

**AGREEMENT OF PURCHASE AND SALE
BY WAY OF PUBLIC AUCTION
PURSUANT TO N.J.S.A. 40A:12-13(a)**

RE PROPERTY:

**66-70 Zabriskie Street
Hackensack, New Jersey
Block 531.01 Lot 1
Block 527 Lot 5.02 and
Block 532.02 Lot 1**

BETWEEN:

COUNTY OF BERGEN

AND

PREPARED BY:

**OFFICE OF COUNTY COUNSEL
COUNTY OF BERGEN
ONE BERGEN COUNTY PLAZA – ROOM 580
HACKENSACK, NEW JERSEY 07601-7076**

THIS AGREEMENT OF PURCHASE AND SALE BY WAY OF PUBLIC AUCTION PURSUANT TO N.J.S.A. 40:A 12-13(a) (this "Agreement") is made and entered into as of this ____ day of _____, 2016 ("the date hereof"), by and between the **County of Bergen**, a body politic of the State of New Jersey whose address is One Bergen County Plaza, Hackensack, New Jersey, 07601 (hereinafter referred to as "**Seller**"), and _____, with its offices at _____, (hereinafter referred to as "**Purchaser**").

RECITALS

A. Seller is the fee simple owner of certain Real Property consisting of approximately 5.9 acres located at 66-70 Zabriskie Street, Hackensack, New Jersey, which is designated as Block 531.01, Lot 1, Block 527, Lot 5.02 and Block 532.02, Lot 1 on the official Tax Map of the City of Hackensack; being more particularly described in **Exhibit A** attached hereto (hereinafter collectively referred to as the "**Property**").

B. The Property was advertised for sale by public auction by the County of Bergen on or about _____, 2016. A copy of said Notice of Public Auction is attached hereto as Exhibit B. In addition, the County published Special Conditions to govern the public auction sale said Special Conditions are attached as **Exhibit C**. Both **Exhibits B** and **C** are hereby incorporated by referenced and made apart hereof of this Agreement. Where any of the provisions of **Exhibits B** and **C** may be inconsistent with the provisions of this Agreement, this Agreement shall take precedent and shall govern.

C. Purchaser was the successful bidder at a public auction held on May 3, 2016, pursuant to Resolution No. _____ of the County of Bergen, for the sale of the Property and the

Purchaser desires to purchase from Seller the Property, in accordance with all of the terms and conditions under the said Resolution No. _____, dated _____, of the County of Bergen, as well as those contained within the attached *Exhibit B* and *Exhibit C*. Said Resolution is attached hereto as *Exhibit D*. Upon execution of this Agreement by the Purchaser, a Resolution authorizing the sale to the Purchaser shall be placed on the Agenda by the Board of Chosen Freeholders at the next earliest scheduled meeting after execution of the Agreement to approve the sale of the Property to the Purchaser.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agrees as follows:

ARTICLE I - BASIC INFORMATION

1.1 Certain Basic Terms

The following defined terms shall have the meanings set forth below:

1.1.1 **Seller:** County of Bergen

1.1.2 **Purchaser:** _____

1.1.3 **Purchase Price:** _____

1.1.4 **Deposit:** _____ (the “Deposit”)

1.1.5 **Effective Date:** The date on which this Agreement is executed by the latter to sign, Purchaser or Seller, as indicated on the signature page of this Agreement.

1.1.6 **Permitted Exceptions:** The term “Permitted Exceptions” shall mean (i) laws, regulations or ordinances of federal, state, county or local entities or agencies having jurisdiction over the Property; (ii) easements, covenants and restrictions of record; and (iii) such state of facts as would be shown on an accurate survey of the Property and subject to restrictions, easements and grants, and (iv) the Seller’s reservation of rights to place additional easements on the Property as set forth in Section 15 of this Agreement.

1.1.7 **Closing Date:** The date no later than ten (10) days after the Bergen County Board of Chosen Freeholders awards by way of Resolution this Agreement to the Purchaser.

