

AGREEMENT OF PURCHASE AND SALE

Block 54, Lot 11

COUNTY OF CAPE MAY

a public body politic and corporate of the State of New Jersey

Seller

and

Purchaser

DATED: _____, 2024

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF SALE (“Agreement”), dated this _____ day of _____, 2024, is hereby made by and between COUNTY OF CAPE MAY (“Seller”) a public body politic and corporate of the State of New Jersey, having a principal place of business at 4 Moore Road, Cape May Court House, New Jersey 08210 and _____ (“Purchaser”) of _____.

RECITALS

WHEREAS, Seller is the owner of certain lands and premises located at 1575 Route 47 South, Woodbine, and designated as Block 54, Lot 11, as shown on the Tax Map of the Township of Dennis, County of Cape May, State of New Jersey, as shown on the Seller’s Deed with legal description attached hereto and made a part hereof as Exhibit A (the “Property”); and

WHEREAS, on August 22, 2023, the Cape May County Board of County Commissioners adopted Resolution No. 576-23, declaring that the Property was not needed for public use and authorizing its public sale pursuant to N.J.S.A. 40A:12-13; and

WHEREAS, on _____, 2024, the Cape May County Board of County Commissioners adopted Resolution No. _____, accepting Purchaser’s bid and authorizing the sale of the Property to Purchaser under and subject to the terms and conditions of this Agreement of Purchase and Sale.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

TERMS

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. This agreement must be signed by Purchaser and the deposit paid as required by Section 1.2.(a) below prior to the adoption of the Resolution by the Board of County Commissioners of the County of Cape May accepting Purchaser’s bid.

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) **Deposit.** Purchaser has paid a Deposit at the time of the execution

of this contract equal to ten per cent (10%) of the purchase price in the amount of _____ (\$_____) (the "Deposit"). At Closing (as defined below), the 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 remaining after payment of the Deposit in the amount of _____ (\$_____) after payment by Purchaser of the 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 at the Closing an Auction Fee to the entity conducting the auction in an amount equal to FIVE PER CENT (5.0%) of the Purchase Price, together with all incidental or miscellaneous costs of the auction.

2. Closing; Deliveries. The sale and purchase of the Property shall be consummated between Seller and Purchaser as follows:

2.1 Title Transfer. On the Closing Date, as defined below, the Seller shall convey title to the Property to the Purchaser by bargain and sale deed with covenants against grantor's acts.

2.2 Time, Place and Manner of Closing. Closing shall occur either (a) at the offices of the County of Cape May, 4 Moore Road, Cape May Court House, New Jersey 08210, 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 thirty (30) days after acceptance of Purchasers bid by Resolution adopted by the Board of County Commissioners of the County of Cape May.

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

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

(3.a.i) a bargain and sale deed with covenant's against grantor's acts (the "Deed"), in recordable form, duly executed by Seller and acknowledged, conveying all of the Seller's rights, title and interest in the Property.

(3.a.ii) Purchaser shall record the Deed and any required closing documents in the Office of the Clerk of Cape May County within ten (10) days after Closing.

(3.b) Purchaser shall deliver to Seller the balance of Purchase Price, in accordance with Section 1.2(c) hereof;

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

(3.c.i) A Closing statement; and

(3.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.

4.3 Authority. The individual(s) executing this Agreement on behalf of Seller 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.

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 ANY SURVIVING OBLIGATIONS (AS SUCH TERM IS HEREINAFTER DEFINED), PURCHASER SHALL BE DEEMED TO HAVE RELEASED SELLER AND ITS SUCCESSORS, IF ANY, 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 Property Buyer shall return the Property to undeveloped land by demolishing all buildings, improvements, and other fixtures that presently exist on the land and removing the debris therefrom. The Purchaser shall be required to maintain the Property undeveloped and in a manner that its natural condition will be preserved in perpetuity. Purchaser is solely responsible for the condition of the Property from and after Closing, and Seller, as set forth in Section 5 above, makes no representations or warranties concerning same.

6.6 Indemnity. To the fullest extent permitted by law, 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. 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 expenses in connection with the Auction, which administrative fees constitute a portion of the Purchase Price.

8. 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 4:30 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: County of Cape May
c/o Clerk of the Board
4 Moore Road, DN 107
Cape May Court House, New Jersey 08210

copy to: Department of Law
County of Cape May
4 Moore Road, DN 104
Cape May Court House, New Jersey 08210

Notices to Purchaser: (Purchaser)

copy to: (Attorney for Purchaser)

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

9. 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.

10. Remedies.

10.1 Seller's Remedies. In the event the Purchaser shall fail or refuse to complete Closing for reasons other than the Seller's default or the failure to satisfy any conditions precedent to the Purchaser's obligations hereunder, or if there has been a breach of any of the covenants, representations, warranties or undertakings of the Purchaser, the Seller shall have all remedies available at law and in equity.

10.2 Purchaser's Remedies. In the event the Seller refuses to complete Closing for reasons other than the Purchaser's default, the Purchaser shall have the right to require specific performance of the terms and conditions of this Agreement or to terminate this Agreement and receive expenses for title searches, inspections, and surveys, provided specific performance can be accomplished at no cost to the Seller.

11. Conservation Deed Restriction: Purchaser understands and agrees that an essential term and condition of the Seller's sale of the Property is to maintain the Property undeveloped and in a manner that its natural condition will be preserved in perpetuity (hereinafter "conservation values") with the purpose of safeguarding and upholding the aforesaid conservation values and significance of the land. Therefore, Purchaser confirms its understanding and agreement, as a condition of its bid to purchase the Property, that the Deed conveying title to the Property will be subject to the Conservation Deed Restriction attached hereto and made a part hereof as Exhibit A.

12. Miscellaneous.

12.1 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.

12.2 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.

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

12.4 Governing Law; Jurisdiction. This Agreement shall be governed by and construed under the substantive laws of the State of New Jersey, excluding choice of law rules thereof. In any action or proceeding brought hereunder or in respect hereof, the Parties consent to the personal jurisdiction of the Superior Court of New Jersey, Cape May County.

12.5 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.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 Brokers. Each party represents and warrants that it has dealt with no broker in connection with this Agreement other than the entity conducting the auction 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 date first above written.

Witness or Attest:

COUNTY OF CAPE MAY (SELLER)

Kevin R. Lare
Clerk of the Board

By: _____
Leonard C. Desiderio
County Commission Director

Approved as to Form:

Jeffrey R. Lindsay, Esquire
County Counsel

PURCHASER

By: _____

Name:

Title: