

CITY COUNCIL**The City of Orange Township, New Jersey**DATE AUGUST 12, 2020NUMBER 337-2020

TITLE: A RESOLUTION AMENDING CERTAIN PROVISIONS OF RESOLUTION 280-2020(WO) ADOPTED ON JULY 1, 2020 AUTHORIZING THE ACQUISITION OF CERTAIN PROPERTIES FROM THE NEW JERSEY DEPARTMENT OF TRANSPORTATION FOR REDEVELOPMENT PURPOSES, AND APPROVING THE SALE OF SAID PROPERTIES TO PEEK REOCK I OWNER URBAN RENEWAL, LLC PURSUANT TO AN APPROVED REDEVELOPMENT AGREEMENT WITH THE CITY

WHEREAS, the City previously determined that certain properties (collectively, the "Redevelopment Area") are an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"); and

WHEREAS, the City previously adopted one or more redevelopment plans (collectively, the "Redevelopment Plan") to govern the redevelopment of properties located within the Redevelopment Area; and

WHEREAS, PEEK Reock I Owner Urban Renewal, LLC ("PEEK Reock") proposes to undertake a redevelopment project on that portion of the Redevelopment Area identified on the City's official tax map as Tax Block 2804, Lots 1, 2, 9, 10 and 11, more commonly known by the street address of 258-276 Reock Street, Orange, New Jersey (the "PEEK Reock Project Site"), consisting of the construction of a 6-story, 50-unit multi-family residential building with 40 on-site parking spaces provided on the ground floor, and other related improvements (the "PEEK Reock Project"); and

WHEREAS, the New Jersey Department of Transportation (the "NJDOT") currently owns certain properties within the Redevelopment Area comprised of (i) the parcel identified on the City's official tax map as Tax Block 2804, Lot 8 ("Lot 8") and (ii) the parcels identified on the City's official tax map as Tax Block 2804, Lots 9 and 10 (and identified on NJDOT's records as Route 280, Section 5, Parcels VX330A2, VX330B2 and VX331B, MP 10.75-10.8) ("Lots 9 and 10"); and

WHEREAS, the NJDOT has indicated that Lot 8 and Lots 9 and 10 (collectively, the "NJDOT Properties") constitute excess surplus properties which may be sold by the NJDOT to the City for redevelopment purposes, at a purchase price to be determined on the basis of an appraisal by the NJDOT; and

WHEREAS, by resolution adopted on June 5, 2019, the City has heretofore designated PEEK Development, L.L.C., an affiliate of the Redeveloper, to serve as the exclusive redeveloper under the LRHL for the PEEK Reock Project on the PEEK Reock Project Site (which PEEK Reock Project Site includes, inter alia, Lots 9 and 10), conditioned upon certain undertakings by PEEK Reock and subject to expiration in the event a redevelopment agreement is not timely negotiated, approved and executed by the parties; and

WHEREAS, by resolution adopted on June 16, 2020, the City authorized the execution and delivery of a redevelopment agreement with PEEK Reock in respect of the PEEK Reock Project (the "PEEK Reock Redevelopment Agreement"), which PEEK Reock Redevelopment Agreement has since been executed and delivered by the parties; and

WHEREAS, pursuant to N.J.S.A. 40A:12-4(a), any municipality may acquire any real

property or any interest or estate whatsoever therein; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-8(b), upon the adoption of a redevelopment plan any municipality may, in order to carry out and effectuate the purposes of the LRHL and the terms of the redevelopment plan, acquire property pursuant to N.J.S.A. 40A:12A-22(i), which authorizes any municipality to acquire, or contract to acquire, from any person, firm or corporation, by purchase or otherwise, real property or any interest therein located within a redevelopment area (or in an area designated as necessary for carrying out the relocation of the residents, industry and commerce displaced from a redevelopment area), including such property as it may deem necessary or proper, although temporarily not required for such purposes; and

WHEREAS, the NJDOT has agreed to sell the NJDOT Properties to the City, for redevelopment purposes, at a purchase price equal to the appraised value thereof, which has been determined to be One Hundred Forty-Three Thousand Dollars (\$143,000) (the “Total Appraised Value”); and

WHEREAS, the PEEK Reock Redevelopment Agreement contemplates and provides for the acquisition of Lots 9 and 10 by the City from the NJDOT at the appraised value thereof, and for the immediate reconveyance of Lots 9 and 10 by the City to PEEK Reock at the City’s cost of acquisition, all as more fully described in the PEEK Reock Redevelopment Agreement; and

