

FINANCIAL AGREEMENT PURSUANT TO
THE LONG TERM TAX EXEMPTION LAW,

N.J.S.A. 40a:20-1, et seq.

BETWEEN THE BOROUGH OF EDGEWATER
AND
45 RIVER ROAD ASSOCIATES, LLC

THIS FINANCIAL AGREEMENT (hereinafter, the "Agreement"), is made as of this 20th day of October, 2020, between 45 RIVER ROAD URBAN RENEWAL ASSOCIATES, a limited liability company of the State of New Jersey, having its principal office at 125 River Road, Edgewater New Jersey 07020 herein designated as the "Entity," and the BOROUGH OF EDGEWATER, a municipal corporation in the County of Bergen and the State of New Jersey, hereinafter designated as the "Borough".

WITNESSETH:

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq. (the "Law"). It is expressly understood and agreed that the Borough relies upon the facts, data, and representations contained in the application of the Entity for Tax Abatement pursuant to the Long Term Tax Exemption Law, 40A:20-1, et seq., (hereinafter, the "Application" and attached as Exhibit A hereto.

The Entity shall at all times prior to the expiration or other termination of this Agreement remain bound by the provisions of the Law. Operation under this Agreement shall be terminable by the Entity in the manner provided by the Law.

2. The Borough does hereby grant its approval for an urban renewal project, the nature, magnitude and description of which is disclosed below and in the accompanying Application, to be built under the provisions of the Law on the land described in said Application located at Block 99, Lot 1.17 in the Borough of Edgewater, New Jersey (hereinafter, the "Project"). The Borough finds that the redevelopment of the Project creates a substantial benefit to the Borough when compared to costs, if any, associated with the tax exemption granted herein and, further finds that such tax exemption is of significant importance in obtaining the development of the Project and in influencing the locational decisions of probable occupants of the Project. A summary of the Project follows:

(a) The Project is a seventy-six (76) rental unit Low and Moderate Income Housing project. The rental units will be leased exclusively to tenants whose income meet the provisions of the New Jersey Long Term Tax Exemption Act and will be maintained as a low and moderate income housing project for a period of thirty (30) years from the completion of construction.

(b) Entity owns the site and the seventy-six (76) rental units. The Entity will be qualified as an "urban renewal" entity under the Law. The Project's proposed sources and uses is set forth on Exhibit "A" attached hereto and incorporated herein.

3. Approval hereunder is granted to the Entity for the undertaking of the Project on the lands referred to above, which shall in all respects comply and conform to all applicable statutes and municipal ordinances, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described herein and in the accompanying Application.

4. The Project to be constructed by the Entity shall be exempt from taxation on its

improvements in accordance with the provisions of the Law and in the manner provided by this Agreement for a term of thirty (30) years from the completion of the entire Project but not more than thirty-five (35) years from the execution of this Agreement, and only so long as the Entity and the Project remain subject to the provisions of the Law and complies with this Agreement.

5. In consideration of the aforesaid exemption from taxation on improvement(s), the Entity, its successors and assigns shall make payments to the Borough of an annual service charge of a sum equal to six and 28/100 percent (6.28%) for municipal services supplied to the Project (hereinafter the "Annual Service Charge") of the annual gross revenue determined pursuant to N.J.S.A. 40A:20-1, et seq. calculated from the first day of the month following the substantial completion of the Project. The Annual Service Charge shall be paid to the Borough on a quarterly basis in a manner consistent with the Borough's tax collection schedule.

6. The Annual Service Charge payments for the first year of the tax exemption shall be made on a pro rata basis, from the date of commencement of the exemption to the close of that calendar year, and, for the last calendar year of the tax exemption, from the first day of the calendar year to the date of termination of the exemption. Upon the termination of the exemption granted pursuant to the provision of the Law, the Project and all improvements made thereto shall be assessed and subject to taxation as are other taxable properties in the Borough. After the date of termination, all restrictions and limitations upon the Entity shall terminate and be at an end upon the Entity's rendering its final accounting to and with the Borough. Notwithstanding the foregoing, in the event of destruction of the Project improvements by fire or other disaster, the Entity will advise the Borough within 120 days of the date of destruction whether the Project improvements will be restored. If restoration will occur: (a) the Entity shall proceed with due diligence in commencing and completing the restoration and (b) the Agreement will not terminate and may be

extended for the years where no payment was due based upon lack of improvements on the site. If restoration of the Project will not occur, the Agreement will be terminated, effective upon notification, and a final calculation of the Annual Service Charge payment due shall be made and delivered by the Entity within forty-five (45) days thereafter.

7. In the event of a breach of the Agreement by either of the parties hereto, or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may, pursuant to N.J.S.A. 40A:20-9f, invoke the rules of the American Arbitration Association for resolution by arbitration (the "AAA Rules"). The arbitration shall be before one neutral arbitrator to be selected in accordance with the AAA Rules and whose decision shall be rendered in writing. The results of the arbitration shall be final and binding upon the parties, with each party paying its own costs of the arbitration and 50% of the costs of the neutral arbitrator, and judgment on the award may be entered in any court having jurisdiction thereof. In rendering the award, the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of New Jersey. The arbitration shall be held in Edgewater, New Jersey, or at such other place as may be selected by mutual agreement of the parties. The arbitrator shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement.

In the event of a default on the part of the Entity pursuant to its obligation to pay the Annual Service Charge as defined in Paragraphs 5 and 6 above, the Borough may terminate the tax abatement if the default is not remedied within ninety (90) days of the due date of the Annual Service Charge. In accordance with the provisions of the Long Term Tax Exemption Law, upon recordation of this Financial Agreement and the passage of the Ordinance, any amount due and

owing hereunder, including the Annual Service Charge shall be and constitute a continuous municipal lien on the Project. (Ordinance attached as Exhibit B)

The Entity shall be subject, during the period of this Agreement and tax exemption under the Law, to a limitation of its profits as determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-1 et seq. Whenever the net profits of the Entity for the period, taken as one accounting period, commencing on the date on which the construction of the Project is completed 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 the fiscal year, pay the excess net profits to the Borough as an additional service charge. The Entity may maintain during the term of this Agreement a reserve for unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten percent (10%) of the gross annual revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted net profits as provided in N.J.S.A. 40A:20-15.

8. Within ninety (90) days after the date of such termination, the Entity shall pay the Borough a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40A:20-15 and 40A:20-16, as well as the excess net profits, if any, payable as of that date.

9. Within ninety (90) days after the close of each of its fiscal years, the Entity shall submit to the Borough, the Tax Collector and the Clerk, and to the State Division of Local Government Services its Auditor's report for the preceding fiscal or calendar year. The report shall clearly identify and calculate the Net Profit for the Entity during the previous year and identify all income and expenses related to the Project..

10. The Entity shall, upon request, permit inspection of the Project, equipment, buildings and other facilities of the Entity by authorized representatives of the Borough or the State

of New Jersey. The Entity shall also permit examination and audit of its books, contracts, records, documents and papers by authorized representatives of the Borough or the State at the Entity's expense. Such inspection or examination shall be made during the reasonable hours of the business day, in the presence of an officer or agent of the Entity.

11. After examination of the books, contracts, etc. as set forth in Paragraph 11, the Borough, in its reasonable discretion, may, within ninety (90) days after the close of any fiscal or calendar year (depending on the Entity's accounting basis) in which this Agreement remains in effect, require the Entity to submit an auditor's report for the preceding fiscal or calendar year, certified by a certified public accountant, to the Borough Clerk. Said auditor's report shall include, but not be limited to, such details as may relate to the Project's cost and to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law, as amended and supplemented, and this Agreement, and shall be prepared in a manner consistent with the current standards of the Financial Accounting Standards Board. Said auditor's report shall be submitted to the representatives of the Borough mentioned above within 90 days of receipt by the Entity of the Borough's request for said auditor's report.

12. The failure on the part of the Entity to make timely payment of all municipal obligations, taxes, fees and charges arising out of this Agreement or in any way arising out of the affected Project, its land and/or improvements, or failure on the part of the Entity to comply with the requirements of the aforementioned audit, or with any other substantive condition of this Agreement shall permit the Borough to exercise such remedies as may be provided by the Law or this Agreement, provided that this Entity shall have received from the Borough a Notice of Default and Intent to Terminate, in which case the Entity shall have ninety (90) days in which to cure any default and avoid such termination.

13. Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

(a) When sent by the Borough to the Entity it shall be addressed to: Entity, 125 River Road, Suite 301, Edgewater, New Jersey, 07020, unless prior to giving such notice the Entity shall have notified the Borough otherwise in writing.

(b) When sent by the Entity to the Borough, it shall be addressed to the Borough Clerk, 55 River Road, Edgewater, NJ 07020, unless prior to giving such notice the Borough shall have notified the Entity otherwise in writing.

14. It is understood and agreed that in the event the Borough shall be named as a party defendant in any action brought against the Entity by reason of any breach, default, or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1, et.seq., the Entity shall indemnify and hold the Borough harmless and shall further defend any such action at its own expense. Notwithstanding anything in the Agreement to the contrary, the Entity's liability under this Agreement shall be limited to its interest in the Project. However, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity consents, the expense thereof to be borne by the Borough.

15. The Entity shall have and may exercise such of the powers conferred by law on limited liability companies as shall be necessary for the operation of the business of the Entity and as shall be consistent with the provisions of the Law, and, in addition shall have and may exercise the powers set forth in the Law, but only so long as this Agreement, together with any amendments thereto, is in effect with the Borough pursuant to the Law.

16. Upon the prior written approval of the Borough and pursuant to the Law, the Entity

may transfer the Project to another urban renewal entity organized pursuant to the Law, their successors, assigns, all owning no other project at the time of the transfer. Upon assumption by the transferee urban renewal entity of the transferor's then remaining obligations under this Agreement, the tax exemption of the improvements of the Project shall continue and inure to the transferee urban renewal entity, its respective successors or assigns.

However, any change made in the ownership of the Project which, as determined by the Borough in its reasonable discretion, would materially affect the terms of this Agreement, shall render this Agreement voidable unless approved by the Borough Council by resolution. It is understood and agreed that the Borough may, on written application by the Entity, consent to a sale of the Project and the transfer of the Agreement to an urban renewal corporation or association eligible to function under the Law provided the Entity is not in default as respects any performance required of it hereunder and full compliance with the terms and conditions of N.J.S.A. 40A:20-1 et seq. has occurred and the Entity's obligation under this Agreement with the Borough is assumed by the transferee.

If the Entity has, with the consent of the Borough, transferred its Project to another urban renewal entity which has assumed the then remaining contractual obligations of the Entity with the Borough, the Entity shall be discharged from any further obligation under this Agreement.

17. Where approval or consent of the Borough is sought for an assignment of the Agreement, either the Entity or its assignee shall be required to pay to the Borough a reasonable fee for the legal services of the Borough's counsel, related to the review, preparation, and/or submission of papers to the Borough Council for its appropriate action on the request assignment.

18. Reference to the Long Term Exemption Law shall mean N.J.S.A. 40A:20-1, et

seq., as amended and supplemented.

19. The Entity shall, from the time the Annual Service Charge becomes effective, and on the same due dates as scheduled for the payment of land taxes, pay the Borough the estimated 1/4 of the Annual Service Charge on the Project's improvements until the correct amount due from the Entity as the Annual Service Charge on the Project's improvements is determined after any review and examination by the Borough of the Entity's books and records and for submission to Borough of any auditor's reports as contained herein. Within 90 days after the correct amount due from the Entity as the Annual Service Charge on the Project's improvements has been determined by the Borough's Finance Director and notice of same given to the Entity, the Borough and the Entity will adjust and pay any over or under payment so made, or needed to be made.

20. This Financial Agreement shall be governed by the provisions of the Long Term Tax Exemption Law and the Borough Ordinance. As to this agreement, it shall be interpreted without regard to or aid of any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

21. This Agreement may not be modified, changed, amended, altered or terminated without the written consent of the Parties hereto.

22. Upon adoption of this Financial Agreement, a certified copy of the Ordinance adopted by the Borough and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Borough Clerk.

23. Nothing in this agreement amends the Entity's obligation to pay for other municipal services.

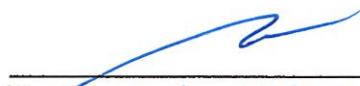
24. This entire Agreement will be filed and recorded with the Bergen County Clerk by the Entity at the Entity's expense.

25. All conditions in the Ordinance of the Borough approving this Agreement are hereby incorporated in this Agreement and made a part hereof.

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

ATTEST/WITNESS:

45 River Road Associates, LLC (name to be changed to 45 River Road Associates Urban Renewal LLC), a New Jersey limited liability company


Name: Michael McManus

By: 
Name: Gregory J. McManus
Title: MANAGING MEMBER

ATTEST:

BOROUGH OF EDGEWATER,
a New Jersey Municipal Corporation


Name: REGINA A ARFUSO

By: 
Name: MICHAEL MCPARTLAND
Title: MAYOR