1.2 Closing Costs

All costs associated with the Closing of title shall be borne by the Purchaser, which include but may not be limited to the following:

Cost	Responsible Party
Title Cost	Purchaser
Premium for Title Policy	Purchaser
Costs of survey and/or any revisions, modification or re-certifications thereto	Purchaser
Costs for UCC Searches	Purchaser
Recording Fees	Purchaser
Realty Transfer Fee	Seller
Real Estate Sales Commission to Broker	NONE
Mansion Tax, if applicable	Purchaser

1.3 Notice Addresses

Seller:	Copy to:
John P. Libretti, Deputy County Counsel Office of Bergen County Counsel One Bergen County Plaza – Room 580 Hackensack NJ 07601 Telephone No.: 201-336-6953 Facsimile No.: 201-336-6966	County Administrator One Bergen County Plaza – Room 580 Hackensack, NJ 07601
Purchaser:	

ARTICLE 2 – PROPERTY

2.1 Property Description

Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, the following Property (collectively, the "Property"):

2.1.1 **Real Property.** The land described in *Exhibit A* attached hereto (the "Land"), together with (i) all improvements presently located thereon ("Improvements"), (ii) any and all rights, benefits, privileges, easements, tenements, hereditaments and appurtenances thereon or in anywise appertaining thereto, and (iii) all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, if any, adjoining such Land.

ARTICLE 3 – PURCHASE PRICE

3.1 Purchase Price

The Purchase Price for the Property, in fulfillment of the public auction held on _____ shall be _____ (\$_____) ("Purchase Price"). The Purchase Price shall be payable by the Purchaser to the Seller as follows:

(a) Upon the Purchasers' successful bid at the aforesaid public auction, a deposit of ten (10%) percent of the bided Purchase Price shall be paid immediately on the date of the public auction payable to the County of Bergen in funds as set forth in *Exhibit B* and *Exhibit C*.

(b) On the date of closing the entire balance of Purchase Price plus any adjustments agreed upon by the parties, shall be paid immediately by the Purchaser to the County of Bergen in funds as described in *Exhibit B* and *Exhibit C* attached hereto.

3.2 **Disposition of Deposit**

3.2.1 The Deposit shall be applied as a credit to the Purchase Price at Closing. The Deposit is non-refundable and the **sale is final**.

3.2.2 In the event the Seller is unable to convey title of the Property to the Purchaser, then and only in that event will the Deposit money be returned to the Purchaser.

3.2.3 The provisions of this Article shall survive Closing of Title.

ARTICLE 4 – DUE DILIGENCE

4.1 **Due Diligence**

The Purchaser acknowledges that it had a full and fair opportunity to conduct its due diligence review of the Property in an unrestricted manner in accordance with the Notice of Public Auction attached hereto as *Exhibit B*, and the Special Conditions attached as *Exhibit C*. The Purchaser further acknowledges that it has received any and all documents in possession of the Seller, and as set forth in *Exhibits B* and *C*, and as may be located on the County website. On that basis, the Purchaser is buying the Property “**AS IS, WHERE IS, SUBJECT TO ALL CONDITIONS**”.

ARTICLE 5 – TITLE AND SURVEY

5.1 **Title and Survey**

By virtue of having the opportunity to conduct due diligence prior to the auction sale, the Purchaser had the opportunity to conduct its own title search and reveal, if any, objections to the Seller concerning the condition of title. The Purchaser, having successfully bid at public auction for the Property, hereby waives any and all objections to title, even if there are conditions to title unknown to the Parties.

5.2 The Purchaser acknowledges that it was given sufficient opportunity to obtain a survey of the Property of its choice, and to object to any survey issues it may have with the Property prior to the public auction. The Purchaser hereby waives any and all objections it may have concerning survey issues or boundary defects, whether known or unknown.

5.3 The provisions of this Article shall survive Closing of Title.

ARTICLE 6 - CLOSING

6.1 At the closing of title, the time for which is set forth herein, the Purchaser shall deliver to the Seller the balance of the Purchase Price in full, in good funds as described in *Exhibit B* and *Exhibit C*, and any additional documents mutually agreed upon by Seller and Purchaser necessary to consummate the Sale.

