

CONTRACT FOR SALE OF REAL ESTATE

This Contract for Sale is made on _____, 2020 (the “Effective Date”),

BETWEEN

BOROUGH OF FLEMINGTON, a municipal corporation and body politic of the County of Hunterdon in the State of New Jersey, and having an address at 38 Park Avenue, Flemington, New Jersey 08822, hereinafter referred to as “Seller”,

AND

FLEMINGTON CENTER URBAN RENEWAL, LLC, a New Jersey limited liability company, whose address is 5 Bartles Corner Road, Flemington, New Jersey 08822, or its permitted assignee, referred to as “Buyer”.

The parties hereto do hereby covenant and agree as follows:

1. Purchase Agreement. The Seller agrees to sell and the Buyer agrees to buy the following Property (the “Property”) in the Borough of Flemington, Hunterdon County, New Jersey consisting of the land and all buildings and improvements at the following addresses and as shown on the municipal tax map as follows and as further described on **Exhibit A** attached hereto:

<u>Address</u>	<u>Block</u>	<u>Lot</u>	<u>Purchase Price</u>
90 – 100 Main Street	22	7 X	\$790,078
96 Main Street	22	7, C1	\$ 87,225
104 Main Street	22	8	\$ 82,168
6 Chorister Place	22	9	\$ 72,582
19 Spring Street	22	10	\$ 67,947

The Property is being conveyed by Seller to Buyer pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. in order to facilitate the redevelopment of the Property with the project (the “Redevelopment Project”) set forth in detail in that certain Amended and Restated Redevelopment Agreement dated [____] by and between the Seller and Buyer (the “Redevelopment Agreement”).

2. Purchase Price. The purchase price shall be One Million One Hundred Dollars (\$1,100,000.00) as allocated in Section 1 (the “Purchase Price”).

3. Payment of Purchase Price. The Buyer shall pay the purchase price as follows:

Deposit to be paid upon the Effective Date: \$ 10,000.00¹

¹ Such amount is the same Deposit paid pursuant to the Prior Contract (defined in Section 17 herein).

Balance to be paid at closing of title, in cash or by certified or bank cashier's check or attorney's trust account check (subject to adjustments at closing as set forth in Sections 5, 14 and 15 hereof): \$1,090,000.00

4. Deposit moneys. All deposit moneys will be held by Dilts & Koester in their non-interest-bearing Attorney Trust Account until closing. Proof of deposit shall be supplied to Seller's Attorney.

5. Escrow Funds. In addition to the Purchase Price, Buyer shall pay to Seller the nonrefundable amount of One Hundred Thirty-Two Thousand Four Hundred Sixty-Five Dollars Eight Cents (\$132,465.08) representing the escrow balance owed as of the Effective Date (the "Escrow Funds"). Buyer shall submit the Escrow Funds to Seller within thirty (30) days of the Effective Date. Buyer and Seller agree that the payment of the Escrow Funds by Buyer shall satisfy Buyer's obligation to fund and replenish the escrow account maintained by the Borough in connection with Buyer's Redevelopment Project as of the Effective Date.

6. Due Diligence Period and Closing Conditions.

(a) A due diligence period is hereby waived.

(b) Prior to or at closing, Seller shall provide to Buyer, in form reasonably satisfactory to Buyer's title company the following termination documents:

(i) Termination and release of any right, title or interest the Borough of Flemington or Borough of Flemington Police Department has to parking rights or parking spaces on or about the Property as set forth in Deed Book 790, page 731, Deed Book 2026, page 714 and Deed Book 2026 page 717.

(ii) Termination and release of any rights of the Seller for a fallout shelter license or privilege on the Property as referenced in Deed Book 786, page 891.

(iii) Termination of Borough's rights in a lease on property at 82 Main Street as referenced in Deed Book 667, page 175.

(iii) Termination and Revocation of the Master Deed for the Sheridan Condominium as set forth in Deed Book 1074, page 135 and amended in Deed Book 1081, page 634 and Deed Book 2002 page 820.

(iv) Termination of sight easement to the Borough of Flemington on property at Block 22, Lot 14 as set forth in Deed Book 2280, page 928, provided that the Buyer shall be required to provide any sight easement required by the Site Plan Approval.

7. Inspections.

(a) At all times prior to the closing, the Buyer shall be entitled to reasonable access to the Property for the purpose of conducting one or more non-invasive inspections of the Property by a qualified professional or consultant, all at the sole expense of the Buyer. Such inspections shall be conducted on reasonable advance notice,

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but in no event less than twenty-four (24) hours, to the Seller, during regular business hours, in a good and workmanlike manner, in compliance with all applicable legal requirements, including without limitation, obtaining a permit from the Borough of Flemington, and in a manner so as not to interfere with the conduct of any business at the Property.

(b) Buyer's rights of inspections shall include access as required for archeological surveys, testing and research as required for Buyers' submissions to the NJDEP relating to the natural and historic resources on the Property. Buyer shall comply with all conditions of the NJDEP approval for natural and historic resources.

(c) The Buyer shall indemnify and hold harmless the Seller and its direct and indirect shareholders, partners, members, managers, principals, directors, officers, employees, agents, contractors and consultants against and from any and all liability, loss, cost, expense, damage or injury (including, without limitation, reasonable attorneys' fees) incurred by or asserted against any of such indemnified persons arising out of or resulting from the conduct of inspections of the Property by the Buyer or any of the Buyer's agents, employees, or consultants.

(d) Buyer shall provide or cause its agents or consultants to provide, Seller with proof of insurance prior to entering the Property.

8. Time and Place of Closing. The closing date cannot be made final at this time and shall be no later than 30 days prior to Buyer's application for building permits for construction of the Redevelopment Project on the Property provided that Buyer may elect to close sooner in its sole discretion. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at the office of the Buyer's Attorney, Dilts & Koester, 167 Main Street, Flemington, New Jersey, electronically, or such other place as Buyer may designate at least three days prior to the closing, provided, however, that the parties agree that Seller's deliveries under this Contract may be made by overnight courier to Buyer's attorney or title company on the day immediately preceding the closing, to be held in escrow pending the actual closing and authorization from Seller's attorney to release such deliveries.

9. Transfer of Ownership. At the closing, the Seller will transfer ownership of the Property to the Buyer. The Seller will give the Buyer a properly executed deed, an affidavit of title and other required documents reasonably acceptable to Buyer's title company. Seller shall provide Buyer with a copy of the current title commitment by no later than thirty (30) days after the Effective Date.

10. Type of Deed. The Seller agrees to provide and the Buyer agrees to accept a Deed known as Bargain & Sale with Covenants Against Grantor's Acts.

11. Physical Condition of the Property.

(a) This Contract contains all of the terms of the contract between the parties, and Buyer acknowledges that it has inspected the Property, having made such inquiries and investigations as Buyer has deemed necessary, desirable or appropriate, and that the Seller has held out no inducements and made no representations other than as may be

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specifically set forth herein. BUYER ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY IN "AS IS" AND "WHERE IS" CONDITION, WITH ANY AND ALL FAULTS AND DEFECTS, WHETHER LATENT OR PATENT, AND SUBJECT TO ORDINARY WEAR AND TEAR FROM THE DATE HEREOF THROUGH THE CLOSING DATE. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING UPON, AND THAT SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, PROMISES, BROKER'S "SET-UPS", STATEMENTS, REPRESENTATIONS OR INFORMATION REGARDING THE PROPERTY'S PHYSICAL OR ENVIRONMENTAL CONDITION, INCOME, EXPENSES, OPERATION, USE, COMPLIANCE WITH LAWS, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS CONTRACT. Buyer releases Seller from all responsibility and liability regarding the condition or utility of the Property and the personal property except as to Seller's obligations under this Contract. It is expressly understood and agreed that Seller shall not be obligated to make any alterations, repairs or improvements to the Property or the personal property except as may be specifically set forth in this Contract.

