

**RECORD & RETURN TO:**

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**REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**MONMOUTH MEDICAL CENTER, INC.**

**AND THE**

**BOROUGH OF TINTON FALLS**

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**REDEVELOPMENT AGREEMENT**

**THIS REDEVELOPMENT AGREEMENT** (this “**Agreement**”) dated as of the \_\_\_\_ day of \_\_\_\_\_ 2022 (the “**Effective Date**”);

by and between

**MONMOUTH MEDICAL CENTER, INC.**, (“**MMC**” or “**Redeveloper**”) a not-for-profit corporation of the State of New Jersey, with an address of 300 Second Avenue, Long Branch, New Jersey 07740, an affiliate and assignee of RWJ Barnabas Health, Inc., whose address is 95 Old Short Hills Road, West Orange, New Jersey 07052;

and the

**BOROUGH OF TINTON FALLS** (the “**Borough**”), a municipal corporation of the State of New Jersey, having its principal office at 556 Tinton Avenue, Tinton Falls, New Jersey 07742.

Hereinafter each a “**Party**” and collectively referred to as the “**Parties**”.

**RECITALS**

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-4, the governing body of the Borough serves as an instrumentality and agency pursuant to the Redevelopment Law for the purpose of implementing redevelopment plans and carrying out redevelopment projects within the Borough (the “**Redevelopment Entity**”); and

**WHEREAS**, N.J.S.A. 40A:12A-8 authorizes the Borough, acting as the Redevelopment Entity, to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area in need of redevelopment; and

**WHEREAS**, on March 6, 2012, the Borough adopted Resolution No. R-12-089 determining and designating that the entirety of the former Fort Monmouth property in the Borough is an area in need of redevelopment under the Redevelopment Law; and

**WHEREAS**, on May 15, 2012, the Borough adopted Ordinance No. 12-1344 accepting the Fort Monmouth Reuse and Redevelopment Plan (the “**Reuse Plan**”), as

amended, under the Redevelopment Law, which established the land use regulations governing the former Fort Monmouth property in the Borough identified herein in conjunction with the land use regulations set forth at N.J.A.C. 19:31C-3.1 et seq.; and

**WHEREAS**, on August 10, 2018, the Fort Monmouth Economic Revitalization Authority ("**FMERA**"), New Jersey Economic Development Authority ("**NJEDA**") and Redeveloper entered into an Agreement to Assign, as amended from time to time (the "**Agreement to Assign**"), pursuant to which Redeveloper agreed to assume, and NJEDA agreed to assign, NJEDA's rights and obligations under a Purchase Agreement, dated October 30, 2017, between FMERA and NJEDA for the acquisition of Block 101.03, Lot 1 (the former Myer Center property) consisting of approximately 36.3 acres within the Borough (the "**Property**" or "**Project Site**"); and

**WHEREAS**, FMERA's Agreement to Assign with the Redeveloper was amended a fourth time in 2021 establishing an outside closing date of December 30, 2022; and

**WHEREAS**, on February 19, 2019, the Borough and the Redeveloper entered an Escrow Agreement to address pre-development activities, including negotiation of a Redevelopment Agreement for the Project and other related actions; and

**WHEREAS**, on May 12, 2022, the Redeveloper formally applied to the Borough to be designated redeveloper of the Property within the Fort Monmouth Reuse and Redevelopment Plan Area, whereby the Redeveloper proposes to construct an approximately 150,000 square foot cancer center/ambulatory care pavilion, a 250-bed acute care hospital, a 112,864 square foot medical office building, and associated amenities, all as more particularly described in Planning Board Resolution of Approval, approved on August 10, 2022 and memorialized on October 26, 2022 (the "**Project**"); and

**WHEREAS**, on June 21, 2022, the Redeveloper conducted a public presentation on the Project during a special meeting of the Borough Council; and

**WHEREAS**, on August 9, 2022, pursuant to Resolution No. R-22-180, the governing body of the Borough conditionally designated the Redeveloper as the redeveloper of the Property; and

**WHEREAS**, on October 26, 2022, pursuant to Resolution No. PB2021-12, the planning board of the Borough granted Preliminary and Final Site Plan with Variances, Design Exceptions and Waivers; and

**WHEREAS**, the Project, which includes the obtaining of governmental approvals, the site preparation of the Property, construction, completion, and management of all Project Improvements contemplated under this Agreement, shall be completed pursuant to the provisions of this Agreement, and the Redevelopment

Agreement between FMERA and MMC, as amended; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-9, it is the intention of the Parties to enter into a Redevelopment Agreement, which shall further define and memorialize the respective obligations of the Parties hereto with regard to proceeding with the redevelopment of the Property in the manner prescribed herein.

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations contained herein, 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 Redevelopment Law and the Reuse Plan, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1. Defined Terms.**

The Parties hereto agree that, unless the context otherwise specifies or requires, the capitalized terms used herein shall have the respective meanings specified below or in the recitals and such definitions shall be applicable equally to the singular and plural forms of such terms.

**“Applicable Law”** means any and all federal, state, Monmouth County and local laws, rules, regulations, statutes, ordinances, permits, and resolutions, applicable to the Project and the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

**“Application”** has the meaning set forth in Section 3.2.

**“Certificate of Completion”** means a written certificate issued by the Borough in accordance with Section 4.3 of this Agreement, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to a certain unit or aspect of the Project, if applicable, whose issuance shall serve to release the relevant unit or aspect of the Project and Redeveloper from all terms, obligations and conditions contained in this Agreement and in the Applicable Law. For the avoidance of doubt, Certificates of Completion may be issued for any individual building or Phase of the Project.

**“Certificate of Occupancy”** means as defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to a particular unit or aspect of the Project indicating that such unit or aspect of the Project has been completed in accordance with the construction permit, the Uniform Construction Code and any Applicable Law.

**“Commencement Date”** shall be as set forth in the Project Schedule.

**“Completion”, “Complete” or “Completed”** means: (i) that all work related to the Project in its entirety, has been completed, acquired and installed in accordance with the terms of this Agreement, the Reuse Plan, and in compliance with all Applicable Laws so that the developed Property may be used and operated under the applicable provisions of this Agreement, and (ii) that all permits, licenses and approvals required for the Property are in full force and effect. Completion shall be evidenced by the issuance of a Certificate of Completion. Subject to the Borough’s reasonable discretion, the Project may be deemed “Complete” notwithstanding that certain immaterial portions of the work remain to be completed, as long as (a) Redeveloper has prepared and delivered to the Borough a list of items requiring completion or correction (“punch list”) by Redeveloper in order for Redeveloper to fully comply with the terms of this Agreement, (b) such “punch list” items have been reasonably agreed to by the Borough, and (c) such “punch list” items are reasonably capable of being completed within 90 days of the date of Completion. Punch List items shall not prohibit the issuance of a temporary Certificate of Occupancy.

**“Construction Phase”** means the sequence in the Project from the issuance of a building permit for the construction of the Project until the issuance of a Certificate of Occupancy.

**“Effective Date”** means the date upon which this Agreement has been executed by the Redeveloper or the Borough, whichever is last.

**“Environmental Law(s)”** means any and all federal, State, regional and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, memoranda of understanding, directives or judgments relating to pollution, damage to or protection of environment, environmental conditions, or the use handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act (**“CERCLA”**) (42 U.S.C. 9601-9675); the Resource Conservation and Recovery Act of 1976 (**“RCRA”**) (42 U.S.C. 6901 et seq.); the Clean Water Act (33 U.S.C. 1251 et seq.); the New Jersey Spill Compensation and Control Act (**“Spill Act”**) (N.J.S.A. 58:10-23.11 et seq.); the Industrial Site Recovery Act, as amended, (**“ISRA”**) (N.J.S.A. 13:1k-6 et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 et seq.); and the rules and regulations promulgated thereunder.

**“Final Approval”** shall have the meaning set forth in N.J.S.A. 40:55D-4.

**“Governmental Approvals”** or **“Approvals”** means any approvals, authorizations, permits, licenses or certificates required and issued or granted by any governmental authority(ies) having jurisdiction, whether federal, state, county or local, to the extent necessary to implement the Project in accordance with the Reuse Plan, Applicable Law and this Agreement.

**“Impositions”** means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property or on any of the Improvements constructed thereon, if duly negotiated in the Redevelopment Agreement, properly imposed by Borough Ordinance or State Law. Unless otherwise specified herein, any Impositions established by Ordinance shall only be at the rates set at the time of the entry of this Redevelopment Agreement.

**“Improvements”** means all buildings, structures and appurtenances including, without limitation, facilities and amenities, telecommunications equipment, surface parking or a structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Property and the streets immediately abutting the Property.

**“Performance or Maintenance Guarantees”** means the performance or maintenance guarantees required for the Project as defined by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

**“Planning Board”** refers to the Borough of Tinton Falls Planning Board.

**“Project”** means the development of the improvements as shown in **Exhibit B** to this Agreement and as depicted in the Redeveloper’s approved final Site Plan approved by the Planning Board in, on and around the Property pursuant to the terms set forth in this Agreement.

**“Project Schedule”** means the schedule attached hereto as **Exhibit A**, which designates the order of and timeframes for the permitting and construction of the Improvements on the Property.

**“Project Site”** or **“Property”** means Block 101.03, Lot 1 (the former Myer Center property) consisting of approximately 36.3 acres within the Borough.

**“Remediation”** means the performance and completion of all investigations and clean-up, wetlands mitigation, and any and all other activities necessary or required for the clean-up or containment of all substances including, without limitation, Hazardous Substances, known or unknown, on, under or migrating to or from the Property, and the construction of remedial systems, all in compliance with Applicable Laws, Environmental Laws and Government Approvals to address any environmental contamination or condition or damage to any natural resource, including but not limited to air, groundwater, surface water or soil required to be addressed by the responsible party.

**“Site Plan”** means the Preliminary and Final Site Plan with Variances, Design Exceptions and Waivers approved by the Planning Board as set forth in Resolution No. PB2021-12 adopted by the Planning Board on October 26, 2022.

**“Termination Date”** shall have the meaning set forth in Section 14.1.

## **ARTICLE 2 DESCRIPTION OF THE PROJECT**

**2.1. Purpose; Designation as Redeveloper.** The purpose of this Redevelopment Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the development of the Property by Redeveloper. The Borough hereby affirms and agrees that Redeveloper is designated and appointed as the exclusive redeveloper of the Property. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform any and all redevelopment activities on and about the Property as permitted in the Reuse Plan. Each of the Parties agrees that all redevelopment on and about the Property will only be authorized and may only be undertaken by Redeveloper under the framework and in accordance with the terms of this Agreement and the Reuse Plan. Further, the Borough agrees that, absent a Default by Redeveloper, it will not negotiate or entertain for the provision of another redeveloper or developer for the Property or any portion thereof.

**2.2. The Project.** The Project shall consist of two phases, as follows.

**A. Phase 1.** The first phase of the Project shall consist of the redevelopment of the Project Site into an approximately 150,000 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. It is acknowledged that various off-site improvements under the jurisdiction of the County of Monmouth may be triggered by the construction of this phase of the Project.

**B. Phase 2.** The second phase of the Project shall consist of two options which may be undertaken by the Redeveloper at its discretion in accordance with this Agreement.

- i. **Phase 2A.** Phase 2A includes the following: (a) an approximately 568,901 square foot acute care hospital, including approximately 250 licensed beds; (b) an approximately 206,768 square foot clinical and support building; (c) an approximately 112,864 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. The construction of this phase shall trigger certain off-site improvements required under Section 5.3 of this Agreement.
- ii. **Phase 2B.** Phase 2B includes the following: (a) 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. The construction of this phase shall not trigger the off-site improvements required under Section 5.2 of this Agreement.

The Project will be developed in accordance with the Project Schedule attached hereto as **Exhibit A**. The Redeveloper shall have the right to accelerate the time frames set forth in the Project Schedule at its option. The Parties agree that the Project may be modified by the Redeveloper and the Planning Board as part of the Site Plan approval process as set forth hereinafter and in accordance with Article 3.

**2.3. Project Development.** The Project shall be designed in accordance with the Reuse Plan and Site Plan. Any modifications from the approved Site Plan that would trigger a “d” variance pursuant to N.J.S.A. 40:55D-70(d) shall require the Redeveloper to seek an amendment to the Reuse Plan. Any modifications from the Reuse Plan that would be deemed a “design waiver”, which shall be considered as the equivalent of and akin to the provisions of a “c” variance pursuant to N.J.S.A. 40:55D-70(c), shall be submitted to the Planning Board for consideration as part of the site plan application by Redeveloper, subject to prior review and approval of the Borough. If the Project size or density becomes impractical to complete as planned, the Borough and the Redeveloper agree to work together in good faith on a project design that may be more feasible subject to the Reuse Plan and applicable Borough regulations.

**2.4. Amendment of Development and Design Concepts.** Design concepts for the Project may be modified by Redeveloper from time to time, as approved by the Parties, to reflect additional detail and information, as such detail and information becomes available, or to reflect or accommodate the requirements of any Applicable



Law, or to take into account engineering/construction considerations which render the then-existing design concepts impractical. Such modifications shall be subject to the review and approval of the Borough. Any modification which triggers the need to amend any Site Plan and/or subdivision approval secured by Redeveloper shall be reviewed by the Borough for consistency with the Reuse Plan and approved by the Borough prior to filing for same before the Planning Board.

It is acknowledged by the Parties that certain specific elements of the Project as shall be approved by the Borough and its consultants, including but not limited to exterior building materials, quality of exterior finishes and designs, exterior architectural elements, and landscaping features, are material consideration for the Borough's approval of the Project, and Redeveloper is obligated under this Agreement to construct the Project in accordance with such specific exterior elements and/or materials as have been approved. The Redeveloper shall be permitted to substitute materials, equipment and fixtures included in and to be used in constructing the Project so long as of the same or similar quality to those described in the plans and specifications for the Project.

**2.5. Development Milestones.** The Redeveloper shall construct the Project or cause the Project to be constructed in accordance with the Project Schedule attached hereto as **Exhibit A** subject to delay caused by an Uncontrollable Circumstance, as defined in Article 10 of this Agreement. If the Redeveloper intends to claim reliance upon an Uncontrollable Circumstance as a basis for its failure to commence physical work on any portion of the Project or to commence or complete performance of any of the milestones set forth on the Project Schedule on or prior to the required date or deadline set forth on the Project Schedule, the Redeveloper shall give written notice to the Borough pursuant to Section 10.2 herein, setting forth in detail the reasons for delay and requesting an extension of such date, which extension the Borough shall not unreasonably deny if the alleged Uncontrollable Circumstance exists in accordance with Article 10.

**2.6. Qualified Entities.**

**A.** The Project will, at Redeveloper's option, be developed, in whole or in part, by (i) Redeveloper, (ii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any affiliate of Redeveloper is the sole beneficial owner, or (iii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any affiliate of Redeveloper are collectively the sole beneficial owners, subject to the review of the Borough.

**B.** A "**Qualified Entity**" is a partnership, corporation, limited liability company or other legal entity which has demonstrated to the satisfaction of the Borough that:

- (i) It has the financial capacity to undertake the development,

construction and operation of the Property in question, including, without limitation, the capacity to obtain financing, to provide appropriate security (such as performance and completion bonds) and to otherwise satisfy its obligations with respect to the development of the Property;

- (ii) It is able to comply with and conform to all of the provisions of this Agreement as they relate to the development of the Property in the Redevelopment Area and expressly assumes all such obligations;
- (iii) No petition under federal bankruptcy laws or any state insolvency law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such entity, or any partnership in which such entity was or is a general partner or any entity in which such entity was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of 10% (and, in the case of an involuntary proceeding, such proceeding has not been terminated within 60 days of its commencement) within 10 full calendar years preceding the date of submission of such entity's application for consideration as a Qualified Entity;
- (iv) Such entity and/or its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them is a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such entity, none is a target of a criminal investigation;
- (v) Such entity and/or its principals, directors, officers, partners, shareholders, and/or members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Borough or Redeveloper which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Borough or Redeveloper alleges a default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving the Borough or Redeveloper;
- (vi) Such entity and/or its principals, directors, officers, partners, shareholders, and/or members, individually, have not been found

in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision;

- (vii) Such entity and/or its principals, directors, officers, partners, shareholders, and/or members, individually, have not violated any Borough, State, or Federal ethics law, and entering into the proposed transaction with Redeveloper and the Borough will not cause any such violation or result in a conflict of interest; and
- (viii) It shall comply with any other conditions that the Borough may find reasonably necessary in order to achieve and safeguard the purposes of the Reuse Plan.

**C. Redeveloper as Qualified Entity.** Redeveloper has presented evidence of its credentials as a Qualified Entity and further represents and warrants herein that it meets the above criteria for a Qualified Entity and, based upon such evidence and representation, Redeveloper is hereby deemed a Qualified Entity.

**D. Qualified Entity Approval Process.** The Redeveloper shall provide written notice to the Borough of any entity which Redeveloper desires be approved by the Borough as a Qualified Entity. Within 30 days after the date of such notice from Redeveloper, the Borough shall provide written notice to Redeveloper either: 1) requesting additional information concerning the proposed entity, 2) approving such entity as a Qualified Entity, or 3) refusing to approve of such entity as a Qualified Entity, setting forth the basis for such denial, with reference to the conditions set forth in Section B(i) through (viii) above. Approval by the Borough of an entity as a Qualified Entity shall authorize such entity to be considered a Redeveloper or hold a beneficial interest in Redeveloper. In the event of a denial by the Borough of an entity as a Qualified Entity as provided above, or in the event the Borough requests additional information, Redeveloper may resubmit its request to the Borough that the subject entity be approved as a Qualified Entity, and Redeveloper shall in such resubmitted request set forth additional information and/or such reasons that demonstrate why Redeveloper believes the subject entity to be a Qualified Entity. Within 30 days after the date of such further request from Redeveloper, the Borough shall provide written notice to Redeveloper stating whether the Borough approves of such entity as a Qualified Entity and, if the Borough does not approve of such entity as a Qualified Entity, the basis for such denial, with reference to the conditions set forth in Section B(i) through (viii) above.

### ARTICLE 3

## **PROCEDURES GOVERNING REVIEW AND APPROVAL OF APPLICATION FOR REDEVELOPMENT PROJECT**

**3.1. Procedures; General.** On October 26, 2022, pursuant to Resolution No. PB2021-12, the Planning Board granted Preliminary and Final Site Plan with Variances, Design Exceptions and Waivers. In order to facilitate the development and implementation of a mutually acceptable design, site plan and technical approach for the Project, the Parties have established the procedures set forth in this Article 3 for the following review and approval process, which shall be utilized in the case of any amendments being required to be made to the Site Plan. The process shall consist of an application to be approved first by the Borough as the Redevelopment Entity prior to submission to the Planning Board for review and approval of an amended site plan for the Project. Subsequent to Borough approval, the development process shall be in accordance with the Redevelopment Law and the MLUL. Nothing herein is intended to restrict the exercise of the Planning Board's governmental authority with respect to applications for site plan approval under duly adopted rules and regulations or to in any way alter the procedures established for challenging the exercise of such authority pursuant to the MLUL.

**3.2. Application for the Project.** The Redeveloper has submitted to the Borough, prior to submission of its site plan to the Planning Board, an Application for approval of a proposed redevelopment project pursuant to this Agreement, which consisted of submission of a report and required architectural and civil engineering plans and also included information sufficient to determine compliance with applicable provisions of the Reuse Plan. Any Applications for amendments to the Site Plan, shall require submission of the following to the Borough:

- (i) Plans depicting existing rights-of-way and easements in the portions of the Redevelopment Area that are the subject of the Application.
- (ii) Architectural renderings of the proposed development.
- (iii) Plans noting the use, location, plan area, setbacks, height and bulk of all existing and proposed structures within the portions of the Redevelopment Area that are the subject of the Application and their consistency with the Reuse Plan.
- (iv) Plans showing vehicular parking and loading areas and a layout of pedestrian and vehicular circulation patterns in relation to the buildings that are the subject of the Application.
- (v) Landscape plans sufficient to show general design concepts, including but not limited to lighting and signage design.

- (vi) A schedule that generally reflects the phasing of construction, as necessary and within the time period(s) set forth in the Project Schedule attached as **Exhibit A** hereto.
- (vii) A list of any requirements in the Reuse Plan from which Redeveloper seeks design waiver relief and the basis upon which such relief is requested.
- (viii) Such other information as may be reasonably required by the professionals employed by the Borough.

**3.3. Other Governmental Approvals.** It is acknowledged by the Parties that it may be necessary for the Redeveloper to obtain Approvals or permits from other governmental agencies in order to undertake development of the Project. The Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to obtain any needed permits and Approvals for the Project in a timely fashion and utilizing commercially reasonable efforts. The Borough agrees to provide any pertinent information in its possession and to provide any reasonable assistance, without cost or expense to the Borough, which may be required of it to enable Redeveloper to properly apply for and obtain such permits or Approvals in a timely fashion, including making applications in the name of the Borough if requested by Redeveloper or if required by law to do so. The Borough agrees to support and endorse any applications for any Governmental Approvals required for the Project. Redeveloper shall periodically report to the Borough the status of such applications and Approvals.

## **ARTICLE 4 CONSTRUCTION OF PROJECT**

**4.1. Reports on Progress.** The Redeveloper shall submit to the Borough a quarterly report in writing concerning the actual progress of the Redeveloper with respect to construction of the Project. The work and construction activities of the Redeveloper shall be subject to inspection by the Borough at reasonable times and upon reasonable notice to the Redeveloper.

**4.2. Suspension of Construction.** The Redeveloper shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project or Property, except in the event of an occurrence of an Uncontrollable Circumstance, as set forth in Article 10 herein.

If the Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of 90 days for reasons other than an Uncontrollable Circumstance, and the suspension or abandonment is not cured, remedied or adequately explained in writing within 30 days after written demand by the Borough to do so, then such shall constitute an Event of Default by the Redeveloper under this Agreement, and the Borough shall have the right to seek any remedies pursuant to this Agreement and all other remedies available to the Borough at law or in equity.

#### **4.3. Certificates of Occupancy and Certificate of Completion.**

**A.** Upon Completion of the construction of the Improvements and/or each phase, as may be applicable, in accordance with the Governmental Approvals, the Redeveloper may apply to the Borough for a Certificate of Occupancy and Certificate of Completion for the Project or completed phases.

**B.** Upon Completion of the overall Project, for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law(s), the Borough shall issue a Certificate of Completion in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of the Applicable Law(s), the Reuse Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Reuse Plan with respect to the Redeveloper's construction of the Project. Upon issuance of a Certificate of Completion: (a) the agreements, restrictions and covenants set forth in Section 6 hereof shall cease and terminate, except for those covenants and restrictions set forth in Section 6 hereof which shall survive in accordance with the terms of Section 6, (b) the conditions determined to exist at the time the Property was determined to be in need of redevelopment shall be deemed to no longer exist, and (c) the land and improvements constituting the Project and the Property shall no longer be subject to eminent domain based upon such conditions. If the Borough shall fail or refuse to provide the Certificate of Completion within 30 days after written request by the Redeveloper, the Borough shall provide to the Redeveloper a written statement setting forth in detail the respects in which it reasonably believes that the Redeveloper has failed to complete the Project, or portion thereof, in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for the Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, the Redeveloper may record it in the County Clerk's office.

#### **4.4. Design Elements.**

**A. Utility Services.** The cost for on-site and off-site utility upgrades and installations, if required in relation to the Project, shall be the sole responsibility of the Redeveloper (subject to the terms of Applicable Law and Redeveloper's Agreement to Assign and Redevelopment Agreement with FMERA).

**B. Streetscape Improvements.** All costs for required streetscape improvements are the responsibility of the Redeveloper (subject to the terms of Applicable Law and Redeveloper's Agreement to Assign and Redevelopment Agreement with FMERA). If required by the Site Plan, such streetscape improvements may include: landscaping, lighting, public furniture and all other on-site improvements located between the curb and the Improvements. Specific off-site improvements are addressed under Section 5.2 of this Agreement.

#### **4.5. Contribution To Costs and Financial Obligations.**

**A. Escrow Fees.** It is acknowledged that the Redeveloper posted an escrow held by the Borough to cover the Borough's professional fees associated with the Project.

- i. Borough Costs.** Borough Costs shall include, but not be limited to any fees and costs of any professional consultant, contractor or vendor retained by the Borough to complete due diligence with respect to the terms of the Redevelopment Agreement or other ancillary agreements between the Parties and for legal and other fees in completing oversight and assistance in the implementation of the Project and in preparing documentation necessary to memorialize the agreements of the Parties including attorneys, planners and financial consultants, among others, and all other out-of-pocket costs and expenses of the Borough incurred in its assistance in implementation, facilitation or defense of the Project, pursuant to the LRHL (N.J.S.A. 40A:12A-8). Upon request, the Borough shall provide the Redeveloper with invoices setting forth Borough Costs incurred. Within 30 days of the receipt by the Redeveloper of written notice from the Borough that the amount in the escrow account has decreased to \$5,000, the Redeveloper shall replenish the escrow account with the Borough to the amount of \$10,000. If the Borough Costs incurred exceed the amount in the escrow account, the Redeveloper will pay such costs upon 30 days written notice from Borough that such costs are due.
- ii. Planning Board Costs.** The Redeveloper shall post with the Planning Board such escrow fees as necessary to reimburse the Planning Board for its professional, expert, engineering and legal costs incurred in the application review and determination process in accordance with the provisions of the MLUL.

**4.6. Contribution for Affordable Housing.** No affordable units are required to be developed on site, however, the Statewide Non-Residential Development Fee of 2% of the equalized assessed value may apply to any hereinafter defined Non-Profit Components of the Project associated with Phase 2A. If due, one half of this total fee shall be paid prior to the issuance of building permits. The final payment shall be made prior to the issuance of the Certificate of Occupancy.

**4.7. Neighborhood Impacts.** The Redeveloper acknowledges that the construction and completion of the Project will have certain impacts on the neighborhoods in the vicinity of the Property, which may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, the Redeveloper, in concert with the Borough, shall take all steps reasonably necessary to minimize any potential negative effects that the construction of the Project may produce.

**4.8. Maintenance of the Redevelopment Area.** Following commencement of physical construction of the Project improvements, the Redeveloper will maintain all areas of the Redevelopment Area including the buildings, parking areas, landscaping, and all such issues identified in the property maintenance code of the Borough.

**4.9. Traffic Control.** The Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Redevelopment Area is an issue to be addressed during the construction of the Project improvements, as well as after its completion. The Redeveloper will exert reasonable efforts to minimize the traffic effects of the Project improvements upon the surrounding neighborhoods.

**4.10. Standards of Construction.** Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with the best quality materials called for under the applicable approvals. All construction shall be in accordance with the Uniform Construction Code codified at N.J.A.C. 5:23-1 et seq., or as appropriate.

**4.11. Access to the Property.** During the course of construction of the Project Improvements, upon reasonable notice to the Redeveloper, the Borough and its authorized representatives shall have the right to enter the Redevelopment Area during regular business hours to inspect the Project Improvements and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement. In no event shall the Borough's inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement, nor shall it create any hardship upon the Redeveloper and/or interfere with or cause delay to construction.

**ARTICLE 5  
COMMUNITY BENEFITS AND**



## OFF-SITE IMPROVEMENTS

**5.1. Community Benefits.** The Redeveloper, in support of the Borough's community initiatives in the Redevelopment Area and surrounding the Property, shall make contributions to the Borough as follows, which shall be used by the Borough toward the acquisition of emergency service vehicles and equipment as set forth on the estimate attached as **Exhibit C**. The Redeveloper agrees to make lump sum payments as follows: (i) \$750,000 at the time of the issuance of building permits for Phase 1; and (ii) in the event Redeveloper elects to construct Phase 2A, an additional \$750,000 contribution payable upon the issuance of building permits for Phase 2A. If Phase 2A is not constructed, the second contribution described herein shall not be due to the Borough.

**5.2. Phase 2A Off-Site Improvements.** Should Phase 2A commence, the Redeveloper shall be responsible for the following off-site improvements determined to be required by the Borough Engineer:

- A. Roadway widening along the frontage of the site along Corregidor Road and Pearl Harbor Road.
- B. Full width roadway resurfacing at the following locations:
  - i. Pearl Harbor Road along the frontage of the site.
  - ii. The full length of Corregidor Road from Pearl Harbor Road to Hope Road.
  - iii. Guam Lane from Corregidor Road to Laboratory Road.
  - iv. Laboratory Road from Guam Lane to Hope Road.
- C. Signage and striping improvements on Corregidor Road and Pearl Harbor Road.
- D. Street lighting along the frontage of the site along Corregidor Road and Pearl Harbor Road.
- E. Replace approximately 1,633 linear feet of existing 10" sanitary sewer main with new 12" sanitary sewer main from Manhole O-10 in Corregidor Road (just east of the stream crossing) to the meter chamber pit in Laboratory Road.
- F. Re-alignment and widening of the Pearl Harbor Road and Pine Brook Road intersection and installation of a traffic signal.
- G. Widening of Pine Brook Road from Wayside Road to Manzo Court (the Parties acknowledge and agree this item is subject to Monmouth County's jurisdiction, and the ultimate improvements to be installed shall be coordinated between the County, Borough and Redeveloper).
- H. Widening of Corregidor Road to extend the length of the eastbound approach right turn lane onto Hope Road (the Parties acknowledge and agree this item is subject to Monmouth County's jurisdiction, and the ultimate improvements to be installed shall be coordinated between the County, Borough and Redeveloper).

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES**

**6.1. Redeveloper's Representations and Warranties.** The Redeveloper hereby represents, warrants to and covenants with the Borough that:

**A. Organization.** The Redeveloper is a duly formed not-for-profit corporation organized under the laws of the State of New Jersey and validly existing and in good standing under the laws of the State of New Jersey with all requisite power and authority to enter into this Agreement.

**B. Authorization; No Violation.** The execution, delivery and performance by the Redeveloper of this Agreement has been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of the Redeveloper or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which the Redeveloper is a party or by which the Redeveloper may be bound or affected.

**C. Valid and Binding Obligations.** The person executing this Agreement on behalf of the Redeveloper has been duly authorized and empowered, and this Agreement has been duly executed and delivered by the Redeveloper and constitutes the valid and binding obligation of the Redeveloper.

**D. Litigation.** To the best of its knowledge, no suit is pending against the Redeveloper which could have a material adverse effect upon the Redeveloper's performance under this Agreement or the financial condition or business of the Redeveloper. There are no known outstanding judgments against the Redeveloper that would have a material adverse effect upon the Redeveloper or which would materially impair or limit of the ability of the Redeveloper to enter into or carry out the transactions contemplated by this Agreement.

**E. No Conflicts.** This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Redeveloper is a party or is otherwise subject.

**F. No Violation of Laws.** As of the Effective Date, the Redeveloper has not received any notices asserting any noncompliance in any material respect by the Redeveloper with applicable statutes, rules and regulations of the United States, the State of New Jersey or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on the Redeveloper's ability to perform its obligations under this Agreement. The Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental

authority, which is in any respect material to the transactions contemplated hereby.

**G. Qualifications of the Redeveloper.** The Redeveloper is fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in, or contemplated under, this Agreement (either by itself or through its designees as permitted herein) and it is properly equipped, organized and in good financial standing so as to perform all such work and undertake all such responsibilities hereunder.

**H. No Speculation.** The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the sole purpose of redevelopment of the Property and not for speculation in land holding.

**6.2. Borough's Representations and Warranties.** The Borough hereby represents and warrants to, and covenants with, the Redeveloper that:

**A. Organization.** The Borough is a public body corporate and politic and a political subdivision of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform their obligations hereunder.

**B. Authorization; No Violation.** The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough under, and will not violate, the statutes, rules and regulations establishing the Borough and governing its activities; have been duly authorized by all necessary Resolutions and/or Ordinances; and will not result in the breach of any material agreement to which the Borough is a party or, to the best of its knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

**C. Valid and Binding Obligations.** The person executing this Agreement on behalf of the Borough has been duly authorized by Resolution to execute this Agreement, the Agreement has been duly executed and delivered by the Borough and it constitutes a valid and binding obligation of the Borough. All of the properties in the Project Site have been designated as areas in need of redevelopment in accordance with the Redevelopment Law and a duly adopted resolution of the Borough. The Reuse Plan for the Project Site has been approved by a duly adopted by FMERA and ordinances and resolutions of the Borough.

**D. Litigation.** No suit is pending against or affects the Borough which could have a material adverse effect upon the Borough's performance under this Agreement or the financial condition or business of the Borough or with respect to the designation of the Project Site or the adoption of the Reuse Plan. There are no outstanding judgments against the Borough that would have a material adverse effect upon the

Borough or which would materially impair or limit of the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement.

**E. No Conflicts.** This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Borough is a party or is otherwise subject.

**F. No Violation of Laws.** As of the Effective Date, the Borough has not received any notices asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on the Borough's ability to perform its obligations under this Agreement. The Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority, which is in any respect material to the transactions contemplated hereby.

### **6.3. Redeveloper Declaration of Covenants.**

**A.** The Redeveloper agrees to record this Agreement and provide a recorded copy to the Borough, including the Declaration of Covenants and Restrictions (hereinafter referred to as the "**Declaration**"), with respect to the Property that shall run with the land to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required herein. All provisions hereinafter with respect to the insertion in or the application of any covenants, restrictions and agreements shall apply equally to the Declaration, and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

**B. Description of Covenants and Restrictions.** The Covenants and Restrictions to be imposed upon the Redeveloper, its successors and assigns, herein and recorded through this Agreement and Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:

- (i) Devote the Property to the uses specified in the Reuse Plan, as may be amended, and as agreed herein, and shall not devote the Property to any other uses;
- (ii) Pursuant to Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, disability, military service, familial status, or marital status in the sale, lease, rental, use or occupancy of the Property or any buildings or structures erected or to be erected thereon, or any part thereof;

- (iii) In the sale, lease or occupancy of the Property or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, disability, military service, familial status, or marital status, and the Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, disability, military service, familial status, or marital status to the extent required by the Applicable Law;
- (iv) Commence Construction of the Improvements within the Project Schedule as set forth in **Exhibit A**; and
- (v) Not sell, lease or otherwise transfer the Property, or any part thereof, without the written consent of the Borough, except for permitted transfers to a Qualified Entity as set forth in Section 2.6(B) hereof.

**C. Effect and Term of the Covenants and Restrictions.** Subject to the provisions of Section 6 hereof, it is intended and agreed, and the Declaration shall so expressly provide to the extent permitted by Applicable Law, that the Covenants and Restrictions set forth in Section 6 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in Section 6 hereof shall remain in effect until the issuance by the Borough of a Certificate of Completion, as provided in Section 4.3, hereof, (at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate), except, however, that the Covenants and Restrictions provided in Section 6B(i) shall remain in effect for 30 years and the Covenants and Restrictions provided in Sections 6B(ii) and (iii), hereof shall remain in effect without limitation as to time; provided that such Covenants and Restrictions shall be binding on the Redeveloper itself, each successor in interest to the Project, the Property, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successors, transferees or party shall have title to, or an interest in, or possession or occupancy of the Property, and the Improvements constructed thereon or any part thereof.

**D. Enforcement by Borough.** In amplification, and not in restriction of the

provisions of this Article 6, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the Covenants and Restrictions set forth in Section 6B hereof both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Borough shall have the right, in the event of any breach of any such Covenants and Restrictions, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

## **ARTICLE 7 DEFAULT**

**7.1. Events of Default.** Each of the following shall constitute an event of default (hereinafter referred to as an **“Event of Default”**) by the applicable party, respectively:

- A. Any Party fails to make payment of any undisputed sum payable to the other party hereunder, as the same shall become due and payable, or fails to fulfill any obligation hereunder within the time prescribed, and such failure shall have continued for a period of 60 days after receipt of written notice specifying such failure, and demanding that same be remedied;
- B. Any Party or its successor in interest shall violate any of its Covenants, Representations, Declarations, or obligations to perform under the terms of this Agreement and failure shall have continued for a period of 60 days after receipt of written notice specifying such default (or such longer or shorter time as may be specified herein), and demanding that same be remedied, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion, However, if, the default cannot be cured within 60 days using reasonable diligence, the non-defaulting party will extend the time to cure, provided the corrective action is instituted within 60 days and diligently pursued to completion;
- C. The Redeveloper shall fail to construct the Project pursuant to the Project Schedule in **Exhibit A**, subject to the occurrence of an Uncontrollable Circumstance and the provisions of this Agreement, or shall abandon or substantially suspend construction of the Project for a continuous period in excess of 90 days, unless such suspension arises out of an Uncontrollable Circumstance as set forth in this Agreement, and any such default, violation, abandonment, or suspension shall not be cured within 30 days after written

demand by the Borough to do so, or such longer period if incapable of cure within such 30 day period and Borough agrees to extend such time to cure, provided that the Redeveloper has commenced and is diligently prosecuting such cure; or

- D. The Redeveloper or its successor in interest shall fail to pay any Impositions when due, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within 30 days after written demand by the Borough to do so, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion; or
- E. There is, in violation of this Agreement, any transfer of the fee title to the Property or a portion thereof, except for Permitted Transfers as provided in Section 13.2, and such violation shall not be cured within 30 days after written demand served upon the Redeveloper by the Borough; or
- F. The Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or suspends payment of its obligations, or takes any action in furtherance of the foregoing; or the Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of the Redeveloper as bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within 30 days from entry thereof, or the Redeveloper consents to the filing of such petition or answer.

**7.2. Right to Cure Upon Event of Default.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by any party hereto or any successor to such party, such party (or successor) shall, within 60 days (or such longer, or shorter, period to the extent expressly provided above) of receiving written notice from another, proceed to cure or remedy such default or breach. In case such action is not taken or diligently pursued, or the default or breach shall not be cured or remedied within such proscribed time, or any extension of such time granted at the discretion of the non-breaching party, the non-breaching party may pursue its remedies in accordance with this Agreement.

**7.3 Borough's Remedies.** If the Redeveloper shall fail to timely cure any Event of Default by the Redeveloper as set forth in Section 7.1, the Borough shall be entitled,

to:

- A. Withhold the issuance of any approval, permit or certificate in connection with the Project;
- B. Terminate this Agreement and seek reimbursement of all actual monetary damages resulting from such failure to cure the Event of Default;
- C. Call any performance or maintenance bond posted as part of the Site Plan approval, in accordance with the terms of this Agreement or as otherwise available as a matter of law;
- D. Retain any payments made by the Redeveloper hereunder and any monetary and in-kind contributions for infrastructure improvements as payment towards the Borough's damages, if any; and/or
- E. Exercise any other remedies available at law or equity.

Upon termination of this Agreement based upon an Event of Default, the Redeveloper's status as the designated redeveloper for the Project and the Property shall automatically be terminated and deemed null and void. The de-designation of the Redeveloper shall be limited to the extent the Project has not been substantially Completed by the Redeveloper, it being understood and agreed that if the Redeveloper shall fail to cure any such default in accordance with Section 7.2 before substantial Completion the Project, the Borough may terminate this Agreement and de-designate the Redeveloper for that portion of the Project that is not substantially Completed by Redeveloper at that time and for which no Certificate of Occupancy or Certificate of Completion was issued. Such remedy shall not defeat, render invalid or limit in any way the lien or rights or interests of holders of institutional financing as authorized and pursuant to Article 12.

**7.4. Redeveloper's Remedies.** If the Borough shall fail to timely cure any Event of Default by Borough as set forth in Section 7.1, the Redeveloper shall be entitled, in its sole and absolute discretion, to all rights and remedies available at law or in equity.

**7.5. Limitation of Liability.** The Parties agree that in the event of any Default or breach under this Agreement, the Parties shall look solely to the Parties hereto and their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, representative or other person affiliated with such party shall be personally liable for any such judgment or damages.

**7.6. No Waiver of Rights and Remedies by Delay.** Any delay by the aggrieved Party in instituting or prosecuting any actions or proceedings or otherwise asserting its



rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved party of or limit the aggrieved Party's rights in any way (it being the intent of this provision that the aggrieved Party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when, the aggrieved Party may still resolve the problems by the default involved; nor shall any waiver in fact made by the aggrieved party with respect to any specific default by the other party under this Agreement be considered or treated as a waiver of the rights of the aggrieved Party with respect to any other defaults by the other Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

**7.7. Rights and Remedies Cumulative.** The rights and remedies of the Parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative and, except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

## **ARTICLE 8 INSURANCE**

**8.1.** During the term of this Agreement, the Redeveloper shall provide and maintain, or shall cause its contractors and/or subcontractors to provide and maintain, as applicable, the following insurance (or their self funded equivalent) in connection with the work to be performed under this Agreement until such work has been Completed, name the Borough as an additional insured under such policies (other than the Compensation Insurance), and furnish the Borough, within 30 days of the Effective Date, with a copy of certificates of insurance/coverage evidencing that the Redeveloper has obtained such insurance/coverage:

- A. **Contractor's General Liability and Property Damage Insurance.** Shall be in place with a minimum of not less than \$1,000,000 per occurrence (not including defense costs), \$2,000,000 per project annual aggregate, \$1,000,000 personal/advertising liability, and a deductible acceptable to the Redeveloper.

- B. **Excess Liability Insurance.** Shall be in the amount of \$5,000,000 is to be provided in addition to the above requirements.
- C. **Worker's Compensation Insurance.** Coverage as required by state law for all employees who will be engaged in the work associated with this Agreement. The Redeveloper shall require all subcontractors to provide similar worker's compensation insurance for all of its employees, unless those employees are covered under the Redeveloper's insurance.
- D. **Certificates.** All insurance certificates provided by the Redeveloper or contractors, as applicable, under this Agreement shall stipulate that the insurance will not be changed or canceled without giving at least 60 days' written notice to the Borough by certified or electronic mail with confirmed receipt.
- E. **Performance and Maintenance Bonds.** The Redeveloper shall, as required pursuant to Resolution of the Planning Board for preliminary and final site plan approval, post the appropriate performance and maintenance bonds in amounts to be determined by the Planning Board and its professionals pursuant to the MLUL.

## **ARTICLE 9 INDEMNITY**

**9.1. Obligation to Indemnify.** The Redeveloper agrees to indemnify and hold the Borough and its officials, agents, and employees (collectively, the "**Indemnified Parties,**") harmless from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith of any kind or nature, directly and solely arising, imposed by Applicable Law (including reasonable attorneys' fees and expenses and experts' fees and expenses) (collectively, "**Claims**") which the Indemnified Parties sustain, subjected to or caused to incur, by reason of personal injury, death or damage to property, arising with the implementation, construction or maintenance of the Project, or any activities of or on behalf of the Redeveloper within the Property, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions, or negligent acts or omissions of the Indemnified Parties. The Borough shall provide written notice to the Redeveloper of the subject Claims as soon as reasonably possible after their occurrence but in any case, within 10 days of the Borough receiving actual or constructive notice of the subject Claims, provided, however, that in the event such notice is not timely received, the Redeveloper shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice. The obligation to indemnify the Indemnified Parties shall survive the termination or expiration of this Agreement with respect to any Claims arising from any activities occurring prior to the issuance of a Certificate of Completion.

**ARTICLE 10**  
**UNCONTROLLABLE CIRCUMSTANCES**

**10.1. Definition of Uncontrollable Circumstances.** For purposes of this Article and as otherwise used in this Agreement, “**Uncontrollable Circumstances**” shall mean any of the events or conditions set forth below, or any combination thereof, that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (an “**Affected Party**”) under this Agreement:

- A. An act of God including severe natural conditions such as landslide, lightning, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people, or any other similar act or event outside the control of the Affected Party; provided however, that any question as to whether any such conditions should be deemed to constitute an Uncontrollable Circumstance shall be considered in light of good engineering practice and industry standards to protect against reasonably foreseeable severe natural weather conditions, taking into account the geographic location and topographic and geotechnical conditions of the Project.
- B. The condemnation, taking, seizure, involuntary conversion or acquisition of title to or use of the Property, or any material portion or part thereof, by the action of any federal, state or local government or governmental agency or authority.
- C. Delays incurred in obtaining Governmental Approvals caused solely by the approving agency after the Affected Party has taken all required action in obtaining such Approval and the continued delay is outside and beyond the control of the Affected Party.
- D. Delays resulting from legal challenges brought to challenge any permit and/or Approval related to this Project by third parties over whom the Affected Party has no control that have a material and adverse effect upon the Affected Party’s ability to perform its obligations under this Agreement.
- E. Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of the Redeveloper and have a material

and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement.

- F. The unavailability of suitable fill or materials required for performance of the work related to the Project due to fluctuations in the historically reasonable commercial rates for fill or materials, shortages of same in the marketplace and/or the inability to obtain transportation services for transporting fill or materials to the Property or the Project area as a result of a public or private labor dispute.

**10.2. Notice of Uncontrollable Circumstance.** If an Uncontrollable Circumstance has occurred and is continuing, the Affected Party wishing to suspend its performance as a result of such Uncontrollable Circumstance shall provide written notice thereof to the other party as promptly as is reasonably possible under the circumstances and in all events within 60 days following such party's knowledge of the occurrence of such Uncontrollable Circumstance.

**10.3. Effect on Obligations.**

- A. In the event of an Uncontrollable Circumstance, the applicable deadline, obligation or term affected by such Uncontrollable Circumstance shall be extended for a period of time equal to the delay caused by the Uncontrollable Circumstance, provided that timely notice was provided by the Affected Party.
- B. The performance, non-performance or delay in performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is/are the result of an Uncontrollable Circumstance, provided, however, that the Uncontrollable Circumstance (a) was not invoked in bad faith or intentionally by a Party (b) was not the result of any unlawful action or non-action of the Affected Party as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility, and (c) the Affected Party takes all reasonable efforts within its power to timely mitigate the Uncontrollable Circumstance.
- C. Each party shall diligently and in good faith seek to mitigate the effect of such Uncontrollable Circumstance and to perform its obligations to the extent practicable notwithstanding the occurrence of an Uncontrollable Circumstance and to overcome such Uncontrollable Circumstance as soon as is possible or practicable.

- D. Reinstatement of Performance Obligations. The performance by the Parties of any obligation under this Agreement excused as aforesaid shall be recommenced as promptly as is legally and reasonably practicable after the occurrence of an Uncontrollable Circumstance and, in the case of the party not seeking to delay its performance based upon such Uncontrollable Circumstance, after receipt by such party from the Affected Party of written notice that the Uncontrollable Circumstance is no longer occurring and that such party can resume performance of its obligations under this Agreement.

**10.4. Defense of Approvals.** Notwithstanding any of the above, the Redeveloper shall assume the defense to any challenge to any permit and/or Approval it requires to proceed with the Project without cost to the Borough so as to continue to move forward with the Project.

## **ARTICLE 11 NOTICES AND DEMANDS**

**11.1.** A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or electronic mail:

**If to the Borough, to:**

Borough Administrator  
556 Tinton Avenue  
Tinton Falls, New Jersey 07742

**With a copy to:**

Brian M. Nelson, Esq.  
Spiro Harrison & Nelson LLC  
Two Bridge Avenue, Suite 322  
Red Bank, New Jersey 07701

**and if to Redeveloper, to:**

Monmouth Medical Center, Inc.  
300 Second Avenue  
Long Branch, New Jersey 07740  
Attn: Eric Carney, President and Chief Executive Officer

RWJ Barnabas Health, Inc.  
95 Old Short Hills Road

West Orange, New Jersey 07052  
Attn: David Mebane, Executive Vice President and General Counsel

**With a copy to:**

Michael A. Bruno, Esq.  
Giordano, Halleran & Ciesla, P.C.  
125 Half Mile Road, Suite 300  
Red Bank, New Jersey 07701

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 11.1 change the street address, or persons to which notices shall be sent.

**ARTICLE 12  
PROJECT FINANCING  
AND INCENTIVES**

**12.1. Redeveloper's Commitment to Finance Project.** The Redeveloper represents and warrants that it has obtained or can obtain and will commit the requisite equity in an amount necessary to implement and complete the Project, subject to obtaining all necessary financing.

**12.2. Financial Incentive.** The Parties expressly understand and agree that the for-profit component of the Project (i.e., the Medical Office Building included in Phase 2A (the "**For-Profit Component**") would not have been undertaken in its intended scope without the provision of financial incentives from the Borough. Redeveloper specifically represents and warrants that it would not have undertaken construction of the Medical Office Building and related amenities associated thereto without financial incentives from the Borough. Subject to compliance with applicable law, including N.J.S.A. 40A:20-1 et seq., the Borough agrees to enter into a Financial Agreement simultaneously with this Agreement to provide a financial incentive to Redeveloper to undertake the Medical Office Building in its intended scope. Further, the Parties acknowledge and agree that other than the Medical Office Building, all other Project Improvements included in the Project (the "**Non-Profit Components**") shall be exempt from conventional taxation pursuant to N.J.S.A. 54:4-3.6j. In lieu of conventional taxation, the parties acknowledge and agree that, other than the Medical Office Building, the Property shall be subject to a Community Service Contribution as set forth herein.

**12.3. Conditions Precedent to the Redeveloper's Responsibilities.** The Parties acknowledge and agree that, as a condition precedent to Redeveloper's obligations set forth herein, the Borough's governing body shall have approved and executed the following agreements:

**A. Community Service Contribution Agreement.** With respect to the Non-Profit Components of the Project, the Parties agree, subject to compliance with applicable law, to enter into a Community Service Contribution Agreement for an initial term of 30 years, renewable for 5-year terms thereafter, which shall contain the following provisions:

1. Upon the Redeveloper acquiring title to the Property, the Property shall remain tax-exempt, but the Redeveloper shall commence making Community Service Contributions of \$25,000 per year ("**CSC Payment**") during the construction period prior to the issuance of the first Temporary Certificate of Occupancy or Certificate of Occupancy for Phase 1.
2. Upon issuance of the first Temporary Certificate of Occupancy or Certificate of Occupancy for Phase 1, the Redeveloper shall commence making a Community Service Contribution to the Borough equal to \$150,000 annually (prorated for partial years), which shall increase 2% annually, with all payments due in quarterly installments consistent with *ad valorem* taxation. A credit, however, shall be applied against the post-construction annual payments equal to the sum of Community Service Contributions made pursuant to Item 1 above up to a maximum credit of \$125,000. If the applicable credits exceed \$125,000, such credits shall be applied in subsequent years, so that the minimum payment shall never be less than \$25,000.
3. Upon issuance of the first Temporary Certificate of Occupancy or Certificate of Occupancy for the acute care hospital under Phase 2A, the Redeveloper shall commence payments to the Borough in an amount equal to that which is required pursuant to N.J.S.A. 40:48J-1 et seq. based on the then-current per day, per bed contribution amount, which increases 2% annually.

**B. Financial Agreement for For-Profit Components under Phase 2A.** With respect to the For-Profit Component, the Parties agree to enter into a 30-year Financial Agreement pursuant to the Long-Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., which shall contain the following terms:

1. A minimum annual service charge of \$150,000 shall commence upon the issuance of building permits for construction of the For-Profit Component. The annual minimum service charge payments shall not affect the term of the 30-year exemption period so long as construction is substantially complete within five years of building permit issuance.

2. Commencing upon issuance of the first Temporary Certificate of Occupancy or Certificate of Occupancy, i.e., substantial completion, an annual service charge of 10% of adjusted gross revenue ("**AGR**") or 20% of conventional taxation for years 1 through 10 shall be assessed, thereafter, escalating as follows:
  - a. Years 11-20: 11% of AGR or 40% of conventional taxes.
  - b. Years 21-25: 12% of AGR or 60% of conventional taxes.
  - c. Years 26-30: 13% of AGR or 80% of conventional taxes.
3. Payments made under the Financial Agreement shall be subject to an annual land tax credit.
4. The Financial Agreement shall include an administrative fee in the amount of 2% of the annual service charge.

**12.4. Rights of Institutional Mortgagee.** Any financial institution lending money on the security of the real Property in the Project shall be entitled to the protection of N.J.S.A. 55:17 providing for notification, right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights all as specifically provided in N.J.S.A. 55:17-8.

- A. This Agreement as a financial arrangement made by a governmental body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the project, as though such default or foreclosure had not occurred, subject to the provisions of N.J.S.A. 55:17.
- B. The Borough agrees to execute subordination and attornment documents that may reasonably be required by an institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

**12.5. Rights of Mortgagees.** Notwithstanding any other provision of this Agreement, the holder of any mortgage (including any such holder who obtains title to the Property or any part thereof), or any other party who thereafter obtains title to the Property or such part from or through such holder or any purchaser at foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project



except to secure and make the Project site and Property safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Property to Redeveloper be construed to so obligate such holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided, or permitted under the Reuse Plan or otherwise approved by the Borough.

**12.4. Notice to Mortgagee.** Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or Default by Redeveloper of its obligations or covenants under this Agreement, the Borough shall at the same time forward a copy of such notice or demand to each holder of any mortgage at the last known address of such holder shown in the land records of the County. Notice that such breach or Default subsequently has been cured shall also be provided by the Borough to each such holder of any mortgage.

**12.5. Mortgagee's Right To Cure Redeveloper's Default.** After any breach or Default referred to in Section 7, each holder shall have the right, at its option, to cure or remedy such breach or Default (if the holder shall opt to cure or remedy the breach or Default, the times to cure provided herein shall be extended for such a period of time equal to the time otherwise applicable to Redeveloper for cure) and to add the cost thereof to its mortgage. If the breach or Default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the Borough's approval, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or Completion of the Project. Any such holder who shall properly Complete the Project or applicable part thereof shall be entitled, upon written request made to the Borough, to receive the Certificate of Occupancy for the units or buildings within the Project and the Certificates of Completion as set forth in Section 4.3 hereof, and such Certificate shall mean and provide that any remedies or rights that Borough shall have or to be entitled to due to the failure of Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any Default with regard to construction of the Project or applicable part thereof, or due to any other Default in or breach of this Agreement by Redeveloper or such successor, shall not apply to the part or unit of the Property to which such Certificate relates.

