terms of net present value, i.e., the benefit in the future should be expressed in dollars today. Additionally, the statute requires the discount to reflect the uncertainty of the company's commitment after the commitment period expires. As such, the Authority will discount expected future revenues to the State accordingly. This, in practice, is a two-step process. First, given the IMPLAN model estimates a one-time (essentially, the 1<sup>st</sup> year) impact on government revenue, the Authority must estimate the growth of future annual revenues. The Authority does this by growing future

revenues by an estimated rate of inflation **The inflation rate will be set based on a five-year mean of the Personal Consumption Expenditures Price Index as provided by the Survey of Professional Forecasters adjusted annually; initially this is set at an annualized rate of two percent.** Second, the Authority must then discount these future revenues. **To calculate the discount rate, staff starts with an industry accepted net present value discount rate, which currently is six percent. To account for the significant risk and uncertainty associated with revenues in the furthest years out, and as directed by the Emerge Statute specifically for years after the eligibility period, the discount rate is increased by two percent (so, currently eight percent).** Tax revenues resulting from construction expenditures and upfront costs do not need to be discounted as they would occur prior to the issuance of any tax credits awarded to a company.

**In certain instances, taxes at the local level or with inherently local implications, impact the State and thus such taxes would be factored into the economic benefit analysis.** The local taxes that could be considered are property taxes from new construction and local payroll taxes. As both of these local tax revenues offset State funds needed for municipal aid and/or appropriations to reduce property taxes, they may directly benefit the state thus making them appropriate to be considered in this analysis. To include such local property taxes, the business will need to provide a PILOT agreement, real estate appraisal, preliminary assessment from tax assessor, or any other relevant third-party document. Conversely, the State's Urban Enterprise Zone program affords projects located in certain geographies an exemption from a portion of the State sales tax associated with a construction project, as such where this is the case the analysis will be adjusted accordingly to best reflect actual sales tax revenues to the State from the related construction project.

**The Emerge Statute requires projects to create positive economic benefit to the State equal to between 400 and 200 percent of the award.** Generally, the project must yield a benefit to of 400%; however, projects located in distressed municipalities or transit hub municipalities must yield a 300% benefit and projects located in government-restricted municipalities, or mega projects, must yield a 200% benefit.



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT:** Party City Holdings Inc. Emerge Tax Credit Program Application

**REQUESTS:**

The Members of the Authority are asked to:

- 1) Adopt the recommended finding by staff that the existing jobs in the application are at-risk of being located outside New Jersey.
- 2) Approve the proposed Emerge New Jersey tax credit award of \$1,428,000 per year over seven years, in total \$9,996,000.00, to induce Party City to site the project in New Jersey. The recommended tax credit award is subject to conditions subsequent to receive and maintain the award, including submission of certifications and evidence that the company has met the eligibility criteria. Staff is authorized to lower the award amount and the term will be lowered to reflect the award amount that corresponds to the actual employment and capital investment in the project completion certification provided that neither the application information nor the project has materially changed and no analysis, such as the net positive economic benefit analysis must be re-evaluated.

**ABOUT THE EMERGE PROGRAM**

The Emerge Program encourages economic development in the State's priority sectors by providing per-job tax credits for up to seven years (the "eligibility period"). To be eligible for Emerge Program support, a project must meet various eligibility criteria at application and at project certification, including locating in a qualified incentive area, creating a minimum number of new jobs or retaining a significant number of at-risk jobs, and meeting minimum capital investment requirements. In addition, the project must comply with certain standards during a commitment period, which is set at 1.5 times the eligibility period rounded up to the next whole year. Upon approval and demonstration of site control and financing, the business must execute a commitment agreement. Full description of the program and the current version of the program's rules can be found at <https://www.njeda.com/emerge>.

Project must yield a minimum net positive benefit to the State. For most projects and most areas of the state, this minimum level is at least 400 percent of the awarded tax credit. However, projects in certain target areas or that meet certain requirements are subject to lower net positive benefit thresholds (300 or 200 percent).

Projects must also demonstrate that the award of the tax credit is a “material factor” in the applicant’s decision to create and/or retain the number of new and retained full-time jobs in New Jersey as specified in the business’s application. To qualify as a position eligible for a tax credit, the employee filling the position must spend at least 80 percent of the employee’s work time in New Jersey. The business must also ensure that not less than 80 percent of the withholdings of new or retained full-time jobs are subject to the ‘New Jersey Gross Income Tax Act’. The location of the project (the “Qualified Business Facility”) must be able to accommodate at least 50 percent of the incented new and retained jobs.

To be awarded Emerge tax credits, the applicant must be in good standing with the NJ Department of Labor and Workforce Development, NJ Department of Treasury, and the NJ Department of Environmental Protection (as determined by each Department). All projects that receive Emerge support must also meet minimum environmental standards, pay prevailing wages to construction workers and building service workers, and offer health benefits.

Applicants with projects that have a total project cost exceeding or equaling \$10 million must also enter into a Community Benefits Agreement with NJEDA and the county or municipality in which the project is located, unless the municipality certifies the approval letter or a redevelopment agreement for the Qualified Business Facility with provisions that meet or exceed the statutory standards for the Community Benefits Agreement.

Upon completion of the project, the applicant must submit an independently prepared CPA cost and job certifications and other documents evidencing completion of the approved project and satisfaction of the eligibility criteria. Once the tax credits are issued, the Emerge credits are certified for use annually and proportionally based on actual job performance (that is, number of new and retained jobs) during that year and an applicant is subject to reduction, forfeiture, and recapture based on various actions, such as job reduction, certain unapproved relocations or Qualified Business Facility property dispositions, and failure to report annually.

**APPLICANT:**

Party City Holdings Inc. (Party City)

**PROJECT LOCATION:**

100 Tice Blvd, Woodcliff Lakes, NJ 07642

**APPLICANT BACKGROUND:**

Party City Holdings Inc., is a publicly traded company (NYSE:PRTY) headquartered in Elmsford, NY. The company was founded by Steve Mandell in 1986 in East Hanover, NJ and went public in 1996.

Party City, through its subsidiaries, designs, manufactures, sources, and distributes party goods worldwide. The company is ranked 900 on the Fortune 1000 list and operates approximately 825 company-owned and franchise stores throughout the United States.

Now headquartered in Elmsford, New York, the company is the largest retailer of party goods in the United States, Canada and Mexico, operating company-owned and franchise outlets under the Party City, Halloween City, Toy City, Factory Card, and Party Outlet brands. As of 7/8/2021, Party City Holdings Inc. employs 13,536 people worldwide with 13,179 of those jobs located in the United States, and 857 located in New Jersey. Out of the 857 New Jersey jobs, 338 full-time jobs are non-retail, corporate jobs.

In addition to selling through its own retail channels, the company designs, manufactures, and distributes party goods found in over 40,000 retail outlets worldwide, including independent party supply stores, mass merchants, grocery retailers, dollar stores and others. Through a series of acquisitions between 2005 and today, they have built an integrated manufacturing-to-retail operation.

**PROJECT BACKGROUND:**

Party City is planning to consolidate its Rockaway, New Jersey and Elmsford, New York sites into one national headquarters. Currently the company is considering a facility in Woodcliff Lake, New Jersey, as well as an alternative site in White Plains, New York.

The company is considering leasing the entire 208,911 square foot building at the Woodcliff Lake site for a 16-year term and anticipates transforming the building into an office environment and a state-of-the-art technology space that will showcase products as well as host vendors and clients. The building will have workspace to accommodate approximately 800 employees including open space, huddle rooms, conference rooms with white boards, offices, studio space for photography sessions for products and showcase items. Staff reviewed and confirmed that the number of seats is reasonable based on the standard amount of space for an office seat.

The applicant's goal for this real estate consolidation is to have a single headquarter presence that would allow the company to expand at one facility, creating synergy, increasing collaboration, and improving team building among its employees.

The anticipated eligible capital investment for the project is \$32,314,598, including landlord and tenant improvements, design and construction, furniture, fixtures and equipment.

The project would retain the 338 full-time at-risk non-retail jobs currently based in the Rockaway, New Jersey and create 357 new full-time jobs. The at-risk jobs have an average salary of \$107,195 and a median salary of \$84,129 and the new full-time jobs have a proposed average salary of \$103,857 and a median salary of \$84,720. While the new jobs are eligible for an incentive award, the 338 at-risk jobs are not eligible to be incentivized as they fall below the minimum requirement of 500 retained at-risk jobs, which is the minimum based on the project's Employment and Investment Corridor qualified incentive location.

Party City Holdings, Inc., along with its proposed affiliates, will be contributing eligible positions and capital investment at the Qualified Business Facility.

Based on an underwriting review of the applicant's financial information staff concludes that the applicant and the proposed Emerge project are financially feasible.

Additional details on the project can be found in Appendix 1: Project Summary.

**PREVIOUSLY AWARDED INCENTIVES**

The NJEDA has not previously incentivized any of the proposed new jobs. Party City was approved for a Business Employment Incentive Program Grant on 5/18/2004, however that award was subsequently withdrawn on 7/21/2008 due to non-responsiveness. Nevertheless, the retained jobs for this Emerge project are not being incentivized because the company does not meet the minimum requirement of 500 retained jobs for its qualified incentive location.

**TARGETED INDUSTRY**

This proposed applicant and project do not qualify as being in one of the Board approved targeted industries.

**MATERIAL FACTOR:**

Staff concludes that, based upon the facts and information provided by the company and to which the company CEO or equivalent officer has certified, the award of incentives is a material factor in the applicant's decision to locate the project in New Jersey.

Prior to factoring in any alternative site incentive offers, the project has a cost comparison difference of \$852,618 over the 11-year commitment period, with New Jersey being more costly than the New York alternative. Overall, this is less than a one percent difference in the context of the 11-year life of the project. More than 50% of this cost gap is driven by the inclusion of NJEDA fees, which are costs to the applicant but are not eligible capital investment.

However, the incentive offer for the alternative site is a significant consideration in the material factor analysis. The applicant has provided evidence that it has a valid incentive offer through New York State's Excelsior Tax Credit Program for up to \$15.7M over ten years. With the incentive included, the cost differential is approximately \$16.5M with New Jersey being more costly than the New York alternative, or just over 2% of the total project cost. Unlike the Emerge Program, the New York State program does not charge fees.

While the proposed New Jersey award would not entirely close the alternative site cost comparison gap after considering the New York State incentive award, it significantly reduces the difference. Overall, staff concludes that on a cost comparison basis, both states are viable options and the New Jersey incentive will be a material factor in the company's decision.

As part of the application, the applicant was required to list the (up to five) top factors driving their decision and provide relative weighting of those factors. Party City Holdings, Inc. listed the following factors:

Factor	Weight
Costs	60
Proximity to Client Base or Supporting Vendors	5
Talent Pool	35

**Total: 100**

Based upon this set of decision factors, staff reviewed the relative advantages and disadvantages of New Jersey compared to White Plains, New York.

Staff's cost analysis is noted above, however, the high factor weight of costs by the applicant is consistent with the fact that the two locations are relatively proximate to one another and there is a competitive dynamic between New York and New Jersey to offer incentives for this project.

In terms of proximity to its client base / supporting vendors and access to talent pool, both sites are nearly identical given their close proximity to one another.

Separate from the above decision factor analysis, staff considered the suitability of both sites for the company's proposed business operations. The New Jersey site and the alternative New York site offer close to identical benefits. Both sites are relatively the same size, have similar proximity to the New York City-Newark-Jersey City Metro market, are within the same driving distance from JFK and Newark airports, and have access to higher education offering top level talent. Both sites would allow the company's existing employee base to continue to commute to the consolidated office.

Additional factors supporting the finding that the Emerge award is a material factor include:

- The applicant currently has two active sites in New York, one of which is their current HQ and the relocation of those employees would be an easier transition should they choose White Plains, NY.
- Both sites are of similar quality and size.
- Both real estate transactions were at a similar level of maturity at the time of application.
- The types of jobs included in the project are a reasonable fit for both New Jersey and New York in terms of available talent pools and salaries.

#### **AWARD GRANT CALCULATION:**

Based on the project's characteristics, including number of new jobs, number of retained jobs, bonuses, and location, staff are recommending an award of \$1,428,000.00 per year of tax credits. The applicant has requested a seven-year eligibility period, corresponding to an 11-year commitment period. Over the course of the seven-year eligibility period, the total recommended award of tax credits for this project is \$9,996,000.00.

As stated in the program regulations, awards for project full-time employees that will primarily work (that is, at least 50% of the employees' time) at the Qualified Business Facility are calculated at the full base and bonus amounts, up to a per-job capped amount. The per-job capped amount in an Employment and Investment Corridor project with bonuses is \$4,000 per year. In this circumstance, Party City reached the per-job cap for their project and the total eligible award was calculated at \$4,000 per job, per year for new full-time jobs.

Awards for any full-time employees that are associated with the project but not “primarily working” at the Qualified Business Facility are calculated at the lower base amount of \$500 with limited bonuses that are not attributed to the facility.

This project will have all of its full-time jobs primarily working at the Qualified Business Facility. To maintain the tax credit amount, all incented jobs must continue to primarily work at the Qualified Business Facility during the commitment period.

A summary of the per job award calculation is included in the table below.

### Award Summary

	Location/Project Type		Amount
<b>Annual Base Award Per Job:</b>	Employment and Investment Corridor	\$	2,500.00
<b>Applicable Bonuses:</b>			
Large Number of New Jobs	Between 251 - 400	\$	500.00
Access to child-care		\$	1,000.00
<b>Total Applicable Bonuses</b>		\$	1,500.00
<b>Total Max Award (Base + Bonuses)</b>		\$	4,000.00

			Award Amount Per Year
<b>New Jobs</b>	<b>357</b>	\$	1,428,000.00
<b>*Retained Jobs</b>	<b>338</b>	\$	-
<b>Total Estimated Award Per Year</b>		\$	1,428,000.00

<b>Total Estimated Award for 7 years</b>		\$	9,996,000.00
--	--	----	--------------

\* The 338 at-risk jobs in this project are not being incented as they fall below the minimum requirement of 500 at-risk jobs.



**NET BENEFIT:**

The amount of net positive economic benefit to the State for a non-Mega-Project Employment and Investment Corridor project is 400% of the award.

In evaluating the net positive economic benefit for this project, staff need to select appropriate inputs into the Board approved IMPLAN economic model. IMPLAN's model allows for users to group NAICS industry codes together to generate results which are a hybrid of different industries and therefore better reflect the complexity of some projects.

The NAICS code provided by Party City in its program application was 452990 (All Other General Merchandise Stores). This code is primarily for retail establishments, such as the actual stores that Party City operates. However, based on the specific scope of the proposed project as a corporate headquarters, including the types of activities, business units, and job functions disclosed as part of the application, staff determined that the provided NAICS codes did not accurately reflect the characteristics of the project. Based on the specific scope of the proposed project, including the types of activities and job functions disclosed as part of the application, staff determined that the most appropriate NAICS code is 551114, which represents U.S. industry establishments (except government establishments) primarily engaged in administering, overseeing, and managing other establishments of the company or enterprise. Additionally, hard renovation construction costs of \$25,401,488 were included in the calculation for this project.

Based on the Program's statute and regulations, the net positive economic benefits calculated for all projects must be evaluated by the Authority on a present value basis with the requested tax credit allocation amount discounted to present value at the same discount rate as the benefits. Using the discount rate approved by the Board, the present value of the \$9,996,000 total award amount results to \$7,434,696. The present value of the \$46,445,076 calculated net positive economic benefit is \$35,734,024. This yields a 481% net positive economic benefit coverage ratio, which is above the required statutory hurdle rate of 400% for this project.

<b>NBT Summary</b>	
One-time benefit to State from construction	\$1,106,675
Ongoing annual benefit to the State	\$4,121,673
<b>NPV of one-time and ongoing benefits</b> <i>(11 years; 2% inflation &amp; 8% discount rate)</i>	<b>\$35,734,024</b>
Total Emerge Award	\$9,996,000
Annual Emerge Award	\$1,428,000
<b>NPV of award (7 years discounted at 8%)</b>	<b>\$7,434,696</b>
<b>Coverage ratio of award</b>	<b>481%</b>
Statutory minimum coverage ratio of award	400%

**PROGRAM CAP AMOUNT:**

The Emerge program is capped with NJ Aspire program at \$1.1B per year over 6 years with the option to roll-over unused program cap to a seventh year. If the Board approves the two projects being presented today, Party City (\$9,960,000) and Fiserv (\$109,229,575), the Programs will have an available balance of \$980,770,425 for State Fiscal Year 2022.

**APPLICABLE DEADLINES:**

Party City shall have 6 months after the date of Board approval to enter into a community benefits agreement with Woodcliff Lake or, if requested by the Woodcliff Lake mayor, Bergen County. The executed community benefits agreement is a condition to entering into a commitment agreement.

Within the earlier of 12 months of the date of the Board's approval or six months after the date of execution of the approval letter, the company will submit progress information indicating that the business has site plan approval (if applicable), committed financing (if applicable) for, and site control of the Qualified Business Facility.

Applicant shall have three years to complete the project and submit the certifications and evidence of project completion and satisfaction of program eligibility criteria.

**CONDITIONS OF APPROVAL:**

Staff recommend that the award include the following conditions of approval:

1. Applicant has not executed a letter of intent, lease, or purchase agreement or any other site control document for the project in New Jersey except the executed non-binding letter of intent provided to the Authority.
2. If in the project completion certifications, the number of new and at-risk full-time employees, median salary or eligible capital investment to be included in the net benefit analysis is reduced by more than 10% from the amounts contained herein, the net benefit to the state will be recalculated under the then current net benefit model, and the size of the tax credits may be reduced accordingly.
3. The company will be required to maintain a total of 338 at-risk full-time jobs in the State before counting the first new full-time job towards their award.

**REQUESTS:**

The Members of the Authority are asked to:

- 1) Adopt the recommended finding by staff that the existing jobs in the application are at-risk of being located outside New Jersey
- 2) Approve the proposed Emerge New Jersey tax credit award of \$1,428,000 per year over seven years, in total \$9,996,000.00, to induce Party City to site the project in New Jersey. The recommended tax credit award is subject to conditions subsequent to receive and maintain the award, including submission of certifications and evidence that the company has met the eligibility criteria., Staff is authorized to lower the award amount and the term will be lowered to reflect the award amount that corresponds to the actual employment and capital investment in the project completion certification provided that neither the application information nor the project has materially changed and no analysis, such as the net positive economic benefit analysis must be re-evaluated.



---

Tim Sullivan, CEO

Prepared by:

**PRODUCT OFFICER:** Ivan Mendez

**APPROVAL OFFICER:** Brian Sabina

**INCLUDED ANALYSIS:**

Appendix 1: Project Summary

# Appendix 1: Project Summary

<b>Basic Applicant Information</b>		<b>Basic Project Information</b>		<b>Basic Award Size Information</b>	
Applicant	Party City	Targeted Industry	No	Incentive Area Type	Employment and
Application Date	6/18/2021	Mega-Project	No	Net Benefit Requirement	400%
Applicant Headquarters State	New York	Small Business	No	Net Benefit Estimate	481%
Total Global Locations for Applicant and Affiliates	786	Eligibility Period (years)	7	Maximum Award Size	\$ 9,996,000
Total NJ Locations for Applicant and Affiliates	28	Commitment Period (years)	11	Net Benefit Constrained Award Size	\$ 9,996,000
		Material Factor - Risk Assessment	Low - no additional due diligence required	Inducement Constrained Award Size	\$ 9,996,000
		Material Factor - Activities to date	No issues	Award size per new full-time job	\$ 4,000
				Total Award Size	\$ 9,996,000

<b>Existing NJ Jobs Summary</b>		<b>New Jobs Summary</b>		<b>Total Jobs Summary</b>		
Total Employees in New Jersey (including Retail jobs)	1,186	Total New Jobs	357	At QBF	In State	Total
Total jobs at-risk jobs in NJ	338	Average New Job Salary	\$ 103,857	Total New Jobs at QBF	357	-
Average at-risk job salary	\$ 107,195	Median salary	\$ 84,720	Total At-Risk Jobs at QBF	338	-
Median at-risk job salary	\$ 84,129	Total New Job Salary	\$ 37,076,777	Total Not-At-Risk Full-time Jobs retained at QBF	-	-
Total annual salary at risk	\$ 36,231,960			Total At-Risk Part-time Jobs	-	-
Median Salary including New Jobs and at-risk jobs salary	\$ 84,720			Total Full-Time Jobs Associated with the New Jersey project	695	
				Total Jobs Previously Incented Jobs	-	-
				Total Eligible Incented Jobs	357	-

<b>Project Location Summary</b>		<b>Alternative Location</b>		<b>Difference</b>	
Address	100 Tice Blvd	1111 Westchester Ave			
Town	Woodcliff Lake	White Plains			
State	New Jersey	New York			
Proposed ownership status	Leased	Leased			
Proposed project Real Estate Status	Non-binding Letter of Intent	Non binding Letter of Intent			
Class	Class A	Class A			
Proposed lease term	20	15			
Sqft total	208,911	236,918		-28,007	
Sqft leasable	208,911	200,000		8,911	
Minimum Capital Investment	\$ 8,356,440				

<b>Project Cost Comparison Summary</b>		<b>NJ Location Cost</b>		<b>Alternative Location Cost</b>		<b>Cost Difference</b>	
One-Time Project Cost estimate	\$	32,694,598	\$	35,485,589	\$	(2,790,991)	
Hard construction costs	\$	25,401,488	\$	28,474,379	\$	(3,072,891)	
Total Capital Investment	\$	32,314,598	\$	35,485,589	\$	(3,170,991)	
Annual Ongoing Project Cost estimate	\$	81,196,382	\$	80,797,854	\$	398,528	
Discounted Ongoing Project Cost Estimate over Commitment Period	\$	742,350,673	\$	738,707,065	\$	3,643,608	
Total Project Comparison Costs	\$	775,045,272	\$	774,192,654	\$	852,618	
Total Percentage Differential Between New Jersey and the Alternative Location						0.11%	

<b>Anticipated Schedule</b>	
Proposed Construction Start	11/1/2021
Proposed Construction End Date	9/30/2022
Proposed Start of Business Operations	9/30/2022
Required Certification Date	9/22/2024

<b>Application Review Status</b>	
Completeness Review Done	Yes
Cost Comparison Done	Yes
Net Benefit Done	Yes
Other Business Analysis Done	Yes
Underwriting Done	Yes
Sister Agency Review Done	Yes
Board Memo Done	Yes
LOI Done	Yes

## **FILM TAX CREDIT PROGRAM**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

**APPLICANT:** Big Indie Barn Burner, Inc.

PROD-00258484

**APPLICANT BACKGROUND:**

Big Indie Barn Burner, Inc. is the production company responsible for “Goodnight Mommy”. The drama/thriller follows twin brothers who, when sent to stay with their mother, are surprised to find her swathed in bandages from a recent procedure. As her behavior grows increasingly erratic and unusual, the twins become convinced she is an impostor. Their suspicion sets off a roller-coaster of emotional mind games and misunderstandings, that eventually explodes with irreparable and heartbreaking consequences.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$16,129,405
B. Total Post-Production Expenses	\$1,913,942
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$13,440,482
Percentage Calculation = $C/(A-B)$	94.54%
<b>Criterion Met</b>	<b>Yes</b>

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$11,113,060
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

Base Award Criteria	Calculation	Result
35% of Qualified Film Production Expenses	$\$11,113,060 \times 35\% =$	\$3,889,571.00
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$\$11,113,060 \times 2\% =$	\$222,261.20
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	$\$0 \times 5\% =$	\$0
<b>Total Award</b>		<b>\$4,111,832.20</b>

<b>APPLICATION RECEIVED DATE:</b>	5/7/2021
<b>DATE APPLICATION DEEMED COMPLETE:</b>	6/2/2021
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	5/10/2021
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Bedminster, NJ
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	6/24/2021
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2021
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2021
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	11/25/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$50.87 million remains in the program for State Fiscal Year 2022. However, there are 27 additional applications in the pipeline totaling \$99.71 million and therefore being over-subscribed for State Fiscal Year 2022.

#### **APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** M. Bhatia



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59<sup>th</sup> Street/Central Park South, New York, New, York.

**APPLICANT:** Universal Television LLC

PROD-00188192

**APPLICANT BACKGROUND:**

Universal Television LLC is the production company responsible for “FBI Most Wanted S1”, a high stakes drama that focuses on the Fugitive Task Force, which relentlessly tracks and captures the notorious criminals on the Bureau’s Most Wanted list. Seasoned agent Jess LaCroix (Julian McMahon) oversees the highly skilled team which functions as a mobile undercover unit that’s always out in the field, pursuing those who are most desperate to elude justice.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$89,349,872
B. Total Post-Production Expenses	\$4,261,344
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$9,141,150

Percentage Calculation = $C/(A-B)$	10.74%
<b>Criterion Met</b>	<b>No</b>

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. "Qualified film production expenses" are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. "Qualified film production expenses" shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$9,078,650
<b>Criterion Met</b>	<b>Yes</b>

## AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	$\$9,078,650 \times 30\% =$	\$2,723,595
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$\$0 \times 2\% =$	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	$\$0 \times 5\% =$	\$0
<b>Total Award</b>		<b>\$2,723,595</b>

**APPLICATION RECEIVED DATE:** 1/16/2020 (Application #38)  
**DATE APPLICATION DEEMED COMPLETE:** 02/20/2020  
**PRINCIPAL PHOTOGRAPHY COMMENCEMENT:** 8/26/2019

<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	East Rutherford Borough
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	3/12/2020
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2021
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2021
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	12/21/2022

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$50.87 million remains in the program for State Fiscal Year 2022. However, there are 27 additional applications in the pipeline totaling \$99.71 million and therefore being over-subscribed for State Fiscal Year 2022.

#### **APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** M. Bhatia

## **LOANS/GRANTS/GUARANTEES**

## **PREMIER LENDER PROGRAM (PLP)**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT:** Century Savings Bank

**Request:**

The Members are asked to approve the addition of Century Savings Bank as a Premier Lender.

**Background:**

Century Savings Bank (the “Bank”) was founded in 1865 in Bridgeton, New Jersey. Century Bancorp, M.H.C. (the “Company”), a state chartered mutual holding company, is a single-bank, two-tiered mutual holding company headquartered in Vineland, NJ. The Company’s principal activity is the ownership and management of its wholly owned subsidiary, Century Bancorp, Inc., and its wholly owned subsidiary, the Bank. The Company is supervised by the Board of Governors of the Federal Reserve System. The Bank has a wholly owned subsidiary, CSB-NJ Investment Company, whose principal business is to hold a portion of the Bank’s investment and mortgage-backed securities portfolio. The Bank operates under a state bank charter and is regulated by the Federal Deposit Insurance Corporation (“FDIC”) and the New Jersey Department of Banking. In July of 1997, the Company switched from a mutual to stock owned savings institution as approved by the FDIC.

As of December 31, 2020, the Company had total assets of \$560 million, net worth of \$65 million and earned \$212,135 for the most recent twelve months on total interest and dividend income of \$13.4 million. See the confidential memorandum for additional details on the financial and operating performance of the Company.

The Bank is a New Jersey State Chartered Federal Deposit Insurance Corporation offering residents and businesses the combination of traditional consumer banking products including: checking, savings and personal loans, a complete line of commercial banking and lending services; and the latest in banking technology, including: mobile banking, online bill pay, and a full suite of cash management tools and services. The Bank operates a network of six branches throughout southern New Jersey with locations in Elmer, Gibbstown, Mullica Hill, Upper Deerfield Township

and Vineland (two branches including the headquarters building). The Company has a total of 70 employees. In an effort to evidence the value of relationships the Bank is committed to providing Community Banking Plus, a pledge to provide better banking products, an unmatched level of personal service and meaningful contributions to the community. Consumer loans are both secured and unsecured loans to individual borrowers which include personal loans, point of sale purchases, student loans, medical debt consolidation, home improvement, and credit card refinancing. Commercial loans include lines of credit, term loans and real estate loans including owner occupied and investment properties as well as single and multi-family construction and permanent loans to developers.

#### Executive Management Team

##### David Hemple, Chief Executive Officer

- Joined the Bank in 1983 as teller. Mr. Hemple has spent a total of 38 years at the Bank, the past 16 years as President until relinquishing this title in February of 2020.
- Graduated from Cumberland Community College.

##### David Hanrahan, President

- Joined the Bank February 10, 2020 as President.
- Founding president and CEO of Capital Bank of New Jersey, a de novo bank formed in 2007 in Vineland, New Jersey. Prior to Capital Bank, Hanrahan spent 16 years at The Bank of Gloucester County, now part of Fulton Bank of New Jersey.
- 32 years of experience in retail banking, credit and lending.
- Mr. Hanrahan will be responsible for directly overseeing the lending division of the bank as well as the development of new and expansion of existing loan products and services and exploration into new markets. Committed to innovation which will drive growth in all business and commercial markets.
- Mr. Hanrahan holds a B.S. in Accounting from Rutgers University School of Business - Camden. He is also a graduate of the American Bankers Association's Stonier Graduate School of Banking.

##### Joseph Rehm, Senior Vice President of Commercial Lending

- Joined the Bank in February 2020.
- Responsible for the Bank's Marketplace Lending Program, Mr. Rehm will focus on expanding the Bank's commercial client base by offering flexible solutions tailored to meet the needs of area small businesses.
- With more than 20 years of banking experience, Mr. Rehm was a member of the initial management team for Capital Bank of New Jersey. During his 12-year tenure, his responsibilities included: Vice President – Loan Officer, Gloucester County Market Manager, Senior Vice President Loan Officer, CRA officer, and Executive Vice President / Chief Lending Officer. Mr. Rehm spent nine years at The Bank & Woodstown National Bank as credit analyst, loan officer, AVP and VP.
- Graduate of the ABA Stonier Graduate School of Banking receiving a Wharton School of Business Leadership Certificate (2013), Graduate of the ABA National Commercial Lending School (2010) and Attended Gloucester County College majoring in Business Administration.

Steve Modzelewski, VP and Credit Officer.

- Joined the Bank in April 2020.
- Prior experience includes eight years at Capital Bank as Credit Officer, AVP and credit analyst.
- BS in Finance from Stockton University.

In October of 2018, the Authority closed one direct loan for \$132,750 in conjunction with a loan from the Bank and this loan has performed according to terms with a balance outstanding of \$113,000. Messrs. Hanrahan and Reim have been in regular contact over the past five years with EDA staff for credit opportunities as their former employer, Capital Bank was a premier lender (acquired by OceanFirst Bank in January 2019). The Authority closed three statewide loan pool participations and one main street credit line guarantee with Capital Bank which all have been fully repaid and according to terms.

Century Savings Bank provided their full credit policy manual for review and was consistent with the Authority's policies and procedures expectations. The policy manual addressed loan approval authorities, collateral, portfolio management, problem loan management, and risk rating guidelines. The structure and risk profile of the underwriting samples provided were reasonable and representative of what the Authority would consider in loan participation and/or guarantee or issuance of tax-exempt bonds. The underwriting samples contained an analysis of the income statement, balance sheet, cash flow, collateral evaluation, covenant/policy compliance, industry analysis, business description, management discussion and personal guarantor analysis.

Finally, as part of our due diligence, EDA staff satisfactorily completed a review of publicly available bank performance reports published on the FDIC's website with observations noted in the confidential memorandum.

### **Recommendation**

Approval of Century Savings Bank as a Premier Lender is recommended.



---

Tim Sullivan, CEO

Prepared by: Michael A. Conte, Senior Credit and Real Estate Underwriter



## **LOANS**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****NJ CoVest Fund****APPLICANT:** Inkbench, Inc.

PROD-00258453

**PROJECT USER(S):** Same as applicant**PROJECT LOCATION:** PO Box 43693 Montclair Township Essex County**APPLICANT BACKGROUND:**

Inkbench is the leading brand management collaborative platform for marketers to amplify and protect their brands. The patented platform combines a brand library (DAM) with an easy-to-use design canvas so businesses can create marketing materials on demand. It also offers brand controls and analytics to ensure everyone stays on brand.

**OTHER NJEDA SERVICES:**

Covid Phase 3 grant  
Angel Tax Credit

**APPROVAL REQUEST:**

Approval is requested for a NJ CoVest Fund loan up to \$250,000 to support Inkbench, Inc. ("the Company"). The Company has requested a NJ CoVest loan for growth capital needs including sales, marketing, business development and product development. As per the NJ CoVest program guidelines approved by the Board on April 10, 2017 and updated on September 13, 2018; August 13, 2019 and November 14, 2019, the proposed loan will be for a 10-year term and will have a fixed interest rate of 3% with no payments for the first 84-months. Interest is to be accrued and capitalized during this period. Beginning with month 85, principal plus interest payments will begin for the remaining 36-month term to fully amortize the disbursed loan along with capitalized interest. The Authority, at its option, may convert its loan into equity during any future qualified rounds of equity investments. The price per share for equity conversion will be the prevailing price offered to all investors.

**FINANCING SUMMARY:****LENDER:** NJ EDA**AMOUNT OF LOAN:** up to \$250,000

**TERMS OF LOAN:** 10-Year Term. The proposed loan will have a fixed interest rate of 3% with no payments for the first 84 months. Interest during this period will be accrued and capitalized. Beginning month 85 principal plus interest payments will begin for the remaining three-year term to fully amortize the loan.

**PRODUCT COSTS:**

Working Capital	\$250,000.00
-----------------	--------------

---

<b>TOTAL COSTS:</b>	<b>\$250,000.00</b>
---------------------	---------------------

**JOBS:**

NJ Full Time Jobs at Application	Expected New Full Time Eligible Jobs at Project Site	Full Time Maintained Jobs at Project Site	Estimated Construction Jobs
5	15	5	0

**DEVELOPMENT OFFICER:** Monika Athwal**UNDERWRITER OFFICER:** Kremena Mironova

M. Athwal  
Digitally signed by M. Athwal  
Date: 2021.09.13 10:49:03  
-04'00'

KMironova  
Digitally signed by KMironova  
Date: 2021.09.10 17:17:08  
-04'00'

## **PETROLEUM UNDERGROUND STORAGE TANK (PUST)**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT:** NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following residential projects have been approved by the Department of Environmental Protection to perform tank removal and site remediation activities. The scope of work is described on the attached project summaries:

**PUST Grants:**

**Residential**

Product 288659	Earl Hinton	\$124,239.80
Product 288657	George Zahn	\$126,514.25

**Total UST Funding – September 2021** **\$250,754.05**

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan

Prepared by: Kathy Junghans

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****Underground Storage Tank - Residential****APPLICANT:** George Zahn

PROD-00288657

**PROJECT USER(S):** Same as applicant**PROJECT LOCATION:** 83 Castlewood Trail      Sparta Township      Sussex County**APPLICANT BACKGROUND:**

George Zahn is a homeowner seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible. Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

None

**APPROVAL REQUEST:**

The applicant is requesting grant funding in the amount of \$126,514.25 to perform the approved scope of work at the project site.

**FINANCING SUMMARY:****GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund**AMOUNT OF GRANT:** \$126,514.25**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

UST Project: Upgrade, Closure, Remediation	\$126,514.25
EDA Administrative Cost	\$250.00

---

<b>TOTAL COSTS:</b>	<b>\$126,764.25</b>
---------------------	---------------------

**DATE:** 7/12/2021

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****Underground Storage Tank - Residential****APPLICANT:** Earl Hinton

PROD-00288659

**PROJECT USER(S):** Same as applicant**PROJECT LOCATION:** 1216 Brookfield Lane      Waterford Township      Camden County**APPLICANT BACKGROUND:**

Earl Hinton is a homeowner seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible. Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

None

**APPROVAL REQUEST:**

The applicant is requesting grant funding in the amount of \$124,239.80 to perform the approved scope of work at the project site

**FINANCING SUMMARY:****GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund**AMOUNT OF GRANT:** \$124,239.80**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

UST Project: Upgrade, Closure, Remediation	\$124,239.80
EDA Administrative Cost	\$250.00

---

<b>TOTAL COSTS:</b>	<b>\$124,489.80</b>
---------------------	---------------------

**DATE:** 8/2/2021



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** September 22, 2021  
**SUBJECT:** NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal projects have been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached product summaries:

**HDSRF Municipal Grants:**

Product 258358	Borough of Glassboro (Glassboro Landfill)	\$ 501,188.44
Product 289000	Somerville Borough	\$3,000,000.00
<b>Total HDSRF Funding –September 2021</b>		<b>\$3,501,188.44</b>

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan

Prepared by: Kathy Junghans

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****Hazardous Discharge Site Remediation - Government Facility****APPLICANT:** Glassboro Borough – Glassboro Landfill

PROD-00258358

**PROJECT USER(S):** Same as applicant**PROJECT LOCATION:** Leigh Road South & West Franklin Road      Glassboro Borough      Gloucester County**APPLICANT BACKGROUND:**

Between September 2009 and November 2020, the Borough of Glassboro, received an initial grant in the amount of \$69,381 under P27504, and supplemental grants in the amount of \$250,981 under P31021 and \$63,337.50 under Product 224176 for remedial investigation at the project site which has potential environmental areas of concern (AOCs). The Borough of Glassboro intends to acquire the project site and has satisfied proof of site control. It is the Borough's intent upon completion of the environmental investigation activities to redevelop the project site for renewable energy.

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action (\$668,251.25) for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the redevelopment plan and is conveyed by a development easement, deed restriction for development or conservation easement for recreation and conservation purposes. The developer is providing the balance of funds (\$167,062.81) for the project.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

**OTHER NJEDA SERVICES:**

\$69,381, P27504; \$250,981, P31021; \$63,337.50, Product 224176

**APPROVAL REQUEST:**

Borough of Glassboro is requesting aggregate supplemental grant funding to perform RA in the amount of \$501,188.44 at the former Glassboro Landfill project site. Total grant funding including this approval is \$884,887.94.

**FINANCING SUMMARY:****GRANTOR:** Hazardous Discharge Site Remediation Fund**AMOUNT OF GRANT:** \$501,188.44**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

Remedial Action	\$668,251.25
EDA Administrative Cost	\$500.00

---

**TOTAL COSTS:                      \$668,751.25**
**DATE:** 8/9/2021



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****Hazardous Discharge Site Remediation - Government Facility****APPLICANT:** Somerville Borough BDA - Somerville Landfill

PROD-00289000

**PROJECT USER(S):** Same as applicant**PROJECT LOCATION:** Somerville Landfill      Somerville Borough      Somerset County**APPLICANT BACKGROUND:**

Between November 2006 and February 2017, Borough of Somerville received a grant in the amount of \$297,045 under P17401 and supplemental grants in the amount of \$209,843 under P17977, \$2,138,292 under P28140, \$72,793 under P29648, \$1,193,833 under P34449, \$4,614,000 under P38794, \$2,793,984 under P40958 and \$392,247 under P42677 to perform Remedial Investigation (RI) activities at the project site. The project site, identified as Block 124, Lots 1 & 21 is a former sanitary landfill which has potential environmental areas of concern (AOC's). The Borough of Somerville currently owns the project site, which is located in a Brownfield Development Area (BDA) and has satisfied proof of site control. It is the Borough's intent upon completion of the environmental investigation activities to redevelop the project site for a solar energy field.

NJDEP has approved this supplemental request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action (\$4,000,000) for projects within a BDA. The developer is providing the balance of funds (\$1,000,000) for the project.

**OTHER NJEDA SERVICES:**

\$297,045, P17401; \$209,843, P17977; \$2,138,292, P28140; \$72,793, P29648; \$1,193,833, P34449; \$4,614,000, P38794; \$2,793,984, P40958; \$392,247, P42677

**APPROVAL REQUEST:**

The Borough of Somerville is requesting aggregate supplemental grant funding to perform RA in the amount of \$3,000,000 at the Somerville Landfill project site. Total grant funding including this approval is \$14,712,037.

**FINANCING SUMMARY:****GRANTOR:** Hazardous Discharge Site Remediation Fund**AMOUNT OF GRANT:** \$3,000,000.00**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

Remedial Action	\$4,000,000.00
EDA Administrative Cost	\$500.00

---

**TOTAL COSTS:      \$4,000,500.00**
**DATE:** 8/19/2021

## **BOND PROJECTS**



**MEMORANDM**

**To:** Members of the Authority

**From:** Tim Sullivan  
Chief Executive Officer

**Date:** September 22, 2021

**Subject:** Linden Renewable Energy, LLC PROD-00228622 Amended and Restated Bond Resolution

**Summary**

The Members are requested to approve an Amended and Restated Bond Resolution (see Attachment A) for Linden Renewable Energy, LLC. The resolution will increase the total costs of the project from \$241,579,674 to \$281,200,000 and the maximum amount of financial assistance requested of the Authority to from \$195,000,000 to \$214,000,000 (see Attachment B)

**Background**

On April 14, 2021, the Authority approved a final bond resolution for Linden Renewable Energy, LLC authorizing the issuance of tax-exempt bonds not to exceed \$195,000,000. The bond proceeds will be used primarily to develop an organic waste anaerobic digester facility and to a lesser degree fund a debt service reserve fund, pay interest on the bonds during the construction, and pay the cost of issuance. The original approval is attached as Attachment C.

On July 14, 2021, the Authority approved a Volume Cap Renewal Resolution (see Attachment D) for Linden Renewable Energy, LLC. The Applicant and its Bond Counsel communicated to EDA staff that the Bond closing was taking longer than anticipated due to delays in engineering, procurement, and drafting of the construction contract and operation and maintenance agreement. The resolution renewed the Authority's volume cap allocation for the issuance of bonds and granted the Applicant a new 60-day period with an additional 30-day extension to close on the approved project.

On August 17, 2021, the Applicant filed an amendment to the original application which increased the total costs of the Project to \$281,200,000 and the maximum amount of financial assistance requested from the Authority to \$214,000,000. The amended application stated commodity price increases and a delay in the start of construction as the reason for the increased project costs and additional funding need. The primary increases in project costs are centered in construction costs and equipment. Soft costs such as finance and legal fees also increased, however, to a lesser degree.

**Recommendation**

It is recommended that the Members approve the Amended and Restated Bond Resolution for Linden Renewable Energy, LLC which will increase the total costs of the project to \$281,200,000 and the maximum amount of financial assistance requested from the Authority to \$214,000,000



---

Tim Sullivan  
Chief Executive Officer

Prepared by: Steven Novak

Attachments:

- Attachment A – Linden Renewable Energy, LLC Amended and Restated Bond Resolution
- Attachment B – Linden Renewable Energy, LLC Project Summary PROD-00228622 September 22, 2021
- Attachment C – Linden Renewable Energy, LLC Project Summary PROD-00228622 April 14, 2021
- Attachment D – Linden Renewable Energy, LLC Volume Cap Renewal Resolution Adopted: July 14, 2021

## **REAL ESTATE**



**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT: Recommendation for Award - #2021-RFP 122  
Environmental Consulting Services – As Needed Basis**

Summary

The Members' approval is being requested to enter into five separate contracts with the firms listed below, to be used on an as needed basis for a (3) three-year contract, with (2) two, (1) one year extension options for a total cost up to \$400,000, to provide environmental consulting services on an as-needed basis to the Authority. Based upon results from the IPM procurement, the selected firms include:

1. PARS Environmental, Inc. dba Montrose Environmental Solutions, LLC ("PARS") of Robbinsville, New Jersey
2. T&M Associates ("T&M") of Middletown, New Jersey
3. WSP USA Inc. ("WSP") of Morristown, New Jersey
4. Vanassen Hangen Brustlin, Inc. ("VHB") of Manasquan, New Jersey
5. Matrix New World Engineering ("Matrix") of Florham Park, New Jersey

These services will enable the Authority to engage with Contractors through Task Order Requests (TOR) pertaining to site investigation and remediation process requirements when evaluating potential land asset and real estate projects. The services will also provide general consultation on environmental matters, as requested by the NJEDA.

Background

On May 3, 2021 the Authority, at the request of the Real Estate Division, through its Internal Process Management ("IPM") Division, issued a solicitation for Professional Service Qualification Statements (PSQS) and a Request for Proposals (RFP), #2021-RFP-122, to provide Environmental Consulting Services On An As Needed Basis. These services will assist the Authority's Real Estate Division as well as other Authority staff in assessing the environmental site conditions of real estate property or project investments considered to be made by the Authority. Services under these contracts includes (1) performing environmental site assessments of properties for the presence of ASTs/USTs and soil and/or groundwater contamination (the "Assessment Phase") in compliance with current ASTM standards or as otherwise directed by EDA; (2) Prepare a program for site remediation and oversee the remediation process, including, without limitation, interfacing with the New Jersey Department of Environmental Protection in all aspects of the remediation from submission of a remedial action work-plan, overseeing EDA's remediation contractor, and obtaining a letter of "no further action" or other appropriate

closure of the matter (the "Oversight Phase"); and (3) Provide general consultation on environmental matters, as requested by EDA.

The RFP language provided for the award of multiple contracts, each for a three-year term with two, one-year extension options to be exercised at the sole discretion of the Authority, at the same terms and conditions. The purpose of awarding five contracts is to have available a pool of vendors to be utilized in the event the primary vendor in the rotation has a conflict of interest or cannot perform the requirements on the TOR form in the timeframe requested. The estimated total amount of the contract, which if fully extended is estimated to be a total of \$400,000, based on the Authority's projected needs for these services.

Per the instructions set forth in the RFP, firms submitting proposals were required to provide a narrative description thoroughly detailing their experience as an environmental consulting firm, supported by evidence or information that can be independently verified by the Authority. It was also mandatory that firms provide information/examples of services provided, similar in size and scope, or demonstrated experience working in New Jersey or other states. Additionally, firms had to provide information from projects they have previously worked on, in what role/capacity and to provide a listing of three references of contacts for whom proposer has previously provided services.

In terms of evaluative criteria, a weighted average of (4) four primary categories were completed:

1. Personnel
2. Experience of Firm
3. Ability of firm to complete the Scope of Work based on firm's technical proposal

Fee schedules were not provided to the Evaluation Committee but were ranked by IPM's Senior Procurement Officer and included in the overall evaluative criteria.

Firms were asked to complete the following technical proposal:

- a. description & documentation of proposer's prior experience and qualifications;
- b. management overview and technical approach to achieve the scope of work;
- c. organization chart, if applicable and not a sole proprietor;
- d. key team member list, if applicable and not a sole proprietor;
- e. resumes of key team members;
- f. references (minimum of three references are required); and
- g. financial capability of the proposer.

Twenty-four (24) proposals were received prior to bid opening date and time. IPM's Senior Procurement Officer reviewed the proposals for procurement responsiveness. Two (2) proposals were deemed non-responsive, specifically the submissions by USAEMI and CME Associates for failing to have an authorized representative sign the mandatory signatory page. The remaining twenty-two (22) submissions, were reviewed and verified that all required items were submitted

from the respective bidders, prior to the bid opening date and time. IPM tabulated the results of the evaluations and the firm's total score and ranking was as follows:

Firm	Score	Rank
PARS Environmental	4.725	1
T&M	4.4	2/3 (tied)
WSP USA	4.4	2/3 (tied)
VHB	4.1375	4
Matrix New World Engineering	4.075	5
Weston	4.01	6
Langan	3.8	7
Sadat Associates	3.7375	8
Environmental Resolutions	3.625	9
GEI	3.6	10
H2M Associates	3.5875	11/12 (tied)
PS&S	3.5875	11/12 (tied)
Suburban Consulting Engineers	3.575	13
APTIM	3.46	14
BRS	3.25	15/16/17 (tied)
Terracon	3.25	15/16/17 (tied)
Terraphase	3.25	15/16/17(tied)
Partner Engineering & Science	3.2	18
E2PM	3.0875	19
Environmental Alliance	2.65	20
Batta Environmental	2.3875	21
Detail Associates	2.2625	22

All proposals and supporting documentation, including IPM's Recommendation Memo, are on file with the IPM Division.

The Real Estate department will issue a Task Order Request ("TOR"), on a rotating basis, each time a site assessment or program for remediation is required by the Authority, detailing the specific project requirements. The Authority does not guarantee a minimum number of TORs, during the term of the contract or any extensions, thereafter. Rather, the Authority will utilize the Environmental Consulting Services of the successful vendor on an "as needed" basis, to assist and support its staff. A TOR will be issued for each project detailing that project's requirements. The successful vendor will then provide the department with a cost based on the line item fees submitted on the Proposer's Fee Schedule. Prior to any work being performed, the Authority will provide written authorization to proceed via email to the vendor in response to the fees and costs outlined in its TOR.



Recommendation

Based on the results of the 2021-RFP-122, it is recommended that the Members approve entry into the Environmental Services on An As-Needed Basis contracts to PARS Environmental, T&M Associates, WSP USA, VHB and Matrix New World Engineering, to be used on a rotating basis, for a maximum of \$400,000 for three years, with two one-year extension options.



---

Tim Sullivan

Prepared by: Rob Wisniewski



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**RE:** Fourth Amendment to the Agreement to Assign with RWJ Barnabas Health, Inc., the Fort Monmouth Economic Revitalization Authority for Parcel F-1 (Myer Center) in Tinton Falls

**DATE:** September 22, 2021

### **Request**

I am requesting that the Members approve the execution of the Fourth Amendment to the Agreement to Assign ("Assignment") among the New Jersey Economic Development Authority ("NJEDA" or "Assignor"), the Fort Monmouth Economic Revitalization Authority ("FMERA" or "Seller"), and RWJ Barnabas Health, Inc. ("RWJBH" or "Assignee" or "Redeveloper"). The Fourth Amendment provides for additional extension periods for RWJBH to obtain all necessary permits and approvals for the construction and operation of RWJBH's planned project at Parcel F-1 in the Tinton Falls Reuse Area (the "Property") and revises the definition of Project.

### **Background**

#### **1. Approval of the Purchase and Sale and Agreement and Mortgage**

In September 2017, the Members authorized the execution of a Purchase and Sale Agreement ("PSA") between FMERA and NJEDA for the Property, an approximately 36.3-acre parcel in the Tinton Falls section of the Fort that included Building 2700, also known as the Myer Center, and Building 2705, the former Night Vision Lab. The September 2017 resolution also provided for FMERA's execution of a mortgage on the Property in the amount of NJEDA's estimated investment (\$7,328,771) to reposition the Property for sale and redevelopment.

#### **2. Agreement to Assign**

In February 2018, RWJBH submitted an unsolicited offer to NJEDA to purchase the Property for an amount not to exceed \$8 million. RWJBH intended to develop a health campus on the Property, which included:

- An ambulatory care center
- A medical office building
- A Cancer Institute of New Jersey cancer center
- A system business office
- Campus space for future medical and health facilities

After negotiations among RWJBH, NJEDA and FMERA (jointly the "Parties") and the approval of the NJEDA and FMERA Boards, the Parties executed an Agreement to Assign on August 10, 2018, that included the following terms:

- At closing, NJEDA will assign to RWJBH the PSA between FMERA and NJEDA for (a) all of NJEDA's actual and documented costs to reposition the Property for sale, including, but not limited to, cost of professional services, the demolition, site improvements, and other environmental investigation and remediation activities occurring at the Property plus (b) five

percent (5%) of these costs, however, in no event shall the Assignment Price and Homeless Trust Fund Contribution exceed \$8 million.

- The Homeless Trust Fund Contribution, \$727,996.50, will be paid directly to FMERA by RWJBH at closing; this amount is included in the \$8 million maximum.
- At execution of the Agreement, RWJBH will post a deposit with its title company equal to 15% of NJEDA's estimated cost to reposition the Property for sale.
- As preconditions to the assignment and closing, RWJBH may perform its own title and survey investigation and due diligence and obtain necessary project approvals. The Approval Period duration is 18 months from the effective date of the Agreement with two 6-month extensions (subject to a \$50,000 non-refundable deposit per extension).
- Conditions precedent to the assignment and closing include an Amendment to the PSA, a Redevelopment Agreement between FMERA and RWJBH, and an amendment to the Fort Monmouth Reuse and Redevelopment Plan.

3. First Amendment to the Agreement to Assign

Under the executed Agreement to Assign, RWJBH's due diligence period commenced on the Assignment's Effective Date and concluded one hundred twenty (120) days thereafter on December 10, 2018. Because of NJEDA's ongoing demolition efforts on the Myer Center parcel, RWJBH was not able to conduct subsurface environmental due diligence in the footprints of Buildings 2700 and 2705 or the Lime Pit Area. In March 2019, the Members of the FMERA and NJEDA Boards approved the First Amendment to the Agreement to Assign, dated June 5, 2019 (the "First Amendment"), which the Parties executed to permit RWJBH to conduct additional testing to assess subsurface environmental conditions at the Property beneath (i) Buildings 2700 and 2705 and (ii) the Lime Pit Area after the completion of the demolition efforts. While RWJBH was able to complete the additional testing beneath former Buildings 2700 and 2705 within the additional time allotted, the Army did not grant access for testing of the Lime Pit Area, and the Additional Testing Period set forth in the First Amendment expired.

4. Second Amendment to the Agreement to Assign

In November 2019, the Members of the NJEDA and FMERA Boards approved a further modification and amendment to the Agreement to Assign (the "Second Amendment") to reflect the following:

- The provisions of Paragraph 10(a) of the Agreement to Assign notwithstanding, RWJBH was provided until sixty (60) days after the Effective Date of the Second Amendment or February 28, 2020, whichever was later, to conduct additional inspection, sampling and testing to assess subsurface environmental conditions at the Property beneath the Lime Pit Area (the "Second Additional Environmental Testing Period").
- RWJBH had the right to terminate the Agreement to Assign on written notice to NJEDA and FMERA due to any unsatisfactory surface or subsurface environmental conditions at the Property beneath the Lime Pit Area within the Second Additional Environmental Testing Period.
- Upon such termination, the Deposit would be returned to RWJBH and, except as expressly provided by in the Agreement to Assign, all rights and obligations of the Parties would be null and void. If RWJBH does not elect to terminate the Agreement to Assign within the Second

Additional Environmental Testing Period for the foregoing reason, RWJBH would conclusively be deemed to have waived its right of termination.

RWJBH satisfactorily completed environmental testing beneath the Lime Pit Area and proceeded to the Project's approvals phase.

5. Third Amendment to the Agreement to Assign

Because of the scope and complexity of its Project, RWJBH determined that it will be unable to obtain all necessary permits and approvals for the construction and operation of the Property within the 18-month Approval Period and the two optional six-month extension periods specified in the Assignment Agreement. The expiration date of the Approval Period including options was February 10, 2021. Accordingly, in the event it is unable to obtain all approvals within the Approval Period under the Assignment Agreement as extended, RWJBH requested two additional six-month extension options that extended the Approval Period through February 10, 2022. In consideration for the two additional extension periods, RWJBH will pay a \$100,000 deposit per extension. The deposits will be credited against the Assignment Price at Closing and will only be refundable in the event of a default by FMERA or NJEDA. In March 2020, the NJEDA and FMERA Boards approved the Third Amendment to the Agreement to Assign.

6. Proposed Fourth Amendment to the Agreement to Assign

- Due to additional delays related to the redesign and complexity of the Project, along with the pending Finding of Suitability to Lease documentation for the Lime Pit Area, RWJBH determined that it will be unable to obtain all necessary permits and approvals for the construction and operation of the Property by the conclusion of the final Board-approved extension on February 10, 2022. Accordingly, RWJBH requests two additional three-month extension options that extend the Approval Period through August 10, 2022. In consideration for the two additional extension periods, RWJBH will pay a \$50,000 deposit per extension, and all deposit monies, including the initial deposit, shall become nonrefundable and shall be retained by NJEDA in the event the agreement is terminated, except in an event of default by FMERA or NJEDA. The deposits will be credited against the Assignment Price at Closing.
- An outside closing date of Friday, December 30, 2022 is established, if RWJBH does not close on the Property sooner.
- Further, the Project definition is amended and RWJBH may now develop the project over two phases:
  - Phase 1 includes an approximately 138,000 square foot Cancer Center and Ambulatory Care Pavilion, comprised of the following uses: oncology services, imaging, radiation, and ambulatory surgery center (for clarity, a portion of the building will serve as the Cancer Center and the balance will serve as an ambulatory care center and support services), parking and interphase grading and landscaping ("Phase 1").
  - Phase 2 consists of two options which may be undertaken by RWJ at its discretion in accordance with the Redevelopment Agreement, to be dated as of the date of the Fourth Amendment: Phase 2(a) would include the following: (A) an approximately 568,901 square foot acute care hospital, including approximately 250 beds; (B) an approximately 206,768 square foot clinical and support building; (C) an approximately 137,000 square foot medical office building; (D) a 34,000 square foot central utility plant; and (E) an approximately 404,000 square foot structured parking facility; alternatively, Phase 2(b) would include the following: (A) twenty (20) acres of publicly accessible open space; (B) stone dust walking trails connecting different site components, including the Cancer Center, parking lots,

gazebos, and Corregidor Road; (C) Seatwall and Sculpture space; (D) at least two gazebos; and (E) landscaped open areas and plantings (as used herein, "Phase 2" refers to either Phase 2(a) or Phase 2(b), as elected by RWJBH).

- Section 7(c) has been added to confirm that FMERA will continue to cooperate with RWJBH to facilitate discussions with the Army to provide RWJBH access rights to ECP-16 by way of a lease until such time as the Army has obtained a Finding of Suitability of Transfer with respect to ECP-16 and a Response Action Outcome within the meaning of the New Jersey Site Remediation Act, N.J.S.A. 58:10C-1 et seq. or other acceptable evidence as recognized by state and federal governmental agencies having jurisdiction over the impacted ground water.

The attached Fourth Amendment to the Agreement to Assign is in substantially final form. The final terms of the amendment will be subject to the approval of FMERA's Executive Director, NJEDA's Chief Executive Officer and the Attorney General's Office. FMERA's Board approved the Fourth Amendment at their August 27, 2021 meeting.

**Recommendation**

In summary, I am requesting that the Members authorize the execution of the Fourth Amendment to the Agreement to Assign among the New Jersey Economic Development Authority, the Fort Monmouth Economic Revitalization Authority and RWJ Barnabas Health, Inc. providing RWJBH up to two additional extension options to obtain all necessary approvals to develop a health care campus at Parcel F-1 in Fort Monmouth's Tinton Falls Reuse Area and revise the Project Definition as detailed above.



---

Tim Sullivan

Attachment: Fourth Amendment to Agreement to Assign  
Prepared by: Kara A. Kopach and David E. Nuse

**FOURTH AMENDMENT TO AGREEMENT TO ASSIGN**

**THIS FOURTH AMENDMENT TO AGREEMENT TO ASSIGN** (hereinafter the “Fourth Amendment”) is made and entered into the \_\_\_\_ day of August 2021 (the “Effective Date”), by and among:

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 1974, C.80, N.J.S.A. 34:1 B-1 et seq., with an address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625 (hereinafter referred to as the “Assignor”); and

**RWJ BARNABAS HEALTH, INC.**, a New Jersey non-profit corporation with an address at 95 Old Short Hills Road, West Orange, New Jersey 07052 (hereinafter referred to as the “Assignee” or “Redeveloper”); and

**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., whose address is 502 Brewer Avenue, P.O. Box 267, Oceanport, New Jersey 07757 (hereinafter referred to as the “Seller” or “FMERA, and together with Assignor and Assignee, the “Parties”).

**WITNESSETH:**

**WHEREAS**, Assignor and FMERA previously entered into that certain Purchase and Sale Agreement, dated as of October 30, 2017, as amended (the “Purchase Agreement”), a copy of which is attached hereto as **Exhibit A**, pursuant to which Assignor has agreed to acquire certain real property identified in Paragraph 3 and Exhibit B of the Purchase Agreement (the “Property”); and

**WHEREAS**, the Parties previously entered into that certain Agreement to Assign, dated as of August 10, 2018, a copy of which is attached hereto as **Exhibit B**, pursuant to which Assignor agreed to assign to Assignee all of Assignor’s rights, title and interest in the Purchase Agreement by way of separate document; and

**WHEREAS**, the Parties previously entered into that certain First Amendment to Agreement to Assign dated June 5, 2019 a copy of which is attached hereto as **Exhibit C**, that certain Second Amendment to Agreement to Assign dated December 3, 2019 a copy of which is attached hereto as **Exhibit D**, and that certain Third Amendment to Agreement to Assign, dated April 9, 2020, a copy of which is attached hereto as **Exhibit E** (the Agreement to Assign, the First Amendment, the Second Amendment and the Third Amendment are collectively referred to as the “Assignment Agreement”); and

**WHEREAS**, Assignee has demonstrated to the satisfaction of Assignor and FMERA that Assignee has been diligently pursuing the approvals and permits necessary for construction and operation of the Property; and

**WHEREAS**, the Parties have determined that (i) Assignee will be unable to obtain all necessary permits and approvals for the construction and operation of the Property within the Approval Period (as defined in the Assignment Agreement) as extended, and (ii) the Approval Period should be subject to two (2) additional extension periods in order to prevent delays or interruption while Assignee seeks such permits and approvals; and

**WHEREAS**, in light of the anticipated length of ongoing remediation relating to Environmental Carve Out Parcel Number 16 (“ECP 16”), FMERA and Assignor have agreed to collaborate with the Army to provide certain access, construction and other property rights to Redeveloper after the Closing, until such time as ECP 16 is transferred to Assignee in accordance with the terms of this Fourth Amendment; and

**WHEREAS**, the Agreement to Assign contemplated development of “Project” comprising (i) a 40,000 to 70,000 square foot Ambulatory Care Center; (ii) a 55,000-80,000 square foot medical office building, (iii) a 70,000-100,000 square foot Cancer Institute of New Jersey Cancer Center, (iv) a 95,000-135,000 square foot System Business Office, and (v) a 500,000-700,000 square foot medical arts/specialty facilities in one or more phases; and

**WHEREAS**, Redeveloper subsequently entered into negotiations with FMERA for the acquisition of an approximately 31.25 acre parcel of land located at Pearl Harbor Avenue and Pinebrook Road in the Tinton Falls Reuse Area of the Charles Wood Area of the Fort (the “Tinton Falls Parcel”); and

**WHEREAS**, in light of the proposed additional development at the Tinton Fall Parcel, Redeveloper proposes to modify its Project under the Agreement to Assign and construct a two-phased development of the Property; and

**WHEREAS**, the Parties have agreed the Redeveloper may develop the Project in two phases; and

**WHEREAS**, Phase 1 includes an approximately 138,000 square foot Cancer Center and Ambulatory Care Pavilion, comprised of the following uses: oncology services, imaging, radiation, and ambulatory surgery center (for clarity, a portion of the building will serve as the Cancer Center and the balance will serve as an ambulatory care center and support services), parking and interphase grading and landscaping (“Phase 1”); and

**WHEREAS**, Phase 2, consists of two options which may be undertaken by RWJ at its discretion in accordance with the Redevelopment Agreement, dated as of the date hereof: Phase 2(a) includes the following: (A) an approximately 568,901 square foot acute care hospital, including approximately 250 beds; (B) an approximately 206,768 square foot clinical and support building; (C) an approximately 137,000 square foot medical office building; (D) a 34,000 square foot central utility plant; and (E) an approximately 404,000 square foot structured parking facility (“Phase 2”); and Phase 2(b) includes the following: (A) twenty (20) acres of publically accessible open space; (B) stone dust walking trails connecting different site components, including Cancer Center, parking lots, gazebos, and Corregidor Road; (C) Seatwall and Sculpture space; (D) at least two gazebos; and (E) landscaped open areas and plantings (as used herein, “Phase 2” refers to either Phase 2(a) or Phase 2(b), as elected in accordance herewith); and

**WHEREAS**, the Parties have agreed to further modify and amend the Assignment Agreement as hereinafter set forth.

**NOW THEREFORE**, in consideration of the sum of \$10.00 and other good and valuable consideration, the parties hereto mutually covenant and agree as follows:

1. Recitals. The recitals set forth above are true and correct and by this reference are incorporated herein in their entirety.
2. Definitions. All terms not defined herein shall have the meaning given to them in the Agreement to Assign.
3. Amendment of Agreement to Assign.

- a. Section 8.ii. of the Agreement to Assign is hereby amended and restated in its entirety as follows:

Approval Period. The Approval Period shall be the period ending on the eighteen (18) month anniversary of the Effective Date of the Agreement to Assign. In the event that Assignee is unable to obtain all permits and approvals necessary pursuant to this Section in advance of the expiration of the Approval Period, Assignee may exercise up to four (4) six (6) month extension periods, and then two (2) three (3) month extension periods, to run through August 10, 2022, upon payment by Assignee to Assignor of (i) with respect to the first and second extensions, a \$50,000 non-refundable deposit per extension, (ii) with respect to the third and fourth extensions, a \$100,000 non-refundable deposit per extension, and (iii) with respect to the fifth and sixth extensions 3-month extensions, a \$50,000 non-refundable deposit per extension; provided, that all extension payments shall be fully refundable in the event of a default hereunder by FMERA or Assignor. Such deposits shall be credited against the Assignment Price at Closing. If, after expiration of such extension periods, Assignee has not obtained all permits and approvals necessary pursuant to this Section, and Assignee has elected not to proceed to Closing by the Outside Closing Date as provided below, then in such event, any Party shall have the right to terminate this Agreement, and in the event of such a termination this Agreement shall be deemed null and void. Notwithstanding the forgoing, all the deposit monies including the up to Four Hundred Thousand Dollars (\$400,000) extension option payments and the initial deposit of One Million Two Hundred Dollars (\$1,200,000) shall be retained by Assignor upon termination of this Agreement (except in an event of default hereunder by FMERA or Assignor), and no Party shall have any other liability to the other pursuant to such agreements.

- b. Section 7 of the Agreement to Assign is hereby amended to add the following Subsection (b):

(b) Outside Closing Date. Notwithstanding anything else contained herein, if not closed sooner, the outside closing date shall be Friday, December 30, 2022 (the "Outside Closing Date"), subject to all other conditions precedent described in this Agreement.

- c. Section 7 of the Agreement to Assign is hereby amended to add the following Subsection (c):



(c) ECP 16 and Ground Lease. The Parties hereto acknowledge and agree that, notwithstanding anything else contained in the Purchase Agreement or Agreement to Assign, Redeveloper shall not be required to acquire the portion of the overall Property known as ECP-16 until such time as the Army has obtained a Finding of Suitability of Transfer with respect to ECP-16 and the remediation of impacted soils and/or ground water has been completed as evidenced by a Response Action Outcome within the meaning of the New Jersey Site Remediation Act, N.J.S.A. 58:10C-1 et seq. or other acceptable evidence as recognized by state and federal governmental agencies having jurisdiction over the impacted ground water (the “Satisfactory Completion of the Impacted Area”). FMERA agrees to continue to cooperate with Redeveloper and facilitate discussions with the Army to provide Redeveloper with access rights to the ECP 16 pursuant to a mutually agreeable ground lease, license agreement, easement or other document providing necessary property rights to Redeveloper to develop the Property.

- d. The definition of Project set forth in the Agreement to Assign is hereby amended and restated as follows:

Project shall mean: (a) with respect to Phase 1, an approximately 138,000 square foot Cancer Center and Ambulatory Care Pavilion, comprised of the following uses: oncology services, imaging, radiation, and ambulatory surgery center (for clarity, a portion of the building will serve as the Cancer Center and the balance will serve as an ambulatory care center and support services), parking and interphase grading and landscaping (“Phase 1”); and (b) with respect to Phase 2, there are two options which may be undertaken by RWJ at its discretion in accordance with this Agreement: Phase 2(a) includes the following: (A) an approximately 568,901 square foot acute care hospital, including approximately 250 beds; (B) an approximately 206,768 square foot clinical and support building; (C) an approximately 137,000 square foot medical office building; (D) a 34,000 square foot central utility plant; and (E) an approximately 404,000 square foot structured parking facility; and Phase 2(b) includes the following: (A) twenty (20) acres of publically accessible open space; (B) stone dust walking trails connecting different site components, including Cancer Center, parking lots, gazebos, and Corregidor Road; (C) Seatwall and Sculpture space; (D) at least two gazebos; and (E) landscaped open areas and plantings (as used herein, “Phase 2” refers to either Phase 2(a) or Phase 2(b), as elected in accordance herewith).

4. Counterpart Copies. This Fourth Amendment may be executed in any number of counterpart copies, all of which shall have the same force and effect as if all parties hereto had executed a single copy hereof. Facsimile or PDF signatures to this First Amendment shall have the same force and effect as “ink” signatures and no “ink” copy of any facsimile or PDF signature is required to bind the party signing by facsimile or PDF to this Fourth Amendment.
5. Entire Agreement, Ratifications and Reconciliation. The Assignment Agreement and this Fourth 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 Fourth Amendment, the Assignment Agreement is hereby ratified and remains in full force and effect. The terms and provisions of this Fourth Amendment shall be reconciled with the terms and provisions of the Assignment Agreement to the fullest extent reasonably possible; provided, however, in the event of any irreconcilable conflict between any term or provision of this Fourth Amendment and any terms or provisions of the Assignment Agreement, such term or provision of this Fourth Amendment shall control.

6. Pursuant to written policy, Assignor allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. Assignee and FMERA also agree to be bound by electronic signatures as signatories to this Fourth Amendment.

*NO FURTHER TEXT; SIGNATURE PAGE FOLLOWS*

**IN WITNESS WHEREOF**, the parties have executed and delivered this Fourth Amendment as of the date first above written.

**FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY**

\_\_\_\_\_  
Name:  
Title:

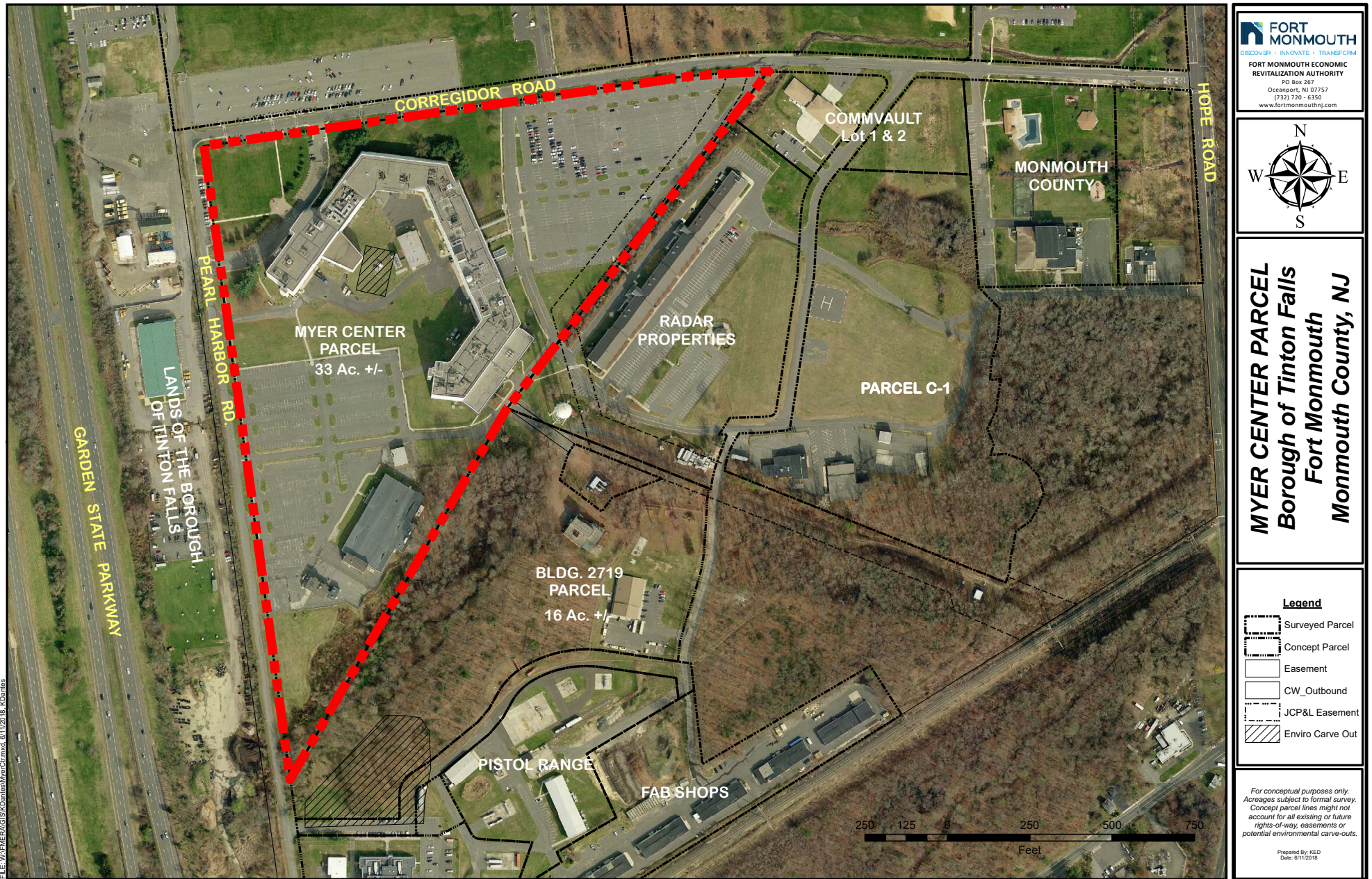
**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Name:  
Title:

**RWJ BARNABAS HEALTH, INC.**

\_\_\_\_\_  
Name:  
Title:





FILE: W:\MYER\GIS\Chantel\Map\Cr.mxd, 6/11/2018, KED\res





## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** FMERA Redevelopment Agreement with RWJ Barnabas Health, Inc. for Parcel F-1 in Tinton Falls

**DATE:** September 22, 2021

### **Request**

I am requesting that the Board consent to the Fort Monmouth Economic Revitalization Authority ("FMERA") entering into a Redevelopment Agreement ("RA") with RWJ Barnabas Health, Inc. ("RWJBH" or "Purchaser" or "Redeveloper") for the redevelopment of Parcel F-1 (the "Myer Center" or the "Property") in the Fort's Tinton Falls Reuse Area (the "Project").

### **Background**

FMERA was created by P.L. 2010, c. 51 ("the Act") to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority ("NJEDA") as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In June 2012, FMERA entered into an Economic Development Conveyance Agreement with the Army for the Phase 1 portion of the Fort, and title to the Phase 1 property was transferred to FMERA on June 30, 2014. The Property is located in the Tinton Falls section of the Phase 1 property.

FMERA and NJEDA entered into a Purchase and Sale Agreement (the "PSA") dated as of October 30, 2017, pursuant to which NJEDA agreed to acquire the former Myer Center situated on an approximately 36.3-acre parcel to be subdivided by deed from FMERA. The Property is bordered by two municipal streets, Corregidor Road and Pearl Harbor Avenue.

Per the PSA, the NJEDA may assign the PSA to a redeveloper to undertake a redevelopment project on the Property so long as the redeveloper (i) is approved by the Chapter 51 Review Unit, (ii) provides FMERA with an unqualified and unconditional acceptance of the terms and conditions of the PSA, and (iii) the redeveloper and its project are approved by FMERA. On February 18, 2018, RWJBH submitted an unsolicited offer to purchase the Property to the NJEDA through a proposed Letter of Intent and the parties executed a non-binding Expression of Interest to Enter into an Agreement to Assign the PSA dated October 30, 2017.

The NJEDA, FMERA and RWJBH (collectively the “Parties”) entered into an Agreement to Assign, dated as of August 10, 2018, as amended in the First Amendment to the Agreement to Assign, dated as of June 5, 2019, as amended by the Second Amendment to the Agreement to Assign, dated December 3, 2019, and as further amended by the Third Amendment to the Agreement to Assign, dated April 9, 2020 (collectively the “Agreement to Assign”) pursuant to which NJEDA agreed to assign to RWJBH all of NJEDA’s rights, title and interest in the PSA. A Fourth Amendment to the Agreement to Assign is simultaneously being presented to the Members with this RA.

The PSA between FMERA and NJEDA, as amended, and the Agreement to Assign, as amended, call for the execution of an RA between FMERA and RWJBH setting forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the Project.

The RA was approved by the FMERA Board on August 27<sup>th</sup>, 2021 and included the following terms:

- Phase 1 of the Project includes an approximately 138,000 square foot Cancer Center and Ambulatory Care Pavilion, comprised of the following uses: oncology services, imaging, radiation, and ambulatory surgery center (for clarity, a portion of the building will serve as the Cancer Center and the balance will serve as an ambulatory care center and support services), parking and interphase grading and landscaping. In addition, Redeveloper initially proposed creating 616 jobs during Phase 1 of the Project, but by way of correspondence dated May 28, 2021, the Redeveloper has indicated it intends to move 300 of the jobs originally proposed for Phase 1 to the abutting Tinton Falls Commercial Parcel.
- Phase 2 of the Project consists of two options which may be undertaken by RWJBH at its discretion in accordance with the Agreement to Assign: Phase 2(a) includes the following: (A) an approximately 568,901 square foot acute care hospital, including approximately 250 beds; (B) an approximately 206,768 square foot clinical and support building; (C) an approximately 137,000 square foot medical office building; (D) a 34,000 square foot central utility plant; and (E) an approximately 404,000 square foot structured parking facility; and Phase 2(b) includes the following: (A) twenty (20) acres of publicly accessible open space; (B) stone dust walking trails connecting different site components, including Cancer Center, parking lots, gazebos, and Corregidor Road; (C) Seatwall and Sculpture space; (D) at least two gazebos; and (E) landscaped open areas and plantings.
- In the event that Redeveloper constructs Phase 2(b), Redeveloper shall deed restrict the property upon which Phase 2(b) is developed only for use as public open space (the “Open Space Deed Restriction”); provided, that (1) the Open Space Deed Restriction shall run only to the benefit of FMERA, and not directly to the general public, and (2) the Open Space Deed Restriction shall remain subject to extinguishment at the FMERA Board’s sole discretion.
- The Redeveloper will construct ancillary improvements in connection with the Project, including parking, to meet the needs of the users as required by FMERA’s Land Use Rules.
- The Army is currently conducting environmental remediation on an approximately 0.285-acre

portion of the Property designated by the Army as ECP 16 (“ECP 16”) which will be conveyed to FMERA via quitclaim deed upon the Army's completion of remediation and issuance of a subsequent Finding of Suitability to Transfer , and the Redeveloper shall take title to ECP 16 as set forth in the PSA and the Fourth Amendment to the Agreement to Assign.

On October 17, 2018, the FMERA Board approved the introduction of Reuse Plan Amendment #12 in accordance with the Redeveloper's Conceptual Site Plan. After the Board's introduction of the amendment, the end of the Governor's veto period and the host municipalities' 45-day comment period, the FMERA Board approved the Reuse Plan Amendment #12 on January 16, 2019.

Under the current terms of the Agreement to Assign, the Approval Period is set to expire on February 10, 2022. The Fourth Amendment to the Agreement Assign will grant RWJBH two (2) additional three (3) month extension options, which if exercised shall expire on August 10, 2021. As set forth in the PSA and the Agreement to Assign, closing shall occur within ninety (90) days of satisfaction of conditions precedent to closing and satisfaction of conditions precedent to assignment. Under the Fourth Amendment to the Agreement to assign, closing shall occur by December 30, 2022, if not sooner.

Closing shall mean the transfer of the Property (other than ECP-16, which will be transferred in accordance with the terms of the PSA and the Fourth Amendment to Agreement to Assign) from FMERA to the Redeveloper and the payment of the Purchase Price from the Redeveloper to FMERA, pursuant to the Agreement to Assign and the PSA.

The Redeveloper will commence the Construction of Phase 1 of the Project no later than one hundred sixty (160) days after closing on the Property. The Redeveloper will complete Construction of Phase 1 of the Project no later than twenty-seven (27) months from closing. The Redeveloper shall be obligated to complete the Project which shall consist of Phase 1 and either Phase 2(a) or Phase 2(b). Redeveloper must submit to FMERA in writing thirty (30) days prior to completion of Phase 1, but no later than on or before the twenty-sixth (26<sup>th</sup>) month after closing, whether Redeveloper has selected to move forward with Phase 2(a) or Phase 2(b). If Redeveloper fails to notify FMERA in writing which Phase 2 option it shall undertake within the timeframe stated above, this shall constitute an Event of Default, which upon notification by FMERA, the Redeveloper shall have sixty (60) days to cure. With respect to Phase 2, if Phase 2(a) is elected: Redeveloper will commence the Construction of Phase 2(a) within six (6) months from making the Phase 2 election, and Redeveloper will complete Construction Phase 2(a) within eighty-four (84) months of closing. If Phase 2(b) is elected, Redeveloper will commence the Construction of Phase 2(b) within sixty (60) days from Completion of Phase 1, and Redeveloper shall complete Construction of Phase 2(b) within thirty-six (36) months from closing.

The Redeveloper's required minimum Capital Investment for Phase 1 and Phase 2(a) of the Project is estimated at Six Hundred and Fifty-One Million (\$651,000,000) Dollars. Redeveloper's required minimum Capital Investment for Phase 1 and Phase 2(b) of the Project is estimated at One Hundred and Fifty-Three Million Five Hundred Thousand (\$153,500,000) Dollars.

The Redeveloper shall create a total of three hundred eighteen (318) full-time equivalent permanent jobs at the Property within twenty-four (24) months of the receipt of the Certificate of Occupancy for Phase 1 of the Project. Redeveloper shall create a total of one thousand (1,000) full-time equivalent permanent

jobs at the Property within twenty-four months of the receipt of the Certificate of Occupancy for any portion of Phase 2(a) of the Project or Redeveloper shall create a total of one (1) full-time equivalent permanent jobs at the Property within twelve (12) months of the Completion for Phase 2(b) of the Project. To the extent the Redeveloper fails to achieve the required creation of full-time equivalent permanent jobs at the Property within the required time period for any phase of the Project, then it shall be liable to pay to FMERA one thousand five-hundred (\$1,500) dollars for each full-time equivalent permanent job not created.

Execution of the Redevelopment Agreement is contingent upon approval and execution by NJEDA, FMERA and RWJBH of the Fourth Amendment to the Agreement to Assign.

Purchaser's site plan and subdivision will be subject to FMERA's Mandatory Conceptual Review and Tinton Fall's planning board review.

Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA's Land Use Rules; (ii) a provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper's rights under the redevelopment agreement prior to completion of the project. Based on the redevelopment provisions of the RA between FMERA and RWJBH, staff concludes that the essential elements of a redevelopment agreement between FMERA and RWJBH are sufficiently addressed and that it is appropriate for the Members to provide NJEDA's consent.

The attached RA is in substantially final form. The final terms of the RA will be subject to the approval of FMERA's Executive Director, NJEDA's Chief Executive Officer and the Attorney General's Office. FMERA's Board approved the RA at their August 27, 2021 meeting. The RA specifies that RWJBH will be confirmed as designated redeveloper of the Property upon execution of the RA and NJEDA approval of the RA in accordance with N.J.S.A. 52:27I-38.

### **Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the attached Redevelopment Agreement with RWJ Barnabas Health, Inc. for the redevelopment of the Myer Center parcel in the Fort's Tinton Falls Reuse Area.



---

Tim Sullivan  
Chief Executive Officer

Attachments: Redevelopment Agreement  
Parcel Map

Prepared by: Kara Kopach & David E. Nuse



**REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY,**

**FMERA,**

**AND**

**RWJ BARNABAS HEALTH, INC.,**

**REDEVELOPER**

**As of \_\_\_\_\_, 2021**

## **TABLE OF CONTENTS**

- 1. Recitals**
- 2. Definitions**
- 3. The Property**
- 4. Capital Investment, Redevelopment Project, Project Approvals, Completion Bond, Job Creation; Security, and Reuse Plan Amendment**
- 5. Declaration of Covenants**
- 6. Reversion to FMERA**
- 7. Prevailing Wage**
- 8. Termination of Agreement**
- 9. Default by Redeveloper**
- 10. Assignment**
- 11. Successors and Assigns**
- 12. Governing Law**
- 13. Partial Invalidity**
- 14. Headings**
- 15. No Partnership or Joint Venture**
- 16. No Third Party Rights or Benefits**
- 17. No Waiver**
- 18. Time Periods**
- 19. Recording**
- 20. Authority Representations of FMERA and Redeveloper**
- 21. Political Campaign Contributions**
- 22. Notices**
- 23. Counterparts**
- 24. Exhibits**
- 25. Utilities**
- 26. Miscellaneous**

## **EXHIBIT LIST**

**A – Purchase and Sale Agreement between FMERA and the NJEDA dated October 30, 2017**

**B – Agreement to Assign, dated as of August 10, 2018, the First Amendment to the Agreement to Assign, June 5, 2019, the Second Amendment to the Agreement to Assign, dated December 3, 2019, and the Third Amendment to the Agreement to Assign, dated April 9, 2020.**

**C-1 – Concept Plan for Phase 1;**

**C-2 – Concept Plan for Phase 2(a)**

**C-3 – Concept Plan for Phase 2(b)**

**D – Boundary Survey**

**E – Job Creation Promissory Note**

**F – Reuse Plan Amendment #12**

## REDEVELOPMENT AGREEMENT

This **REDEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of \_\_\_\_\_, 2021 (the “**Effective Date**”) between **Fort Monmouth Economic Revitalization Authority** (“**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., whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and **RWJ Barnabas Health, Inc.** (“**Redeveloper**” 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. FMERA and Redeveloper are collectively referred to herein as the “**Parties**”.

### WITNESSETH:

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

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

**WHEREAS**, the New Jersey Economic Development Authority (“**NJEDA**”) and FMERA entered into a Purchase and Sale Agreement dated as of October 30, 2017, as amended (the “**Purchase Agreement**”), a copy of which is attached hereto as **Exhibit A**, pursuant to which NJEDA agreed to acquire certain real property identified in Section 3 of the Purchase Agreement (the “**Property**”); and

**WHEREAS**, pursuant to Section 26 of the Purchase Agreement, the NJEDA may assign the Purchase Agreement to a redeveloper to undertake a redevelopment project on the Property (as defined in the Purchase Agreement), so long as the redeveloper (i) is approved by the Chapter 51 Review Unit, (ii) provides FMERA with an unqualified and unconditional acceptance of the terms

and conditions of the Purchase Agreement, and (iii) the redeveloper and its project are approved by FMERA; and

**WHEREAS**, RWJ submitted an unsolicited offer to purchase the Property to the NJEDA through a proposed Letter of Intent dated February 18, 2018, and the Parties executed a non-binding Expression of Interest to Enter into an Agreement to Assign the Purchase and Sale Agreement between FMERA and NJEDA, dated October 30, 2017; and

**WHEREAS**, the NJEDA, FMERA and RWJ entered into an Agreement to Assign, dated as of August 10, 2018, as amended in the First Amendment to the Agreement to Assign, dated as of June 5, 2019, as amended by the Second Amendment to the Agreement to Assign, dated December 3, 2019, as further amended by the Third Amendment to the Agreement to Assign, dated April 9, 2020 (collectively the “**Agreement to Assign**”), a copy of which is attached hereto as **Exhibit B**, pursuant to which NJEDA agreed to assign to RWJ all of NJEDA’s rights, title and interest in the Purchase Agreement; and

**WHEREAS**, the Purchase Agreement between FMERA and NJEDA, as amended, and the Agreement to Assign, as amended call for the execution of a Redevelopment Agreement between FMERA and RWJ setting forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the construction of the proposed redevelopment project on the Property (the “**Project**”, as further defined below); and

**WHEREAS**, this Redevelopment Agreement is intended to fulfill the obligations as set forth in Subsection 10(a)(iii) of the Purchase Agreement and Subsection 8(iii) of the Agreement to Assign; and

**WHEREAS**, as of the Effective Date or upon NJEDA approval of this Agreement (whichever occurs later), Redeveloper is the designated redeveloper of the Property pursuant to N.J.S.A. 52:27I-38; and

**WHEREAS**, the Agreement to Assign contemplated development of “Project” comprising (i) a 40,000 to 70,000 square foot Ambulatory Care Center; (ii) a 55,000-80,000 square foot medical office building, (iii) a 70,000-100,000 square foot Cancer Institute of New Jersey Cancer Center, (iv) a 95,000-135,000 square foot System Business Office, and (v) a 500,000-700,000 square foot medical arts/specialty facilities in one or more phases; and

**WHEREAS**, Redeveloper subsequently entered into negotiations with FMERA for the acquisition of an approximately 31.25 acre parcel of land located at Pearl Harbor Avenue and Pinebrook Road in the Tinton Falls Reuse Area of the Charles Wood Area of the Fort (the “**Tinton Falls Parcel**”); and

**WHEREAS**, Redeveloper proposes to develop the Tinton Falls Parcel with (i) an approximately 121,121 square foot, three-story Medical Office Building, (ii) a grid-supply solar energy system, (iii) 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 or support structure (as described in the applicable Purchase and Sale and Redevelopment Agreement, dated as of the date hereof, between Redeveloper and FMERA), (iv) passive recreation, including a community walking / nature trail that enhances walkability and interconnectedness of the Tinton Falls section of Fort Monmouth, and (v) open space to benefit the surrounding area; and

**WHEREAS**, in light of the proposed additional development at the Tinton Fall Parcel, Redeveloper proposes to modify its development proposal under the Agreement to Assign and construct a two-phased development of the Property; and

**WHEREAS**, Phase 1 includes an approximately 138,000 square foot Cancer Center and Ambulatory Care Pavilion, comprised of the following uses: oncology services, imaging, radiation, and ambulatory surgery center (for clarity, a portion of the building will serve as the Cancer Center and the balance will serve as an ambulatory care center and support services), parking and interphase grading and landscaping (“**Phase 1**”); and

**WHEREAS**, Phase 2, consists of two options which may be undertaken by RWJ at its discretion in accordance with this Agreement: Phase 2(a) includes the following: (A) an approximately 568,901 square foot acute care hospital, including approximately 250 beds; (B) an approximately 206,768 square foot clinical and support building; (C) an approximately 137,000 square foot medical office building; (D) a 34,000 square foot central utility plant; and (E) an approximately 404,000 square foot structured parking facility; and Phase 2(b) includes the following: (A) twenty (20) acres of publically accessible open space; (B) stone dust walking trails connecting different site components, including Cancer Center, parking lots, gazebos, and Corregidor Road; (C) Seatwall and Sculpture space; (D) at least two gazebos; and (E) landscaped open areas and plantings (as used herein, “**Phase 2**” refers to either Phase 2(a) or Phase 2(b), as elected in accordance herewith); and

**WHEREAS**, it is understood that the modification to the term “Project” in the Agreement to Assign to a two-phases as described herein is subject to the agreement by the NJEDA; and

**WHEREAS**, in addition, Redeveloper initially proposed creating 616 jobs during Phase 1 of the Project, but by way of correspondence dated May 28, 2021, the Redeveloper has indicated it intends to move 300 of the jobs originally proposed for Phase 1 to the Tinton Fall Parcel; and

**WHEREAS**, Redeveloper will construct ancillary improvements in connection with the Project, including parking, to meet the needs of the user as required by FMERA’s Land Use Rules. The square footage represented in this Agreement are estimates prepared prior to receipt of preliminary and final major site plan approval and other Approvals, and remain subject to change based on the written agreement of the Parties, consistent with Redeveloper’s concept plan and phasing schedule attached hereto as **Exhibit “C”** and subject to FMERA’s Reuse Plan and Land Use Rules; and

**WHEREAS**, the Army is currently conducting an environmental remediation on an approximately 0.285-acre portion of the Property designated by the Army as ECP 16 (“**ECP 16**” or “**Environmental Carve-Out Parcel**”) which will be conveyed to FMERA via quitclaim deed upon the Army's completion of remediation and issuance of a Subsequent FOST and the

Redeveloper shall take title to ECP 16 as set forth in the Purchaser Agreement and the Fourth Amendment to the Agreement to Assign; and

**WHEREAS**, pursuant to Section 8(v) of the Agreement to Assign, the Parties acknowledge that the Assignment and this Agreement will require an amendment to the Purchase Agreement to accommodate FMERA, RWJ and the Project, including, but not limited to, provisions requiring indemnification of FMERA and NJEDA, acceptance by RWJ of the Property in an “as is” condition, agreement to accept title to ECP 16 upon receipt by FMERA from the Army of the Subsequent FOST and title to ECP 16, provisions subjecting all contract claims to the New Jersey Contractual Liability Act, N.J.S.A. 59: 13-1 et seq. Pursuant to Section 7 of the Agreement to Assign, the amendment to the Purchase Agreement shall be executed contemporaneously with closing and the assignment, which the Parties understand requires approval by NJEDA’s and FMERA’s Boards; and

**WHEREAS**, on October 17, 2018, the FMERA Board approved the introduction of Reuse Plan Amendment #12 in accordance with the Redeveloper’s Conceptual Site Plan and after the Board’s introduction of the amendment and at the end of the Governor’s veto period and the host municipalities 45 day comment period, the Board approved the Reuse Plan Amendment #12 attached as **Exhibit F** on January 16, 2019 in fulfillment of Section 8(iv) of the Agreement to Assign; and

**WHEREAS**, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the construction of the Project, the Parties have determined to execute this Agreement; and



**NOW THEREFORE**, for and in consideration of the premises, the mutual obligations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, and further, to implement the purposes of the FMERA Act, the Reuse Plan, and the Land Use Rules, the Parties hereto agree as follows:

**1. Recitals.**

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

**2. Definitions.**

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

- a. **"Affiliate"** means with respect to Redeveloper, any other Person directly controlling or controlled by, or under direct common Control with RWJ. For purposes of this definition the term **"Control"** (including the correlative meanings of the term "controlled by" and "under common control with" as used with respect to Redeveloper), shall mean the possession, directly, of the power to direct or cause the direction of the management, operations and policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.
- b. **"Affiliate Urban Renewal Entity"** means an entity meeting the requirements of Section 10 and qualifying under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.
- c. **"Agreement"** means this Redevelopment Agreement dated above, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- d. **"ALTA Survey"** shall mean a comprehensive boundary survey that adheres to the national standards adopted by the American Land Title Association and National Society of Professional Surveyors.
- e. **"Approvals"** means all Non-Appealable Final Approvals, permits, decisions, reviews and agreements issued by municipal, county, state, federal and quasi-governmental authorities needed to obtain building permits for the Project and all of the uses on the Property and related off-site improvements so as to allow the continuous development

of the Project, as applicable in accordance herewith, and which Approvals shall contain terms and conditions acceptable to Purchaser in its reasonable discretion, including but not limited to, the following Non-Appealable Final Approvals: (i) the mandatory conceptual review approval of the Project by FMERA which is required pursuant to N.J.A.C. 19:31C-3.20(c); (ii) preliminary and final site plan (and subdivision approval as applicable) from county and local authorities; (iii) the receipt by Purchaser of any necessary licenses and approvals from all governmental authorities required to develop and operate the Project on the Property as set forth herein; (iv) any necessary amendment to the Reuse Plan so that the Project is fully conforming therewith; and (v) any approvals and permits required from the New Jersey Department of Environmental Protection including pursuant to the Coastal Area Facilities Review Act, N.J.S.A. 13:19-1, et seq., as applicable.

- e. **“Approval Period”** shall be the Approval Period set forth in the Agreement to Assign in Section 8(ii), as the same may be extended.
- f. **“Army”** means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- g. **“Army Quitclaim Deed”** means the quitclaim deed that FMERA received from the Army and recorded with the Monmouth County Clerk on June 30, 2014 in Book OR-9070 at Pages 9803 et seq., whereby the Army conveyed all right, title and interest to the Property to FMERA, subject to the terms, conditions, covenants and restrictions set forth in the Army Quitclaim Deed, and was received by Redeveloper as **Exhibit A** in the Agreement to Assign.
- h. **“Boundary Survey”** is a means to formally define the boundaries of a property, showing the corners of a parcel of land described in a deed, attached hereto as **Exhibit D**.
- i. **“Capital Investment”** means demolition & site work, off-site improvement costs, construction costs, patient equipment, patient technology, labor, and all other costs included in construction and completion of the Project, exclusive of Property acquisition and costs of obtaining All Approvals.
- j. **“Certificate of Completion”** means a document issued by FMERA constituting a recordable, conclusive determination of the Completion of the Project and satisfaction

and termination of this Agreement and the Declaration of Covenants with respect to the Project pursuant to N.J.A.C. 19:31C-3.24(f).

- k. **“Certificate of Occupancy”** means a document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed and will be used in compliance with all applicable municipal codes and ordinances.
- l. **“Closing”** shall mean the transfer of the Property (other than ECP-16, which will be transferred in accordance with the terms of the Purchase Agreement and the Fourth Amendment to Agreement to Assign), from the FMERA to the Redeveloper and the transfer of the Purchase Price from the Redeveloper to the FMERA, pursuant to the Agreement to Assign and the Purchase Agreement.
- m. **“Commence Construction”, “Commenced Construction”, “Commence the Construction”** or **“Commencement of the Construction”** shall mean the receipt of building permits by the Redeveloper and any two of the following items (i.) mobilization of contractors on site, (ii.) installation of infrastructure on site, (iii.) site work (including grading or other site preparation in advance of installing Improvements), or (iv.) building renovation work.
- n. **“Complete”, “Completed”** or **“Completion”** means the issuance of a Certificate of Completion by the FMERA, which must occur following the issuance of a Certificate of Occupancy by the local governmental authorities.
- o. **“Due Diligence Period”** means the due diligence period set forth in the Agreement to Assign between NJEDA, FMERA and RWJ dated as of August 10, 2018, as amended, a copy of which is attached hereto as **Exhibit B**.
- p. **“EDC Agreement”** shall mean the Agreement between the Army and FMERA, dated June 25, 2012, which sets forth the terms by which the Army conveyed portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA acquired same from the Army.
- q. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement, if no date is set forth in the introductory paragraph, the Effective Date shall mean the date upon which the last party to sign this Agreement executes this Agreement.

- r. **“Finding of Suitability to Transfer”** or **“FOST”** means the document issued by the Army, and acknowledged as received by Redeveloper on Section 12 of the Agreement to Assign. The purpose of the FOST is to document the environmental suitability of the Property for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST will include the CERCLA Notice, Covenant and Access Provisions and other Deed Provisions and the Environmental Protection Provisions necessary to protect human health or the environment after transfer of the Property from the Army to FMERA. A subsequent FOST shall be issued for ECP-16 prior to the transfer of the property to the Redeveloper.
- s. **“Force Majeure”** shall mean the failure or delay of performance by FMERA or Redeveloper of any provision of the Agreement by reason of the following: labor disputes, strikes, picket lines, boycott efforts, war (whether or not declared), riots, moratorium regarding sewer, water or any other utilities, litigation filed against either FMERA or Redeveloper affecting the Property, pandemic; epidemic; any global, national, or local public health emergency or disease outbreak (including, without limitation, any of the conditions listed above that may subsequently arise under the COVID-19 (a/k/a the 2019 Novel Coronavirus) outbreak or any similar disease(s)), or acts of God. In such cases, neither the FMERA nor Redeveloper shall be in default of this Agreement if the delay or failure to perform is by reason of the aforementioned events or conditions. Any extension of the timeframes for performance of obligations set forth in this Agreement for Force Majeure shall be contingent upon the Party claiming a Force Majeure notifying the other Party in writing within thirty (30) days of the occurrence of the event resulting in the failure or delay of performance. The time of performance shall be extended for the period of the delay occurring as a result of the Force Majeure event, but under no circumstances shall the time for performance be extended pursuant hereto for more than twelve (12) months.

Notwithstanding the above, the Purchaser acknowledges that pursuant to Executive Orders 103, 119, 138, 151, 244 (2020), New Jersey is presently under a declared state of emergency. At the time that this Agreement is executed, Purchaser affirms that it has the ability to complete the Project as described in this Agreement.

- t. **“Interested Parties”** means Redeveloper’s Mortgagee and/or Redeveloper’s Lender.
- u. **“Jobs Report”** means the periodic reports to be provided by the Redeveloper to the FMERA as required by Subsection 4(d)(i) herein that provides the FMERA with information concerning the number of permanent jobs created by the Redeveloper during the construction of the Project and within certain time period after Completion of the Project as further described in Section 4(d)(i).
- v. **“Municipality”** shall mean the Borough of Tinton Falls, in the County of Monmouth, State of New Jersey.
- w. **“Non-Appealable Final Approval”** shall mean an Approval where the time to challenge or appeal the grant or denial of the Approval or a term or condition of the Approval that is before any administrative body or court of law has expired, and no challenge or appeal is pending. The term shall also mean an Approval decided after a challenge or appeal has been filed where the challenge or appeal has been decided in Redeveloper’s favor, and all terms and conditions contained in the Approval are acceptable to the Redeveloper in its reasonable discretion.
- x. **“Person”** means an individual, partnership, Limited Liability Company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, government authority, or other entity of whatever nature.
- y. **“Phase 1”** shall have the meaning set forth in Subsection 4(b).
- z. **“Phase 2(a)”** shall have the meaning set forth in Subsection 4(b).
- aa. **“Phase 2(b)”** shall have the meaning set forth in Subsection 4(b).
- cc. **“Phase 2”** Shall mean Phase 2(a) or Phase 2(b), as applicable.
- bb. **“Project”** the Project is as described herein at Subsection 4(b) and depicted in the Site Plan attached hereto as **Exhibit C-1 and either Exhibit C-2 or Exhibit C-3.**
- cc. **“Property”** means the former “Myer Center”, designated as a portion of Block 101.03, Lot 1 (a portion of existing Block: 101, Lot: 1) in the Borough of Tinton Falls, County of Monmouth, New Jersey situated on an approximately 36.3 acre parcel to be subdivided by deed from FMERA to Redeveloper. The Property is bordered by two municipal streets, Corregidor Road and Pearl Harbor Avenue. The Property is further described and depicted on the boundary survey and the metes and bounds description attached hereto as **Exhibit D.**

- dd. **“Purchase Price”** is the price that the Redeveloper shall pay to FMERA for the Property as set forth in Section 5 of the Agreement to Assign.
- ee. **“Redeveloper”** shall mean RWJ Barnabas Health, Inc. or its authorized assigns or successors pursuant to Section 11.
- ff. **“Redeveloper’s Lender”** means an institutional lender; commercial, national or savings bank; savings and loan association; trust company; insurance company; real estate investment trust; or pension or retirement fund; utilized by Redeveloper for financing the Project.
- gg. **“Redeveloper’s Mortgagee”** means Redeveloper’s Lender (where the context so dictates) or other party to whom Redeveloper has granted a mortgage interest in the Property.
- hh. **“Reuse Plan Amendment”** means a final and unappealable amendment to the Fort Monmouth Reuse and Redevelopment Plan adopted by FMERA pursuant to N.J.A.C. 19:31C-3.27(c).
- ii. **“Reversion Cure Period”** shall mean ninety (90) days after FMERA’s advance written notice of FMERA’s intent to exercise its right of reversion during which the Redeveloper and/or Interested Parties shall have the opportunity to cure.
- jj. **“Reversion Purchase Price”** shall mean the cash to FMERA amount on the HUD-1 Settlement Statement/Closing Statement executed at closing and as set forth in the Agreement to Assign.
- kk. **“Toll”, “Tolled” or “Tolling”** shall mean a period of time during which all time frames and obligations of Redeveloper or FMERA as set forth in this Agreement are suspended in accordance with the terms of this Agreement and which suspension of time frames and obligations shall continue until the event causing the Tolling is resolved to the satisfaction of the Party seeking the benefit of a Tolling period.

### **3. The Property.**

The Property consists of the former “Myer Center”, Fort Monmouth, Tinton Falls, New Jersey situated on an approximately 36.3 acre parcel to be subdivided by deed from FMERA to

Redeveloper. The Property is bordered by two municipal streets, Corregidor Road and Pearl Harbor Avenue. The Property is further described and depicted on the boundary survey and metes and bounds description attached hereto as **Exhibit D**. The redevelopment and use of the Property by FMERA is subject to N.J.A.C. 19:31C-3.1 et seq.

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

**a. Capital Investment.** Redeveloper's required minimum Capital Investment for Phase 1 and Phase 2(a) of the Project is estimated at Six Hundred and Fifty-One Million (\$651,000,000) Dollars. Redeveloper's required minimum Capital Investment for Phase 1 and Phase 2(b) of the Project is estimated at One Hundred and Fifty-Three Million Five Hundred Thousand (\$153,500,000) Dollars.

**b. Redevelopment Project.**

Redeveloper represents that it is purchasing the Property with the intent to construct a healthcare campus. This Project consists of:

Phase 1 which includes an approximately 138,000 square foot Cancer Center and Ambulatory Care Pavilion, comprised of the following uses: oncology services, imaging, radiation, and ambulatory surgery center (for clarity, a portion of the building will serve as the Cancer Center and the balance will serve as an ambulatory care center and support services) and parking, and interphase grading and landscaping ("**Phase 1**"); **and either**

Phase 2(a), which includes the following: (A) an approximately 568,901 square foot acute care hospital, including approximately 250 beds; (B) an approximately 206,768 square foot clinical and support building; (C) an approximately 137,000 square foot medical office building; (D) a 34,000 square foot central utility plant; and (E) an approximately 404,000 square foot structured parking facility ("**Phase 2(a)**"); **or**

Phase 2(b), which shall consist of (A) twenty (20) acres of publically accessible open space; (B) stone dust walking trails connecting different site components, including

Cancer Center, parking lots, gazebos, and Corregidor Road; (C) Seatwall and Sculpture space; (D) at least two gazebos; and (E) landscaped open areas and plantings; (“**Phase 2(b)**”). In the event that Redeveloper constructs Phase 2(b), Redeveloper shall deed restrict the property upon which Phase 2(b) is developed only for use as public open space (the “Open Space Deed Restriction”); provided, that (1) the Open Space Deed Restriction shall run only to the benefit of FMERA, and not directly to the general public, and (2) the Open Space Deed Restrictions subject to extinguishment at FMERA (or such successor governmental authority then having jurisdiction) sole discretion.

Redeveloper shall be obligated to complete the Project which shall consist of Phase 1 and either Phase 2(a) or Phase 2(b). Redeveloper must submit to FMERA in writing thirty days prior to Completion of Phase 1 – but no later than on or before the twenty-sixth (26<sup>th</sup>) month after Closing whether Redeveloper has selected to move forward with Phase 2(a) or Phase 2(b). If Redeveloper fails to notify FMERA in writing of which Phase 2 is shall undertake in the timeframe stated above, this shall constitute an Event of Default, which upon notification by FMERA, the Redeveloper shall have sixty (60) days to cure.

The Project may be amended upon mutual agreement of Redeveloper and FMERA, subject to FMERA board approval and Reuse Plan amendment, as applicable.

- i. The Redeveloper’s Site Plan for the Project is attached hereto as **Exhibit C**. The Redeveloper’s site plan and subdivision plan are subject to (i) FMERA’s Mandatory Conceptual Review and (ii) the planning board review process of the Borough of Tinton Falls. The Project may be amended upon mutual agreement of FMERA and Redeveloper if Redeveloper is unable to obtain the same, subject to FMERA Board approval and Reuse Plan Amendment, as applicable.
- ii. Subject to Force Majeure, Redeveloper shall comply with the following Project schedule:
  1. Promptly following the Closing, Redeveloper shall use good faith, commercially reasonable efforts to diligently apply for and pursue



building permits for the Project (and Approvals, if Redeveloper shall have acquired the Property without having first obtained all Approvals).

2. Redeveloper will Commence the Construction of Phase 1 of the Project no later than one hundred sixty (160) days after the Closing on the subject Property.
3. Redeveloper will Complete Construction of Phase 1 of the Project no later than twenty-seven (27) months from Closing.
4. With respect to Phase 2:
  - a. If Phase 2(a) is elected: Redeveloper will Commence the Construction of Phase 2(a) within six (6) months from making the Phase 2 election, and Redeveloper will Complete Construction Phase 2(a) within eighty-four (84) months of Closing.
  - b. If Phase 2(b) is elected: Redeveloper will Commence the Construction of Phase 2(b) within sixty-nine (60) days of from Completion of Phase 1, and Redeveloper shall Complete Construction of Phase 2(b) within thirty-six (36) months from Closing.

iii. It shall be a default under this Agreement for Redeveloper to fail to Commence the Construction or Complete the Project timely, as required herein.

iv. The provisions of this Subsection 4(b) shall survive Closing and run with the land.

**c. Financial Assurances and Guarantees.**

- i. Prior to the Commencement of the Construction, Redeveloper shall post all financial assurances and guarantees (as may be permitted under the New Jersey Municipal Land Use Law) and as may be required pursuant to municipal ordinances for performance, maintenance and site restoration with the municipality and name FMERA as a beneficiary.
- ii. The provisions of this Subsection 4(c) shall survive Closing and/or termination of this Agreement and run with the land.

**d. Job Creation; Security.**

- i. Redeveloper shall create a total of three hundred eighteen (318) full-time equivalent permanent jobs at the Property within twenty-four (24) months of the receipt of the Certificate of Occupancy for Phase 1 of the Project. Redeveloper shall create a total of one thousand (1,000) full-time equivalent permanent jobs at the Property within twenty-four months of the receipt of the Certificate of Occupancy for any portion of Phase 2(a) of the Project or Redeveloper shall create a total of one (1) full-time equivalent permanent jobs at the Property within twelve (14) months of the Completion for Phase 2(b) of the Project. The Redeveloper shall be obligated to provide the FMERA with a Jobs Report within twenty-four (24) months after receipt of the Certificate of Occupancy for Phase 1 of the Project and until such time as the Project is complete. To the extent the Redeveloper fails to achieve the required creation of full-time equivalent permanent jobs at the Property within the required time period for any phase of the Project, then it shall be liable to pay to FMERA one thousand five-hundred dollars (\$1,500) dollars for each full-time equivalent permanent job not created. Payment shall be due to FMERA within thirty (30) days of FMERA's delivery of notice pursuant to this Section. Redeveloper's total obligation for Phase 1 shall not exceed four hundred seventy-seven thousand dollars (\$477,000) total; Redeveloper's total obligation for Phase 2(a) shall not exceed one million five hundred thousand dollars (\$1,500,000); Redeveloper's total obligation for Phase 2(b) shall not exceed one thousand five-hundred dollars (\$1,500).
- ii. Redeveloper shall secure its obligation to create the required number of full-time equivalent permanent jobs at the Property, or pay FMERA the amount per job not created, through the granting of three Job Creation Promissory Notes for each phase of the Project in a form substantially similar to **Exhibit E** at the time of execution of this Redevelopment Agreement. It is agreed and understood that upon receipt of notice of creation of the required full-time equivalent permanent jobs as set forth above or receipt of the payment of any monies for jobs not created, then FMERA shall, within thirty (30) days of notice

of creation or payment, release, cancel or otherwise discharge the Job Creation Promissory Note applicable, which shall no longer be in force or effect.

- iii. The provisions of this Subsection 4(d) shall survive Closing and/or termination of this Agreement and run with the land.

**5. Declaration of Covenants.**

- a. The quitclaim deed from FMERA to Redeveloper shall include a declaration of covenants and restrictions upon the Property, which shall run with the land and shall be released upon the issuance of a Certificate of Completion issued by FMERA. The Declaration shall indicate or otherwise contain:
  - i. The uses of the Property shall be limited to those uses permitted pursuant to the Reuse Plan, as amended.
  - ii. Redeveloper, as the approved redeveloper, will Commence the Construction and Complete the Project within the period of time established in Subsections 4(b) of this Agreement, subject to the terms of this Agreement; and
  - iii. Redeveloper, as the approved redeveloper, will not sell, lease or transfer the Property, the Project or this Agreement prior to the Completion of the Project without the written consent of FMERA, except as set forth in Section 9 hereof.

**6. Reversion to FMERA.**

The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth in Subsection 4(b) have not been met, then FMERA, at its sole option and discretion, shall have the right of reversion of title to the Property. Such right of reversion shall be, by its terms as set forth in the quitclaim deed, subordinate to any and all land, construction, permanent or other lender whose lien shall have superiority over any such rights. Seller's reversion right shall always be subject to and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage in favor of any Interested Parties or (ii) any rights or interests for the protection of Interested Parties.

FMERA agrees to provide Redeveloper and Interested Parties with a Reversion Cure Period. During the Reversion Cure Period, the Redeveloper or any of the Interested Parties may either (a) cure the default identified by the FMERA in their default notice or (b) agree with FMERA on a proposal which must be acceptable to both Parties in both Parties' reasonable discretion, for the Redeveloper and/or one or more of the Interested Parties to cure Redeveloper's default beyond the Reversion Cure Period. If following the Reversion Cure Period, the default is neither cured nor have the Parties agreed upon a proposal to cure the default, then FMERA may move forward with its right of reversion; provided that, if FMERA determines that the Interested Parties and the Redeveloper are negotiating a proposal to cure the default in good faith as of the expiration of the Reversion Cure Period then FMERA may extend the Reversion Cure Period in its sole discretion as is equitably necessary to allow the parties to either (i) finalize the proposal to cure the default or (ii) terminate such negotiations if it becomes obvious to FMERA that a proposal to cure the default cannot be agreed upon. Should FMERA exercise this reversion option, FMERA shall pay Redeveloper the Reversion Purchase Price. Any amount of the Reversion Purchase Price paid by FMERA shall be applied first to reduce any outstanding balance of any mortgage or lien imposed on the Property by Redeveloper.

a. Redeveloper or its successors and assigns may request that the FMERA execute a release evidencing the termination of FMERA's right of reversion on any portion of the Property that has been Completed upon the presentation of (i) a valid Certificate of Completion and (ii) a form of release that shall be recorded at the sole cost and expense of the Redeveloper or its successors and assigns.

b. The provisions of this Section 6 shall survive Closing and/or termination of this Agreement and run with the land.

#### 7. **Prevailing Wage.**

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

provisions of this Section 7 shall survive Closing and/or termination of this Agreement and run with the land.

**8. Termination of Agreement.**

If this Agreement is legally and rightfully terminated in accord with any provision herein, (excluding termination resulting from a default as specified in Section 8) or by mutual agreement of the Parties, the Parties shall be free of liability to each other, except that the Parties shall remain responsible for any other obligations that specifically survive Closing and/or termination of the Agreement and run with the land.

**9. Default by Redeveloper.**

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

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

ii. Redeveloper has:

1. applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets or if a custodian is legally appointed with or without consent of Redeveloper; or
2. made a general assignment for the benefit of creditors or filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or
3. filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding or a petition in bankruptcy shall have been filed against Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive days; or
4. suspended the transaction of its usual business.

iii. If:

1. an Order for Relief is entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code;
  2. an Order, judgment or decree is entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days.
- iv. The Redeveloper places any unauthorized encumbrance or lien on the Property prior to Closing, or shall suffer any levy or attachment to be made on the Property prior to Closing, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Property prior to Closing.
  - v. Redeveloper fails or refuses to consummate the Closing (where no default by FMERA has occurred under the Agreement and all Conditions Precedent to Closing have been satisfied or waived as detailed in Section 8 of the Agreement to Assign.
  - vi. Redeveloper has failed to select Phase 2(a) or Phase 2(b) in accordance with the terms of this Agreement.
- b. FMERA agrees that prior to declaring the Redeveloper in default as described in Subsection 9(a), FMERA shall provide Redeveloper with sixty (60) days advance written notice of such default and Redeveloper shall have the right to cure such default within said sixty (60) day period (or longer period as set forth in Subsection 9(a) above, as applicable). In the event that Redeveloper does not cure said default in said sixty (60) day period (or longer period as set forth in Subsection 9(a) above, as applicable), then the FMERA as its sole and exclusive remedy, may terminate this Agreement by giving written notice thereof to Purchaser and retain the Deposit (as defined in the Agreement to Assign) as full and liquidated damages in accordance with Section 16 of the Agreement to Assign. In the event that FMERA terminates this Agreement or Redeveloper, NJEDA or FMERA terminate the Agreement to Assign, the Redeveloper's designation as redeveloper shall immediately terminate. FMERA shall have all rights under applicable law including, without limitation, the right to appoint

a new redeveloper for the Property. Purchaser acknowledges that the remedies set forth in this Subsection 9(b) are in addition to the right of reverter provided to FMERA in Section 5 herein.

- c.** Notwithstanding anything in this Section 9 to the contrary, in the event Redeveloper records this Agreement without having obtained the prior written consent of FMERA thereto, then Redeveloper shall be deemed in material incurable default under this Agreement and FMERA shall be authorized without any notice whatsoever to terminate this Agreement and pursue all rights and remedies afforded to FMERA under Section 9(b).
- d.** The terms of this Section 9 shall survive the Closing and/or any termination of this Agreement.

10. **Assignment.**

- a. Notwithstanding Section 17 of the Agreement to Assign, the provisions of Section 9 shall control if the Redeveloper seeks to assign this Agreement or the Agreement to Assign.
- b. Redeveloper shall not have the right to assign this Agreement, or any part thereof, prior to the Completion of the Project without first obtaining the express written consent of the FMERA, which consent shall not be unreasonably withheld provided that:
  - i. the assignee is an Affiliate of the Redeveloper;
  - ii. the assignee is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions;
  - iii. the assignee has demonstrated to the satisfaction of FMERA that the potential assignee has the financial ability to meet the funding requirements of the assignee's Project;
  - iv. the assignee provides the FMERA with an unqualified and unconditional acceptance of the terms and conditions of this Agreement, including but not limited to any and all redevelopment obligations;
  - v. the assignment will not delay the Completion of the Project; and
  - vi. the assignee provides FMERA with satisfactory proof of the managerial experience and project experience of the assignee with projects of similar size and magnitude to the assignee's project.
- c. Notwithstanding the foregoing, Redeveloper shall have the right to assign this Agreement, or any part thereof to an Affiliate Urban Renewal Entity created to



undertake the Redeveloper's Project without first obtaining the Seller's consent provided that the Affiliate Urban Renewal Entity:

- i. is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions; and
  - ii. provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement, including but not limited to any and all redevelopment obligations.
- d. Except as provided in Section 10(c), prior to the Completion of the Project, any stockholder, partner or member holding a controlling interest in Redeveloper at the time of the Effective Date shall not, without the express written consent of the FMERA, be permitted to transfer an interest in RWJ that would result in such stockholder, partner or member no longer having Control over Redeveloper. FMERA shall not unreasonably withhold its consent to such a transfer provided that the assignee or transferee, as applicable, provides the materials, to FMERA's satisfaction, within Subsection 10(b)(ii)-(vi). The foregoing restriction on transfers shall not, however, apply to any publicly traded company.
- e. The Parties agree that if FMERA authorizes an assignment in accordance with the terms herein, then FMERA shall enforce this Agreement against the assignee and FMERA shall release Redeveloper from any and all duties, obligations, claims and damages arising under this Agreement to the extent that they relate to the portion of the Property and Project being assigned.

**11. Successors and Assigns.**

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

**12. Governing Law.**

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

**13. Partial Invalidity.**

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

**14. Headings.**

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

**15. No Partnership or Joint Venture.**

Nothing contained in this Agreement will make or will be construed to make the Parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between Redeveloper and FMERA hereunder is that of FMERA and Redeveloper.

Nor should anything in this Agreement render or be construed to render either of the Parties hereto liable to the other for any third party debts or obligations due the other party.

**16. No Third-Party Rights or Benefits.**

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

**17. No Waiver.**

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

**18. Time Periods.**

All time periods contained in this Agreement shall expire at five o'clock (5:00) p.m. Eastern Time on the date performance is due and any performance after such time and any notice received after such time shall be deemed to have occurred on the next business day. In the event

that any date falls on a weekend or any other day which commercial banks in the State of New Jersey are closed or permitted to be closed, the date shall be deemed to extend to the next weekday.

19. **Recording.**

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

20. **Authority Representations of Redeveloper and FMERA.**

Redeveloper and FMERA hereby represent to each other on and as of the date of this Agreement, that each have full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of FMERA and Redeveloper shall be duly authorized to sign the same on Redeveloper’s and FMERA’s behalf and to bind FMERA and Redeveloper thereto. This Agreement and all documents to be executed pursuant to FMERA and Redeveloper are and shall be binding upon and enforceable against FMERA and Redeveloper in accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchase or FMERA is bound.

21. **Omitted.**

22. **Notices.**

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

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

CC: Riker Danzig Scherer Hyland Perretti, LLP  
Headquarters Plaza  
One Speedwell Avenue  
P.O. Box 1981  
Morristown, New Jersey 07962-1981  
Attention: Scott G. Collins, Esq.

AND

TO: RWJ Barnabas Health, Inc.  
95 Old Short Hills Road  
West Orange, New Jersey 07052  
Attention: William Cuthill, Senior Vice President, Facilities  
Management and Construction

CC: Giordano, Halleran & Ciesla, P.C.  
125 Half Mile Road, Suite 300  
Red Bank, New Jersey 07701-6777  
Attention: Michael Bruno, Esq.

- b. All notices which must be given under this Agreement are to be given either by:
- i. personal service,
  - ii. certified mail, return receipt requested, addressed to the other party at their address specified above, or
  - iii. overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail); and
  - iv. with a copy by facsimile and/or electronic mail.

- c. Either party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.
- d. Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

**23. Counterparts.**

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

**24. Exhibits.**

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

**25. Utilities.**

- a. Following the Closing, the Redeveloper, at its sole cost and expense, will be responsible for establishing service connections and accounts at Redeveloper's cost with Jersey Central Power and Light, New Jersey Natural Gas Company, New Jersey American Water Company and the Borough of Tinton Falls Sewer Authority as required for the Project.
- b. Any existing transformers and electric distribution lines on the Property that are not needed by JCP&L will become the property of the Redeveloper. Following the Closing, the Redeveloper shall be responsible for replacement, repair, maintenance and/or relocation of utilities within the Property, subject to FMERA's review and approval, as required for the Project.

- c. Following the Closing, Redeveloper shall be responsible for connecting the property to an existing New Jersey American Water Company main, Jersey Central Power and Light transmission/distribution lines, available New Jersey Natural Gas lines and Tinton Falls Sewerage Authority main in Corregidor Road.
- d. It is understood that should Redeveloper seek to do any of the above prior to Closing it shall be at Redeveloper's cost and expense.

26. **Miscellaneous.**

- a. This Agreement can only be changed by an agreement in writing signed by both Redeveloper and FMERA.
- b. Seller and Purchaser shall work together in good faith to determine mutually acceptable locations to install Seller's wayfinding/placebranding signage, so long as its located on the Property's frontage. Seller and Purchaser will identify a location for the wayfinding/placebranding signage during Due Diligence Period.
- c. Within three months of execution of this Agreement, Purchaser shall be responsible for general landscaping maintenance on the Property including, but not limited to mowing the grass, clearing underbrush, and removing debris.
- d. This Agreement is contingent upon performance of the Agreement to Assign.

[Signature Page Follows]

Wherefore the FMERA and Redeveloper have signed this Agreement as of the date first written above.

ATTEST:

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, FMERA

\_\_\_\_\_

By: \_\_\_\_\_  
Bruce Steadman,  
Executive Director

ATTEST:

RWJ BARNABAS HEALTH, INC., REDEVELOPER

\_\_\_\_\_

By: \_\_\_\_\_  
William Cuthill, Senior Vice President,  
Facilities Management and Construction



Attorney

STATE OF NEW JERSEY     )

)

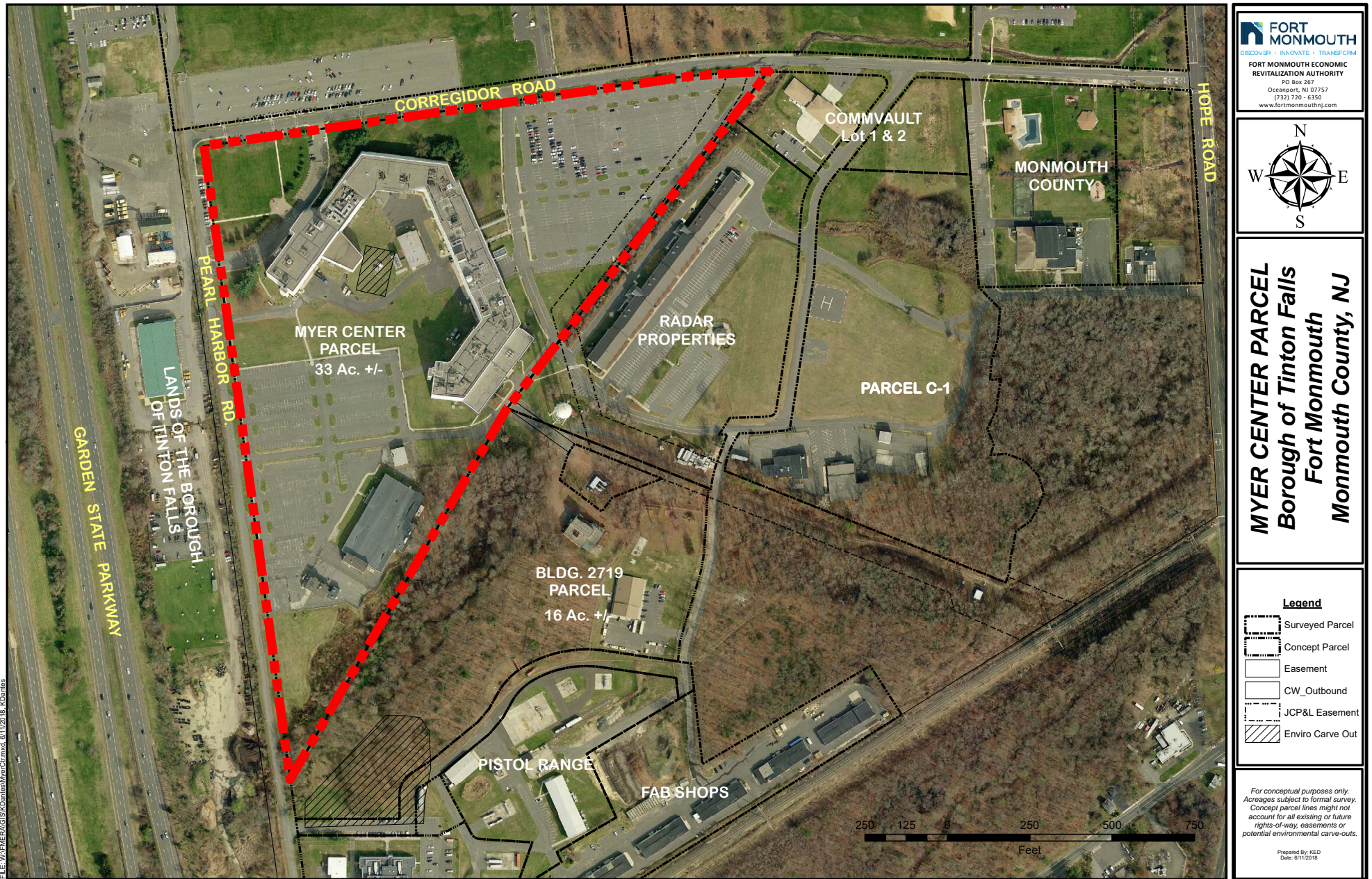
COUNTY OF MONMOUTH    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_ 2021, by Fort Monmouth Economic Revitalization Authority, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey (the “FMERA”), pursuant to P.L. 2010, c. 51, by Bruce Steadman, its Executive Director, on behalf of the Company.

^(FMERA’s counsel)\_\_\_\_\_

Docs #3836417-v3





FILE: W:\MYER\GIS\Chen\Map\Chen.mxd, 6/11/2018, KED:res





## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

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

**DATE:** September 22, 2021

### **Request**

I am requesting that the Members consent to the Fort Monmouth Economic Revitalization Authority ("FMERA") entering into the redevelopment agreement that is contained within FMERA's Purchase and Sale & Redevelopment Agreement ("PSARA") with RWJ Barnabas Health, Inc. ("RWJBH" or "Purchaser") for the sale and redevelopment of the Tinton Falls Commercial Parcel (the "Property") in the Fort's Tinton Falls Reuse Area (the "Project").

### **Background**

FMERA was created by P.L. 2010, c. 51 ("the Act") to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority ("NJEDA") as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In June 2012, FMERA entered into an Economic Development Conveyance Agreement with the Army for the Phase 1 portion of the Fort, and title to the property was transferred to FMERA on June 30, 2014. The Property is located in the Tinton Falls section of the Phase 1 property.

FMERA issued a Request for Offers to Purchase ("RFOTP") in February 2020 in connection with the planned redevelopment of the Property. The Property 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. The Army is currently conducting an environmental remediation on an approximately 2.1-acre portion of the Property ("ECP 21" or the "Environmental Carve-Out Parcel") which will be conveyed to FMERA via quitclaim deed upon the Army's completion of remediation and issuance of a subsequent Finding of Suitability to Transfer, and the Purchaser shall take title to ECP 21 as set forth in the Agreement.

Responses to the RFOTP were due on April 27, 2020, and FMERA received two proposals, from CHA Partners, LLC and RWJ Barnabas Health, Inc. The two bids were scored by an evaluation committee as follows: CHA Partners, LLC (3215) and RWJ Barnabas Health, Inc. (3725) with RWJBH receiving the

highest score. The evaluation committee recommended proceeding with negotiations for a PSARA with RWJBH for the Property. CHA subsequently withdrew its proposal.

The PSARA was approved by the FMERA Board at its August 27, 2021 meeting and is pending execution by FMERA and RWJBH.

The PSARA includes the following terms:

RWJBH will pay Five Million One Hundred Thousand (\$5,100,000) Dollars for the Property. Purchaser proposes to demolish all of the existing buildings and site improvements on the Property and complete 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 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 (which shall initially consist of storage space for equipment related to the active recreational facilities, but may be expanded in the future to include bathrooms, locker rooms or other similar amenities at Purchaser's sole discretion); 4) development of passive recreation areas, 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, at its sole cost and expense, 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; provided, that 1) the Open Space Deed Restriction shall run only to the benefit of FMERA, and not directly to the general public, and 2) the Open Space Deed Restriction shall state that FMERA shall have the ability to terminate and discharge the Open Space Deed Restriction upon RWJBH's request which shall be considered in the FMERA Board's sole discretion. Purchaser shall commence construction of the Project no later than ninety (90) days after Closing. Purchaser will complete construction of the Project no later than twenty-six (26) months from Closing.

Purchaser's site plan and subdivision will be subject to FMERA's Mandatory Conceptual Review and Tinton Fall's planning board review.

Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA's Land Use Rules; (ii) a provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper's rights under the PSARA prior to completion of the project. Based on the redevelopment provisions of the PSARA between FMERA and RWJBH, staff concludes that the essential elements of a redevelopment agreement between FMERA and RWJBH are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with RWJBH for its redevelopment of the Tinton Falls Commercial Parcel.

Attached is the PSARA between FMERA and RWJBH. The PSARA specifies that RWJBH. will be confirmed as designated redeveloper of the Property upon execution of the PSARA and NJEDA approval of the PSARA in accordance with N.J.S.A. 52:27I-38.

**Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health, Inc. for the sale and redevelopment of the Tinton Falls Commercial Parcel in the Fort's Tinton Falls Reuse Area.



---

Tim Sullivan  
Chief Executive Officer

Attachment: Purchase and Sale & Redevelopment Agreement  
Prepared by: Kara Kopach & David E. Nuse

**PURCHASE AND SALE AGREEMENT  
AND REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**As Seller,**

**AND**

**RWJ Barnabas Health, Inc.,**

**As Purchaser**

**As of \_\_\_\_\_, 2021**

## Table of Contents

1.	Recitals.....	3
2.	Definitions.....	3
3.	Purchase and Sale Agreement.....	10
4.	The Property.....	10
5.	The Purchase Price.....	11
6.	Purchaser Financially Able to Close.....	11
7.	Capital Investment, Redevelopment Project, Project Approvals, Completion Bond, Job Creation; Security, and Reuse Plan Amendment.....	11
8.	Declaration of Covenants.....	16
9.	Reversion to Seller.....	17
10.	Prevailing Wage.....	18
11.	Title and Survey Investigation.....	18
12.	Due Diligence Period.....	20
13.	Conditions Precedent to Closing.....	21
14.	Time and Place of Closing.....	22
15.	Transfer of Ownership.....	24
16.	Personal Property and Fixtures.....	24
17.	Physical Condition of the Property.....	24
18.	Acknowledgment and Covenants Regarding FOST.....	25
19.	Risk of Loss.....	25
20.	Environmental Matters.....	26
21.	Termination of Agreement.....	28
22.	Default by Seller.....	28
23.	Default by Purchaser.....	29
24.	Adjustments at Closing/Assessments for Municipal Improvements.....	31
25.	Possession.....	32
26.	Liens.....	32
27.	Assignment; Assignment of Interest.....	32
28.	Successors and Assigns.....	34
29.	Entire Agreement.....	34
30.	Governing Law.....	34
31.	Partial Invalidity.....	34
32.	Headings.....	35
33.	No Partnership or Joint Venture.....	35
34.	No Third-Party Rights or Benefits.....	35
35.	No Waiver.....	35
36.	Time Periods.....	36
37.	Force Majeure.....	36
38.	Publication.....	36
39.	Recording.....	37
40.	Lis Pendens.....	37
41.	Authority Representations of Purchaser and Seller.....	37



42.	Political Campaign Contributions.....	38
43.	Notices. ....	42
44.	Brokerage Commissions. ....	43
45.	Counterparts.....	43
46.	Exhibits. ....	43
47.	Utilities.....	43
48.	Miscellaneous. ....	45

## **EXHIBIT LIST**

**A – Conceptual Site Plan**

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

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

**D – Quitclaim Deed from Army to FMERA**

**PURCHASE AND SALE AGREEMENT AND  
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of \_\_\_\_\_, 2021 (the “**Effective Date**”) between **Fort Monmouth Economic Revitalization Authority** (“**FMERA**” or “**Seller**”), a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and **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**”.

**WITNESSETH:**

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

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

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

**WHEREAS**, Seller acquired title to certain property identified on the official tax map of the Borough of Tinton Falls as a portion of Block 101, Lot 1, and more commonly known as the Tinton Falls Commercial Parcel (“**Tinton Falls Parcel**”), from the Army via a quitclaim deed

recorded with the Monmouth County Clerk on June 30, 2014 in Book OR -9070 at Pages 9803 et seq., incorporated herein by reference (the “**Army Quitclaim Deed**”) along with sufficient adjoining property in order to provide for free and unencumbered ingress and egress to and from the Property to and from adjoining dedicated and proposed public streets so that Seller is able to convey the Property to Purchaser, in accordance with the terms, conditions, covenants and restrictions as set forth in the Army Quitclaim Deed; and

**WHEREAS**, FMERA publicly advertised a Request for Offers to Purchase (“**RFOTP**”) the property consisting of buildings and land located at Pearl Harbor Avenue and Pinebrook Road situated on an approximately 31.25 acre parcel in the Tinton Falls Reuse Area of the Charles Wood Area of the former Fort Monmouth (the “**Property**” as further identified, described and defined herein), in accordance with FMERA’s Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq.; and

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

**WHEREAS**, the Army is currently conducting an environmental remediation on an approximately 2.1-acre portion of the Property designated by the Army (“**ECP 21**” or “**Environmental Carve-Out Parcel**”) which will be conveyed to FMERA via quitclaim deed upon the Army's completion of remediation and issuance of a Subsequent FOST and the Purchaser shall take title to ECP 21 as set forth in the Subsection 14(b) of this Agreement; and

**WHEREAS**, the Purchaser, FMERA and the New Jersey Economic Development Authority (“**NJEDA**”) had previously entered into an Agreement to Assign, dated as of August 10, 2018, as subsequently amended, pursuant to which NJEDA agreed to assign to Purchaser all of NJEDA’s rights, title and interest in the purchase of an adjacent parcel of land known as the Myer Center Parcel; and

**WHEREAS**, as part of its proposal to the Tinton Falls Parcel, Purchaser proposed to move three-story Medical Office Building, previously scheduled to be built on the Myer Center Parcel, to the Tinton Falls Parcel; and

**WHEREAS**, the Project (as defined below) represents the scope of this Agreement, the Parties acknowledge that should Purchaser seek to build a second three-story medical office building, that buildout shall be subject to a separate Redevelopment Agreement; and

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

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

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

**1. Recitals.**

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

**2. Definitions.**

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

- a. **"Affiliate"** means with respect to Purchaser, any other Person directly controlling or controlled by, or under direct common Control with RWJ. For purposes of this definition the term **"Control"** (including the correlative meanings of the term "controlled by" and "under common control with" as used with respect to Purchaser), shall mean the possession, directly, of the power to direct or cause the direction of the management, operations and policies of the Purchaser, whether through the ownership of voting securities or by contract or otherwise.

- b. **“Affiliate Urban Renewal Entity”** means an entity meeting the requirements of Section 27 and qualifying under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.
- c. **“Agreement”** means this Purchase and Sale Agreement and Redevelopment Agreement dated as of the Effective Date, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- d. **“All Approvals”** means all Non-Appealable Final Approvals, permits, decisions, reviews and agreements issued by municipal, county, state, federal and quasi-governmental authorities needed to obtain building permits for all of the commercial and other uses on the Property and related off-site improvements so as to allow the continuous development of the Project and which Approvals shall contain terms and conditions acceptable to Purchaser in its reasonable discretion, including but not limited to, the following Non-Appealable Final Approvals:
  - i. the mandatory conceptual review approval of the Project by FMERA which is required pursuant to N.J.A.C. 19:31C-3.20(c) (**“Mandatory Conceptual Review”**);
  - ii. preliminary and final subdivision approval from the Monmouth County Planning Board, if applicable;
  - iii. preliminary and final site plan approval from the Borough of Tinton Falls Planning Board, if applicable, including the required review by FMERA in connection with “use-type” variances;
  - iv. a confirmation that there is no evidence of areas of concern (**“AOC”**) or a Final Remediation Document issued to Purchaser by either the New Jersey Department of Environmental Protection (**“NJDEP”**) or Purchaser’s licensed site remediation professional that documents that the Property has been remediated and which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2;
  - v. such permits or approvals as may be needed from the NJDEP which may include, but are not limited to, sewer and water extension permits, stream encroachment permit, and fresh water wetlands permit, and any approvals or

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

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

- e. “**ALTA Survey**” shall mean a comprehensive boundary survey that adheres to the national standards adopted by the American Land Title Association and National Society of Professional Surveyors.
- f. “**Approval Costs**” shall mean all costs and expenses including, without limitation, attorneys’, consulting, engineering, and application fees associated with obtaining All Approvals.
- g. “**Approval Period**” shall be twelve (12) months commencing upon the later to occur of (1) completion of the Due Diligence Period, or (2) adoption of the Reuse Plan Amendment as contemplated by Section 7(f) below, in which Purchaser will diligently seek to obtain All Approvals.
- h. “**Approval Extension Period**” shall be as defined in Subsection 7(c)(i).
- i. “**Army**” means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- j. “**Army Quitclaim Deed**” means the quitclaim deed that FMERA received from the Army and recorded with the Monmouth County Clerk on June 30, 2014 in Book OR-9070 at Pages 9803 et seq. attached hereto as **Exhibit D**, whereby the Army conveyed all right, title and interest to the Property to FMERA, subject to the terms, conditions, covenants and restrictions set forth in the Army Quitclaim Deed.
- k. “**Boundary Survey**” is a means to formally define the boundaries of a property, showing the corners of a parcel of land described in a deed, attached hereto as **Exhibit B**.
- l. “**Capital Investment**” means demolition & site work, off-site improvement costs, construction costs, labor, and all other costs included in construction of the Project, exclusive of Property acquisition and the costs of obtaining All Approvals.
- m. “**Certificate of Completion**” means a document issued by FMERA constituting a recordable, conclusive determination of the Completion of the Project and satisfaction

and termination of this Agreement and the Declaration of Covenants with respect to the Project pursuant to N.J.A.C. 19:31C-3.24(f).

- n. **“Certificate of Occupancy”** means a document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed and will be used in compliance with all applicable municipal codes and ordinances.
- o. **“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended.
- p. **“CERCLA Covenants”** means those certain covenants required by CERCLA which are contained in the Army Quitclaim Deed.
- q. **“Closing”** shall mean the transfer of the Property, or portion thereof in accordance with this Agreement, from the Seller to the Purchaser and the transfer of the Purchase Price, or portion thereof in accordance with this Agreement, from the Purchaser to the Seller which shall occur after the satisfaction or the waiver of the Conditions Precedent to Closing set forth in Section 13.
- r. **“Commence Construction”**, **“Commenced Construction”**, **“Commence the Construction”** or **“Commencement of the Construction”** shall mean the receipt of building permits by the Purchaser and any two of the following items (i.) mobilization of contractors on site, (ii.) demolition of existing structures, if applicable, (iii.) installation of infrastructure on site, (iv.) site work (including grading or other site preparation in advance of installation of Improvements), or (v.) building renovation work.
- s. **“Complete”**, **“Completed”** or **“Completion”** means the issuance of a Certificate of Occupancy by the Municipality for a building to be occupied for the intended commercial use as part of the Project. Thereafter, Purchaser may apply to Seller for a Certificate of Completion subject to the requirements of N.J.A.C. 19:31C-3.24(f), if all other requirements of this Agreement have been satisfied.
- t. **“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Section 13.
- u. **“Deposit”** shall mean collectively the Initial Deposit and Second Deposit described in Section 5 herein.



- v. **“Discharge”** pursuant to N.J.S.A. 58:10-23.11b, as same may be amended, means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.
- w. **“Due Diligence Period”** means the One Hundred and Twenty (120) day period commencing on the later to occur of (1) the Effective Date of this Agreement, or (2) the date on which FMERA delivers to Purchaser a Boundary Survey, if same is not attached hereto as Exhibit B, and ending at five o’clock (5:00) p.m. on the One Hundred and Twentieth (120th) day thereafter, during which the Purchaser upon prior written notice to Seller, at its sole cost and expense, may investigate the Property to determine whether the as-is condition of the Property is satisfactory to the Purchaser. The Due Diligence Period may be extended with the written approval of FMERA for two (2) additional thirty (30) day extensions if necessary to complete environmental investigations provided Purchaser is proceeding diligently and in good faith.
- x. **“EDC Agreement”** shall mean the Agreement between the Army and FMERA, dated June 25, 2012 , which sets forth the terms by which the Army conveyed portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA acquired same from the Army.
- y. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement, if no date is set forth in the introductory paragraph, the Effective Date shall mean the date upon which the last party to sign this Agreement executes this Agreement.
- z. **“Environmental Carve-out Parcel 21”** or **“ECP 21”** shall mean the portion of the Property (as depicted on **Exhibit B**) that the Army will convey to Seller upon receipt of the Final Remediation Documents from the New Jersey Department of Environmental Protection and Army’s issuance of a Finding of Suitability to Transfer.
- aa. **“Environmental Laws”** or **“Environmental Law”** shall mean each and every applicable federal, state, county or municipal environmental and/or health and safety statute, ordinance, rule, regulation, order, code, directive or requirement.

- bb. “Escrow Agent”** shall mean the attorney or law firm designated by FMERA as outside counsel for purposes of this transaction and is responsible for holding all deposit monies.
- cc. “Final Remediation Document”** pursuant to N.J.S.A. 58:10-23.11b, as it may be amended, means a no further action letter (“**NFA**”) issued by the NJDEP pursuant to N.J.S.A. 58:10B-1 et seq., or a response action outcome (“**RAO**”) issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.
- dd. “Finding of Suitability to Transfer” or “FOST”** means the document issued by the Army, dated August 13, 2013. The purpose of the FOST is to document the environmental suitability of the Property for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST includes the CERCLA Notice, Covenant and Access Provisions and other Deed Provisions and the Environmental Protection Provisions necessary to protect human health or the environment after transfer of the Property from the Army to FMERA.
- ee. “Fixtures”** means items of property that become so attached to a building or other real property that they become a part of it. They include such items as fireplaces, patios and built-in shelving.
- ff. “Force Majeure”** shall mean the failure or delay of performance by Seller or Purchaser of any provision of the Agreement by reason of the following: labor disputes, strikes, picket lines, boycott efforts, war (whether or not declared), riots, moratorium regarding sewer, water or any other utilities, litigation filed against either Seller or Purchaser affecting the Property, pandemic; epidemic; any global or local public health emergency of disease outbreak (including without limitation, any of the conditions listed above that may subsequently arise under the COVID-19 (a/k/a the 2019 Novel Coronavirus) outbreak or any similar disease(s), or acts of God.
- Notwithstanding the above, the Purchaser acknowledges that pursuant to the Executive Orders 103, 119, 138, 151 (2020) New Jersey is presently under a declared state of emergency. At the time that this Agreement is executed, Purchaser affirms that it has the ability to complete the Project described in this Agreement.
- gg. “Hazardous Substances”** means all substances set forth in N.J.A.C. 7:1E-1.7 as same may be amended from time to time.

- hh. **“Improvements”** shall mean the buildings, fixtures and structures located on the Property.
- ii. **“Interested Parties”** means Purchaser’s Mortgagee, Purchaser’s Lender and/or Purchaser’s Tax Credit Investor.
- jj. **“Jobs Report”** means the periodic reports to be provided by the Purchaser to the Seller as required by Subsection 7(e)(i) herein that provides the Seller with information concerning the number of temporary and permanent jobs created by the Purchaser during the construction of the Project and within a certain time period after Completion of the Project as further described in Subsection 7(e)(i).
- kk. **“Municipality”** shall mean the Borough of Tinton Falls, in the County of Monmouth, State of New Jersey.
- ll. **“Non-Appealable Final Approval”** shall mean an Approval where the time to challenge or appeal the grant or denial of the Approval or a term or condition of the Approval that is before any administrative body or court of law has expired, and no challenge or appeal is pending. The term shall also mean an Approval decided after a challenge or appeal has been filed where the challenge or appeal has been decided in Purchaser’s favor, and all terms and conditions contained in the Approval are acceptable to the Purchaser in its reasonable discretion.
- mm. **“Person”** means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, government authority, or other entity of whatever nature.
- nn. **“Personal Property”** means property that is movable and is not affixed to or associated with the land.
- oo. **“Project”** the Project is as described herein at Subsection 7(b) and depicted in the conceptual site plan attached hereto as **Exhibit A** (“**Conceptual Site Plan**”).
- pp. **“Property”** shall mean the land as described and defined in Section 4 of this Agreement and as depicted and described in the Boundary Survey by metes and bounds description located in **Exhibit B**.
- qq. **“Purchaser”** shall mean RWJ or its authorized assigns or successors pursuant to Section 27.

- rr. **“Purchase Price”** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Section 5.
- ss. **“Purchaser’s Utility Obligation”** shall mean the Purchaser’s obligation to undertake infrastructure improvements as defined in Section 47.
- tt. **“Reuse Plan Amendment”** means a final and unappealable amendment to the Fort Monmouth Reuse and Redevelopment Plan adopted by FMERA pursuant to N.J.A.C. 19:31C-3.27(c).
- uu. **“Reversion Cure Period”** shall mean ninety (90) days after Seller’s written notice of Seller’s intent to exercise its right of reversion during which the Purchaser and/or Interested Parties shall have the opportunity to cure.
- vv. **“Reversion Purchase Price”** shall mean the cash to Seller amount on the HUD-1 Settlement Statement/Closing Statement executed at closing.
- ww. **“Subsequent Closing”** shall mean the Closing of ECP 21 occurring after the initial Closing.
- xx. **“Seller’s Net Sale Proceeds”** shall mean the entirety of sales proceeds net of NJEDA working capital loan payoff, if applicable, and homeless trust fund payments.
- yy. **“Seller’s Utility Obligation”** shall mean the Seller’s obligation to undertake infrastructure improvements as defined in Section 47.
- zz. **“Toll”**, **“Tolled”** or **“Tolling”** shall mean a period of time during which all time frames and obligations of Purchaser or Seller as set forth in this Agreement are suspended in accordance with the terms of this Agreement and which suspension of time frames and obligations shall continue until the event causing the Tolling is resolved to the reasonable satisfaction of the Party seeking the benefit of a Tolling period.

### **3. Purchase and Sale Agreement.**

Subject to the terms and conditions set forth in this Agreement and the performance by the Parties of all of the obligations hereunder, the Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to purchase and acquire from Seller, the Property. The Seller will sell and convey to the Purchaser the Property in its as-is condition, which consists of: (a) the land and all

the buildings, Fixtures and other improvements on the land; (b) all of the Seller's rights relating to the Property; and (c) all Personal Property specifically included in this Agreement.

**4. The Property.**

The approximately 31.25 acre parcel that is formally identified as a portion of Block 101, Lot 1, that is located along Pearl Harbor Avenue and Pinebrook Road, and that is depicted in greater detail on the Boundary Survey, Block \_\_\_\_\_, Portion of Lot \_\_\_\_\_, prepared by \_\_\_\_\_, dated \_\_\_\_\_, attached as **Exhibit B**. The Property is improved with twelve (12) structures including Buildings 2627, 2628, 2629, 2704, 2630, 2631, 2632, 2707, 2709, 2710, 2713 and 2719 that are to be demolished in connection with the Project. The redevelopment and use of the Property by Seller is subject to N.J.A.C. 19:31C-3.1 et seq. The Property includes an approximately 2.1 acre former landfill to be remediated by the Army to CERCLA standards. The Property will be subdivided by deed from Seller to Purchaser. \

**5. The Purchase Price.**

Subject to any adjustments as called for in Section 24, the price that the Purchaser will pay the Seller as consideration for the Property is Five Million One Hundred Thousand Dollars (\$5,100,000 ) as follows:

At the time of submission of its offer to purchase, Purchaser deposited an <b>Initial Deposit</b> with the Seller and the Seller has transferred said Initial Deposit, with interest, to the Escrow Agent, in the amount of:	\$255,000
The <b>Second Deposit</b> shall be deposited with Escrow Agent by Purchaser upon the execution of this Agreement by the Parties, and shall be transferred, with interest, to the Escrow Agent, in the amount of:	\$510,000
Balance to be paid at closing of title, by wire transfer, in cash or by certified check	\$4,335,000

**6. Purchaser Financially Able to Close.**

The Purchaser represents that it has or will have sufficient cash available at Closing to complete the purchase without financing. The Closing shall not be contingent upon the Purchaser

or any other Person obtaining financing to pay the Purchase Price. Notwithstanding Purchaser's representation that it has or will have sufficient cash available at Closing to complete the purchase without financing, Purchaser may in Purchaser's sole discretion choose to seek and obtain financing to complete the purchase.

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

**a. Capital Investment.** Purchaser's total Capital Investment is estimated at One Hundred Million Dollars (\$100,000,000). Purchaser shall render progress reports annually to FMERA following Commencement of Construction as to its cumulative Capital Investment expenditures.

**b. Redevelopment Project.**

**i.** Purchaser represents that it is purchasing the Property with the intent to construct the Project, which consists of the demolition of existing improvements, and (A) construction of a three-story Medical Office Building anticipated to have be approximately 121,125 GSF; (B) 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; (C) 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 (which shall initially consist of storage space for equipment related to the active recreational facilities, but may be expanded in the future to include bathrooms, locker rooms or other similar amenities at Purchaser's sole discretion); (D) passive recreation, including a community walking / nature trail that enhances walkability and interconnectedness of the Tinton Falls section of Fort Monmouth (which shall include a portion of ECP 21), and; (E) open space to benefit the surrounding area, (G) additionally 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. (the "Project"). 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; provided, that (1) the Open Space Deed Restriction shall run only to the benefit of FMERA, and not directly to the general public, and (2) the Open Space Deed Restriction shall state that FMERA shall have the ability to terminate and discharge the Open Space Deed Restriction upon RWJ’s request which shall be considered in the Board’s sole discretion.

The Purchaser’s Conceptual Site Plan for the Project is attached hereto as **Exhibit A**. The Purchaser’s site plan and subdivision plan are subject to (i) Seller’s Mandatory Conceptual Review and (ii) the planning board review process of the Borough of Tinton Falls. The Project may be amended upon mutual agreement of Seller and Purchaser if Purchaser is unable to obtain the same, subject to FMERA Board approval and Reuse Plan Amendment, as applicable.

**ii. Purchaser shall comply with the following Project schedule:**

1. Purchaser will Commence the Construction of the Project no later than ninety (90) days after Closing.
2. Purchaser will Complete Construction of the Project no later than twenty-six (26) months from Closing.
3. Notwithstanding the above, construction of the roadway as defined in Section 7(b)(i)(g) shall be completed within fifteen (15) months from Closing.

**iii. It shall be a default under this Agreement for Purchaser to fail to Commence the Construction or Complete the Project timely, as required herein.**

**iv. The provisions of this Subsection 7(b) shall survive Closing and run with the land.**

**c. Project Approvals.**

- i. Purchaser shall obtain All Approvals within the Approval Period. In the event that Purchaser is unable to obtain All Approvals within the Approval Period, Seller may grant, at its sole discretion, an extension of the Approval Period for an additional six (6) month period(s) (“Approval Extension Period”) which**

shall be granted if Seller determines that the Purchaser is diligently and in good faith pursuing All Approvals. Any additional Approval Extension Period shall run from the expiration of the Approval Period. Despite anything to the contrary herein, Purchaser may elect to waive receipt of All Approvals within the Approval Period or Approval Extension Period and close on the Property without said Approvals as further described in Subsection 13(a)(ii).

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

**d. Financial Assurances and Guarantees.**

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

**e. Job Creation; Security.**

- i. Purchaser covenants that Purchaser will create a total of three hundred (300) part-time and/or full-time jobs within twelve (12) months of the Completion of the Project. The Purchaser shall be obligated to provide the Seller with a Jobs Report within twelve (12) months after Completion of the Project. To the extent the Purchaser fails to achieve the required creation of part-time and/or full-time jobs at the Property within the required time period after the Completion of



Project, then on that date it shall be liable to pay to the Seller one thousand five hundred (\$1,500) dollars for each part-time and/or full-time job not created. It is understood and agreed that the aforesaid obligation does not apply to the creation any of the construction-related part-time and/or full-time temporary jobs. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice to Purchaser of failure to achieve the required creation of jobs pursuant to this Section. Purchaser's total obligation shall not exceed Four hundred and fifty thousand (\$450,000) dollars total.

- ii. Prior to Closing, Purchaser shall secure its obligation to create the required number of full-time equivalent permanent jobs at the Property, or pay Seller the amount per job not created, through the granting of the Job Creation Promissory Note in a form substantially similar to **Exhibit C**. It is agreed and understood that upon receipt of notice of creation of the required full-time equivalent permanent jobs as set forth above or receipt of the payment of any monies for jobs not created, then Seller shall, within thirty (30) days of notice of creation or payment, release the bond, return the deposit or cancel or otherwise discharge the Job Creation Promissory Note which shall thereafter be null and void.
- iii. The provisions of this Subsection 7(e) shall survive Closing.

**f. Reuse Plan Amendment**

- i. Purchaser shall provide a refined version of the Conceptual Site Plan attached hereto as **Exhibit A** along with a detailed memo outlining the proposed changes to the Reuse Plan required to permit the development of the Project as proposed by the Purchaser (together the refined Conceptual Site Plan and memo are the "Final Conceptual Site Plan") no later than forty-five (45) days after the expiration of the Due Diligence Period. FMERA shall provide to Purchaser a draft Reuse Plan Amendment based upon Purchaser's Final Conceptual Site Plan within thirty (30) days of receipt of Purchaser's Final Conceptual Site Plan. Purchaser shall provide comments to FMERA on the draft Reuse Plan Amendment within seven (7) days of receipt of same. FMERA's planner shall provide a final draft Reuse Plan Amendment to FMERA and Purchaser

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

#### **8. Declaration of Covenants.**

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

- i. The uses of the Property shall be limited to those uses permitted pursuant to the Reuse Plan, as amended.
- ii. Purchaser, as the approved redeveloper, will Commence the Construction and Complete the Project within the period of time established in Subsections 7(b)(ii)(1) and (2) of this Agreement; and
- iii. Purchaser, as the approved redeveloper, will not sell, lease or transfer the Property, the Project or this Agreement prior to the Completion of the Project without the written consent of FMERA, except as set forth in Section 27 of this Agreement.

**9. Reversion to Seller.**

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

- a. Seller agrees to provide Purchaser and Interested Parties with a Reversion Cure Period. During the Reversion Cure Period, any of the Interested Parties may either (a) cure the default identified by the Seller in their default notice or (b) agree with Seller on a proposal which must be acceptable to both Parties in both Parties' reasonable discretion, for one or more of the Interested Parties to cure Purchaser's default beyond the Reversion Cure Period. If following the Reversion Cure Period, the default is neither cured nor have the Parties agreed upon a proposal to cure the default, then Seller may move forward with its right of reversion.
- b. Should Seller exercise its right of reversion, Seller shall pay Purchaser a reversion purchase price (the "**Reversion Purchase Price**"). Any amount of the Reversion Purchase Price paid by Seller shall be applied first to reduce any outstanding balance of any mortgage or lien imposed on the Property by Purchaser. Purchaser shall, at no

additional cost to Seller, convey ownership of all plans, studies, approvals, etc., along with its rights to the Property.

- c. Purchaser or its successors and assigns may request that the Seller execute a release evidencing the termination of Seller's right of reversion on any portion of the Property that has been Completed upon the presentation of (i) a valid Certificate of Completion and (ii) a form of release that shall be recorded at the sole cost and expense of the Purchaser or its successors and assigns.
- d. The provisions of this Section 9 shall survive Closing and/or termination of this Agreement and run with the land.

#### **10. Prevailing Wage.**

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

#### **11. Title and Survey Investigation.**

- a. As of the Effective Date, Seller has provided Purchaser with the Boundary Survey. Prior to Closing, Seller will cause the Boundary Survey to be certified to Purchaser, Purchaser's attorney, the title company and such additional parties as may be reasonably requested by Purchaser, unless Purchaser elects to obtain an ALTA Survey as described in Subsection 11(c).
- b. Seller agrees to deliver title to the Property that is good, marketable, fee simple title, valid of record and insurable at regular rates.
- c. Purchaser shall obtain and deliver a title commitment from the title company along with a list of title objections identified by Purchaser to Seller ("**Title Objections**") and may obtain an ALTA Survey no later than forty-five (45) days from the later of the Effective Date or the date of receipt of the Boundary Survey. Purchaser shall be required to furnish its Title Objections to FMERA not later than five (5) business days following receipt of such Title Commitment. Not later than ten (10) days after Seller

receives the Title Objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either (i) terminate this Agreement within thirty (30) days of receipt of Seller's response (or within thirty (30) days of Seller's failure to respond after the aforementioned ten (10) day period), and receive a refund of its Deposit or (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the Title Objections by the Purchaser and the Seller shall have no further obligation to cure the Title Objections either prior to or at Closing.

- d. Purchaser shall have the further right to order a run-down title examination(s) at any time prior to Closing, at Purchaser's cost and expense, and to submit to Seller any new objections to matters which may have arisen since Purchaser's initial title and survey examination ("**New Objections**") no later than ten (10) days after Purchaser receives the New Objections. Not later than ten (10) days after Seller receives the New Objections, Seller shall notify Purchaser which of the New Objections, if any, Seller shall cure prior to or at Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either (i) terminate this Agreement within thirty (30) days of receipt of Seller's response (or within thirty (30) days of Seller's failure to respond) or (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the New Objections by the Purchaser and the Seller shall have no further obligation to cure the New Objections either prior to or at Closing.
- e. If Seller fails to meet the requirements of Subsection 11(b), or if Seller has agreed to cure a title objection pursuant to Subsection 11(c) and fails to do so, or if Purchaser has New Objections and/or survey objections as a result of its run-down title examination pursuant to Subsection 11(d) and Seller fails to cure such objections, then Purchaser may:

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

**12. Due Diligence Period.**

- a. Purchaser and its officers, employees, agents, contractors, or licensees shall have the right, during the Due Diligence Period, and at all times during the term of this Agreement, to access the Property, to inspect the Property and to investigate all matters relating thereto, including, but not limited to, existing zoning requirements, the physical condition of the Property, the environmental condition of the Property and its environs, and any other matters Purchaser deems relevant to its decision to purchase the Property.
- b. Purchaser may terminate this Agreement in its sole, absolute and unfettered discretion by delivering written notice of such termination to the Seller prior to five o'clock (5:00) P.M. on the last day of the Due Diligence Period without penalty, and receive a full refund of the Initial and Second Deposits, and all interest accrued thereon. If Purchaser terminates this Agreement for any reason after the expiration of the Due Diligence Period, Seller shall be entitled to retain the Initial Deposit; provided, that if this

Agreement is terminated as a result of a Seller default, Purchaser shall be entitled to a full return of its Initial Deposit and Second Deposit.

- c. Purchaser and its officers, employees, agents, contractors, or licensees shall provide Seller with proof of the following insurances prior to being provided access to the Property:
  - i. **Comprehensive General Liability Policy** (including insurance with respect to owned or operated motor vehicles which may be provided under a separate policy) as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an additional insured endorsement (broad form) for contractual liability. Limits of liability shall be maintained at the level of Five Million Dollars (\$5,000,000.00) per occurrence of bodily injury, death and property damage liability except that automobile liability may be at a minimum of One Million Dollars (\$1,000,000.00) per occurrence of bodily injury, death and property damage liability. Seller shall be named an additional insured on this policy; and
  - ii. **Worker's Compensation and Employer's Liability Insurance** applicable to the Laws of the State of New Jersey with limits of not less than One Hundred Thousand Dollars (\$100,000.00) per occurrence for bodily injury liability and One Hundred Thousand Dollars (\$100,000.00) occupational disease per employee with an aggregate limit of Five Hundred Thousand Dollars (\$500,000.00) occupational disease.
- d. If, at or before Closing, Purchaser elects to terminate this Agreement and not purchase the Property, Purchaser shall repair any damage caused by its investigations and shall restore the Property to substantially the same condition as existed immediately prior to such investigations. Purchaser hereby indemnifies and holds Seller harmless from any liability to the extent related to any negligent act or omission of Purchaser or Purchaser's officers, employees, agents, contractors, or licensees in the performance of any and all activities conducted on the Property by Purchaser until Closing, unless such liability is the result of Seller's gross negligence or intentional acts or omissions.

**13. Conditions Precedent to Closing.**

- a.** Closing is subject to and conditioned upon the following conditions, which are agreed by the Parties to be included for the protection of the Parties:
  - i.** Approval of Purchaser as redeveloper of the Property by the NJEDA Board;
  - ii.** The receipt by Purchaser of All Approvals within the timeframes set forth in Subsection 7(c). Despite anything to the contrary herein, Purchaser may elect to waive All Approvals and close on the Property without said Approvals, provided that Purchaser will still be required to obtain a Mandatory Conceptual Review approval of the Project by FMERA prior to (or concurrent with) seeking preliminary and final site plan approval from the Borough with the understanding that any such waiver will not Toll or delay in any way the Purchaser's obligation to comply with the Project Schedule set forth in Section 7 herein;
  - iii.** Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of Closing and shall have cured all defaults;
  - iv.** Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 11; and
  - v.** Seller shall have obtained a Reuse Plan Amendment for the Property pursuant to Subsection 7(f) hereof.
- b.** The Parties mutually agree as follows concerning the Conditions Precedent to Closing:
  - i.** Each Party shall use its best efforts to perform all conditions required by this Agreement diligently prior to or as of Closing and each Party shall have cured any of its respective defaults prior to Closing or at Closing; and
  - ii.** Either Party may waive any Conditions Precedent to Closing that is specifically for such Party's benefit or may waive the cure of the other Party's default at any time prior to Closing or at Closing, subject to the terms of Subsection 13(a)(ii). Such waiver shall be in writing and acknowledged by both Seller and Purchaser.



**14. Time and Place of Closing.**

- a. The Closing shall occur no later than thirty (30) days after satisfaction or waiver of the Conditions Precedent to Closing as detailed in Section 13, or ten (10) days after all title and environmental obligations are satisfied, whichever is later (“**Closing Date**”).
- b. In the event that FMERA has not obtained title ECP 21 by the Initial Closing, FMERA will convey ECP 21 to the Purchaser at a Subsequent Closing. The Subsequent Closing will occur within forty-five (45) after FMERA receives title to ECP 21 from the Army.
- c. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and the title company:
  - i. quitclaim deed;
  - ii. entity resolution;
  - iii. tax and utility bill adjustments, if any;
  - iv. Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA);
  - v. Bill of Sale for any Personalty;
  - vi. IRS Form 1099;
  - vii. a post-Closing adjustments letter whereby the Parties agree to readjust the pro-rations should any error or mistake be discovered within twelve (12) months of Closing;
  - viii. EDA Mortgage Release;
  - ix. Jobs Promissory Note; and
  - x. such other documentation as reasonably requested by the Title Company to complete Closing.
- d. At Closing, Purchaser shall deliver the Purchase Price and a title closing statement.
- e. At Closing, Purchaser shall pay to Seller the balance of the Purchase Price due at Closing in accordance with Section 5. Purchaser shall make payment at Purchaser’s option by either certified check or attorney trust account check or with the consent of Seller by wire transfer.

**15. Transfer of Ownership.**

Upon receipt of payment of the balance of the Purchase Price at Closing, the Seller shall transfer ownership of the Property to the Purchaser via a properly executed quitclaim deed. The quitclaim deed shall be in a form reasonably acceptable to Purchaser and the title company. The quitclaim deed between the Parties shall include a metes and bounds description of the Property being transferred that shall be based upon the Boundary Survey. The quitclaim deed between the Purchaser and Seller shall be subject to all notices, CERCLA Covenants, covenants, access provisions, deed provisions and environmental protection provisions recorded upon the Property as set forth in the Army Quitclaim Deed, and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24.

**16. Personal Property and Fixtures.**

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

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

**17. Physical Condition of the Property.**

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

**18. Acknowledgment and Covenants Regarding FOST.**

Purchaser and Seller agree and acknowledge that the Army is responsible for the environmental investigation and remediation of the Property, as required by applicable law. The Purchaser acknowledges that Seller has provided Purchaser with a link to the FOST on Seller’s website and Purchaser has had the opportunity to download a copy of the FOST. The Purchaser

and Seller agree that to the extent that the notices, covenants, access provisions, deed provisions and environmental protection provisions concerning the Property found in the FOST are contained in the Army Quitclaim Deed, then such terms shall run with the land. Purchaser, its Affiliates, assignees, corporate successors, heirs, devisees and personal representatives covenant and hold harmless the Seller, and shall make no claim against the Seller, its successors and assigns, whether based upon strict liability, negligence or otherwise, concerning noise, environmental, land use, pollution, vibrations, or any similar problems, for any damage, direct or consequential, to any person or persons, or to property or otherwise, or for any other relief, which may arise from the condition of the Property or the fact that the Property is subject to the FOST and the Army Quitclaim Deed.

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

**19. Risk of Loss.**

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

**20. Environmental Matters.**

- a. Purchaser and Seller acknowledge that pursuant to CERCLA, the Army will retain responsibility for any Army caused environmental contamination (other than mold, asbestos containing materials, lead-based paint and commercially-applied pesticides

and termiticides) that may be present on the Property as of the date of the Army Quitclaim Deed and as otherwise set forth in the RFOTP. The Parties acknowledge that the quitclaim deed between Seller and the Purchaser shall contain the CERCLA Covenants contained in the Army Quitclaim Deed and the FOST for the Property. The Seller shall not bear any responsibility or liability to the Purchaser or its successors or assigns for the presence of mold, asbestos containing materials, lead-based paint or commercially applied pesticides and termiticides on the Property as of or after the Closing. Purchaser shall be solely responsible for the proper disposal of any mold, asbestos containing materials, lead-based paint or commercially applied pesticides encountered during the renovation or demolition of the building(s) and improvements on the Property, if applicable.

- b.** If Seller receives notice from any Person at any time prior to the Closing that any Discharge of a Hazardous Substance has occurred on the Property which has not already been documented in the FOST, then Seller shall provide Purchaser with notice of the Discharge on the Property within three (3) days of Seller receiving notice of the Discharge. Seller shall also advise Purchaser within thirty (30) days of receiving the notice of Discharge whether Seller or the Army or other responsible third party shall remediate such Discharge and obtain a Final Remediation Document. If Seller advises Purchaser that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge and obtain a Final Remediation Document, then Purchaser shall have thirty (30) days from the receipt of this notice from the Seller to elect to either (i) terminate this Agreement and receive a full refund of the Deposit, and all interest accrued thereon, or (ii) proceed to Closing under this Agreement. If Purchaser fails to notify Seller by written notice of its election under the preceding sentence within thirty (30) days of receipt of notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge, then the Purchaser shall have waived the right to terminate the Agreement due to the Discharge. If Purchaser waives the right to terminate the Agreement after receiving notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge of a Hazardous Substance on the Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at Closing.

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

## **21. Termination of Agreement.**

If this Agreement is legally and rightfully terminated in accordance with any provision herein (excluding termination resulting from a default by either Party as specified in Sections 22 and 23) or by mutual agreement of the Parties, the Parties shall be released from any liability to each other and Seller shall direct the Escrow Agent to return the Initial Deposit (if such termination occurs prior to the expiration of the Due Diligence Period) and Second Deposit, and all interest accrued thereon, to the Purchaser and that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement. In accordance with Subsection 12(b), Seller shall be entitled to receive the Initial Deposit if the Agreement is terminated by Purchaser for any reason after the expiration of the Due Diligence Period.

## **22. Default by Seller.**

- a. The following occurrences shall be a default by Seller of the terms of this Agreement:
  - i. Failure to convey the Property in accordance with the terms of this Agreement.
- b. The Purchaser agrees that prior to declaring the Seller in default as described in Subsection 22(a), Purchaser shall provide Seller with sixty (60) days advance written

notice of such default and Seller shall have the right to cure such default within said sixty (60) day period.

- c. In the event that Seller does not cure said default in said sixty (60) day period then the Purchaser may terminate this Agreement at which time the Escrow Agent shall return the Purchaser's Initial and Second Deposits and all interest accrued thereon,. Purchaser acknowledges that the remedies set forth in this Subsection 22(c) are Purchaser's sole and exclusive remedies in the event of any breach of or default under this Agreement by Seller or the inability or unwillingness of Seller to consummate the Closing as provided in this Agreement and the Parties shall be free of liability to each other, except that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.
- d. The terms of this Section 22 shall survive the Closing and/or any termination of this Agreement for ninety (90) days.

**23. Default by Purchaser.**

- a. The following occurrences shall be a default by Purchaser of the terms of this Agreement prior to Closing:
  - i. Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement as set forth in this Agreement.
  - ii. Purchaser has:
    - 1. applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets or if a custodian is legally appointed with or without consent of Purchaser; or
    - 2. made a general assignment for the benefit of creditors or filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or
    - 3. filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding or a petition in bankruptcy shall have been filed against Purchaser, and shall not have been dismissed for a period of ninety (90) consecutive days; or

4. suspended the transaction of its usual business.
- iii. If:
    1. an Order for Relief is entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code;
    2. an Order, judgment or decree is entered, without the application, approval or consent of Purchaser, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Purchaser, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days.
  - iv. Purchaser has abandoned or substantially suspended any pursuit of All Approvals. If Purchaser fails to obtain All Approvals in advance of the expiration of the Approval Period (as the same may be extended), Seller shall be entitled to terminate this Agreement and shall be entitled to receive the Initial and Second Deposits and all interest accrued thereon. However, if Seller determines that the Purchaser has pursued All Approvals diligently and in good faith but fails to obtain them, FMERA shall refund Purchaser's Second Deposit. Notwithstanding anything in this Section to the contrary, this Subsection 23(a)(iv) shall survive Closing in the event that receipt of All Approvals is waived as a Condition Precedent to Closing as detailed in Section 13.
  - v. The Purchaser places any unauthorized encumbrance or lien on the Property prior to Closing, or shall suffer any levy or attachment to be made on the Property prior to Closing, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Property prior to Closing.
  - vi. Purchaser fails or refuses to consummate the Closing (where no default by Seller has occurred under the Agreement and all Conditions Precedent to Closing have been satisfied or waived as detailed in Section 13).
- b. The Seller agrees that prior to declaring the Purchaser in default as described in Subsection 23(a), Seller shall provide Purchaser with sixty (60) days advance written notice of such default and Purchaser shall have the right to cure such default within said sixty (60) day period. In the event that Purchaser does not cure said default in said

sixty (60) day period then the Seller may terminate this Agreement at which time the Escrow Agent shall pay the Seller the Initial and Second Deposits and all interest accrued thereon as liquidated damages. Seller acknowledges that the remedies set forth in this Subsection 23(b) are Seller's sole and exclusive remedies (except as provided for in Section 9 herein) in the event of any breach of or default under this Agreement by Purchaser prior to Closing or the inability or unwillingness of Purchaser to consummate the Closing as provided in this Agreement.

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

**24. Adjustments at Closing/Assessments for Municipal Improvements.**

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



- iii. If the improvement is completed at or before Closing, but the amount of the charge/assessment has not been determined by the Municipality, the Seller will pay an estimated amount at Closing (unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such assessments). When the amount of the charge is finally determined by the Municipality, the Seller will pay any deficiency to the Purchaser (if the estimate proves to have been too low), or the Purchaser will return any excess to the Seller (if the estimate proves to have been too high).

**25. Possession.**

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

**26. Liens.**

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

**27. Assignment; Assignment of Interest.**

- a. Seller shall have the right to assign this Agreement without the consent of Purchaser to the State of New Jersey or any division or instrumentality thereof.
- b. Purchaser shall not have the right to assign this Agreement, or any part thereof, prior to the Completion of the Project without first obtaining the express written consent of the Seller, which consent shall not be unreasonably withheld provided that:
  - i. the assignee is an Affiliate of the Purchaser;

- ii. the assignee is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions;
  - iii. the assignee has demonstrated to the satisfaction of FMERA that the potential assignee has the financial ability to meet the funding requirements of the assignee's Project;
  - iv. the assignee provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement, including but not limited to any and all redevelopment obligations;
  - v. the assignment will not delay the Completion of the Project; and
  - vi. the assignee provides FMERA with satisfactory proof of the managerial experience and project experience of the assignee with projects of similar size and magnitude to the assignee's project;
- c. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement, or any part thereof to an Affiliate Urban Renewal Entity created to undertake the Purchaser's Project without first obtaining the Seller's consent provided that the Affiliate Urban Renewal Entity:
  - i. is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions; and
  - ii. provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement, including but not limited to any and all redevelopment obligations.
- d. Except as provided in Section 27(c), prior to the Completion of the Project, any stockholder, partner or member holding a controlling interest in Purchaser at the time of the Effective Date shall not, without the express written consent of the Seller, be permitted to transfer an interest in Purchaser that would result in such stockholder, partner or member no longer having Control over Purchaser. Seller shall not unreasonably withhold its consent to such a transfer provided that the assignee or transferee, as applicable, provides the materials, to Seller's satisfaction, within

Subsection 27(b)(ii)-(vi). The foregoing restriction on transfers shall not, however, apply to any publicly traded company.

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

**28. Successors and Assigns.**

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

**29. Entire Agreement.**

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

**30. Governing Law.**

- a. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of New Jersey without respect to any principles of conflict of law, both as to interpretation and performance. Seller and Purchaser waive any statutory or common law presumption which would serve to have this document construed in favor and against either party as the drafter.
- b. The Parties agree that any and all claims made or to be made against the Seller based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The Parties also agree that any and all claims for damages made or to be made against the Seller based in tort law, including

but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

**31. Partial Invalidity.**

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

**32. Headings.**

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

**33. No Partnership or Joint Venture.**

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

**34. No Third-Party Rights or Benefits.**

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

the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).

**35. No Waiver.**

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

**36. Time Periods.**

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

**37. Force Majeure.**

Neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of a Force Majeure event or condition. Any extension of the timeframes for performance of obligations set forth in this Agreement for Force Majeure shall be contingent upon the Party claiming a Force Majeure notifying the other Party in writing within thirty (30) days of the occurrence of the event resulting in the failure or delay of performance. The time of performance shall be extended for the period of the delay occurring as a result of the Force Majeure

event; provided, however, that in no event shall the extension of the timeframe exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.

**38. Publication.**

Purchaser and Seller agree to consult with and cooperate with each other on the content and timing of all press releases and other public announcements relating to the transactions contemplated by this Agreement and that Purchaser shall not issue any announcement or statement without the express written approval of Seller as to the text of the announcement.

**39. Recording.**

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

**40. Lis Pendens.**

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

**41. Authority Representations of Purchaser and Seller.**

Purchaser and Seller hereby represent to each other on and as of the date of this Agreement and on and as of the date of the transfer(s) provided for herein, that each have full capacity, right,

power and authority to execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller and Purchaser shall be duly authorized to sign the same on Purchaser's and Seller's behalf and to bind Seller and Purchaser thereto. This Agreement and all documents to be executed pursuant to Seller and Purchaser are and shall be binding upon and enforceable against Seller and Purchaser in accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchase or Seller is bound.

**42. Section Omitted.**

**43. Notices.**

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

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

CC: Riker Danzig Scherer Hyland & Perretti LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07962-1981  
Attention: Scott G. Collins, Esq.

AND

TO: RWJ Barnabas Health, Inc.  
95 Old Short Hills Road  
West Orange, New Jersey 07052  
Attention: William Cuthill, Senior Vice President, Facilities  
Management and Construction

CC: Giordano, Halleran & Ciesla, P.C.  
125 Half Mile Road, Suite 300  
Red Bank, New Jersey 07701-6777  
Attention: Michael Bruno, Esq.

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

**44. Brokerage Commissions.**

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

**45. Counterparts.**

This Agreement may be simultaneously executed in several counterparts, or with counterpart signature pages, and may be delivered by facsimile or electronic mail, it being understood that all



such counterparts or counterpart signature pages, taken together, shall constitute one and the same instrument.

**46. Exhibits.**

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

**47. Utilities.**

- a. Beginning three (3) months after the Effective Date of this Agreement, Purchaser shall be responsible for utility costs and property maintenance expenses associated with the Property regardless of whether the Purchaser has closed on the Property. At Purchaser's election, Purchaser shall either install electric and water meters or disconnect these services within three (3) months of PSARA execution.
- b. During the Due Diligence Period, the Purchaser shall make every effort to ensure that all utilities serving and/or traversing the Property are accounted for in its conceptual development plan.
- c. Purchaser shall be responsible for establishing service connections and accounts with Jersey Central Power & Light Company ("JCP&L"), New Jersey American Water ("NJAW"), New Jersey Natural Gas ("NJNG"), and Tinton Falls Sewer Authority.
- d. Purchaser shall be responsible for coordinating communication services to the Property through a provider of its choosing.
- e. Seller represents to Purchaser that sanitary sewer service is currently inactive, (ii) additional sewer connections are available at the Property boundary, and (iii) water and electric is currently inactive, but available at the Property's boundaries. Purchaser will be responsible for making any needed improvements or upgrades to utility infrastructure within the footprint of the Property as needed for Purchaser's Project. Purchaser shall, at its sole cost and expense, will be required to connect to a water main located adjacent to the Property in Pearl Harbor Avenue/Pinebrook Road, and establish metered electric service with Jersey Central Power & Light Company to their specifications.
- f. A 0.25± acre utility and access easement runs adjacent to the northeast corner of the Property, providing access to the substation from Satellite Drive between Watson Avenue

and the substation, which will be maintained by JCP&L for use by JCP&L. An additional JCP&L easement exists to the north of the Property. Additional Utility easements, existing and proposed, will be established upon formal survey of the Property.

- g. An access easement for the southern roadway is required to benefit the adjacent property. The newly constructed roadway will also need an access easement to benefit the adjacent property owner.
- h. JCP&L has an electrical easement that benefits and provides electrical service to the adjacent parcel. Purchaser may work with JCP&L to relocate this easement so long as electrical service to the adjacent parcel is maintained.
- i. Purchaser shall contribute to off-site utility improvements to the extent required by agreement, statute, ordinance, resolution and as permitted under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq..

**48. Miscellaneous.**

- a. Purchaser shall apply to be a certified retail vendor in the Fort Monmouth Infrastructure District, if and when the District is formed. See NJSA 52:27I-41.
- b. Any furniture, fixtures and equipment (“FF&E”) remaining on the Property as of the execution date of this Agreement will be included in the sale in “as-is where-is” condition.
- c. Seller and Purchaser shall work together in good faith to determine mutually acceptable locations to install Seller’s wayfinding/placebranding signage so long as its located on the Property’s frontage. Seller and Purchaser will identify a location for the wayfinding/placebranding signage during Due Diligence Period..
- d. Upon the expiration of the Due Diligence Period, Purchaser shall erect a Coming Soon sign on the Property at its expense consistent with the attached template which signage will contain information regarding the Project acceptable to both Parties and include the Seller’s branding and logo. The Parties agree that the signage may be updated to include additional information as the Project progresses.
- e. Purchaser and Seller will cooperate in locating stops and appropriate signage on and adjacent to the Property for FMERA’s future jitney bus service.

- f. Purchaser's Project will be the committed commercial development and/or committed open space of a majority of developable acreage that is predominantly consistent with or complementary to the adjacent uses, including light industrial/fabrication, office, healthcare, and/or technology uses.
- g. In addition to the redevelopment of the Property, 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. The design of the roadway will be at the Purchaser's reasonable discretion as long as the roadway is designed to accommodate tractor-trailer traffic leaving the Fabrication Shops parcel and shall include all necessary drainage facilities. If the Purchaser intends to dedicate the roadway as a future right of way, the roadway will be subject to municipal design standards and must be designed accordingly. The Parties agree that the Purchaser shall not be obligated to install any utilities in such road. The road shall be substantially in the location as provided in Exhibit A, which design and location shall be agreed upon by Seller and Purchaser during the Due Diligence Period. Construction of the roadway shall be completed within twelve (12) months of Closing.

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

ATTEST:

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, Seller

\_\_\_\_\_

By:  
Bruce Steadman  
Executive Director

ATTEST:

RWJ BARNABAS HEALTH, INC., REDEVELOPER

\_\_\_\_\_

By: \_\_\_\_\_  
William Cuthill, Senior Vice President,  
Facilities Management and Construction

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by  
^ \_\_\_\_\_, on behalf of the Purchaser.

Attorney

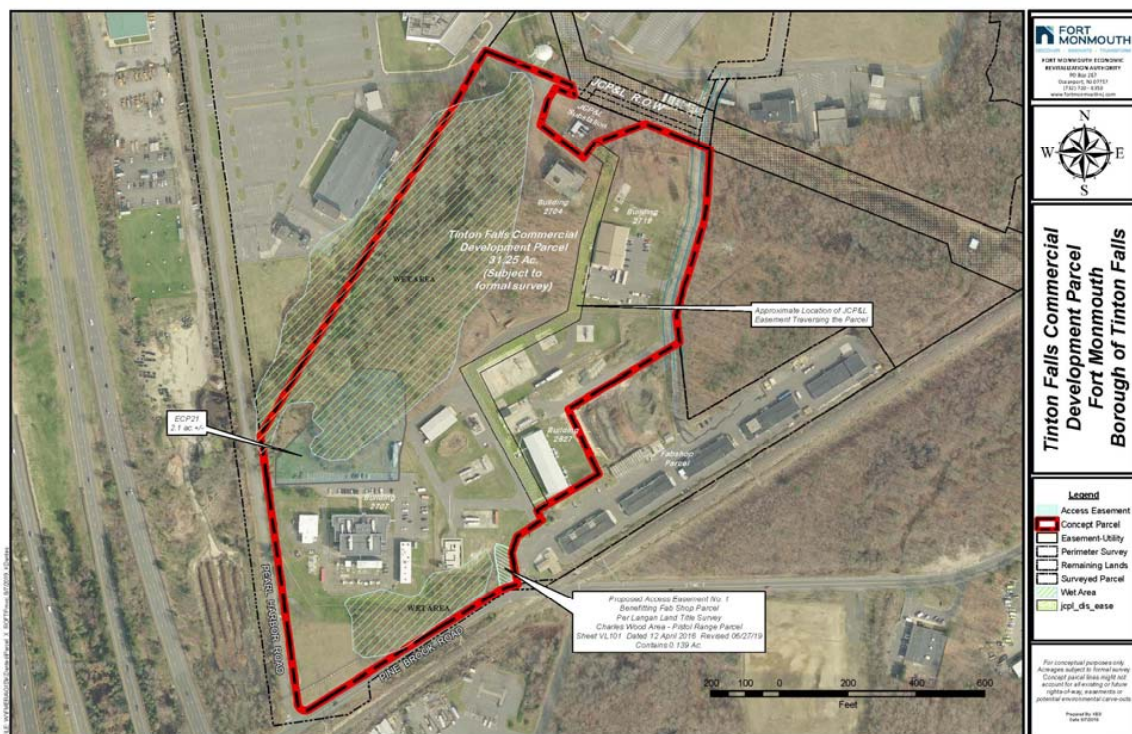
STATE OF NEW JERSEY     )

)

COUNTY OF MONMOUTH    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2018, by Fort Monmouth Economic Revitalization Authority, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey (the “Seller”), pursuant to P.L. 2010, c. 51, by Bruce Steadman, its Executive Director, on behalf of the Company.

^(FMERA’s counsel)\_\_\_\_\_



**BOARD MEMORANDA – FYI ONLY**





**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** September 22, 2021

**SUBJECT:** Credit Underwriting Projects Approved Under Delegated Authority –  
**For Informational Purposes Only**

The following projects were approved under Delegated Authority in August 2021:

**Micro Business Loan Program:**

- 1) Bayonne Eats LLC (PROD-00224476 & 00288812), located in Bayonne City, Hudson County, was formed in 2019 as a full-service restaurant that offers dine-in, take-out, delivery and catering. NJEDA approved a \$22,050 working capital loan and a \$2,450 forgivable loan. Proceeds will be used to cover inventory, utilities and to purchase equipment. Currently, the Company has one employee.
- 2) Little Stars Day Care Center, Inc. (PROD-00224323 & 00288819), located in Ridgefield Park Village, Bergen County, was established in 2003 as a full-service day-care facility catering to children from the age of five months up to thirteen years old. NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to cover payroll and rent expenses. The Company currently seven employees.
- 3) Living on Another Frequency LLC (PROD-00224428 & 00288808), located in South Orange Village, Essex County, was established in 2018 as a fine dining bistro offering unique and traditional menu items from select regions around the world. NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to cover payroll and rent payments. The Company currently has four employees.
- 4) M & J Mechanical LLC (PROD-00228183 & 00295179), located in Union City, Hudson County, operates as a mechanical works handyman business. NJEDA approved a \$37,260 working capital loan and a \$4,140 forgivable loan. Proceeds will be used to purchase equipment. The Company currently has two employees.
- 5) Matal Inc. DBA Accents Dancewear (PROD-00228161 & 00288989) is located in Berkeley Heights Township, Union County. Established in 1994, the Company sells a full line of Dance Wear (including ballet, tap, jazz, hip hop and pointe shoes), Gymnastics Wear and Girl's Swim Wear. NJEDA approved a \$21,600 working capital loan and a \$2,400 forgivable loan. Proceeds will be used to supplement inventory costs. The Company currently has one employee.

- 6) Performance Selling LLC (PROD-00228317 & 00288849) is located in Franklin Township, Somerset County. The Company was formed in 2004, to establish selling processes to help small to medium size businesses and entrepreneurs build, grow and improve their sales teams to meet and exceed their business goals. NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to cover payroll, rent and utility expenses. Currently, the Company has one employee.
- 7) Sicsin 360 Inc. DBA Butcher 360 (PROD-00224442 & 00288724), located in New Brunswick City, Middlesex County, was established in 2019 as a Korean barbecue restaurant. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to cover payroll and rent expenses. Currently, the Company has seven employees.
- 8) Signature Princeton Corp DBA Signature Cleaners & Tailors (PROD-00228375 & 00288854) is located in Princeton Township, Mercer County. The Company, which is located in the Princeton Shopping Center, was established in 2015 to provide laundry and tailoring services. NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent payments. The Company currently has two employees.
- 9) Viocare, Inc. ("Viocare") (PROD-00228254 & 00288807) is located in Franklin Township, Somerset County. Viocare was formed in 1996 as a privately held technology company dedicated to improving health and wellness by creating innovative nutrition-based software solutions for its clients. NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement existing cash from operations to cover primarily payroll, rent and utilities. Currently, the Company has three employees.
- 10) Windsor Green Enterprise LLC DBA Windsor Green Cleaners (PROD-00228371 & 00288818), located in West Windsor Township, Mercer County, was established in 2014 as a laundry service provider. NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to cover rent and payroll expenses. Currently, the Company has three employees.



---

**Prepared by:** G. Robins