
**AMENDED AND RESTATED
FINANCIAL AGREEMENT
BETWEEN
CHATHAM RIVER ROAD URBAN RENEWAL LLC
AND
THE BOROUGH OF CHATHAM
Dated as of December __, 2023**

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AMENDED AND RESTATED

FINANCIAL AGREEMENT

BETWEEN

CHATHAM RIVER ROAD URBAN RENEWAL LLC

AND

THE BOROUGH OF CHATHAM

PREAMBLE

THIS AMENDED AND RESTATED FINANCIAL AGREEMENT, (the “**Agreement**”) made as of this ___ day of _____, 2023, (the “**Effective Date**”) by and between Chatham River Road Urban Renewal, LLC (“**Entity**”), an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (the “**LTTEL**”), having its principal office at C/O BNE Real Estate Group, 16 Microlab Road, Livingston, New Jersey 07039, and the Borough of Chatham, a Municipal Corporation in the County of Morris and the State of New Jersey (“**Borough**”), and together with the Entity, the “**Parties**”.

RECITALS

WITNESSETH:

WHEREAS, the Entity is the owner of land, located in the Borough, currently shown and designated as Block 135, Lots 9, 10 and 11 (inclusive of former Lot 12) on the Tax and Assessment Map of the Borough, as generally shown on **Exhibit A**, attached hereto and made a part hereof, which Exhibit also sets forth the approximately 4.56 acre property covered by this Financial Agreement (the “**Property**”); and

WHEREAS, the Property is located within the boundaries of the River Road Redevelopment Area within the Borough (“**Redevelopment Area**”), duly designated by Resolution No. 18-331 adopted on November 26, 2018; and

WHEREAS, the Borough adopted the Redevelopment Plan (the “**Redevelopment Plan**”) establishing the River Road Redevelopment Area, adopted pursuant to Ordinance No. 19-11, on June 10, 2019 together with amendments to the Plan adopted pursuant to Ordinance No. 21-03 adopted February 8, 2021; and

WHEREAS, the Entity entered into a Redevelopment Agreement and between it and the Borough dated May 5, 2021 as may be further amended (the “**Redevelopment Agreement**”), to provide for, among other things, a redevelopment project at the Property, consisting of the construction of a residential apartment complex together with parking and other appurtenant facilities (“**Project**”), which Project is consistent with the Redevelopment Plan; and

WHEREAS, the Entity has been formed with the intention of owning the Property and redeveloping the Project; and

WHEREAS, on November 11, 2019, the Borough Council received from the Entity an Application for a Long Term Tax Exemption, a copy of which is attached hereto as **Exhibit B** (the “**Application**”), in accordance with N.J.S.A. 40A:20-8, pursuant to the Law and this Financial Agreement between the Entity and the Borough, seeking approval of this Financial Agreement providing for exemption from municipal taxation for the Project as aforesaid, for a period of thirty (30) years from “Substantial Completion”, as that term is hereinafter defined, and for payment in lieu of taxes of an Annual Service Charge; and

WHEREAS, Ordinance No. 21-04 adopted February 22, 2021 provides authority for the execution of a Financial Agreement, a copy of which is attached hereto as Exhibit C (the “Ordinance 21-04”); and

WHEREAS, the Borough and the Entity entered into a Financial Agreement dated May 5, 2021 (the “Original Agreement”); and

WHEREAS, the Borough and Entity have agreed to certain revisions to the Financial Agreement which are set forth in the within Agreement; and

WHEREAS, this Agreement shall be an amendment to and in replacement and substitution of the Original Agreement for all purposes; and

WHEREAS, Ordinance No. 23-__ adopted _____, 2023 provides authority for the execution of this Amended and Restated Financial Agreement a copy of which is attached hereto as Exhibit C (the “Ordinance”); and

WHEREAS, the Borough has made the following findings with respect to the Project:

A. Relative benefits of the Project:

i. The Project will eliminate the currently existing uses of the properties and will include a residential apartment complex with multi-family units. in accordance with the Redevelopment Plan. The Project will create approximately 500 construction jobs and 10 permanent jobs. The Project will generate significant amounts of new, otherwise unavailable, municipal revenues through the Annual Service Charge and water/sewer fees. In light of current market conditions, economic factors and development costs impacting the Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken.

ii. The Project will result in benefits to the community including improvements to the intersection of River Road and Watchung Avenue, the extension and improvement of sidewalks from the Property to adjacent properties, a contribution to the development of open space in the Borough, 39 Affordable Housing Units, environmental remediation of a substantial portion of the Property

and advancing smart growth and green development policies. Without the Project, the benefits described above would not be realized by the Borough.

B. Assessment of the importance of the tax exemption in obtaining development of the Project:

i. The tax exemption permits the development of an underutilized property and provides a stream of revenue in the form of the Annual Service Charges. The relative stability and predictability of the Annual Service Charges will allow the Project operators to stabilize their expenses which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project. The tax exemption permits the development of the Project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the Project. Reduced expenses allow for a more competitive rental structure.