## **ARTICLE 13 RESTRICTIONS ON TRANSFERS**

**13.1. Restrictions on Transfer.** Prior to the issuance of a Certificate of Completion for the Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), except as otherwise permitted by this Agreement, Redeveloper shall be without power to sell, lease or otherwise transfer the Project or any such part, without the written

consent of the Borough, which consent shall not be unreasonably withheld, delayed or conditioned, except that Redeveloper may sell or lease individual units, if any, to third parties. The prohibition in this Section 13.1 shall apply to any sale, transfer, pledge, or hypothecation by Redeveloper of all or substantially all of its assets "in bulk" (but not to sales in the ordinary course of business) or all or substantially all of its stock, or the sale, transfer, pledge, or hypothecation of 50% or more of the stock of Redeveloper if Redeveloper's stock is not publicly traded; or the sale, transfer, pledge, or hypothecation of 50% or more of the beneficial ownership interest in Redeveloper if Redeveloper is a partnership, except in the event of the death of a partner or member. Any of the foregoing cases whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of Redeveloper, which is prohibited by the third sentence of this Section. The restrictions in this Section 13.1 shall not apply to conveyances set forth in Section 13.2.

**13.2. Permitted Transfers.** Notwithstanding the foregoing, the Borough hereby consents, without the necessity of any further approval, but subject to 10 days prior notice to the Borough (except as to conveyances in Sections (A) and (B)), to the following conveyances:

- A. A conveyance of driveways, roads, infrastructure, open space and other common property to a property owners' association or similar entity.
- B. Deeds to purchasers of individual condominium units, if any, or leases to tenants of individual units.
- C. Utility and other necessary easements.
- D. A mortgage or mortgages or leases or leasehold or other financing and other liens and encumbrances solely for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project.
- E. A conveyance of the Property or any portion thereof to the holder of any mortgage authorized under this Agreement, whether through foreclosure, deed-in-lieu of foreclosure, or otherwise.
- F. A transfer of any interest in the Project Site to any partner of any of the members of the Redeveloper or to any entity owned by, controlled by, or under common control with, in each case, the Redeveloper.

**13.3. Conveyance to a Qualified Entity.** Upon a conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.6, which shall not be

unreasonably delayed or denied, the Redeveloper shall be relieved of its right and obligations hereunder.

**13.4. Subsequent Conveyance by Redeveloper.** Upon issuance of a Certificate of Completion for any portion of the Project, the Redeveloper shall have the right to sell, lease or otherwise transfer, convey or encumber any such portion of the Project without the consent of the Borough and free of any restrictions imposed by this Agreement.

## **ARTICLE 14 MISCELLANEOUS**

**14.1. Term.** Except for those provisions expressly surviving termination, this Agreement shall terminate upon the earlier of: (i) Completion of the Project, or (ii) the expiration of the Planning Board approval for the Project, after any applicable extensions granted by the Planning Board.

**14.2. No Third-Party Beneficiaries.** The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

**14.3. Amendment; Waiver.** No alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement. The failure of the Borough or Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Borough or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Borough or Redeveloper.

**14.4. Consents.** Unless otherwise specifically provided herein, no consent or approval by the Borough or Redeveloper permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the party by or on whose behalf such consent is given. Whenever this Agreement requires the consent or approval of the Borough or the Redeveloper, or any officers, agents or employees of either Party, such approval or consent shall not be unreasonably withheld, delayed or conditioned and shall be given within a reasonable time if said time is not specifically set forth herein.

**14.5. Captions.** The captions of the Sections and Subsections and the Table of Contents, Schedule of Exhibits and Index of Definitions of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of the articles, sections, exhibits, definitions, or other provisions hereof.

**14.6. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall be filed in either the Superior Court of New Jersey, Monmouth County, or in the United States District Court for the District of New Jersey in accordance with their respective rules of court.

**14.7. Severability.** If any article, section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

**14.8. Binding Effect.** Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of Redeveloper, the Borough and their respective successors and assigns.

**14.9. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Redeveloper and the Borough, their relationship being solely as contracting Parties under this Agreement.

**14.10. Commercially Reasonable Efforts.** Each party will use its commercially reasonable efforts to assure the completion of the Project as specified in this Agreement.

**14.11. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

**14.12. Prior Agreements Superseded.** This Agreement repeals and supersedes any prior understanding or written or oral agreements (express or implied) between

the Parties. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.

**14.13. Exhibits.** All Exhibits referred to herein shall be considered a part of this Agreement as fully and with the same force and effect as if such Exhibits had been included within the text of this Agreement in full.

**14.14. Counting of Days; Saturday, Sunday or Holiday.** The word “days” as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided in this Agreement for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day. The term “Business Day” as used herein means any day other than a Saturday, a Sunday, or a day on which banks generally and public offices are not open under the laws of the State of New Jersey.

**14.15. Affirmative Action.** Should Redeveloper use any public funding or financing for the Project, which requires compliance with affirmative action requirements set forth in P.L. 1975, C. 127 (N.J.S.A. 17:27), the Redeveloper agrees to comply with said requirements and cause its contractors and subcontractors to comply with same.

**14.16. Non-Discrimination.** The Redeveloper shall not discriminate against or segregate any person, a group of persons, on account of race, color, religion, creed, national origin, ancestry, disability, age, marital status, familial status, military status, sex, gender identity or expression, affectional or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project Site; nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees on the Project Site. Redeveloper appreciates Borough’s sharing of Redeveloper’s commitment to promoting an antiracist culture and advancing racial equity, diversity and inclusion in its governance structure, workforce, subcontracts, procurement and policies.

**14.17. Construction.** The Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each party and agree that no provision of this Agreement shall be construed in favor of or against either party by such party or its counsel have provided an initial or any subsequent draft of this Agreement or of any portion of this Agreement.



**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective on the Effective Date.

**WITNESS:**

**MONMOUTH MEDICAL CENTER, INC.**

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

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

**ATTEST:**

**BOROUGH OF TINTON FALLS**

\_\_\_\_\_  
Michelle Hutchinson  
Borough Clerk

By: \_\_\_\_\_  
Vito Perillo, Mayor

**EXHIBIT A**  
**PROJECT SCHEDULE**

1. Promptly following closing, Redeveloper shall use good faith, commercially reasonable efforts to diligently apply for and pursue building permits for the Project.
2. Redeveloper will commence construction of Phase 1 no later than 160 days after closing, provided however, that if the corresponding timeline set forth in the FMERA Redevelopment Agreement is extended, such timeline shall be automatically, and without further action of the parties, modified accordingly herein.
3. Redeveloper will Complete Construction (as defined in the FMERA Redevelopment Agreement) of Phase 1 of the Project no later than 27 months after closing, provided however, that if the corresponding timeline set forth in the FMERA Redevelopment Agreement is extended, such timeline shall be automatically, and without further action of the parties, modified accordingly herein.
4. If Phase 2A is commenced, construction shall commence within 6 months and be completed within 84 months of closing, provided however, that if the corresponding timeline set forth in the FMERA Redevelopment Agreement is extended, such timeline shall be automatically, and without further action of the parties, modified accordingly herein.
5. If Phase 2B is commenced, construction shall commence within 60 days of Completion of Phase 1 and be completed within 36 months of closing, provided however, that if the corresponding timeline set forth in the FMERA Redevelopment Agreement is extended, such timeline shall be automatically, and without further action of the parties, modified accordingly herein.