

FINANCIAL AGREEMENT
FOR BLOCK 266, LOTS 7.05 AND 7.06
IN MILLVILLE, NEW JERSEY

THIS FINANCIAL AGREEMENT (this “Financial Agreement”), dated as of _____, 2017 (the “Effective Date”) **VILLAGE DRIVE HEALTH CARE URBAN RENEWAL LLC**, an urban renewal entity having an address of 48 Pavilion Avenue, Suite 2, Long Branch, New Jersey 07740 (hereinafter designated as the “Entity”), and the **CITY OF MILLVILLE**, a municipal corporation of the State of New Jersey, having offices at 12 South High Street, Millville, NJ 08332 (hereinafter referred to as the “City”). Either the Entity or the City is separately a “Party” and together, they are the “Parties”.

RECITALS:

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

WHEREAS, in order to stimulate rehabilitation and redevelopment within the City, the City Council of the City of Millville (“City Council”), designated, pursuant to Resolution 275-2017 adopted by the City Commission on September 19, 2017, Block 266, Lots 7.04, 7.05, 7.06 and 7.07 as a Non-Condensation Redevelopment Area (“Redevelopment Area”) under the Redevelopment Law; and

WHEREAS, on September 19, 2017, the City Commission, pursuant to Ordinance No. 34-2017, adopted the “Redevelopment Plan For Block 266, Lots 7.04, 7.05, 7.06 and 7.07, City of Millville, Cumberland County, NJ”, dated September 2017 (the “Redevelopment Plan”); and

WHEREAS, pursuant to the Redevelopment Law, the City and Village Drive Healthcare Urban Renewal, LLC, entered into a redevelopment agreement (the “Redevelopment Agreement”), designating Village Drive Healthcare Urban Renewal, LLC as redeveloper of a portion of the Redevelopment Area known as 1111 Village Drive and 1125 Village Drive, Millville, New Jersey, also known as Block 266, Lots 7.05 and 7.06 on the Official Tax Map of the City (the “Property”), and setting forth the terms and conditions pursuant to which the Property is to be redeveloped pursuant to the Redevelopment Plan; and

WHEREAS, the Entity represents that it has and/or will have site control over the Property; and

WHEREAS, the Entity proposes to undertake the planning, design and construction of certain improvements consisting of the construction of a 154-room assisted living facility and 85-client capacity adult medical daycare center on the Property (the “Project Improvements”); 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 Redevelopment Agreement (the “Project”), shall be completed pursuant to the provisions of the Redevelopment Agreement and the Redevelopment Plan; and

WHEREAS, construction of the Project Improvements will require, among other things, the construction of certain infrastructure improvements, including but not limited relocation and modification of existing infrastructure on and around the Property (the “Infrastructure Improvements”) (the Infrastructure Improvements together with the Project Improvements are collectively referred to as the “Project”); and

WHEREAS, in order to assist in ensuring that the Project remain financially viable, the City intends to issue general obligation bonds in one or more series in an aggregate total amount not to exceed \$25,000.00 (the “Bonds”), pursuant to the Redevelopment Law, the Redevelopment Area Bond Law, *N.J.S.A. 40A:12A-64 et seq.* and/or the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.*, to be used towards financing of the Infrastructure Improvements; and

WHEREAS, the Redevelopment Agreement contemplates that the City and Village Drive Healthcare Urban Renewal, LLC would enter into a financial agreement pursuant to the Long Term Tax Exemption Law; and

WHEREAS, the Entity has submitted an application to the City for the approval of a long term tax exemption for the Project pursuant to the Long Term Tax Exemption Law, as supplemented to date (the “Exemption Application”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, on _____, 2017, the City adopted Ord. No. _____, entitled “Ordinance Approving the Application and Financial Agreement For a Long Term Tax Exemption With Village Drive Healthcare Urban Renewal, LLC, for Block 266, Lots 7.05 and 7.06 on the Official City Tax Map” (the “Ordinance”), a copy of which is attached hereto as Exhibit B; and