WHEREAS, the NJDOT has advised the City that the portion of the Total Appraised Value allocable to Lots 9 and 10, being the appraised value of Lots 9 and 10, is One Hundred Twenty-One Thousand Dollars (\$121,000) (the “Lots 9 and 10 Appraised Value”), and that the portion of the Total Appraised Value allocable to Lot 8, being the appraised value of Lot 8, is Twenty-two Thousand Dollars (\$22,000); and

WHEREAS, by resolution 280-2020(WO) adopted on July 1, 2020 (the “July Resolution”), the City authorized the execution and delivery of a purchase and sale agreement with the NJDOT, by which the City would acquire Lots 9 and 10 for the Lots 9 and 10 Appraised Value, with the intention to immediately resell Lots 9 and 10 to PEEK Reock at a similar purchase price in accordance with the PEEK Reock Redevelopment Agreement as aforesaid; and

WHEREAS, certain provisions of the July Resolution must now be amended in light of delays in finalizing the conveyancing documents by which Lots 9 and 10 are to be acquired by the City; and

WHEREAS, the City now wishes to formally approve the sale of Lots 9 and 10 to PEEK Reock in accordance with the PEEK Reock Redevelopment Agreement, upon the acquisition thereof by the City from the NJDOT as aforesaid;

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Orange Township that:

1. The Municipal Council hereby authorizes the sale and conveyancing of Lots 9 and 10 to PEEK Reock, for redevelopment purposes, at a sale price equal to the City’s cost of acquisition thereof from the NJDOT, being the Lots 9 and 10 Appraised Value of \$121,000 (subject to customary real estate closing adjustments), contingent upon the acquisition thereof by the City from the

NJDOT. Such sale to PEEK Reock shall be effected by deed in form and substance satisfactory to PEEK Reock and the City Attorney. The Mayor, Clerk and City Attorney are hereby authorized to execute and deliver said deed, together with such additional agreements, certifications and other documents as the parties may deem necessary or useful and convenient for the purpose of effecting said conveyance.

2. The July Resolution is hereby amended to permit the acquisition by the City from the NJDOT, for redevelopment purposes, of Lots 9 and 10, at the Lots 9 and 10 Appraised Value of \$121,000 (subject to customary real estate closing adjustments).
3. The July Resolution is hereby amended to authorize the expenditure of \$121,000 representing the Lots 9 and 10 Appraised Value (subject to customary real estate closing adjustments), to be derived from escrowed funds supplied by PEEK Reock pursuant to the PEEK Reock Redevelopment Agreement, for the purpose of acquiring Lots 9 and 10 from the NJDOT.
4. The July Resolution is hereby amended to authorize the conveyancing of Lots 9 and 10 from the NJDOT to the City by deed in form and substance satisfactory to the NJDOT, the City Attorney and PEEK Reock, with or without an accompanying purchase and sale agreement or agreements. The Mayor, Clerk and City Attorney are hereby authorized to execute and deliver any such purchase and sale agreement, together with such additional agreements, certifications and other documents as the parties may deem necessary or useful and convenient for the purpose of effecting such conveyance.
5. Except as amended hereby, all provisions of the July Resolution shall remain in full force and effect.
6. In the event that any one or more provisions of this resolution shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of all other provisions of this resolution.
7. This resolution shall take effect immediately.

Adopted:

Joyce L. Lanier
Municipal Clerk

Kerry J. Coley
Council President

CITY COUNCIL

July 1, 2020

The City of Orange Township, New Jersey
280-2020(WO)

DATE _____

NUMBER _____

TITLE: A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND THE STATE OF NEW JERSEY, ACTING BY AND THROUGH THE NEW JERSEY DEPARTMENT OF TRANSPORTATION, IN CONNECTION WITH THE CITY'S ACQUISITION, FOR REDEVELOPMENT PURPOSES, OF CERTAIN PROPERTY IDENTIFIED AS BLOCK 2804, LOTS 9 AND 10, AND AUTHORIZING THE MAYOR TO EXECUTE THE PURCHASE AND SALE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the City previously determined that certain properties (collectively, the "Redevelopment Area") are an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"); and

WHEREAS, the City previously adopted one or more redevelopment plans (collectively, the "Redevelopment Plan") to govern the redevelopment of properties located within the Redevelopment Area; and

WHEREAS, PEEK Reock I Owner Urban Renewal, LLC (the "Redeveloper") proposes to undertake a redevelopment project on that portion of the Redevelopment Area identified on the City's official tax map as Tax Block 2804, Lots 1, 2, 9, 10 and 11, more commonly known by the street address of 258-276 Reock Street, Orange, New Jersey (the "Project Site"), consisting of the construction of a 6-story, 50-unit multi-family residential building with 40 on-site parking spaces provided on the ground floor, and other related improvements (the "Project"); and

WHEREAS, the New Jersey Department of Transportation (the "NJDOT") currently owns that portion of the Project Site identified on the City's official tax map as Tax Block 2804, Lots 9 and 10 (and identified on NJDOT's records as Route 280, Section 5, Parcels VX330A2, VX330B2 and VX331B, MP 10.75-10.8) (the "NJDOT Properties"); and

WHEREAS, the NJDOT has indicated that the NJDOT Properties constitute excess surplus properties which may be sold by the NJDOT to the City for redevelopment, at a purchase price to be determined on the basis of an appraisal by the NJDOT; and

WHEREAS, by resolution adopted on June 5, 2019, the City has heretofore designated PEEK Development, L.L.C., an affiliate of the Redeveloper, to serve as the exclusive redeveloper under the LRHL for the Project on the Project Site, conditioned upon certain undertakings by the Redeveloper and subject to expiration in the event a redevelopment agreement is not timely negotiated, approved and executed by the parties; and


WHEREAS, by resolution adopted on June 16, 2020, the City authorized the execution and delivery of a redevelopment agreement with the Redeveloper in respect of the Project (the "Redevelopment Agreement"), which Redevelopment Agreement has since been executed and delivered by the parties; and

WHEREAS, pursuant to N.J.S.A. 40A:12-4(a), any municipality may acquire any real property or any interest or estate whatsoever therein; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-8(b), upon the adoption of a redevelopment plan any municipality may, in order to carry out and effectuate the purposes of the LRHL and the terms of the redevelopment plan, acquire property pursuant to N.J.S.A. 40A:12A-22(i), which authorizes any municipality to acquire, or contract to acquire, from any person, firm or corporation,

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APPROVED AS TO FORM, SUFFICIENCY AND LEGALITY

*Yvonne Parchment on behalf of
the City Attorney*

CITY ATTORNEY

by purchase or otherwise, real property or any interest therein located within a redevelopment area (or in an area designated as necessary for carrying out the relocation of the residents, industry and commerce displaced from a redevelopment area), including such property as it may deem necessary or proper, although temporarily not required for such purposes; and

WHEREAS, the NJDOT has agreed to sell the NJDOT Parcel to the City, for redevelopment purposes, at a purchase price equal to the appraised value thereof, which has been determined to be One Hundred Twenty-One Thousand Dollars (\$121,000); and

WHEREAS, the Redevelopment Agreement contemplates and provides for the acquisition of the NJDOT Properties by the City from the NJDOT at said appraised value, and for the immediate reconveyance of the NJDOT Properties by the City to the Redeveloper at the City's cost of acquisition, all as more fully described in the Redevelopment Agreement; and


WHEREAS, the Mayor has negotiated a proposed Agreement to Sell Property For Redevelopment Purposes with the NJDOT in substantially the form attached hereto (the "Purchase and Sale Agreement"), and has caused same to be presented to the Municipal Council for its approval pursuant to N.J.S.A. 40:69A-36(l); and

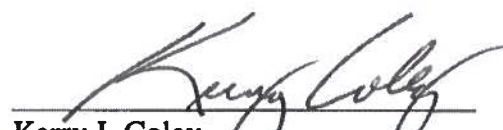
WHEREAS, under the proposed Purchase and Sale Agreement, the City would acquire the NJDOT Property from the NJDOT for the sum of \$121,000, with the intention to immediately resell the NJDOT Property to the Developer at a similar purchase price in accordance with the Redevelopment Agreement as aforesaid;

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Orange Township that:

1. The Municipal Council hereby authorizes the acquisition of the NJDOT Parcel for redevelopment purposes, substantially as described in the recitals hereto; provided, that the closing of the acquisition shall be conditioned upon the escrowed payment of funds by the Developer to finance such cost of acquisition by the City.
2. The Municipal Council hereby approves the proposed form of the Purchase and Sale Agreement in substantially the form attached hereto.
3. The Mayor, Clerk, and Attorney are hereby authorized to execute the Purchase and Sale Agreement in substantially the form attached hereto, along with any other documents and/or agreements necessary to implement the acquisition of the NJDOT Property for redevelopment purposes, substantially as described in the recitals hereto.

Adopted: July 1, 2020


Joyce L. Lanier
City Clerk


Kerry J. Coley
Council President

RESOLUTION NO. 280-2020 (WO)

OFF CONSENT AGENDA

REORGANIZATION MEETING– JULY 1, 2020

MOTION TO WALK-ON: Johnson, Jr.

SECOND: Coley

YEAS: Eason, Johnson, Jr., Montague, III, Ross, Summers-Johnson, Wooten and Council President C

NAYS: None

ABSTENTIONS: None

ABSENCES: None

MOTION TO ADOPT: Johnson, Jr.

SECOND: Montague, III

YEAS: Eason, Johnson, Jr., Montague, III, Ross, Summers-Johnson, Wooten and Council President C

NAYS: None

ABSTENTIONS: None

ABSENCES: None

AGREEMENT TO SELL PROPERTY FOR REDEVELOPMENT PURPOSES

This Agreement to Sell Property for Redevelopment Purposes (this “Agreement”) dated December _____, 2019, is by and between the **STATE OF NEW JERSEY, ACTING BY AND THROUGH THE NEW JERSEY DEPARTMENT OF TRANSPORTATION** (the “NJDOT”) and the **CITY OF ORANGE TOWNSHIP**, a municipal corporation of the County of Essex and the State of New Jersey, having its offices at 29 North Day Street, Orange, New Jersey 07050 (the “City”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the City previously determined that certain properties (collectively, the “Redevelopment Area”) are an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “LRHL”); and

WHEREAS, the City previously adopted one or more redevelopment plans (collectively, the “Redevelopment Plan”) to govern the redevelopment of properties located within the Redevelopment Area; and

WHEREAS, PEEK Reock I Owner Urban Renewal, LLC (the “Redeveloper”) proposes to undertake a redevelopment project on that portion of the Redevelopment Area identified on the City’s official tax map as Tax Block 2804, Lots 1, 2, 9, 10 and 11, more commonly known by the street address of 258-276 Reock Street, Orange, New Jersey (the “Project Site”), consisting of the construction of a 6-story, 50-unit multi-family residential building with 40 on-site parking spaces provided on the ground floor, and other related improvements (the “Project”); and

WHEREAS, the NJDOT currently owns that portion of the Project Site identified on the City’s official tax map as Tax Block 2804, Lots 9 and 10 (and identified on NJDOT’s records as Route 280, Section 5, Parcels VX330A2, VX330B2 and VX331B, MP 10.75-10.8) (the “Property”); and

WHEREAS, the NJDOT has indicated that the Property constitutes excess surplus property which may be sold by the NJDOT to the City for redevelopment, at a purchase price to be determined on the basis of an appraisal by the NJDOT; and

WHEREAS, by resolution adopted on June 16, 2020, the City authorized the execution and delivery of a redevelopment agreement with the Redeveloper in respect of the Project (the “Redevelopment Agreement”), which Redevelopment Agreement has since been executed and delivered by the parties thereto; and

WHEREAS, pursuant to N.J.S.A. 40A:12-4(a), any municipality may acquire any real property or any interest or estate whatsoever therein; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-8(b), upon the adoption of a redevelopment plan any municipality may, in order to carry out and effectuate the purposes of the LRHL and the terms of the redevelopment plan, acquire property pursuant to N.J.S.A. 40A:12A-22(i), which authorizes any municipality to acquire, or contract to acquire, from any person, firm or corporation, by purchase or otherwise, real property or any interest therein located within a redevelopment area (or in an area designated as necessary for carrying out the relocation of the residents, industry and commerce displaced from a redevelopment area), including such property as it may deem necessary or proper, although temporarily not required for such purposes; and

WHEREAS, the NJDOT has agreed to sell the Property to the City, for redevelopment purposes, at a purchase price equal to the appraised value thereof, which has been determined to be One Hundred Twenty-One Thousand Dollars (\$121,000); and

WHEREAS, the Redevelopment Agreement contemplates and provides for the acquisition of the Property by the City from the NJDOT at said appraised value, and for the immediate reconveyance of the Property by the City to the Redeveloper at the City's cost of acquisition, all as more fully described in the Redevelopment Agreement; and

NOW, THEREFORE, in consideration of the foregoing and certain other consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

ARTICLE 1

TERMS AND CONDITIONS OF CONVEYANCE OF PROPERTY

1.1 Consideration For Sale. The consideration for the conveyance of the Property shall be the City's payment to the NJDOT of the sum of One Hundred Twenty-One Thousand Dollars (\$121,000.00) (the "Purchase Price").

1.2 Time And Place Of Closing Of Title. The closing on the conveyance of the Property shall occur on a mutually convenient date, time and location on or before _____, 20__.

1.3 Transfer Of Ownership; Title.

(a) At the Closing for the Property, the City shall pay the NJDOT the Purchase Price and the NJDOT shall give the City a properly executed Bargain and Sale Deed without covenants (the "Deed"), an adequate affidavit of title, a properly executed affidavit of consideration or exemption, a true copy of the resolution authorizing the sale and conveyance, and such other documentation as may reasonably be requested by Redeveloper's title insurance company.

(b) The NJDOT shall transfer and convey to the City clear and marketable title to the Property, defined for purposes of this Agreement as insurable by a title insurance

company licensed to do business in the State of New Jersey at regular rates free of all claims and rights of others, except for: (i) normal utility easements servicing the Property which do not interfere with City's intended use thereof; (ii) ALTA 1992 preprinted exceptions; and (iii) any Permitted Exceptions (as hereinafter defined).

(c) Failure to notify the NJDOT of an objection to title for the Property prior to Closing on the Property shall be deemed a waiver by the City of all objections to any lien, encumbrances or other exception revealed by the title report (as waived, or as otherwise deemed acceptable by City, "Permitted Exceptions"). In the event that the NJDOT is unwilling or unable to remedy any such title defect(s) of that particular Property, then the City may either (i) waive the objection and proceed to Closing; or (ii) terminate this Agreement. Upon such termination, neither the NJDOT nor the City shall have any further liability under this Agreement as to the Property except as otherwise expressly provided herein. Under no circumstances shall the NJDOT be obligated to reimburse the City for any monies expended by the City in connection with this Agreement.

1.4 Physical Condition Of The Property; Release As To Environmental Claims.

(a) The Property is being sold to the City in an "AS IS" condition. The City acknowledges that the NJDOT has not made any statements, claims or guaranties as to the value or condition of the Property. The City fully realizes that the NJDOT does not assume any responsibility or liability on account of any such physical condition. At the Closing, the NJDOT shall deliver possession of the Property in the same condition as it is in as of the date of the execution of this Agreement, deterioration from ordinary and reasonable usage and exposure to the elements excepted.

1.5 Risk Of Loss. The NJDOT is responsible for any damage or loss to the Property, except for normal wear and tear, until the Closing; provided, however, that the NJDOT shall not be required to repair any damage to the existing improvements on the Property as it is the intention of the Redeveloper to demolish these improvements.

1.6 Building And Zoning Laws. The Property is being sold subject to the Redevelopment Plan and all other applicable laws.

1.7 Brokerage Fees. The NJDOT and the City each represent that they have not dealt with or transacted any business with any broker concerning the purchase of the Property, and each agrees to hold the other harmless from any claim of any broker.

1.8 Non-Foreign Affidavit. The NJDOT shall provide to the Redeveloper at Closing an adequate Non-Foreign Affidavit stating the inapplicability of 26 U.S.C. Section 1445 to the sale of the Property.

1.9 Form 1099-B Filing. In compliance with the requirements of the Internal Revenue Code, the City's attorney is responsible for collecting certain information from the City necessary to complete and file Form 1099-B with the Internal Revenue Service.

The City agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such filing.

1.10 Responsibility For Taxes. The City shall be responsible for the payment of any real estate taxes assessed on the Property after conveyance of title in the Property to the Redeveloper.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

2.1 Representations And Warranties By The City. The City makes the following representations and warranties:

(a) The City has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein as of the date of this Agreement.

(b) The City is a duly organized and validly existing municipal corporation of the State of New Jersey, and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the City's behalf.

(c) No receiver, liquidator, custodian or trustee of the City has been appointed or is contemplated as of the date of this Agreement, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the City has been filed or is contemplated as of the date of this Contract.

(d) To the best of the City's knowledge and belief after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which questions the validity of this Agreement, the City's execution hereof, or any action or act taken or to be taken by the City pursuant to this Agreement.

(f) The City's execution and delivery of this Agreement and its performance hereunder will not, to the Redeveloper's knowledge, constitute a violation of any agreement, mortgage, indenture, instrument or judgment to which the City is a party.

(g) The party or parties signing this Agreement on behalf of the City is or are fully authorized to sign on behalf of the City and to bind it with respect thereto.

3.2 Representations And Warranties By The NJDOT. The NJDOT hereby makes the following representations and warranties:

(a) The NJDOT has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the NJDOT is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(b) This Agreement is duly executed by the NJDOT, and is valid and legally binding upon the NJDOT and enforceable in accordance with its terms on the basis of all applicable laws currently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the NJDOT is a party.

(c) To the best of the NJDOT's knowledge there is no action, proceeding or investigation now pending nor any basis therefor, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the NJDOT pursuant to this Agreement.

(d) To the best of the NJDOT's knowledge there is no pending litigation which affects the title to the Property or the NJDOT's ability to convey the Property to the City.

(e) To the best of the NJDOT's knowledge the NJDOT is not in violation of any term of any judgment, decree, injunction or order affecting the Property.

(f) The NJDOT has not received notice of any pending eminent domain or condemnation of any of the Property and the NJDOT does not know of, or have reason to know of, any proposed eminent domain or condemnation proceeding with respect to any portion of the Property.

(g) To the best of the NJDOT's knowledge the NJDOT has not received any notice of violation issued by any federal, state or other public authority with regard to any the Property, and the NJDOT has no reason to believe that any such notice will be issued after the date hereof.

(h) Prior to conveyance from the NJDOT to the City, the NJDOT shall be the legal owner of the Property in fee simple and the Property shall not then be subject to any outstanding option or agreement of sale.

3.3 No Warranty Of Suitability Or Environmental Condition. The City specifically acknowledges that the NJDOT makes no representation or warranty, expressed, implied or otherwise, as to the Property's suitability for the Project or for any other purpose. Moreover, the NJDOT makes no representation or warranty as to the environmental condition of the Property (or the structures located thereon).

ARTICLE 4 **MISCELLANEOUS PROVISIONS**

4.1 Modification of Agreement. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the NJDOT and the City with the specific intention to modify the terms of this Agreement. In the event that any

such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect. No waiver by the NJDOT or the City of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of both the NJDOT and the City.

4.2 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey sitting in Essex County, New Jersey, and the City hereby waives all objections to such venue. Notwithstanding the above, the Parties may, upon mutual written consent, pursue alternate dispute resolution (such as mediation or binding arbitration) to attempt to resolve any issues or disputes arising from this Agreement.

4.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

4.4 Notices and Demands A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the Parties at their respective addresses as set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the NJDOT:

With copies to:

As to the City:

The City of Orange Township
29 North Day Street
Orange, New Jersey 07050

Attention:

Christopher Hartwyk
Business Administrator

Phone: 973-266-4010
Fax: 973-677-7847
Email: chartwyk@ci.orange.nj.us

Attention:

Christopher Mobley
Planning and Economic Development

Phone: 973-266-4061
Fax: 973-677-7847
Email: cmobley@ci.orange.nj.us

Attention:

Avram White
Planning and Economic Development

Phone: 973-266-4198
Fax: 973-674-2021
Email: awhite@ci.orange.nj.us

With copies to:

James G. Fearon, Esq.
Gluck Walrath LLP
4 Paragon Way, Suite 400
Freehold, New Jersey 07728

From time to time either party may designate a different person or address for all the purposes of this notice provision by giving the other party no less than ten (10) days notice in advance of such change of address in accordance with the provisions hereof.

4.5 Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

4.6 Severability. The validity of any Articles and Sections, clauses or provisions of this Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

4.7 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.

4.8 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

4.9 Waiver. No waiver made by any party with respect to any obligation of any other party under this Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

4.10 Authorization. Each of the Parties hereto which are business entities represent and warrant that each has complied with all necessary formalities and the undersigned signatory has been duly authorized to execute this Agreement on behalf of such entity.

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

ATTEST:

**STATE OF NEW JERSEY, ACTING BY
AND THROUGH THE NEW JERSEY
DEPARTMENT OF
TRANSPORTATION**

Witness

By: _____
Authorized Officer

ATTEST:

THE CITY OF ORANGE TOWNSHIP

Clerk

By: _____
Dwayne D. Warren, Esq., Mayor

APPROVED AS TO FORM

City Attorney