PURCHASE AND SALE INSTALLMENT AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "**Agreement**"), dated as of the 7th day of January, 2025 (the "**Effective Date**"), is entered into between **777 NUTLEY, LLC**, and **413 NUTLEY, LLC**, both New Jersey limited liability companies (collectively, "**Seller**"), having an address at 777 Bloomfield Avenue, Nutley, New Jersey 07110, and **TOWNSHIP OF NUTLEY**, a public body corporate and politic of the State of New Jersey, ("**Purchaser**") having an address at 1 Kennedy Drive, Nutley, New Jersey 07110. Seller and Purchaser may each be referred to as a "party" and collectively as the "parties".

RECITALS

WHEREAS, Seller is the owner of the Property (as hereinafter defined); and

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the Property from Seller on an installment payment basis; and

WHEREAS, inclusive in the purchase of the Property is Seller's construction of certain improvements to the Property for the benefit of Purchaser (as more specifically described herein).

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

"**Agreement**" has the meaning set forth in the preamble.

"**Architect**" has the meaning set forth in Section 2.02 (a).

"**Architect Agreement**" has the meaning set forth in Section 2.02 (a).

"**Assumed Contracts**" has the meaning set forth in Section 8.03.

"**Assumed Permits and Licenses**" has the meaning set forth in Section 2.01(h).

"**Assumed Warranties and Guaranties**" has the meaning set forth in Section 2.01(i).

"**Bill of Sale**" has the meaning set forth in Section 5.02(c).

"**Bring Down Certificate**" has the meaning set forth in Section 5.02(g).

"**Broker**" has the meaning set forth in Section 14.01.

"**Building**" has the meaning set forth in Section 2.02.

"**Business Day**" has the meaning set forth in Section 15.04.

"**Classroom Renovation**" has the meaning set forth in Section 3.01 (b) (ii).

"**Closing**" has the meaning set forth in Section 5.01.

"**Closing Date**" has the meaning set forth in Section 5.01.

"**Code**" has the meaning set forth in Section 5.02(d).

"**Deed**" has the meaning set forth in Section 5.02(a).

"**Developer**" has the meaning set forth in Section 2.02 (a).

"**Deposit**" has the meaning set forth in Section 3.01 (a).

"**Division**" has the meaning set forth in Section 15.14.

"**Due Diligence Delivery Date**" has the meaning set forth in Section 4.01.

"**Due Diligence Period**" has the meaning set forth in Section 4.01.

"**Due Diligence Materials**" has the meaning set forth in Section 4.01.

"**Effective Date**" has the meaning set forth in the preamble.

"**Environmental Laws**" has the meaning set forth in Section 7.01(j).

"**Final Completion**" has the meaning set forth in Section 2.02 (d).

"**Final Payment**" has the meaning set forth in Section 3.01(b)(iii).

"**Governmental Authorities**" has the meaning in Section 2.02 (c).

"**Governmental Requirements**" has the meaning set forth in Section 2.02 (c).

"**Hazardous Materials**" has the meaning set forth in Section 7.01(j).

"**Improvements**" has the meaning set forth in Section 2.01(b).

"**Inspections**" has the meaning set forth in Section 4.01.

"**Installment Payments**" has the meaning set forth in Section 3.01(b).

"**Intangible Property**" has the meaning set forth in Section 2.01(j).

"**Land**" has the meaning set forth in Section 2.01(a).

"**Loan Commitment**" has the meaning set forth in Section 3.02.

"**Loan Commitment Date**" has the meaning set forth in Section 3.02.

"**Mandatory Title Removal Items**" has the meaning set forth in Section 6.04(b).

"**Monetary Liens**" has the meaning set forth in Section 6.04(b).

"**Notices**" has the meaning set forth in Section 10.01.

"**OFAC**" has the meaning set forth in Section 7.01(m).

“**Office Renovation**” has the meaning set forth in Section 3.01 (b) (ii).

“**Performance Bond**” has the meaning set forth in Section 3.05.

"**Permitted Exceptions**" has the meaning set forth in Section 6.02.

"**Personal Property**" has the meaning set forth in Section 2.01(c).

"**Plans and Specifications**" has the meaning set forth in Section 2.01(f).

"**Property**" has the meaning set forth in Section 2.01.

“**Project**” has the meaning set forth in Section 2.02.

"**Purchase Price**" has the meaning set forth in Section 3.01.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser's Costs**" has the meaning set forth in Section 11.01(b).

"**Purchaser's Default**" has the meaning set forth in Section 11.01(a).

"**Purchaser's Representatives**" has the meaning set forth in Section 4.03.

"**Purchaser's Termination Notice**" has the meaning set forth in Section 9.02.

"**Seller**" has the meaning set forth in the preamble.

"**Service Contracts**" has the meaning set forth in Section 7.01(g).

"**Survey**" has the meaning set forth in Section 6.03.

"**Title Commitment**" the meaning set forth in 6.03(a).

"**Title Insurance Company**" has the meaning set forth in Section 6.01.

"Title Insurance Policy" has the meaning set forth in Section 6.01(b).

"Title Objection" has the meaning set forth in Section 6.03(a).

"Title Objection Notice" has the meaning set forth in Section 6.03(a).

"Transfer Tax Documents" has the meaning set forth in Section 5.02(b).

"Voluntary Liens" has the meaning set forth in Section 6.04(b).

ARTICLE II
CONVEYANCE OF THE PROPERTY; CONSTRUCTION OF THE PROJECT

Section 2.01 Subject of Conveyance. Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all right, title, and interest of Seller in and to the following (collectively referred to herein as the **"Property"**):

(a) All that certain lot, piece, or parcel of land located at 777-789 Bloomfield Avenue, Block 2304, Lot 18, and 413 Kingsland Street, Block 2304, Lot 17, in the Township of Nutley, County of Essex and State of New Jersey, as more particularly bounded and described in Exhibit A attached hereto and hereby made a part hereof (the **"Land"**);

(b) All buildings and improvements located on the Land and all of Seller's right, title, and interest in and to any and all fixtures attached thereto (collectively, the **"Improvements"**);

(c) All equipment, machinery, apparatus, appliances, and other articles of personal property located on and used in connection with the operation of the Improvements (collectively, the **"Personal Property"**);

(d) All rights appurtenant to the Land, if any, including without limitation, any strips and gores abutting the Land, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the Land, to the center line thereof;

(e) All other rights, privileges, easements, licenses, appurtenances, and hereditaments relating to the Property;

(f) All plans, surveys, specifications, drawings, architectural and engineering drawings, and other rights relating to the construction of the Property (collectively, the **"Plans and Specifications"**);

(g) All right, title, and interest of Seller in and to the Assumed Contracts, pursuant to Section 8.03 of this Agreement;

(h) Any permit, entitlement, governmental approval, certificate of occupancy, license, or other form of authorization or approval issued by a government agency or authority and legally required for the construction, ownership, operation, and use of the Property to the extent transferable with the sale of the Property (collectively, the "**Assumed Permits and Licenses**");

(i) Any written warranty, guaranty, or other obligation from any contractor, manufacturer, or vendor to any improvements, furnishings, fixture, or equipment located at the Property, to the extent assignable in connection with the sale of the Property ("**Assumed Warranties and Guaranties**"); and

(j) All rights, title, and interests of Seller in and to: (i) computer software used in connection with any computer systems located at the Property; (ii) trademarks, trade names, service marks, and other intellectual property rights held or used in connection with the Property or the operation; (iii) other intangibles associated with the Property, including, without limitation, goodwill, logos, and designs related to the Property and other general intangibles relating to the Property; and (iv) all telephone exchange numbers specifically dedicated and identified with the Property (collectively, the "**Intangible Property**").

Notwithstanding anything herein to the contrary, "Property" does not include any tenant fixtures or other property belonging to the tenants at the Property, or any item leased from third parties.