WHEREAS, the City is agreeable to granting a Long Term Tax Exemption and, in connection therewith, the City and the Entity will utilize provisions of the Redevelopment Area Bond Financing Law, codified at *N.J.S.A. 40A:12A-64 et seq.* (the “Redevelopment Area Bond Financing Law”), the Local Redevelopment and Housing Law and the Long Term Tax Exemption Law, codified at *N.J.S.A. 40A:20-1 et seq.* (the “Long Term Tax Exemption Law”) and such other statutes as may be sources of relevant authority, if any, to facilitate the redevelopment project that the Entity proposes to undertake at the Property; and

WHEREAS, the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Redevelopment Area Bond Financing Law, and such other statutes as may be sources of relevant authority, if any, authorize the City to accept, in lieu of real property taxes, an annual service charge paid by the Entity to the

City as set forth in such laws; and

WHEREAS, *N.J.S.A.* 40A:12A-66(a) authorizes a municipality to dispense with the provisions of requiring a minimum or maximum annual service charge and requiring staged increase in the annual service charges where a redevelopment project has been financed with bonds; and

WHEREAS, the City made the following findings:

- A. Relative benefits of the Project when compared to the costs:
1. The tax exemption granted hereby will permit the development of underutilized commercial property, which could not otherwise be completed in light of the existing market conditions and other economic factors (including the sizeable costs of remediation and other development costs).
 2. The Project will further the redevelopment and reposition of the currently underutilized or unused portions of the Property.
 3. The Project should help to stabilize and contribute to the economic growth of existing local business and to the creation of new business.
 4. The Project will assist the City of Millville in satisfying a portion of its affordable housing obligations.
 5. The Project will further the redevelopment objectives of the Redevelopment Plan.
- B. Assessment of the importance of the tax exemption in obtaining development of the Project and in influencing the locational decisions of probable occupants of the Project:
1. 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.
 2. The relative stability and predictability of the Annual Service Charges will allow the Entity to stabilize its operating budget, allowing a high level of maintenance to the Project Improvements over the life of 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

WHEREAS, the Parties have entered into this Financial Agreement to memorialize the terms and conditions by which the Entity will pay Annual Service Charges in lieu of real property taxes on the improvements to be made in connection with the Project (the "Project Improvements").

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed as follows:

ARTICLE 1 GENERAL PROVISIONS

SECTION 1.1 Governing Law. This Financial Agreement shall be governed by the laws of the State (as hereinafter defined), including the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Redevelopment Area Bond Financing Law, the Ordinance, and all other Applicable Law.

SECTION 1.2 General Definitions. The terms defined in the preambles hereto retain the meanings assigned to such terms therein. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Financial Agreement shall mean:

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

Allowable Profit Rate - The Allowable Profit Rate for the purpose of this Financial Agreement will be calculated as set forth in *N.J.S.A.* 40A:20-3(b). The provisions of *N.J.S.A.* 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue – Pursuant to *N.J.S.A.* 40A:20-3(a), the annual gross revenue shall be calculated as all income, monies or revenues generated or derived by or through the Entity (or by or through any assignee, lessee, tenant, licensee or other space occupant of Entity) that arise out of or are in connection with or attributable to the Project Improvements from any source and before deductions for any costs or expenses, excepting therefrom any gain realized by the Entity on the sale of any unit in fee simple, whether or not taxable under Federal or State law.

Annual Service Charge - The amount the Entity has agreed to pay to the City pursuant to Section 4.1 and 4.2 hereof, for municipal services supplied to the Project, which sum is in lieu of any taxes on the Project Improvements, which amount shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law, Redevelopment Area Bond Financing Law, the Long Term Tax Exemption Law, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable Federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), the contents of which have been prepared in a manner consistent with generally accepted accounting principles and that fully details all items as required by the applicable statutes, including Allowable Net Profit for the period as defined in *N.J.S.A. 40A:20-15*, and that has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State.

Bonds – Shall have the meaning given to such term under *N.J.S.A. 40A:12A-65* of the Redevelopment Area Bond Financing Law.

Certificate of Occupancy - Either a certificate of occupancy or a certificate of approval as such terms are defined in the New Jersey Administrative Code, *N.J.A.C. 5:23-2.1 et seq.*, issued by the City with respect to all or a portion of the Project signifying substantial completion of all or a portion of the Project as set forth therein.

Default – The failure of either Party to perform any obligation imposed upon such Party by the terms of this Financial Agreement, or under Applicable Law, after notice and opportunity to cure as provided herein.

Entity – Shall be given the meaning as set forth in the perambulatory paragraphs of this Financial Agreement.

Gross Revenue – see “Annual Gross Revenue”.

In Rem Foreclosure Act - *N.J.S.A. 54:5-104.29 et seq.*, as same may be amended or supplemented from time to time.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by the In Rem Foreclosure Act and the general provisions of *N.J.S.A. 54:5-1 et seq.*

Land - The real property, but not the Project Improvements, known as Block 266, Lots 7.05 and 7.06 on the Official Tax Map of the City on the tax maps of the City of Millville, New Jersey, and as shown on the map attached to the Exemption Application, which is attached hereto as Exhibit A.

Land Taxes – The Entity's share of the amount of taxes assessed on the value of the Land, exclusive of the value of any Project Improvements related thereto, from time to time during the term of this Financial Agreement.

Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the City tax assessor and the City tax collector from time to time during the term of this Financial Agreement.

Long Term Tax Exemption Law - *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented to date.

Material Conditions - As defined in Section 4.5 hereof.

Net Profit - The Annual Gross Revenue, 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)*, which includes, but is not limited to, an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the exemption granted pursuant to this Financial Agreement as well as all other expenses permitted under the provisions of *N.J.S.A. 40A:20-3(c)*.

Ordinance - Ordinance No. _____ adopted by the Council on _____, 2017 attached hereto as Exhibit B authorizing this Financial Agreement.

Project - As defined herein and in the Redevelopment Agreement, which qualifies as a “project” as defined in *N.J.S.A. 40A:20-3(e)*. Any reference in the Redevelopment Agreement to the “Project,” to the extent such reference is applicable to this Financial Agreement, shall refer to the Project.

Project Completion Date - That date on which the Project that is the subject of this Financial Agreement is substantially completed, as evidenced by the issuance of a Certificate of Occupancy therefor.

Project Improvements - Shall be given the meaning as set forth in the Recitals above.

Property – 1125 Village Drive, Millville, New Jersey, also known as Block 266, Lots 7.05 and 7.06 on the Official Tax Map of the City on the Official Tax Map of the City of Millville.

Redevelopment Area Bond Financing Law – *N.J.S.A. 40A:12A-64 et seq.*

Redevelopment Law - *N.J.S.A. 40A:12A-1 et seq.* as amended and supplemented to date.

State - The State of New Jersey.

Tax Sale Law - *N.J.S.A. 54:5-1 et seq.*, as amended or supplemented to date.

Total Project Cost – The total cost of construction or rehabilitation of the Project through the Project Completion Date, which categories of cost are as set forth in *N.J.S.A. 40A:20-3(h)*, as modified by this Financial Agreement.

City - The City of Millville, in the County of Cumberland, New Jersey, a municipal corporation of the State.

SECTION 1.3 Exhibits Incorporated. All exhibits referred to in this Financial Agreement and attached hereto are incorporated herein and made part hereof.

ARTICLE 2 APPROVAL

SECTION 2.1 Approval of Tax Exemption. The City has granted and does hereby grant its approval for a tax exemption for the Project in accordance with the Long Term Tax Exemption Law on the Property. Pursuant to the Ordinance, all Project Improvements owned by the Entity shall be exempt from taxation as provided by this Financial Agreement.

The Project shall be substantially as described in the Exemption Application and the Redevelopment Agreement. The Entity represents and covenants that, effective as of the completion of the Project, the Project shall be financed, used, managed and operated for the purposes set forth in the Exemption Application, and the land use applications filed with, and as approved by, the City in connection with the Project. It is expressly understood and agreed by the Parties hereto that the City expressly relies upon the facts, data and presentations contained in the Exemption Application in granting this tax exemption.

SECTION 2.2 Approval of Project to be Undertaken by the Entity. Approval hereunder is granted to the Entity for the contemplated Project, which shall in all respects materially comply and conform to: (a) all Applicable Laws; (b) the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof; and (c) any resolutions of the City Planning Board regarding the Project.

ARTICLE 3 DURATION OF AGREEMENT

SECTION 3.1 Term. It is understood and agreed by the Parties that this Financial Agreement, including the obligation to pay Annual Service Charges required under Article 4 hereof and the tax exemption granted and referred to in Section 2.1 hereof, shall remain in effect until the earlier of (i) thirty-five (35) years from the Effective Date hereof or (ii) thirty (30) years from the Project Completion Date (“Term”). At the expiration of the Term hereof, the tax exemption for the Project shall expire and the Project Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City. After expiration of the Term hereof, all restrictions and limitations upon the Entity shall terminate upon the Entity’s rendering and the City’s acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-13*.

SECTION 3.2 Date of Termination. Upon any termination of the tax exemption described in this Financial Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Entity and the tax exemption for the Project contemplated in this Financial Agreement shall remain in effect until such end of the fiscal year of the Entity.

SECTION 3.3 Termination by Entity Not Permitted. Pursuant to *N.J.S.A. 40A:12A-66*, the provisions of *N.J.S.A. 40A:20-13* permitting the relinquishment of tax-exemption status under the Long Term Tax Exemption Law after the expiration of one (1) year from the Project Completion Date, shall not apply to redevelopment projects financed with Bonds. The Project will be partially financed by Bonds, although payments hereunder shall not be pledged to secure such Bonds. The Entity shall have no authority to voluntarily terminate this Financial Agreement.

ARTICLE 4 ANNUAL SERVICE CHARGE

SECTION 4.1 Annual Service Charge. Notwithstanding anything herein to the contrary, or the exercise by the City of any right or remedy provided for herein or otherwise available with respect hereto, so long as this Financial Agreement has not been terminated, the Entity shall pay the Annual Service Charge to the City for the duration of the tax exemption provided for in Section 2.1 and 3.1 of this Financial Agreement. The Entity’s obligation to make the Annual Service Charge shall be absolute and unconditional and not subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of status of the Entity as an “Urban Renewal Entity” qualified under and as defined in the Long Term Exemption Law, or any violation by the City of any provisions of this Financial Agreement, termination of the Redevelopment Agreement or failure of the Entity to complete the Project.

SECTION 4.2 Calculation of Annual Service Charge. Pursuant to *N.J.S.A.* 40A:12A-66, the provisions of *N.J.S.A.* 40A:20-12 establishing a minimum or annual service charge and requiring staged increases in the annual service charge over the term of the exemption period shall not apply to redevelopment projects financed with Bonds. The Project will be financed by Bonds. The Annual Service Charge under the Long Term Tax Exemption Law for each year during the term of the exemption, including any partial year when a temporary Certificate of Occupancy has been issued for a portion of the Project Improvements shall be calculated in accordance with Schedule A.

Notwithstanding the foregoing, in no event shall the Annual Service Charge be less than the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation.

SECTION 4.3 Quarterly Installments. The Entity expressly agrees that installments of the aforesaid Annual Service Charge shall be paid quarterly in a manner consistent with the City's tax collection schedule. The first installment of the Annual Service Charge shall be payable upon issuance of a permanent Certificate of Occupancy for any portion of the Project Improvements, the amount of which shall be calculated based on the percentage that the square footage of such portion bears to the total square footage of the Project Improvements. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under State law in the case of unpaid taxes or tax liens on the land until paid.

SECTION 4.4 Land Taxes. Because the Land is not permitted to be exempt pursuant to *N.J.S.A.* 40A:20-12, the Entity is required and shall be solely responsible to pay the Land Tax Payments. Pursuant to *N.J.S.A.* 40A:20-12, the Entity shall be entitled to a credit for Land Tax Payments against the Annual Service Charge in accordance with *N.J.S.A.* 40A:20-12.

SECTION 4.5 Material Conditions. It is expressly agreed and understood that the granting of a tax exemption for the Project Improvements pursuant to the Long Term Tax Exemption Law, the representations of the Parties set forth in this Financial Agreement and in the Exemption Application, and all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon are material conditions of this Financial Agreement ("Material Conditions"). If any other term, covenant or condition of this Financial Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Financial Agreement or 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, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

SECTION 4.6 Annual Service Charges as Municipal Lien. The Parties hereby agree that the Annual Service Charge shall be a continuous municipal lien on the Property and Project Improvements.

ARTICLE 5 REMEDIES

SECTION 5.1 Remedies. In the event of a breach of this Financial Agreement by any of the Parties hereto, any and all rights and remedies of the Parties may be enforced in the Superior Court of New Jersey, at law or in equity, provided, however, that under no circumstances may any party seek or be entitled to recover any special, consequential, punitive, speculative or indirect damages for any breach of this Financial Agreement. Whenever the word "Taxes" appears, or is implied, directly or indirectly, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Financial Agreement, as if the Annual Service Charge was a tax or municipal lien on land. If the Entity fails to make any payment of the Annual Service Charges, or other monetary obligations of the Entity set forth in this Financial Agreement, the sole remedy of the City shall be those provided for collection of taxes under New Jersey Statutes, including but not limited to an In Rem Tax Foreclosure.

SECTION 5.2 Disputes. In the event of a dispute (other than one arising from the failure of the Entity to make payments due hereunder) arising in reference to the terms and provisions of this Financial Agreement, either party shall submit the dispute to the American Arbitration Association to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Tax Exemption Law, Redevelopment Area Bond Financing Law and this Financial Agreement. The costs of arbitration shall be borne equally by the parties.

ARTICLE 6 CERTIFICATE OF OCCUPANCY

SECTION 6.1 Certificate of Occupancy. It is understood and agreed that the Entity shall remain obligated to make application for and make all good faith efforts which are reasonable to obtain Certificates of Occupancy for the Project in a timely manner as identified in the Exemption Application.

SECTION 6.2 Filing of Certificate of Occupancy. 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 City a copy of such Certificate of Occupancy.

ARTICLE 7 ANNUAL AUDITS

SECTION 7.1 Accounting System. The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles consistently applied, and as otherwise prescribed in the Long Term Tax Exemption Law during the term of this Financial Agreement.

SECTION 7.2 Periodic Reports.

- A. Auditor's Report. Annually, within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, that this Financial Agreement shall continue in effect, the Entity shall submit its Auditor's Report certified by an independent certified public accountant for the preceding fiscal or calendar year to the Mayor, the City Committee and the City Clerk of said City, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(d)*. Said Auditor's Report shall identify and calculate the Net Profit for the period shown.
- B. Total Project Cost Audit. Within ninety (90) days after the Project Completion Date, the Entity shall, unless this Financial Agreement is terminated, submit to the Mayor and governing body of the City an audit of Total Project Cost, certified as to actual construction costs in the form attached to the Exemption Application.

SECTION 7.3 Inspection. Upon the request of the City or the Division of Local Government Services in the Department of Community Affairs, the Entity shall permit the inspection of property, equipment, buildings and other facilities of the Entity by the requesting party or its agents. It also shall permit, upon request of the City or the Division of Local Government Services in the Department of Community Affairs, reasonable examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by such City or Division of Local Government Services in the Department of Community Affairs. Requests for such inspection shall be made by way of written notice ten (10) days prior to the proposed inspection. Such inspection, examination or audit shall be made during the hours of the business day, in the presence of any officer or agent of the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

SECTION 7.4 Limitation on Profits and Reserves. During the period of tax exemption as provided herein, the Allowable Net Profit limitation shall apply to the Entity pursuant to the provisions of *N.J.S.A. 40A:20-1 et seq.* Pursuant to *N.J.S.A. 40A:20-15*, the calculation of Net Profit shall be cumulative for the period commencing at the time of the Project Completion Date.

Any gain realized by the Entity on either (a) the sale of all or a portion of the Project and/or Property, whether or not taxable under Applicable Law, or (b) the refinancing proceeds from financing or refinancing of a mortgage or mortgages encumbering the Project and/or Property or any portion thereof, is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in *N.J.S.A. 40A:20-3* for the purpose of determining compliance with *N.J.S.A. 40A:20-15* or *N.J.S.A. 40A:20-16*.

SECTION 7.5 Payment of Dividend and Excess Profit Charge. Whenever the Net Profit of the Entity for the period, taken as one accounting period, commencing upon the Project Completion Date and terminating at the end of the last full fiscal year, shall exceed the Allowable Net Profits for the period, the Entity shall, within ninety (90) days of the close of that fiscal year, pay the excess Net Profit to the City as an additional service charge, provided, however, that the Entity may maintain any reserves permitted by *N.J.S.A. 40A:20-3(c)(1)* or *40A:20-15*.

ARTICLE 8 **ASSIGNMENT, ASSUMPTION OR TRANSFER**

SECTION 8.1 Restrictions on Transfers. The Entity shall not, without the prior written consent of the City: (a) effect or permit any change, directly or indirectly, in the ownership or control of the Entity which affects a 10% or more interest in the Entity, (b) assign or attempt to assign this Agreement or any rights herein or in the Property or the Project, or (c) make any total sale, lease, transfer or conveyance of the whole of its interest in the Project or the Property (collectively a "Transfer"). The written consent required pursuant to this Section shall not be unreasonably withheld, delayed or conditioned.

Any Transfer in violation of this Section 8.1 shall be an Event of Default of the Entity and shall be null and void ab initio. The City shall notify the Entity of such default and provide thirty (30) days in which the Entity shall have an opportunity to cure such default. Any such Event of Default shall entitle the City to seek all remedies available under the terms hereof, and those available at law or in equity, including specific performance. In the absence of specific written consent by the City, no such sale, Transfer, conveyance or assignment of the Property or Project, or any part thereof, shall be deemed to relieve the Entity from any obligations under this Agreement.

SECTION 8.2 Approval. The City hereby consents to the sale by the Entity of all or a portion of the Project or Property, or both, in the following instances:

- (A) The City hereby consents to the sale of the Project or Property, or both, or any portion thereof that has been devoted to fee simple ownership, to another urban renewal entity organized under and in full compliance with the provisions of the Long Term Tax Exemption Law, including all successors and assigns of any transferee urban renewal entity, all owning no other project at the time of the transfer, provided that the obligations of the Entity under this Financial Agreement are, to the extent those obligations relate to the portion of the Property, acquired by the transferee. Further, the City consents that upon assumption by the transferee urban renewal entity of the Entity's obligations, to the extent those obligations relate to the portion of the Property acquired by the transferee under this Financial Agreement, the tax exemption for the Project and Project Improvements shall continue and

inure to the transferee urban renewal entity and its respective successors or assigns.

- (B) Those transfers and assignments otherwise consented to pursuant to Section 3.b of the Redevelopment Agreement as if set forth at length herein.

Nothing herein shall prohibit transfer of the ownership interest in the Entity itself, or require any consent to such transfer, provided that the transfer, if greater than ten percent (10%), is disclosed to the City in the annual Auditor’s Report or in correspondence sent to the City in advance of the annual Auditor’s Report.

SECTION 8.3 Operation of Project. The Entity is hereby empowered to plan, develop, construct, maintain and operate the Project in accordance with this Financial Agreement and the Redevelopment Agreement during the Term (as defined in Section 3.1 hereof) of this Financial Agreement. The Project shall be planned, developed, constructed, maintained and operated in accordance with all Applicable Law. The terms of the Redevelopment Agreement are incorporated herein as if fully set forth herein.

SECTION 8.4 Subordination of Fee Title. It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the City, to encumber or assign, or both, the lease to the Land or Project Improvements or both, and that any such encumbrance or assignment shall not be deemed to be a violation of this Financial Agreement.

**ARTICLE 9
WAIVER**

SECTION 9.1 Waiver. Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City or the Entity of any rights and remedies provided by law except for the express waiver herein of certain rights of acceleration and certain rights to terminate this Financial Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the City or the Entity has under law, in equity, or under any provision of this Financial Agreement.

**ARTICLE 10
NOTICE**

SECTION 10.1 Notice. Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, or by commercial overnight delivery service with package tracking capabilities and for which proof of delivery is available, as follows:

If to the City, to:

Jeanne Hitchner, Municipal Clerk
City of Millville
12 South High Street
Millville, NJ 08332
Phone: (856) 825-7000
Facsimile: (856) 825-3686

With a copy to:

M. James Maley Jr., Esq.
Maley & Associates, PC
1150 Haddon Avenue
Suite 210
Collingswood, NJ 08108-2111
Telephone: (856) 854-1515
Facsimile: (856) 858-2944

If to the Entity, to:

Village Drive Healthcare Urban Renewal, LLC
48 Pavilion Avenue
Suite 2
Long Branch, New Jersey 07740

With a copy to:

Christopher M. Walrath, Esq.
Gluck Walrath, LLP
11 Wharf Avenue
Suite 4
Red Bank, New Jersey 07701
Telephone: (732) 530-8822
Facsimile: (732) 530-6770

ARTICLE 11 COMPLIANCE

SECTION 11.1 Statutes and Ordinances. The Entity hereby agrees at all times prior to the expiration or other termination of this Financial Agreement to remain bound by the provisions of Applicable Law and any lawful ordinances and resolutions of the City, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a violation and breach of this Financial Agreement.

ARTICLE 12 CONSTRUCTION

SECTION 12.1 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Financial Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

ARTICLE 13 INDEMNIFICATION

SECTION 13.1 Indemnification. It is understood and agreed that in the event the City shall be named as party defendant in any action brought against the City or the Entity by reason of any breach, default or a violation of any of the provisions of this Financial Agreement and/or the provisions of the Long Term Tax Exemption Law, the Entity shall indemnify and hold the City harmless from and against all out-of-pocket liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, default or a violation of any of the provisions of this Financial Agreement and/or the provisions of *N.J.S.A. 40A:20-1 et seq.* by virtue of the action or inaction of the Entity. Such indemnification shall not apply, however, for any willful misconduct or gross negligence of the City or any of its officers, officials, employees or agents.

