

**CITY COUNCIL****The City of Orange Township, New Jersey**DATE July 5, 2023NUMBER 270-2023

**TITLE: A RESOLUTION OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, APPROVING AND AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT AND A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF ORANGE TOWNSHIP AND PAUL CARTER REGARDING VARIOUS CLAIMS ALLEGED BETWEEN THE PARTIES, AS WELL AS THE CITY'S ACQUISITION, IN LIEU OF CONDEMNATION, OF A PARCEL DESIGNATED ON THE CITY'S OFFICIAL TAX MAPS AS BLOCK 2805, LOT 5, MORE COMMONLY KNOWN AS 59 SOUTH DAY STREET.**

**WHEREAS**, Paul Carter ("Owner") is the record owner of a parcel designated as Block 2805, Lot 5 on the official tax maps of the City of Orange Township ("City"), more commonly known as 59 South Day Street ("Property"); and,

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law ("LRHL"), *N.J.S.A. 40A:12A-1 et seq.*, the Municipal Council adopted Resolution No. 293-2009 on October 6, 2009, designating the Property as part of the Reock Street Redevelopment Area ("Redevelopment Area"); and,

**WHEREAS**, on April 20, 2010, the Municipal Council adopted Ordinance No. 6-2010, approving the Reock Street Redevelopment Plan ("Redevelopment Plan"), which established zoning and land use regulations for the Redevelopment Area; and,

**WHEREAS**, the Municipal Council subsequently amended the Redevelopment Plan in 2011 and 2021 to, among other things, expand the Redevelopment Area as a condemnation area in need of redevelopment pursuant to the LRHL; and,

**WHEREAS**, on October 19, 2021, the Municipal Council adopted Ordinance No. 50-2021, authorizing the City to acquire the Property in accordance with the Eminent Domain Act of 1971 ("EDA"), *N.J.S.A. 20:3-1, et seq.*, which requires the City to attempt to negotiate a voluntary sale of the Property prior to seeking condemnation and provide relocation assistance to those residing in the Property; and,

**WHEREAS**, by correspondence dated December 22, 2021, the City formally offered to acquire the Properties based on market value appraisals performed by the City's consultant, Integra Realty Resources Inc., and approved by the Municipal Council through Ordinance No. 50-2021; and,

**WHEREAS**, on October 18, 2022, the Municipal Council adopted Ordinance No. 52-2022, amending the Redevelopment Plan to remove the Property and 4 other parcels—Block 2805, Lots 2, 3, 4 and 6, commonly known as 51 South Day Street, 53 South Day Street, 55 South Day Street, and 61 South Day Street ("Adjoining Parcels")—from the Redevelopment Area and to limit the permitted use of the Property and Adjoining Parcels to parks and open space exclusively; and,

**WHEREAS**, on November 22, 2022, the Owner and the owner and tenant of 2 Adjoining Parcels, jointly filed an action in lieu of prerogative writs in the Superior Court



PAUL CARTER



of New Jersey, Essex County, against the City and its Mayor, Municipal Council and Planning Board, captioned as *Paul Carter et al. v. City of Orange Township et al.*, Docket No. ESX-L-006955-22, challenging adoption of Ordinance No. 52-2022 (“Prerogative Writ Action”); and,

**WHEREAS**, the City opposes the Prerogative Writ Action and maintains that the Municipal Council properly adopted Ordinance No. 52-2022; and,

**WHEREAS**, on or about May 11, 2023, Paul Carter received a notice of violation and unsafe structure for the Property (“Building Violations”); and,

**WHEREAS**, notwithstanding the pending Prerogative Writ Action, the Owner and the City (collectively, “Parties”) have maintained open dialogue regarding voluntary sale of the Property to the City and relocation assistance for the Owner; and,

**WHEREAS**, under all of the circumstances, as a matter of business judgment, the Parties now wish to resolve all open issues between them (“Open Matters”), including without limitation: acquisition of the Property by the City; relocation assistance for the Owner; the Prerogative Writ Action; the Building Violations; and, all other claims the Parties have and/or could have asserted against one another with respect to the Property; and,

**WHEREAS**, after extensive arms-length negotiation and consultation with their respective legal counsel, the Parties reached an agreement to amicably resolve the Open Matters in good faith, without admitting or further alleging any wrongdoing or liability; and,

**WHEREAS**, the Parties have further documented their mutual promises and covenants regarding the Open Matters in a comprehensive Settlement Agreement and Purchase and Sale Agreement, copies of which are appended hereto.

**NOW, WHEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY**, that the Settlement Agreement and Purchase and Sale Agreement (collectively, “Agreements”) appended hereto and incorporated herein by reference, shall be and hereby are approved; and,

**BE IT FURTHER RESOLVED** that the Mayor and all other appropriate City officials are hereby authorized to execute the Agreements and take all such other actions as necessary to carry out the terms thereof.

Adopted: July 5, 2023

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Joyce L. Lanier  
City Clerk

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Council President



## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (“Agreement”) is made as of July \_\_\_\_, 2023, between:

**City of Orange Township,  
a New Jersey Municipal Corporation,**  
with offices at 29 North Day Street, Orange, New Jersey, 07050; and,

**Paul Carter, Individually,**  
who resides at 59 South Day Street, Orange, New Jersey, 07050.

### **RECITALS**

**WHEREAS**, Paul Carter (“Owner”) is the record owner of a parcel designated as Block 2805, Lot 5 on the official tax maps of the City of Orange Township (“City”), more commonly known as 59 South Day Street (“Property”); and,

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law (“LRHL”), N.J.S.A. 40A:12A-1 *et seq.*, the City’s governing body (“Municipal Council”) adopted Resolution No. 293-2009 on October 6, 2009, designating the Property as part of the Reock Street Redevelopment Area (“Redevelopment Area”); and,

**WHEREAS**, on April 20, 2010, the Municipal Council adopted Ordinance No. 6-2010, approving the Reock Street Redevelopment Plan (“Redevelopment Plan”), which established zoning and land use regulations for the Redevelopment Area; and,

**WHEREAS**, the Municipal Council subsequently amended the Redevelopment Plan in 2011 and 2021 to, among other things, expand the Redevelopment Area as a condemnation area in need of redevelopment pursuant to the LRHL; and,

**WHEREAS**, on October 19, 2021, the Municipal Council adopted Ordinance No. 50-2021, authorizing the City to acquire the Property in accordance with the Eminent Domain Act of 1971 (“EDA”), N.J.S.A. 20:3-1, *et seq.*, which requires the City to attempt to negotiate a voluntary sale of the Property prior to seeking condemnation and provide relocation assistance to those residing in the Property; and,

**WHEREAS**, by correspondence dated December 22, 2021, the City formally offered to acquire the Properties based on market value appraisals performed by the City’s consultant, Integra Realty Resources Inc., and approved by the Municipal Council through Ordinance No. 50-2021; and,

**WHEREAS**, on October 18, 2022, the Municipal Council adopted Ordinance No. 52-2022, amending the Redevelopment Plan to remove the Property and 4 other parcels—Block 2805, Lots 2, 3, 4 and 6, commonly known as 51 South Day Street, 53 South Day Street, 55 South Day Street, and 61 South Day Street (“Adjoining Parcels”)—from the Redevelopment Area and to limit the permitted use of the Property and Adjoining Parcels to parks and open space exclusively; and,

**WHEREAS**, on November 22, 2022, the Owner and the owner and tenant of 2 Adjoining Parcels, jointly filed an action in lieu of prerogative writs in the Superior Court of New Jersey, Essex County, against the City and its Mayor, Municipal Council and Planning Board, captioned as *Paul Carter et al. v. City of Orange Township et al.*, Docket No. ESX-L-006955-22, challenging adoption of Ordinance No. 52-2022 (“Prerogative Writ Action”); and,

**WHEREAS**, the City opposes the Prerogative Writ Action and maintains that the Municipal Council properly adopted Ordinance No. 52-2022; and,

**WHEREAS**, on or about May 11, 2023, Paul Carter received a notice of violation and unsafe structure for the Property (“Building Violations”); and,

**WHEREAS**, notwithstanding the pending Prerogative Writ Action and the Building Violations, the Owner and the City (collectively, “Parties”) have maintained open dialogue regarding voluntary sale of the Property to the City and relocation assistance for the Owner; and,

**WHEREAS**, under all of the circumstances, as a matter of business judgment, the Parties now wish to resolve all open issues between them (“Open Matters”), including without limitation: acquisition of the Property by the City; relocation assistance for the Owner; the Prerogative Writ Action; the Building Violations; and, all other claims the Parties have and/or could have asserted against one another with respect to the Property; and,

**WHEREAS**, after extensive arms-length negotiation and consultation with their respective legal counsel, the Parties reached an agreement to amicably resolve the Open Matters in good faith, without admitting or further alleging any wrongdoing or liability; and,

**WHEREAS**, the Parties agreed to further memorialize their mutual promises and covenants regarding the Open Matters in a comprehensive formal document and, therefore, enter into this Agreement so as to fully and finally resolve same; and,

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree to the terms and conditions as set forth in further detail herein.

## **TERMS**

1. **Recitals.** All Recitals set forth above are hereby incorporated herein by reference.
2. **Municipal Council Approval.** In accordance with the Optional Municipal Charter Law, N.J.S.A. 40:69A-1 *et seq.*, this Agreement was considered and approved by the Municipal Council through Resolution No. \_\_\_\_-2023 adopted on July \_\_\_\_, 2023. The Owner understands and acknowledges that any oral or written representations by any City official or employee differing from the terms expressly set forth herein shall not bind the City unless formally approved by the Municipal Council.
3. **Property Acquisition; Tenant Relocation.** In lieu of condemnation and involuntary relocation pursuant to the EDA, the Parties agree to the following foundational terms:
  - a. **Conveyance of the Properties.** The Owner shall sell and the City shall purchase the Owner’s entire interest in the Property, as-is, where-is and with all faults, in exchange for a single lump sum payment by the City totaling \$266,000.00 (“Purchase Price”) pursuant to the terms of a Purchase and Sale Agreement (“PSA”) negotiated between the Owner and the City, in substantially the same form as appended hereto under *Schedule A*. At closing of title, the City shall also provide the Owner with a release from all environmental liability relating to the Property.

The Parties acknowledge that none of them have entered into any contracts for or otherwise utilized the services of any real estate broker with regard to this transaction, and that no commission, finder’s fee or other remuneration was promised or will be owed to any third party as a result of same.

**b. Relocation Assistance.** At closing of title to the Property, and in lieu of relocation assistance under the EDA, the City shall issue a single lump sum relocation payment totaling \$25,000.00 ("Relocation Payment") separately to the Owner, with the Owner concurrently releasing the City from all claims for relocation assistance regarding the Property.

**4. Other Open Matters.** With respect to the Prerogative Writ Action and any other pending matters between them, the Parties agree as follows:

**a. Dismissal of the Prerogative Writ Action.** Following closing of title to the Property, the Owner shall no longer have standing to maintain the Prerogative Writ Action, and, therefore, shall withdraw all claims alleged by him in that action with prejudice. In the interests of efficiency and expediency, concurrent with execution of this Agreement, the Parties shall execute a Stipulation of Dismissal with Prejudice regarding the Prerogative Writ Action, which shall be held in escrow by counsel for the Owner and filed with the Superior Court of New Jersey immediately following closing of title to the Property.

**b. Dismissal of Building Violations.** The City shall withdraw all building violations pending against the Property and dismiss any complaints and penalties against the Owner.

**c. Mutual Releases.** Concurrent with closing of title to the Property, the Parties shall execute mutual general releases incorporating releases of all claims alleged against one another regarding the Property, the Open Matters and all other related issues ("Mutual Releases").

**d. Maintenance of Status Quo.** Pending dismissal of the Prerogative Writ Action, the Parties shall jointly seek a stay of each proceeding so as not to alter the *status quo*. In the event any court or tribunal having jurisdiction over the Prerogative Writ Action refuses to stay any individual matter, the Parties may terminate this Agreement and proceed with that matter before that court or tribunal.

**5. Beneficiaries of Agreement.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective present or former parents, subsidiaries, affiliates, departments, officers, directors, members, shareholders, agents, administrators, insurers, attorneys, representatives, past and present employees and all their respective heirs, representatives, successors and assigns.

**6. Choice of Law.** This agreement shall be governed by the laws of the State of New Jersey without regard to principles of conflict of laws. All contract claims under this Agreement shall be subject to and governed by the provisions of the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.*

**7. Informed Agreement.** The Parties acknowledge that they each read this Agreement in its entirety prior to executing same. The Parties further acknowledge that they are each fully informed of their respective legal rights and obligations. The Parties further acknowledge that they each enter into this Agreement voluntarily and without force, constraint, compulsion, coercion, intimidation, duress or hardship.

**8. Headings.** The headings of the several paragraphs of this Agreement are solely for the convenience of reference and shall have no further meaning, force or effect.

**9. Construction; Entire Agreement; Modification.**

**a.** The language contained in this Agreement was negotiated and is deemed to have been drafted collaboratively by the Parties.

**b.** This Agreement shall, in all cases, be construed as a whole according to its objective and fair meaning, and shall not be interpreted in favor of or against any of the Parties. Without limitation

by the foregoing, interpretation of any provision (in part or in whole) of this Agreement shall not be interpreted against the drafter in any manner.

c. This Agreement supersedes all previous understandings, agreements, statements and representations, whether oral or written, between the parties, and constitutes the complete and final expression of all understandings and agreements between the parties with respect to the subject matter hereof.

d. This Agreement shall only be amended, modified and/or amplified in a writing executed by the Parties and approved by the Municipal Council. Oral statements by any person shall not serve to amend, modify and/or amplify the terms and provisions of this Agreement in any manner.

**10. Severability; Waiver.**

a. If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by such court, agency or arbitrator, or the validity or enforceability of this Agreement as a whole.

b. The Parties' respective rights and remedies under this Agreement are cumulative and not alternative. No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy, except as otherwise provided in this Agreement. No delay, forbearance, or neglect on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof. No waiver of any of the conditions of this Agreement by a party shall be effective unless expressly and affirmatively made and given by the party against whom enforcement of the waiver is sought.

**11. Signatures; Counterparts; Electronic Signatures.**

a. The undersigned certify that they execute this Agreement as authorized representatives of the respective parties for which they are signing, and that they have full authority to enter into and bind the respective parties to the terms of this Agreement.

b. This Agreement may be executed in 1 or more counterparts, all of which together shall be considered a single and the same document, and shall become effective when each of the Parties signs 1 or more counterparts. It is understood that the Parties need not sign the same counterpart.

c. This Agreement may be signed electronically by any of the Parties using a digital signature that meets the requirements of the federal Electronic Signatures in Global and National Commerce (ESIGN) Act, 15 U.S.C. §§ 7001 *et seq.*, as amended, and the New Jersey Uniform Electronic Transactions Act, *N.J.S.A. 12A:12-1 et seq.*, as amended. Any digital signature affixed to this Agreement shall constitute the signing-party's intent and agreement to be bound by the terms of this Agreement and shall have the same legal effect as a "wet-ink" signature.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]  
[SIGNATURES FOLLOW ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement as of the date first written above.

For **CITY OF ORANGE TOWNSHIP**

Witness:

By: \_\_\_\_\_  
Honorable Dwayne D. Warren, Esq.  
Mayor

\_\_\_\_\_  
Joyce Lanier  
City Clerk

Approved as to form and legality:

By: \_\_\_\_\_  
Aaron Mizrahi, Esq.  
Deputy City Attorney

For **PAUL CARTER**

Witness:

By: \_\_\_\_\_  
Paul Carter

\_\_\_\_\_

# **Schedule A**

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made as of July \_\_\_\_, 2023, by and between:

**City of Orange Township,**  
**a New Jersey Municipal Corporation,**  
with offices at 29 North Day Street, Orange, New Jersey, 07050,  
("City"); and,

**Paul Carter, Individually,**  
who resides at 59 South Day Street, Orange, New Jersey, 07050,  
("Seller", together with the City, "Parties").

### **RECITALS**

**WHEREAS**, Seller is the record owner of a parcel designated as Block 2805, Lot 5 on the official tax maps of the City of Orange Township, County of Essex, State of New Jersey, more commonly known as 59 South Day Street ("Property"); and,

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law ("LRHL"), *N.J.S.A. 40A:12A-1 et seq.*, the City's governing body ("Municipal Council") adopted Resolution No. 293-2009 on October 6, 2009, designating the Property as part of the Reock Street Redevelopment Area ("Redevelopment Area"); and,

**WHEREAS**, on April 20, 2010, the Municipal Council adopted Ordinance No. 6-2010, approving the Reock Street Redevelopment Plan ("Redevelopment Plan"), which established zoning and land use regulations for the Redevelopment Area; and,

**WHEREAS**, the Municipal Council subsequently amended the Redevelopment Plan in 2011 and 2021 to, among other things, expand the Redevelopment Area as a condemnation area in need of redevelopment pursuant to the LRHL; and,

**WHEREAS**, on October 19, 2021, the Municipal Council adopted Ordinance No. 50-2021, authorizing the City to acquire the Property in accordance with the Eminent Domain Act of 1971 ("EDA"), *N.J.S.A. 20:3-1, et seq.*, which requires the City to attempt to negotiate a purchase prior to seeking condemnation; and,

**WHEREAS**, by correspondence dated December 22, 2021, the City formally offered to acquire the Property based on market value appraisals performed by the City's consultant, Integra Realty Resources Inc., and approved by the Municipal Council through Ordinance No. 50-2021; and,

**WHEREAS**, on October 18, 2022, the Municipal Council adopted Ordinance No. 52-2022, amending the Redevelopment Plan to remove the Property from the Redevelopment Area and to limit the permitted use of the Property to "parks and open space" exclusively; and,

**WHEREAS**, after extensive arms-length negotiation and consultation with their respective legal counsel, the Parties reached an agreement to with respect to the purchase and sale of the Property; and,

**WHEREAS**, the Parties agreed to further memorialize their mutual promises and covenants regarding the purchase and sale of the Property; and,

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties to the terms and conditions as set forth in further detail herein.

## **TERMS**

- 1. Recitals.** All Recitals set forth above are hereby incorporated herein by reference.
- 2. Municipal Council Approval.** In accordance with the Optional Municipal Charter Law, *N.J.S.A. 40:69A-1 et seq.*, this Agreement was considered and approved by the Municipal Council through Resolution No. \_\_\_\_-2023 adopted on July \_\_, 2023. Seller understands and acknowledges that any oral or written representations by any City official or employee differing from the terms expressly set forth herein shall not bind the City unless formally approved by the Municipal Council.
- 3. Agreement to Sell.** Seller hereby agrees to sell and the City hereby agrees to purchase the Property.
- 4. Condition of the Property.** Subject to Paragraph 13 below, the City agrees to purchase the Property as-is, where-is, and with all faults. Notwithstanding, Seller agrees that, at closing of title, the Property shall be transferred vacant and free of any tenancy interests.
- 5. Purchase Price.** The total purchase price for the Property (“Purchase Price”) shall be \$266,000.00, subject to adjustments as set forth in Paragraph 9 below, and payable to Seller at closing of title by certified or attorney trust account check, or pursuant to Seller’s wire instructions.
- 6. City’s Intended Use.** Seller acknowledges that the City is purchasing the Property for the purpose of developing same and other adjoining parcels into public open park space (“Intended Use”).
- 7. Title; Permitted Exceptions.**
  - 7.1.** Title to the Property shall be good, marketable, with title valid of record, and insurable by a title insurance company of the City’s choice authorized to do business in the State of New Jersey, subject to the following exceptions which shall be deemed “Permitted Exceptions”: N/A
    - 7.1.1.** Mortgages on the Property, provided the outstanding principal balance and accrued interest due and owing thereon is less than the Purchase Price. In the event the amounts due under such mortgages are less than the Purchase Price and remain outstanding at closing of title, then such amounts shall be satisfied at closing through direct disbursement from Seller’s proceeds. If any such mortgage is not held by an institutional lender, then at closing, Seller shall present a fully executed discharge in recordable form or a mortgage properly endorsed for cancellation.
    - 7.1.2.** Laws, regulations or ordinances of federal, state, county or local entities or agencies having jurisdiction over the premises.
    - 7.1.3.** Easements, covenants, and restrictions of record, provided the same have not been violated, would not render title to the premises unmarketable, and would not materially interfere with the Intended Use.
    - 7.1.4.** Such state of facts as would be shown on an accurate survey of the Property, provided such facts do not render title to the Property unmarketable, would not materially

interfere with the Intended Use, and would not reveal encroachments onto the Property from adjoining parcels or from the Property onto adjoining parcels.

**7.2.** Within 30 calendar days after this Agreement is fully signed by the Parties, the City shall procure a preliminary certificate of title from a title insurance company of its choice licensed to do business in the State of New Jersey. Not more than 10 calendar days after receipt of said preliminary certificate, or any amendment thereto, the City shall notify Seller, in writing, of any title exceptions listed therein that do not qualify as Permitted Exceptions. Seller shall then have 30 calendar days from the date of such notice to clear or remove the non-Permitted Exceptions to the satisfaction of the City and its title insurance company. If Seller is unable, after due diligence, to remove the non-Permitted Exceptions and deliver title as required in Subparagraph 7.1 above, the City shall have the option to either accept such title as Seller is able to convey without abatement of the Purchase Price, or terminate this Agreement.

**8. Closing of Title; Delivery of Documents.** Closing of title shall take on or before September 15, 2023, with reasonable extensions only as mutually agreed upon by the Parties. Unless otherwise agreed upon by the Parties, closing shall be held in the City's offices located at the address listed in Paragraph 14 below.

At the closing, Seller shall deliver to the City a Bargain & Sale Deed, Seller's Residency Certification/Exemption (GIT/REP-3), Affidavit of Consideration (RTF-1), Affidavit of Title, corporate resolution authorizing the sale if applicable, and all such other documents as the City's title insurance company may reasonably request or require. In the event the City obtains a survey of the premises from a surveyor licensed in the State of New Jersey, Seller agrees to use a legal description in accordance with such survey, a copy of which shall be provided to Seller by the City in advance of closing. The Parties agree to exchange copies of all required closing documents not less than 3 days prior to closing.

Also at the closing, the City shall provide Seller with a release from all environmental liability relating to the Property.

**9. Adjustments at Closing.** At the time of closing, taxes, water and sewer charges, if applicable, shall be adjusted between the City and Seller as of the closing date with charges for the day of closing attributable to Seller. Real estate taxes shall be apportioned on the basis of the calendar year for which assessed, using the final tax rate or the Parties' best knowledge of the current year's assessments if the closing occurs before the final tax rate is fixed. The Parties acknowledge that this transaction is fully exempt from the Realty Transfer Fee, as the Property is being conveyed to the City, a municipal subdivision of the State of New Jersey.

**10. Assignment.** Assignment of this Agreement by any of the Parties is expressly prohibited.

**11. Possession; Pre-Closing Entry.** Following closing of title, the City may enter into and upon the Property and from thence take all rents, issues and profits for its own use. For a period not to exceed 30 calendar days after execution of this Agreement by the Parties, however, the City shall be entitled, from time to time and upon 48-hours' advance notice, to enter the Property for the purpose of conducting inspections, surveys and tests related to the Intended Use. The City shall indemnify and hold Seller harmless from all liability for damage to persons or property caused by the City or its representatives or agents, arising from such entry prior to the closing.

**12. Real Estate Brokers; Commissions, Finder's Fees, Etc.** The Parties represent and warrant to each other that the no real estate brokers or salespersons were involved with the negotiation of this Agreement or the sale of the Property to the City and that no real estate commissions, finder's fees or other remuneration was promised or will be owed to any third party relating to the Property or this transaction, prior to, at or after closing of title. The Parties agree to hold one another harmless and

indemnify one another from any losses, damages, judgments and costs, including legal fees, one may suffer if the other's representation herein proves untrue.

**13. Risk of Loss.** Risk of loss to the Property by fire or other casualty shall remain with Seller until the time of closing. In the event of fire or other casualty to the Property, Seller shall advise the City within 48-hours thereof; however, loss or damage to the Property as a result of fire or other casualty shall not be cause for the City to terminate this Agreement. Rather, if Seller is entitled to any recovery for said loss or damage pursuant to an insurance policy Seller maintained on the Property, the total amount of that recovery shall be assigned and paid to the City at closing. In the event this Agreement is terminated for any reason, the City shall not be entitled to any insurance recovery from Seller for loss or damage to the Property.

**14. Notices.** All notices, demands or communications hereunder shall be sent by registered or certified mail, postage prepaid, return receipt requested, as follows:

To Seller  
Paul Carter  
59 South Day Street  
Orange, New Jersey 07050

To the City  
Christopher Hartwyk, Business Administrator  
City of Orange Township  
29 North Day Street  
Orange, New Jersey 07050

with copy to  
Michael J. Ash, Esq.  
Carlin Ward Ash & Heiart LLC  
25B Vreeland Road, Suite 102  
P.O. Box 751  
Florham Park, New Jersey 07932

with copy to  
Aaron Mizrahi, Esq., Deputy City Attorney  
City of Orange Township  
29 North Day Street  
Orange, New Jersey 07050

**15. Seller Records.** Not later than 10 days after this Agreement is fully signed by the Parties, Seller shall provide the City with copies of all prior title insurance binders/policies, surveys, deeds, and/or other real estate records in his possession relating to the Property.

**16. Calculation of Time.** With respect to any time periods set forth herein that are calculated from the date of this Agreement, it is understood and agreed that such time period commences from the date the last party signs this Agreement and any such riders or amendments hereto.

**17. Termination of Agreement.** To the extent this Agreement is terminated pursuant to Paragraphs 7 above, the Parties shall not be entitled to compensation from one another as a result of said termination and shall be returned to their respective positions prior to entering into same.

**18. Beneficiaries of Agreement.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective present or former parents, subsidiaries, affiliates, departments, officers, directors, members, shareholders, agents, administrators, insurers, attorneys, representatives, past and present employees and all their respective heirs, representatives, successors and assigns.

**19. Choice of Law.** This Agreement shall be governed by the laws of the State of New Jersey without regard to principles of conflict of laws. All contract claims under this Agreement shall be subject to and governed by the provisions of the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.*

**20. Informed Agreement.** The Parties acknowledge that they each read this Agreement in its entirety prior to executing same. The Parties further acknowledge that they are each fully informed of their respective legal rights and obligations. The Parties further acknowledge that they each enter

into this Agreement voluntarily and without force, constraint, compulsion, coercion, intimidation, duress or hardship.

**21. Headings.** The headings of the several paragraphs of this Agreement are solely for the convenience of reference and shall have no further meaning, force or effect.

**22. Construction; Entire Agreement; Modification.**

**22.1.** The language contained in this Agreement was negotiated and is deemed to have been drafted collaboratively by the Parties.

**22.2.** This Agreement shall, in all cases, be construed as a whole according to its objective and fair meaning and shall not be interpreted in favor of or against any of the Parties. Without limitation by the foregoing, interpretation of any provision (in part or in whole) of this Agreement shall not be interpreted against the drafter in any manner.

**22.3.** This Agreement supersedes all previous understandings, agreements, statements and representations, whether oral or written, between the parties, and constitutes the complete and final expression of all understandings and agreements between the parties with respect to the subject matter hereof.

**22.4.** This Agreement shall only be amended, modified and/or amplified in a writing executed by the Parties and approved by the Municipal Council. Oral statements by any person shall not serve to amend, modify and/or amplify the terms and provisions of this Agreement in any manner.

**23. Severability; Waiver.**

**23.1.** If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by such court, agency or arbitrator, or the validity or enforceability of this Agreement as a whole.

**23.2.** The Parties' respective rights and remedies under this Agreement are cumulative and not alternative. No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy, except as otherwise provided in this Agreement. No delay, forbearance, or neglect on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof. No waiver of any of the conditions of this Agreement by a party shall be effective unless expressly and affirmatively made and given by the party against whom enforcement of the waiver is sought.

**24. Recording.** The Parties agree that, if requested by either of them, a short-form memorandum of this Agreement may be prepared and recorded in the Office of the Essex County Register of Deeds and Mortgages. The requesting party shall be responsible for all fees and costs associated with preparation and recording of said instrument.

**25. Signatures; Counterparts; Electronic Signatures.**

**25.1.** The undersigned certify that they execute this Agreement as authorized representatives of the respective parties for which they are signing, and that they have full authority to enter into and bind the respective parties to the terms of this Agreement.

**25.2.** This Agreement may be executed in 1 or more counterparts, all of which together shall be considered a single and the same document, and shall become effective when each of the Parties has signed 1 or more counterparts. It is understood that the Parties need not sign the same counterpart.

**25.3.** This Agreement may be signed electronically by any of the Parties using a digital signature that meets the requirements of the federal Electronic Signatures in Global and National Commerce (ESIGN) Act, 15 U.S.C. §§ 7001 *et seq.*, as amended, and the New Jersey Uniform Electronic Transactions Act, *N.J.S.A. 12A:12-1 et seq.*, as amended. Any digital signature affixed to this Agreement shall constitute the signing-party's intent and agreement to be bound by the terms of this Agreement and shall have the same legal effect as a "wet-ink" signature.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]  
[SIGNATURES FOLLOW ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the Parties hereby execute this Agreement as of the date first written above.

For **CITY OF ORANGE TOWNSHIP**

Witness:

By: \_\_\_\_\_  
Honorable Dwayne D. Warren, Esq.  
Mayor

\_\_\_\_\_  
Joyce Lanier  
City Clerk

Approved as to form and legality:

By: \_\_\_\_\_  
Aaron Mizrahi, Esq.  
Deputy City Attorney

For **PAUL CARTER**

Witness:

By: \_\_\_\_\_  
Paul Carter

\_\_\_\_\_

