

FINANCIAL AGREEMENT

**Re: For-Profit Medical Office Building
Block 101.03, Lot 1
Borough of Tinton Falls
County of Monmouth**

THIS FINANCIAL AGREEMENT (the "Agreement") made this ____ day of _____ 2023 (the "Effective Date");

by and between

MMC FORT MONMOUTH HOLDINGS URBAN RENEWAL LLC, a New Jersey limited liability company (the "Entity" or "Redeveloper"), formed and qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. ("Exemption Law"), an affiliate of **MONMOUTH MEDICAL CENTER, INC.**, ("MMC") 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 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 October 30, 2017, the Fort Monmouth Economic Revitalization Authority ("**FMERA**") and the Redeveloper entered into a Purchase and Sale Agreement for 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, on August 10, 2018, FMERA, the 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 the Property; and

WHEREAS, FMERA's Agreement to Assign with the Entity 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 Entity entered an Escrow Agreement to address pre-development activities, including negotiation of a Financial Agreement for the Project and other related actions; and

WHEREAS, on May 12, 2022, the Entity 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 a phased development as follows: (a) the first phase consisting of the construction of an approximately 150,000 square foot cancer center/ambulatory care pavilion, comprised of the following uses: oncology services, imaging, radiation, ambulatory surgery center, parking and interphase grading and landscaping ("**Phase 1**"); and (b) a second phase consisting of two options, which may be undertaken by the Redeveloper at its discretion in accordance with the Redevelopment Agreement, Phase 2A consisting of the construction of an approximately 568,901 square foot acute care hospital including 250 licensed beds, an approximately 206,768 square foot clinical and support building,

a 112,864 square foot medical office building, a 34,000 square foot central utility plan, an approximately 404,000 square foot structured parking facility, and associated site improvements and amenities, and Phase 2B consisting of 20 acres of publicly available accessible open space, stone dust walking trails connecting different site components, seatwall and sculpture space, at least two gazebos and landscaped open areas and plantings (Phase 1 and either Phase 2A or Phase 2B, as elected by Redeveloper in accordance with the Redevelopment Agreement (collectively, the “**Project**”); and

WHEREAS, the Entity’s May 12, 2022 application (the “**Application**”) was made in the same form required to be made under the Exemption Law.

WHEREAS, on June 21, 2022, the Entity 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 Entity as redeveloper of the Property; and

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

WHEREAS, on December 20, 2022, the Borough adopted Resolution No. R-22-241, fully designating the Entity as redeveloper of the Property and authorizing the entry of a Redevelopment Agreement dated January 23, 2023 (the “**Redevelopment Agreement**”); and

WHEREAS, on December 15, 2022, the Entity acquired title and took possession of the Property; and

WHEREAS, the Entity is a not-for-profit corporation exempt from federal, state and local income tax under Section 501(c)(3) of the Internal Revenue Code and Title 54 of the New Jersey Statutes; and

WHEREAS, 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; and

WHEREAS, the Parties acknowledge and agree that other than the Medical Office Building, referred to herein as the “For-Profit Component”, 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 whereby payments shall be made under the Community Service Contribution Agreement between the Parties; and

WHEREAS, by the adoption of **Ordinance No. _____ on _____**, 2023 (the "**Ordinance**"), the Borough approved the above findings and the tax exemption Application and authorized the execution of this Agreement as it relates to the For-Profit Component of the Project; and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to payment of the Annual Service Charge (as defined herein) by the Entity, in lieu of real property taxes for the For-Profit Component, the Parties have determined to execute this Financial Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties to this Agreement mutually covenant and agree as follows:

1. General Definitions. Unless specifically provided otherwise or the context otherwise requires, the following terms shall have the meanings set forth below.

(a) **Administrative Fee** – As defined in Section 8 of this Agreement.

(b) **Agreement** – This Financial Agreement.

(c) **Allowable Net Profit** – The amount arrived at by applying the Allowable Profit Rate, as defined by N.J.S.A. 40A:20-3(b), to the Total Project Cost, as defined by N.J.S.A. 40A:20-3(h), pursuant to the provisions of N.J.S.A. 40A:20-3(b) and (c).

(d) **Allowable Profit Rate** – The Allowable Profit Rate, as defined by N.J.S.A. 40A:20-3(b), means the greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing the allowable profit rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in the county.

