

**EXECUTION**

**THIS FINANCIAL AGREEMENT AND THE ORDINANCE ATTACHED HERETO AS EXHIBIT C SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED.**

Record and Return to:  
Charles B. Liebling, Esq.  
Windels Marx Lane & Mittendorf, LLP  
120 Albany Street Plaza, 6th Floor  
New Brunswick, NJ 08901

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**FINANCIAL AGREEMENT**

**BY AND BETWEEN  
THE BOROUGH OF DUNELLEN,  
as the Borough**

**and**

**BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC,  
as the Entity**

**Long Term Tax Exemption Law  
N.J.S.A. 40A:20-1 et seq.**

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

**Re: ArtColor Project**

## PREAMBLE

THIS FINANCIAL AGREEMENT (the "Agreement" or "Financial Agreement"), made this 13th day of July, 2017 (the "Effective Date"), by and between BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC (as further defined herein, the "Entity"), a New Jersey urban renewal entity and limited liability company, and its permitted successors and assigns, 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 "Exemption Law"), having its principal office at c/o Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052 and THE BOROUGH OF DUNELLEN, a municipal corporation in the County of Middlesex and the State of New Jersey, having its principal office at 355 North Avenue, Dunellen, New Jersey 08812 (the "Borough"). The parties hereto are from time to time referred to as the "Parties," with each a "Party."

## RECITALS

### WITNESSETH:

WHEREAS, the Borough previously created the Borough of Dunellen Redevelopment Agency (the "Agency") pursuant to §§68-1 through 68-4 of the Borough Code and thereafter adopted Ordinance 04-12 which repealed the creation of the Agency and appointed the Council of the Borough of Dunellen (the "Borough Council") as the municipal entity responsible for implementing the redevelopment plans and carrying out redevelopment projects pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, on May 5, 2003, the Borough Council adopted a resolution designating certain properties within the Borough, consisting of property located at South Washington Avenue between the rail line and Columbia Street, identified on the Official Tax Map of the Borough as Block 85, Lots 1 and 2 in the Borough, as an area in need of redevelopment in accordance with the Redevelopment Law (the "Redevelopment Area"); and

WHEREAS, on August 9, 2004, the Borough Council adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I (Revised July 12, 2004), which was thereafter revised on June 6, 2011, August 5, 2013, November 3, 2014, and May 16, 2016 (collectively the "Redevelopment Plan") in accordance with the Redevelopment Law; and

WHEREAS, the Redevelopment Plan governs the Redevelopment Area; and

WHEREAS, the Entity is the fee simple owner of the Redevelopment Area (also referred to herein as the "Property"); and

WHEREAS, on April 3, 2017, the Borough Council adopted a resolution authorizing the execution and delivery of that certain Redevelopment Agreement (the "Redevelopment Agreement"), which sets forth the respective obligations for each Party with respect to the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan; and

WHEREAS, on the date hereof, the Parties executed the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement provides for, inter alia, a mixed-use redevelopment project at the Property consisting of 10,000 to 15,000 square feet of retail/commercial space (the "Retail/Commercial Subcomponent"), 252 rental housing units, of which 194 will be market-rate rental housing units (the "Market Rate Rental



Subcomponent”) and 58 will be low income and moderate income housing units as those terms are defined by N.J.S.A. 52:27D-304, allocated per the Uniform Housing Affordability Control regulations (the “**Affordable Housing Rental Subcomponent**”; together with the Market Rate Rental Subcomponent, the “**Residential Rental Subcomponent**” and, collectively with the Retail/Commercial Subcomponent, the “**Rental Component**”), and 130 fee-simple, for-sale residential units (the “**Townhouse Component**”), as well as infrastructure improvements and related remediation (collectively, the “**Project**”), which Project is consistent with the Redevelopment Plan; and

**WHEREAS**, the cost of the Project is expected to be approximately \$108,620,532; and

**WHEREAS**, despite the Entity’s current and future substantial investment of “at-risk” equity and traditional borrowed funds for acquisition, development and construction of the Project, such amounts of equity and traditional borrowed funds are insufficient to pay for all of the costs associated with the acquisition, development and construction of the Project; and

**WHEREAS**, Borough is agreeable to granting a long term tax exemption to the Entity for the Project and, in connection therewith, Borough and the Entity will utilize the Redevelopment Area Bond Financing Law, codified at N.J.S.A. 40A:12A-64 et seq. (the “**Bond Financing Law**”), the Exemption Law, and such other statutes as may be sources of relevant authority, if any, to facilitate financing of the Project at the Property; and

**WHEREAS**, the provisions of the Exemption Law, the Bond Financing Law, and such other statutes as may be sources of relevant authority, if any, authorize the Borough to accept, in lieu of real property taxes, an annual service charge paid by the Entity to Borough as set forth in such laws; and

**WHEREAS**, on March 17, 2017, the Entity filed an Application for a Financial Agreement with the Borough, a copy of which is attached hereto as **Exhibit B** (the “**Application**”), in accordance with N.J.S.A. 40A:20-1, et seq., seeking approval of this Financial Agreement providing for exemption from municipal taxation for the Project as aforesaid, for a period set forth in Section 3.1(b) hereof, and for payment, in lieu of taxes, of an annual service charge; and

**WHEREAS**, on April 3, 2017, the Borough Council finally adopted an ordinance entitled “AN ORDINANCE TO APPROVE A LONG-TERM TAX EXEMPTION AND FINANCIAL AGREEMENT BETWEEN THE BOROUGH OF DUNELLEN AND BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC” approving the Application, this Financial Agreement and the Project, a copy of which is attached hereto as **Exhibit C** (the “**Ordinance**”); and

**WHEREAS**, pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Financial Agreement and the Ordinance, constitute a municipal lien on the Redevelopment Area and the Project within the meaning of such law; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Borough or the redevelopment entity may issue bonds, may apply to an authority (as such term is defined in the Bond Financing Law) to issue bonds, or may cause the issuance of such bonds, which bonds may be secured by the Annual Service Charge; and

**WHEREAS**, in order to assist in financing a portion of certain costs of the Project, as shown on **Exhibit I** together with any other Project costs that may be approved by Borough, the Borough has agreed to issue its Special Obligation PILOT Redevelopment Bonds (ArtColor Project), Series 20\_\_\_\_\_ (such designation to reflect the year of issuance) (the “**Bonds**”) in accordance with that certain Bond Agreement relating to the issuance of the Bonds (as the same may be amended, modified or supplemented from time to time, the “**Bond Agreement**”) by and among the Borough, the Entity and a banking corporation, as trustee, escrow agent and paying agent (together with its successors and assigns in any such capacity, the “**Bank**”), and the purchaser of the Bonds, for the purpose of providing funds for the Project; and

**WHEREAS**, pursuant to the terms of this Financial Agreement and the Bond Agreement and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Pledged Annual Service Charge (as defined herein) shall be pledged to the payment of the principal or redemption premium of, and interest on, the Bonds, which Bonds will be **NONRECOURSE** to the Borough; and

**WHEREAS**, the Entity and the Borough have agreed that the Debt Service (as defined herein) on the Bonds shall be paid from the Pledged Annual Service Charge and that the Unpledged Annual Service Charge (as defined herein) may be used by the Borough for any lawful purpose in the exercise of the Borough’s sole discretion; and

**WHEREAS**, the Borough has made the following findings:

A. **Benefits of Project v. Costs.**

1. The development and construction of the Project, including infrastructure improvements as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the overall community; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize the Redevelopment Area; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Redevelopment Area; will facilitate the remediation of environmental contamination and the revitalization and productive reuse of land currently in a blighted, stagnant, unproductive and fallow condition; will enhance the economic development of the Borough by alleviating existing blight conditions of the Redevelopment Area; and will further Redevelopment Plan objectives and contribute to the economic growth of the Borough in general and specifically the Redevelopment Area.

2. That the Project will result in the creation of approximately 950 construction jobs.

3. That the Project, upon completion, will result in the creation of approximately 221 full-time and part-time jobs.



4. That the aforesaid benefits of the Project exceed the cost, if any, associated with granting the tax exemption provided by this Agreement.

**B. Importance of Long Term Tax Exemption.**

The Borough Council's approval of the long term tax exemption set forth herein is essential to the success of this Project because:

1. The relative stability and predictability of the Annual Service Charge associated with the Project will make it more attractive to Entity to pursue the Project. Without a long-term tax exemption for the Project, it will not be financially viable.

2. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Project and will have a positive impact on the surrounding area and community.

3. The assistance provided by this Financial Agreement is a necessary and important inducement to the undertaking of the Project; and

**WHEREAS**, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to (a) the payment of the Annual Service Charge by the Entity and (b) the issuance of the Bonds and provision for repayment thereof through the Annual Service Charge, the Parties have determined to execute this Financial Agreement.

**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, the Exemption Law, the Redevelopment Law, the Bond Financing Law 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**

Unless specifically provided otherwise, when used in this Agreement, the following terms, when capitalized, shall have the meanings set forth below:

Administrative Expenses – Any costs for the administration of the Bonds as may be required under the Bond Agreement, including but not limited to the PILOT Administrative Fee.

Affiliate – With respect to any person or entity, any other person or entity directly or indirectly Controlling or Controlled by, or under direct common Control with, such person or entity.

Affordable Housing Rental Subcomponent - Shall have the meaning set forth in the recitals of this Agreement.

Agency - Shall have the meaning set forth in the recitals of this Agreement.

Agreement or Financial Agreement - Shall have the meaning set forth in the recitals of this Agreement.

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to the Total Project Cost, as those terms are hereinafter defined.

Allowable Profit Rate - The greater of twelve percent (12%) or the percentage per annum arrived at by adding 1 1/4% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1 1/4% per annum to the interest rate per annum which the Borough determines to be the prevailing rate on mortgage financing on comparable improvements in Middlesex County, all in accordance with N.J.S.A. 40A:20-3(b).

Annual Service Charge - The greater of (i) the amount computed in accordance with Section 4.2(b) and (ii) the Minimum Annual Service Charge.

Annual Service Charge Start Date - For each of the Rental Component and the Townhouse Component, the first day of the month immediately following the month in which the first Certificate of Occupancy is eligible to be issued for each such Component (including, for the Rental Component, a Subcomponent).

Applicable Law - All federal, State and local laws, ordinances, approvals, rules, regulations, resolutions and requirements applicable hereto including, but not limited to, the Redevelopment Law, the Bond Financing Law, the Exemption Law, as applicable, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary and safety ordinances, laws and such rules and regulations thereunder.

Application - Shall have the meaning set forth in the recitals of this Agreement.

Auditor's Report - A complete, certified, audited financial statement outlining the financial status of the Entity as it relates to the Project and reporting the Annual Gross Revenue, Net Profit and Total Project Cost as defined herein, the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board and which fully details all financial items required to determine that the Entity is complying with the Exemption Law and this Agreement and which has been certified as to its conformance with the current standards of the Financial Accounting Standards Board by a certified public accountant, who is licensed to practice that profession in the State.

Bank - Shall have the meaning set forth in the recitals of this Agreement.

Bond Agreement - Shall have the meaning set forth in the recitals of this Agreement.



Bond Amount – The aggregate principal amount of Bonds to be issued, which aggregate principal amount shall not exceed Ten Million dollars (\$10,000,000), inclusive of any amount required to fund costs of issuance, capitalized interest for a period of not to exceed three (3) years and applicable reserve funds, if any, which shall have a term of thirty (30) years and which shall be issued such principal amount and bear interest at such rate that results in level debt service in an annual amount not to exceed \$710,000.

Bond Financing Law - Shall have the meaning set forth in the recitals of this Agreement.

Bond Notice Date – Shall be as defined in Section 4.6.

Bondholder - Any person who is the registered owner of any outstanding Bonds.

Bonds - Shall have the meaning set forth in the recitals of this Agreement.

Borough – Shall have the meaning set forth in the preamble of this Agreement.

Borough Council - Shall have the meaning set forth in the recitals of this Agreement.

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.

Component - A portion of the Project consisting of the Rental Component or the Townhouse Component.

Control – As used with respect to any person or entity, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and operation of such person or entity, whether through the ownership of voting securities or by contract or other written agreement.

County – Middlesex County, New Jersey.

County Share – The first five per centum (5.00%) of the Annual Service Charge, which shall be payable by the Borough to the County in accordance with the provisions of N.J.S.A. 40A:20-12.

Cure Period – Shall be as defined in Section 9.3.

DCA - The New Jersey State Department of Community Affairs, to which the Entity shall report in accordance with the Exemption Law.

Debt Service – The scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period. Notwithstanding anything contained herein to the contrary, the Debt Service shall not exceed \$710,000.00 in any year. Simultaneous with the issuance of the Bonds, the Debt Service schedule for the Bonds shall be attached hereto as **Exhibit G** and the same shall be recorded by the Borough.

Debt Service Charge – For any year, the annual Debt Service and all other payments due and payable in any given year in accordance with the terms and provisions of the Bond Agreement, including without limitation, the Administrative Expenses and the replenishment of any reserves established within the Bond Agreement. Simultaneous with the issuance of the

Bonds, the Debt Service Charge schedule for the Bonds shall be attached hereto as **Exhibit G** and the same shall be recorded by the Borough.

Default – Shall be as defined in Section 9.1.

Effective Date - Shall have the meaning set forth in the preamble of this Agreement

Entity – Brudner Redevelopment Partners Urban Renewal, LLC, which is the owner of the Project, and all subsequent purchasers or successors in interest of the Project, or a Component or Components thereof, as applicable, provided they are organized pursuant to the Exemption Law and the transfer of the Project, or a Component or Components thereof, as applicable, to said subsequent purchasers or successors has been approved, in writing, by the Borough, and/or otherwise in accordance with the terms of this Financial Agreement, the Redevelopment Agreement and the Exemption Law.

Estimate of Total Project Cost or Estimate of Total Project Unit Cost - The Entity's good faith estimate of the total cost of constructing the Project, including the total cost for each Component thereof, through the date of issuance of the last Certificate of Occupancy issued for the Project, as more specifically defined in N.J.S.A. 40A:20-3(h), consisting of, and limited to, the categories of costs set forth in **Exhibit D** annexed, subject to those exclusions from Total Project Cost set forth in **Exhibit D**, if any, which calculations and exclusions have been approved by the Borough and the Entity.

Exemption Law - Shall have the meaning set forth in the preamble of this Agreement.

Existing Tax Amount - Shall be as defined in Section 4.3(a).

GAAP - Shall be as defined in Section 5.1.

Gross Revenue or Annual Gross Revenue - Annual gross revenue of the Entity as defined in the Exemption Law, as set forth in the financial plan submitted by the Entity in its Application, attached hereto as **Exhibit D**. With respect to the Rental Component, for each of the Retail/Commercial Subcomponent, the Affordable Housing Rental Subcomponent, and the Market Rate Rental Subcomponent, the Entity shall calculate the Annual Gross Revenue in accordance with N.J.S.A. 40A:20-3(a). With respect to the Townhouse Component, the Entity shall calculate the Annual Gross Revenue in accordance with N.J.S.A. 40A:20-14(a).

Improvements - The structural components of the Project described in the recitals hereof and as further described in and permitted by the Redevelopment Agreement, as amended.

Incremental Board of Education Costs – Shall be as defined in Section 4.3(a).

Incremental Borough Costs – Shall be as defined in Section 4.3(a).

Incremental Costs – The Incremental Borough Costs and the Incremental Board of Education Costs.

Independent Financial Consultant - Shall be as defined in the Bond Agreement.

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 the Tax Sale Law.

Interest Holders - Shall be as defined in Section 5.2(c).

Land - The Property at which the Improvements are to be located as more fully described herein, at **Exhibit A** and in the Redevelopment Agreement.



Land Taxes - The amount of conventional real estate taxes assessed on the Land constituting the Property during the term of this Agreement. As described in Section 4.1 herein, if the Land is not exempt from taxation, the school and county portions of Land Tax Payments shall not be applied as a credit against the amount of the Annual Service Charge. In the event of a transfer of a Component or Components to a Sub-Redeveloper (as such term is defined in Redevelopment Agreement) in accordance with Section 7.1(a) of this Financial Agreement, "Land Taxes" shall be defined as the amount of conventional real estate taxes assessed on that portion of the Land associated with such Component or Components.

Land Tax Payments - Payments made on the quarterly due dates for Land Taxes on the Property as determined by the Tax Assessor and the Tax Collector.

Local Finance Board - The Local Finance Board in the Division of Local Government Services, Department of Community Affairs.

Market Rate Rental Subcomponent - Shall have the meaning set forth in the recitals of this Agreement.

Minimum Annual Service Charge - Shall be as defined in Section 4.3 hereof.

Net Profit - The Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Included in expenses shall be an amount sufficient to amortize the Total Project Cost over the life of the Project, which period the parties agree is thirty (30) years, pursuant to the Exemption Law.

Ordinance - Shall have the meaning set forth in the recitals of this Agreement.

Outstanding - Shall be as defined in the Bond Agreement.

Parties or Party - Shall have the meaning set forth in the preamble of this Agreement.

PILOT Administrative Fee - \$15,000 annually in years 1-10 of the term of this Agreement, \$17,000 annually in years 11-20 of the term of this Agreement and \$19,000 annually in years 21-30 of the term of this Agreement.

Planning Consultant - Shall be as defined in the Bond Agreement.

Pledged Annual Service Charge - In each year, an amount equal to the Debt Service Charge for such year.

Project - Shall have the meaning set forth in the recitals of this Agreement.

Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as the context requires.

Property - Shall have the meaning set forth in the recitals of this Agreement.

Redevelopment Agreement - Shall have the meaning set forth in the recitals of this Agreement.

Redevelopment Area - Shall have the meaning set forth in the recitals of this Agreement.

Redevelopment Law - Shall have the meaning set forth in the recitals of this Agreement.

Redevelopment Plan - Shall have the meaning set forth in the recitals of this Agreement.

Rental Component - Shall have the meaning set forth in the recitals of this Agreement.

Residential Rental Subcomponent - Shall have the meaning set forth in the recitals of this Agreement.

Residential Rental Subcomponent Adjustment Event - Following the issuance of the Certificate of Occupancy for the Residential Rental Subcomponent that causes the Residential Rental Subcomponent to hold Certificates of Occupancy for 95% of its total square footage, one or more vacancies in the Market Rate Rental Subcomponent occurs causing total vacancy to exceed 25% of the total square footage of the Market Rate Rental Subcomponent for a period of six consecutive calendar months.

Residential Rental Subcomponent Adjustment Notice - The written notice from the Entity to the Borough of a Residential Rental Subcomponent Adjustment Event.

Retail/Commercial Subcomponent - Shall have the meaning set forth in the recitals of this Agreement.

State – The State of New Jersey.

Subcomponent – A portion of the Project consisting of either the Retail/Commercial Subcomponent, the Affordable Housing Rental Subcomponent, or the Market Rate Rental Subcomponent.

Substantial Completion - The completion of a Component, to such degree that it is considered to be ready for its intended use, which presumptively shall mean the date on which the last Certificate of Occupancy is issued for the Component.

Tax Sale Law - N.J.S.A. 54:5-1 et seq.

Termination - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its long term tax exemption in accordance with N.J.S.A. 40A:20-9(g). 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 Entity pursuant to N.J.S.A. 40A:20-12.

Total Project Cost – Shall be as defined in the Exemption Law.

Townhouse Component - Shall have the meaning set forth in the recitals of this Agreement.

Unit – An individual dwelling unit.

Unpledged Annual Service Charge - An amount in each year equal to the Annual Service Charge for such year, less the Pledged Annual Service Charge for such year, subject to the provisions of Section 4.2(j) hereof.

### **1.3 Incorporation of Recitals**

The Recitals set forth at the beginning of this Agreement are hereby incorporated into this Agreement by reference and made a part of this Agreement as if set forth at length herein.

### **1.4 Exhibits and Schedules Incorporated**



All Exhibits referred to in this Agreement and are attached hereto are incorporated herein and made a part hereof.

## **ARTICLE 2 APPROVAL OF AGREEMENT, USE, OPERATION, MANAGEMENT AND FINANCIAL PLAN OF 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 Exemption Law. The Project shall be constructed on the Property.

### **2.2 Approval of the Entity**

The Borough hereby grants its approval to the Entity for the Project, which Entity shall in all respects comply and conform to all applicable statutes of the State and lawful regulations made pursuant thereto, governing land, buildings and the use thereof. It is expressly acknowledged by the Borough that the ownership structure of the Entity may change at a later date by transfer of such ownership interest pursuant to the Exemption Law to a related entity or Affiliate, and the Borough hereby approves and authorizes such transfer, subject to prior review by the Borough of the formation documents of such transferee, and subject to such transferee's written acknowledgment of this Financial Agreement.

### **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, directly or indirectly, convey and/or lease out the individual residential units of the Project. The Improvements shall be those authorized by the Redevelopment Agreement, implemented in accordance with all required permits and approvals.

## **ARTICLE 3 DURATION OF AGREEMENT**

### **3.1 Term**

(a) This Agreement shall become effective on the Effective Date.

(b) The Parties understand and agree that this Agreement, including the obligation to pay the Annual Service Charge required under Article 4 and the tax exemption granted and referred to in Section 4.1, shall remain in effect until the earlier of (A) 35 years from the date of execution hereof or (B) for each of the Rental Component and Townhouse Component, 30 years from each respective Annual Service Charge Start Date. At the expiration of the term hereof or upon Termination, the tax exemption for the Project shall expire and the Project shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Borough. After expiration of the term hereof, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12. Upon any Termination of the tax exemption described in Section 4.1, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity in which the Termination has occurred.

## **ARTICLE 4 EXEMPTION AND ANNUAL SERVICE CHARGE**

#### 4.1 Tax Exemption

(a) Pursuant to the Ordinance, the Project to be constructed and/or renovated and maintained by the Entity in the Redevelopment Area shall be exempt from taxation as provided for herein and in the Exemption Law. In accordance with N.J.S.A. 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement. The tax exemption granted pursuant to the Ordinance and this Agreement relates only to the Project constructed in the Redevelopment Area.

(b) With regard to the Land, it is the intent of the parties that the Land (excluding that associated with the Retail/Commercial Subcomponent) be exempt from taxation pursuant to the terms of this Agreement but only if so permitted by N.J.S.A. 40A:20-12. If the Land (excluding that associated with the Retail/Commercial Subcomponent) is permitted to be exempt pursuant to N.J.S.A. 40A:20-12, the Entity is only required to pay the Annual Service Charge. For purposes of clarity, exemption from Land Taxes, to the extent permitted by Applicable Law, shall commence on the applicable Annual Service Charge Start Date.

(c) If the Land is not exempt or is not permitted to be exempt pursuant to N.J.S.A. 40A:20-12, the Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Unpledged Annual Service Charge for the subsequent year, in the amount described below. The Entity and the Borough agree that the Land Tax Payment will never be less than the Land Taxes that were assessed on the Land using the 2016 assessment at the 2016 tax rate. If the Land is not exempt or is not permitted to be exempt, the Entity shall be entitled to credit for the amount, without interest, of the municipal portion of the Land Tax Payments made in the last four (4) preceding quarterly installments against the municipal portion of the Unpledged Annual Service Charge, with the Entity expressly waiving its rights to any additional credit for Land Tax Payments made. In the event that the Entity is required to pay the Minimum Annual Service Charge and the Land is not exempt or permitted to be exempt, the Entity shall be entitled to credit for the amount, without interest, of the municipal and school portion of the Land Tax Payments made in the last four (4) preceding quarterly installments against the Minimum Annual Service Charge, with the Entity expressly waiving its rights to any additional credit for Land Tax Payments made; provided that such land tax credit shall never be allowed to reduce the Minimum Annual Service Charge below the Debt Service Charge. In any year that the Entity fails to make any Land Tax Payments, if and when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the municipal and/or school portions, as applicable, of the Unpledged Annual Service Charge for that year. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the Property pursuant to the Tax Sale Law and/or declare a Default and terminate this Agreement.

#### 4.2 Annual Service Charge

(a) The Entity and the Borough hereby consent and agree to the amount of the Annual Service Charge, the Entity hereby consents and agrees to the liens established in this Agreement, and the Entity shall not contest the validity or amount of any such lien; provided, however, that the foregoing shall not be construed to bar the Entity from raising the defense that (A) (i) the Annual Service Charge then due and owing has been paid in full or (ii) that the Annual Service Charge is not yet due and owing, or (B) the Annual Service Charge is incorrectly



calculated based on the formulas set forth in this Agreement. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be 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 Exemption Law, or any violation by the Borough of any provisions of this Agreement, termination of the Redevelopment Agreement or failure of the Entity to complete the Project.

(b) In consideration of the tax exemption, the Entity shall make payment of an Annual Service Charge. The Annual Service Charge in clause (i) of the definition of such term shall be calculated as follows:

(1) for the Market Rate Rental Subcomponent, the Affordable Housing Rental Subcomponent and the Retail/Commercial Subcomponent, i.e., the Rental Component, ten percent (10%) of Annual Gross Revenue, plus

(2) for each Unit in the Townhouse Component, twenty-two and one-half percent (22.5%) of Annual Gross Revenue for each Unit in the Townhouse Component, but in no event less than Six Thousand Dollars (\$6,000) for each two-bedroom Unit and no less than Six Thousand Six Hundred Dollars (\$6,600) for each three-bedroom Unit.

(c) As provided for in the Exemption Law, the Annual Service Charge shall be a percentage of the Annual Gross Revenue or the Total Project Cost; provided however, the Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), provides that the minimum or maximum percentages as established in the Exemption Law are not applicable to the Project since a portion of the costs of the Project are financed with the proceeds of the Bonds. The Annual Service Charge is in lieu of any and all other municipal real estate taxes on the Project (except the Land if not tax exempt) pursuant to N.J.S.A. 40A:20-12.

(d) Notwithstanding anything herein to the contrary, the Entity shall pay to the Borough the Annual Service Charge as provided in this Agreement. The Entity has agreed to pay the Annual Service Charge as consideration for (i) the Borough's agreement to pledge the Pledged Annual Service Charge to the repayment of the Bonds and (ii) the municipal services supplied to the Project. The Annual Service Charge shall commence on the Annual Service Charge Start Date.

(e) The Annual Service Charge shall be divided into two components, the Pledged Annual Service Charge and the Unpledged Annual Service Charge. For recordkeeping and audit purposes, in order to determine the percentage of Annual Gross Revenue that was paid as an Annual Service Charge for a given year, the Annual Service Charge paid in such year shall be divided by the Annual Gross Revenue.

(f) The Pledged Annual Service Charge shall be limited to the amount necessary to pay the Debt Service Charge on the Bonds issued in the Bond Amount.

(g) 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.

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

(i) The Entity expressly agrees that payment of the Annual Service Charge shall be made on the Annual Service Charge Start Date and in quarterly installments thereafter on each February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date, subject to adjustment for over or underpayment within thirty (30) days after close of each fiscal or calendar year, as the case may be.

(j) If for any reason, the Entity fails to make the full payment of the Minimum Annual Service Charge in accordance with this Agreement, the amount paid shall be allocated first, to the County Share, second, to the amounts set forth in Section 4.3(a), and third, to the extent of any remaining Minimum Annual Service Charge and in such remaining amounts, to the Pledged Annual Service Charge.

(k) Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.2(b) and 4.2(i), shall be reduced, amended or otherwise modified during the term of this Financial Agreement, except as explicitly provided herein, including Section 4.1(c).

#### **4.3 Minimum Annual Service Charge**

(a) The Minimum Annual Service Charge shall be the greater of (i) the amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation divided by 0.95 and (ii) the amount calculated as follows: the sum of (1) \$69,951.00 (existing tax amount to Borough, the "**Existing Tax Amount**"), increasing by two percent (2%), on each January 1 following the Effective Date, plus (2) \$655.00 per Unit within the Residential Rental Subcomponent and Townhouse Component for which a Certificate of Occupancy was issued or was eligible to be issued as of October 1 of the preceding calendar year (the "**Incremental Borough Costs**"), each stated dollar amount increasing by two percent (2%), on each January 1 following the Effective Date, plus (3) \$750.00 per Unit within the Residential Rental Subcomponent and Townhouse Component for which a Certificate of Occupancy was issued or was eligible to be issued as of October 1 of the preceding calendar year (the "**Incremental Board of Education Costs**"), such stated dollar amount increasing by two percent (2%), on each January 1 following the Effective Date, plus (4) the Debt Service Charge, with such sum of (1) – (4) then to be divided by 0.95 (for the purposes of addressing the County Share).

(b) Upon the assignment of the rights under this Agreement to the Sub-Redevelopers, as such term is defined under the Redevelopment Agreement, the Minimum Annual Service Charge shall be calculated separately for the Residential Rental Subcomponent and for the Townhouse Component. If the Minimum Annual Service Charge is paid under Section 4.3(a)(i), the amount due shall be allocated sixty percent (60%) to the Townhouse Component and forty percent (40%) to the Rental Component. If the Minimum Annual Service Charge is paid under Section 4.3(a)(ii), the Existing Tax Amount and the Debt Service Charge (divided by 0.95 to account for the County Share) shall be allocated sixty percent (60%) to the Townhouse Component and forty percent (40%) to the Rental Component. The Incremental Borough Costs and the Incremental Board of Education Costs applicable to the Townhouse Component under Section 4.3(a) shall be based on the Certificates of Occupancy issued or eligible to be issued for Units within the Townhouse Component (with such amount to be divided by 0.95), and the



Incremental Borough Costs and the Incremental Board of Education Costs applicable to the Rental Component under Section 4.3(a) shall be based on the Certificates of Occupancy issued or eligible to be issued for Units within the Rental Component (with such amount to be divided by 0.95).

(c) Except as set forth herein, the Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvements during the period that this Agreement is in force. The Minimum Annual Service Charge shall be reduced upon the occurrence of a Residential Rental Subcomponent Adjustment Event, commencing on the first day of the first month following delivery by the Entity of the Residential Rental Subcomponent Adjustment Notice. In such event, the Minimum Annual Service Charge for the Residential Rental Subcomponent shall be reduced on a monthly basis by an amount equal to the product of 80% of the percentage vacancy within the Market Rate Rental Subcomponent multiplied by the aggregate amount of thirty-one percent (31%) of the Incremental Costs, such product amount then divided by twelve. The reduction in the Minimum Annual Service Charge shall end on the first day of the first month following the month in which the Residential Rental Subcomponent Adjustment Event no longer exists.

#### **4.4 Intentionally Deleted**

#### **4.5 Annual Service Charge as Municipal Lien**

The Borough and the Entity hereby expressly acknowledge, understand and agree that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, and other 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 Redevelopment Area 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 Redevelopment Area 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 Redevelopment Area and the Project, including specifically and without limitation, the federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined, 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.

#### **4.6 Bond Financing**

Upon the request of the Entity (which request shall (i) be made at least one hundred twenty days prior to the date on which Redeveloper wishes the Bonds to be issued (the “**Bond Notice Date**”) and (ii) be unanimous by all holders of an interest hereunder if a transfer has occurred pursuant to Section 7.1) and provided that (i) no default has occurred and is continuing under the Financial Agreement or the Redevelopment Agreement and (ii) the Entity has demonstrated to the reasonable satisfaction of the Borough that all other financing required for the Project is fully authorized and committed, the Borough agrees to take all steps required pursuant to the Bond Financing Law and other applicable law to fully authorize and cause the issuance and sale of the Bonds, including, but not limited to, preparation and submission of an

application to the Local Finance Board for approval pursuant to applicable State statutes, the parties understanding and acknowledging that the Local Finance Board is an independent State board with the power to approve or deny the Borough's application and that the Borough's obligations hereunder to issue the Bonds is subject to its application being approved. Upon the sale and issuance of the Bonds, the proceeds of the Bonds shall be held by the Bank and requisitioned pursuant to the terms of the Bond Agreement to provide for the costs of the Project set forth in **Exhibit I**. The Bonds shall be issued for a term of thirty (30) years, shall amortize interest only in years 1 through 5 and amortize principal and interest in years 6 through 30, unless otherwise agreed to by the Borough in its sole discretion. Interest on the Bonds shall be Federally taxable and shall be payable semiannually. Debt Service on the Bonds shall be level. Notwithstanding anything contained herein to the contrary, the Bond Notice Date shall be no later than one hundred twenty (120) days prior to the expected occurrence of the first Annual Service Charge Start Date and the Bonds shall be issued prior to the Annual Service Charge Start Date. The Bonds shall be subject to redemption and otherwise issued on terms agreed to between the Borough and the Entity. Notwithstanding the transfer of interests herein that may occur, only a single series of Bonds will be issued.

#### **4.7 Security for the Bonds; Pledge of Pledged Annual Service Charge**

(a) The Borough hereby pledges and assigns, and grants a security interest in, all of its right, title and interest in each installment of the Pledged Annual Service Charge to secure payment of the Bonds. This pledge shall constitute an absolute, unconditional assignment of the Borough's right, title and interest in and to the Pledged Annual Service Charge. The Borough hereby represents, warrants and covenants that it has not, prior to the date hereof, and shall not, subsequent to the date hereof, pledge, assign and otherwise transfer its rights to the Pledged Annual Service Charge to any person other than the Bank. The Borough hereby acknowledges that the rights it has assigned to the Bank pursuant to the Bond Agreement and such assigned rights shall constitute part of the trust estate thereunder. The Entity hereby consents to such assignments.

(b) Each installment payment of the Annual Service Charge, to be made on the dates set forth in Section 4.2(i), shall be paid by the Entity to the Borough or to its assignee, if directed in writing by the Borough, and clearly identified on the memo line of the payment as "**Annual Service Charge Payment for the Art Color Dunellen Redevelopment Project.**" Subject to Section 4.2(j) hereof, the Borough shall first pay the County Share to the County, then pay the Pledged Annual Service Charge to the Bank and retain the Unpledged Annual Service Charge. The Unpledged Annual Service Charge may be used by the Borough for any lawful purpose all in accordance with the terms of the Bond Agreement.

(c) The Entity hereby waives any objection or right to challenge the use by the Borough of the enforcement of remedies to collect such installment of the Annual Service Charge as are afforded the Borough by Applicable Law, including the Tax Sale Law; provided, however, that in no event shall there be any acceleration of any unpaid Annual Service Charge amounts which are due and owing to repay the Bonds; provided, further, that and such remedies shall be limited solely to the collection of delinquent and unpaid Annual Service Charge amounts which are past due for payment, including interest, penalties and costs of collection provided for by the Tax Sale Law.



(d) Pursuant to the Bond Financing Law and such other statutes as may be of relevant authority, if any, the Annual Service Charge shall not be included within the general funds of the Borough and shall not be subject to any laws regarding the receipt, deposit, investment or appropriation of public funds, notwithstanding enforcement of the payment of the Annual Service Charge by the Borough. The Borough's pledge of the Pledged Annual Service Charge to the Bank for the Bonds shall be a limited obligation of the Borough payable to the extent of payments received from the Entity and shall not constitute a general obligation of the Borough.

(e) [Reserved].

(f) As such time as the Bonds are defeased or otherwise no longer outstanding, the Entity's obligation to pay the Pledged Annual Service Charge shall terminate. However, the Unpledged Annual Service Charge shall continue to be due and owing to the Borough in accordance with this Agreement.

(g) The Bonds are **NON-RECOURSE** to the Borough and neither the full faith and credit nor the *ad valorem* taxing power of the Borough are pledged to pay debt service on the Bonds.

## 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”) or in accordance with cash basis accounting principles and as otherwise prescribed by Applicable Law.

### 5.2 Periodic Reports

(a) Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Rental Component, the Entity shall submit to the Borough an audit of Total Project Costs for each such Component, certified as to actual construction costs and site remediation and clean-up of hazardous substances, if any, by an independent and qualified architect, utilizing the form attached hereto as **Exhibit E**. Other extraordinary costs, as contemplated by **Exhibit D**, shall be certified in conformance with GAAP, by a certified public accountant licensed to practice that profession in the State of New Jersey. Within ninety (90) days after Substantial Completion of the Townhouse Component, the Entity shall submit to the Borough an audit of Total Project Costs with respect to the fee simple units comprising the Townhouse Component, in accordance with N.J.S.A. 40A:20-3(h).

(b) 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, or a Component or Components thereof, as applicable, and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Exemption Law and this Agreement.

(c) Disclosure Statement: Within thirty (30) days of each anniversary date of the Effective Date, the Entity shall submit to the Borough a Disclosure Statement listing all persons and other entities having an ownership interest in the Entity ("**Interest Holders**"), and the extent of the ownership interest held by each.

(d) Termination of Obligations: The Entity's obligations under this Section 5.2 shall terminate at the end of the tax exemption period set forth in Section 3.1, or upon earlier termination, if any, of this Agreement, or, with respect to the Townhouse Component only, upon the closing and conveyance of the last fee simple unit in a bona fide sale to a third party. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Borough, except that any termination of the Entity's obligations under this Section 5.2 with respect to the bona fide sale of all the fee simple units constituting the Townhouse Component shall not affect the tax exemption granted to such fee simple units, in accordance with the Exemption Law. 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 request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Borough and the State. 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.

## **ARTICLE 6 LIMITATION OF PROFITS AND RESERVES**

### **6.1 Limitation of Profits and Reserves**

(a) During the period of this 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 pursuant to the Exemption Law shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in this Financial Agreement, as provided for in the Exemption Law.

(b) The Entity shall have the right to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten per centum (10%) of the Gross Revenue of the Entity for the calendar year preceding the year in which a determination is being made with respect to Allowable Net Profit as provided in N.J.S.A. 40A:20-15, said reserve to be noncumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten per centum (10%) of the preceding year's Gross Revenue as aforesaid.

### **6.2 Annual Payment of Excess Net Profit**

(a) In the event the Net Profit of the Entity, in any calendar year, having been calculated cumulatively, shall exceed the Allowable Net Profit for the term of this Agreement to date, then in accordance with N.J.S.A. 40A:20-15, the Entity, within one hundred twenty (120)



days after the end of such fiscal year, shall pay such excess Net Profit to the Borough as an additional Annual Service Charge. Gross Revenue and Net Profit for the purposes hereof shall be determined pursuant to N.J.S.A. 40A:20-3(a) and (c) in the following manner. For each year during the term of this Agreement, the Entity's Gross Revenue shall be the total amount of annual gross rents the Entity actually collects during each such year and Net Profit shall be (i) the Gross Revenue of the Entity less (ii) all operating and non-operating expenses of the Entity determined in accordance with generally accepted accounting principles, including without limitation those items required by N.J.S.A. 40A:20-3(c).

(b) The parties agree that any excess Net Profit will be retained by the Borough as additional Unpledged Annual Service Charge.

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

The date of the termination of this Agreement, expiration of this Agreement or the sale of the Project to a non-urban renewal entity shall be considered to be 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 this Section 6.3 and the excess Net Profit, if any. 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 Entity pursuant to N.J.S.A. 40A:20-12.

## **ARTICLE 7 ASSIGNMENT AND/OR ASSUMPTION**

### **7.1 Approval**

(a) Except with the Borough's written consent, as set forth in Section 7.1(b) of this Agreement, the Entity may not sell, convey, grant, bargain, assign, or otherwise transfer its fee title interest in the Project, or any part thereof, or any direct or indirect interest in the Entity, or permit the Project, or any part thereof, to be sold, conveyed, granted, bargained, assigned, or otherwise transferred, except for: (i) the transfer of ownership interest in the Entity to a related entity or Affiliate, to which transfers the Borough hereby consents, as set forth in Section 2.2 herein, subject to the conditions set forth therein; or (ii) the conveyance of, and the assignment of all of the Entity's right, title and interest in and to this Agreement with respect to a Component to a Sub-Redeveloper, as such terms are defined in the Redevelopment Agreement, provided that such Sub-Redeveloper is an entity eligible to operate under the Exemption Law and owning no other "project," as this term is defined in the Exemption Law and provided that no Default of Entity, or Event of Default by Redeveloper under the Redevelopment Agreement, exists and that no state of facts exists that, if uncured, would give rise to a Default by Entity, or Event of Default by Redeveloper under the Redevelopment Agreement. In the event of such a conveyance and assignment, the Borough, the Entity and the Sub-Redeveloper shall enter into an Assignment and Assumption Agreement, in a form substantially similar to that attached hereto and incorporated herein as **Exhibit H**, and all other necessary and appropriate documents to effect same, as applicable. Notwithstanding anything to the contrary in this Section, a transfer of ownership interests that occurs by inheritance, devise or bequest or by operation of law upon an immediate family member of Interest Holders, or a trust established for the benefit of such immediate family member shall not be a violation of this restriction. For purposes of the foregoing sentence, an "immediate family member" shall mean a spouse, child or grandchild of any Interest Holder,



and "Interest Holders" shall mean holders of interests in the Entity (or holders of interests in any entity directly or indirectly holding an interest in the Entity) as of the date of this Agreement.

(b) It is understood and agreed that the Borough, on written application by the Entity, shall not unreasonably withhold its written consent to a sale of the Project, or a Component or Components thereof, and the transfer of the Financial Agreement as authorized by the Exemption Law, or any interest therein, and the assignment of all of the Entity's right, title and interest in and to this Agreement, to an entity eligible to operate under the Exemption Law, owning no other "project," as this term is defined in the Exemption Law, provided the Entity is not in Default regarding any performance required of it hereunder, full compliance with the Exemption Law has occurred and the Entity's obligations under its Agreement with the Borough are fully assumed by the transferee.

(c) If the Entity transfers the Project to a transferee pursuant to Section 7.1(b), then upon such transfer the Entity shall pay an administrative fee to the Borough equal to two percent (2%) of the corresponding year's Annual Service Charge for the processing of such request for the continuation of the long term tax exemption to the benefit of the transferee and any of its transferees. This administrative fee shall not be required in connection with a transfer pursuant to Section 7.1(a). Within ninety (90) Days after the date of any such transfer, the Entity shall pay to the Borough any fees due to the Borough pursuant to this Financial Agreement, as well as any excess Net Profit payable to the Borough pursuant to this Financial Agreement and the Exemption Law.

(d) It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge, and to the rights of the Borough, to encumber the fee title to the Property, or any portion thereof, owned in fee simple by the Entity, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of mortgage liens on the Property, it being expressly understood that a mortgage lien takes subject to the lien of the Annual Service Charge.

(e) In the event that the Project or any portion thereof is devoted to a condominium form of ownership, the Borough will consent to a sale of the Project to purchasers of units in the condominium, and to their successors, assigns, all owning (in the case of housing) no other condominium unit of the Project at the time of the transfer, and that, upon assumption by the condominium unit purchaser of the transferor's obligations under the Financial Agreement, the tax exemption of the Project buildings and Improvements and, to the extent authorized pursuant to N.J.S.A. 40A:20-12, Land, shall continue and inure to the unit purchaser, his respective successors or assigns. Moreover, the conveyance of a condominium unit to a bona fide unit purchaser shall not require consent or approval of the Borough, and the grantee shall acquire title to the unit subject to the requirement for payment of the annual service charge and other provisions of this Financial Agreement expressly applicable to condominium unit purchasers, subject to the Borough's right to adopt a resolution with respect to residential condominium units requiring either the lapse of the tax exemption or an increase in the annual service charge by a specified percentage over that which is otherwise applicable for any period during which the unit owner does not personally reside in the condominium unit and such unit is occupied by someone other than the owner, all in accordance with N.J.S.A. 40A:20-14.c.

(f) In the event that the Project or any portion thereof is devoted to a fee simple form of ownership, the Borough will consent to a sale of the project to purchasers of units in fee



simple and to their successors, assigns, all owning (in the case of housing) no other fee simple unit of a project at the time of the transfer, and that, upon assumption by the fee simple unit purchaser of the transferor's obligations under the Financial Agreement, the tax exemption of the Project buildings and Improvements and, to the extent authorized pursuant to N.J.S.A. 40A:20-12), Land shall continue and inure to the fee simple unit purchaser, his respective successors or assigns. The provisions of this subsection shall not be construed to authorize the sale of the Project between an urban renewal entity and a for-profit developer.

(g) Notwithstanding anything contained in this section to the contrary, the foregoing provisions shall not restrict or prohibit the lease by the Entity of any portion of the Project to any residential or commercial tenant, with such tenant not being required to be an entity eligible to operate under the Exemption Law.

## **ARTICLE 8 COMPLIANCE**

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

## **ARTICLE 9 DEFAULT**

### **9.1 Default Defined**

Default shall mean the failure of the Entity or Borough to conform to the terms of this Agreement beyond the Cure Period set forth in Section 9.3 below.

### **9.2 Intentionally deleted**

### **9.3 Cure Upon Default**

Should the Entity be in Default of any obligation under this Agreement, the Borough or the Bank 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 ("Cure Period"), other than a Default in payment of any installment of the Annual Service Charge. In the event of any uncured Default, the Borough (or the Bank as its assignee and agent) shall have the right to proceed against the Property pursuant to applicable provisions of the law, including N.J.S.A. 40A:12A-58 and -68, but subject to the aforementioned limitations on acceleration, including as set forth in Sections 4.7(c) and 9.4(a) hereof. No Default hereunder by the Entity shall terminate the tax exemption described herein and its obligation to make Annual Service Charge payments, which shall continue in effect for the respective durations set forth in Section 3.1 hereof, subject to Article 10 hereof. Upon any Default in payment of any installment of the Annual Service Charge, the Borough shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law.

### **9.4 Remedies Upon Default**

(a) In the event of a breach of this Agreement by any of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, then the parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. 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 4 above, the Borough, or the Bank acting as assignee and agent of the Borough, in addition to their other remedies, reserve the right to proceed against the Entity's land and premises, in the manner provided by Applicable Law, including the Tax Sale Law, and any act supplementary or amendatory thereof; provided, however, that in no event shall there be any acceleration of any future Annual Service Charge. The Borough shall pursue the collection of delinquent payments of Annual Service Charge with the same diligence it employs in the collection of the Borough's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. The Borough agrees that it will provide notice to the Bank of any legal proceedings to be instituted for the collection of delinquent payments of the Annual Service Charge. 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 Borough or the Bank to proceed in the above-mentioned manner, subject to the aforementioned proscription on acceleration in this Section and in Section 4.7(c) hereof.

(b) All of the remedies provided in this Agreement to the Borough (and the Bank), 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 Agreement shall deprive the Borough (or the Bank) of any of their remedies or actions against the Entity because of Entity's failure to pay Land Taxes, the Annual Service Charges 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 (but only if the Land is not permitted to be exempt pursuant to the Exemption Law), 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 Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

## **9.5 Bondholder Remedies**

Bondholders shall have the right to direct action of the Bank and take action on behalf of themselves and/or the Bank as set forth in the Bond Agreement, this Agreement and the Bond Financing Law.

## **ARTICLE 10 TERMINATION**

### **10.1 No Voluntary Termination by Entity While Bonds Outstanding**

Neither the Entity nor the Borough may at any time terminate this Financial Agreement during the period when any Bonds remain outstanding under the terms of the Bond Agreement. The Entity further expressly acknowledges, understands and agrees that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), the relinquishment provisions set forth in the Exemption Law, specifically N.J.S.A. 40A:20-9(g) and 13, shall not be applicable in accordance with, pursuant to, and under this Agreement. The Entity further expressly rejects, refuses, relinquishes, surrenders, and otherwise waives any and all rights of relinquishment of its status under the acts and this Agreement that it may have otherwise been entitled to in accordance with any Applicable Law, including without limitation, N.J.S.A. 40A:20-13.



## **10.2 Voluntary Termination by the Entity**

Except as specifically prohibited by Section 10.1, if there are no outstanding Bonds within the meaning of the Bond Agreement, the Entity may, after the expiration of one (1) year from the Substantial Completion of all Components 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 Charge hereunder, and the profit and dividend restriction shall terminate, and Section 10.3 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 general law applicable to other taxable property within the Borough, and the Entity is bound by this Agreement and by Applicable Law until expiration or Termination shall occur.

# **ARTICLE 11 NOTICE**

## **11.1 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.

## **11.2 Sent by the Borough**

Unless prior to giving of notice, the Entity shall have notified the Borough in writing otherwise, when sent by the Borough to the Entity, the notice shall be addressed to:

Brudner Redevelopment Partners Urban Renewal, LLC  
c/o Davanne Realty Co.  
80 Main Street, Suite 510  
West Orange, New Jersey 07052  
Attn: Michael J. Mandelbaum, Esq.

with copy to:

Peter M. Flannery, Esq.  
Bisgaier Hoff, LLC  
25 Chestnut Street, Suite 3  
Haddonfield, New Jersey 08033

The Bank shall receive copies of all notices given by the Borough hereunder, which shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

### **11.3 Sent by Entity**

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

Borough of Dunellen  
355 North Avenue  
Dunellen, New Jersey 08812  
Attn: Borough Clerk

with copies to:

Borough Attorney  
355 North Avenue  
Dunellen, New Jersey 08812

John E. Bruder, Esq.  
2 West Union Ave  
Bound Brook, NJ 08805

Charles B. Liebling, Esq.  
Windels Marx Lane & Mittendorf, LLP  
120 Albany Street Plaza, Sixth Floor  
New Brunswick, New Jersey 08901

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. Furthermore, the Entity shall provide notice to the Borough of each payment of the Pledged Annual Service Charge sent to the Bank.

The Bank shall receive copies of all notices given by the Entity hereunder, which shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **ARTICLE 12 MISCELLANEOUS**

### **12.1 Intentionally Deleted**

### **12.2 Covenant to Make Payments**

The Entity agrees that the timely payment of the Land Taxes and the Annual Service Charge to the Borough, as well as continued compliance with Applicable Law, are material conditions of this Financial Agreement. The failure to make any of the aforesaid payments in



timely fashion shall constitute both a breach of this Financial Agreement and a tax payment delinquency under Applicable Law.

### **12.3 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 Applicable Law.

### **12.4 Indemnification**

If the Borough becomes named as a party defendant in any action brought against the Entity by reason of any breach, default, or violation of any provision of this Financial Agreement and/or the Exemption Law and/or the Bond Financing Law, but not including any taxpayer actions brought against the Borough or the Entity, the Entity shall defend, indemnify and hold the Borough harmless to the extent that the Entity is found to be liable in the action, except for any negligence or misconduct by the Borough or any of its officers, officials, employees, consultants or agents, and the Entity agrees to defend the suit and indemnify the Borough as set forth herein at its own expense.

### **12.5 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State, 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.

### **12.6 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.

### **12.7 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.

### **12.8 Annual Service Charge Paid to County**

Pursuant to N.J.S.A. 40A:20-12, the County Share shall be paid to the County.

### **12.9 Recording**

Either this entire Agreement, or a memorandum of this Agreement in form and substance approved in writing by the Borough, will be recorded with the County Clerk by the Entity, at no cost to the Borough.

#### **12.10 Notice to County.**

In accordance with P.L.2015, c.247, within the later of ten (10) days following adoption of the ordinance approving this Agreement or the execution of this Agreement by the Entity, the Borough Clerk shall submit a certified copy thereof to the chief financial officer of the County and the County Counsel.

#### **12.11 Financing Matters**

The information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application.

#### **12.12 Cooperation of the Parties for Facilitating Issuance of the Bonds**

For the purpose of facilitating the issuance of the Bonds, the Borough and Entity shall agree to such revisions or amendments to this Agreement as may be reasonably required from time to time by the issuer of the Bonds or its counsel, the Bank and and/or any insurer of the Bonds.

### **ARTICLE 13 EXHIBITS AND SCHEDULES**

The following Exhibits and Schedules 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 of the Borough Authorizing Execution of this Financial Agreement

**Exhibit D** – Financial Plan including Entity's Estimate of Total Project Cost

**Exhibit E** - Form of Certification of Final Construction Cost

**Exhibit F** - Certificate of Formation of Brudner Redevelopment Partners Urban Renewal, LLC

**Exhibit G** – Schedule of Debt Service Charges

**Exhibit H** – Form of Assignment and Assumption Agreement

**Exhibit I** - Approved Cost Categories for Use of Bond Proceeds




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

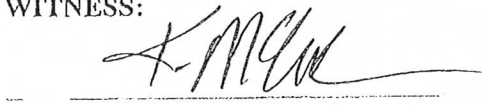
ATTEST:

BOROUGH OF DUNELLEN



By:   
Mayor Robert J. Seader

WITNESS:



ENTITY:

BRUDNER REDEVELOPMENT PARTNERS  
URBAN RENEWAL, LLC,  
a New Jersey limited liability company

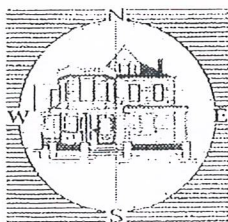
By: DUNELLEN ASSOCIATES, LLP  
a New Jersey limited partnership

By: SOUTHWIND EQUITIES, INC.  
its general partner

By:   
Richard Brudner, President

**EXHIBIT A**  
**Property Description**





SINCE 1955

## ***STIRES ASSOCIATES, P.A.***

PROFESSIONAL ENGINEERS AND SURVEYORS  
ENVIRONMENTAL CONSULTANTS

43 W. HIGH STREET SOMERVILLE, N.J. 08876

Ph. (908) 725-0230 Fax. (908) 707-0831

[www.stiresassociates.com](http://www.stiresassociates.com)

### LEGAL DESCRIPTION

Lots 1 & 2 Block 85

Borough of Dunellen Middlesex County New Jersey

All that certain lot, tract or parcel of land and premises situate, lying and being in the Borough of Dunellen, County of Middlesex, and State of New Jersey, being more particularly described as follows:

BEGINNING at the intersection of the northeasterly sideline of Washington Avenue with the southeasterly sideline of lands belonging now or formerly to the Central Railroad Company of New Jersey and from said point running;

- Thence 1) along the southeasterly sideline of Central Railroad of New Jersey, North 58 degrees 35 minutes 00 seconds East a distance of 1506.56 feet;
- Thence 2) continuing along the southeasterly sideline of the Central Railroad of New Jersey, North 21 degrees 57 minutes 06 seconds West a distance of 20.28 feet;
- Thence 3) continuing along the southeasterly sideline of the Central Railroad of New Jersey, North 58 degrees 35 minutes 00 seconds East a distance of 88.75 feet more or less to the Municipal Boundary between the Borough of Dunellen and the Township of Piscataway;
- Thence 4) along said Municipal Boundary, South 31 degrees 14 minutes 23 seconds East a distance of 200.00 feet more or less to a point in the northwesterly sideline of South Second Street;
- Thence 5) along the northwesterly sideline of South Second Street, South 58 degrees 35 minutes 00 seconds West a distance of 121.54 feet more or less;
- Thence 6) South 21 degrees 57 minutes 06 seconds East a distance of 620.82 feet;
- Thence 7) South 73 degrees 52 minutes 00 seconds West a distance of 555.22 feet;
- Thence 8) South 83 degrees 48 minutes 14 seconds West a distance of 488.06 feet;
- Thence 9) South 84 degrees 11 minutes 32 seconds West a distance of 268.78 feet;
- Thence 10) South 05 degrees 48 minutes 28 seconds East a distance of 65.00 feet;
- Thence 11) South 84 degrees 53 minutes 19 seconds West a distance of 149.84 feet to an iron pin found in the easterly sideline of Washington Avenue;
- Thence 12) along the sideline of Washington Avenue, North 31 degrees 06 minutes 00 seconds West a distance of 68.07 feet;

Thence 13) continuing along the sideline of Washington Avenue, North 58 degrees 35 minutes 00 seconds East a distance of 7.00 feet;

Thence 14) continuing along the sideline of Washington Avenue, North 31 degrees 24 minutes 00 seconds West a distance of 246.00 feet to the Point of BEGINNING

W/lgl/10/17/17093



**EXHIBIT B**

**Executed Financial Agreement Application with All Exhibits**

[Attached]

# BISGAIER HOFF

Attorneys At Law A Limited Liability Company

Peter M. Flannery  
Member of the NJ & NY Bars  
E-mail: pflannery@bisgaierhoff.com  
Phone: (856) 375-2804

March 17, 2017

Via Messenger

Hon. Robert J. Seader, Mayor  
Borough of Dunellen  
Municipal Building  
355 North Avenue  
Dunellen, New Jersey 08812-1053

Re: **Brudner Redevelopment Partners Urban Renewal, LLC**  
**Application for Long Term Tax Exemption and Redevelopment Area Bond**  
**Financing for Dunellen Art Color Redevelopment Project**  
**100 S. Washington Avenue, Dunellen, New Jersey 08812**

Dear Mayor Seader:

As you know, this firm represents Brudner Redevelopment Partners Urban Renewal, LLC (the "Applicant"), which is the contract purchaser of the approximately 19-acre "Art Color" property located at 100 South Washington Avenue and designated as Lots 1 and 2 in Block 85 on the Borough of Dunellen tax maps (the "Property"). By this letter and its enclosures, the Applicant hereby applies to the Borough of Dunellen for a long term tax exemption and redevelopment area bond financing, pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., and the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq., respectively, in connection with the redevelopment of the Property.

In accordance with the Dunellen Downtown Redevelopment Plan Phase I, the Applicant proposes to redevelop the Property as a mixed-use project consisting of 130 for-sale stacked townhouse units, 252 rental residential units, 10,000-15,000 square feet of commercial/retail space, and related site improvements and infrastructure (the "Project"). Among other benefits, the Project will provide fifty-eight (58) affordable housing units and will include major sewer infrastructure improvements, including the construction of a new Washington Street Pump Station. The Project will also generate approximately 950 construction jobs and approximately 221 permanent jobs.

To help fund the Project, which has an estimated cost of over \$108 million, the Applicant is requesting both a long term tax exemption and redevelopment area bond financing for the Project. The Applicant requests a long term tax exemption for a period of thirty (30) years with corresponding annual service charges equal to 10% of the annual gross revenue for the rental residential units and the commercial/retail space and equal to 22.5% of the annual gross revenue for the townhouse units. The Applicant also requests a redevelopment area bond in an amount



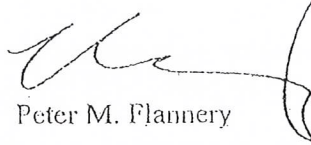
Page 2

not to exceed \$10 million and an annual debt service amount not to exceed \$710,000, which debt service is to be paid out of the annual service charge payments. In addition, the Applicant proposes a minimum annual service charge that ensures (1) the payment of the debt service, (2) the required payment to Middlesex County, and (3) the payment of the municipal and Dunellen Board of Education costs generated by the Project.

Thank you for your assistance with this matter and please contact me with any questions.

Very truly yours,

BISGAIER HOFF, LLC

  
Peter M. Flannery

Enclosures

cc: Charles B. Liebling, Esq. (via e-mail w/ enclosures)

Brudner Redevelopment Partners Urban Renewal, LLC (via e-mail w/ enclosures)

BOROUGH OF DUNELLEN  
APPLICATION FOR TAX EXEMPTION

OF

BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC



In accordance with the requirements of the Long Term Exemption Law, N.J.S.A. 40A:20-1, et seq., (the "Exemption Law"), Brudner Redevelopment Partners Urban Renewal, LLC (the "Applicant" or the "Entity") respectfully submits to the Borough Council of the Borough of Dunellen (the "Borough") this Application for Long Term Tax Exemption along with those documents attached and annexed hereto.

Applicant's Name and Address:

Brudner Redevelopment Partners Urban Renewal, LLC  
c/o Davanne Realty Co.  
80 Main Street, Suite 510  
West Orange, New Jersey 07052

Project Name:

The Art Color Project (the "Project") as referenced in the Dunellen Downtown Redevelopment Plan Phase I, last revised on May 16, 2016 pursuant to Ordinance #2016-05 (the "Redevelopment Plan").

**1. Identification of Project Area:**

The Project Area is located at 100 South Washington Avenue in the Borough of Dunellen, County of Middlesex, State of New Jersey (the "Redevelopment Area") and consists of a series of parcels of property containing approximately 19 acres of real property, identified on the Borough Tax Map as Tax Block 85, Lots 1 and 2 (the "Project Area").

**2. General Statement of Nature of Redevelopment Project:**

The Project consists of a mixed-use project consisting of 130 for-sale stacked townhouse units, 252 rental residential units, 10,000 – 15,000 square feet of commercial/retail space, and related site improvements and infrastructure. A total of 58 of the 252 rental residential units shall be affordable to low- and moderate-income households, and the Project shall be developed in three phases.

The Applicant seeks to assign its right to develop the Project to two entities: (1) an urban renewal entity ("KHOV Entity") to be created by its parent entity, K. Hovnanian Holdings NJ LLC, which will develop the townhouse component of the Project; and (2) Dunellen Prism Associates Urban Renewal, LLC ("Prism JV Entity"), which is a joint venture between Applicant and Prism Dunellen LLC (a subsidiary of Prism Capital Partners, LLC), which will develop the rental residential (market-rate and affordable) and commercial/retail components of the Project.

The Project conforms to all applicable Borough ordinances and the Project accords with the Borough Master Plan and the Redevelopment Plan.

3. **Description of the Project:**

The following documents depicting and describing the Project Area and the proposed improvements in the Project are attached hereto and made a part hereof as Exhibit A: Concept Plan.

4. **Term of Exemption:**

The Applicant requests that the term of the long-term tax exemption be for a period of thirty (30) years from Annual Service Charge Start Date, as such term is defined in the Financial Agreement.

5. **Financial Agreement:**

The proposed Financial Agreement between the Borough and the Applicant (therein referred to as the Entity) is attached and annexed hereto as Exhibit B.

6. **Estimate of Total Project Cost:**

Pursuant to the Exemption Law, N.J.S.A. 40A:20-3(h), the statement prepared by an architect or engineer licensed in the State of New Jersey setting forth the estimated Total Project Cost for the Project is set forth in the schedule attached and annexed hereto as Exhibit C.

7. **Financial/Fiscal Plan:**

A proposed Financial/Fiscal Plan for the Project, as required by N.J.S.A. 40A:20-8(e), outlining the schedule of annual gross revenue, the estimated expenditure for operation and maintenance of the Project, payments for interest, amortization of debt and reserves, and payments to be made to the Borough pursuant to the Financial Agreement is annexed hereto and made a part hereof as Exhibit D and Exhibit E.

8. **Sources, Method and Amount of Financing For Project:**

Pursuant to N.J.S.A. 40A:20-8(b), the Applicant, Prism JV Entity and KHOV Entity will finance the development and construction of the Project through a mixture of loans, equity and proceeds from redevelopment area bond financing.

The estimated amount of financing for the Project to be obtained by the Applicant, Prism JV Entity and KHOV Entity through each method of financing set forth above and the security, collateral and/or any mortgage or guaranty to be granted or pledged in connection therewith is set forth in the proposed Financial/Fiscal Plan attached hereto as Exhibit D.

9. **Applicant's Relationship to Project Area:**

The Applicant is the contract purchaser of the Project Area. The current owner of the Project Area -- Dunellen Associates -- is under common control with the Applicant. Applicant will purchase the Project Area from Dunellen Associates and then convey a portion of the Project Area to the KHOV Entity and convey the remainder of the Project Area to the Prism JV Entity.



10. Minimum Annual Service Charges and Annual Service Charges:

Commencing upon the Annual Service Charge Start Date, as such term is defined in the Financial Agreement attached hereto, the Applicant shall pay to the Borough, as applicable, the Minimum Annual Service Charge or the Annual Service Charge.

(A) Minimum Annual Service Charge amount: the greater of (i) the amount of total taxes levied against the Project Area in the last full tax year in which the Project Area was subject to taxation divided by 0.95; and (ii) the amount calculated as follows: the sum of: (1) \$69,951.00, increasing by 2% on each January 1 following the Effective Date of the Financial Agreement, plus (2) \$655.00 per residential unit in the Project for which a certificate of occupancy was issued or was eligible to be issued as of October 1 of the preceding calendar year, each stated dollar amount increasing by 2% on each January 1 following the Effective Date of the Financial Agreement, plus (3) \$750.00 per residential unit in the Project for which a certificate of occupancy was issued or was eligible to be issued as of October 1 of the preceding calendar year, such stated dollar amount increasing by 2% on each January 1 following the Effective Date of the Financial Agreement, plus (4) the debt service charge on the redevelopment area bond financing for the Project, with such sum of (1) -- (4) then to be divided by 0.95 for the purpose of computing Middlesex County's share.

(B) Annual Service Charge amount:

- (1) 10% of annual gross revenue for the Project's rental residential units (market rate and affordable) and commercial/retail space; and
- (2) For each of the Project's townhouse units, the greater of (i) 22.5% of annual gross revenue for each townhouse unit and (ii) \$3.16 per square foot of each such Unit (the square footage of the two townhouse unit types being 1,632 square feet and 2,332 square feet).

Annexed hereto as **Exhibit E** is a projection of the Annual Gross Revenue and the Annual Service Charge for the Project.

11. Real Estate Taxes:

The total real property taxes paid on the Project Area for the 2016 Tax Year were Two Hundred Sixty Two Thousand Two Hundred Twenty Seven and 00/100 Dollars (\$262,227.00). Attached and annexed hereto as **Exhibit F** are true copies of the Tax Bills for the Project Area for the 2016 Tax Year.

12. Municipal Tax Assessment:

The approximate total real property aggregate assessed value of the Project Area is Two Million One Hundred Thousand and 00/100 Dollars (\$2,100,000.00) for the 2017 Tax Year. Attached and annexed hereto as **Exhibit G** are the estimated 2017 Real Estate

Property Taxes for the Project Area. The Borough has provided the estimated 2017 taxes and believes that same is accurate as presented herein.

**13. Disclosure Statement:**

The Applicant is an urban renewal limited liability company formed and operated pursuant to the laws of the State of New Jersey. Its status as an urban renewal entity has been duly qualified by the Commissioner of the State of New Jersey Department of Community Affairs. Attached and annexed hereto as **Exhibit II** is a true copy of the Disclosure Statement for the Applicant.

**14. Applicant Qualifications:**

Attached and annexed to as **Exhibit I** is a summary document and financial information demonstrating the qualifications of Applicant, the Prism JV Entity, and the KHOV Entity as the redevelopers of the Project.

**15. Certification as to Commencement of Construction:**

The Applicant hereby certifies that it has not and will not commence construction of the Project prior to adoption by the Borough's Governing Body of a Resolution approving this Application and an appropriate Ordinance approving and making effective this Long Term Tax Exemption and Financial Agreement and authorizing the Mayor or other appropriate official to execute the Financial Agreement.

**16. Certificate of Formation:**

Attached and annexed hereto as **Exhibit J** is a true copy of the filed Certificate of Formation of Brudner Redevelopment Partners Urban Renewal, LLC, reviewed and approved by the Commissioner of the State of New Jersey Department of Community Affairs.



17. Exhibits:

The following exhibits are attached and annexed to this Application for Long Term Tax Exemption and are hereto incorporated herein:

Exhibit A: Description of Project

Exhibit B: Financial Agreement

Exhibit C: Total Project Cost

Exhibit D: Financial/Fiscal Plan

Exhibit E: Projected Annual Gross Revenue and Annual Service Charge

Exhibit F: 2016 Real Estate Taxes

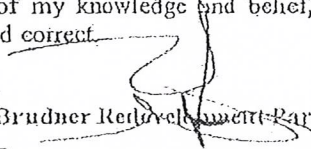
Exhibit G: Estimated 2017 Real Estate Taxes

Exhibit H: Disclosure Statement/Application to New Jersey DCA

Exhibit I: Redeveloper Qualifications and Ownership Disclosure

Exhibit J: Certificate of Formation

I hereby certify to the best of my knowledge and belief, that all of the information contained in this application is true and correct.

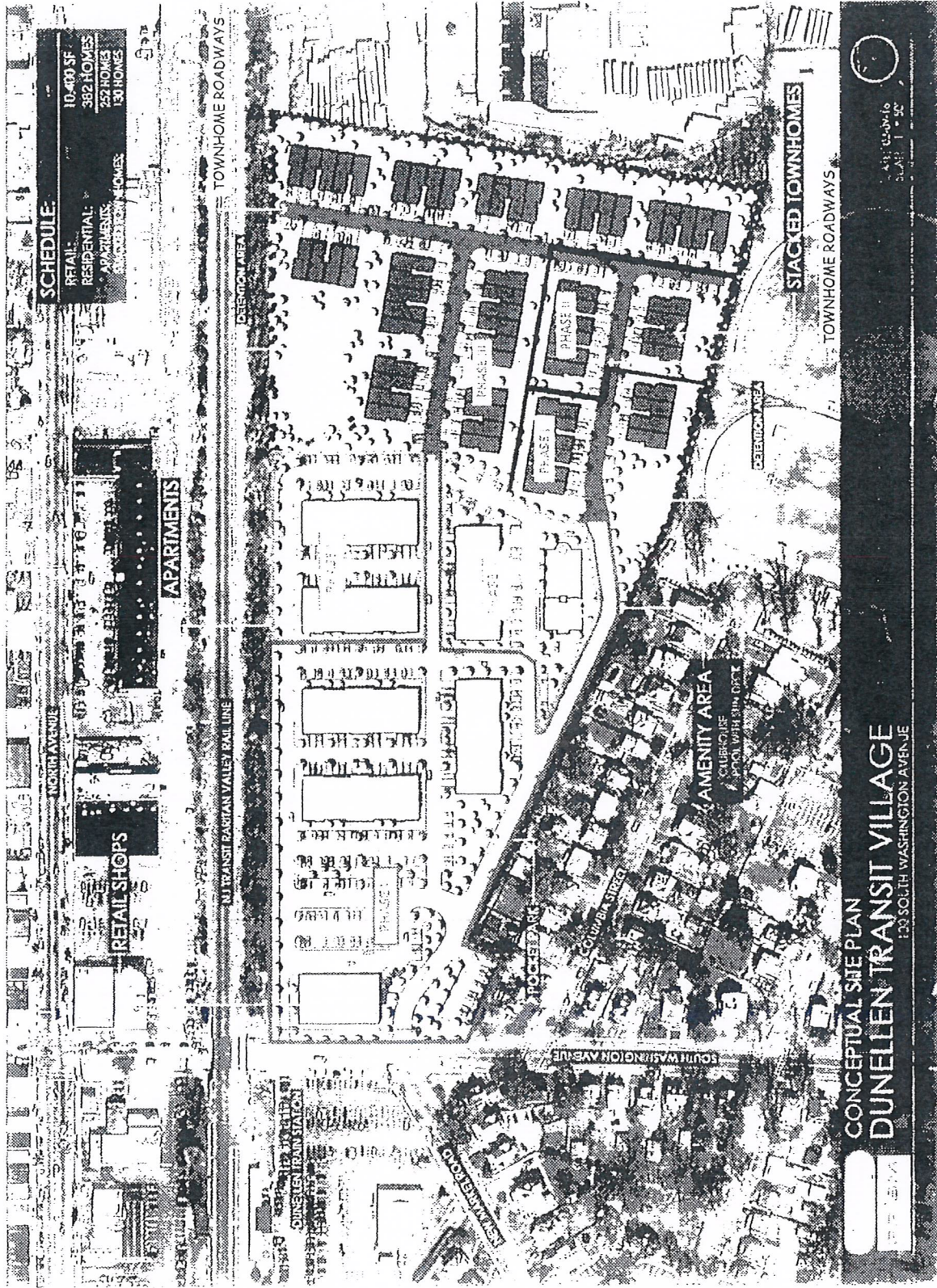
  
Brudner Redevelopment Partners Urban Renewal, LLC

By:

Name: RICHARD BRUDNER  
Title: AUTHORIZED PERSON

Exhibit A  
Project Concept Plan





**CONCEPTUAL SITE PLAN**  
**DUNELLEN TRANSIT VILLAGE**  
 100 SOUTH WASHINGTON AVENUE

DATE: 05-16  
 SCALE: 1" = 50'

Exhibit B  
Form of Financial Agreement



**EXHIBIT C**

**Ordinance of the Borough Authorizing Execution of this Financial Agreement**

## ORDINANCE 2017-03

The following ordinance was Introduced for first reading on March 20, 2017, and a second reading and public hearing is now being held at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey on the 1st day of May, 2017, and copies of this Ordinance have been posted on the public bulletin board prior to the date for second reading and final passage and copies of this Ordinance have been available at the Office of the Borough Clerk for any interested members of the public.

### AN ORDINANCE TO APPROVE A LONG-TERM TAX EXEMPTION AND FINANCIAL AGREEMENT BETWEEN THE BOROUGH OF DUNELLEN AND BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC

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

WHEREAS, in accordance with the criteria set forth in the Act, the Borough Council (the "Borough Council") of the Borough of Dunellen (the "Borough"), acting as the Borough's redevelopment entity pursuant to N.J.S.A. 40A:12A-4, identified and designated a certain area of the Borough consisting of North Avenue and Bound Brook Road (State Highway 28) from the municipal boundaries with the City of Plainfield in the east to the Borough of Middlesex in the west and including Washington Avenue (County Road 529) from Front Street (north) to New Market Road (south) (County Road 665) as an area in need of redevelopment under N.J.S.A. 40A:12A-5; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, the Borough Council adopted by ordinance on August 9, 2004, the Dunellen Downtown Redevelopment Plan, Phase One, and subsequently amended by ordinances on June 9, 2011, August 5, 2013, November 3, 2014, and February 22, 2016 (the "Redevelopment Plan") for an area that includes Block 85, Lots 1 and 2 on the Borough's tax map (the "Property"); and

WHEREAS, Brudner Redevelopment Partners Urban Renewal, LLC (the "Entity") is the owner or contract owner of the Property; and

WHEREAS, on May 1, 2017, the Borough Council passed a resolution authorizing the execution and delivery of that certain Redevelopment Agreement (the "Redevelopment Agreement"), which sets forth the respective obligations for the Borough and the Entity with respect to the redevelopment of the Property in accordance with the Redevelopment Plan; and

WHEREAS, the Redevelopment Agreement provides for, *inter alia*, a mixed-use redevelopment project at the Property consisting of 10,000 to 15,000 square feet of retail/commercial space (the "Retail/Commercial Subcomponent"), 252 rental housing units, of which 194 will be market-rate rental housing units (the "Market Rate Rental Subcomponent") and 58 low income and moderate income housing units, as those terms are defined by N.J.S.A. 52:27D-304, allocated per the Uniform Housing Affordability Control.

N.J.S.A. 5:80-26.1 *et seq.*, regulations (the “Affordable Housing Rental Subcomponent”; together with the Market Rate Rental Subcomponent, the “Residential Rental Subcomponent” and, collectively, the “Rental Component”), and 130 fee-simple, for-sale residential units (the “Townhouse Component”), as well as infrastructure improvements and related remediation (collectively, the “Project”); and

WHEREAS, the Project as set forth in the Redevelopment Agreement conforms to the Redevelopment Plan and the master plan of the Borough; and

WHEREAS, pursuant to the Act, improvements to property located within an area in need of redevelopment may qualify for long term tax exemptions under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.* (the “LTTE Law”); and

WHEREAS, the Entity is authorized to do business as an urban renewal entity under the laws of the State of New Jersey pursuant to the provisions of the LTTE Law; and

WHEREAS, despite the Entity’s substantial investment of equity and borrowed funds, such amounts are insufficient to pay for all of the costs associated with the development and construction of the Project; and

WHEREAS, the provisions of the Act and such other statutes as may be sources of relevant authority, if any, authorize the Borough to accept, in lieu of real property taxes, an annual service charge paid by the Entity to Borough as set forth in such laws; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Entity has submitted an application for the approval of a long term tax exemption for the Project (the “Exemption Application”), attached hereto as Exhibit A, and a form of financial agreement (the “Financial Agreement”), attached hereto as Exhibit B, to the Borough, all in accordance with the LTTE Law; and

WHEREAS, the mayor of the Borough has provided his recommendations with respect to the Exemption Application to the Borough Council; and

WHEREAS, upon review of the proposed Project, the Exemption Application and the Financial Agreement, the Borough has made the following findings with respect to the Project pursuant to N.J.S.A. 40A:20-11:

1. The development and construction of the Project, including infrastructure improvements as set forth in the Redevelopment Agreement and the Redevelopment Plan will be beneficial to the overall community; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize the Property; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Property; will facilitate the remediation of environmental contamination and the revitalization and productive reuse of land currently in a blighted, stagnant, unproductive and fallow condition; will enhance the economic development of the Borough by alleviating existing blight conditions of the Property; and will further Redevelopment Plan objectives and contribute to the



economic growth of the Borough in general and specifically the Property;

2. The Project will result in the creation of approximately 950 construction jobs;
3. The Project, upon completion, will result in the creation of approximately 221 full-time and part-time jobs;
4. The aforesaid benefits of the Project exceed the cost, if any, associated with granting the tax exemption provided by the Financial Agreement;
5. The Financial Agreement is a material inducement to the Entity to undertake the Project in the Borough and facilitate the redevelopment of the Property; and

WHEREAS, the Redevelopment Area Bond Financing Law (N.J.S.A. 40A:12A-64 et seq.) (the “**Bond Financing Law**”), the LTTE and the Act are intended to encourage private investment in such redevelopment areas by providing the ability to finance and pay for necessary improvements, while simultaneously giving private investors and tenants stability and predictability as to the future tax treatment of their investment; and

WHEREAS, the Borough is agreeable to granting a long term tax exemption to the Entity for the Project and, in connection therewith, the Borough and the Entity will utilize the Bond Financing Law, the Act, and such other statutes as may be sources of relevant authority, if any, to facilitate financing of the Project; and

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Borough Council, as redevelopment entity, may issue bonds, may apply to an authority (as such term is defined in the Bond Financing Law) to issue bonds, or may cause the issuance of such bonds, which bonds may be secured by an annual service charge; and

WHEREAS, to assist in financing a portion of the costs of the Project, the Borough has agreed to issue its Special Obligation PILOT Redevelopment Bonds (ArtColor Project), Series 20[ ] (the “**Bonds**”) in accordance with that certain Bond Agreement relating to the issuance of the Bonds (as the same may be amended, modified or supplemented from time to time, the “**Bond Agreement**”) by and among the Borough, the Entity and a banking corporation, as trustee, escrow agent and paying agent (together with its successors and assigns in any such capacity, the “**Bank**”), and the purchaser of the Bonds, for the purpose of providing funds for the Project; and

WHEREAS, pursuant to the terms of the Financial Agreement and the Bond Agreement, and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Pledged Annual Service Charge (as defined in the Financial Agreement) is to be pledged to the payment of the principal or redemption premium of, and interest on, the Bonds, which Bonds will be nonrecourse to the Borough; and

WHEREAS, the Entity and the Borough have agreed that the Debt Service Charge (as defined in the Financial Agreement) on the Bonds shall be paid from the Pledged Annual Service Charge (as defined in the Financial Agreement) and that the Unpledged Annual Service Charge (as defined in the Financial Agreement) may be used by the Borough for any lawful purpose in the exercise of the Borough's sole discretion, all net of the Borough paying the County Share to the County (each as defined in the Financial Agreement); and

WHEREAS, in accordance with the provisions of the Act and the LTTE Law, the Borough desires to approve the Project, the Exemption Application and the Financial Agreement.

**NOW THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF DUNELLEN, NEW JERSEY AS FOLLOWS:**

Section 1. The Recitals are incorporated by reference as if set forth in full.

Section 2. The Exemption Application submitted by the Entity is hereby approved in accordance with Section 8 of the LTTE Law.

Section 3. The Mayor, in consultation with counsel to the Borough, is hereby authorized to execute the Financial Agreement following the execution thereof by the Entity and prepare, amend or execute any other agreements necessary to effectuate this ordinance, subject to modification or revisions, as deemed necessary and appropriate, with such execution to occur only simultaneous with the full execution of a redevelopment agreement for the Project.

Section 4. The Clerk of the Borough is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the corporate seal of the Borough upon such document.

Section 5. An exemption from taxation as set forth in the Financial Agreement is hereby granted to the Entity, with respect to the Project for the term set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed the earlier of (i) thirty-five (35) years from the date of execution of the Financial Agreement or (ii) thirty (30) years from the Annual Service Charge Start Date, as said term is defined in the Financial Agreement, for each Component of the Project (as the term "Component" is defined in the Financial Agreement) and only so long as the Entity remains subject to and in compliance with the Financial Agreement and the LTTE Law.

Section 6. The executed copy of the Financial Agreement shall be certified by and filed with the Office of the Borough Clerk. Further, the Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Borough and the Director of the Division of Local Government Services with the Department of Community Affairs, in accordance with Section 12 of the LTTE Law. Further, the Borough Clerk shall, within ten (10) days of the later of (i) the effective date of this Ordinance, or (ii) execution of the Financial Agreement, transmit certificated copies of this Ordinance and the Financial Agreement to the chief financial officer of, and legal counsel for, Middlesex County, New Jersey

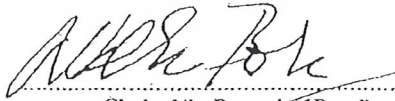
Section 7. The Project shall conform with all federal, state and Borough laws, ordinances, regulations, the Redevelopment Plan and the Redevelopment Agreement relating to its construction and use.

Section 8. The Entity shall, in the operation of the Project, comply with all laws so that no person of race, religious principles, color, national origin or ancestry will be subject to discrimination.

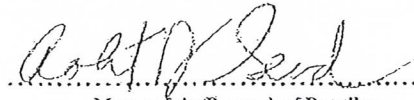
Section 9. Without limiting the terms of the Financial Agreement, the Entity shall submit Annual Audits to the Borough in accordance with Article V of the Financial Agreement.

Section 10. This ordinance shall take effect in accordance with all applicable laws.



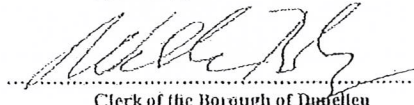
  
Clerk of the Borough of Dunellen

Approved ..... 5/1/17 .....

  
Mayor of the Borough of Dunellen

I certify the foregoing to be a true and correct  
abstract of a resolution regularly passed at a  
meeting of the Common Council of the Borough of  
Dunellen, held

..... 5/1/17 .....  
and in that respect a true and correct copy of  
its minutes, -

  
Clerk of the Borough of Dunellen

**EXHIBIT D**

**Financial Plan Including Entity's Estimate of Total Project Cost**

[See PILOT Application]

EXHIBIT E

Form of Certification of Final Construction Cost of Project

I, \_\_\_\_\_, do hereby certify the following:

1. I am the \_\_\_\_\_ of \_\_\_\_\_, the architects for the 100 South Washington, Dunellen Redevelopment Project.

2. To the extent that our firm has been involved in the design and construction of the 100 South Washington, Dunellen Redevelopment Project, and based upon those records and contracts that have been supplied to us by \_\_\_\_\_, we certify that the total construction cost for the above referenced project is \$ \_\_\_\_\_.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Date: \_\_\_\_\_

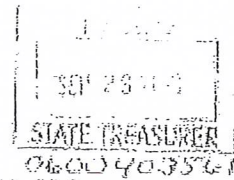


## EXHIBIT F

### Certificate of Formation of Brudner Redevelopment Partners Urban Renewal, LLC

#### CERTIFICATE OF FORMATION OF

BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC



The undersigned, being an authorized person to execute this Certificate of Formation, pursuant to the provisions of the Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq., hereby certifies as follows:

1. The name of the limited liability company is Brudner Redevelopment Partners Urban Renewal, LLC ("LLC").
2. The registered office of the LLC is located at 515 Columbus & Grant P.C., One Riverfront Plaza, Newark, New Jersey 07102, attn: Ted Zangari, Esq.
3. The members of the LLC are: Dandlen Associates, P.O. Box 3726, West Palm Beach, Florida 33402, and Davsons Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052.
4. The LLC shall have perpetual duration unless it is dissolved and its affairs wound up in accordance with the Revised Uniform Limited Liability Company Act or its Operating Agreement.
5. The purpose of the LLC is to operate under P.L. 1994, c. 431 (C.40A:23-1 et seq.) and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or parts thereof, which are convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the Borough of Dandlen, to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizens housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of projects, or any single project, under such conditions as to be determined by agreement with the Borough pursuant to P.L. 1994, c. 431 (C.40A:23-1 et seq.).
6. So long as the LLC is obligated under a financial agreement with the Borough of Dandlen made pursuant to P.L. 1994, c. 431 (C.40A:23-1 et seq.), it is to engage in no business other than the development, operation and management of the project.
7. The LLC has been organized to carry a public purpose and its operations are to be directed toward (i) the redevelopment or development areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (ii) the acquisition, management and operation of a project, or redevelopment relocation facility project, or low and moderate income housing project, and (iii) P.L. 1994, c. 431.

(C. 40A:20-1 et seq.), and (3) that it is to be subject to regulation by the Borough of Dunellen, and to a limitation or prohibition, as appropriate, in profits or dividends for so long as it remains the owner of a project subject to P.L. 1991, c. 431 (C. 40A:20-1 et seq.).

8. The LLC is not to transfer voluntarily more than ten percent (10%) of the ownership of the project or any portion thereof undertaken by it under P.L. 1991, c. 431 (C. 40A:20-1 et seq.), until it has first removed both itself and the project from all restrictions of P.L. 1991, c. 431 (C. 40A:20-1 et seq.) in the manner required by P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of Community Affairs to such transfer, with the exception of transfer to another urban renewal entity, as approved by the Borough of Dunellen, which other urban renewal entity is to assume all contractual obligations of the LLC under the financial agreement with the Borough of Dunellen. The LLC is to file annually with the Borough of Dunellen governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each. Nothing herein shall prohibit any transfer of the ownership interest in the LLC itself provided that the transfer, if greater than ten percent (10%), is disclosed to the Borough of Dunellen governing body in the annual disclosure statement or in correspondence sent to the Borough of Dunellen in advance of the annual disclosure statement referred to above.
9. The LLC is subject to the provisions of section 18 of P.L. 1991, c. 431 (C. 40A:20-18), respecting the powers of the Borough of Dunellen to alleviate financial difficulties of the LLC or to perform actions on behalf of the LLC upon a determination of financial emergency.
10. Any housing units constructed or acquired by the LLC are to be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.

The undersigned has executed this Certificate of Formation for the LLC, on this 1<sup>st</sup> day of August, 2013.

Richard Brubaker, Authorized Person



State of New Jersey  
 DEPARTMENT OF COMMUNITY AFFAIRS  
 101 SOUTH BRIDGE STREET  
 PO BOX 495  
 TRENTON, NJ 08645-0495

Chief Executive  
 Officer  
 Kim G. Coleman  
 LL.D. Mayor

Richard E. Costantino, III  
 Commissioner

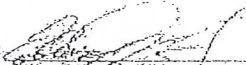
DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer  
 RE: BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, L.L.C.  
 Reg # 1363  
 An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431

Dated this 11th day of July 2014 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

BY:   
 Edward M. Singh, Director  
 Division of Codes and Standards



**EXHIBIT G**  
**DEBT SERVICE CHARGES<sup>1</sup>**

Rental Component

Year	Date	Principal	Interest	Administrative Expenses	Total Debt Service Charge
1	February 1*	\$(TBD)	\$(TBD)	\$(TBD)	\$(TBD)
	May 1				
	August 1				
	November 1				
2	February 1				
	May 1				
	August 1				
	November 1				
3	February 1				
	May 1				
	August 1				
	November 1				
4	February 1				
	May 1				
	August 1				
	November 1				
5	February 1				
	May 1				
	August 1				
	November 1				
6	February 1				
	May 1				
	August 1				
	November 1				
7	February 1				
	May 1				
	August 1				
	November 1				
8	February 1				
	May 1				
	August 1				
	November 1				
9	February 1				
	May 1				
	August 1				

<sup>1</sup> TO BE REVISED UPON THE ISSUANCE OF THE BONDS.

10	November 1				
	February 1				
	May 1				
	August 1				
11	November 1				
	February 1				
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12	November 1				
	February 1				
	May 1				
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13	November 1				
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	May 1				
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14	November 1				
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30	February 1				
	May 1				
	August 1				
	November 1				

Townhouse Component

Year	Date	Principal	Interest	Administrative Expenses	Total Debt Service Charge
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1	February 1*	\$(TBD)	\$(TBD)	\$(TBD)	\$(TBD)
	May 1				
	August 1				
	November 1				
2	February 1				
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	August 1				
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30	February 1				
	May 1				
	August 1				
	November 1				



## EXHIBIT H

### Form of Assignment and Assumption Agreement

#### ASSIGNMENT AND ASSUMPTION OF FINANCIAL AGREEMENT

##### PREAMBLE

THIS ASSIGNMENT AND ASSUMPTION OF FINANCIAL AGREEMENT (this "Assignment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC, a New Jersey urban renewal entity and limited liability company, and its permitted successors and assigns, 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 "Exemption Law"), having its principal office at c/o Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052 ("Assignor") and \_\_\_\_\_ URBAN RENEWAL, LLC, a New Jersey urban renewal entity and limited liability company, and its permitted successors and assigns, qualified to do business under the Exemption Law, having its principal office at \_\_\_\_\_ ("Assignee").

##### RECITALS

##### WITNESSETH:

WHEREAS, the Borough of Dunellen (the "Borough") previously created the Borough of Dunellen Redevelopment Agency (the "Agency") pursuant to §§68-1 through 68-4 of the Borough Code and thereafter adopted Ordinance 04-12 which repealed the creation of the Agency and appointed the Council of Borough of Dunellen (the "Borough Council") as the municipal entity responsible for implementing the redevelopment plans and carrying out the redevelopment projects pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, on May 5, 2003, the Borough Council adopted a resolution designating certain properties within the Borough, consisting of property located at South Washington Avenue between the rail line and Columbia Street, identified on the Official Tax Map of the Borough as Block 85, Lots 1 and 2 in the Borough, as an area in need of redevelopment in accordance with the Redevelopment Law (the "Redevelopment Area"); and

WHEREAS, on August 9, 2004, the Borough Council adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I (Revised July 12, 2004), which was thereafter revised on June 6, 2011, August 5, 2013, November 3, 2014, and May 16, 2016 (collectively the "Redevelopment Plan") in accordance with the Redevelopment Law; and

WHEREAS, the Redevelopment Plan governs the Redevelopment Area; and

WHEREAS, the Assignor is the fee simple owner of the Redevelopment Area (also referred to herein as the “Property”); and

WHEREAS, on \_\_\_\_\_, 2017, the Borough Council adopted a resolution authorizing the execution and delivery of that certain Redevelopment Agreement (the “Redevelopment Agreement”), which sets forth the respective obligations for the Borough and the Assignor with respect to the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan; and

WHEREAS, on \_\_\_\_\_, 2017, the Borough and the Assignor executed the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement provides for, inter alia, a mixed-use redevelopment project at the Property consisting of 10,000 to 15,000 square feet of retail/commercial space (the “**Retail/Commercial Component**”), 252 rental housing units, of which 194 will be market-rate rental housing units (the “**Market Rate Rental Component**”) and 58 will be low income and moderate income housing units as those terms are defined by N.J.S.A. 52:27D-304, allocated per the Uniform Housing Affordability Control regulations (the “**Affordable Housing Rental Component**”), and 130 residential townhouse units (the “**Townhouse Component**”), as well as infrastructure improvements and related remediation (collectively, the “**Project**”), which Project is consistent with the Redevelopment Plan; and

WHEREAS, the Redevelopment Agreement also provides for, inter alia, the Borough’s granting of a long term tax exemption to the Assignor for the Project and, in connection therewith, the utilization of the Redevelopment Area Bond Financing Law, codified at N.J.S.A. 40A:12A-64 et seq. (the “**Bond Financing Law**”), the Exemption Law, and such other statutes as may be sources of relevant authority, if any, to facilitate financing of the Project at the Property; and

WHEREAS, on \_\_\_\_\_, 2017, the Assignor filed an application (the “**Application**”) with the Borough, pursuant to the Exemption Law and the Bond Financing Law, seeking approval of a financial agreement (“**Financial Agreement**”) providing for exemption from municipal taxation for the Project for a period of thirty (30) years, for payment in lieu of taxes of annual service charges for the Project, and for the issuance of the Special Obligation PILOT Redevelopment Bonds (ArtColor Project), Series 20\_\_\_\_\_ (the “**Bonds**”), with total proceeds in the amount of ten million dollars (\$10,000,000); and

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the Borough Council finally adopted an ordinance entitled, AN ORDINANCE TO APPROVE A LONG-TERM TAX EXEMPTION AND FINANCIAL AGREEMENT BETWEEN THE BOROUGH OF DUNELLEN AND BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC approving the Application, the Financial Agreement and the Project; and

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the Borough and the Assignor executed the Financial Agreement; and



WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the Financial Agreement was recorded with the Middlesex County Clerk at Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in accordance with the Exemption Law and the Bond Financing Law; and

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the Borough, the Assignor, and \_\_\_\_\_, a banking corporation, as escrow agent, paying agent, and purchaser of the Bonds (together with its successors and assigns in any such capacity, the "Bank") entered into a bond agreement relating to the issuance of the Bonds (as the same may be amended, modified or supplemented from time to time, the "Bond Agreement") for the purpose of providing funds for the Project, as provided for in the Financial Agreement; and

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the Borough issued the Bonds in accordance with that the Bond Agreement; and

WHEREAS, the Redevelopment Agreement, the Financial Agreement and the Bond Agreement, inter alia, provide for the Assignor's assignment of its rights under the Redevelopment Agreement, the Financial Agreement, and the Bond Agreement, with respect to a portion of the Project and Property, to a Sub-Redeveloper, as such term is defined in the Redevelopment Agreement;

WHEREAS, Assignor and the Assignee entered into that certain Purchase and Sale Agreement dated \_\_\_\_\_, 20\_\_\_\_ for the purchase and sale of a portion of the Property, which is commonly known as \_\_\_\_\_ and shown as Block \_\_\_\_\_, Lot \_\_\_\_\_ on the tax map or plat thereof of record in the Office of the Clerk of the Borough, upon which the Assignee will develop the \_\_\_\_\_ Component(s) in accordance with the Redevelopment Agreement (the "Assignee Property"); and

WHEREAS, Assignor has, contemporaneously herewith, sold, transferred and conveyed to the Assignee all of its right, title and interest in and to the Assignee Property, and assigned to Assignee all of Assignor's right, title and interest in and to the Redevelopment Agreement and the Bond Agreement with respect to the Assignee Property, and in connection therewith, Assignor has agreed to assign to Assignee all of Assignor's right, title and interest in and to the Financial Agreement with respect to the Assignee Property.

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor and Assignee hereby agree as follows:

1. Assignor does hereby bargain, sell, transfer, assign, convey, set over and deliver to Assignee all right, title and interest of the Assignor in, to and under the Financial Agreement, and all amendments, extensions and renewals thereof, attached hereto and incorporated herein as Exhibit A, which pertain to the Assignee Property, as more particularly described on Exhibit B, attached hereto and incorporated herein.
2. Assignee hereby accepts this assignment by Assignor and assumes all obligations of Assignor under the Financial Agreement that arise, accrue or mature after the date of this Assignment with respect to the Assignee Property only. Assignee does not accept assignment by Assignor and does not assume any obligations of Assignor



under the Financial Agreement, including, but not limited to, the payment of annual service charges, that pertain to any portion of the Property or Project other than the Assignee Property. Assignee shall simultaneously herewith, and as a condition to Borough's consent hereto, deliver a fully executed version of Exhibit C attached hereto.

3. Assignee hereby agrees that it has no right to any portion of the proceeds of the Bonds and that, notwithstanding any provision in this Assignment to the contrary, Assignor alone shall have the right to use the proceeds of the Bonds.

4. Assignor hereby represents to Assignee that, to the best of Assignor's knowledge:

(a) The Financial Agreement is in full force and effect and enforceable in accordance with its terms. The Financial Agreement has not been modified or amended except as set forth in Exhibit A, and is fully assignable by Assignor without the consent of any party;

(b) No party other than Assignor and Assignee has any right, title or interest in any interest of the Entity, as such term is defined in the Financial Agreement, under the Financial Agreement with respect to the Assignee Property;

(c) There are no uncured defaults, breaches, or events of default by the Entity in the Financial Agreement in the observance or performance of any of its obligations, and no facts or circumstances known to Assignor which would, with the passage of time or the delivery of notice, or both, constitute a default, breach, or event of default thereunder; and

(d) Assignor has previously provided Assignee true and complete copies of the Financial Agreement attached as Exhibit A, including all amendments, modifications, addendums and riders thereto, affecting the Property or any portion thereof, including the Assignee Property.

5. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any damage, loss, cost, expense (including reasonable attorneys' fees), claim, liability, obligation or debt resulting from, or arising out of:

- a. any obligations or liabilities of the Entity under the Financial Agreement which matured, became due or accrued on or prior to the date hereof with respect to the Assignee Property;
- b. any obligations or liabilities of the Entity under the Financial Agreement with respect to any portion of the Property or Project other than the Assignee Property;
- c. performance to be made by the Entity under the Financial Agreement on or prior to the date hereof with respect to the Assignee Property;

- d. performance to be made by the Entity under the Financial Agreement with respect to any portion of the Property or Project other than the Assignee Property;
  - e. any act or omission of Assignor arising or accruing under the Financial Agreement on or prior to the date hereof with respect to the Assignee Property; or
  - f. any act or omission of Assignor arising or accruing under the Financial Agreement with respect to any portion of the Property or Project other than the Assignee Property.
6. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any damage, loss, cost, expense (including reasonable attorneys' fees), claim, liability, obligation or debt resulting from, or arising out of:
- a. any obligations or liabilities of the Entity under the Financial Agreement which mature, become due or accrue after the date hereof with respect to the Assignee Property;
  - b. performance to be made by the Entity after the date hereof with respect to the Assignee Property; or
  - c. any act or omission of the Entity arising or accruing under the Financial Agreement after the date hereof with respect to the Assignee Property.
7. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
8. The parties shall execute, acknowledge and deliver for no further consideration all such assignments, transfers, consents and other documents as Assignee may reasonably require to vest in Assignee, and protect Assignee's right, title and interest in, the Financial Agreement with respect to the Assignee Property.
9. This Assignment shall not be modified or amended except by a written agreement signed by the parties.
10. This Assignment may be executed in multiple counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument.
11. This Assignment shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to conflicts of law principles.

*[NO FURTHER TEXT ON THIS PAGE. SIGNATURE PAGE FOLLOWS.]*

IN WITNESS WHEREOF, the Assignor and Assignee have hereunto executed this Assignment as of the date first above written.

ASSIGNOR:  
BRUDNER REDEVELOPMENT PARTNERS URBAN  
RENEWAL, LLC

By: \_\_\_\_\_

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

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

ASSIGNEE:  
\_\_\_\_\_ URBAN RENEWAL, LLC

By: \_\_\_\_\_

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

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



### LIMITED JOINDER

The Borough of Dunellen, a municipal corporation in the County of Middlesex and State of New Jersey, having its principal office at 355 North Avenue, Dunellen, New Jersey 08812, as a party to the Financial Agreement referenced herein, hereby acknowledges all of the terms, conditions and provisions of this Assignment, and (although not bound as a party thereto) agrees to the terms thereof. Notwithstanding the above, however, the Borough of Dunellen hereby joins in and agrees to be bound by the provisions of Paragraph 2 hereof to the same extent as if the Borough of Dunellen were a party hereto. Specifically, the Borough of Dunellen agrees and acknowledges that Assignee has not assumed, and shall not be liable for, any obligations of Assignor under the Financial Agreement, including, but not limited to, the payment of annual service charges, that accrued prior to the date of this Assignment with respect to the Assignee Property or which have accrued or will accrue with respect to any portion of the Property or Project other than the Assignee Property. Except as aforesaid, the Borough of Dunellen is not a party to this Assignment.

Dated \_\_\_\_\_, 20\_\_\_\_

WITNESS/ATTEST:

BOROUGH OF DUNELLEN

By: \_\_\_\_\_

EXHIBIT A TO EXHIBIT II

Financial Agreement

EXHIBIT B TO EXHIBIT H

Legal Description – Assignee Property



## EXHIBIT C TO EXHIBIT H

### Agreement and Acknowledgement of Assignment

This Agreement and Acknowledgment of Assignment ("Acknowledgment") dated as of \_\_\_\_\_, 20\_\_, is made by \_\_\_\_\_ ("Assignee") for the benefit of The Borough of Dunellen (the "Borough") concerning that certain Assignment of Financial Agreement (the "Assignment") dated \_\_\_\_\_ by and between Brudner Redevelopment Partners Urban Renewal, LLC ("Assignor"), as assignor, and Assignee, as assignee.

### Acknowledgement

Assignee agrees and acknowledges the following for the benefit of the Borough:

1. Pursuant to the Assignment, Assignee accepts all obligations of Assignor under that certain Financial Agreement (the "Agreement") dated \_\_\_\_\_, 2017 by and between the Borough and Assignor as to the Assignee Property, as defined in the Assignment, as of the date of the Assignment; and

2. As to matters concerning the Agreement and the Assignee Property, the Borough may communicate directly with Assignee at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Assignee agrees that any change, modification, amendment or alteration of the Assignment or Assignee's obligations thereunder shall be subject to the Borough's approval, not to be unreasonably withheld.

4. This Acknowledgment shall be binding upon Assignee and its successors, assigns and legal representatives, and shall inure to the benefit of the Borough, its successors, assigns and legal representatives.

5. This Acknowledgment shall in no way serve to relieve Assignor of any continuing obligations to the Borough under the Agreement.

6. This Acknowledgment shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to conflicts of law principle.

*[Signature Appears on Following Page]*

IN WITNESS WHEREOF, Assignee has caused this Acknowledgment to be duly executed and delivered by its authorized officer, as of the day and year first above written.

ASSIGNEE:

\_\_\_\_\_

By: \_\_\_\_\_

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

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

# **EXHIBIT I** **Approved Cost Categories for Use of Bond Proceeds**

i.	Demolition costs:	\$2,400,000
ii.	Environmental remediation costs:	\$1,200,000
	iii. Costs of fill for site (75,000 cubic yards at \$22/cubic yard):	\$1,650,000
iv.	Sewer infrastructure costs:	
	1. New Washington Avenue Pump Station:	\$880,000
	2. Other sewer improvements:	
	a. Existing Gravity Main Improvements from Fourth Street to Second Street (approx. 750 feet):	\$616,750
	b. Sewer Line from Second Street to Site along Washington Avenue (approx. 2,000 feet):	\$834,375
	c. Onsite Pump Station & Wet Well:	\$322,500
	3. Additional costs for sewer work at night (i.e., approx. 10% of cost of the "other sewer improvements"):	\$177,362
	4. Costs to mill and pave Washington Avenue:	\$308,000
v.	Traffic improvement costs (including new traffic signal at Washington and New Market Road, including restriping/left turn lane into the site, and coordination of the new traffic signal with the existing Washington/Route 28 traffic signal (but not including any potential upgrades to the Washington Avenue/Route 28 intersection)):	\$478,800