

PROGRAMMATIC AGREEMENT

Between

FORT MONMOUTH, NEW JERSEY

And

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

FOR THE

**PRIVATIZATION OF FAMILY HOUSING AT
FORT MONMOUTH, NEW JERSEY**

WHEREAS, Fort Monmouth, New Jersey, pursuant to the Military Housing Privatization Initiative (P.L. 104-106, 110 Stat. 544, Title XXVIII, Subtitle A, Section 2801), which amends 10 U.S.C. 169 by addition of a new subchapter, IV-Alternative Authority for Acquisition and Improvement of Military Housing, has determined to privatize family housing at Fort Monmouth, New Jersey, through the Residential Communities Initiative (RCI) (Undertaking) (Attachment A, map of RCI area); and

WHEREAS, the United States Department of the Army, Fort Monmouth, New Jersey is responsible for carrying out as part of its assigned missions various activities, some of which may have the potential to affect historic properties; and

WHEREAS, Fort Monmouth, New Jersey, in consultation with the Advisory Council on Historic Preservation (Council) and the New Jersey State Historic Preservation Officer (NJSHPO) has determined that certain types and categories of those activities meet the definition of undertakings pursuant to Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended); and

WHEREAS, 36 CFR 800.14(c) permits federal agencies such as Fort Monmouth, New Jersey to propose categories of programs or activities that may be exempted from review under the provisions of 36 CFR 800; and

WHEREAS, Fort Monmouth, New Jersey has completed or caused to be completed numerous cultural resources surveys and inventories to identify those buildings, sites, districts, structures and objects under its jurisdiction or control that satisfy the criteria for eligibility for the National Register of Historic Places as set forth at 36 CFR 60.4 (Attachment B, list of historic buildings); and

WHEREAS, Fort Monmouth, New Jersey shall incorporate a number of Standard Operating Procedures (SOP's) intended to insure that Fort Monmouth's undertakings do not adversely affect historic properties (Attachment C, SOP's); and

WHEREAS, Fort Monmouth, New Jersey has elected not to employ the Army Alternate Procedures for compliance with Section 106 of the NHPA; and

WHEREAS, All Wherry housing on Fort Monmouth, New Jersey is covered by an Armywide Program Comment by the ACHP and there are no further preservation or consultation requirements for these housing areas pursuant to 36 CFR 800. The Neighborhood Design Guidelines for Army Capehart Family Housing must be considered when planning improvements to Capehart-era housing areas.

NOW, THEREFORE, Fort Monmouth, New Jersey, the Council, and the NJSHPO enter into this Agreement pursuant to 36 CFR 800.6(b)(2) which shall be administered in accordance with the following stipulations to satisfy Fort Monmouth's Section 106 responsibilities for those undertakings falling within the scope of this Agreement.

STIPULATIONS

Fort Monmouth, New Jersey will ensure that the following measures are carried out:

I. APPLICABILITY, BASELINE INFORMATION, AND PROFESSIONAL QUALIFICATIONS STANDARDS

A. Fort Monmouth, New Jersey will provide an information package concerning the Historic Properties to all relevant signatories to this agreement. This information package will describe contributing (NRHP eligible) and non-contributing (not NRHP eligible) structures and buildings, historic landscapes, and archeological sites that may be present within or adjacent to existing housing developments and areas proposed for development of housing and supporting amenities. The presence of NRHP eligible or listed properties was disclosed in the Request for Qualifications document used to notify the private sector of the proposed privatization action.

B. Fort Monmouth, in consultation with NJ SHPO, has determined that the Fort Monmouth Historic District is eligible for listing on the National Register of Historic Places

C. Based on analysis of the residential infrastructure and proposed construction sites, Fort Monmouth, New Jersey has determined in consultation with the NJ SHPO that no other existing, residential buildings, structures, objects, districts or landscapes affected by the Undertaking are now National Register of Historic Places eligible under NRHP criteria. Fort Monmouth, New Jersey will conduct a periodic historic architectural survey of all buildings, structures, and landscapes on Fort Monmouth property that have reached fifty years of age since the previous survey. Any new NRHP eligible properties recognized through this process and administered or affected by Carlise, Monmouth, Picatiny Communities, Limited Liability Corporation (CMPC, LLC) will be subject to the provisions of this Agreement.

D. Fort Monmouth, New Jersey will document existing interior and exterior conditions at contributing (NRHP eligible) structures, buildings, and landscapes in the historic housing areas. Fort Monmouth, New Jersey will provide the documentation to the signatories and concurring parties to this Agreement in electronic or paper formats. Fort Monmouth, New Jersey will supplement the documentation as necessary to include information regarding any modifications or alterations to the property to maintain accuracy and record modifications to

Historic Properties. One copy of the documentation and any supplemental materials, as they are developed, shall be provided to the signatories to this agreement. This documentation will serve as a reference throughout the term of this Agreement.

E. For the purposes of this Agreement the Fort Monmouth's Cultural Resource Manager (CRM) will at a minimum, consist of an individual who meets 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History, Historical Architect, or Historic Preservationist. The Fort Monmouth's CRM will serve as the point of contact with the New Jersey SHPO. SHPO must be notified of change in qualified CRM. If no qualified CRM is employed by Fort Monmouth, project reviews must come to the SHPO.

F. For the purposes of this Agreement CMPC, LLC shall have access to and utilize "Qualified Staff," on an "as needed basis," for the development of rehabilitation plans; to review and screen proposed projects and work requirements that affect historic properties. For the purposes of this Agreement, "Qualified Staff" is defined as an individual who meets 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History, Historical Architect, or Archaeologist as appropriate.

II. CONVEYANCE ACTIVITIES

A. Fort Monmouth, New Jersey shall ensure that the Ground Lease shall contain such terms and conditions as necessary and appropriate to meet the requirements of Sections 106, 110, and 111 of the Act to provide for adequate consideration and treatment of Historic Properties that may be affected by the RCI Program. All relevant portions of this Agreement shall be incorporated into and made part of the Ground Lease. The NJ SHPO will be given an opportunity to review the Ground Lease to ensure that adequate preservation conditions are included.

B. Renewal or any modifications to the Ground Lease shall be subject to consultation among the signatories to determine whether such renewal or modifications constitute a new federal undertaking subject to provisions of the Act.

C. Terms of the Development Agreement shall apply equally to any document subordinate to the primary Development Agreement and to all successor individuals and/or entities holding the Development Agreement and Ground Lease. Fort Monmouth, New Jersey shall include provisions in the Development Agreement and Ground Lease that provide for government review and approval of any successors to ensure that they meet or exceed original RFQ source selection criteria for the developer/partner.

III. HISTORIC PROPERTY MANAGEMENT

A. When conducting preservation, maintenance, or rehabilitation measures for Historic Properties, Fort Monmouth, New Jersey shall conform to the management standards and guidelines for treatment of Historic Properties established by the Secretary of Interior in *The Secretary of the Interior's Standards for the Treatment of Historic Properties, with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (Treatment Standards)*.

B. A long term Maintenance Plan will be developed for the quarters in the proposed district boundary to assure that the treatment of these properties conform to the Treatment Standards as established by the Secretary of the Interior. The Maintenance Plan will identify and

describe the character defining architectural features of each style of quarters in a graphic and written format and prescribe periodic inspection measures for general maintenance. Each character-defining feature will be described in detail as to materials, original construction techniques and appropriate methods of repair. The Maintenance Plan will also be prepared in consultation with the Fort Monmouth CRM and the NJ SHPO.

C. Fort Monmouth shall ensure that all landlord/tenant agreements for occupation of Historic Properties incorporate all pertinent conditions of this Agreement and allow Fort Monmouth, and the NJ SHPO, an opportunity to review and comment upon the language of such agreements. One aspect of the landlord/tenant agreement will be the protection of significant architectural elements during tenant occupancy. Fort Monmouth will allow for reasonable access to buildings by NJ SHPO.

D. Project Review and Consultation

The Fort Monmouth CRM will review, screen, and monitor all proposed projects and activities of the CMPC, LLC, and the property management agent to include the review process specified in C.1. through 3., below. The Fort Monmouth CRM will be responsible for creating and keeping a record of each project review.

1. If a determination of no adverse effect is made by the Fort Monmouth CRM, the project may proceed as planned. If a determination of adverse effect is made by the Fort Monmouth CRM, the CRM will recommend alterations to the project plans to avoid or minimize the adverse effect. The recommendations will be made in accordance with the *Treatment Standards*. If CMPC, LLC does not accept the recommendations of Fort Monmouth CRM, CMPC, LLC shall follow the project review process outlined in III.D.4 below.