(e) **Annual Gross Revenue** – The annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income, for the Entity pursuant to N.J.S.A. 40A:20-3(a).

(f) **Annual Service Charge or ASC** – The amount the Entity has agreed to pay the Borough for municipal services supplied to the Project, which sum is in lieu of

any taxes on the Improvements pursuant to N.J.S.A. 40A:20-12.b, and shall be subject to a Land Tax credit as set forth herein.

- (g) **Application** – As defined in the Recitals to this Agreement.
- (h) **Auditor’s Report** – A complete financial statement outlining the financial status of the Project for the period referenced therein, the contents of which have been prepared in a manner consistent with the current standards of generally accepted accounting principles consistently applied, and the terms of the Exemption Law, and which fully details all items as required by all applicable state statutes and which has been prepared by a certified public accountant who is, or whose firm is licensed to practice that profession in the State of New Jersey.
- (i) **Certificate of Occupancy** – The certificate, whether temporary or permanent, issued by the Borough authorizing occupancy of the Project in whole or in part.
- (j) **Effective Date of Termination** – As defined in Section 16 of this Agreement.
- (k) **Entity** – MMC Fort Monmouth Holdings Urban Renewal LLC.
- (l) **Exemption** – the long-term tax exemption provided by this Agreement.
- (m) **Exemption Law** – The Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq., as amended and supplemented.
- (n) **Expiration Date** – 30 years after Substantial Completion of the Project; provided, however, that in no event shall the Expiration Date be more 35 years from the date of execution of this Agreement.
- (o) **Foreclosure Act** – As defined in Section 22 of this Agreement.
- (p) **Improvements** – As defined in Section 5 of this Agreement.
- (q) **In Rem Tax Foreclosure** – A summary proceeding by which the Borough may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by N.J.S.A. 54:5-104.29 et seq.
- (r) **Land Taxes** – The amount of taxes assessed on the value of the land comprising the Property (and not the Improvements located on the Property), as determined by the Borough Tax Assessor. Assessments with respect to Land Taxes are not abated under the long-term exemption granted in this Agreement, however same shall be applied as a Credit against the Annual Service Charge due hereunder.

- (s) **Land Tax Payments** – Payments to the Borough of Land Taxes made on the quarterly due dates, as determined by the Tax Assessor and/or the Tax Collector.
- (t) **Material Conditions** – As defined in Section 10 of this Agreement.
- (u) **Minimum Annual Service Charge** – shall mean \$150,000.
- (v) **Net Profit** – The gross revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c).
- (w) **Notice of Relinquishment** – As defined in Section 16 of this Agreement.
- (x) **Ordinary Taxes** – the taxes on the land and improvements that would ordinarily be due and payable in the absence of a Tax Exemption.
- (y) **Project** – As defined in the Recitals to this Agreement.
- (z) **Project Unit** – As defined in Section 12 of this Agreement.
- (aa) **Project Unit Purchaser** – As defined in Section 12 of this Agreement.
- (bb) **Pronouns** – He, she or it shall mean the masculine, feminine or neuter gender, the singular, as well as, the plural, as proper meaning requires.
- (cc) **Redeveloper** – The Entity.
- (dd) **Redevelopment Area** – As defined in the Recitals to this Agreement.
- (ee) **Redevelopment Law** – As defined in the Recitals to this Agreement.
- (ff) **Redevelopment Plan** – As defined in the Recitals to this Agreement.
- (gg) **Substantial Completion** – The determination by the Borough that the Project is ready for the use intended as evidenced by the issuance of a Certificate of Occupancy.
- (hh) **Property** – As defined in the Recitals to this Agreement and meaning the land that is subject to this Agreement and which the Project is located on.
- (ii) **Borough** – Borough of Tinton Falls, Monmouth County, New Jersey.
- (jj) **Termination** – The expiration or earlier cancellation of the exemption in accordance with the terms hereof, which by operation of the terms of this Agreement shall cause the Entity to lose or relinquish its long term tax exemption.

2. Borough's Findings. Pursuant to N.J.S.A. 40A:20-11, the Borough makes the following findings with respect to the tax exemption granted in this Agreement:

(a) The relative benefits of the Project to the redevelopment of the Redevelopment Area when compared to the costs, if any, associated with the Exemption:

(i) This Agreement will benefit the Borough and its inhabitants by furthering the redevelopment of the Redevelopment Area, specifically, the Property, which has been an unproductive property for many years as part of the former Fort Monmouth, in need of adaptive reuse;

(ii) The Agreement will allow for the development of the Project which will contribute to the economic growth of the Borough;

(iii) The tax exemption granted in this Agreement will benefit the Borough and its inhabitants by furthering the redevelopment of the Redevelopment Area pursuant to the objectives of the Redevelopment Plan;

(iv) The Borough's review and analysis indicates that the benefits of the Project and Exemption outweigh any costs that could be associated and that the revenue generated will yield an annual revenue surplus in contrast to the deficit from the currently unused Property; and

(v) It is expected that the Project will create a substantial number of jobs during construction and additional permanent jobs thereafter.

(b) Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

(i) The Exemption offset the significant costs of development of the Project and the significant capital investment being made by the Entity to redevelop the Property;

(ii) The Exemption will influence the locational decisions of the prospective occupants of the Project because without the Exemption, rents would be higher and prospective occupants of the Project would likely have located in other areas where the rents are lower due in large part to the absence of substantial costs of redevelopment and to lower tax rates;

(iii) The relative stability and predictability of the service charges will allow the Entity and its prospective tenants to stabilize their expenses, allowing a high level of maintenance to the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area; and

(iv) The relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project, in view of the significant level of site preparation and development costs associated with the Project.

3. Approval of Entity. Approval of the Exemption is granted to the Entity for the Project on the Property, which shall in all respects comply and conform to all applicable statutes of the State of New Jersey, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described herein. By execution of this Agreement, the Entity hereby acknowledges and agrees that it currently complies, and shall continue to comply for the duration of this Agreement, with all qualifications of the Exemption Law as applicable to urban renewal entities.

4. Redevelopment of the Property. The Entity agrees to undertake the Project and use, own, manage and control the redevelopment of the Property in accordance with the provisions of the Redevelopment Plan and Redevelopment Agreement, any applicable municipal land use approvals including the Site Plan Resolution pertaining to the Project and the Exemption Law.

5. Exemption. So long as there is compliance with the Exemption Law and this Agreement, it is understood and agreed by the Parties hereto that all Improvements made in the redevelopment of the Property (the "**Improvements**"), shall be exempt from taxation in accordance with the provisions of the Exemption Law and in the manner provided by this Agreement, for a term of 30 years, commencing from the date of Substantial Completion of the Project, as evidenced by the issuance of a Certificate of Occupancy; provided that in no event shall the exemption from taxation exceed a period of 35 years from execution of this Agreement (the "**Expiration Date**"); and further provided that the Exemption and this Agreement shall continue in force only while the Project is owned by one or more urban renewal entity(ies) formed and qualified pursuant the Exemption Law.

6. Annual Service Charge.

(a) In consideration of the aforesaid Exemption from taxation on the Improvements, the Entity shall make payment to the Borough of an Annual Service Charge ("**ASC**") for municipal services supplied to the Project, in stages as follows:

(i) Commencing upon Substantial Completion and continuing for a period of 10 years (years 1-10), the ASC shall be 10% of the Annual Gross Revenue of the Entity, or 20% of the amount of Ordinary Taxes on the Property otherwise due to the Borough, whichever shall be greater.

(ii) Commencing on the 11th year and continuing for a period of 10 years (years 11-20), the Annual Service Charge shall be 11% of the Annual Gross

Revenue of the Entity, or 40% of the amount of Ordinary Taxes on the Property otherwise due to the Borough, whichever shall be greater.

(iii) Commencing in the 21st year and continuing for a period of 5 years (years 21-25), the Annual Service Charge shall be 12% of the Annual Gross Revenue of the Entity, or 60% of the amount of Ordinary Taxes on the Property otherwise due to the Borough, whichever shall be greater.

(iv) Commencing in the 26th year and continuing for a period of 5 years (years 26-30), the Annual Service Charge shall be 13% of the Annual Gross Revenue of the Entity, or 80% of the amount of Ordinary Taxes on the Property otherwise due to the Borough, whichever shall be greater.

(e) Pursuant to N.J.S.A. 40A:20-12, the ASC shall be paid in quarterly installments on those dates when real estate tax payments are due, subject to adjustment for overpayment or underpayment within 45 days after the close of each calendar year. In the event that the Entity, or any successor in interest of the Entity, fails to so pay, the amount unpaid shall bear the rate of interest permitted in the case of unpaid taxes or tax liens until paid.

