

Record and return to:

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Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068

**SPECIAL ASSESSMENT AGREEMENT**

**BY AND BETWEEN**

**THE BOROUGH OF DUNELLEN**

**AND**

**BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC**

**THIS SPECIAL ASSESSMENT AGREEMENT** (hereinafter "**Agreement**"), is made as of this 13th day of July, 2017, by and between **BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC** (the "**Entity**"), a limited liability company of New Jersey having its offices 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 offices at 355 North Avenue, Dunellen, New Jersey 08812 (the "**Borough**", and together with the Entity, the "**Parties**").

**WITNESSETH:**

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "**Redevelopment Law**" or the "**Act**") and the Dunellen Downtown Redevelopment Plan Phase I dated as of May 16, 2016 (as amended and supplemented from time to time, the "**Redevelopment Plan**"), the Borough and the Entity entered into that certain redevelopment agreement dated July 13, 2017 (as the same may be amended and supplemented in accordance with its terms, the "**Redevelopment Agreement**"), with respect to that certain property identified on the official tax map of the Borough as Block 85, Lots 1 and 2 (the "**Property**"), which is subject to the Redevelopment Plan; and

**WHEREAS**, in accordance with the Redevelopment Agreement, the Entity will undertake the remediation of the Property and the construction and implementation of for sale townhomes, rental apartments, commercial space, retail space, site improvements and infrastructure improvements (as further described in the Redevelopment Agreement, collectively the "**Project**"); and

**WHEREAS**, as part of the Project, and pursuant to Sections 2.03 and 6.10 of the Redevelopment Agreement, the Entity is responsible for the costs of certain wastewater, stormwater, utility and other infrastructure improvements (collectively, and as further described in Section 1.02, below, the "**Infrastructure Improvements**"), which Infrastructure Improvements, in whole or in part, constitute redevelopment projects to be undertaken pursuant to the Redevelopment Plan, all as contemplated by the Redevelopment Law and *N.J.S.A. 40A:12A-64 et seq.* (the "**RAB Law**"); and

**WHEREAS**, in order to finance and facilitate the implementation of the Project, including the Infrastructure Improvements upon the Property, the Borough and the Entity have established a financial structure including: (i) entry into a Financial Agreement providing for a payment in lieu of taxes in accordance with *N.J.S.A. 40A:20-1 et seq.* (the "**Long Term Tax Exemption Law**"); (ii) the issuance of bonds to finance the redevelopment of the Property in accordance with the RAB Law; (iii) pursuant to Section 6.15 of the Redevelopment Agreement, payment of the Redevelopment Fee (as defined in the Redevelopment Agreement) to the Borough by the Entity; and (iv) payment of a special assessment to the Borough by the Entity as further described herein; and

**WHEREAS**, in order to effectuate this financial structure and the implementation of the Project, including the Infrastructure Improvements, the Borough has determined that a portion of the cost of the Infrastructure Improvements should be assessed in accordance with the Local

Improvements Law, *N.J.S.A. 40:56-1 et seq.* (the "Local Improvements Law"), and the RAB Law; and

**WHEREAS**, on June 6, 2017, the Borough adopted an ordinance entitled, "An Ordinance of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, Providing for the Special Assessment of the Cost of Certain Wastewater, Stormwater, Utility and Other Infrastructure Improvements on Block 85, Lots 1 & 2 and Establishing a Mechanism for Payment of a Portion of the Cost Thereof" approving the execution of this Agreement (the "Ordinance"),

**NOW, THEREFORE**, in consideration of one dollar (\$1.00), the mutual covenants and promises set forth above and herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE I. GENERAL PROVISIONS**

**SECTION 1.01** Governing Law — THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE ACT, THE LOCAL IMPROVEMENTS LAW, THE RAB LAW AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE ORDINANCE AND THIS AGREEMENT IN ACCORDANCE WITH SECTION 7.01 HEREOF, THE LAND, AND ANY INFRASTRUCTURE IMPROVEMENTS RELATED THERETO, AS SUCH TERMS ARE DEFINED HEREIN, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS AGREEMENT AND EACH AND EVERY OWNER, WHETHER IN FEE SIMPLE OR OTHERWISE, OF ANY SUCH PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, REGARDLESS OF WHETHER SUCH OWNER SHALL BE AN URBAN RENEWAL ENTITY, OR ANY OTHER COMPANY, ENTITY OR PERSON (EACH INDIVIDUALLY REFERRED TO HEREIN AS AN "OWNER") SHALL BE BOUND BY THE TERMS HEREOF.

**SECTION 1.02** General Definitions — Capitalized terms used and defined in the preambles hereof shall have the meanings assigned to such terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Bonds – shall have the meaning ascribed to such term in the Financial Agreement, and shall include any bonds issued to refund or refinance such Bonds.

Default – shall have the meaning ascribed to such term at Section 5.01.

Infrastructure Improvements – shall consist of the design, financing, construction and installation of the various infrastructure improvements further described in the Redevelopment Agreement, including but not limited to, wastewater, stormwater and utility improvements, including all work necessary therefor and incidental thereto with respect to the Property.

In Rem Tax Foreclosure — shall mean a summary proceeding by which the Borough may enforce the lien for taxes, special assessments and other statutory liens. Said foreclosure is governed by *N.J.S.A. 54:5-1 et seq.*

Land — shall mean that certain real property identified on the official tax map of the Borough as Block 85, Lots 1 & 2, upon which the Project shall be constructed.

Legal Interest - in the event that an Owner fails to timely pay, in full, any installment of the Special Assessment, Legal Interest with respect to such installment shall mean the highest rate of interest permitted under State law in the case of unpaid taxes or tax liens on land until paid.

Owner – shall have the meaning ascribed to such term at Section 1.01.

Principal Amount – shall have the meaning ascribed to such term at Section 3.01.

Redevelopment Fee Default – shall mean the failure by Redeveloper to pay the Redevelopment Fee pursuant to the terms of the Redevelopment Agreement.

Redevelopment Fee Default Date – shall mean the first date upon which a Redevelopment Fee Default occurs.

State – shall mean the State of New Jersey.

Tax Sale Law – shall mean *N.J.S.A. 54:5-1 et seq.*, as the same may be amended or supplemented from time to time.

## **ARTICLE II. DURATION OF AGREEMENT**

### **SECTION 2.01**      Term

The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that this Agreement, including the obligation to pay the Special Assessment required under Article III hereof, shall remain in effect until the earlier of (i) the last payment date of the Redevelopment Fee in accordance with the Redevelopment Agreement and (ii) the lesser of the period of years for which the Bonds are issued and thirty (30) years.

## **ARTICLE III. SPECIAL ASSESSMENT AMOUNT**

### **SECTION 3.01**      Special Assessment Amount and Installments

(a) The Owner hereby expressly, irrevocably and unconditionally acknowledges and agrees that, with respect to the Land and the Project to be constructed thereon: (i) the Special Assessment shall be Three Million One Hundred Forty-Seven Thousand Dollars (\$3,147,000), less the aggregate amount of Redevelopment Fee payments made prior to the Redevelopment Fee Default Date (the "**Principal Amount**"); and (ii) the Principal Amount of the Special

Assessment shall be, and is hereby irrevocably and unconditionally accepted in full and agreed to by the present Owner of the Land and Project constructed thereon from time-to-time (on behalf of such present Owner and all subsequent Owner(s)) and in accordance with *N.J.S.A. 40A:12A-66(c)* of the RAB Law and shall be deemed to be, in lieu of a determination by the procedures otherwise applicable to determining the actual benefit conferred on the Land and the Project constructed thereon from time-to-time, the benefit conferred on the Land and the Project by the Infrastructure Improvements.

(b) The Special Assessment for the Project shall be allocated to the Land and the Project, and shall be payable in equal quarterly installments of Sixty-Two Thousand One Hundred Dollars (\$62,100.00) on February 1, May 1, August 1 and November 1 of each year during the term of this Agreement, commencing on the Redevelopment Fee Default Date and ending on the last payment date of the Redevelopment Payment in accordance with the Redevelopment Agreement.

(c) Each installment payment of the aforesaid Special Assessment amount is to be made to the Borough and shall be clearly identified as a Special Assessment payment for the Project.

**SECTION 3.02**      Interest on Past Due Amounts; Credit for Redevelopment Fee; Legal Interest

(a) The Owner hereby expressly, irrevocably and unconditionally agrees, warrants, covenants and accepts that in the event that the Owner fails to timely pay, in full, any installment of any Special Assessment amount, the amount past due shall bear the highest rate of interest permitted under State law in the case of unpaid taxes or tax liens on land until paid.

(b) The Borough shall credit its receipt of the Redevelopment Fee pursuant to the Redevelopment Agreement, by or on behalf of the Owner, against the Special Assessment due, but only to the extent of the amount of the Redevelopment Fee that is actually received by or on behalf of the Borough. In the event the amount of the Redevelopment Fee due under the terms of the Redevelopment Agreement in any tax quarter is less than the amount set forth in Section 3.01(b) and the Owner makes full payment of such Redevelopment Fee, the Borough shall credit its receipt of such Redevelopment Fee against the full quarterly amount of Special Assessment due. It is the express intent and agreement of the Parties that, so long as the Owner makes all required payments of the Redevelopment Fee it shall not be required to make the payment of the Special Assessment otherwise required under this Agreement. Upon payment by the Owner of the final Redevelopment Fee payable pursuant to the terms of the Redevelopment Agreement, the Borough shall credit and extinguish any remaining balance of the Principal Amount then due and owing and file and record with the Middlesex County Clerk, at the Entity's expense, a Discharge of Special Assessment in the form attached hereto as Exhibit A.

(c) The Parties hereby agree that the Borough shall have the right, but not the obligation, to charge Legal Interest on any installment of the Special Assessment not paid when due.

**ARTICLE IV.**  
**MUNICIPAL LIEN; SUBORDINATION OF FEE TITLE**

**SECTION 4.01**      Municipal Lien

(a) The parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that in accordance with the RAB Law, specifically *N.J.S.A. 40A:12A-66(c)*, and such other statutes as may be sources of relevant authority, if any, upon as a consequence of the recordation of the Ordinance and this Agreement, as set forth in Section 7.01 hereof, and commencing on the Redevelopment Fee Default Date, the Ordinance, this Agreement, and any amount due hereunder, including without limitation, the Special Assessment, shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes of law. In the event of a Redevelopment Fee Default, such statutory municipal lien shall relate back to the date of recordation of the Ordinance and this Agreement, and shall be superior to all other non-municipal liens recorded after the date of recordation of the Ordinance and this Agreement.

(b) The Parties hereby expressly, irrevocably and unconditionally represent, agree, warrant and covenant that this Agreement, and the municipal lien created hereby, is valid and enforceable in accordance with all applicable law, including without limitation the RAB Law.

**SECTION 4.02**      Liens and Encumbrances

The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that the Owner has the right, prior to the imposition of the municipal lien set forth in Section 4.01, to encumber the fee title to the Property by granting a mortgage or mortgages and other liens and encumbrances solely for the purposes of financing the acquisition, development, construction and marketing of the Project, and after imposition of the municipal lien set forth in Section 4.01, to encumber the fee title to the Property, subordinate to the municipal lien, as a matter of law, to encumber the fee title to the Property, including any improvements related thereto, and that any such encumbrances shall not be deemed to be a violation of this Agreement.

**ARTICLE V.**  
**DEFAULT**

**SECTION 5.01**      Default - Default shall be failure of any party to perform its obligations under this Agreement, beyond any applicable notice, cure or grace period (each a "Default").

**SECTION 5.02**      Cure Upon Default - Should any party be in Default of any obligation under this Agreement, the other party shall notify the defaulting party and any mortgagee, if applicable, in writing of said Default. Except as otherwise limited by law, the defaulting party shall have sixty (60) days to cure any Default provided however, if such Default cannot be cured timely but cure action is being diligently prosecuted, such sixty (60) day period shall be extended to permit required cure action to be concluded. Notwithstanding the foregoing

sentence, the Owner shall have ten (10) days to cure a payment Default, and any extension of such cure period shall be in the sole discretion of the Borough.

**SECTION 5.03**     Remedies for Default - (a) In the event of any uncured Default by the Borough, the Owner may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance.

(b) In the event of any uncured Default by the Owner, the Borough may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. No Default hereunder by the Owner shall terminate this Agreement and its obligation to pay the Special Assessment amounts due hereunder, which shall continue in effect for the duration as set forth in Section 2.01 hereof.

**SECTION 5.04**     Default in the Payment of Special Assessment

Upon any Default by the Owner in payment of any installment of the Special Assessment, the Borough, in addition to its other remedies, reserves the right to proceed against the Land to which the Default applies, and any improvements related thereto, in the manner provided by Applicable Law and shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law. As set forth in the RAB Law, specifically *N.J.S.A. 40A:12A-66(c)*, an event of a default by the Owner in the payment of an installment of the Special Assessment shall not result in the acceleration of the subsequent installments of the Special Assessment and such subsequent installments shall be considered as not in default and the municipal lien for the subsequent installments of the Special Assessment not yet due shall continue.

**ARTICLE VI.**  
**NOTICES**

**SECTION 6.01**     Notice - Formal notices, demands and communications between the Borough and the Owner shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

**If to the Borough:**

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 Avenue  
Bound Brook, New Jersey 08805

Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, Second Floor  
Roseland, New Jersey 07068

**If to the Entity:**

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

**with a copy to:**

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

**If to any other Owner:**

The notice shall be directed to the Owner's address  
as set forth in the property tax records of the Borough.

**ARTICLE VII.  
MISCELLANEOUS**

**SECTION 7.01**      Recording — Upon the execution and delivery of this Agreement, the entire Agreement and the Ordinance shall be filed and recorded with the Middlesex County Clerk by the Borough, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Middlesex as a municipal lien upon and a covenant running with each and every parcel of Land and any improvements related thereto in accordance with the terms of this Agreement.

**SECTION 7.02**      Counterparts - This Agreement may be simultaneously executed in

counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


**SECTION 7.03**      Amendments - This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

**SECTION 7.04**      Severability of Invalid Provisions - If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof. In such event, the Parties shall confer in good faith and endeavor to reform this Agreement in a manner which is lawful and produces the same or substantially the same results as existed prior to the declaration of illegality or invalidity.


**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
William M. Robins, RMC,  
Borough Clerk

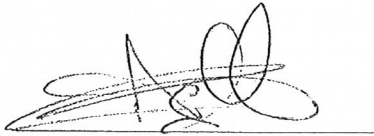
**BOROUGH OF DUNELLEN**

By:   
\_\_\_\_\_  
Robert J. Seader, Mayor

**BRUDNER REDEVELOPMENT  
PARTNERS URBAN RENEWAL, LLC**

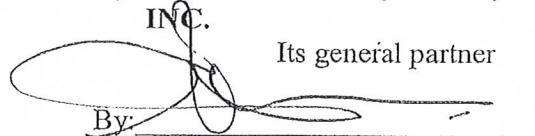
By: **DUNELLEN ASSOCIATES, LLP**

WITNESS:

  
\_\_\_\_\_

By: **SOUTHWIND EQUITIES,  
INC.**

Its general partner

By:   
\_\_\_\_\_  
Richard Brudner, President

STATE OF NEW JERSEY )  
 :  
COUNTY OF MIDDLESEX )

The foregoing instrument was acknowledged before me this 9 day of July 2017 2017, by the Borough of Dunellen (the "Borough"), a municipal corporation of the State of New Jersey, by Robert J. Seader, its Mayor, on behalf of the Borough.

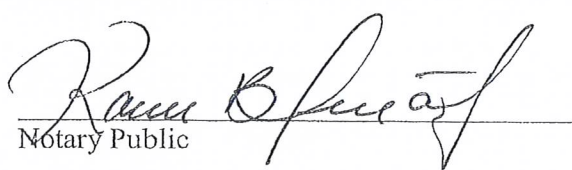
  
Notary Public

**WILLIAM M. ROBINS**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires May 28, 2019**

Commission Expiration: \_\_\_\_\_

New York  
STATE OF ~~NEW JERSEY~~ )  
 :  
COUNTY OF New York )

On this, the 23 day of June, 2017, before me, the subscriber, personally appeared Richard Brudner, who I am satisfied is the person who executed the foregoing instrument as the President of Southwind Equities, Inc., the general partner of Dunellen Associates, LLP, the sole member of Brudner Redevelopment Partners Urban Renewal, LLC, a New Jersey limited liability company, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said limited liability company.

  
Notary Public

KATHLEEN BIANEL PENA  
Notary Public - State of New York  
NO. 01PE6350570  
Qualified In New York County  
My Commission Expires Nov 14, 2020

Commission Expiration: NOV 14 2020

**EXHIBIT A**

**FORM OF DISCHARGE OF SPECIAL ASSESSMENT**

Record and return to:

\_\_\_\_\_  
Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068

**DISCHARGE OF SPECIAL ASSESSMENT**

The Borough of Dunellen, in the County of Middlesex, New Jersey (the "Borough") has agreed that the following special assessment has been paid in full and may be DISCHARGED. It may now be discharged of record. This means that the following special assessment recorded in the Office of the Clerk of Middlesex County is now cancelled and void:

Special assessment on Block 85, Lots 1 & 2 of the Tax Maps of the Borough, pursuant to and in accordance with the terms of an ordinance of the Borough duly adopted on \_\_\_\_\_, 2017, and entitled, "An Ordinance of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, Providing for the Special Assessment of the Cost of Certain Wastewater, Stormwater, Utility and Other Infrastructure Improvements on Block 85, Lots 1 & 2 and Establishing a Mechanism for Payment of a Portion of the Cost Thereof" and a Special Assessment Agreement dated as of \_\_\_\_\_, 2017, by and between the Borough and Brudner Redevelopment Partners Urban Renewal, LLC, and recorded on \_\_\_\_\_, 2017 in Mortgage Book \_\_\_\_\_, page \_\_\_\_ in the principal amount of not to exceed \$3,147,000.00.

I sign and CERTIFY to this Discharge of Special Assessment on \_\_\_\_\_, 20\_\_.

WITNESS

BOROUGH OF DUNELLEN, IN THE  
COUNTY OF MIDDLESEX, NEW JERSEY

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

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW JERSEY )

COUNTY OF MIDDLESEX )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the Borough of Dunellen (the "Borough"), a municipal corporation of the State of New Jersey, by \_\_\_\_\_, its Mayor, on behalf of the Borough.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_