(b) Except as set forth herein, Buyer affirms that Seller has not made nor has Buyer relied upon any representation, express or implied, or promise made by Seller, or any of its employees or agents, or any broker, with respect to the Property or its operation, except as specifically set forth in this Contract. Buyer agrees that any and all financial information, leasing information, or feasibility or marketing reports, or other information of any type with respect to the Property which Buyer has received or may receive from Seller, or any of its employees or agents of any broker, was furnished on the express condition that Buyer make an independent verification of the accuracy of any and all such information, all such information being furnished without any warranty whatsoever, except as specifically set forth in this Contract. Buyer agrees that Buyer shall not assert any liability against Seller and/or its agents and/or its employees, for furnishing such information.

12. Title Generally. (a) Subject to paragraph 6(b) hereof, the Seller agrees to transfer and the Buyer agrees to accept ownership of the Property free of all claims and rights of others, except for:

(i) the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the Property next to the street or running to any house or other improvement on the Property; and

(ii) recorded agreements which limit the use of the Property, unless the agreements: (1) are presently violated; (2) provide that the Property would be forfeited if they were violated, or (3) unreasonably limit the current use of the Property (a) and (b), collectively, "Permitted Exceptions";

(b) In addition to the above, the title of the Buyer must be marketable and insurable at regular rates by any title insurance company authorized to do business in New Jersey subject only to the Permitted Exceptions.

13. Risk of Loss. The Seller shall use reasonable efforts to preserve the Property in the same condition as of the date of this Contract, except for normal wear and tear, until the closing. If there is damage to the Property and the cost of repair is more than \$100,000.00 the Buyer may cancel this Contract. If Buyer chooses not to cancel the Contract, Seller shall assign to Buyer any insurance proceeds that are payable with respect to the damage to the Property. Otherwise, the Buyer shall take the Property in its AS-IS, WHERE-IS condition.

14. Adjustments at Closing. The Buyer and Seller agree to adjust the following expenses as of the closing date: taxes, rents, fuel oil, utilities etc. Buyer or Seller may require that any person with a claim or right affecting the Property be paid off from the proceeds of this sale. Seller shall pay the Realty Transfer Tax, if applicable. Buyer and Seller shall each pay their respective attorney's fees in connection with the closing. Buyer shall pay all other costs and expenses related to the closing, including, but not limited to, closing fees, recording taxes, title insurance premiums, costs and expenses in connection with any financing obtained by Buyer, and related items. In addition to the above, the purchase price shall be reduced if the Borough fails to meet the requirements of Section 4.4(c) of the Redevelopment Agreement concerning the Water, Sewer and Stormwater Infrastructure Improvements (as defined in the Redevelopment Agreement) and the Redeveloper exercises its option to undertake Option A (as defined in the Redevelopment Agreement). As described in Section 4.4(c)(i), the Redeveloper shall receive a dollar-for-dollar credit against the purchase price for every dollar provided to the Borough from the Redeveloper for Option B (as defined in the Redevelopment Agreement).

15. Police Building. At or before closing, Seller and Buyer shall execute a lease in connection with Block 22, Lots 8 and 7/CL (the "Police Lot") with Seller as lessee and Buyer as lessor, the form of which shall be substantially as set forth in the attached **Exhibit C** (the "Police Lot Lease"). In consideration for the execution of the Police Lot Lease Buyer shall receive a credit of One Hundred Sixty-Nine Thousand Three Hundred Ninety-Three Dollars (\$169,393.00) against the purchase price and rent in the amount of One Dollar (\$1.00) per year. The Police Lot Lease shall also be conditioned upon the use of the Police Lot by Seller solely for Borough Police Department business. The term of the Police Lot Lease shall commence upon the closing and shall automatically terminate in the event the Police Lot is no longer used by the Borough Police Department for its primary police business, or upon written agreement of the Seller and Buyer. Within 30 days of termination of the Police Lot Lease, Redeveloper shall pay to the Borough the sum of \$169,393.00.

16. Possession. At the closing, the Buyer will be given possession of the Property subject to the Police Lot Lease. No other tenant will have any right to the Property unless otherwise agreed to in this Contract.

Buyer acknowledges that Flemington DIY, Inc. currently occupies the Property. Flemington DIY, Inc. occupies the Property pursuant to an April 2017 lease that can be terminated on thirty (30) days' prior notice and Seller shall terminate such lease prior to the Closing.

17. Prior Agreement. This Contract is not the only agreement between the Buyer and the Seller. The Buyer and the Seller have also executed Contract for Sale of Real Estate by and

between Seller and Buyer dated December 11, 2018 (the “Prior Contract”). Until such time as a closing occurs the Prior Contract and this Contract shall both remain in full force and effect. The parties may agree to proceed to closing pursuant to the Prior Contract or this Contract. In the event that Buyer purchases the Property pursuant to the Prior Contract the deposit shall be applied to the purchase price thereunder. This Contract can only be changed by an agreement in writing signed by both Buyer and Seller. The Seller states that the Seller has not made any other contract to sell the Property to anyone else.

18. Parties Liable. This Contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

19. Notices. All notices under this Contract must be in writing and must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this Contract, and to that party’s attorney.

20. Realtor’s Commission. The parties represent that they have dealt with no broker in connection with this matter. Seller and Buyer agree to indemnify and hold the other party harmless from any breach of this representation by the breaching party.

21. Assignment. Buyer or Seller shall have the right to assign all of their rights under this Contract to an entity owned or controlled by the Buyer or Seller provided that the Buyer or Seller remain personally liable under this Contract and the assignee of Buyer qualifies as a Redeveloper under the Redeveloper Agreement.

22. New Jersey Bulk Sales Law. If required by NJSA 54:50-38, the Buyer shall give proper notice to the Bulk Transfer Unit of the State of New Jersey of the Sale in accordance with all applicable taxing statutes. The Buyer shall withhold the amount required by the Director of the Division of Taxation of the State of New Jersey to be held by the attorneys for the Buyer (the “Bulk Sales Escrow Agent”). The Seller reserves all rights to dispute any amounts imposed by any taxing authority of the State of New Jersey. The Seller shall cooperate with the Buyer in filing such notice and shall provide information to the Buyer as shall be reasonably requested. The obligations of all Parties under this paragraph 23 shall survive the closing and shall be in force until such time as the amount held in escrow has been released by the Bulk Sales Escrow Agent upon receipt of a clearance letter from the Division of Taxation of the State of New Jersey.

23. Buyer’s Contingency. This contract is contingent upon the Buyer securing, at the Buyer’s own cost and expense, all governmental approvals necessary to undertake the Alternate Project and the expiration of all applicable appeal periods with respect to such governmental approvals and the resolution of any appeals. Buyer may terminate this Contract by written notice given to the Seller in the event, in his sole discretion, it is unable to satisfy such contingency or waive this contingency and close upon 15 days’ notice. Upon termination, the Buyer shall be entitled to the return of the Deposit and all the rights and obligations of the respective parties hereunder shall be of no further force or effect.

24. There shall be no automatic waiver for either the Buyer or Seller for noncompliance of any time limitation under this Contract. Affirmative action in writing shall be required by

either the Buyer or Seller if either party desires to declare the Contract null and void for reason of lack of performance under the contract.

SIGNED AND AGREED TO BY:

Witnessed or Attested by: Date Signed:

BOROUGH OF FLEMINGTON

As to Seller

By:

**FLEMINGTON CENTER URBAN
RENEWAL, LLC**

As to Buyer

By, John J. Cust, Jr., Managing Member

EXHIBIT A
PROPERTY DESCRIPTION

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EXHIBIT B
SITE LAYOUT PLAN

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EXHIBIT C
FORM OF POLICE LOT LEASE