

AGREEMENT OF PURCHASE AND SALE

Block 284, Lot 1.01

THE TOWNSHIP OF LACEY

a body corporate and politic of the State of New Jersey

Seller

and

Purchaser

DATED: _____, 2023

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (“Agreement”) is entered into this _____ day of _____, 2022, by and between the **TOWNSHIP OF LACEY**, a body corporate and politic of the State of New Jersey, with offices at 818 Lacey road, Forked River, New Jersey 08731 (“Seller”), and _____, an individual/corporation, with a mailing address at _____ (“Purchaser”).

RECITALS:

WHEREAS, Seller is the owner of a certain parcel of real estate in the Township of Lacey, County of Ocean, State of New Jersey, having a street address of 101 North Main Street, corner of Lacey road and Route 9 designated as Block 284, Lot 1.01 on the official Tax Map of the Township of Lacey, which, together with any improvements located thereon or appurtenances connected thereto, is hereinafter referred to as the “Property”; and

WHEREAS, the Property was previously listed for sale by way of auction by the Township (the “Auction”); and

WHEREAS, Purchaser, desiring to purchase the Property, bid on the Property at the Auction and was determined to be the highest bidder; and

WHEREAS, subject to, and on the terms and provisions of, and for the considerations set forth in this Agreement, Seller has agreed to sell, and Purchaser has agreed to buy, the Property.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Sale; Purchase Price.

1.1 Subject to the terms and provisions hereof, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and accept from Seller, the Property.

1.2 The total purchase price (the “Purchase Price”) to be paid by Purchaser to Seller for the Property shall be the principal amount of _____ (\$ _____)

The Purchase Price shall be paid by Buyer to Seller in the following manner:

- (a) Bid Deposit. Seller and Purchaser acknowledge that Purchaser remitted a bid deposit in the amount of _____ (ten percent (10%) of the Purchase Price) within ten (10) days Purchaser placed its bid on the Property during the Auction (the “Bid Deposit”). At Closing (as defined below), the Bid Deposit shall be paid to Seller and shall be credited toward the Purchase Price.

(b) Balance of Purchase Price. Purchaser shall pay to Seller at Closing the amount of the Purchase Price remaining due as of Closing after payment by Purchaser of the Bid Deposit, by cash or by wire transfer to an account designated by Seller.

(c) No Financing Contingency. It is expressly acknowledged by Purchaser that this Agreement is not subject to any financing contingency and that no financing for the transaction contemplated hereunder shall be provided by Seller, provided, however, that nothing contained herein shall prohibit Purchaser from obtaining such financing. Purchaser has or will have at Closing sufficient cash, available lines of credit, or other sources of immediately good funds to enable it to make payment of the Purchase Price, together with any other amounts to be paid by Purchaser hereunder, to Seller, in full.

1.3 In addition to the Purchase Price to be paid by Purchaser to Seller, Purchaser shall pay an Auction Fee to the entity conducting the auction at the Closing in an amount equal to FIVE PERCENT (5.0%) of the Purchase Price, together with any incidental or miscellaneous costs of the auction.

2. Closing; Deliveries.

2.1 Time, Place and Manner of Closing. Closing shall occur either (a) at the offices of the Township Attorney, Dasti, Murphy, McGuckin, Ulaky, Koutsouris and Connors, 620 W. Lacey Road, Forked River, NJ 08731, or (b) by mail or at such location, as decided and agreed upon by the parties hereto, on a date which is mutually agreeable to the parties hereto (“Closing”), but, in any event, no later than sixty (60) days after acceptance of Purchasers bid by Resolution adopted by the Lacey Township Committee.

2.2 Deliveries. At Closing each party shall execute and deliver to the other and/or Seller’s title company, if any, the following:

(2.a) Seller shall deliver to Purchaser and/or its title company:

(2.a.i) a quitclaim deed (the “Deed”) in recordable form, duly executed by Seller and acknowledged, conveying to Purchaser title to the Property.

(2.b) Purchaser shall deliver to Seller and/or its title company, if any, the balance of Purchase Price, in accordance with Section 1.2(c) hereof;

(2.c) Seller and Purchaser shall jointly deliver:

(2.c.i) A Closing statement;

(2.c.ii) All affidavits, declarations, and certificates which may be reasonably required;

3. Prorations. All items of income and expense shall be paid, prorated or adjusted as of the close of business on the day prior to Closing, including, without limitation, real estate taxes and utilities, if any.

4. Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

4.1 Power. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated hereby.

4.2 Requisite Action. All requisite action has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any judicial or administrative body, Township Committee, authority or other party is required which has not been obtained to permit Purchaser to enter into this Agreement and consummate the transaction contemplated hereby.

4.3 Authority. The individual(s) executing this Agreement have the legal power, right, and actual authority to bind themselves to the terms and conditions hereof and thereof.

4.4 Validity. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

4.5 Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated or referenced herein conflicts with or results in the material breach of any terms, conditions or provisions of, or constitutes a default under, any bond, note, or other evidence of indebtedness or any contract, lease or other agreements or instruments to which Seller is a party.

4.6 Representations. Notwithstanding anything contained in this Agreement to the contrary, Seller shall have no liability for breaches of any representations, warranties and certifications (the "Representations") which are made by Seller herein, or in any of the documents or instruments required to be delivered by Seller hereunder, if Purchaser, its elected or appointed officials, committee members, employees, professionals, consultants, or agents had knowledge of such breach by Seller at Closing, and Purchaser shall not have the right to bring any lawsuit or other legal action against Seller, nor pursue any other remedies against Seller, as a result of the breach of such Representations caused thereby, but Purchaser's sole right shall be to terminate this Agreement in which event.

5. Purchase As-Is; Release. EXCEPT FOR THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT PURCHASER IS PURCHASING THE PROPERTY IN ITS "AS-IS, WHERE IS" CONDITION "WITH ALL FAULTS" AS OF THE CLOSING DATE, AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER. EXCEPT FOR THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN SECTION 4 OF THIS AGREEMENT, SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, STRUCTURAL INTEGRITY, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (H) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY OR ANY OTHER ENVIRONMENTAL MATTER OR CONDITION OF THE PROPERTY; OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY.

EFFECTIVE AS OF THE CLOSING, AND SUBJECT TO THE SURVIVING OBLIGATIONS (AS SUCH TERM IS HEREINAFTER DEFINED), PURCHASER SHALL BE DEEMED TO HAVE RELEASED SELLER AND THEIR HEIRS AND ASSIGNS FROM ALL CLAIMS WHICH PURCHASER OR ANY AGENT, REPRESENTATIVE, EMPLOYEE, RESIDENT, CITIZEN OR OTHER PERSON OR ENTITY ACTING BY THROUGH OR UNDER PURCHASER HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE PROPERTY INCLUDING THE DOCUMENTS AND INFORMATION REFERRED TO HEREIN, ANY ENVIRONMENTAL CONDITIONS, AND PURCHASER SHALL NOT LOOK TO SELLER OR ITS SUCCESSORS IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION.

6. Purchaser's Representations, Warranties and Covenants. Purchaser hereby represents and warrants as follows:

6.1 Power. Purchaser has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated hereby.

6.2 Requisite Action. All requisite action (corporate, trust, partnership or otherwise) has been taken by Purchaser in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, creditor, investor, judicial or administrative body, authority or other party is required which has not been obtained to permit Seller to enter into this Agreement and consummate the transaction contemplated hereby.

6.3 Authority. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Purchaser have the legal power, right and actual authority to bind Purchaser to the terms and conditions hereof and thereof.

6.4 Validity. This Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

6.5 Improvements: Purchaser understands, acknowledges and agrees that the purchaser is solely responsible for the removal of any structures or other improvements on the Property required or necessary for Purchasers use of the Property.

6.6 Indemnity. Purchaser shall indemnify and hold Seller harmless from and against any and all claims, actions, judgments, liabilities, liens, damages, penalties, fines, costs, and reasonable attorneys' fees, foreseen or unforeseen, asserted against, imposed on or suffered or incurred by Seller directly or indirectly arising out of or in connection with any breach of the warranties, representations and covenants set forth in this Section 6. The warranties, representations and indemnities set forth in this Section 6 shall be deemed remade as of Closing and shall survive Closing, and said warranties and representations as so remade, and the indemnity obligation set forth in herein shall be deemed waived unless Seller has given Purchaser written notice of any such claim prior to the date which is six (6) months from the date of Closing.

7. Closing Costs. Seller shall pay for its legal fees and expenses, Purchaser shall pay for all other costs and expenses of closing, including, but not limited to, its legal fees and expenses, all title company settlement fees, the costs of recording the Deed and all fees, costs and in connection with the Auction, which administrative fees constitute a portion of the Purchase Price.

8. Attorneys' Fees and Costs. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, or in connection with any arbitration or mediation of any dispute, the prevailing party shall be entitled to recover from the other party such sum as the court, arbitrator or mediator may adjudge reasonable as such party's costs and attorney's fees, including such costs and fees as are incurred in any trial, on any appeal, in any bankruptcy proceeding (including the adjudication of issues peculiar to bankruptcy law) and in any petition for review. Each party shall also have the right to recover its reasonable costs and attorney's fees incurred in collecting any sum or debt owed to it by the other party, with or without litigation, if such sum or debt is not paid within fifteen (15) days following written demand therefor.

9. Notices. All notices, demands, deliveries and communications (a "Notice") under this Agreement shall be delivered or sent by: (i) first class, registered or certified mail, postage prepaid, return receipt requested, or (ii) nationally recognized overnight carrier, or (iii) by electronic mail addressed to the address of the party in question set forth in the first paragraph of this Agreement and copies to the parties designated below or to such other address as either party may designate by Notice pursuant to this Section 9. Notices shall be deemed given (a) three business days after being mailed as provided in clause (i) above, (b) one business day after delivery to the overnight carrier as provided in clause (ii) above, or (c) on the day of the transmission of the electronic mail so long as it is received by 5:00 PM on such day, and the original of such Notice is received the next business day via overnight mail as provided in clause (iii) above.