2. After its review of the project and to expedite the review of routine activities, the Fort Monmouth CRM may determine that certain actions, as outlined in IV.A, are exempt from the project review process outlined in III.D.1, above.

3. In the case of an emergency, Fort Monmouth may take all actions necessary for the protection of the Historic Properties with on-site monitoring by the Fort Monmouth CRM. Where possible, such emergency measures will be limited to the stabilization of the property and will be undertaken in a manner that is consistent with the *Treatment Standards*. This emergency provision is limited to Undertakings initiated within 30 days of the emergency.

4. If CMPC, LLC proposes substantial alteration or demolition of a historic property, an alternatives analysis, including an economic analysis will be performed to evaluate the economic feasibility for the developer/partner to preserve or maintain specific Historic Properties in accordance with the *Treatment Standards*, recordation requirements consistent with the HABS/HAER standards, 16 U.S.C. 470h-2(b), Section 111 of NHPA and 16 U.S.C. 470 (h)(3)(a). The CMPC, LLC will submit the economic analysis and their recommended course of action for the Historic Properties in question to the Fort Monmouth CRM for review and consultation with the NJ SHPO, the ACHP and, if appropriate, National Park Service (NPS). The NJ SHPO, ACHP, will be given 30 days to review and comment on the alternatives analysis and recommended a course of action. If a determination of adverse effect is made by Fort Monmouth, NJ SHPO, ACHP, Fort Monmouth will consult to resolve the adverse effect pursuant to 36 CFR 800.6.

5. The New Jersey SHPO may at any time request to review and comment on a project submitted to the Fort Monmouth CRM, pursuant to Stipulation III.D.1 above, if it has reason to believe that a historic property may be adversely affected by a proposed Undertaking.

E. The CRM will report to the NJ SHPO on the status of the Fort Monmouth historic housing properties using the annual asset management report prepared by CMPC, LLC annually in a month to be agreed upon by the New Jersey SHPO and Fort Monmouth CRM. This report will include information on the current condition of the historic properties, actions taken by the CMPC, LLC to maintain the properties in accordance with the Treatment Standards and description of unanticipated problems that could affect the integrity or upkeep of the historic properties, or any other activities or policies that affect or may affect the historic properties, including the documentation of project reviews carried out under Stipulation III.C. above.

F. Proposed Undertakings that have the potential to adversely impact Historic Properties shall be reported to the SHPO and Fort Monmouth CRM in a timely manner during the project planning period and separate from the annual report. The report will contain sufficient information on the proposed Undertaking for the SHPO to determine whether the Undertaking would adversely impact Historic Properties. The SHPO will have 30 days to comment following receipt of the report.

G. Tax Credits

1. CMPC, LLC may explore federal tax credit benefits via the established application process with the NJ SHPO and National Park Service (NPS), and IAW AR 200-4, 3-2c(2)-(3) before the start of rehabilitation projects involving historic buildings.

2. CMPC, LLC may explore state tax credit benefits via the established application process with the NJ SHPO before the start of rehabilitation projects involving historic buildings.

3. In the event CMPC, LLC determines to seek the historic preservation tax credits, the proposed project will, upon receipt of an approved Part II certification from NPS, be exempt from Stipulations III.D. above for the five-year recapture period of the tax credit. However, CMPC, LLC will be required to follow NPS review requirements during this time. After the five year tax credit recapture period is complete CMPC, LLC will again be subject to Stipulation III.D.

IV. EXEMPT ACTIVITIES

A. Each of the following activities will be exempt from further Section 106 review by the NJ SHPO and ACHP. Fort Monmouth CRM Qualified Staff will review the following activities to ensure the exemption is appropriate:

1. General operation and maintenance, demolition of non contributing buildings, rehabilitation and/or renovation of existing buildings and new construction, provided such new construction does not adversely affect the view plane of Historic Properties, Landmarks, or Districts, or other architectural or landscape features which contribute to Landmarks or Districts as stipulated in NRHP nomination forms.

2. Temporary installation, for a period of five years, of facilities to provide access to the Historic Properties by disabled persons provided these changes make no permanent modification to contributing architectural or landscape elements.

B. Activities not listed above shall be completed as directed in Stipulation III.D.

V. ARCHEOLOGICAL CONCERNS

A. Prior to any new construction on previously undeveloped land, Fort Monmouth CRM will consult with the NJ SHPO and Federally recognized Indian Tribe to determine the need for an archeological survey. If a survey is recommended, CMPC, LLC will undertake a survey of the Area of Potential Effect sufficient to determine the presence or absence of any National Register historic properties. The eligibility of the properties will be evaluated for National Register eligibility in accordance with Section 36 CFR 800.4.

