

**CITY COUNCIL**

**The City of Orange Township, New Jersey**

**DATE** August 2, 2023

**NUMBER** 305-2023

**TITLE: A RESOLUTION OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, APPROVING AND AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF ORANGE TOWNSHIP AND SYMREC ORANGE JV LLC FOR THE SALE OF VARIOUS PARCELS DESIGNATED ON THE CITY'S OFFICIAL TAX MAPS AS BLOCK 3601, LOTS 1, 33, 34, 35, 36, 37 AND 38.**

**WHEREAS**, the City of Orange Township ("City"), SYMREC Orange JV LLC ("Purchaser") and Orange Flats LLC, Orange NJ Holdings LLC, 256 Henry Holding LLC and 184 Matthew Holding LLC (collectively, "Title Holder") previously entered into a Memorandum of Understanding ("MOU") dated April 19, 2023, related to redevelopment of the former Orange Memorial Hospital site, designated on the City's official tax map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38, and Block 3702, Lots 4, 5, and 6 (collectively "Hospital Property"), which are currently owned by the Title Holder; and,

**WHEREAS**, the MOU divides the Hospital Property into 3 distinct development assemblages, identified as: "Site A", comprising Block 3601, Lots 1 and 33-38; "Site B", comprising Block 3601, Lots 2-5 and 18; and, "Site C", comprising Block 3702, Lots 4-6; and,

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law ("LRHL"), *N.J.S.A. 40A:12A-1 et seq.*, the City and Purchaser entered into a Redevelopment Agreement ("RDA") approved by the Municipal Council on July 5, 2023, under Resolution No. 275-2023, in furtherance of the MOU and phased redevelopment of the Hospital Property; and,

**WHEREAS**, pursuant to the MOU, the Title Holder shall convey Site A to the City which shall, thereafter, convey Site A to the Purchaser pursuant to the LRHL and the Local Buildings and Lands Law, *N.J.S.A. 40A:12-1 et seq.*, in exchange for payment equal to \$15,000,000.00, less an environmental remediation credit of up to \$7,800,000.00; and,

**WHEREAS**, the Parties have further documented their mutual promises and covenants regarding the transfer of title to Site A in a comprehensive Purchase and Sale Agreement, a copy of which is appended hereto.

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

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

Adopted: August 2, 2023

\_\_\_\_\_  
Joyce L. Lanier  
City Clerk

\_\_\_\_\_  
Tency A. Eason  
Council President

 A. MIZEANT

1935年10月10日 星期三 晴

10月10日



**PURCHASE AND SALE AGREEMENT**

between

**CITY OF ORANGE TOWNSHIP, Seller**

and

**SYMREC ORANGE JV LLC, Purchaser**

dated as of

August \_\_, 2023

This PURCHASE AND SALE AGREEMENT (this "**Agreement**"), dated as of the \_\_\_ day of August, 2023 (the "**Effective Date**"), is entered into between City of Orange Township, a municipal corporation of the State of New Jersey, with offices located at 29 North Day Street, Orange, New Jersey 07050 ("**Seller**"), and SYMREC Orange JV LLC, a New Jersey limited liability company, with an address at 211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701 ("**Purchaser**").

## RECITALS

WHEREAS, Seller, Purchaser, and Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC (collectively, the "**Property Owner**") have previously entered into a Memorandum of Understanding dated April 19, 2023 (the "**MOU**") related to redevelopment of the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the "**Hospital Site Property**") which are currently owned by the Property Owner; and

WHEREAS, the MOU further defines the Hospital Site Property as three (3) distinct development parcels identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 ("**Site A**"), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 ("**Site B**"), and Site C, consisting of Block 3702, Lots 4, 5, 6 ("**Site C**"); and

WHEREAS, the Seller and the Purchaser have entered into a Redevelopment Agreement dated July \_\_, 2023 (the "**Redevelopment Agreement**") in furtherance of the MOU and the redevelopment of the Hospital Site Property in phases; and

WHEREAS, pursuant to the MOU, the Property Owner shall convey Site A to the Seller for nominal consideration upon satisfaction of certain conditions, and thereafter, and subject to further conditions in the MOU, the Seller shall convey Site A to the Purchaser; and

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Purchaser Site A and Purchaser desires to purchase Site A from Seller in order for the Purchaser to develop Site A pursuant to the terms of the MOU and Redevelopment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

"**Agreement**" has the meaning set forth in the Preamble.

"**Broker**" has the meaning set forth in Section 12.01.

"**Business Day**" has the meaning set forth in Section 15.06.

"**Closing**" has the meaning set forth in Section 5.01.

"**Closing Date**" has the meaning set forth in Section 5.01.

"**Closing Statement**" has the meaning set forth in Section 9.02.

**"Conveyance Deed"** has the meaning set forth in **Section 7.01(a)**.

**"Effective Date"** has the meaning set forth in the Preamble to this Agreement.

**"Environmental Laws"** has the meaning set forth in **Section 13.03**.

**"Facts"** has the meaning set forth in **Section 6.01(d)**.

**"FIRPTA Certificate"** has the meaning set forth in **Section 7.01(c)**.

**"Hazardous Substances"** has the meaning set forth in **Section 13.03**.

**"Holiday"** has the meaning set forth in **Section 15.06**.

**"Laws and Regulations"** has the meaning set forth in **Section 6.01(b)**.

**"Non-Objectionable Encumbrances"** has the meaning set forth in **Section 6.02(c)**.

**"Party or Parties"** has the meaning set forth in **Section 15.03(b)**.

**"PCBs"** has the meaning set forth in **Section 13.03**.

**"Permitted Exceptions"** has the meaning set forth in **Section 6.01**.

**"Person or Persons"** has the meaning set forth in **Section 15.05(c)**.

**"Property"** or **"Site A"** has the meaning set forth in **Section 2.01**.

**"Purchase Price"** has the meaning set forth in **Section 3.01**.

**"Purchaser"** has the meaning set forth in the preamble to this Agreement.

**"Purchaser's Representatives"** has the meaning set forth in **Section 4.01**.

**"Rights"** has the meaning set forth in **Section 6.01(c)**.

**"Seller"** has the meaning set forth in the preamble to this Agreement.

**"Seller Related Parties"** has the meaning set forth in **Section 4.03**.

**"Title Company"** has the meaning set forth in **Section 6.02(b)**.

**"Title Insurance Policy"** has the meaning set forth in **Section 11.02(c)**.

**"Title Report"** has the meaning set forth in **Section 6.02(b)**.

**"Title Report Objection Date"** has the meaning set forth in **Section 6.02(b)**.

**"Title Report Objection Notice"** has the meaning set forth in **Section 6.02(b)**.

"Violations" has the meaning set forth in Section 6.01(e).

## **ARTICLE II PURCHASE AND SALE**

**Section 2.01 The Property.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller in accordance with the terms and conditions of this Agreement, Site A, including all right, title, and interest therein, and all improvements thereon ("Site A" or the "Property").

## **ARTICLE III PURCHASE PRICE**

**Section 3.01 Purchase Price.** Purchaser shall pay Seller the sum of Fifteen Million and 00/100 Dollars (\$15,000,000) (the "Purchase Price"), subject to the credits as are provided in Article IX, and further subject to the conditions and prorations set forth in Article V.

**Section 3.02 Payment of Purchase Price.** Purchaser shall pay the Purchase Price to Seller on the Closing Date, simultaneously with the delivery of the Conveyance Deed, by federal funds wire transfer of immediately available funds to an account at such bank or banks as shall be designated by Seller by notice to Purchaser at least two (2) Business Days prior to the Closing Date.

**Section 3.03 No Financing Contingency.** Purchaser expressly agrees and acknowledges that Purchaser's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Purchaser's ability to obtain financing of any type or nature whatsoever, whether by way of debt financing or equity investment, or otherwise.

## **ARTICLE IV ACCESS**

**Section 4.01 Purchaser's Access.** Subject to the provisions of Section 4.02, Purchaser and its agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively "Purchaser's Representatives") shall have the right, through the Closing Date, to enter upon and pass through Site A to examine and visually inspect the same, and to perform any necessary environmental remediation. Notwithstanding any such inspection, or anything to the contrary herein contained, Purchaser's obligations hereunder shall not be limited or otherwise affected as a result of any fact, circumstance, or other matter of any kind discovered from the Effective Date in connection with any such inspection, access, or otherwise; it being agreed that Seller is permitting Purchaser such right of inspection and access as a courtesy to Purchaser in its preparation for taking title to Site A. Without limiting the generality of the foregoing: (a) Purchaser agrees that it shall not have any so-called "due diligence period" and that it shall have no right to terminate this Agreement or obtain a reduction of the Purchase Price as a result of any such fact, circumstance, or other matter so discovered (including, without limitation, relating to the physical condition of Site A, or otherwise); and (b) Purchaser shall have no right to terminate this Agreement except as otherwise expressly provided in this Agreement; provided however, that to the extent the Site Remediation Costs, as evidenced by environmental reports and remediation costs estimates provided to the Purchaser from its third party consultants (who are

reasonably acceptable to the Seller) and submitted to the Seller, exceed \$15,000,000, the Purchaser may terminate this Agreement with no further obligations to the Seller under this Agreement.

#### **Section 4.02 Purchaser's Right to Inspect or Remediate.**

(a) In conducting any inspection or remediation of Site A or otherwise accessing Site A, Purchaser shall at all times: (i) comply with all laws and regulations of all applicable governmental authorities; and (ii) maintain or ensure Purchaser's Representative to maintain, a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Seller and naming Seller as an additional insured covering all of the activities to be undertaken by the Purchaser on Site A with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00, and such other insurance as may be reasonably required by Seller, and deliver to Seller a certificate of insurance evidencing that such insurance is in force and effect prior to Purchaser's or Purchaser's Representatives first entry onto Site A to conduct any inspection. Purchaser shall schedule and coordinate all inspections of Site A or other access thereto with Seller and shall give Seller at least two (2) Business Days prior notice thereof. In no event shall Seller unreasonably interfere or impede Purchaser or Purchaser's Representatives from entering Site A. Seller shall be entitled to have a representative present at all times during each such inspection or other access but shall not unreasonably interfere with Purchaser or Purchaser's Representatives from accessing Site A. All inspection fees, appraisal fees, engineering fees, and other costs and expenses of any kind incurred by Purchaser or Purchaser's Representatives relating to such inspection and its other access shall be at the sole expense of Purchaser, and none of these costs shall be considered Site Remediation Costs. The provisions of this Section 4.20(a) shall survive the Closing or any termination of this Agreement.

(b) Copies of any environmental reports, including site remediation reports shall be provided to Seller.

**Section 4.03 Seller Indemnification.** Purchaser agrees to indemnify and hold Seller and its disclosed or undisclosed, elected officials, employees, agents, representatives, consultants, accountants, contractors, and attorneys or other advisors, and any successors or assigns of the foregoing (collectively with Seller, the "**Seller Related Parties**"), harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) incurred by any Seller Related Parties arising from or by reason of Purchaser's and/or Purchaser's Representatives' access to, or inspection of, Site A, or any tests, inspections, or other due diligence conducted by or on behalf of Purchaser, except to the extent such losses, costs, damages, liens, claims, liabilities, or expenses are caused by an existing condition at Site A or are caused by the gross negligence or willful misconduct of any of the Seller Related Parties. The provisions of this Section 4.03 shall survive the Closing or any termination of this Agreement.

## **ARTICLE V CLOSING**

**Section 5.01 Closing; Closing Date.** The closing of the transaction contemplated hereby (the "**Closing**") shall occur shall take place within thirty-six (36) months of the Effective Date (the "**Closing Date**"), upon 30-day notice from the Purchaser of its intent to close on Site A; provided however that, so

long as the Purchaser is diligently and in good faith pursuing the approvals and/or financing for the development and acquisition of Site A, the Seller will consider any reasonable request(s) by the Purchaser for extensions ("**Extension Request**"), the timeframe of which will be mutually determined by the Parties at the time of such Extension Request. The Purchaser shall provide the reasons for the extension in the Extension Request and the Seller in good faith will consider the same. Notwithstanding the foregoing, pursuant to the MOU and the Redevelopment Agreement the Purchaser shall have the right, in its sole discretion, to "phase" the development of Site A into no more than three (3) "phases". In the event that the Purchaser elects to phase to the development of Site A, the Purchaser shall have the right to acquire only such portion of Site A as necessary for such phase of the development and at a prorated purchase price, subject to the Environmental Closing Credit. By way of example and not limitation, in the event that the first phase of the development of Site A consists of forty percent (40%) of the acreage of Site A, the purchase price for the portion of Site A necessary for such first phase shall be equal to forty percent (40%) of the Purchase Price, subject to the Environmental Closing Credit. The Closing shall be in accordance with the terms and conditions of this Agreement, at the offices of Murphy Schiller & Wilkes LLP, 24 Commerce Street, 12<sup>th</sup> Floor, Newark, New Jersey 07102 or by the Title Company acting as settlement agent, pursuant to written instructions from the Purchaser and Seller. If the Purchaser elects to purchase Site A in phases, Closing Date shall mean each separate Closing Date for such phase, and Purchase Price shall mean the Purchase Price for such phased Closing Date.

## **ARTICLE VI EXCEPTIONS TO TITLE; TITLE MATTERS**

**Section 6.01 Permitted Exceptions.** The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject only to the following matters (collectively, the "**Permitted Exceptions**"):

(a) All presently existing and future liens for unpaid real estate taxes and water and sewer charges not due and payable as of the Closing Date.

(b) All present and future zoning, building, environmental, and other laws, ordinances, codes, restrictions, and regulations of all governmental authorities having jurisdiction with respect to Site A, including, without limitation, landmark designations and all zoning variances and special exceptions, if any (collectively, "**Laws and Regulations**").

(c) All covenants, restrictions, and rights of record and all easements and agreements of record for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer, or other utility pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under Site A (collectively, "**Rights**"), provided as to any such exceptions that are not set forth in the Title Report, such exceptions do not interfere with the present use of Site A.

(d) Any state of facts which would be shown on or by an accurate current survey of Site A, together with any additional state of facts that a subsequent accurate survey of Site A would show (collectively, "**Facts**").



(e) All violations of property, building, fire, sanitary, environmental, housing, and similar Laws and Regulations (collectively, "**Violations**") prior to the Effective Date through the Closing Date.

(f) De-minimis variations between tax lot lines and lines of record title that do not impact the quality or marketability of title or cause title not to be insured at regular rates.

(g) The standard conditions and exceptions to title contained in the form of title policy or "marked-up" title commitment issued to Purchaser by the Title Company.

(h) The Non-Objectionable Encumbrances and any liens, encumbrances, or other title exceptions approved or waived by Purchaser as provided in this Agreement.

(i) Any other matter which the Title Company may raise as an exception to title, provided the Title Company will insure against collection or enforcement of same out of Site A and/or that no prohibition of present use or maintenance of Site A will result therefrom, as may be applicable.

(j) Any lien or encumbrance arising out of the acts or omissions of Purchaser.

(k) Any special assessments including but not limited to any and all special assessments that are presently assessed, a lien against or imposed on Site A, not yet due and payable and payable in installments or in a lump sum.

(l) Any exceptions to title that exist as of the date the Property Owner conveys the Site A to the Seller.

## **Section 6.02 Title.**

(a) Seller's title to Site A shall be conveyed in fee simple and shall be insurable at regular rates by a reputable title insurance company authorized to do business in New Jersey, subject only to the Permitted Exceptions.

(b) Purchaser shall promptly order from [TITLE COMPANY NAME] (the "**Title Company**"), a title commitment for an ALTA title insurance policy (the "**Title Report**") and survey and shall cause a copy of the Title Report and survey to be delivered to Seller's attorney concurrently with the delivery thereof to Purchaser's attorney. No later than ten (10) Business Day[s] after the date hereof (the "**Title Report Objection Date**"), Purchaser shall furnish to Seller's attorney written notice (the "**Title Report Objection Notice**") specifying any exceptions to title to Site A set forth in the Title Report which are not Permitted Exceptions (each, a "**Title Objection**"). Purchaser's failure to timely deliver the Title Report Objection Notice on or prior to the Title Report Objection Date shall constitute Purchaser's irrevocable acceptance of the Title Report and Purchaser shall be deemed to have unconditionally waived any right to object to any matters set forth therein. If, after giving the Title Report Objection Notice to Seller, Purchaser receives a continuation report showing any exceptions to title to Site A which are not Permitted Exceptions, Purchaser shall give written notice thereof to Seller no later than two (2) Business Day[s] after the date Purchaser receives such continuation report. If Purchaser fails to give Seller

such notice, Purchaser shall be deemed to have unconditionally waived any additional matters as to which it fails to give such notice to Seller.

(c) For the avoidance of doubt, Purchaser and Seller hereby acknowledge and agree that Purchaser shall only have the right to object to those exceptions to title disclosed on Schedule B of the Title Report that are not Permitted Exceptions. Permitted Exceptions shall be deemed to include, without limitation, any liens, encumbrances, or other title exceptions: (i) which the Title Company is willing to omit as exceptions to title (without additional cost to Purchaser or where Seller pays such cost for Purchaser provided that the Title Company shall also agree to provide the same coverage to subsequent purchasers without cost); or (ii) which shall be extinguished upon the transfer of Site A (collectively, the "**Non-Objectionable Encumbrances**").

(d) If the Seller is not able to convey title to Site A on the Closing Date due to any Title Objection, Seller and Purchaser shall have the following rights and obligations:

(i) Seller shall be entitled to no more than three (3), thirty (30) day adjournments of the Closing in order to enable Seller to convey title to Site A without the Title Objections. In the event Seller cannot remove the Title Objections within this time period, Purchaser shall be entitled to terminate this Agreement in which event this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement;

(ii) If Seller does not so elect to adjourn the Closing, and on the Closing Date, fails or is unable to convey title subject to and in accordance with the provisions of this Agreement, Purchaser shall be entitled, to either: (A) terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (B) complete the purchase (with no reduction in the Purchase Price) with such title as Seller is able to convey on the Closing Date. If Purchaser shall fail to give such notice as aforesaid, Purchaser shall be deemed to have elected clause (B) above and the Closing shall take place on the Closing Date;

(iii) If Seller elects to adjourn the Closing as provided above, this Agreement shall remain in effect for the period or periods of adjournment, in accordance with its terms. If, on the Closing Date, Seller fails or is unable to convey title to Site A subject to and in accordance with the provisions of this Agreement, Purchaser shall make its election between clauses (A) and (B) of Section 6.02(d)(ii) above, by written notice to Seller given not later than the Closing Date. If Purchaser shall fail to give such notice as aforesaid, Purchaser shall be deemed to have elected clause (A) above and the Agreement will be terminated, void and of no further force or effect; and

(e) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to take or bring any action or proceeding or any other steps to remove any

defect in or objection to title or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity.

**Section 6.03 Title As Seller Can Convey.** Notwithstanding anything in Section 6.02 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller. The acceptance of the Conveyance Deed by Purchaser shall be deemed to be full performance of, and discharge of, every agreement and obligation on Seller's part to be performed under this Agreement, except for such matters which are expressly stated to survive the Closing hereunder.

**Section 6.04 Unpaid Taxes and Violations.** The Purchaser shall within fifteen (15) days of the Effective Date pay the amount of any unpaid taxes and Violations, which are the subject of summons, on or related to Site A.

## **ARTICLE VII CLOSING DELIVERIES**

**Section 7.01 Seller's Closing Deliveries.** Seller shall deliver or cause to be delivered to Purchaser, at or prior to the Closing Date, all of the following:

(a) Provided the Property Owner has delivered a bargain and sale deed with covenant's against grantor's acts to the Seller, the Seller will deliver one (1) original bargain and sale deed with covenant's against grantor's acts (the "**Conveyance Deed**"), executed by Seller and acknowledged, and in recordable form, conveying to Purchaser Site A, subject only to the Permitted Exceptions.

(b) One (1) original of an affidavit of consideration for the realty transfer fee to be filed with the Conveyance Deed, executed by Seller.

(c) One (1) original affidavit executed by Seller and stating its taxpayer identification number for federal income tax purposes and that Seller is not a foreign person within the meaning of Section 1445, *et seq.* of the Internal Revenue Code (the "**FIRPTA Certificate**").

(d) One (1) seller's residency certificate, executed by Seller with respect to the withholding requirements for New Jersey Income Tax.

(e) To the extent in the possession of Seller, all keys, key cards, passwords, and access codes for entrance to Site A and identification of the locks to which they correspond.

(f) A resolution of Seller authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(g) A written certificate stating that all representations and warranties contained in Section 10.01 remain, as of the Closing Date, true, correct, and complete in all material respects as when first made hereunder.

(h) One (1) original title affidavit in a form reasonably acceptable to Seller and the Title Company.

(i) One (1) original 1099-S.

(j) One (1) copy of the recorded discharge of mortgage which is held/owned by the Seller.

(k) Two (2) original Closing Statements.

(l) All other documents reasonably necessary or otherwise required by Title Company or Purchaser to consummate the transactions contemplated by this Agreement.

**Section 7.02 Purchaser's Closing Deliveries.** Purchaser shall deliver or cause to be delivered to Seller, at prior to the Closing Date, all the following:

(a) The Purchase Price.

(b) An affidavit of consideration for the mansion tax, if applicable.

(c) A consent of the members of Purchaser authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(d) Such evidence as the Title Company may require as to the authority of the person or persons executing documents on behalf of Purchaser.

(e) Two (2) original Closing Statements.

(f) All other documents reasonably necessary or otherwise required by the Title Company or Seller to consummate the transactions contemplated by this Agreement.

## **ARTICLE VIII CLOSING COSTS**

**Section 8.01 Seller's Closing Costs.** Seller shall incur no closing costs in connection with the transaction contemplated by this Agreement, all of which shall be paid for by the Purchaser.

**Section 8.02 Purchaser's Closing Costs.** Purchaser shall pay all closing costs including the following costs and expenses in connection with the transaction contemplated by this Agreement:

(a) Recording fees for the recording of the Conveyance Deed and any mortgage.

(b) Any applicable mansion tax and/or other purchaser transfer fees due at Closing.

(c) The cost of the Title Report.

(d) The cost of the Title Insurance Policy.

(e) The cost of the survey.

(f) Any and all costs associated with any financing Purchaser may obtain to consummate the acquisition of Site A.

(g) Any and all costs incurred by Purchaser or Seller in connection with the preparation, review, and negotiation of this Agreement and the transactions and the Closing contemplated by this Agreement, including any expenses associated with Purchaser's investigation of Site A, and any Purchaser or Seller attorneys' or consultancy fees.

## **ARTICLE IX CREDITS**

**Section 9.01 Environmental Credit.** The Parties understand and agree that Site A has multiple buildings that need to be demolished prior to commencing construction, and certain known and unknown environmental conditions and remediation costs (the "**Environmental Conditions**"). The Parties, pursuant to the MOU, agreed that the Purchaser shall be responsible for the remediation of the Environmental Conditions on Site A as well as any Environmental Conditions on Site B and Site C that originated at Site A (the "**Site Remediation Costs**") at its sole cost subject to the receipt of a credit at Closing of up to \$7,800,000 against the Purchase Price (the "**Environmental Credit**"). In furtherance of the foregoing, the Purchaser shall have the right to conduct such environmental remediation pursuant to Section 4.02 of this Agreement, and following the Closing on Site A (or any "phase" thereof). In such case, the estimated cost of the total remediation of the entire Site A (as determined by Purchaser's environmental consultant), up to \$7,800,000 (or the allocable portion thereof if Site A is acquired in phases), shall be withheld from the sale proceeds payable to Seller, and placed into an escrow account with the Title Company (the "**Environmental Escrow**"). Following such Closing, the Purchaser shall have the right to use and draw down on the Environmental Escrow to pay for the Site Remediation Costs.

**Section 9.02 Closing Statement.** On or prior to the Closing Date, Seller and Purchaser shall agree to the amount of the Environmental Credit to be paid on the Closing Date, and Seller and Purchaser and/or their respective agents or designees shall jointly prepare, and at the Closing, Seller and Purchaser shall execute and deliver, a closing statement (the "**Closing Statement**") which shall reflect the amount of the Environmental Credit to be subtracted from the Purchase Price to be paid to Seller at the Closing.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

### **Section 10.01 Seller's Representations and Warranties.**

(a) Except as expressly set forth in this Section 10.01, Seller has not made and does not make any representations or warranties, including any representations or warranties as to the physical and environmental condition, layout, footage, rents, income, expenses, zoning, or other matters with respect to Site A.

(b) Seller represents and warrants that:

(i) Seller is a municipal corporation of the State of New Jersey. Seller has full power and authority to enter into and perform this Agreement in accordance with its terms. All requisite action has been taken by Seller in connection with this Agreement or shall have been taken on or prior to the Closing Date. Seller's execution, delivery, and performance of this Agreement have been duly and validly authorized and all required consents or approvals have been obtained. The individuals executing this Agreement on behalf of Seller have the power and authority to bind Seller to the terms and conditions of this Agreement;

(ii) This Agreement is valid and binding upon Seller, enforceable against Seller in accordance with its terms, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally;

(iii) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code 1986, as amended, or any regulations promulgated thereunder (collectively, the "Code");

(iv) Seller will dismiss any and all legal proceedings, lawsuits or claims by Seller and against any predecessor in interest for Site A; and

(v) Seller will cooperate with the Purchaser to resolve any outstanding Violations that cannot be resolved prior to Closing.

#### **Section 10.02 Purchaser's Representations and Warranties.**

(a) Purchaser represents and warrants that:

(i) Purchaser has full power and authority to enter into and perform this Agreement in accordance with its terms. Purchaser is a New Jersey limited liability company validly formed and in good standing under the laws of the State of New Jersey. All requisite action (corporate, trust, partnership, or otherwise) has been taken by Purchaser in connection with this Agreement or shall have been taken on or prior to the Closing Date. Purchaser's execution, delivery, and performance of this Agreement have been duly authorized and all required consents or approvals have been obtained. The individuals executing this Agreement on behalf of Purchaser have the power and authority to bind Purchaser to the terms and conditions of this Agreement;

(ii) This Agreement is a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally;

(iii) Except for the express representations and warranties of Seller found in Section 10.01, Purchaser is acquiring Site A on an "AS IS, WHERE IS" basis, without any representation or warranty of any kind or nature whatsoever, express or implied, and Purchaser acknowledges that no such representations or warranties have been made

except as set forth in writing herein. In deciding whether to acquire Site A, Purchaser is relying solely on Purchaser's investigation of Site A;

(iv) Purchaser has received from Seller all environmental assessments/environmental reports within its possession; and

(v) Purchaser is not, and shall not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations OFAC (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or be otherwise associated with such persons or entities.

**Section 10.03 No Representations.** PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.01, NEITHER SELLER, NOR ANY PERSON ACTING ON BEHALF OF SELLER, NOR ANY PERSON OR ENTITY WHICH PREPARED OR PROVIDED ANY OF THE MATERIALS REVIEWED BY PURCHASER IN CONDUCTING ITS DUE DILIGENCE, NOR ANY ELECTED OFFICIAL, EMPLOYEE, AGENT, REPRESENTATIVE, ACCOUNTANT, ADVISOR, ATTORNEY, PRINCIPAL, CONSULTANT, CONTRACTOR, SUCCESSOR, OR ASSIGN OF ANY OF THE FOREGOING PARTIES (SELLER, SELLER RELATED PARTIES, AND ALL THE OTHER PARTIES DESCRIBED IN THE PRECEDING PORTIONS OF THIS SENTENCE (OTHER THAN PURCHASER) SHALL BE REFERRED TO HEREIN COLLECTIVELY AS THE "**EXCULPATED PARTIES**") HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION WARRANTIES OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE PROPERTY, THE PERMITTED USE OF THE PROPERTY, OR THE ZONING AND OTHER LAWS, REGULATIONS, AND RULES APPLICABLE THERETO OR THE COMPLIANCE BY THE PROPERTY THEREWITH, OR OTHERWISE RELATING TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREIN. PURCHASER FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL MATERIALS WHICH HAVE BEEN PROVIDED BY ANY OF THE EXCULPATED PARTIES HAVE BEEN PROVIDED WITHOUT ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THEIR CONTENT, SUITABILITY FOR ANY PURPOSE, ACCURACY, TRUTHFULNESS, OR COMPLETENESS AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER SHALL NOT HAVE ANY RECOURSE AGAINST SELLER OR ANY OF THE OTHER EXCULPATED PARTIES IN THE EVENT OF ANY ERRORS THEREIN OR OMISSIONS THEREFROM. PURCHASER IS ACQUIRING THE PROPERTY BASED SOLELY ON ITS OWN INDEPENDENT INVESTIGATION AND INSPECTION OF THE PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY SELLER OR ANY OF THE OTHER EXCULPATED PARTIES, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH

HEREIN, PURCHASER EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS PROVIDED TO IT BY SELLER IN CONNECTION WITH ITS DUE DILIGENCE AND AGREES THAT IT SHALL RELY SOLELY ON ITS OWN INDEPENDENTLY DEVELOPED OR VERIFIED INFORMATION.

## **ARTICLE XI CONDITIONS TO CLOSING**

**Section 11.01 Conditions Precedent to Obligations of Seller.** Notwithstanding anything to the contrary contained herein, the obligation of Seller to close title in accordance with this Agreement is expressly conditioned upon the delivery to the Seller of title to Site A from the Property Owner, and the fulfillment by and as of the time of the Closing of each of the conditions listed below, provided that Seller, at its election, evidenced by written notice delivered to Purchaser at or prior to the Closing, may waive any of such conditions:

(a) Purchaser shall have: (i) executed and delivered to Seller all the documents required to be executed and delivered under this Agreement; (ii) paid the Purchase Price in accordance with Section 3.02 above; (iii) paid all other sums of money required under this Agreement; and (iv) taken or caused to be taken all the other action required of Purchaser pursuant to this Agreement.

(b) Purchaser shall not be in default of any covenant or agreement to be performed by Purchaser under this Agreement and there is no uncured Event of Default (as defined in the Redevelopment Agreement) by the Purchaser on its obligations under the Redevelopment Agreement or the MOU, and shall have performed all other reasonable obligations required to be performed by it under this Agreement on or prior to the Closing Date.

(c) On the Closing Date all representations and warranties made by Purchaser in Section 10.02 shall be true and correct as if made on the Closing Date.

**Section 11.02 Conditions Precedent to Obligations of Purchaser.** Notwithstanding anything to the contrary contained herein, the obligation of Purchaser to close title and pay the Purchase Price in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the time of the Closing of each of the conditions listed below, provided that Purchaser, at its election, evidenced by written notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions:

(a) Seller shall have executed and delivered to Purchaser all the documents required to be executed and delivered under this Agreement and required to be delivered by Seller at the Closing and shall have taken all other action required of Seller at the Closing.

(b) All representations and warranties made by Seller in Section 10.01 shall be true and correct in all material respects as if made on the Closing Date, provided, however, to the extent the facts and circumstances underlying such representations and warranties may have changed as of the Closing Date, Seller shall have the right to update its representations and warranties as of the Closing Date and Purchaser shall be obligated to consummate the transactions contemplated by this Agreement on the Closing Date.



(c) The Title Company shall be willing to insure title to Site A pursuant to an ALTA Title Insurance Policy in the amount of the Purchase Price, subject only to the Permitted Exceptions and as otherwise provided in this Agreement (the "**Title Insurance Policy**").

### **Section 11.03 Failure of Conditions to Closing.**

(a) If Purchaser is unable to timely satisfy (and Seller has not waived in writing), then Purchaser may, if it so elects and without any abatement in the Purchase Price: (i) adjourn the Closing Date for no more than three (3) thirty (30) day periods; and (ii) if, after any such extension, the conditions precedent to Seller's obligation to effect the Closing continue not to be satisfied (and Seller has not waived the same in writing) or Purchaser does not elect such extension and, in either case, such failure or condition precedent is not the result of Purchaser's default hereunder, the Purchase or Seller shall be entitled to terminate this Agreement by notice thereof to the other Party in accordance with the terms of this Agreement. If this Agreement is so terminated, then neither party shall have any further obligations hereunder, except those expressly stated to survive the termination hereof.

(b) If Seller is unable to timely satisfy (and Purchaser has not waived in writing) the conditions precedent to Purchaser's obligation to effect the Closing (and Purchaser has not waived the same in writing), then Seller may, if it so elects and without any abatement in the Purchase Price: (i) adjourn the Closing Date for no more than three (3) thirty (30) day periods; and (ii) if, after any such extension, the conditions precedent to Purchaser's obligation to effect the Closing continue not to be satisfied (and Purchaser has not waived the same in writing) or Seller does not elect such extension and, in either case, such failure of condition precedent is not the result of Seller's default hereunder, then Purchaser or Seller shall be entitled to terminate this Agreement by notice thereof to the other party in accordance with the terms of this Agreement. If this Agreement is so terminated, then neither party shall have any further obligations hereunder, except those expressly stated to survive the termination hereof.

## **ARTICLE XII BROKERAGE COMMISSIONS**

**Section 12.01 Purchaser Representation.** Purchaser represents and warrants to Seller that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, either directly or indirectly, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each a "**Broker**") in connection with this Agreement or the transactions contemplated hereby. Purchaser hereby agrees to indemnify, defend, and hold Seller and its elected officials, employees, agents, contractors, and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs, and expenses (including reasonable attorneys' fees, court costs, and disbursements) arising from any claim for commission, fees, or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with Purchaser in connection with this Agreement or the transactions contemplated hereby.

**Section 12.02 Seller Representation.** Seller represents and warrants to Purchaser that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, either directly or indirectly, any Broker in connection with this Agreement or the transactions contemplated hereby. Seller hereby agrees to indemnify, defend, and hold Purchaser and its disclosed and undisclosed direct and indirect

shareholders, officers, directors, partners, principals, members, employees, agents, contractors, and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs, and expenses (including reasonable attorneys' fees, court costs, and disbursements) arising from any claim for commission, fees, or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with Seller in connection with this Agreement or the transactions contemplated hereby.

**Section 12.03 Survival.** The provisions of this Article XII shall survive the termination of this Agreement or the Closing.

## **ARTICLE XIII AS-IS**

**Section 13.01 AS-IS, WHERE-IS.** Except as expressly set forth in this Agreement to the contrary, Purchaser is expressly purchasing Site A in its existing condition "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and Seller has no obligation to determine or correct any such facts, circumstances, conditions, or defects or to compensate Purchaser for same. Seller has specifically bargained for the assumption by Purchaser of all responsibility to investigate Site A, Laws, and Regulations, Rights, Facts, Violations, and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Purchaser has undertaken all such investigations of Site A, Laws, and Regulations, Rights, Facts, and Violations, as Purchaser deems necessary or appropriate under the circumstances as to the status of Site A and, based upon same, Purchaser is and shall be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. Purchaser is and shall be fully satisfied that the Purchase Price is fair and adequate consideration for Site A and, by reason of all the foregoing, Purchaser assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to Site A.

**Section 13.02 No Warranty or Other Representation.** Except as expressly set forth in this Agreement to the contrary, Seller hereby disclaims all warranties of any kind or nature whatsoever (including, without limitation, warranties of habitability and fitness for particular purposes), whether expressed or implied, including, without limitation, warranties with respect to Site A. Except as is expressly set forth in this Agreement to the contrary, Purchaser acknowledges that it is not relying upon any representation of any kind or nature made by Seller, or any of its elected officials, employees, or agents (collectively, the "**Seller Related Parties**") with respect to Site A, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation, or order.

**Section 13.03 Environmental Laws; Hazardous Materials.** Seller makes no warranty with respect to the presence of Hazardous Materials on, above, or beneath Site A (or any parcel in proximity thereto) or in any water on or under Site A. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause Seller to be joined in any action brought under any Environmental Laws. As used herein, the term "**Hazardous Materials**" shall mean: (a) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them; (b) petroleum and petroleum products, including, without

limitation, crude oil and any fractions thereof; (c) natural gas, synthetic gas, and any mixtures thereof; (d) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite, and/or actinolite, whether friable or non-friable; (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids; (f) radon; (g) any other hazardous or radioactive substance, material, pollutant, contaminant, or waste; and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring, or remediation. As used herein, the term "**Environmental Laws**" shall mean all federal, state, and local laws, statutes, ordinances, and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees, and binding judgments relating to the regulation and protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 5101 *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 *et seq.*), the Clean Air Act, as amended (42 U.S.C. §§ 7401 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f *et seq.*), the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 *et seq.*), the New Jersey Industrial Site Recovery Act (N.J.S.A. 13:1K-6 *et seq.*), the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 *et seq.*), the New Jersey Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1.1 *et seq.*), the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 *et seq.*), the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 *et seq.*), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*), and any other state or local counterpart or equivalent of any of the foregoing, and any federal, state, or local transfer of ownership notification or approval statutes.

**Section 13.04 Seller Release.** Purchaser shall rely solely upon Purchaser's own knowledge of Site A based on its investigation of Site A and its own inspection of Site A in determining Site A's physical condition, and Purchaser agrees that it shall, subject to the express warranties, representations, and conditions contained in this Agreement, assume the risk that adverse matters, including, but not limited to, construction defects and adverse physical and environmental conditions may not have been revealed by Purchaser's investigations. Except as expressly set forth in this Agreement to the contrary, Purchaser releases Seller, the Seller Related Parties, and their respective successors and assigns from and against any and all claims which Purchaser or any party related to or affiliated with Purchaser (each, a "**Purchaser Related Party**") has or may have arising from or related to any matter or thing related to or in connection with Site A except as expressly set forth in this Agreement to the contrary, including the documents and information referred to herein, any construction defects, errors or omissions in the design or construction, and any environmental conditions and, except as expressly set forth in this Agreement to the contrary, neither Purchaser nor any Purchaser Related Party shall look to Seller, the Seller Related Parties, or their respective successors and assigns in connection with the foregoing for any redress or relief. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages, and causes of action. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation, or order.

**Section 13.05 Survival.** The provisions of this Article XVI shall survive the Closing or the earlier termination of this Agreement and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

## **ARTICLE XIV REMEDIES**

**Section 14.01 Seller's Remedies in the Event of Purchaser's Breach or Default.** In the event of Purchaser's default or breach in its obligations under this Agreement, after written notice and thirty (30) days to cure, the Seller shall have the right as its sole and exclusive remedy to terminate this Agreement by delivery of written notice to Purchaser and seek reimbursement for any reasonable legal fees, and costs incurred in the enforcement of any dispute arising from this Agreement related to such default or breach. Upon payment of the legal fees and costs to Seller, this Agreement shall be terminated, and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement.

**Section 14.02 Purchaser's Remedies in the Event of Seller's Breach or Default.** In the event Seller should default in its obligations under this Agreement, after written notice and thirty (30) days to cure, the Purchaser shall have the right as its sole and exclusive remedy to choose to either: (a) terminate this Agreement by delivery of written notice to Seller and seek reimbursement for any reasonable legal fees, and costs incurred in the enforcement of any dispute arising from this Agreement related to such default or breach; or (b) continue this Agreement and obtain and enforce specific performance of Seller's obligations hereunder, provided that any such action for specific performance must be commenced within thirty (30) days after such default. PURCHASER EXPRESSLY WAIVES ALL RIGHTS TO SEEK OTHER DAMAGES, INCLUDING WITHOUT LIMITATION, ACTUAL OR CONSEQUENTIAL DAMAGES IT MAY HAVE ON ACCOUNT OF ANY DEFAULT BY SELLER HEREUNDER. If the Purchaser elects the right under (a) above, then, upon payment of the legal fees and costs to Purchaser, this Agreement shall be terminated, and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement.

**Section 14.03 Survival.** The provisions of this Article XIV shall survive the termination of this Agreement and the Closing.

## **ARTICLE XV GENERAL PROVISIONS**

**Section 15.01 Notices.** Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required under this Agreement shall be in writing and delivered to all other Parties, at the addresses below, by one of the following methods:

- (a) Hand delivery, whereby delivery is deemed to have occurred at the time of delivery;

(b) A nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier;

(c) Registered U.S. Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or

(d) Electronic transmission (facsimile or email) provided that the transmission is completed no later than 4:00 p.m. on a Business Day and the original also is sent via overnight courier or U.S. Mail, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed.

To Purchaser: SYRMEC Orange JV LLC  
211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701  
Attention:  
Telephone:  
Facsimile:  
Email:

with a copy to: Murphy Schiller & Wilkes LLP  
24 Commerce Street, 12<sup>th</sup> Floor, Newark, New Jersey 07102  
Attention: Kellen F. Murphy, Esq.  
Telephone: 201-650-3126  
Facsimile:  
Email: kmurphy@murphyllp.com

To Seller: City of Orange  
29 North Day Street, Orange, New Jersey 07050  
Attention: Christopher M. Hartwyk, Business Administrator  
Telephone:  
Facsimile:  
Email: chartwyk@orangenj.gov

with a copy to: Dilworth Paxson LLP  
4 Paragon Way, Suite 400, Freehold, New Jersey 07728  
Attention: Christopher M. Walrath, Esq.  
Telephone: 732-530-8822  
Facsimile: 732-530-6770  
Email: cwalrath@dilworthlaw.com

Any Party shall change its address for purposes of Section 15.01 by giving written notice as provided in this Section 15.01.

All notices and demands delivered by a Party's attorney on a Party's behalf shall be deemed to have been delivered by said Party. Notices shall be valid only if served in the manner provided in this Section 15.01.

**Section 15.02 Complete Agreement; Amendments and Modifications; Partial Invalidity; Waivers.**

(a) This Agreement may be executed in counterparts, and when executed by all Parties shall become one (1) integrated agreement enforceable on its terms. This Agreement, along with the MOU and the Redevelopment Agreement, supersedes all prior agreements between the Parties with respect to Site A and all discussions, understandings, offers, and negotiations with respect thereto, whether oral or written. This Agreement shall not be amended or modified, except in a writing signed by each Party hereto. If amended or modified as permitted by this Section 15.02(a), the term "**Agreement**" shall thereafter be read as including all said amendments and modifications. All exhibits that are referenced in this Agreement or attached to it are incorporated herein and made a part hereof as if fully set forth in the body of the document.

(b) Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

(c) Any waiver of any provision or of any breach of this Agreement shall be in writing and signed by the Party waiving said provision or breach. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts. Effective as of the Closing, any breaches or conditions not waived previously (including any Title Report objections) in accordance with this Section 15.02(c) are deemed waived.

**Section 15.03 Parties; Assignment of Interests in This Agreement; Successors and Assigns.**

(a) Except as specifically permitted under the Redevelopment Agreement, Purchaser may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder or any of the direct or indirect ownership interests in Purchaser, without first obtaining Seller's prior consent and approval thereto, which may be given or withheld in Seller's sole and absolute discretion.

(b) The terms "**Party**" and "**Parties**" include Seller, Purchaser, their respective constituent entities and their respective successors, assigns, and legal representatives. In the event either Seller or Purchaser is an individual, a "Party" or "Parties" includes that individual's heirs.

(c) This Agreement and all its covenants, terms, and provisions shall be binding on and inure to the benefit of each Party and its successors and assigns.

**Section 15.04 Further Assurances.** From the Effective Date, Seller and Purchaser each agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as

may be reasonably necessary and customary to complete the transactions contemplated by this Agreement. This Section 15.04 shall survive the Closing for a period of sixty (60) days thereafter.

**Section 15.05 Interpretation and Construction.**

(a) The Parties acknowledge that, in connection with negotiating and executing this Agreement, each has had its own counsel and advisors and that each has reviewed and participated in the drafting of this Agreement. The fact that this Agreement was prepared by Seller's counsel as a matter of convenience shall have no import or significance to the construction of this Agreement. Any uncertainty or ambiguity in this Agreement shall not be construed against Seller because Seller's counsel prepared this Agreement in its final form. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of: (i) this Agreement; (ii) any exhibits to this Agreement; or (iii) any document drafted or delivered in connection with the transactions contemplated by this Agreement.

(b) Any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement.

(c) The singular of any term, including any defined term, shall include the plural, and the plural of any term shall include the singular. The use of any pronoun with respect to gender shall include the neutral, masculine, feminine, and plural. The term "**Person**" or "**Persons**" includes a natural person or any corporation, limited liability company, partnership, trust, or other type of entity validly formed.

**Section 15.06 Days; Performance on a Saturday, Sunday, or Holiday.** Whenever the term "day" is used in this Agreement, it shall refer to a calendar day unless otherwise specified. A "**Business Day**" shall mean any weekday except for those weekdays that a banking institution within the State of New Jersey is required by said state to be closed (a "**Holiday**"). Should this Agreement require an act to be performed or a notice to be given on a Saturday, Sunday, or Holiday, the act shall be performed or notice given on the following Business Day.

**Section 15.07 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF NEW JERSEY, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS*, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS, OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS ARTICLE XX. SERVICE OF PROCESS, SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST ANY PARTY HERETO, MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY SUCH PARTY'S ADDRESS INDICATED IN SECTION 15.01 HEREOF.

**Section 15.08 No Survival.** Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller set forth in this Agreement shall survive the Closing hereunder and no action based thereon shall be commenced after the Closing.

**Section 15.09 Attorneys' Fees.**

(a) Seller and Purchaser each acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel; and (iv) because Seller and Purchaser have been represented by independent counsel in connection with this Agreement, this Agreement shall not be construed against Seller.

(b) If any action is brought by either Party against the other in connection with or arising out of this Agreement, or any of the documents and instruments delivered in connection herewith or in connection with the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party its reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action.

**Section 15.10 Waiver of Jury Trial.** Except as otherwise expressly stated in this Agreement, to survive the Closing hereunder, all obligations the Parties have to each other under this Agreement shall survive neither the Closing nor the earlier termination of this Agreement. In the unlikely event that a dispute survives the Closing or termination, EACH OF SELLER AND PURCHASER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH OF SELLER AND PURCHASER MAY HAVE TO: (A) INJUNCTIVE RELIEF (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT TO THE CONTRARY); (B) A TRIAL BY JURY; (C) INTERPOSE ANY COUNTERCLAIM THEREIN (EXCEPT FOR ANY COMPULSORY COUNTERCLAIM WHICH, IF NOT ASSERTED IN SUCH SUIT, ACTION, OR PROCEEDING, WOULD BE WAIVED); AND (D) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION, OR PROCEEDING.

**Section 15.11 Bulk Sale Notification.** Pursuant to N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38, Purchaser may be required to notify the Division of Taxation in the Department of the Treasury of the State of New Jersey (the "Department"), at least ten (10) days prior to the Closing Date, of the proposed sale and of the price, terms, and conditions of the transaction (the "Bulk Sale Notification"). Seller agrees to fully cooperate with Purchaser, and provide any such necessary information, in connection with Purchaser's filing of a Bulk Sale Notification. If Purchaser files a Bulk Sale Notification and the Department determines that any or all of Seller's proceeds are to be held in escrow following the Closing, then such funds as determined by the Department shall be held in escrow by the Purchaser's Title Company until such time as the parties are in receipt of a tax clearance letter from the Department authorizing the release of the escrow. Purchaser shall be responsible for submitting the required notification of the pending sale to the Department, to the extent it is required in connection with this transaction, and Seller agrees to fully cooperate with any such submissions. Seller shall be solely



responsible for all taxes, interest, and penalties due and owing to the State of New Jersey by Seller, and hereby agrees to indemnify and hold Purchaser harmless against any and all taxes, interest, and penalties that may be due to the State of New Jersey by Seller. Upon receipt of notice of the sums owed to the State of New Jersey, Purchaser's Title Company is authorized to disburse such amounts from the escrow in satisfaction of such outstanding obligation. The escrow established shall not terminate until the requirements of the Department in establishing the escrow have been satisfied as evidenced by a clearance letter. This Section 15.11 shall survive the Closing. .

**Section 15.12 No Third-Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser (and their successors and assigns) only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce any of the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**Section 15.13 Recordation.** This Agreement may not be recorded by any party hereto without the prior written consent of the other party(s) hereto. This Section shall survive the Closing or any termination of this Agreement.

**Section 15.14 Execution of Agreement; Electronic Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties hereto and delivered to all parties. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail (email) in "portable document format" (".pdf") form shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes.

**Section 15.15 Execution and Delivery.** This Agreement shall be effective upon the delivery of this Agreement fully executed by the Seller and Purchaser.

**Section 15.16**

[SIGNATURE PAGE FOLLOWS]

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

**PURCHASER:**

SYMREC Orange JV LLC, a New Jersey limited liability company

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

Name:

Title:

**SELLER:**

City of Orange Township, a municipal corporation of the State of New Jersey

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

Name: Dwayne D. Warren

Title: Mayor