6.2 The Seller, at the time of closing, shall deliver to the Purchaser in exchange for the Purchase Price, the following:

- Quitclaim Deed from Seller to Purchaser
- Affidavit of Title
- Seller's Residency Certificate (if required)
- Affidavit of Consideration
- Closing Statement
- Possession of the Property to Purchaser
- Any additional documents mutually agreed upon by Seller and Purchaser to be

necessary to consummate the Sale

ARTICLE 7 – PRORATIONS

7.1 Prorations

7.1.1 Real Estate Taxes

At Closing, real estate taxes ("Taxes"), if any are owed by the Seller, shall be prorated as of the date of closing.

7.1.2 Utilities. Seller shall terminate all utilities as of or prior to Closing Date, or shall terminate such utilities at the expiration of Seller's post-closing occupancy of the Property.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties

Seller represents and warrants to Purchaser that:

8.1.1 Organization and Authority. Seller has the full right and authority to convey the Property and, except for Resolution No. _____ of the County of Bergen, no other consent is required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.

8.1.2 The above representations and warranties shall not survive closing of title hereunder.

8.2 Purchaser's Representations and Warranties

Purchaser represents and warrants to Seller that:

8.2.1 Organization and Authority. Purchaser, if not an individual, is a corporation or LLC or partnership, duly organized and validly existing and in good standing in the State of

New Jersey and is qualified to do business in New Jersey. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

8.2.2 **Conflicts and Pending Action.** There is no agreement to which Purchaser is a party, or to Purchaser's knowledge binding on Purchaser, which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser, which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

8.2.3 Purchaser has sufficient financial resources to perform all of the obligations set forth in this Agreement.

8.2.4 Purchaser acknowledges and represents to the Seller that it has reviewed the Environmental Reports produced by the Seller, including any and all remediation analyses, as well as the proposed costs for environmental remediation of the Property. The Purchaser hereby represents that it is purchasing the Property “*AS IS, WHERE IS, SUBJECT TO ALL CONDITIONS*” and acknowledges that it had been given sufficient opportunity to conduct any and all due diligence it required in order to purchase the Property. The provisions of this paragraph shall survive Closing of Title.

ARTICLE 9 – DEFAULTS AND REMEDIES

9.1 Seller’s Remedies

If Purchaser fails to perform its obligations pursuant to this Agreement at or prior to

Closing for any reason except failure by Seller to perform hereunder, or if prior to Closing any one or more of Purchaser's representations or warranties are breached in any material respect, Seller shall be entitled, as its sole remedy, to terminate this Agreement and recover the Deposit as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Deposit is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. Notwithstanding the foregoing, if Purchaser interferes with or makes any attempt to interfere with Seller by retaining all or any portion of the Deposit, including, without limitation, the recording of a lis pendens or other lien against the Property without justification, Seller shall have the right to elect to recover its actual damages or the liquidated damages by giving written notice to Purchaser.

If Purchase shall, post-closing of title, breach any of its covenants or surviving representations and warranties, including those covenants contained in the Deed, then the Seller shall have as its one of its remedies the right of reverter, whereby it shall be entitled to possession and title to the Property. In such an event, title to the Property shall, pursuant to the terms of the Deed and this Agreement, revert to the Seller and the Seller shall retain the entire purchase price as its liquidated damages.

9.2 Purchaser's Remedies

If Seller defaults in its obligations under this Agreement to convey the Property to Seller except by reason of the failure of Purchaser to perform hereunder, Purchaser shall elect, as its sole remedy, either to (i) terminate this Agreement by giving Seller timely written notice of

such election prior to or at Closing and recover the Deposit, or (ii) waive said failure or breach and proceed to Closing. Under no circumstances shall Seller be responsible for consequential damages.

ARTICLE 10 – DISCLAIMERS

10.1 Disclaimers by Seller

Except as expressly set forth in this Agreement, it is understood and agreed that Seller has not at any time made, and is not now making, and it specifically disclaims, any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties or representations as to (i) the physical condition of the Property, including without limitation, patent or latent defects; (ii) the applicability to the Property of, or the compliance of the Property with, any particular statutes, laws, codes, ordinances, regulations or rules, including, without limitation, zoning building and health codes, regulations and ordinances including Environmental Laws (delivered below); (iii) the presence in, at, under or about the Property of any “hazardous substances” or “hazardous wastes” as such terms are defined in any federal, state or local status, law, rule, ordinance or regulation relating to the protection of the environment, including, but not limited to the Resource Conservation & Recovery Act, 42 U.S.C. §9601 *et seq.*, as amended, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601, as amended; the Industrial Site Recovery Act, N.J.S.A 13:1k-6, *et seq.*, as amended; the New Jersey Spill Compensation and Control Act, N.J.S.A 58:10-23.11, *et seq.*, as amended; or the New Jersey Underground Storage of Hazardous Substances Act N.J.S.A 58:10A-21, *et seq.*, as amended; (“Environmental Laws”); and (iv) compliance of the Property or any current or

prior use thereon with any Environmental Laws, environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Substances in, on, under or in the vicinity of the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of and geologic faults and the resulting damage of past and/or future faulting, (vi) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (vii) drainage, (viii) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (ix) the presence of endangered species or any environmentally sensitive or protected areas, (x) zoning or building entitlements to which the Property or any portion thereof may be subject, (xi) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (xii) usages of adjoining property, (xiii) access to the Property or any portion thereof, (xiv) the value, compliance with any plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xv) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rule regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (xvi) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (xvii) the merchantability of the Property or fitness of the Property for any

particular purpose, (xviii) tax consequences, or (xix) any other matter or thing with respect to the Property.

10.2 Sale “As Is, Where Is, With All Faults”

Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Property "*AS IS, WHERE IS, WITH ALL FAULTS*", except to the extent expressly provided otherwise in this Agreement or any document executed by Seller and delivered to Purchaser at Closing. Except as expressly set forth in this Agreement, Purchaser has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property at any pre-bid or post-bid meetings) made or furnished by Seller, or any agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, or in writing. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. Purchaser acknowledges and agrees that any and all on-site or off-site improvements which may be a condition of any permit and/or approval for Purchaser's intended use or redevelopment of the property shall be the Purchaser's sole responsibility, including but not limited to, costs or obligations associated with

COAH, as may be amended. The Seller makes no representation or covenant as to the ability of Purchaser to obtain approvals for redevelopment of the property from any governmental entity, including the Seller, nor as to the conditions which may be imposed by any governmental entity with jurisdiction, including the Seller, as part of such approvals. The Seller does not represent that the property is developable or fit for any particular purpose, and the Seller makes no representations as to the condition of the property and does not warrant the accuracy or completeness of any information provided to Purchaser in conjunction with the auction and sale of the property. The Purchaser has had the opportunity to inspect the property during the due diligence period and Seller shall not be required to correct any violations of law or provide a Certificate of Occupancy or similar document at time of closing. Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Property as Purchaser deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Purchaser specifically acknowledges that it understands that the Property has been used for various purposes including the storage, and use of motor fuels, petroleum, petroleum-based products and other Hazardous Substances, and that the environment, including but not limited to, soil and sub-soil of the Property and the soil, air, land, groundwater and water, on, under, near or adjacent thereto and drains, sewers, pipes, water occurs and water tables at, on, under or in the vicinity of the Property has been contaminated or impacted by Hazardous Substances.

10.3 In the event of a conflict between the terms of this Article 10 and the balance of this Agreement, the terms of this Article 10 shall govern.

10.4 The terms and conditions of this Article 10 shall expressly survive the Closing and not merge with the provisions of any closing documents.

**ARTICLE 11 - PURCHASER'S ENVIRONMENTAL REMEDIATION
AND RELEASE OF LIABILITY AND INDEMNIFICATION**

11.1 Purchaser, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, and shall defend, indemnify and hold harmless Seller, its agents, representatives, employees, officers, officials (including elected officials) and their respective heirs, successors, personal representatives and assigns (collectively the "Seller Related Parties"), and Purchaser shall indemnify, defend and hold Seller's related parties from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments costs or expenses whatsoever (including, without limitation, court costs and attorneys' fees and disbursements), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property including, without limitation, the environmental condition of the Property and the presence of Hazardous Substances on, under or about the Property, (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Law and any other federal, state or local law, and (iii) the breach by Purchaser of its obligations under this Agreement.

11.2 Purchaser acknowledges that the Property was used as a Public Works and County Police facility, and Purchaser accepts the Property as such, and waives any claims or rights it may have, including the right to rescind this Agreement of Sale. Purchaser acknowledges that there may be

asbestos and other Hazardous Substances within the existing buildings and the Property. The Purchaser shall be solely responsible for the remediation of all such Hazardous Substances.

11.3 Purchaser acknowledges that there are asbestos containing materials in buildings at the Property and that Purchaser, at its sole cost and expense, shall remove all asbestos and other Hazardous Substances from the existing buildings and shall be solely responsible for the demolition of all buildings and materials contained therein on the Property after the Closing.

11.4 Purchaser acknowledges its obligation to achieve environmental compliance. Purchaser hereby acknowledges that the Property contains Hazardous Substances, some of which may not be presently known or disclosed in the documents made available to the Purchaser, that Seller neither warrants nor guarantees the accuracy or completeness thereof, and that certain Hazardous Substances at the Property require further environmental investigation and remediation. After the Closing, Buyer shall be responsible for all obligations and costs associated with such Hazardous Substances and Remedial Actions undertaken in association therewith, any institutional and engineering controls that may be required and any remedial action permit(s) required in association therewith, including, but not limited to, conducting biennial inspections and conducting any monitoring of soil or groundwater which are imposed as a condition of the RAO, or other institutional or engineering controls, as well as any financial assurance associated therewith. Purchaser agrees and acknowledges that the conveyance of the Property is subject to the following covenants of Purchaser and that these covenants were a material inducement to Seller's sale and conveyance of the Property to Purchaser. As part of the consideration of Seller's sale and conveyance of the Property to Purchaser, Purchaser agrees: (1) to undertake all necessary Remedial Actions in order to diligently pursue and obtain the RAO with respect to all

Hazardous Substances located in, at, under or emanating from or affecting the Property, in compliance with all applicable Environmental Laws and requirements of Governmental Authorities including Remedial Actions which are required as a result of Purchaser's redevelopment of the Property; (2) to pay, settle and compromise all claims for natural resource damages (or the like); and (3) that in remediating and developing the Property, Purchaser shall, at its sole cost and expense, adopt and use all engineering and related technical assistance available and standard to the industry and any required by the Governmental Authority to protect the health and safety of persons and that, depending upon the nature of Purchaser's development of the Property, Purchaser may need to consider the use of engineering controls to prevent the migration of vapors and/or liquids containing Contamination into any buildings, underground utilities or storm water retention/detention ponds, including, without limitation, vapor installation systems, vapor barriers, sealed sumps and storm pond liners, collectively referred to as the "Engineering and Institutional Controls." Purchaser shall be responsible for the payment of all fees, costs and expenses incurred in connection with the performance of its obligations under this Article 11.

11.5 Purchaser's agreement to obtain and comply with the RAO including any of the Engineering and Institutional Controls and pay, settle or compromise all natural resource damage claim, or the like, shall be specifically enforceable against the applicable Purchaser-Related Parties. If Purchaser or any applicable Purchaser-Related Party breaches these provisions regarding the RAO, including the Engineering and Institutional Controls, Seller shall have the right to enforce every remedy, either public or private, available at law and in equity against the Purchaser and the applicable Purchaser-Related Parties, including but not limited to injunctive relief, specific performance, or reversion of title at the sole option of the Seller. All remedies

provided herein, including without limitation, those at law or in equity, shall be cumulative and not exclusive. Any purchaser or successor owner of the Property shall take title to the Property subject to these terms.

11.6 All of the covenants and agreements of Purchaser set forth herein and in the Deed conveying the Property to Purchaser, regarding obtaining the RAO, including Engineering and Institutional Controls and paying, settling or compromising any natural resource damage claims (or the like), shall be covenants running with the land and binding upon the Property, Purchaser and the Purchaser-Related Parties, their successors and assigns, as applicable, and that Purchaser agrees that Purchaser shall not complete any sale, transfer or assignment of its interest in the Property or any part thereof or enter into any lease, license or right to occupy or use the Property or any part thereof, without inserting these environmental provisions into and made a part of any other deed or lease or other instrument conveying or demising the Property herein conveyed or any part thereof.

11.7 Reservation of Access and Reversion

11.7.1 This conveyance is made by Seller and accepted by Purchaser subject to the following reservation by Seller of a right of access to the Property, commencing as of the Closing. Seller reserves the right of access to the Property on and after the Closing, and Purchaser, on behalf of itself and the Purchaser-Related Parties, grants to Seller access to the Property on and after the Closing, such that if Purchaser has failed to diligently pursue and obtain the RAO or pay, settle or compromise the natural resource damage claims (or the like), upon written notice to Purchaser and opportunity to cure such failure, Seller may enter the Property to undertake any environmental assessment, investigation, testing and Remedial Action

that Seller deems necessary to pursue and obtain the RAO or such other activities in order to pay, settle or compromise any nature resource damage claims (or the like) and avail itself of the Deposit or Purchase Price to pay for same. Such access shall include, but is not limited to, the right to conduct tests, take groundwater or soil samples, excavate, remove, dispose of tanks, and soil, and treat the soil and groundwater, conduct and/or continue environmental investigation, testing and Remedial Action, and undertake such other actions as Seller deems necessary. Purchaser shall provide Seller with exclusive access rights to the Property to observe and/or confirm Purchaser's or Purchaser-Related Parties' timely discharge of Purchaser's or Purchaser-Related Parties' obligations with respect to Hazardous Substances at the Property and pursuit of the RAO. Seller shall provide Purchaser as much advance notice as reasonably practical of all potentially disruptive or intrusive activities to be undertaken on the Property and advance notice shall be required for non-disruptive activities on the Property, if any. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from all Claims made, incurred or assessed against Seller by any persons or entities including, without limitation, the Governmental Authorities, as a result, directly or indirectly, of Purchaser's or any Purchaser-Related Parties' failure to provide access to Seller or failure to diligently pursue and obtain the RAO. Purchaser, for itself and the Purchaser-Related Parties, releases Seller from and against all Claims, including but not limited to those for loss of business and/or consequential damages associated with or arising out of Seller's access to the Property on or after the Effective Date under this Deed.

11.8 Purchaser agrees that until Purchaser discharges its obligations to obtain the RAO and pay, settle or compromise all claims for natural resource damages (or the like), any sale, transfer, conveyance, or assignment of its interest in the Property or any part thereof or any lease, license, or right to occupy or use the Property or any part thereof will be subject to Purchaser's and

Purchaser-Related Parties' reserving access rights to the Property.

11.9 Purchaser agrees that in addition to Seller's right of access in the event Purchaser fails to obtain the RAO, the Seller shall have all remedies available to it in law or equity, including, injunctive relief, specific performance, breach of contract and at Seller's sole option, a right of reverter as may be set forth in the Deed conveying the Property to the Purchaser.

11.10 Purchaser agrees that Purchaser's environmental obligations including the obligation to pursue and obtain the RAO and pay natural resource damage claims as well as Seller's reservation of access set forth in this Deed shall be a covenants running with the land herein conveyed and that Purchaser agrees that Purchaser shall not complete any sale, transfer or assignment of its interest in the Property or any part thereof or enter into any lease, license or right to occupy or use the Property or any part thereof prior to discharging Purchaser's obligation to obtain the RAO without first obtaining from the purchaser, transferee, assignee, lessee, licensee, occupier or any other person or entity having the right to use the Property, the obligation to procure Seller's reservation of access from any subsequent purchaser, transferee, assignee, lessee, occupier or any other person or entity having the right to use the Property and Seller's reservation of access shall be inserted in any other deed or lease or other instrument conveying or demising the Property herein conveyed or any part thereof. Any transferee, assignee, or successor owner, lessee, licensee, occupier or user of the Property shall take title to the Property subject to Seller's reservation of access. The Seller's rights and benefits of this reservation of access are an easement in gross, inuring to the benefit of Seller.

11.11 **Definitions**

The following definitions shall apply as used in this Deed:

- a. "**Affiliate(s)**" means, with respect to Purchaser, any Person directly or indirectly

controlling, controlled by, or under common control with, Purchaser, including any other person, directly or indirectly, controlling, controlled by, or under common control with such person. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities or by contract or otherwise.

b. **"Claims"** (or individually a "Claim") means any pending or threatened suit, claim, loss, cost, obligation, damage, liability, payment, fine, penalty, cause of action, litigation, judgment (including, but not limited to, expert fees and attorneys' fees awarded as part of a judgment), lien or expense (including, but not limited to, reasonable attorneys' fees and other litigation expenses), whether known or unknown, that may be alleged or brought by any person, Governmental Authority or governmental entity, or any administrative, arbitration, or governmental proceeding, investigation or inquiry affecting or arising out of any asset, obligation or right that is a subject of this Deed.

c. **"Contamination"** means the presence, whether known or unknown, at, on, under, originating or migrating from the Property of any chemical, compound, material, substance or other matter that: (a) is a flammable, corrosive, explosive, hazardous, toxic or regulated material, substance or waste, or other injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; or (b) is controlled, designated in, regulated or governed by any Environmental Law. "Contamination" also shall include any increase in Contamination.

d. **"Governmental Authority"** or "Governmental Authorities" means any governmental (federal, state, local or other), regulatory, executive, legislative, judicial, or other

competent authority, including without limitation, an authority responsible for the administration or collection of any tax; a body or self-regulating entity responsible for the administration of Environmental Laws, including, with respect to remediation, Remedial Action; those qualified environmental contractors and consultants given specific authority to administer or implement Environmental Laws; with respect to compliance with the Site Remediation Reform Act and achieving RAO status, a Licensed Site Remediation Professional; and a body or self-regulating entity responsible for administration of laws or regulations affecting any or all parts of the energy sector. "Governmental Authority" includes any person appointed by any of the foregoing to carry out an investigation or an inquiry.

e. **"Hazardous Substances"** shall mean all substances, in whatever form or concentration, which are classified as hazardous, toxic or dangerous or as pollutants or contaminants under any Environmental Laws.

f. **"Purchaser-Related Parties"** means Purchaser, its parent, subsidiaries, and Affiliates, and their respective owners, officers, directors, employees, agents, divisions, contractors, invitees, servants, representatives, successors and assigns, (and, if Purchaser is a natural person, its heirs and legal representatives) and any lessee, licensee, occupier, user or subsequent owner of the Property.

g. **"Remedial Action"** means any site investigation, study, assessment, testing, monitoring, containment, removal, transport, storage, disposal, closure, corrective action, remediation (whether active or passive), natural attenuation, bioremediation, response, treatment, cleanup or abatement work, and operations and maintenance, whether on-site or off-site, of Contamination required to achieve the RAO.

h. **"Response Action Outcome" or "RAO"** means the written determination of a

Licensed Site Remediation Professional (or LSRP) in the form prescribed by N.J.S.A. 58:10C-2 and any applicable rules, regulations or guidance and also shall include the written determination of any other Government Authority with jurisdiction over the Hazardous Substances at, on, under, emanating from or affecting the Property that no further environmental investigation or remediation is required.

i. **“Seller”** means Seller, its officers, directors, employees, agents, divisions, contractors, invitees, servants, representatives, successors and assigns.

11.12 In the event of a conflict between the terms of this Article 11 and the balance of this Agreement, the term of this Article 11 shall govern.

11.13 The terms and conditions of this Article 11 shall expressly survive the Closing and not merge with the provisions of any closing documents.

ARTICLE 12 – COVENANTS RUNNING WITH THE LAND

12.1 The conditions, covenants and other provisions set out in this Agreement shall also be set out in the Deed and be covenants running with the land and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable. The intention of the parties is that the covenants and restrictions are intended to last in perpetuity, except as expressly provided otherwise herein.

ARTICLE 13 - NON-TAX EXEMPT USES

13.1 Purchaser acknowledges that the Property shall be subject to a Deed Restriction which shall prohibit the use or development of the Property for any purpose for which property tax

exemption may be granted.