(f) The obligation to pay the ASC shall commence from the first day of the month following the Substantial Completion of the Project or part thereof for which a Certificate of Occupancy has been issued.

(g) The ASC for the first year and last year of the Exemption shall be calculated on a pro rata basis, based respectively on the number of days remaining in the calendar year or the number of days having elapsed in the calendar year, divided by 365. For the first year, the Exemption shall be in effect from the commencement of the Exemption to the close of the first calendar year. For the year ending the Exemption, the Exemption shall be in effect from the first day of the year to the termination of the Exemption.

7. Land Tax Payment and Credit. The Entity shall pay Land Taxes applicable to the Property as conventionally paid to the Borough. The Entity shall be entitled to an annual credit against the ASC for the amount, without interest, of Land Taxes paid on the Property in the last four preceding quarterly installments. The payments of Land Taxes must be made by the Entity in order for any entitlement to a Land Tax credit against the ASC for the subsequent year. The Entity reserves all rights pursuant to applicable State law with respect to the Borough's determination of the Land Taxes due and the value of the Property, but not the Improvements, including the right to challenge the annual assessments of the value of the Property, but not the Improvements, through a tax appeal or other appropriate proceeding.

8. Administrative Fee. The Entity shall pay an annual Administrative Fee to the Borough in addition to the ASC, Land Tax Payments and other payments provided

for herein at a rate of 2% of each prior year's ASC and shall be payable and due on or before December 31st of each year and collected in the same manner as the ASC.

9. Material Conditions. It is expressly agreed and understood that full and timely payment (subject to applicable cure periods under this Agreement) of Land Taxes, Administrative Fees, ASCs, water and sewer charges, and any interest or other assessments, including the methodology of computing all such payments, are material conditions of this Agreement ("**Material Conditions**").

10. Certificate of Occupancy. It is understood and agreed that it shall be the obligation of the Entity to make application for and make all best efforts to obtain Certificate(s) of Occupancy in a timely manner for the Project. The ASC is to commence from the first day of the month following the Substantial Completion of the Project. It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, the Tax Collector and the Chief Financial Officer of the Borough a copy of each Certificate of Occupancy obtained. Failure of the Entity to file such issued Certificate of Occupancy shall not militate against any action or non-action taken by the Borough's Tax Assessor in the absence of such filing by the Entity.

11. Sale of Project or a Portion of the Project. In accordance with N.J.S.A. 40A:20-10a-d, the Borough will not unreasonably deny, withhold, condition, or delay its consent to a sale of the Project by the Entity to another qualified urban renewal entity organized under the Exemption Law, so long as it, its successors, and its assigns, all own no other project at the time of the transfer. Upon assumption by the transferee urban renewal entity of the Entity's obligations under this Agreement with respect to the portion of the Project being transferred, the Exemption applicable to the transferee's interest in the Project shall continue and inure to the transferee urban renewal entity, its respective successors or assigns. In the event of a sale of a portion of the Project to another qualified urban renewal entity, this Agreement shall be deemed assigned to such urban renewal entity for the portion of the Project conveyed and the transferee will be required to fulfill all requirements of this Agreement as if it were the Entity. It is expressly acknowledged and agreed that, in accordance with N.J.S.A. 40A:20-3, any gain realized by the urban renewal entity on the sale of the Project or any unit therein in fee simple, whether or not taxable under federal or State law, shall not be included in computing Annual Gross Revenue hereunder.

12. Dispute Resolution.

- (a) If either party, its successors or assigns, breaches this Agreement, or a dispute arises between the parties regarding the terms and provisions set forth herein, each party reserves the right to apply to the Tax Court or other governing Court of the State of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such a fashion as will tend to accomplish the purposes of the Exemption Law and this Agreement.

- (b) In the event that it is determined that the Exemption Law requires the dispute to be arbitrated, then the parties shall submit the dispute to American Arbitration Association, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Agreement. The costs of arbitration shall be borne equally by the parties. In such event, any award rendered in any such arbitration shall be final and binding on the Parties and judgment thereon may be entered in a court of competent jurisdiction.

13. Limitation on Profits. During the period of tax exemption granted under this Agreement, the Entity's profits and dividends shall be limited according to the provisions of the Exemption Law and N.J.S.A. 40A:20-15 in particular. For any fiscal year in which the Entity's Net Profit, as calculated pursuant to N.J.S.A. 40A:20-15, exceeds its Allowable Net Profit, the excess Net Profit shall be paid to the Borough as an additional service charge within 120 days of the close of that fiscal year.

14. Permitted Reserves. The Entity may maintain during the term of this Agreement a reserve against vacancies, unpaid rentals, and contingencies in an amount not exceeding 10% of the Entity's Gross Revenues for the last full fiscal year preceding the determination with respect to permitted Net Profit as provided in N.J.S.A. 40A:20-15, said reserve to be noncumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of 10% of the preceding year's Gross Revenues as aforesaid; provided, however that the Entity may retain sufficient excess Net Profits each year to eliminate any deficiency in the reserve.

15. Relinquishment of Exemption and Termination of Agreement.

(a) Pursuant to N.J.S.A. 40A:20-13, the Entity may, at any time after the expiration of 1 year from Substantial Completion of the Project or part thereof for which a Certificate of Completion has been issued, relinquish its status as an urban renewal entity, as defined in the Exemption Law, N.J.S.A. 40A:20-3(g). Notice of such election ("**Notice of Relinquishment**") shall be given to the Borough in writing and shall state the date designated for the relinquishment of the Entity's status as an urban renewal entity under the Exemption Law. With the exception of transfer to another urban renewal entity, as approved by the Borough, and subject to the transferee entity's assumption of all contractual obligations of the transferor entity under this Agreement, the tax exemption, annual service charges, and the profit and dividend restrictions contemplated by this Agreement shall terminate on the date designated in the Notice of Relinquishment.

(b) Pursuant to N.J.S.A. 40A:20-13, and notwithstanding the provisions of Section 15a of this Agreement, the date of termination of the tax exemption, whether by affirmative action by the Entity, by virtue of the provisions of the Exemption Law, or by other terms of this Agreement, shall be deemed to be the close of the Entity's fiscal

year ("**Effective Date of Termination**"). Within 90 days after the Effective Date of Termination, the Entity shall provide a final accounting and pay to the Borough a sum equal to the amount of the reserve, if any, maintained pursuant to this Agreement and N.J.S.A. 40A:20-15, as well as the excess profit, if any, payable as of the Effective Date of Termination pursuant to this Agreement in accordance with the provisions of N.J.S.A. 40A:20-15 and -16. Upon the Effective Date of Termination, the Project, all affected parcels and the Improvements shall be assessed and subject to taxation as are other taxable properties in the municipality.

(c) At all times prior to the expiration or other termination of this Agreement, the Entity shall remain bound by the provisions of the Exemption Law.

16. Annual Audit. The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles and as otherwise prescribed in the Exemption Law during the term of the tax exemption. Within 90 days after the close of its fiscal year, while this Agreement continues in effect, the Entity shall submit to the Mayor and Tax Assessor pursuant to N.J.S.A. 40A:20-9(d), an annual audited statement prepared by a certified public accountant for the preceding fiscal year which identifies clearly the calculations of the Entity's Net Profit as of the previous year to the extent required by the Exemption Law. Said auditor's report shall include, but not be limited to the following: calculation of the Entity's Gross Revenue and Net Profit derived from the Project, the terms and interest rate on any mortgage(s) affecting the Project, and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the said Law and this Agreement. Pursuant to N.J.S.A. 40A:20-3(h)(4), the Entity further agrees to submit a Total Project Cost audit certified as to actual construction costs by an independent and qualified architect, within 90 days after completion of the Project. The contents of any audit submitted by the Entity shall be prepared in conformity with generally accepted accounting principles and the terms of the Exemption Law.

17. Right of Inspection. In accordance with N.J.S.A. 40A:20-9(e), the Entity shall, upon reasonable request, permit inspection of its property, equipment, buildings, and other facilities. It also shall permit, upon reasonable request, examination and audit of its books, contracts, records, documents, and papers by duly authorized representatives of the Borough or the State. Such examination or audit shall be made during reasonable business hours, in the presence of an officer or agent of the Entity.

18. Transfer of Project.

(a) Any change made in the ownership of the Project shall be void unless approved by the Borough Council, which approval shall not be unreasonably withheld, conditioned, or delayed. However, to facilitate a sale of the Project by the Entity to another qualified urban renewal entity organized under the Exemption Law as

contemplated under Section 11, it is understood and agreed that the Borough, on written application by the transferor Entity, will not withhold its consent, provided the transferor Entity is not in default regarding any performance required of it hereunder, full compliance with N.J.S.A. 40A:20-1 et seq. has occurred, and the transferor Entity's obligations under this Agreement are fully assumed by the transferee entity. Upon assumption, in form and content satisfactory to the Borough, by the transferee entity of the Entity's obligations under this Agreement, the tax exemption granted under this Agreement shall continue to inure to the transferee entity, its respective successors or assigns as authorized by the Borough.

(b) If the Entity transfers the Project or portion thereof to another urban renewal entity pursuant to the preceding paragraph, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, with respect to the transferred portion of the Project then, pursuant to N.J.S.A. 40A:20-6, the transferor Entity shall be discharged from any further obligation under this Agreement.

19. Entity's Covenants and Representations. The Entity represents that:

(a) The Entity is a urban renewal entity organized as a limited liability company and is qualified to do business under the provisions of the Exemption Law and in good standing under the laws of the State of New Jersey.

(b) The statements contained in the Application are true, correct and complete as of the date of this Agreement and do not omit any material facts necessary to make the statements therein not misleading.

(c) The Entity further acknowledges that the Borough is relying on the truth, accuracy and completeness of the statements, information and data contained in the Application.

(d) The Entity has approved the execution and delivery of this Agreement, and upon its execution, it will be valid and binding upon the Entity.

(e) The Entity also covenants that it will use, manage and operate the project in accordance with the Redevelopment Plan and applicable governmental approvals.

20. Borough's Representations. The Borough represents that:

(a) The designation of the Property as an area in need of redevelopment was made in full compliance with the Redevelopment Law and, as applicable, the Exemption Law.

(b) The preparation and adoption of the Redevelopment Plan by appropriate Borough ordinance was performed in full compliance with the Redevelopment Law and, as applicable, the Exemption Law.

21. Events of Default. The Entity shall be in default under this Agreement if it fails to comply with any Material Condition, or if the Entity fails to comply in any material respect with the obligations under the Exemption Law (each such failure an “**Event of Default**”).

(a) Cure Upon Default. Should the Entity (the “**Defaulting Party**”) be in default as defined and set forth in Section 22 of this Agreement, the Borough shall notify the Defaulting Party in writing of said default (“**Default Notice**”). The Default Notice shall set forth with particularity the basis of said default. Notwithstanding anything expressly to the contrary in the Redevelopment Agreement, if applicable, the Defaulting Party has 60 days from the date of the Default Notice to cure any default.

(b) Interest on Overdue Payments. Any payments hereunder not made by the due date, after written notice and opportunity to cure as set forth in Section 22(a) above, shall bear interest from the due date thereof at the highest rate of interest permitted in the case of unpaid taxes or tax liens until paid.

(c) Remedies. Upon service of the Default Notice and expiration of the cure period, the Borough shall have the following rights and remedies upon the occurrence of an Event of Default as against any Defaulting Party:

(i) Declare the entire unpaid amount then due under this Agreement, together with all accrued interest thereon, to be immediately due and payable, whereupon the same, and all interest accrued thereon, shall forthwith become due and payable;

(ii) Take any action at law or in equity to collect the payments due under this Agreement or to otherwise enforce performance and observance of any Material Condition of this Agreement or to otherwise enforce an obligation as to which there has been an Event of Default;

(iii) Upon 90 days written notice to the Defaulting Party, the Borough may terminate this Agreement as to that Defaulting Party only and declare it null and void at which time the Project, as applicable, will become subject to full taxation at the current total tax rate of the Borough; or

(iv) Proceed against the Property, as applicable, then owned by the Defaulting Party pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. (“Foreclosure Act”). Whenever the word “taxes” appear in the Foreclosure Act or other applicable law, or is applied, directly or indirectly, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement as if the ASC and Administrative Fee were taxes or municipal liens on land. In such event, however, the Defaulting Party does not waive any defense it may have to contest the right of the Borough to proceed in the above mentioned manner by conventional or In Rem Tax Foreclosure.

(d) **No Remedy Exclusive.** No remedy herein conferred or reserved to the Borough is intended to be exclusive of any other available remedy, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borough to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give notice, other than such notice as may be expressly required herein or by law. No interpretation of or determination relating to any provision within this Agreement shall deprive the Borough of any of its remedies or actions against a Defaulting Party because of its failure to pay Land Taxes, the ASC, the Administrative Fee and/or the water and sewer charges and interest payments. This right shall apply to arrearages that are due and owing at the time; nor shall the bringing of any action for Land Taxes and ASCs, or other charges or the resort of any other remedy herein provided for the recovery of Land Taxes, ASCs, and water and/or sewer charges, or other charges be construed as a waiver of the right to terminate said tax exemption or proceed with In Rem Foreclosure action or any other remedy.

22. Waiver. Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Borough of any rights and remedies, including without limitation, the right to terminate this Agreement and the tax exemption granted herein for violation of any of the Material Conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the Borough has under law, in equity, or under any provisions of this Agreement. In the event any provision contained in this Agreement should be breached by the Entity, and thereafter waived by the Borough, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

23. Governing Law and Conflicts. This Agreement shall be governed by the provisions of the Exemption Law and the other laws of the State of New Jersey. The parties agree that in the event of a conflict between this Agreement and the Application, the language contained in this Agreement shall govern and prevail.

24. Oral Representations. Neither party hereto has made any oral representation that is not contained in this Agreement. The Resolution of the Council authorizing this Agreement and the Entity's Application are incorporated in this Agreement and made a part hereof and, together with this Agreement, constitute the entire agreement between the parties.

25. Modification. There shall be no modification of this Agreement except by written instrument executed by both parties.

26. Notices. Unless prior to giving any notice required under this Agreement, either party shall have notified the other to the contrary, all notices shall be sent by certified mail, return receipt requested, addressed as follows:

(a) **When sent by the Borough to the Entity:**

MMC FORT MONMOUTH HOLDINGS URBAN RENEWAL LLC
95 Old Short Hills Road
West Orange, New Jersey 07052

and

Monmouth Medical Center, Inc.
300 Second Avenue
Long Branch, New Jersey 07740

With a copy to:

Michael A. Bruno, Esq.
Giordano, Halleran & Ciesla
125 Half Mile Road, Suite 300
Red Bank, New Jersey 07701-6777

David Mebane, Executive Vice President and General Counsel
RWJ Barnabas Health, Inc.
95 Old Short Hills Road
West Orange, New Jersey 07052

(b) **When sent by the Entity to the Borough:**

Borough Administrator
Borough of Tinton Falls
556 Tinton Avenue
Tinton Falls, New Jersey 07724

With a copy to:

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

27. Severability. If any term, covenant or condition of this Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement and the application of such term, covenant or condition to persons or circumstances

other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

28. Good Faith. In their dealings with each other, utmost good faith is required from the Entity and the Borough.

29. Counterparts. This Agreement may be executed in several counterparts with the same effect as if the signatures were upon the same instrument.

30. Effective Date of Agreement. Pursuant to N.J.S.A. 40A:20-9, this Agreement shall not become effective until approved by Ordinance of the Borough and execution by both Parties.

31. Collateral Assignment. Notwithstanding anything to the contrary, it is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Property and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) mortgage financing.

(a) The Borough agrees that the Entity and or its affiliates may assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a "**Secured Party**" and collectively, the "**Secured Parties**") as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the "**Security Arrangements**"). The Entity shall give the Borough written notice of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such notice waives any requirement of the Borough hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

(b) Without limiting the generality of this Article hereof, if the Entity shall default in any of its obligations hereunder, the Borough shall give notice of such default to the Secured Parties and the Township agrees that, in the event such default is not waived by the Borough or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the Borough will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than 15 days from the date of such notice to the Secured Parties with regard to a failure of the Entity to pay the Annual Service Charge or Land Taxes and 90 days from the date the Entity was required to cure any other default.

(c) In the absence of a default by the Entity, the Borough agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement

and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the Borough's right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

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

Witness:

**MMC FORT MONMOUTH HOLDINGS
URBAN RENEWAL LLC**

Name:
Title:

By: _____

Attest:

BOROUGH OF TINTON FALLS

Michelle Hutchinson
Borough Clerk

By: _____
Vito Perillo
Mayor