B. If National Register Eligible properties will be affected by the undertaking, Fort Monmouth will consult with the NJSHPO and ACHP, if participating, to determine how to avoid or resolve an adverse effect on the property, in accordance with 36 CFR 800.6.

C. In the event of discovery of archeological materials during any of its activities, work shall be stopped in the immediate area of discovery and the Fort Monmouth CRM shall protect the discovery until Fort Monmouth has complied with 36 CFR 800.13(b) and any other legal requirements.

VI. FISCAL REQUIREMENTS AND SOURCES

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act 31 U.S.C. 1341 (1998). If compliance with the Anti-Deficiency Act alters or impairs Fort Monmouth's ability to implement the stipulations of this Agreement, Fort Monmouth will consult in accordance with the dispute resolution, amendment or termination stipulations as specified in Stipulations VII, and VIII.

VII. DISPUTE RESOLUTION

A. Should any party to this Agreement object within 30 days to any plans or other documents provided by Fort Monmouth or others for review pursuant to this Agreement, Fort Monmouth, supported by and in cooperation with the developer/partner will consult with the objecting party to resolve the objection. If Fort Monmouth determines it cannot resolve the objection, Fort Monmouth shall promptly forward to the ACHP and Army's Federal Preservation Officer (FPO) all dispute-relevant documentation including a proposed resolution of the objection for documented consideration before the installation proceeds with the undertaking.

B. Any recommendation or comment the ACHP provides pertains only to the subject of the dispute. Fort Monmouth's responsibility to carry out all other actions under this Agreement, other than those disputed will not change.

VIII. AMENDMENT AND TERMINATION

Programmatic Agreement- US Army Garrison, Fort Monmouth

A. If a change occurs in the Undertaking that creates new circumstances that Fort Monmouth must address, or, if Fort Monmouth determines that it cannot carry out the terms of this Agreement, any party to this Agreement may request an amendment in accordance with 36 CFR 800.6(c)(7).

B. Should the parties to this Agreement not agree on an amendment or in the event of a failure by any party to comply with the stipulations of this Agreement prior to execution of a Ground Lease, this Agreement may be terminated. In such an event, Fort Monmouth shall not execute a Ground Lease that has the potential to adversely affect historic properties until applicable stipulations of the Agreement are met or it obtains alternative documentation from the ACHP that it has met the requirements of the NHPA.

IX. EFFECTIVE DATE, END DATE, APPLICABILITY

A. This Agreement is effective on the last date that all signatories sign. Fort Monmouth will comply with all terms and stipulations from that date forward.

B. This Agreement will be incorporated into the ground lease as an exhibit and will become an integral part of the ground lease. The Programmatic Agreement will become applicable to CMPC, LLC after CMPC, LLC is formed and upon their execution of the ground lease. The Ground lease is expected to be a 50 year lease, with an option to renew that lease for 25 more years upon mutual agreement with the parties.

C. This Agreement will be in effect for 5 years and renewable upon agreement by both parties, unless previously terminated under the provisions of I (f) or IX, above. If the parties consent to renew this Agreement the parties will consult on the need to either renew or amend this agreement.

Execution of this Agreement and implementation of its terms evidence that CMPC, LLC has afforded the ACHP an opportunity to comment on the Undertaking to privatize family housing at Fort Monmouth, and its effects on historic properties, and that CMPC, LLC has taken into account the effects of the Undertaking on historic properties.

US ARMY GARRISON, FM

By: Ricki L. Sullivan Date: 9/17/04
RICKI L. SULLIVAN
COL, FA
Garrison Commander

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

By: Dorothy P. Guzzo Date: 9/17/04
Dorothy Guzzo
State Historic Preservation Officer

AMERICAN EAGLE MILITARY HOUSING

American Eagle Military Housing, LLC has reviewed the above terms and stipulations of this Agreement. We acknowledge that the terms and stipulations will become a part of the ground lease and that they will become binding on CMPC, LLC, a limited liability corporation that American Eagle Military Housing, LLC and the Army will form after the RCI project at Fort Monmouth is approved by Congress.

By: Scott Lowe Date: 20 SEP 04
Scott Lowe, PE
Project Director, American Eagle Communities, LLC