

**BOROUGH OF HIGHLAND PARK  
ORDINANCE NO. 21-2034**

**ORDINANCE OF THE BOROUGH OF HIGHLAND PARK IN THE  
COUNTY OF MIDDLESEX, STATE OF NEW JERSEY,  
AUTHORIZING THE BOROUGH TO ENTER INTO A PURCHASE  
AND SALE AGREEMENT WITH DAVID R. TAWIL AND  
YEHUDITH TAWIL TO ACQUIRE BLOCK 3001, LOT 7 ON THE  
TAX MAP OF THE BOROUGH OF HIGHLAND PARK**

**WHEREAS**, the Borough of Highland Park (the “**Borough**”) is a public body corporate and politic of the State of New Jersey, and, pursuant to *N.J.S.A. 40A:12A-1 et seq.* of the Local Redevelopment and Housing Law (the “**LRHL**”), the Borough has determined to act as the “redevelopment entity” (as such term is defined at *N.J.S.A. 40A:12A-3*) and to exercise the powers contained in the LRHL to facilitate redevelopment; and

**WHEREAS**, David R. Tawil and Yehudth Tawil (“**Sellers**”) are the owners of certain real property shown on the tax map of the Borough as Block 3001, Lot 7 commonly known as 23 South 3<sup>rd</sup> Avenue, Highland Park (the “**Property**”); and

**WHEREAS**, the Borough wishes to acquire the Property as part of its efforts to develop a public space in the area; and

**WHEREAS**, pursuant to *N.J.S.A. 40A:12A-8(b)*, *N.J.S.A. 40A:12A-22(i)* and *N.J.S.A. 40A:12A-22(o)* of the LRHL, the Borough may contract to acquire property by purchase; and

**WHEREAS**, the Borough desires to purchase the Property from Sellers for a price of Four Hundred Ninety Thousand and 00/100 Dollars (\$490,000.00) (the “**Purchase Price**”), pursuant to the terms of a purchase and sale agreement, substantially in the form attached hereto as **Exhibit A** (the “**PSA**”), negotiated between the Borough and the Sellers,

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Highland Park, County of Middlesex, and the State of New Jersey, as follows:

**Section 1.** The aforementioned recitals are hereby incorporated by reference as if fully set forth herein.

**Section 2.** The Borough Council approves the PSA with the Sellers in substantially the form attached hereto as **Exhibit A**, together with any changes, insertions and omissions, after the Mayor’s consultation with counsel to the Borough, as they deem in their collective discretion to be necessary or desirable for the execution thereof.

**Section 3.** The Mayor, Borough Administrator and other necessary and desirable Borough officials/employees and Borough consultants are authorized to execute, deliver and administer the PSA, take any other necessary actions or refrain from taking actions, execute and deliver documents and/or agreements that are reasonable and necessary to effectuate the PSA and this Ordinance, and to close on the purchase of the Property.

**Section 4.** The Borough Council further authorizes the acquisition of, and closing on the purchase of the Property from the Sellers in accordance with the PSA, and the Mayor, Borough Administrator and other necessary and desirable Borough officials/employees are hereby authorized to accept the Deed to the Property and any and all associated documents by and between the Sellers and the Borough, and any other documents in accordance with the PSA and this Ordinance as reasonably required to effectuate said purchase.

**Section 5.** If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

**Section 6.** This Ordinance shall take effect upon final passage and publication according to law.

Introduced on first reading  
by title: September 14, 2021

ADOPTED: October 5, 2021

ATTEST:

APPROVED: October 5, 2021

\_\_\_\_\_  
Joan Hullings  
Borough Clerk

\_\_\_\_\_  
Gayle Brill Mittler  
Mayor

**EXHIBIT A**

FORM OF PURCHASE AND SALE AGREEMENT

# **PURCHASE AND SALE AGREEMENT**

by and between

**DAVID R. TAWIL AND YEHUDITH TAWIL**

(Sellers)

And

**BOROUGH OF HIGHLAND PARK**

(Buyer)

Property:

Block 3001, Lot 7 on the Tax Map of Highland Park, Middlesex County, New Jersey  
commonly known as 23 South 3<sup>rd</sup> Avenue, Highland Park, New Jersey 08904

Effective Date: \_\_\_\_, 2021

**THIS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made to be effective as of \_\_\_, 2021 (the “**Effective Date**”) by and between the **DAVID R. TAWIL** and **YEHUDITH TAWIL**, with an address of 23 South 3<sup>rd</sup> Avenue, Highland Park, New Jersey 08904 (collectively, the “**Sellers**”), and the **BOROUGH OF HIGHLAND PARK**, with an address of: 221 S. Fifth Avenue, Highland Park, New Jersey, 08904 (the “**Buyer**”). Sellers and Buyer are sometimes individually referred to as a “**Party**” and collectively as the “**Parties.**”

W I T N E S S E T H:

**WHEREAS**, Sellers are the owners of fee title to the Property;

**WHEREAS**, Buyer desires to acquire the Property; and

**WHEREAS**, Buyer has agreed to purchase, and Sellers have agreed to sell, the Property, but only on the terms and subject to the conditions hereinafter set forth.

**NOW THEREFORE**, for and in consideration of the premises hereof, the sums of money to be paid hereunder, the mutual covenants and conditions herein contained, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do covenant, stipulate and agree as follows:

**1.0 Property** The Sellers are the owner of certain real property and the improvements located thereon in the Borough of Highland Park, Middlesex County, New Jersey (the “**Borough**”), designated as Block 3001, Lot 7 on the Borough’s tax map, with street addresses 23 South 3<sup>rd</sup> Avenue, Highland Park, New Jersey 08904 (the “**Property**”).

**2.0 Agreement to Sell** The Sellers agree to sell the Property to the Buyer and the Buyer agrees to buy the Property from the Sellers upon the terms and conditions set forth below.

**3.0 Property to be Conveyed** The Property consists of that certain lot, tract or parcel of land defined as the Property, together with any buildings and improvements thereon contained and the privileges contained and appurtenances thereto appertaining, including but not limited to all rights, title and interest of the Sellers in and to any water rights, mineral rights, air rights, rights of surface support, adjoining strips and gores, and easements and rights-of-way incidental thereto.

**4.0 Purchase Price** Subject to the terms of this Agreement and the Closing Deliverables (as defined herein), the Sellers agree to sell and the Buyer agrees to purchase all of the Sellers’ right, title and interest in and to the Property. In consideration therefor, the Buyer shall pay to the Sellers the amount of FOUR HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$490,000.00) (the “**Purchase Price**”).

## **5.0 Payment of Deposit**

5.1 No later than five (5) days after the execution of this Agreement, the Buyer shall deposit into escrow with the Sellers' attorney, Ralph D. Tawil, Esq. the amount of FORTY-NINE THOUSAND AND 00/100 DOLLARS (\$49,000.00) (the "**Deposit**").

5.2 The Deposit shall be deposited into escrow with Sellers' attorney in immediately available funds. Except as expressly otherwise set forth herein, the Deposit shall be applied against the Purchase Price at the Closing and shall otherwise be held and delivered by the Sellers' attorney.

**6.0 Balance of Purchase Price at Closing** On the Closing Date, the Buyer shall (a) deposit into escrow with the Title Company (the "**Escrow Agent**") the balance of Purchase Price plus the amount of any prorations or adjustments to which the Sellers are entitled as set forth in Section 11.0, or as otherwise provided under this Agreement, and (b) authorize and direct the Escrow Agent to simultaneously pay the Deposit into such escrow.

## **7.0 Due Diligence Period**

7.1 Prior to execution of this Agreement, Sellers agree to provide Buyer with electronic copies of all documents, surveys, letters, approvals, environmental or other reports, examinations, title report / information and any other information related to the Property (the "**Property Documents**") within Sellers' possession, custody or control.

7.2 The Buyer, together with its authorized agents, consultants, contractors and representatives (collectively "**Entrants**"), shall have a period of fourteen (14) days from August 24, 2021, the date of execution of the Letter of Intent to Purchase the Property (the "**LOI**") (the "**Due Diligence Period**") to perform any and all inspections, measurements, surveys, engineering and environmental studies (including specifically a Phase I or II Environmental Site Assessment, Preliminary Assessment, and/or Site Investigation, as such terms are defined under Environmental Laws), sampling of soil and/or groundwater for laboratory analysis, utilities investigations, zoning and architectural studies, title investigations and any other reports, tests, and/or investigations relating to the Property which the Buyer shall deem appropriate (collectively the "**Due Diligence Activities**"). The due diligence review shall be performed at the Buyer's sole cost and expense.

7.3 In the event the Buyer shall determine in its sole and absolute discretion that it is not satisfied with the condition of the Property as a result of its review, the Buyer shall have the right to either a) seek a reduction of the Purchase Price; or b) terminate this Agreement by written notice to the Sellers given prior to 5:00 p.m. on the last day of the Due Diligence Period, in which event neither Party shall have any further rights nor liabilities hereunder thereafter (except as set forth in any provisions hereunder that expressly survive termination of this Agreement). Provided, however, that Buyer shall be entitled to one (1) fourteen (14) day extension of the Due Diligence Period upon written notice to the Sellers prior to the 5:00 p.m. on the last day of the Due Diligence Period. In the event that the Buyer does not terminate this Agreement or extend the Due Diligence Period prior to 5:00 p.m. of the last day of the Due Diligence Period as herein above

provided, time being of the essence, the Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 7.

7.4 For purposes of this Agreement, the following capitalized terms shall have the meaning set forth below:

**“Environmental Law”** shall mean all federal, state or local laws, ordinances, statutes, codes, rules, regulations, treaty, judgment, orders or decrees or published directive, guideline, requirement or other governmental rule or restriction which has the force of law, by or from a court, arbiter, or other federal, state, county, municipal or regional governmental authority, agency or other entity of a similar nature, exercising any executive, legislative, judicial, regulatory or administrative function of government, now or hereinafter in effect relating to, or imposing obligations, liabilities, or standards of conduct concerning or otherwise relating to (A) pollution, (B) the protection or regulation of human or animal health or safety, natural resources or the environment, including flora and fauna, (C) the treatment, storage, distribution, use, recycling, transport, handling or disposal of Hazardous Materials, or (D) the generation, manufacture, processing, distribution, emission, discharge, release or threatened release of Hazardous Materials into the environment, including, without limitation: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 41 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, as amended (“TSCA”), 15 U.S.C. § 2601 et seq.; the New Jersey Spill Compensation and Control Act (the “Spill Act”), as amended, N.J.S.A. 58:10-23.11 et seq.; the New Jersey Industrial Site Recovery Act (“ISRA”), as amended, N.J.S.A. 13:1K-6 et seq.; the New Jersey Underground Storage of Hazardous Substances Act, as amended, N.J.S.A. 58:10A-21 et seq.; the New Jersey Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.; the New Jersey Solid Waste Management Act (“SWMA”), N.J.S.A. 13:1E-1 et seq.; the New Jersey Brownfield and Contaminated Site Remediation Act; N.J.S.A. 58:10B-1 et seq.; the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et. seq.; the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C et seq.; the NJDEP Remediation Standards, N.J.A.C. 7:26D et seq.; the Technical Requirements for Site Remediation, N.J.A.C. 7:26E et seq.; any other applicable state and local environmental laws and regulations promulgated or enforced by any governmental authority.

**“Hazardous Materials”** shall mean (a) those substances included within the definition of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes” and “toxic pollutants,” as such terms are defined under the Environmental Laws or any definitions in any comparable state laws, (b) any “hazardous substance” as now or hereafter defined in §101(14) of CERCLA, or any regulations promulgated under CERCLA; (c) any “hazardous waste” as now or hereafter defined in RCRA, or regulations promulgated under RCRA; (iii) any substance regulated by ISRA, the Spill Act, the SWMA, or any regulations promulgated thereunder; (d) any substance regulated by the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; (e) petroleum and petroleum products, including, without limitation, crude oil and any factions thereof, (f) natural gas, synthetic gas and any mixtures thereof, (g) asbestos and/or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable, (h) polychlorinated biphenyl (“PCBs”) or PBC-containing materials or fluids, (i) radon, (j)

any other hazardous or radioactive substance, material, pollutant, contaminant or waste, and (k) any additional substances or materials which are now or hereafter determined, classified or considered to be hazardous, toxic or subject to regulation and that may need to be investigated, monitored, or remediated if present on, under or migrating from the Property pursuant to Environmental Laws.

## **8.0 Title**

8.1 The Buyer shall obtain (at Buyer's sole expense) a title insurance commitment (the "**Title Commitment**") from the Escrow Agent (the "**Title Company**") and an ALTA survey of the Real Property (the "**Survey**"), and furnish a copy of the Title Report and Survey to the Sellers promptly after the Buyer receives same, but in no event later than October 5, 2021 (collectively the "**Feasibility Period**"). Buyer shall provide the Sellers with true, accurate and complete copies of any easements, covenants, restrictions, exceptions of record and other matters that are shown on the Title Commitment or the Survey in their respective forms at the end of the Feasibility Period (and as most recently delivered to Sellers by Buyer, the surveyor or the Title Company), together with (a) all laws, ordinances, statutes, orders, requirements and regulations to which the Property is subject, (b) the preprinted exceptions in the Title Commitment or Title Policy; (c) any exception from a survey updated after the end of the Feasibility Period; and (d) any Title Commitment requirements which are the Buyer's responsibility to fulfill (such as providing the Title Company with organizational and authorization documentation (collectively referred to as "**Permitted Exceptions**"). If Buyer objects to any exception or matter shown on the Title Commitment or the Survey, Buyer shall deliver a written notice thereof to Sellers within five (5) Business Days prior to the expiration of the Feasibility Period. If Buyer does not timely deliver any such objection notice to Sellers, Buyer shall be deemed to have approved all Permitted Exceptions. Sellers shall have no obligation to cure any Buyer title objection or satisfy any other title matters. If the Title Company notifies the parties of any additional exceptions to title after the expiration of the Feasibility Period, Buyer shall have five (5) Business Days from the date of delivery of any such title supplement within which to object to the same by written notice to Sellers. If Buyer does not timely deliver such objection notice to Sellers, Buyer shall be deemed to have approved all such additional exceptions, each of which shall be deemed a Permitted Exception. With respect to any title or survey matter to which Buyer has timely objected, Sellers shall notify Buyer within five (5) Business Days of receipt of Buyer's objection notice whether Sellers intend to endeavor to cure such title or survey matter. If Sellers do not notify Buyer within such five (5) Business Day period, Sellers shall be deemed to have elected not to endeavor to cure such title or survey matter. If Sellers elect (or is deemed to have elected) not to cure a title or survey matter which Buyer has objected to, Buyer shall have the right to terminate this Agreement by written notice to Sellers given within three (3) Business Days of Sellers' notice not to cure, failing which, any such title or survey matter shall be deemed a Permitted Exception and Buyer shall proceed to closing without any reduction or abatement in the Purchase Price. Notwithstanding anything contained herein to the contrary, Buyer shall have no right to object to: (i) any matter over which the Title Company is willing to insure or (ii) any matter arising as a result of an act or omission of Buyer.

8.2 On or prior to Closing, Sellers shall be obligated only to cure or remove the following encumbrances to the title of the Property raised in the Title Objection Notice

(collectively, the “**Liquidated Defects**”): (a) liens securing a mortgage, deed of trust, security agreement or trust deed evidencing an indebtedness arising by, through or under Sellers; (b) judgment liens against Sellers; (c) tax liens or environmental liens; (d) broker’s liens based on the written agreement of Sellers; (e) UCC liens and encumbrances arising by, through or under Sellers; and (f) any mechanics’ or materialmen’s liens that are based upon a written agreement between either (x) the claimant (a “**Contract Claimant**”) and Sellers, or (y) the Contract Claimant and any other contractor, supplier or materialman with which Sellers have a written agreement. The Buyer shall have the right to continue any and all title searches to the Closing Date to confirm that Sellers are conveying marketable title. The Buyer shall have the right to continue any and all title searches to the Closing Date to confirm that Sellers are conveying marketable title.

**9.0 Closing of Title** The transaction contemplated in this Agreement will be closed and the Deed (as defined herein) will be delivered and recorded in the land records of the Middlesex County Clerk, State of New Jersey, fully executed originals (and to the extent executed in counterparts, compiled to make the appropriate originals) of Buyer’s Closing Deliverables (defined below) and Sellers’ Closing Deliverables (defined below) will be delivered to the appropriate parties, and proceeds from the sale will be delivered to Sellers in accordance with this Agreement and the fully executed Closing Statement, as defined in Section 10, no later than October 8, 2021, or at a date mutually agreed to by and between the Parties, within thirty-one (31) days following the conclusion of the Due Diligence Period. The Closing will take place on the specified Closing Date at the offices of McManimon, Scotland & Baumann, LLC, 75 Livingston Avenue, Roseland, New Jersey 07068, or such other time and place as may be agreed upon by Buyer and Sellers, in writing. Sellers and Buyer, respectively, acknowledge and agree that so long as each party hereto satisfies its obligations under this Agreement, including the obligations set forth in Section 11, neither party shall be required to attend Closing. At the option of either party, Closing may be conducted by the distribution and delivery of Buyer’s Closing Deliverables and Sellers’ Closing Deliverables via overnight delivery service to Escrow Agent.

#### **10.0 Closing Deliverables**

On the Closing Date, the Sellers shall deliver the following:

- (a) A fully and properly executed bargain and sale deed with covenants against grantor’s acts in recordable form sufficient to convey marketable fee title to the Property to the Buyer in accordance with the terms of this Agreement (the “**Deed**”);
- (b) An executed Affidavit of Title in form reasonably required by the Title Company including a warrant that the Sellers are duly authorized to consummate this transaction, including the Sellers’ execution of this Agreement, the LOI, and the Closing Documents required to be delivered by the Sellers;
- (c) An Internal Revenue Code Section 1445 Affidavit (FIRPTA);
- (d) Closing Statement executed by Sellers;

- (e) A properly completed and executed Affidavit of Consideration and/or Exemption and Sellers' Residency Certification / Exemption;
- (f) An executed 1099-S;
- (g) A non-foreign status affidavit as required by Section 1445 of the Internal Revenue Code, executed by each of the Sellers and
- (h) Any other necessary documents reasonably required by the Buyer, its attorney, or the Title Company.

On the Closing Date, the Buyer shall deliver the following:

- (a) The Purchase Price, as adjusted for apportionments and other adjustments required under this Agreement, plus any other amounts required to be paid by the Buyer at Closing
- (b) A properly completed and executed Affidavit of Consideration or Exemption, if applicable;
- (c) Closing Statement executed by Buyer; and
- (d) Any other necessary documents reasonably required by its Title Company.

**11.0 Adjustments at Closing** The following adjustments are to be made at the Closing as of the end of the Closing Date, if applicable: (i) real estate taxes on the basis of the fiscal year for which assessed; (ii) water charges; (iii) sewer rents; (iv) gas; (v) electric; (vi) fuel (at the Sellers' cost therefor); and (vii) any other items which shall be appropriate for adjustment under local closing standards and practices.

**12.0 Closing Costs** Except as otherwise provided in this Agreement, Sellers will pay the following costs in connection with the Closing: (a) all costs of preparation and recording of the Deed any instruments required to correct any Title Defects and Liquidated Defects, (b) Sellers' attorneys' fees and (c) property transfer taxes, documentary stamp taxes or similar charges. Except as otherwise provided in this Agreement, Buyer will pay for the following costs in connection with the Closing: (a) any fees and costs of the Title Company for the title search and exam and issuance of the commitment which fees and costs are separately stated from the title premium for the title policy and the cost to obtain a standard owner's title insurance policy in an amount of the fair market value of the Property and the cost of any extended insurance or endorsements to such title policy, (ii) all costs related to its Inspections, including without limitation the cost of the Survey and (iii) any other closing costs which are not specified as the responsibility of Sellers. All other costs by and between Sellers and Buyer shall be governed by closing customs of the State of New Jersey.

**13.0 As-Is Condition** THE PROPERTY IS BEING PURCHASED BY BUYER IN AN “AS IS” AND “WHERE IS” CONDITION AND WITH ALL EXISTING DEFECTS (PATENT AND LATENT) PURSUANT TO SUCH INSPECTIONS AND INVESTIGATIONS AND NOT IN RELIANCE ON ANY AGREEMENT, UNDERSTANDING, CONDITION, WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) OR REPRESENTATION MADE BY SELLERS OR ANY AGENT OR EMPLOYEE OF SELLERS OR ANY OTHER PARTY (EXCEPT AS OTHERWISE EXPRESSLY ELSEWHERE PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENT TO BE DELIVERED BY SELLERS AT CLOSING) AS TO THE FINANCIAL OR PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL AND/OR GEOPHYSICAL) CONDITION OF THE PROPERTY OR THE AREAS SURROUNDING THE PROPERTY, OR AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO ANY PERMITTED USE THEREOF, THE ZONING CLASSIFICATION THEREOF OR COMPLIANCE THEREOF WITH FEDERAL, STATE OR LOCAL LAWS, AS TO THE INCOME OR EXPENSE IN CONNECTION THEREWITH, OR AS TO ANY OTHER MATTER IN CONNECTION THEREWITH. BUYER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY ELSEWHERE PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENT TO BE EXECUTED AND DELIVERED BY SELLERS AT CLOSING, NEITHER SELLERS, OR ANY AGENT OR EMPLOYEE OF SELLERS NOR ANY OTHER PARTY ACTING ON BEHALF OF SELLERS HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY SUCH AGREEMENT, CONDITION, REPRESENTATION OR WARRANTY EITHER EXPRESS OR IMPLIED. IN PURCHASING THIS PROPERTY, BUYER AGREES AND ACKNOWLEDGES THAT IT IS SOLELY RELYING ON ITS OWN ASSESSMENTS, INVESTIGATIONS, INSPECTIONS, TESTS, REVIEWS, AND/OR STUDIES OF THE PROPERTY CONDUCTED DURING THE DUE DILIGENCE PERIOD PROVIDED BY SECTION 6.0 (DUE DILIGENCE PERIOD). THIS PARAGRAPH SHALL SURVIVE CLOSING AND DELIVERY OF THE DEED.

**14.0 Right of Entry**

14.1 During the Due Diligence Period, Entrants shall have a license to enter upon the Property for the purpose of performing the Due Diligence Activities. Entrants license to enter the Property shall be limited to the purpose of conducting the Due Diligence Activities and for no other purpose, provided that (i) Buyer notifies Sellers not less than two (2) Business Days prior to such entry; provided, however, such notice shall generally describe the scope of the physical nature of the Due Diligence Activities which Entrants intend to conduct during such access to the Property.

14.2 At Sellers’ election, a representative of Sellers may be present during any entry upon the Property by Entrants. Buyer shall not cause or permit any mechanics liens, materialmen liens, or other liens to be filed against the Property as a result of the Due Diligence Activities. Entrants shall, in performing the Due Diligence Activities, comply with the agreed upon procedures and in a good and workmanlike manner and comply with all applicable laws, codes, ordinances, rules and regulations of all municipal, local, state and federal governmental or quasi-governmental entity.

14.3 Buyer agrees to indemnify, defend and hold Sellers and their respective representatives, including, without limitation, employees, managers, investment and other advisors, lenders (collectively, the “**Indemnified Parties**”) harmless from and against any and all claims, losses, damages of every kind and nature (including without limitation personal injury, death, bodily injury and property damage), costs and expenses (including, without limitation, reasonable attorneys’ fees; and court costs) suffered or incurred by any of the Indemnified Parties as a result of or in connection with any Due Diligence Activities of Entrants conducted pursuant to the provisions of this Agreement. Provided, however, that Buyer shall NOT indemnify, defend or hold the Indemnified Parties harmless from and against any and all claims, losses, damages of every kind and nature (including without limitation personal injury, death, bodily injury and property damage), costs and expenses (including, without limitation, reasonable attorneys’ fees; and court costs) arising from or related to the negligence, gross negligence, wonton or willful misconduct of the Indemnified Parties.

## **15.0 Representations and Warranties**

15.1 Buyer’s Representations. Buyer hereby makes the following representations to Sellers:

- a. Buyer is public body corporate and politic and a subdivision of the State of New Jersey. The Buyer has the requisite power and authority to enter into this Agreement. The execution, delivery and performance by the Buyer of this Agreement are within the authority of the Buyer.
- b. The person executing this Agreement on behalf of the Buyer has been duly authorized by Ordinance of the Borough Council of the Borough of Highland Park (the “**Council**”) to execute this Agreement as a valid and binding obligation of the Buyer. The Ordinance authorizing the sale of the Property to the Buyer will be introduced for first reading at the Council meeting on September 14, 2021, and, if it passes, it will be presented to the Council for final adoption at the Council meeting on October 5, 2021.
- c. Buyer has performed and observed, in all material respects, all covenants and agreements contained in this Agreement to be performed and observed by the Buyer as of the Closing.
- d. All of the representations and warranties of the Buyer contained in this Agreement and are true and correct in all material respects as of the Closing.
- e. The Buyer has no knowledge of any pending or threatened legal action of any kind or character whatsoever affecting the Property which will in any manner interfere with the transfer of possession or title upon consummation hereof, nor has the Buyer knowledge that any such action is presently contemplated.
- f. There are no insolvency proceedings pending or to Buyer’s knowledge, threatened against it.

15.2 Sellers' Representations. Sellers hereby makes the following representations to Buyer:

- a. The Sellers are authorized to execute this Agreement and consummate the Transaction and fulfill all of its obligations hereunder and under all Closing Deliverables to be executed by the Sellers and such instruments, obligations and actions are valid and legally binding upon the Sellers, enforceable in accordance with their respective terms.
- b. Sellers are not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.
- c. The Sellers have no knowledge of any pending or threatened legal action of any kind or character whatsoever affecting the Property which will in any manner interfere with the transfer of possession or title upon consummation hereof, nor have the Sellers any knowledge that any such action is presently contemplated.
- d. There are no insolvency proceedings pending or to Sellers' knowledge, threatened against them.

15.3 The representations and warranties as set forth in this Agreement shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time and shall survive the closing of title.

## **16.0 Default**

16.1 If Sellers default under this Agreement, fails to timely perform any of the covenants and agreements of Sellers herein or if any of Sellers' representations and warranties contained herein are not true and correct either on the Effective Date or the Closing Date, and such failure is not cured within ten (10) days after Sellers' receipt of written notice from Buyer, Buyer may elect to (i) terminate this Agreement by written notice to Sellers with a copy to Escrow Agent and neither party shall have any further rights or obligations to the other under this Agreement, except as otherwise expressly set forth in this Agreement, or (ii) file an action for specific performance. If the Buyer has tendered the Deposit at the time of termination of the Agreement as set forth in this Section 16.1(i), the full Deposit will be returned to the Buyer.

16.2 If Buyer defaults under this Agreement, fails to timely perform any of the covenants and agreements of Buyer herein, or if any of Buyer's representations and warranties contained herein are not true and correct either on the Effective Date or on the Closing Date, and such default is not cured within ten (10) days after Buyer's receipt of written notice from Sellers, Sellers may terminate this Agreement by written notice to Buyer with a copy to Escrow Agent and neither party shall have any further rights or obligations to the other under this Agreement, except as otherwise expressly set forth in this Agreement. If the Buyer has tendered the Deposit at the time of termination of the Agreement as set forth in this Section 16.2, the full Deposit will be returned to the Buyer.

16.3 Neither party shall be liable to the other party or any other person or entity for any consequential, incidental, indirect, special or punitive damages of any kind or nature, including lost profits or lost opportunity costs.

**17.0 Environmental**

- a. The Parties expressly acknowledge and agree that to the extent any portion of the Property requires environmental investigation or remediation, pursuant to Environmental Laws, the Sellers shall have no responsibility therefor. The Parties expressly agree and acknowledge that it shall be the sole responsibility of the Buyer to undertake and pay the cost and expenses related to any and all environmental investigation or remediation, compliance with Environmental Laws, environmental testing, and/or other analyses for the Property, and that the Sellers have no obligation or liability whatsoever with respect to the environmental condition of the Property. The provisions of this subparagraph, however, shall not apply to any third-party claim(s) that Hazardous Materials originating from the Property are impacting hereon as a result of Sellers' former use or operations conducted on the Property.
- b. Buyer shall defend, protect, indemnify and hold harmless the Sellers, and their collective officers, employees, agents, servants, guests, contractors, representatives, or administrators, from any claims which may be sustained as a result of any environmental conditions on, in, or under the Property. The provisions of this subparagraph, however, shall not apply to any third-party claim(s) that Hazardous Materials originating from the Property are impacting thereon as a result of Sellers' former use or operations conducted on the Property.
- c. Buyer and any person or entity claiming by, through or under Buyer, hereby agrees to fully release the Sellers, and their collective employees, agents, servants, guests, contractors, representatives, or administrators, from any (i) any and all claims, costs, losses, liabilities, damages, expenses, demands, or causes of action, now or hereafter arising from or relate to any matter of any kind or nature relating to the Property and (ii) any and all responsibility and liability with respect to the environmental conditions at the Property, including the presence in the soil, air, structures, and groundwater of Hazardous Materials that have been or may in the future be determined to be toxic, hazardous, or subject to regulation and that may need to be specially treated, handled, and/or removed from the Property under current or future Environmental Laws. The provisions of this subparagraph, however, shall not apply to any third-party claim(s) that Hazardous Materials originating from the Property are impacting thereon as a result of Sellers' former use or operations conducted on the Property.
- d. The provisions of this Article 17 shall survive the transfer of title to the Property.

**18.0 Risk of Loss** The risk of loss to the Property until the Closing shall be on the Sellers. In the event that the Property shall be destroyed or damaged by reason of fire, storm, accident or other casualty, the Buyer shall have the option on written notice to the Sellers to either: (i) terminate this Agreement on written notice to the Sellers, whereupon neither Party shall have any further rights nor liabilities hereunder thereafter (except for provisions that expressly survive

termination of this Agreement); or, (ii) direct the Sellers to assign to the Buyer at Closing the Sellers' right to any casualty insurance proceeds resulting from such casualty (or if such insurance proceeds are not assignable, the Sellers shall at Closing grant to the Buyer a credit against the Purchase Price in the amount of any such insurance proceeds), in all instances with Sellers providing to the Buyer a credit against the Purchase Price for the amount of any applicable deductible. If the Buyer elects to have insurance proceeds assigned to the Buyer, the Sellers shall not be required to repair or replace the damaged Property nor shall the Purchase Price be abated (except that if insurance proceeds have already been paid to the Sellers by the Closing Date, the Buyer shall be credited with the amount so paid against the Purchase Price). If the Sellers do not have insurance to cover any such destruction or damage or is unable to collect the insurance proceeds, then the Buyer shall have the option on written notice to the Sellers to either (a) terminate this Agreement whereupon neither Party shall have any further rights or obligations except as otherwise set forth in this Agreement or (b) abate the Purchase Price in an amount necessary to repair or replace any such destruction or damage. The Buyer shall have the right to independently insure its interest in the Property, at the Buyer's sole cost and expense.

**19.0 Condemnation** In the event that the entire Property or a substantial part thereof shall have been taken by eminent domain or shall be in the process of being so taken, on the Closing Date, the Buyer shall have the option to terminate this Agreement on written notice to the Sellers, whereupon neither Party shall have any further rights or liabilities hereunder thereafter (except for provisions that expressly survive termination of this Agreement). In the event any such taking shall not include a substantial part of the Property or in the event that the Buyer shall not terminate this Agreement pursuant to the preceding sentence, the Buyer shall accept the Property in the condition in which it is left following such taking, with an abatement of the Purchase Price measured by the proceeds of any condemnation award allowed. In the event the award has not been made or collected by the Sellers on the Closing Date, the Sellers shall assign to the Buyer at Closing all rights, title and interest of the Sellers in the collection of such award and the Buyer shall accept the Property without abatement of the Purchase Price. As employed herein, the term "a substantial part of the Property" shall be deemed to mean (i) a part of the Property consisting of ten (10%) percent or more of the total area of the Property, or (ii) a part of the Property consisting of less than ten (10%) percent of the total area, but which renders the Property unsuitable for redevelopment.

**20.0 Brokerage Commission** The Sellers and the Buyer expressly acknowledge that no real estate agent, broker or salesperson was employed in connection with the negotiation of this Agreement or this Transaction other than Preferred Properties as the listing broker on behalf of the Sellers. The Sellers shall be fully responsible for the payment of all brokerage fees at the Closing to the foregoing brokers per the listing agreement.

### **21.0 Notices**

21.1 All notices, requests, consents, approvals or other communications under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage

prepaid, or delivered by a nationally recognized overnight courier service which obtains delivery receipts (e.g., Federal Express) addressed as follows:

If to the Buyer, at: Borough of Highland Park  
221 S. Fifth Avenue  
Highland Park, NJ 08903  
Telephone No.: (732) 819-3789  
E-mail Address: [tjover@hpboro.com](mailto:tjover@hpboro.com)

with a copy to: Joseph P. Baumann, Esq.  
McManimon Scotland & Baumann LLC  
75 Livingston Avenue  
Second Floor  
Roseland, NJ 07068

If to the Sellers, at: David R. Tawil and Yehudith Tawil  
23 South 3<sup>rd</sup> Avenue  
Highland Park, New Jersey 08904

with a copy to: Ralph D. Tawil, Esq.  
1062 Broadway  
West Long Branch, NJ 07764  
E-mail address: [rdtawil@gmail.com](mailto:rdtawil@gmail.com)

21.2 Either Party may, by notice given as aforesaid, change its address for all subsequent notices. A Party's attorney may deliver any notice on behalf of that Party.

21.3 All notices hereunder shall be effective upon the earlier of either three (3) Business Days after mailing (if mailed) or one (1) business day after delivery to the nationally recognized independent overnight courier.

## **22.0 Miscellaneous**

### 22.1 Bulk Sales Law.

(a) The Buyer shall have the right to comply with *N.J.S.A. 54:32B-22(c)* and *N.J.S.A. 54:50-38* (the "**Bulk Sales Law**") and the Sellers shall cooperate in connection with such compliance. In furtherance thereof: (i) if the Bulk Sales Law applies, the Sellers shall prepare and deliver to the Buyer for the Buyer's submission to the New Jersey Division of Taxation, an Asset Transfer Tax Declaration (Form TTD) (the "**TTD**") in the form prescribed by the Director of the New Jersey, Division of Taxation (the "**Director**"), so that such form is received by the Buyer not less than twenty-five (25) days prior to the Closing; and (ii) the Buyer shall deliver a Notification