ARTICLE 14 DEFAULT

SECTION 14.1 Default. A Default shall be deemed to have occurred if the Entity fails to conform with the terms of this Financial Agreement or the Redevelopment Agreement, or fails to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

SECTION 14.2 Cure Upon Default. Should the Entity be in Default of any obligation under this Financial Agreement, the City shall notify the Entity and any mortgagee of the Entity in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Entity shall have sixty (60) days to cure any Default (other than a default in payment of any installment of the Annual Service Charge in which case the default must be cured within ten (10) days from the date of the Entity's receipt of the notice described herein), provided such cure can reasonably be effected within such sixty (60) day period. If a cure cannot reasonably be effected within the sixty (60) day period, the Entity shall have such additional time to cure as reasonably necessary to effect same. Subsequent to the remedy periods set forth in this Section, the City shall have the right to proceed against the Property pursuant to Applicable Law, subject to Section 5.1 and Section 5.2 hereof. No Default hereunder by the Entity shall terminate the long term tax exemption described herein and its obligation to make Annual Service Charges, which shall continue in effect for the duration of this Financial Agreement.

SECTION 14.3 Remedies Upon Default Cumulative; No Waiver. Subject to all other terms and conditions of this Financial Agreement, all of the remedies provided in this Financial Agreement to the City and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Financial Agreement shall deprive the City of any of their remedies or actions against the Entity because of the Entity's failure to pay Land Taxes, the Annual Service Charge, and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges, or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges, or other charges shall not be construed as a waiver of the right to proceed with In Rem Tax Foreclosure action consistent with the terms and provisions of this Financial Agreement. Under no circumstances may any party seek or be entitled to recover any special, consequential, punitive, speculative or indirect damages for any breach of this Agreement.

SECTION 14.4 Final Accounting. Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to the provisions of *N.J.S.A. 40A:20-13* and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the Termination of the Financial Agreement shall be deemed to be the end of the fiscal year for the Entity.

SECTION 14.5 Conventional Taxes. Upon Termination or expiration of this Financial Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

**ARTICLE 15
MISCELLANEOUS**

SECTION 15.1 Conflict. The Parties agree that in the event of a conflict between the Exemption Application and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

SECTION 15.2 Oral Representations. There have been no oral representations made by either of the Parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance, the Exemption Application, and the Redevelopment Agreement constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them.

SECTION 15.3 Entire Document. All conditions in the Ordinance are incorporated in this Financial Agreement and made a part hereof.

SECTION 15.4 Good Faith. In their dealings with each other, the Parties agree that they shall act in good faith.

SECTION 15.5 Municipal Services. The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

SECTION 15.6 Financing Matters. The financial information required by the final paragraph of *N.J.S.A.* 40A:20-9 is set forth in the Exemption Application.

SECTION 15.7 Counterparts. This Financial Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15.8 Amendments. This Financial Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

SECTION 15.9 Severability. If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

**ARTICLE 16
EXHIBITS AND SCHEDULES**

Exhibit A	Exemption Application
Exhibit B	Ordinance
Exhibit C	Formation Documents of Urban Renewal Entity
Schedule A	Annual Service Charge Calculations

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

ATTEST:

CITY OF MILLVILLE

JEANNE HITCHNER, City Clerk

By: _____
MICHAEL SANTIAGO, Mayor

Witness:

VILLAGE DRIVE HEALTHCARE URBAN
RENEWAL LLC

Name:
Title:

By: _____
Name:
Title:

Exhibit A
Exemption Application

Exhibit B
Ordinance

Exhibit C
Formation Documents of Urban Renewal Entity

Schedule A
Annual Service Charge Calculations

The Annual Service Charge applicable in the years in which the PILOT remains in effect shall be as set forth below, except that in no event shall the Annual Service Charge be less than the total taxes levied against the Property in the last full tax year in which the area was subject to taxation.

Pilot Year	Annual Service Charge Payment
1	120,000
2	122,400
3	124,800
4	127,200
5	129,600
6	132,000
7	134,400
8	136,800
9	139,200
10	141,600
11	144,000
12	146,400
13	148,800
14	151,200
15	153,600
16	156,000
17	159,000
18	162,000
19	165,000
20	168,000
21	171,000
22	174,000
23	177,000
24	180,000
25	183,000
26	186,000
27	189,000
28	192,000
29	195,000
30	198,000