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

ARTICLE 1

GENERAL PROVISIONS

1.1 Governing Law

The provisions of the laws of the State of New Jersey, the LTTEL, the Redevelopment Agreement, and the Ordinance approving this Agreement shall govern this Agreement. It is expressly understood and agreed that the Borough expressly relies upon the facts, data, and presentations contained in the Application, including Exhibits, all of which are incorporated herein by reference, in granting this tax exemption.

1.2 General Definitions

Along with the terms defined in the Preambles, which shall have the meanings provided therein, and unless specifically provided otherwise, when used in this Agreement, the following terms, when capitalized, shall have the meanings set forth below:

Allowable Net Profit – The Allowable Net Profit of the Entity shall be determined by applying the Allowable Profit Rate to the Total Project Cost, pursuant to N.J.S.A. 40A:20-3(b) and (c).

Allowable Profit Rate – The greater of twelve percent (12%) or the percentage per annum arrived at by adding 1¼% to the annual interest percentage rate payable on the Entity’s initial permanent mortgage financing for the Project. 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 or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1¼% per annum to the interest rate per annum which the

Borough determines to be the prevailing rate on mortgage financing on comparable improvements in Morris County, all in accordance with N.J.S.A. 40A:20-3(b).

Annual Administrative Fee – Shall be as defined in Section 4.6.

Annual Gross Revenue – Annual gross revenue or gross shelter rents, as appropriate, and other income, for the Entity, in accordance with N.J.S.A. 40A:20-3(a), specifically excluding, without limitation, amounts received from tenants to reimburse landlord expenses, extraordinary items, condemnation awards, insurance proceeds, gains from sales, transfers, or assumption of the Project or any part thereof, proceeds of any financing or refinancing, proceeds from any disposition of a partner or a partner's interest in the Entity or any successor entity.

Annual Service Charge(s) – The amount the Entity has agreed to pay pursuant Section 4.2 of this Agreement, in lieu of taxes.

Applicable Law – Shall mean any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Project, the Redevelopment Area and the long term tax exemption.

ASC Commencement Date – The first day of the month immediately following the Substantial Completion of any portion of the Project, with the amount of the Annual Service Charge upon commencement being determined and controlled by Section 4.2 of this Agreement, as prorated for the remainder of the year the Annual Service Charge commences.

Auditor's Report – A certified, audited financial statement outlining the financial status of the Entity and reporting the Annual Gross Revenue, Net Profit, Allowable Net Profit, Annual Gross Revenue in relation to Total Project Cost, the contents of which have been prepared in a manner consistent with the LTTEL and to the extent also relevant in conformance with generally accepted accounting principles, prepared by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy – The document, whether temporary or permanent, issued by the Borough pursuant to N.J.S.A. 52:27D-133 authorizing occupancy of a building, in whole or in part.

Clerk – The municipal clerk of the Borough.

County – The County of Morris.

County Share – The first five percent (5%) of the Annual Service Charge, which shall be payable to the County in accordance with the provisions of N.J.S.A. 40A:20-12.

Debt Service – The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the Project for a period equal to the term of the long term tax exemption granted by this Financial Agreement.

Default – The breach or failure of the Entity or the Borough to perform any obligation imposed by the terms of this Financial Agreement or by the Law, beyond any applicable grace or cure periods set forth in this Financial Agreement.

Financial Plan – The financial plan prepared pursuant to N.J.S.A. 40A:20-8(e).

Improvements – The buildings, structures, fixtures or site improvements comprising the Project which is permanently affixed to the Property to be constructed and exempt under this Financial Agreement, as amended.

In Rem Tax Foreclosure – A summary proceeding by which the Borough may enforce the lien for taxes due and owing by a tax sale, under N.J.S.A. 54:5-1 et seq.

Land – The Property at which the Improvements are to be located, commonly known as Block 135, Lots 9, 10 and 11 on the tax maps of the Borough, as more fully described by the metes and bounds description set forth in **Exhibit A**.

Mayor – the mayor of the Borough.

Minimum Annual Service Charge – The amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the Property was subject to taxation. The Parties acknowledge and agree that the tax assessment on the land and improvements in year 2020 total \$4,138,100 (Block 135, Lot 9-\$899,800; Block 135, Lot 10-\$737,100 and Block 135, Lot 11-\$2,501,200) and the taxes levied against the Property in year 2020, total \$87,686.34. The tax assessment on the existing tax parcels will be allocated to the Project for purposes of establishing the Minimum Annual Service Charge, and the Borough’s total tax rate for the last full tax year shall be used in the determination of the Project’s Minimum Annual Service Charge

Net Profit – Annual Gross Revenue (AGR) less all operating and non-operating expenses and costs of the Entity, all determined in accordance with Generally Accepted Accounting Principles and the provisions of N.J.S.A. 40A:20-3(c), but: (1) there shall be included in expenses: (a) all annual service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the municipality of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits, over the term of the abatement as set forth in this Financial Agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts; (e) all payments of rent including, but not limited to, ground rent by the Entity (if applicable); (f) all Debt Service; and (2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of Debt Service, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the Entity, or officers, partners or other persons holding any proprietary ownership interest in the Entity.

State – the State of New Jersey.

Substantial Completion – The determination by the Borough construction official that the Project, in whole or in part, is ready for the use intended, which shall mean the date on which the Project receives, or is eligible to receive, any Certificate of Occupancy for any portion of the Project.

Tax Assessor – The Borough tax assessor.

Tax Collector – The Borough tax collector.

Termination – Expiration of the term of this agreement in accordance with Section 3.1 or any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish or forfeit the tax exemption granted under the Agreement.

Termination Date – The earlier to occur of (i) the thirty-fifth (35th) anniversary of the Effective Date; (ii) the thirtieth (30th) anniversary date of the ASC Commencement Date; or (iii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.

Total Project Cost – The Entity's total cost of constructing the Project through the date of issuance of a Certificate of Occupancy for the entire completed Project, as more specifically defined in N.J.S.A. 40A:20-3(h) and as certified by an independent and qualified architect, consisting of, and limited to, the categories of costs set forth in **Exhibit 6** to the Application.

1.3 **Incorporation of Recitals**

In this Financial Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. All references to articles, sections or exhibits in this Agreement shall, unless indicated otherwise, refer to the articles, sections or exhibits in this Agreement.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(g) All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

1.4 Reliance by Borough

It is expressly understood and agreed that the Borough has relied on the facts and representations contained in the Application in granting the tax exemption in this Agreement.

ARTICLE 2

APPROVAL OF AGREEMENT, USE, OPERATION, MANAGEMENT AND FINANCIAL PLAN OF THE PROJECT

2.1 Approval of Agreement

The Borough hereby grants its approval of this Agreement for the Project that is to be constructed and maintained in accordance with the terms and conditions set forth herein and the provisions of the Law. The Project shall be constructed on the Property. This Agreement shall be deemed an amendment to, and in replacement and substitution of the Original Agreement for all purposes.

2.2 Approval of the Entity

Approval hereunder is granted to the Entity for the Project, which Entity shall in all respects comply and conform to all applicable statutes of the State of New Jersey and lawful regulations made pursuant thereto, governing land, buildings and the use thereof.

2.3 Use, Operation and Management of Project

The Entity covenants and represents pursuant to N.J.S.A. 40A:20-9 that it shall cause the Project to be constructed, and shall manage and operate the Property as a multi-family facility. The Improvements shall be those authorized by the Redevelopment Agreement, implemented in accordance with all permits and approvals and pursuant to the schedule agreed upon by the Borough and the Entity.

2.4 Financial Plan

(a) The method for computing Annual Gross Revenue for the Entity, the method of determining insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, the plans for financing the Project, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on the construction financing, the source and amount of paid-in capital, the terms of mortgage amortization or payment of principal on any mortgage, and the rental schedules and lease terms to be used in the Project are set forth in **Exhibit 1** to the Application.

(b) The Entity's good faith estimate of the Total Project Cost is set forth in **Exhibit 6** attached to the Application.

ARTICLE 3

DURATION OF AGREEMENT

3.1 Term

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the Parties hereto that this Agreement shall remain in effect for thirty (30) years from the date of Substantial Completion. This Agreement shall continue in force only while the Project is owned by an urban renewal entity formed and operating pursuant to the LTTEL. This Agreement shall be fully performed by the Parties hereto within thirty (30) years from the date of Substantial Completion, and in no event more than thirty five (35) years from the date of execution of the Financial Agreement, pursuant to N.J.S.A. 40A:20-13.

3.2 Voluntary Termination by Entity

The Entity may, after the expiration of one year from the Substantial Completion of the Project, or a portion of the Project, notify the Borough in writing that, as of a date certain designated in such notice, it relinquishes its status as an urban renewal entity under the LTTEL and that the Entity, or transferee, has obtained, only if required by law, the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of such date, continuation of this tax exemption, the Annual Service Charges hereunder, and the profit and dividend restriction shall terminate, and Section 10.3 below shall control. A final accounting pursuant to N.J.S.A. 40A:20-12 shall be a requirement of termination. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the transferee, as applicable, to make payment of any Administrative Fee, Annual Service Charge, or Minimum Annual Service Charge that has accrued up to and including the Termination Date, or the obligation of the Entity or the transferee, as applicable, to perform the final accounting required by the LTTEL and Section 5.2.4.

ARTICLE 4

EXEMPTION AND ANNUAL SERVICE CHARGE

4.1 Exemption

The Borough agrees that the Project shall be exempt from real property taxation, as provided in the LTTEL, including the land upon which housing is located pursuant to Section 12 thereof, from the date of Substantial Completion to and through the date that is thirty (30) years from the date of Substantial Completion, consistent with Section 3.1 above.

4.2 Annual Service Charge

(a) In consideration of the Borough granting the Entity the exemption set forth in Section 4.1 of this Agreement, the Entity shall make payment to the Borough for municipal services, as provided in the Law, by payment to the Borough of the Annual Service Charge in the amount of ten percent (10%) of Annual Gross Revenue for years one (1) through three (3) following the ASC Commencement Date, eleven percent (11%) of Annual Gross Revenue for years four (4) through ten (10) following the ASC Commencement Date, twelve percent (12%) of Annual Gross Revenue for years eleven (11) through twenty (20) following the ASC Commencement Date, and thirteen percent (13%) of Annual Gross Revenue for years twenty one (21) through thirty (30) following the ASC Commencement Date. Notwithstanding the above, N.J.S.A. 40A:20-12 requires that the minimum Annual Service Charge shall be the amount of total taxes levied against all real property in the area covered by the Project in the last full tax year in which that area was subject to taxation, and the minimum Annual Service Charge shall be paid in each year in which the other provisions of this Financial Agreement would result in less than the Minimum Annual Service Charge being paid.