of Sale, Transfer, or Assignment in Bulk (Form C-9600), together with the completed TTD and a fully executed copy of the Agreement (the “**Tax Notification**”) to the Director so that such Tax Notification is received by the Director not less than fifteen (15) days prior to Closing. The Sellers shall provide all information requested by the Buyer and/or the Director to enable the Buyer to complete the Tax Notification and/or comply with the Bulk Sales Law, as soon as practicable. If, at any time prior to Closing, the Director informs the Buyer that a possible claim (the “**Claim**”) for taxes imposed or to be imposed on the Sellers, including any interest or penalties thereon, any cost or fees imposed by the Director related thereto and any tax on the gain from the sale of the Property (collectively, the “**Taxes**”), exists and the amount thereof (the “**Deficiency**”), then the Buyer and the Sellers shall close as scheduled and without delay, and the Buyer shall withhold the portion of the Purchase Price equal to the amount of the Deficiency, which amount so withheld shall be placed in a non-interest bearing escrow account (the “**Tax Escrow**”). The tax escrow agent for purposes of this Section 11.1 shall be a title company, authorized to transact business in New Jersey, selected by the Buyer (the “**Tax Escrow Agent**”). If requested by the Tax Escrow Agent, the Parties shall enter into an escrow agreement (the “**Bulk Sales Escrow Agreement**”).

(b) If, prior to or after Closing, the Director requests that the Buyer pay all or any portion of the Deficiency on behalf of the Sellers, then the Buyer shall direct the Tax Escrow Agent to, and the Tax Escrow Agent shall, promptly release to the Division of Taxation such amount from the Tax Escrow. If the Director informs the Buyer that the Deficiency has been fully paid or that the Buyer has no further liability for the Deficiency, then the Buyer shall direct the Tax Escrow Agent to, and the Tax Escrow Agent shall, promptly release such difference to the Sellers.

(c) Notwithstanding anything to the contrary contained herein, the Sellers shall have the right to negotiate with the Director regarding the Claim and the Deficiency; provided, however, that: (i) the Buyer shall be entitled to comply with all instructions of the Director; (ii) the Closing shall not be delayed as a result thereof; and (iii) the Buyer shall not be liable for any amount in excess of the Tax Escrow. In no event shall the Tax Escrow Agent fail to make any distribution provided for hereunder, including, without limitation, on the grounds that the Sellers contest any finding of the Director.

(d) Notwithstanding anything to the contrary contained herein, the Buyer shall not be liable for any taxes (including but not limited to, taxes owed in connection with the use and operation of the Property prior to Closing, or any taxes on any gain realized upon the sale, transfer or assignment of the Property) and the Sellers shall indemnify and hold the Buyer harmless from any liability or cost incurred in connection with any claim for any such taxes, including any interest and penalties thereon and cost and fees imposed by the Director relating thereto. The indemnification provision shall survive the termination of this Agreement and/or the Closing under this Agreement.

22.2. Force Majeure and COVID-19. Notwithstanding anything to the contrary contained herein, neither party shall be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties or civil unrest, or pandemic. Notwithstanding the

foregoing, in the event of such an occurrence, each party agrees to make a good faith effort to perform its obligations hereunder.

22.3 Governing Law, Forum Selection, and Waiver of Jury Trial. The Parties agree that this Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to, and consents to, the jurisdiction of the Superior Court of New Jersey, Middlesex County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably waives any objection to the laying of venue or that any such action or proceeding brought in said Court has been brought in an inconvenient forum. The Parties further agree that any claims relating to or arising out of this Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury and irrevocably waives any right to a trial by jury.

22.4 Construction. The Sellers and the Buyer waive any statutory or common law presumption which would serve to have this document construed in favor and against either Party as the drafter.

22.5 Entire Agreement. This Agreement represents the entire Agreement and understanding between the Parties hereto and no oral or written representations or promises have been made with respect thereto other than those set forth in the LOI. To the extent the terms of the LOI conflict with the terms set forth in this Agreement, the terms of this Agreement shall control. This Agreement may not be altered or modified orally, but only by a written Agreement executed by the Parties hereto.

22.6 Captions and Headings. Captions and headings used herein are for reference only and are in no way to be deemed to define, limit, explain or amplify any provisions hereof.

22.7 Severability. In the event that any one or more of the provisions of this Agreement, or any parts thereof, shall be deemed invalid or unenforceable by any court of competent jurisdiction, or shall otherwise conflict with applicable law, such provisions, or parts thereof, shall be deemed deleted herefrom, and this Agreement shall be construed to give effect to the remaining provisions hereof, which shall be and remain in full force and effect.

22.8 Business Days. “Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks are authorized or required to be closed in the State in which the Property is located. If any date set forth in this Agreement for the performance of any obligations by any Party, or for the delivery of any instrument or notice as herein provided, should be a non-Business Day, the compliance with such obligation or delivery shall be deemed acceptable on the next Business Day.

22.9 Further Cooperation. Each of the Parties hereby agrees to execute, acknowledge, and deliver such other documents or instruments as the other may reasonably require from time to time to carry out the purposes of this Agreement.

22.10 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, each Party hereto has caused this Agreement to be duly executed and to be effective as of the day and year first above written.

SELLERS:

**DAVID R. TAWIL**

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

Date: \_\_\_\_\_

**YEHUDITH TAWIL**

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

Date: \_\_\_\_\_

BUYER:

**BOROUGH OF HIGHLAND PARK**

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

Name: Teri Jover

Title: Borough Administrator

Date: \_\_\_\_\_