Notices to Seller: Township of Lacey
c/o Veronica Laureigh
Township Administrator
818 Lacey Road
Forked River, NJ 08731

copy to: Dasti, Murphy, McGuckin,
Ulaky, Koutsouris and Connors
c/o Christopher J. Connors, Esq.
620 W. Lacey Road,
Forked River, NJ 08731

Notices to Purchaser: (Purchaser)

copy to: (Attorney for Purchaser)

Notices given to and from either parties' counsel shall constitute effective notice hereunder.

10. Fire or Other Casualty; Condemnation. If the Property or any part thereof is damaged by fire or other casualty prior to the date of Closing, the Closing shall take place as herein provided without abatement of the Purchase Price, and Seller shall be permitted to retain all insurance proceeds paid or payable to Seller on account of such fire or casualty.

11. Assignment. Purchaser shall not assign this Agreement without Seller's prior written consent which consent may be withheld for any reason or no reason. Subject to the previous sentence, this Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective successors and assigns.

12. Remedies. IN THE EVENT ANY PARTY IS IN MATERIAL BREACH OF THIS AGREEMENT, THE OTHER PARTY MAY BRING ANY ACTION AT LAW OR IN EQUITY IN THE SUPERIOR COURT OF NEW JERSEY, WHICH MAY BE ADJUDICATED IN A SUMMARY PROCEEDING. SELLER AND PURCHASER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THE FOREGOING PROVISION AND BY THEIR SIGNATURES IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

13. Miscellaneous.

13.1 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto regarding the purchase and sale of the Property, and all prior agreements, understandings, representations and statements, oral or written, are hereby merged herein. In the event of a conflict between the terms of this Agreement and any prior written agreements, the terms of this Agreement shall prevail. This Agreement may only be amended or modified by an instrument in writing, signed by the party intended to be bound thereby.

13.2 Time. All parties hereto agree that time is of the essence in this transaction. If the time for performance of any obligation hereunder shall fall on a Saturday, Sunday or holiday (national, in the State of New Jersey) such that the transaction contemplated hereby cannot be performed, the time for performance shall be extended to the next such succeeding day where performance is possible.

13.3 Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

13.4 Governing Law. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW JERSEY AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY.

13.5 Recordation. Purchaser shall not record this Agreement or a memorandum or other notice thereof in any public office without the express written consent of Seller. A breach by Purchaser of this covenant shall constitute a material default by Purchaser under this Agreement.

13.6 Section Headings. The Section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

13.7 Severability. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

13.8 Independent Counsel. Purchaser and Seller each acknowledge that: (a) they were provided the opportunity to be represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel, if any; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel, if any. The fact that this Agreement was prepared by Seller's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Seller as a result of the preparation of this Agreement by Seller's counsel in its final form.

13.9 Governmental Approvals. Nothing contained in this Agreement shall be construed as authorizing Purchaser to apply for a zoning change, variance, subdivision maps, lot line adjustment, or other discretionary governmental act, approval or permit with respect to the Property prior to the Closing, and Purchaser agrees not to do so. Purchaser agrees not to submit any reports, studies or other documents, including, without limitation, plans and specifications, impact statements for water, sewage, drainage or traffic, environmental review forms, or energy conservation checklists to any governmental agency, or any amendment or modification to any such instruments or documents prior to the Closing. Purchaser's obligation to purchase the Property shall not be subject to or conditioned upon Purchaser's obtaining any variances, zoning amendments, subdivision maps, lot line adjustment or other discretionary governmental act, approval or permit. Nothing herein shall prevent or prohibit Purchaser from obtaining any required approval to construct any improvement on the Property after Closing and the merger of the Property with Purchaser's adjacent property.

13.10 No Waiver. No covenant, term or condition of this Agreement other than as expressly set forth herein shall be deemed to have been waived by Seller or

Purchaser unless such waiver is in writing and executed by Seller or Purchaser, as the case may be.

13.11 Discharge and Survival. The delivery of the Deed by Seller, and the acceptance thereof by Purchaser shall be deemed to be the full performance and discharge of every covenant and obligation on the part of Seller to be performed hereunder except for those obligations which expressly survive the Closing pursuant to and in accordance with the terms of this Agreement (the "Surviving Obligations"). No action shall be commenced after Closing on any covenant or obligation except the Surviving Obligations.

13.12 Brokers. Each party represents and warrants that it has dealt with no broker in connection with this Agreement, and each party shall indemnify, defend, and hold the other harmless from and against all loss, cost, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) arising out of any claim for a commission or other compensation by any broker who alleges that it has dealt with such party in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

Witness or Attest:

TOWNSHIP OF LACEY (SELLER)

Name: Veronica Laureigh, RMC
Title: Township Clerk

By: _____
Name: Timothy McDonald
Title: Mayor

PURCHASER

Witness or Attest:

Name:

By: _____
Name:
Title: