

AGREEMENT OF SALE AND PURCHASE

This **AGREEMENT OF SALE AND PURCHASE** (the "**Agreement**") is made this _____ day of April, 2022, (the "**Effective Date**") by and among, the Township of West Orange, a public body politic and corporate of the State of New Jersey, having an address at 66 Main Street, West Orange, New Jersey (the "**Seller**"), and West Orange Senior Housing, LLC, having an address of 1 Parker Plaza, Fort Lee, New Jersey, as nominee for an Urban Renewal Entity to be formed (the "**Purchaser**").

1. **Agreement.** For the consideration hereinafter set forth, but subject to the terms, provisions, covenants and conditions herein contained, Seller agrees to sell and to convey and Purchaser agrees to purchase only the subdivided portion of the real property commonly known as the Library property, West Orange, New Jersey, otherwise known as Block 68, Lot 1 on the tax map of the Township of West Orange, and more particularly described on Exhibits A and B attached hereto (the entire parcel shall be referred to as the "**Total Lot**" and the portion to be subdivided and conveyed pursuant to this Agreement shall be referred to as the "**Property**"), for the purpose of constructing approximately 65 units of age-restricted low- and moderate-income housing, the Community Room Use (described below), and ancillary site improvements (collectively, the "**Project**") in accordance with N.J.S.A. 40A:12-21(l) of the New Jersey Local Lands and Buildings Law.

2. **Purchase Price.** The purchase price to be paid by Purchaser to Seller for the property is **ONE MILLION DOLLARS** (\$1,000,000.00) (the "**Purchase Price**") and shall be paid at closing.

3. **As Is Purchase.** The Property shall be conveyed to the Purchaser in an "as is, where is" condition, based on the condition of the Property on the date of closing, without any representation or warranty by Seller as to any matters concerning the condition of the Property.

4. **Condition Regarding Use of Property.** Performance by Seller under this Agreement, including but not limited to conveyance of title to the Property, is conditioned upon the representation by Purchaser that Purchaser will utilize the Property solely for (i) the construction and operation of age-restricted low and/or moderate-income housing, and (ii) the construction of a 7,500 square foot public use room (to serve as a community room, satellite library, or other public use as determined by the Township)(the "**Community Room Use**"). These conditions shall be effectuated by the preparation of a deed restriction that restricts the rent or use of the units as low- and moderate-income residential housing for a term which shall be for thirty (30) years from the issuance of the certificate of occupancy for each residential unit and by the recording of an easement on, over, in, upon and through the Property reserved for by the Seller for the public benefit for use of the Community Room Use (the "**Easement**"). The Community Room Use and Easement shall be perpetual and recorded as a deed restriction.

5. **Title.** Title to be conveyed to the Property at closing shall be good and marketable title, free and clear of all liens, claims, restrictions and encumbrances whatsoever, including tenancies of any kind, but subject to (a) zoning and subdivision laws and regulations; (b) real

estate taxes that are a lien, but are not yet due and payable; and (c) easements, restrictions and encroachments that are of record and do not prohibit or negatively impact the Development Approvals in Purchaser's reasonable opinion.

Within ninety days (90) days of the Effective Date of this Agreement, the Purchaser shall deliver to the Seller's attorney, a statement of any defects, encumbrances, encroachments or objections to title which are not specified in this agreement and which, in the reasonable opinion of the Purchaser, render the title unmarketable. If Purchaser notified Seller that the premises are affected by an encumbrance, outstanding interest or questions of title not consented to herein by Purchaser, which renders Seller unable to deliver title pursuant to this agreement, the Seller shall remove or satisfy the same within thirty (30) days of notice. In the event that the Seller fails to correct any such objection within this time period, the Purchaser may upon written notice to Seller cancel this Contract, or in the alternative, Purchaser may elect to accept such title as Seller is able to convey.

a. **Conditions Precedent to Closing.** This Contract and the Purchaser's obligation to purchase the Property are subject to and conditioned upon the following:

i. The final, non-appealable, perfected, and recorded subdivision of the Total Lot by the Seller, pursuant to N.J.S.A. 40A:55D-31, in accordance with the specifications described on Exhibits A and B attached hereto. The subdivision of the Total Lot shall be the sole and absolute responsibility of the Seller. Seller shall be solely responsible for all costs, fees and expenses in subdividing the Total Lot. The Purchaser shall in no way be obligated to purchase the Property without the subdivision according to Exhibits A and B attached hereto.

ii. Adoption of a final and non-appealable ordinance by the Township, acceptable in form and substance to the Purchaser, amending and/or supplementing the Township's Land Development Ordinance to provide for zoning of the Property that permits as-of-right the development of the Project without variances, waivers or exceptions.

iii. Confirmation of the accuracy and truthfulness of the representations made by Seller as provided for in Paragraph 8 of this Agreement.

iv. Formation of an Urban Renewal Entity that shall succeed to the rights and obligations of Purchaser under this Agreement and shall be the Grantee to whom title is conveyed from the Seller at Closing.

v. The preparation and execution of a deed restriction that restricts the rent or use of the units as low- and moderate-income residential housing for a term which shall be for at least thirty (30) years from the issuance of the certificate of occupancy for each residential unit to be recorded with the Closing Deliverables listed in paragraph 7.

vi. The preparation and execution of the Easement to be recorded with the Closing Deliverable listed in paragraph 7.

vii. The preparation and execution of a deed restriction containing the Community Room Use set forth in paragraph 4.

6. **Closing Date and Location.** The closing of this transaction contemplated herein shall take place on the first business day sixty (60) days after the later of (i) all conditions precedent to closing in Paragraph 5 and 5(a) of this Agreement are satisfied, and (ii) the date upon which the new West Orange Public Library becomes constructed and operational, or the Township waives such condition in writing. The Closing shall be held at the offices of the Buyer's attorney or at another location selected by the Parties. If the conditions of closing set forth herein are not satisfied within two (2) years of the Effective Date, as may be further extended upon mutual agreement by the parties, either party may cancel this Agreement in writing to the other party, and from that point forth shall have no further obligations to the other party under this Agreement.

7. **Closing Deliverables.** At the Closing, the Seller shall deliver the following to the Purchaser:

a. A Bargain and Sale Deed with Covenants Against Grantor's Acts in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Property, free of all encumbrances, except as otherwise stated herein;

b. The Seller shall also deliver to Purchaser at the time of closing a resolution of the Township Council for the Township of West Orange authorizing this Agreement; and

c. Such other documentation as may be reasonably requested by the Purchaser's title company, so as to effectuate the transfer of title and the clearance of any title objections that said company may have.

d. The West Orange Public Library vacates the Property. No obligation exists to leave the Property in broom clean condition.

At the Closing, the Purchaser shall deliver the following to the Seller:

a. Payment in the amount of the Purchase Price;

b. documentation confirming the formation and approval of an Urban Renewal Entity pursuant to applicable law;

c. documentation confirming that the new Urban Renewal Entity is authorized to succeed to the rights and obligations of Purchaser under this Agreement;

d. a deed restriction that restricts the rent or use of the units as low- and moderate-income residential housing for a term which shall be for thirty (30) years from the issuance of the certificate of occupancy for each residential unit; and

e. the Easement.

f. a deed restriction that provides for the perpetual existence and use of the Community Room Use (defined in paragraph 4 above).

8. **Seller's Representations and Warranties.** The Seller hereby represents and warrants as follows to the best of its knowledge:

a. The Seller is the sole owner of the Property and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this Contract. No person or entity has any right of first refusal, right of first offer, contract or other option to acquire the Property or any part thereof or interest therein.

b. The Seller is a municipal corporation of the State of New Jersey and has all the requisite power and authority, in accordance with law, to enter into this Agreement and to carry out the transactions contemplated hereby. All proceedings required to be taken by or on behalf of Seller to authorize Seller to make, deliver and carry out this Agreement have been and will be duly and properly taken. The individual signing this Agreement on behalf of the Seller has been authorized to do so and the Purchaser can reasonably rely upon his action to bind the Seller.

c. The execution, delivery and performance of the transaction contemplated pursuant to this Agreement will not violate the provision of any law, statute, rule or regulation to which the Seller or the Property is subject, or violate any judgment, writ, order, injunction or decree of any court applicable to Seller or the Property.

d. The Seller is not a "foreign person", as that term is defined, for the purposes of the Foreign Investment in Real Property Tax Act;

e. There are no leases, tenancies, licenses or other occupancy agreements to which the Seller is a party by which the Purchaser may be bound for any portion of the Property following the closing. Unless otherwise agreed to in writing by the Purchaser, the property will be delivered vacant and free and clear of all tenancies at the time of closing.

9. **Adjustments.** All adjustments of real estate taxes, assessments and water/sewer charges, if any, shall be apportioned as of midnight of the day before the day of Closing. Any errors or omissions in computing adjustments shall be corrected within a reasonable time period following the Closing of title. This shall survive the Closing.

10. **Defaults and Remedies.** The Default of either party of the obligations as detailed in this Contract shall be governed as follows:

a. If the Purchaser defaults hereunder, the Seller's sole and exclusive remedy shall be to terminate this Agreement.

b. If the Seller defaults hereunder, the Purchaser's sole and exclusive remedy shall be to terminate this Agreement.

11. **Assignment.** This Contract may only be assigned to an approved Urban Renewal Entity in order to maintain compliance with the requirements of N.J.S.A. 40A:12-21(1) of the New Jersey Local Lands and Buildings Law in the sole and absolute discretion of the Township which must be approved by the Township in its sole and absolute discretion.

12. **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed wholly within the State of New Jersey. Jurisdiction for all disputes arising out of this Agreement shall be in the state courts of New Jersey.

13. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, statements, understandings, and agreements, oral and written, between the parties, if any, with respect thereto.

14. **Waiver; Amendments.** This Contract and any provision thereof may not be waived, changed or cancelled except in writing. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.

15. **Further Assurances.** Each party shall, at any time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this Contract.

16. **Successors and Assigns.** The covenants, conditions and agreements in this Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective permitted successors and assigns. This Agreement is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

17. **Termination Rights Related to Litigation.** If third party litigation is commenced challenging the validity of this Agreement or the sale of the Property, then either party may terminate this Agreement by written notice to the other. Upon such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder

18. **Notices.** All notices, demands or requests required or deemed to be given hereunder shall be given in writing and sent by registered or certified mail, return receipt requested, or overnight delivery service such as Federal Express, addressed to the attorneys for the parties as hereinafter provided:

To Seller:

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

With a conforming copy sent in like manner to:

Richard Trenk, Esq.
Trenk Isabel Siddiqi & Shahdanian P.C.
290 W. Mount Pleasant Avenue
Building 3, Suite 2350
Livingston, New Jersey 07039
Email: rtrenk@trenkisabel.law

To Purchaser:

Joseph Alpert
West Orange Senior Housing, LLC
1 Parker Plaza
Fort Lee, New Jersey 07024

With a conforming copy sent in like manner to:

Steven G. Mlenak, Esq.
Greenbaum, Rowe, Smith & Davis, LLP
75 Livingston Avenue
Roseland, New Jersey 07068

A copy of any notice to the Seller and/or Purchaser shall also be mailed to the parties hereto at their addresses set forth at the head of this Agreement or other addresses as they may designate by written notice. All notices given hereunder shall be deemed effective on the business day following delivery to the overnight delivery service if sent by overnight delivery or three (3) business days after mailed, if sent by certified mail, as the case may be. Notices required or permitted to be given hereunder may be given by a party's attorneys.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

Seller
Township of West Orange

By: _____
Name: Robert D. Parisi
Title: Mayor

Purchaser
West Orange Senior Housing, LLC
as Nominee for an Urban Renewal Entity to be formed

By: _____
Name: Joseph Alpert
Title: Managing Member

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
SUBDIVISION PLANS