

CITY COUNCIL**The City of Orange Township, New Jersey**DATE March 19, 2024NUMBER 176-2024

TITLE: A RESOLUTION OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, RATIFYING THE ACQUISITION IN LIEU OF CONDEMNATION OF BLOCK 2805, LOT 4 ON THE CITY'S OFFICIAL TAX MAPS, MORE COMMONLY KNOWN AS 55 SOUTH DAY STREET, FOR AN AMOUNT NOT TO EXCEED \$255,000.00.

WHEREAS, 55 South Day LLC ("Owner") is the record owner of a parcel designated as Block 2805, Lot 4 on the official tax maps of the City of Orange Township ("City"), more commonly known as 55 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, 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, 5 and 6, commonly known as 51 South Day Street, 53 South Day Street, 59 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, the Owner and the City (collectively, "Parties") have maintained open dialogue regarding voluntary sale of the Property to the City in lieu of condemnation; and,

WHEREAS, after extensive arms-length negotiation and consultation with their respective legal counsel, the Parties reached an agreement for the City to purchase the Property in lieu of condemnation for \$255,000.00; and,

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


A. M. RATH

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 are 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: **March 19, 2024**

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made as of October 3, 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,

55 South Day LLC
a New Jersey Limited Liability Company,
with offices at 177 North Dean Street, Suite 301, Englewood, New Jersey, 07631,
 (“Seller”, together with the City, “Parties”).

RECITALS

WHEREAS, Seller is the record owner of a parcel of real property designated as Block 2805, Lot 4 on the official tax maps of the City of Orange Township, County of Essex, State of New Jersey, more commonly known as 55 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, 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, 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 October 3, 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 14 below, the City agrees to purchase the Property as-is, where-is, and with all faults. Seller agrees that the Property shall be transferred to the City at closing vacant and free of any tenancy interests.

5. Purchase Price; Donation of Land Value. The total purchase price for the Property ("**Purchase Price**") shall be \$255,000.00, subject to adjustments as set forth in Paragraph 10 below, and payable to Seller at closing of title by certified or attorney trust account check, or pursuant to Seller's wire instructions.

5.1. The Parties acknowledge that the Purchase Price reflects a donation of \$189,000.00 in land value by Seller to the City, representing the difference between the Purchase Price and an appraisal of the Property by Noam Kutcher, SCGRE, dated November 22, 2022, valuing the Property at \$440,000.00, a copy of which is appended hereto as Schedule A and incorporated herein by reference. The City agrees to execute, at closing, Part V of IRS Form 8283 (Noncash Charitable Contributions), as prepared by Seller, acknowledging said donation.

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**"). Notwithstanding, Seller makes no warranty or representation as to the Property's suitability for this or any 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**":

7.1.1. Mortgages and other monetary liens 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 or monetary liens 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. If such monetary lien is disputed, Seller may elect to have funds equal to 125.00% of the amount necessary to satisfy such lien placed in escrow and Seller shall have 60 days

following closing to remove said lien, after which, the City may elect to use the escrowed funds to satisfy and remove same. Any unused escrowed funds shall be returned to Seller. This shall survive closing.

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 10 calendar days from the date of such notice to inform the City whether or not Seller elects to clear or remove the non-Permitted Exceptions to the satisfaction of the City and its title insurance company. If Seller agrees to remove such non-Permitted Exceptions, Seller shall take such actions to do so without delay so that said non-Permitted Exceptions may be removed at, or prior to, closing. If Seller is unable or unwilling 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. Funding Contingency. It is understood and agreed that the City's obligation to purchase the Property under this Agreement is expressly contingent on approval by the Municipal Council and successful placement/funding of a municipal bond in at least the amount of the Purchase Price ("**Funding Contingency**"). Seller agrees to reasonably cooperate with the City and execute all documents necessary for the City to satisfy the Funding Contingency, without assuming or incurring any financial or legal obligation.

The City agrees to diligently pursue satisfaction of the Funding Contingency in good faith, and shall notify Seller in writing within 45 calendar days after this Agreement is fully signed ("**Contingency Period**"), whether it: (a) satisfied or is waiving the Funding Contingency and is prepared to move forward with the transaction; (b) requires a reasonable extension to satisfy the Funding Contingency, which Seller agrees to consider in good faith; or, (c) is unable to satisfy the Funding Contingency and is terminating this Agreement. In the event the Contingency Period is extended, the City shall notify Seller of the updated status of the Funding Contingency prior to conclusion of that extended period. If the City has not issued notice to Seller in accordance with this Paragraph, Seller may immediately terminate this Agreement by written notice to the City at any time following expiration of the Contingency Period, as extended. Notwithstanding, this Agreement shall not automatically terminate, and the Funding Contingency shall not automatically be deemed satisfied at the conclusion of the Contingency Period, or any extension thereof, unless and until the City or Seller, as applicable, affirmatively notifies the other party as to the status of the matter.

9. Closing of Title; Delivery of Documents. Closing of title shall take place not later than 10 days after the City notifies Seller that it either has satisfied or is waiving the Funding Contingency, on such date and time as is convenient for and agreed to 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 15 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. Seller shall use the legal title description set forth in the deed Seller received when acquiring title to the Property as the legal description in the Seller's deed conveying title to the City at closing. The Parties agree to exchange copies of all required closing documents not less than 3 days prior to closing.

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

10. 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.

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

12. 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. Prior to the closing, however, the City shall be entitled, from time to time and upon 48-hours' advance written notice, to enter the Property for the purpose of conducting inspections, surveys and tests related to the Intended Use and/or satisfaction of the Financing Contingency. At Seller's option, it may have a representative present during any such entry onto the Property by the City. 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.

13. 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.

14. 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 without any reduction in the Purchase Price. 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.

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15. Notices. All notices, demands or communications hereunder shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by commercial delivery service or personal service, as follows:

To Seller

55 South Day LLC
177 North Dean Street, Suite 301
Englewood, New Jersey 07631

with copy to

James M. Turteltaub, Esq.
The Turteltaub Law Firm LLC
98 Main Street, 2nd Floor
P.O. Box 458
Madison, New Jersey 07940

To the City

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

with copy to

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

16. 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 its reasonable possession relating to the Property.

17. 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.

18. Termination of Agreement. To the extent this Agreement is terminated pursuant to Paragraphs 7 or 8 above, the Parties shall not be entitled to compensation from one another as a result of said termination unless otherwise provided herein and shall be returned to their respective positions prior to entering into same.

19. 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 of their respective heirs, representatives, successors and assigns.

20. 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.*

21. 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.

22. 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.

23. Construction; Entire Agreement; Modification.

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

23.2. 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.

23.3. 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.

23.4. The Parties shall not bring any claims or receive any recovery from one another for punitive or consequential damages arising out of this Agreement, or based on any implied warranties or contracts implied in law relating to the Property; however, if a Party becomes aware of any situation or occurrence that may potentially result in a claim against the other Party, that Party must notify the other Party of the situation or occurrence, in writing, not later than 5 calendar days after becomes aware of same.

23.5. 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.

24. Severability; Waiver.

24.1. 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.

24.2. 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.

25. Recording. The Parties agree that, if requested by either of them, a Notice of Settlement 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.

26. Signatures; Counterparts; Electronic Signatures.

26.1. 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.

26.2. This Agreement may be executed in one (1) or more counterparts, all of which together shall be considered a single document and the same shall become effective when one (1) or more counterparts have been signed by each of the Parties. It is understood that the Parties need not sign the same counterpart.

26.3. 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.

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[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 **5 SOUTH DAY LLC**

Witness:

By: _____
Name: _____
Title: _____

10/18/23