

Exhibit “A”

1st 

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement"), made as of the ~~11th~~ day of ^{MAY 2020} ~~September 2019~~, by and between **THE TOWNSHIP OF WEST ORANGE**, (the "Seller" or the "Township") and **DOV AND MIRIAM GARDIN** (collectively the "Buyer").

WITNESSETH:

WHEREAS, the Seller is the owner of certain real property known as Block 175.08, Lot 7 on the Township of West Orange Tax Map (the "Property"), an undeveloped and undersized lot adjacent to the property commonly known as 60 Mellon Avenue; and

WHEREAS, on May 29, 2019, the Township Council for the Township of West Orange adopted Ordinance 2572-19 authorizing the Township to sell the Property pursuant to N.J.S.A. 40A:12-13.2; and

WHEREAS, on May 31, 2019, pursuant to N.J.S.A. 40A:12-13.2, the Township issued a letter to the owners of the properties contiguous to the Property (the "Contiguous Owners") providing notice that the Township intended to sell the Property and that the Township was providing the Contiguous Owners, the right to prior refusal to purchase the Property; and

WHEREAS, on June 12, 2019, the Buyer submitted a formal offer consistent with the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual promises herein made, it is agreed as follows:

1. **SALE.** Seller agrees to sell and Buyer agrees to purchase the Seller's right, title, and interest in and to the Property for the Purchase Price (as hereinafter defined) and upon the terms and conditions hereinafter provided.

2. **PURCHASE PRICE.** The Purchase Price of the Property is FIVE THOUSAND AND 00/100 (\$5,000) DOLLARS (the "Purchase Price").

The Purchase Price shall be payable as follows:

A. Upon execution of this Agreement, the Buyer shall pay the entire Purchase Price, to be held in escrow by the Township, until the Closing (as hereinafter defined).

B. At the Closing Date as defined herein, the Township shall release the Purchase Price from escrow and accept the entire Purchase Price.

3. **CLOSING DOCUMENTS.**

A. Prior to the Closing Date, Buyer shall prepare and provide to the Seller no later than forty-eight (48) hours from Closing Date, the Closing Documents including: (i) a Deed (the "Deed"), in proper form for recording; and (ii) such other instruments as may be reasonably required by Buyer's attorney or Buyer's title insurance company to effectuate the within transaction, including an Affidavit of Title.

B. At the Closing, Seller shall execute and/or deliver to the Buyer: (i) the Deed; and (ii) such other instruments as may be reasonably required by Buyer's attorney or Buyer's title insurance company to effectuate the within transaction, including the Affidavit of Title.

C. At the Closing, Buyer shall execute and/or deliver to Seller such other documents and/or instruments as may be reasonably required by Seller's attorneys or Buyer's title insurance company to effectuate the within transaction.

4. **TITLE.** The dimensions of the Property shall be set forth on a survey which shall be ordered by the Buyer at the Buyer's expense. The sale is subject to easements and restrictions of record, if any, and such state of facts as an accurate survey might disclose,

provided same do not render title uninsurable at regular rates. The sale is also subject to applicable zoning ordinances. The Seller shall provide title, free and clear of all mortgages, encumbrances and liens.

5. **POSSESSION.** At the Closing, Seller shall deliver possession of the Property to the Buyer.

6. **DUE DILIGENCE.** The Buyer shall be solely responsible for the investigation of all facts and data which it has deemed necessary or desirable to enter into this Agreement (referred to as "Due Diligence"). Due Diligence shall also include any and all investigations regarding title and investigations regarding any and all impediments related to title. Buyer consents and acknowledges that all Due Diligence has been completed or shall be completed by the Closing Date as defined herein.

7. **CONDITION OF PROPERTY.** Buyer acknowledges and agrees that it has the opportunity to inspect the Property during the Due Diligence including, but not limited to, all of the improvements and the land comprising the Property. The Buyer acknowledges that it is purchasing the Property "**WHERE IS**" and "**AS IS**" without reliance upon any warranty or representation made by Seller or by any of its agents or representatives, including any broker, of any kind or nature, except that the Seller has not received any notice regarding any environmental issue affecting the Property. The Buyer shall be responsible, at its sole cost and expense: (i) to obtain whatever governmental certificates or approvals, that might be necessary to convey the Property to the Buyer; and (ii) to conduct an inspection and perform all Due Diligence of the Property. Buyer understands and agrees to accept the Property in its current undeveloped state. Notwithstanding the above, Seller will convey to Buyer good and marketable

title to the Property, insurable at regular rates by a title insurance company licensed to do business in New Jersey, chosen by Buyer, subject to the restrictions set forth herein.

8. **DISCLOSURES AND ACKNOWLEDGMENTS.** Buyer acknowledges that it is aware that there are no utilities connected to the Property and that Buyer shall bear the burden to construct and install all necessary utilities and subject to all required permit applications and approvals. Buyer further acknowledges that the approval and execution of this Agreement shall not be deemed an approval for any application for construction or installation of utilities on behalf of the Township. In addition, Buyer acknowledges that it is aware that the Property is currently within a Conservation District pursuant to Section 25, Chapter 26.13 of the Township Municipal Code which limits the use and construction on the Property. Buyer further acknowledges that the approval and execution of this Agreement shall not be deemed a covenant or promise that the Property can be or will be removed from the Conservation District.

9. **CLOSING OF TITLE.** The Closing shall take place within fourteen (14) days after the Township Council for the Township's approval of the sale, **TIME BEING OF THE ESSENCE** (the "Closing Date"), at the offices of McManimon, Scotland and Baumann, LLC, 75 Livingston Avenue, Suite 201, Roseland, New Jersey 07068, or at such other location as may be mutually agreed by the parties, at a time mutually convenient for the parties.

10. **TOWNSHIP COUNCIL APPROVAL.** The parties' obligations set forth in this Agreement are expressly subject to final approval by the Township Council for the Township of West Orange (the "Township Council") to be manifested in the adoption of a resolution authorizing the sale of the Property **and** the execution of this Agreement.

11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties. If any of the terms in this Agreement conflict with any previous agreement

or contract between the parties, the terms of this Agreement prevail. No variations or modifications of or amendments to the terms of this Agreement shall be binding unless reduced to writing and signed by the parties hereto.

12. **BINDING EFFECT.** This Agreement shall be binding on and shall inure to the benefit of Seller and Buyer and their respective successors and assigns.

13. **CONSTRUCTION.** The laws of the State of New Jersey shall govern the interpretation, construction and performance of this Agreement.

14. **FURTHER ASSURANCES.** Each party agrees that at any time or from time to time upon written request of the other party, they will execute and deliver all such further documents and do all such other acts and things as may be reasonably required to confirm or consummate this transaction.

15. **CAPTIONS.** The captions preceding the paragraphs of this Agreement are intended only as a matter of convenience for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

16. **NOTICES.** All notices required to be given pursuant to this Agreement shall be sent by certified mail, return receipt requested, or overnight courier postage prepaid, return receipt requested, or delivered personally at the addresses listed below for each party.

(a) **In the case of Township of West Orange:**

Mayor Robert D. Parisi
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

Municipal Clerk
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

With copy to:

Richard D. Trenk, Esq.
McManimon, Scotland and Baumann
75 Livingston Avenue, Suite 201
Roseland, New Jersey 07068

(b) **In the case of the [BUYER'S NAME]:**

Dov and Miriam Gardin
5 Cliff Street
West Orange, New Jersey 07052

With copy to:

[BUYER'S COUNSEL'S NAME]
[BUYER'S COUNSEL'S ADDRESS]

Any party may change the notice address by written notice to the other party.

17. **REMEDIES.** If Buyer defaults in its obligations hereunder, Buyer shall waive any and all rights to the funds held by the Township in escrow as liquidated damages and Seller shall keep the funds held in escrow and may sell the Property to another buyer. If the Seller defaults in its obligations hereunder or shall fail to close title hereunder for any reason, then Buyer, as its sole and exclusive remedy, shall be solely entitled to the rescission of this Agreement and return of the Purchase Price paid to the Seller.

18. **WAIVER OF CONDITIONS.**

A. Buyer and Seller each shall have the right to waive any of the terms or conditions of this Agreement which are strictly for their respective benefit and to complete the Closing in accordance with the terms and conditions of this Agreement which have not been so waived. Any such waiver shall be effective and binding only if made in writing and signed by the party who benefits from the condition being waived.

B. No waiver by either party of any failure or refusal by the other party to comply with their obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by the other party so to comply.

19. **SEVERABILITY.** The terms, conditions, covenants and provisions of this Agreement shall be deemed to be severable. If any clause or provision herein contained shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by operation of applicable law, the same shall be deemed to be severable and shall not affect the validity of any other clause or provision of this Agreement and such other clauses and provisions shall remain in full force and effect. If, however, the severed clause or provision relates to the Purchase Price or other monies to be paid hereunder, Seller shall have the right to terminate this Agreement on prior written notice to the Buyer.

20. **GENDER.** As used in this Agreement, the masculine gender shall include the feminine or neuter genders, the neuter gender shall include the masculine or feminine genders, the singular shall include the plural and the plural shall include the singular, wherever appropriate to the context.

21. **NO BROKER.** Both Seller and Buyer represent and warrant that no real estate broker, agent, or salesperson has been involved in this transaction. The Buyer and Seller shall each indemnify the other if a brokerage commission is sought.

22. **MISCELLANEOUS.**

A. Each person signing this Agreement warrants that he/she has fully authority to execute this Agreement and bind the party on whose behalf he/she has signed to the terms hereof.

B. Seller acknowledges that Purchaser may purchase the Property as part of an IRC Section 1031 Tax Deferred Exchange for Purchaser's benefit. Seller agrees to assist and cooperate in such exchange for the benefit of Purchaser provided Seller shall incur no liability, cost or expense and will execute any and all documents, subject to the reasonable approval of its counsel, as are reasonably necessary in connection with such exchange.

C. This Agreement may be executed in two or more counterparts, and when all counterparts have been executed, each executed counterpart will have the force and effect of the original. Each party to this Agreement may sign and deliver to the other party(ies) a facsimile copy of this Agreement, in counterparts, or with a conformed signature of the Debtor with the same effect as if each party had signed and delivered to the other party(ies) an original of the same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto executed and delivered this Agreement the day and year first above written.

WITNESS:

TOWNSHIP OF WEST ORANGE, *Seller*

By: _____
MAYOR ROBERT D. PARISI

WITNESS:

DOV GARDIN, *Buyer*

Dov Gardin

By: *[Signature]*
_____ [BUYER'S NAME]

WITNESS:

MIRIAM GARDIN, *Buyer*

[Signature]

By: *M. Gardin*
_____ [BUYER'S NAME]