(b) The Annual Service Charge shall first begin to accrue on the first day of the month following Substantial Completion. In the event the Entity fails to timely pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid, and the Borough shall have the same rights and remedies to collect such charges as provided by law for collection of general municipal taxes.

(c) The Annual Service Charge shall not be in lieu of sewer charges or other special assessments imposed in accordance with Applicable Law.

4.3 Staging Schedule for Annual Service Charges

The Annual Service Charge shall be scheduled over the term of the Agreement in accordance with N.J.S.A. 40A:20-12(b) as follows:

4.3.1 Stage One (years 1-15): Pursuant to N.J.S.A. 40A:20-11 and N.J.S.A. 40A:20-12(1), from the first day of the month following Substantial Completion (ASC Commencement Date) of the Project and for each of the fifteen (15) years thereafter, the Annual Service Charge shall be determined pursuant to Section 4.2(a) of this Agreement;

4.3.2 Stage Two (years 16-21): The Annual Service Charge shall be the amount determined pursuant to Section 4.2(a) of this Agreement, or twenty (20%) per cent of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater;

4.3.3 Stage Three (years 22-27): The Annual Service Charge shall be the amount determined pursuant to Section 4.2(a) of this Agreement, or forty (40%) per cent of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater;

4.3.4 Stage Four (years 28-29): The Annual Service Charge shall be the amount determined pursuant to Section 4.2(a) of this Agreement, or sixty (60%) per cent of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater;

4.3.5 Stage Five (year 30): The Annual Service Charge shall be the amount determined pursuant to Section 4.2(a) of this Agreement, or eighty (80%) per cent of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater.

4.4 **Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be billed in quarterly installments on those dates when real estate tax payments are due, i.e., February 1, May 1, August 1, and November 1; subject nevertheless to adjustment for over or underpayment within thirty (30) days after close of each fiscal or calendar year, as the case may be.

4.5 **Administrative Fee**

In addition to the Annual Service Charge, pursuant to N.J.S.A. 40A:20-9, the Borough shall charge the Entity and the Entity shall pay an annual administrative fee (the "**Annual Administrative Fee**") in an amount equal to two percent (2.0%) of the Annual Service Charge. The Annual Administrative Fee shall be due on or before November 1 in each year following the ASC Commencement Date.

4.6 **Other Municipal Services**

Nothing herein shall exempt the Entity from the payment for any municipal services ordinarily assessed to taxpayers outside of and in addition to ad valorem taxes rendered to the Property. The Entity shall timely pay for municipal services rendered to the Property, and the Borough shall retain the right to pursue all remedies to collect such payments, including the right to institute collection through a tax lien sale pursuant to N.J.S.A. 54:5-1 et seq.

4.8 **Municipal Contribution**

There shall be no municipal contributions for services pursuant to the Municipal Services Act, N.J.S.A. 40:67.23.2 during the term of this Agreement in the event the Project is developed as or converted to the condominium or cooperative form of ownership, as the Project will benefit from the tax exemption.

4.9 **Appeals**

Notwithstanding anything in this Agreement to the contrary, the Entity shall have the right to appeal the assessor's determination as to comparable assessment pursuant to Section 4.3 to the County Tax Board or the New Jersey Tax Court, and if declined by the aforesaid, the Superior Court of New Jersey.

4.10 **Annual Service Charges as Municipal Lien**

The Borough and Entity hereby expressly acknowledge, understand and agree that in accordance with Applicable Law, upon the recordation of the Ordinance and this Agreement: (a) the Ordinance, this Agreement and any amount due hereunder, including without limitation, the Annual Service Charge, shall be a continuous, municipal lien on the Property and the Project, and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that

shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien on the Property and the Project, (b) the Ordinance, this Agreement and any amounts due hereunder, including without limitation, the Annual Service Charge, shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes on the Property and the Project, including specifically and without limitation, the federal bankruptcy code, and (c) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

ARTICLE 5

ANNUAL REPORTS

5.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with Generally Accepted Accounting Principles (“**GAAP**”) and pursuant to the LTTEL.

5.2 Periodic Reports

5.2.1 **Total Project Cost Audit**: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Borough an audit of Total Project Costs, certified as to actual construction costs and site remediation and clean-up of hazardous substances, if any, by an independent and qualified architect. Other extraordinary costs incurred by the Entity in order to alleviate blighting conditions as permitted by N.J.S.A. 40A:20-3(h), (including, but not limited to costs of demolishing structures and utility relocation), shall also be certified to the chief financial officer of the municipality, by a certified public accountant licensed to practice that profession in the State of New Jersey.

5.2.2 **Auditor’s Report**: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity’s accounting basis during the period that this Agreement shall continue in effect, the Entity shall submit to the Borough, and the New Jersey Division of Local Government Services within the DCA, its Auditor’s Report for the preceding fiscal or calendar year in accordance with N.J.S.A. 40A:20-9(d). The Auditor’s Report shall include, but not be limited to, the terms and interest rate on any mortgage(s) associated with the purchase or construction of 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 Law and this Agreement.

5.2.3 **Disclosure Statement**: Within thirty (30) days of each anniversary date of the Parties’ execution of this Agreement, the Entity shall submit to the Borough a Disclosure Statement listing all persons and other entities having an ownership interest in the Project (“**Interest Holders**”), and the extent of the ownership interest held by each.

5.2.4 **Termination of Obligations**: The Entity’s obligations under this Section 5.2 shall terminate at the end of the thirty (30) year tax exemption period, or upon earlier termination, if any, of this Agreement. Upon termination or expiration, all affected property shall be assessed and subject to

taxation as are other taxable properties in the Borough. After termination or expiration, restrictions and limits on the Entity shall terminate, upon the Entity's rendering a final accounting to and with the Borough pursuant to N.J.S.A. 40A:20-12.

5.3 Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Entity and shall also permit, upon reasonable request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Borough and the State of New Jersey. Such examination or audit shall be made upon seven (7) days' notice during regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the examination, inspection or audit will not materially interfere with the construction or operation of the Project and it is expressly understood that inspection of the Project shall not include inspection of the individual units rented to private third parties after issuance of the Certificate of Occupancy.

ARTICLE 6

LIMITATION OF PROFITS AND RESERVES

6.1 Limitation of Profits and Reserves

(a) During the period of the Agreement as provided herein, the Entity shall be subject to a limitation of its profits and, in the case of a corporation, the dividends payable by it, pursuant to the provisions of N.J.S.A. 40A: 20-15. The calculation of the Entity's excess Net Profit shall include as part of Total Project Costs those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in this Financial Agreement, as provided for in N.J.S.A. 40A:20-3(h), even though those costs may have been deducted from the Total Project Cost for the purpose of calculating the Annual Service Charge.

(b) The Entity shall have the right to establish, at any time during the term of this Agreement, and to maintain at its discretion a reserve against unpaid rents and reasonable contingencies, in an amount equal to ten percent (10%) of the Annual Gross Revenue of the Entity for the last full fiscal year, and may retain such part of the excess Net Profit as may be necessary to eliminate any deficiency in that reserve, as provided in N.J.S.A. 40A:20-15; provided, however, that in no event shall any portion of excess Net Profit be retained or contributed to such reserve if the amount of the reserve as of the end of such fiscal year equals or exceeds ten percent (10%) of the preceding fiscal year's Annual Gross Revenue.

6.2 Annual Payment of Excess Net Profit

In accordance with N.J.S.A. 40A:20-15, whenever the Net Profit of the Entity for the period, taken as one accounting period, commencing on the date on which the construction of the first unit of the project is completed, or on which the project is completed if the project is not undertaken in units, and terminating at the end of the last full fiscal year, shall exceed the Allowable Net Profits for the period, the Entity shall, within 120 days of the close of that fiscal year, pay the excess Net Profits to the municipality as an additional service charge. The calculation of Net Profit shall be cumulative for the

period, with all revenues and expenses from prior years being included in the accumulated Allowable Net Profit calculation, consistent with City of Newark vs. First Newark Gateway Urban Renewal Association, Docket No. ESX-L-1160-91 (NJ Super. Law Div. August 8, 1994). Annual Gross Revenue and Net Profit for the purposes hereof shall be determined pursuant to N.J.S.A. 40A:20-3 a and c.

6.3 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale

Consistent with N.J.S.A. 40A:20-13, the date of the Termination of the tax exemption, whether by relinquishment by the Entity or by terms of the Financial Agreement, shall be deemed the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Borough the amount of the reserves, if any, maintained by it pursuant to N.J.S.A. 40A-15, as well as the excess Net Profit, if any, payable as of that date. Upon Termination of the exemption, all affected Property, Land and 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 on the Entity shall terminate upon the Entity's rendering a final accounting to and with the Borough pursuant to N.J.S.A. 40A:20-12.

ARTICLE 7

ASSIGNMENT AND/OR TRANSFER

7.1 Prior to Completion

Prior to the issue of the Final Certificate of Completion to the Project, pursuant to the Redevelopment Agreement, transfers of the Project or any part thereof, or transfers of ownership in the Entity or its successor urban renewal entity shall be subject to the terms and conditions of Article XI of the Redevelopment Agreement.

7.2 Subsequent to Completion

(a) Upon application and as permitted by N.J.S.A. 40A:20-10(a), and subsequent to the issue of the Final Certificate of Completion for the Project pursuant to the Redevelopment Agreement, it is understood and agreed that the Borough will consent to the transfer of this Agreement to another urban renewal entity (or interests in the Entity of 10 percent or more in the aggregate as set forth below), and the tax exemption of the improvements shall continue and inure to the transferee entity without any further action by the Borough Mayor and Council of the Borough provided: (i) the transferee entity does not own any other project at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the LTTEL; (iii) the Entity is not then in Default of this Agreement or the LTTEL; and (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity. Pursuant to N.J.S.A. 40A: 20-10(d), the Borough shall be entitled to charge an administrative fee of two percent (2.0%) of the Annual Service Charge due in the year that the transfer is requested for processing any such application for transfer by the Entity. The Borough shall, in good faith, in a prompt and timely manner reasonably cooperate with the Entity and the transferee entity and use its best efforts to review the written application of the Entity, and timely consent to the application for approval of the transferee entity.

(b) Nothing in this Section 7.2 shall prohibit any transfer of an ownership interest in the Entity or a successor urban renewal entity itself provided that the transfer or transfers, if less than 10 percent in the aggregate, are disclosed to the Borough governing body in the annual disclosure statement or in correspondence sent to the Borough in advance of the annual disclosure statement referred to above. All other transfers of interests shall be subject to consent of the Borough as set forth above in subparagraph (a) as if they were a transfer of this Agreement. It is understood and agreed that there shall be no change in control as long as HS 3 Family LLC, LP 3 Family LLC, Alan Pines Family LLC and/or Jonathan Schwartz or any of their affiliates, parent companies, or subsidiaries continue to manage the day to day operations of the Entity.

7.3 Obligations of Entity and Transferee after Conveyance

If the Entity transfers the Project to a transferee, all sums due to the Borough have been paid in full as of the date of transfer, and the transferee has assumed the contractual obligations of the transferor Entity with the Borough, pursuant to Section 7.1 hereof, then the Entity shall be absolutely discharged from any further obligations under this Financial Agreement and shall be qualified to undertake another project pursuant to the Law.

7.4 Ordinary Course

This Article 7 shall not apply to the sale and rental of apartments in the ordinary course of business, which are hereby expressly authorized.

ARTICLE 8

COMPLIANCE

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law.

ARTICLE 9

DISPUTE/DEFAULT

9.1 Arbitration

In the event of any dispute between the Parties, other than a dispute arising from the failure of the Entity to timely pay any portion of the Annual Service Charge or any other financial obligation required by this Agreement, the Parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Notwithstanding such rules and regulations, the arbitrator shall be obligated to provide the Parties with a detailed written statement supporting the arbitrator's decision. Costs for said arbitration shall be paid by the non-prevailing party. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, the City, in addition to its other remedies, reserves the right to proceed against the Entity's land and premises, in

the manner provided by law, including the Tax Sale Law, and any act supplementary or amendatory thereof. Whenever the word “Taxes” appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the City to proceed in the above-mentioned manner.

9.2 Default

Default shall be failure of the Entity or Borough to conform to the terms of this Agreement beyond the notice, cure and grace periods set forth in Section 9.3 below.

9.3 Cure Upon Default

Should a party be in Default, the non-defaulting party shall send written notice to the defaulting party of the Default (the “**Default Notice**”). The Default Notice shall set forth with particularity the basis of the Default. The defaulting party or a party acting on its behalf shall have fifteen (15) days from receipt of the Default Notice (the “**Cure Period**”), to cure any monetary Default and a sixty (60) day Cure Period to cure any non-monetary default. However, if the Default is a non-monetary Default of a nature that cannot be cured within the Cure Period, using reasonable diligence, the time to cure the Default shall be extended beyond the Cure Period for the time period required in order to allow the defaulting party to cure the Default, provided that the defaulting party continues using reasonable diligence to cure the Default. Upon the expiration of the Cure Period, or any extension thereof, and providing that the Default is not cured, the non-defaulting party shall be permitted to invoke the remedies set forth in Section 9.4 below.

9.4 Remedies Upon Default

(a) General. In the event of any Default not cured within the Cure Period or any extension thereof, a breach of this Agreement by either of the Parties hereto, or a dispute arising between the Parties with respect to the terms and provisions of this Agreement and the Default or dispute has not been resolved, either party may invoke the arbitration provision, Section 9.1 hereof.

(b) Monetary Default. The Entity’s failure to make the requisite Annual Service Charge payment, reserve payment, additional Annual Service Charge payment, any administrative fee levied, and/or sewer and water charge payments within the Cure Period or any extensions thereof shall constitute a breach of this Agreement by the Entity, and the Borough shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:55-1 et seq. Whenever the word “**Taxes**” appears or is implied 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 Annual Service Charges were taxes or municipal liens on land. In addition, the Borough may terminate this Agreement as to the Entity pursuant to Section 10.1.

(c) Notwithstanding the foregoing, the Entity shall not be entitled to proceed with arbitration unless the Entity shall have paid, as a minimum amount, the Annual Service Charge due and payable for the most recent annual reporting period.

(d) All of the remedies provided in this Agreement, and all rights and remedies granted by Law and equity shall be cumulative and concurrent. No termination of any provision within this Agreement shall deprive either party of any of its remedies in accordance with Law. Nothing shall deprive the Borough from filing an action against the Entity because of its failure to pay Taxes, Annual Service Charges, administrative fees, reserve payments, and/or water and sewer charges with interest payments. The bringing of any action for any Taxes, Annual Service Charges, or other charges due hereunder, or in connection with another Default hereunder, or the resort to any other remedy herein provided for the recovery of such Taxes, any Annual Service Charges, administrative fees, reserve payments and water and sewer charges, or other charges, shall not be construed as a waiver of the right to terminate the tax exemption granted hereby or proceed with an In Rem Tax Foreclosure action or any other remedy as provided for in this Agreement or by Law.

ARTICLE 10

TERMINATION

10.1 Termination Upon Default

If either the Entity or Borough fails to cure or remedy the Default within the Cure Period as provided in Section 9.2, the non-defaulting party may at its sole option terminate this Agreement upon thirty (30) days written notice (the “**Notice of Termination**”).

10.2 Voluntary Termination by the Entity

The Entity may, after the expiration of one year from the Substantial Completion of the Project, notify the Borough in writing that, as of a date certain designated in such notice, it relinquishes its status as an Urban Renewal Entity. As of such date, continuation of this tax exemption the Annual Service Charges hereunder, and the profit and dividend restriction shall terminate, and Section 10.3 below shall control. A final accounting pursuant to N.J.S.A. 40A:20-12 shall be a requirement of termination.

10.3 Conventional Taxes

Upon the Termination or expiration of this Agreement and thereafter, the Property shall be assessed and conventionally taxed according to the Applicable Law applicable to other taxable property within the Borough, and the Entity is bound by this Agreement and by the LTTEL until expiration or Termination shall occur.

ARTICLE 11

CERTIFICATE OF OCCUPANCY

11.1 Copies of Certificate of Occupancy

It shall be the responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of any Certificate of Occupancy issued for the Project.

11.2 Applications for Certificate of Occupancy

It shall be the obligation of Entity to make application for and make all commercially reasonable efforts to obtain all Certificates of Occupancy in a timely manner. It shall be the primary responsibility of Entity to forthwith file with the Tax Assessor, the Tax Collector and the Borough Administrator a copy of any Certificate of Occupancy.

In the event that Entity fails to secure Certificates of Occupancy in a timely manner after Substantial Completion of the Project or a Project phase, as determined by the Borough in its sole discretion and Entity has not obtained the Certificates of Occupancy within sixty (60) days after the Borough has provided notice to the Entity of the Project phases Substantial Completion, the Project shall be subject to full taxation (ordinary applicable taxes) for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained, unless Entity's application for a Certificate of Occupancy is pending or the delay in issuance of the Certificate of Occupancy is a result of Force Majeure events as set forth in the Redevelopment Agreement.

ARTICLE 12

BOROUGH DETERMINATIONS

A. Relative benefits of the Project:

i. The project will eliminate the currently existing uses of the properties and will include a residential apartment complex with multi-family units. in accordance with the Redevelopment Plan. The project will create approximately 500 construction jobs and 10 permanent jobs. The project will generate significant amounts of new, otherwise unavailable, municipal revenues through the Annual Service Charge and water/sewer fees. In light of current market conditions, economic factors and development costs impacting the project, it is not financially feasible to undertake the development of this project in the absence of the tax exemption. Accordingly, without the incentive of the tax exemption, it is unlikely that the project would be undertaken. Without the project, the benefits described above would not be realized by the Borough

ii. The Project will result in benefits to the community including improvements to the intersection of River Road and Watchung Avenue, the extension and improvement of sidewalks from the Property to adjacent properties, and contribution to the development of open space in the Borough, 39 Affordable Housing Units, environmental remediation of a portion of the Property and advancing smart growth and green development policies.

B. Assessment of the importance of the tax exemption in obtaining development of the Project:

The tax exemption permits the development of an underutilized property and provides a stream of revenue in the form of the Annual Service Charges. The relative stability and predictability of the Annual Service Charges will allow the project operators to stabilize their expenses which will ensure the likelihood of the success of the project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the project

more attractive to investors and lenders needed to finance the project. The tax exemption permits the development of the project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the project. Reduced expenses allow for a more competitive rental structure. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

C. The Borough also represents that the Redevelopment Area designation, Redevelopment Plan, Redevelopment Agreement and the Resolution and Ordinance authorizing execution of this Financial Agreement have been duly authorized and adopted according to Applicable Law.

ARTICLE 13

NOTICE

13.1 Certified Mail

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested or by recognized overnight courier, with proof of delivery.

13.2 Sent by the Borough

When sent by the Borough to the Entity, the notice shall be addressed to:

Chatham River Road Urban Renewal, LLC
c/o BNE Real Estate Group
16 Microlab Road
Livingston, NJ 07039
Attention: Jonathan P. Schwartz

Copies to:

Inglesino Webster Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, NJ 07054
Attention: Dean J. Donatelli, Esq.

Unless prior to giving of notice, the Entity shall have notified the Borough in writing otherwise. In addition, provided the Borough is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's mortgagee, the Borough agrees to provide such mortgagee with a copy of any notice required to be sent to the Entity.

13.3 Sent by the Entity

When sent by the Entity to the Borough, it shall be addressed to:

Borough of Chatham
54 Fairmount Avenue
Chatham, NJ 07928
Attention: Stephen W. Williams

Copies to:

River
Greenbaum, Rowe, Smith & Davis, LLP
331 Newman Springs Road
Centre Building 1, Suite 122
Red Bank, New Jersey 07701
Attention: Michael J. Coskey, Esq.

The notice to the Borough shall fully identify the Project to which it relates, including the full name of the Urban Renewal Entity and the Property's Block and Lot numbers.

ARTICLE 14

MISCELLANEOUS

14.1 Severability

If any term, covenant or condition of this Agreement or the Application shall be judicially declared to be invalid or unenforceable, the remainder of this 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 term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

14.2 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, except for those provisions governing choice of law, and 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.

14.3 Captions

The marginal captions after the Article, Section and Paragraph numbers of this Agreement are for convenience of reference purposes only and do not in any way define, limit or amplify the terms of this Agreement and are to be given no weight in its interpretation.

14.4 Oral Representations

There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement. This Financial Agreement including all Exhibits, the Ordinance

authorizing this Agreement, and the Financial Agreement Application including all Exhibits, shall constitute the entire Agreement between the Parties, and there shall be no modifications thereto other than by a written instrument approved and executed by and delivered to each.

14.5 **Recording**

A memorandum of this Agreement in form and substance approved in writing by the Borough, will be recorded with the Morris County clerk by the Entity, at no cost to the Borough.

ARTICLE 15

EXHIBITS

The following Exhibits are attached hereto and incorporated herein as set forth at length herein:

Exhibit A - Property Description

Exhibit B - Executed Financial Agreement Application with all Exhibits

Exhibit C - Ordinance No. 21-04

Exhibit D - Ordinance of the Borough Authorizing Execution of this Amended and Restated Financial Agreement

[This section was intentionally left blank. Signature page follows.]

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

Witness:

Chatham River Road Urban Renewal, LLC

By: _____

Name: _____

Title: _____

Attest:

Borough of Chatham

By: _____

Borough Clerk

Exhibit A

Property Description



DATE: June 13, 2018
BCG Proj.080392-C1-001

DESCRIPTION OF LANDS SITUATED IN THE BOROUGH OF CHATHAM, MORRIS COUNTY, NEW JERSEY.

BEING Lots 9, 10, 11 and 12, Block 135, Borough of Chatham, Morris County, New Jersey as shown on a map entitled "Boundary and Topographic Survey, BNE Real Estate Group, Block 135, Lots 9, 10, 11 & 12, Borough of Chatham, Morris County, New Jersey" dated June 13, 2018 and prepared by Bowman Consulting, more particularly described as follows:

BEGINNING at a point in the northwesterly sideline of River Road, 50 feet wide, where the same is intersected by the division line between said Lot 9 and Lot 8, Block 135, and running; Thence

- 1) Along said division line, North 48°42'36" West, 249.58 feet to a point of non-tangent curve where same is intersected by the southeasterly sideline line of the Conrail Erie-Lackawanna Railroad, Morris & Essex Division Main Stem; Thence, along said sideline the following 2 courses
- 2) Along a curve to the left having a radius of 1910.00 feet, an arc length of 472.18 feet, the chord of which bears North 26°12'13" East, 470.98 feet, to a point in same; Thence
- 3) South 65°34'46" East, 5.76 feet to a point where same is intersected by the division line between said Lot 11 and Lot 14, Block 135; Thence
- 4) Along said division line, South 44°58'06" East, 166.61 feet to a point where same is intersected by the division line between said Lot 11 and Lot 13, Block 135; Thence
- 5) Along said division line, South 34°22'36" East, 74.89 feet to a point where same is intersected by the division line between said Lot 12 and Lot 13, Block 135; Thence
- 6) Along said division line, North 36°49'24" East, 209.49 feet to a point where same is intersected by the southwesterly sideline of Watchung Avenue, 50 foot wide; Thence, along said sideline the following 3 courses
- 7) South 48°53'36" East, 101.58 feet to an angle point in same; Thence
- 8) South 49°01'36" East, 100.32 feet to an angle point in same; Thence
- 9) South 50°21'36" East, 43.65 feet to a point of tangent curve leading into the aforesaid northwesterly sideline of River Road; Thence
- 10) Along said sideline, along a curve to the right having a radius of 20.00 feet, an arc length of 36.00 feet, the chord of which bears South 01°12'24" West, 31.33 feet, to a point of tangency in the said northwesterly sideline of River Road; Thence

Bowman Consulting Group, Ltd.
54 Horsehill Road • Cedar Knolls, NJ 07927
Phone: 973.359.8400 • www.bowmanconsulting.com

11) Along said sideline, South 52°46'24" West, 587.13 feet to an angle point in same;
Thence

12) South 48°10'29" West, 38.92 feet the aforesaid point of BEGINNING.

Containing 198853 square feet or 4.5650 acres more or less to the sideline of River Road and Watchung Avenue. Subject to easements and restrictions of record.

This description was prepared by:


Kevin P. Bollinger, PLS Lic. 30744
BOWMAN CONSULTING GROUP, LTD.

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Exhibit B

Executed Financial Agreement Application with All Exhibits

Exhibit C
Ordinance 21-04

Exhibit D

Ordinance of the Borough Authorizing Execution of this Amended and Restated Financial Agreement