ARTICLE 14 - CITY OF HACKENSACK EASEMENT

14.1 Purchaser acknowledges that the City of Hackensack (the "City") currently utilizes a portion of the property for an unrecorded storm water pipe. The sale of the Property is expressly subject to the City's continued rights to utilize the unrecorded storm water pipe and the Seller shall have the right to memorialize the metes and bounds of the storm water pipe in an Easement to be recorded prior to or after the Closing Date.

ARTICLE 15 - MISCELLANEOUS

15.1 Assignment

Purchaser may not assign any of Purchaser's rights or duties hereunder without the prior written consent of Seller, which may be withheld in Seller's sole and absolute discretion.

15.2 Headings

The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

15.3 Invalidity and Waiver

If any portion of this Agreement is held invalid or inoperative, then so as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to

be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

15.4 Governing Law and Venue

This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the law of the State of New Jersey and in the courts of such state. If in the event a dispute between the Parties results in litigation, the Parties agree that the venue and jurisdiction shall rely with the Superior Court of New Jersey, Bergen County.

15.5 Survival

The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

15.6 Entirety and Amendments

This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought.

15.7 Notices

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United

States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day, with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party, provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed as given by the Purchaser, and notices given by counsel to the Seller shall be deemed given by Seller.

15.8 Construction

The parties acknowledge that they and their counsel have reviewed this Agreement and agree that the normal rule of construction, to the effect any ambiguities are to be resolved against the drafting party, shall not be employed in interpretation of this Agreement or any exhibits or amendments hereto.

15.9 Calculation of Time Periods

Unless otherwise specified, in computing any period of time described the day of the act or event after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day, which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m.

15.10 Execution in Counterparts

This Agreement may be executed in any number of counterparts, each which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by facsimile, counterparts of the signature pages, provided that executed originals thereof are forwarded to the other party on the same day by any of the delivery methods set forth in Section 12.9 other than facsimile.

15.11 Further Assurances

In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

15.12 Discharge of Obligations

The acceptance of the Deed by Purchaser shall be deemed to be a performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those

which are herein specifically stated to survive Closing.

15.13 No Third Party Beneficiary

The provisions of this Agreement and of the documents to be executed delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

15.14 Parties Bound

This Agreement and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of each of the parties hereto.

15.15 Brokerage Commissions and Finder's Fees

Seller represents and warrants to Purchaser and Purchaser represents and warrants to Seller, that no person or entity can properly claim a right to a real estate commission, real estate finder's fee, real estate acquisition fee or other real estate brokerage-type compensation (collectively "Real Estate Fees"). Purchaser further agrees to indemnify and hold Seller harmless from any and all claims for any Real Estate Fees arising prior to or after the Closing Date.

15.16 Alternate Dispute Resolution/Mediation

A. At the sole and exclusive option of the County, any and all disputes arising of or relating to this Agreement or the breach thereof shall be decided by arbitration in accordance

with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining.

B. As a condition precedent to the filing of a Demand for Arbitration or a lawsuit, the parties shall enter into non-binding mediation with a mutually agreeable Judge that has retired from the State or Federal Courts of the State of New Jersey. To the extent that mediation is not successful, at the sole and exclusive option of the County, the matter may proceed to arbitration. The filing of a Demand for Arbitration or litigation in accordance with this Section shall not take place until forty-five (45) days have passed following the final mediation session.

C. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law. The Purchaser's obligation to arbitrate as provided in this paragraph shall be specifically enforceable under applicable law. The Purchaser shall have no right to demand arbitration of any dispute with the County without the County's written consent. The locale of any arbitration or litigation hereunder shall be Bergen County, New Jersey.

D. Arbitration may include, by consolidation or joinder or in any other manner, any party needed in order to settle the entire controversy and provide complete relief in one forum.

E. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below.

(SIGNATURES ON NEXT PAGE)

SIGNATURES:

ATTEST

COUNTY OF BERGEN (Seller)

By: _____

Date: _____

Title: _____

ATTEST

(Purchaser)

By: _____

Date: _____

Title: _____

[JPL:AV / SALE OF 66-70 ZABRISKIE ST., HACKENSACK #100002440 -5]