Section 2.02. **Construction of Project.** Inclusive in the conveyance of the Property from Seller to Purchaser and subject to the Installment Payments (defined below), Seller shall renovate the existing building located on the Property ("**Building**") by (i) renovating the first and second floors for school classrooms ("**Classroom Renovation**"), and (ii) renovating the third floor for office space ("**Office Renovation**"), all in accordance with the Plans and Specifications (collectively, "**Project**").

(a) Purchaser hereby appoints DMR Architects ("**Architect**") as the architect for the Project. Architect shall execute this Agreement as to its respective obligations hereunder. The Architect has been retained by the Purchaser under a separate agreement ("**Architect Agreement**").

(b) Seller's objectives are to have the Project developed, designed, constructed, and completed in a good and workmanlike manner as a quality education and public project in conformity with all building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled, and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees (collectively, "**Governmental Requirements**") of any federal, state, county, city, town, governmental agency, department or body having jurisdiction over the Project ("**Governmental Authorities**") in accordance with the Plans and Specifications and the project schedule set forth in Section 3.03 below.

(c) Construction of the Project and performance of the services to be completed by the Seller and all related parties shall be done in a good and workmanlike manner, free and clear of all materialmen's, mechanic's, and similar liens, in accordance with the

Plans and Specifications, this Agreement, the Architect Agreement and Governmental Requirements; (ii) all necessary certificates of occupancy, including temporary certificates of occupancy, and other permits and approvals for the construction, occupancy, operation, and management of the Project to be obtained and to remain in full force and effect through final completion and issuance of a final Certificate of Occupancy ("**Final Completion**") for the Project; and (iii) the Project to be equipped with all necessary and appropriate fixtures, equipment, and articles of personal property as required by the Plans and Specifications.

ARTICLE III
PURCHASE PRICE; INSTALLMENT PAYMENTS; CONDITIONS OF SALE

Section 3.01 Purchase Price and Deposit. The purchase price to be paid by Purchaser to Seller for the Property is Nine Million, Eight Hundred Thousand and 00/100 Dollars ($9,800,000.00) (the "**Purchase Price**"). The Purchase Price shall be payable in installments ("**Installment Payments**") as follows:

(a) Simultaneously with the execution and delivery of this Agreement by the Parties, the sum of Two Million, Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) (the "**First Installment Payment**") shall be paid by Purchaser to Seller by check, or by wire transfer of immediately available funds. The Architect, along with other Purchaser representatives, shall monitor the construction of the Project and all related costs and expenses of construction to confirm: (i) at each stage of the construction process there are sufficient remaining funds from the Purchase Price to complete the Project, and (ii) construction of the Project is in accordance with the Project Schedule, including, without limited to, performing the following:

(i) At commercially reasonable intervals, which may be as frequently as semi-monthly, inspecting the progress of construction and verifying that all materials and labor furnished in connection therewith have been ordered, supplied or completed in a good and workmanlike manner, using new materials, free and clear of all liens under the terms of this Agreement, in compliance with all Governmental Requirements, and free from material defects.

(ii) Coordinating with Developer to correct any construction work which fails to conform with Governmental Requirements in any material respect, and with the General Contractor to correct any construction work which fails to conform with the Plans and Specifications.

(iii) On substantial completion of the Project, making a final inspection and confirming in writing the construction work was completed substantially in accordance with the Plans and Specifications and all costs of the Project that Owner is not contesting have been paid in full, except with respect to Punch List Work (defined below).

(iv) Creating a list of any minor items of construction work necessary to complete the Project that will not materially interfere with the use and occupancy of the

Building, and which are otherwise of a scope and nature as is commonly understood in the construction industry ("**Punch List Work**").

(b) Subsequent to the First Installment Payment, Seller shall be permitted to request progress payments ("**Progress Payments**") on a periodic basis, but not more frequently than semi-monthly, upon written request to the Architect with a copy to the Township. Such request for Progress Payments shall include supporting documentation, including but not limited to, the following:

(i) Invoices from the contractors, subcontractors or other parties related to the Progress Payments;

(ii) Status report from Seller regarding the updated progress and status of the construction work;

(iii) Purchase orders for the requisition of materials and equipment to be installed;

(iv) Confirmation as to whether any change orders or modifications to the Plans and Specifications shall be required, and

(v) Such other documentation and/or information as may be required by the Architect or the Purchaser from Seller in order to substantiate the Progress Payments.

(c) Prior to making any Progress Payments, the Architect shall be entitled to make inspections that are, in the Architect's sole opinion and discretion, are necessary to verify the status and progress of the work. In the absence of the Architect, the Township Construction Official may conduct said inspections. Any Progress Payments shall be made in the same manner as the First Advance.

(d) The balance of the Purchase Price, less the First Installment Payment and any payments made pursuant to (b) above, shall be paid to Seller on the Closing Date, subject to any credits or apportionments as provided for under this Agreement, simultaneously with delivery of the Deed (defined below).

Section 3.02 **Installment Sale.** Purchaser and Seller expressly acknowledge and agree that Purchaser's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are fully conditioned upon Seller complying with the conditions set forth in Section 3.01 (b) above, it being understood the Purchaser takes equitable title to the Property and has the right to possession and use of the Property while the Installment Payments are being made to Seller. At such time as the Final Payment and Closing occur, Seller shall convey fee simple title to the Property to the Purchaser by a Bargain and Sale Deed with Covenants Against Grantor's Acts ("**Deed**").

Section 3.03 **Conditions of Sale; Project Schedule:** Seller shall complete the Project in conformance with the following schedule:

(a) The Classroom Renovation shall be completed by September 1, 2025 with a temporary certificate of occupancy ("**TCO**") subject to Punch List Work, pending completion of the Office Renovation, and compliance with all New Jersey Department of Education ("**DOE**") requirements.

(b) In the event the Office Renovation does not take place prior to September 1, 2025, then Seller shall enter into a short term lease (in form and substance mutually agreeable to Seller and Purchaser) with the Nutley Township Board of Education to permit the occupancy of the Building, conducting of classes on the first and second floor classrooms (even if the Office Renovations are not complete) while Seller completes the Office Renovations.

(c) The Office Renovation shall be completed by Seller with a final certificate of occupancy no later than October 31, 2025. Seller shall at all times be responsible for compliance with all applicable laws, statutes, regulations and condes, including any requirements of the DOE pertaining thereto.

Section 3.04 **Transfer/Termination of Condominium Association.** Prior to the Closing, Seller shall (i) transfer all units and related common areas located at the Nicols Park Condominium (777-789 Bloomfield Avenue, in the Township of Nutley, County of Essex, State of New Jersey), except for the Oakley units, into an entity with common ownership, and (ii) dissolve the Nicols Park Condominium Association.

Section 3.05 **Performance Bond.** Prior to execution of this Agreement, Seller shall obtain a Performance Bond ("**Performance Bond**") in form and substance satisfactory to Purchaser to be maintained with respect to the construction obligations of Seller (and its general contractor) for the Classroom Renovation and the Office Renovations. The Performance Bond shall be in an amount not less than the full cost of the Classroom Renovation, the Office Renovation, any change orders and any additional construction of the Building on behalf of Purchaser.

ARTICLE IV
DUE DILIGENCE INVESTIGATION

Section 4.01 **Due Diligence Materials.** Within ten (10) days after the Effective Date (the "**Due Diligence Delivery Date**"), Seller shall, if not already made available to Purchaser, deliver, cause to be delivered, or make available, copies of the following documents and materials pertaining to the Property to the extent within Seller's possession or control: title commitment/policy, Seller's survey, site plans and specifications, architectural plans, inspections, environmental/hazardous material reports, soils reports, governmental permits/approvals, zoning information, tax information and utility letters, copy of service contracts, certificate(s) of occupancy, warranties and guaranties, commission agreements and other similar materials relating to the physical and environmental condition of the Property, and any other documents relating to the Property reasonably requested by Purchaser (collectively, the "**Due Diligence Materials**").

Section 4.02 **Due Diligence Period.** Purchaser shall have a period, commencing on the Effective Date through the date which is thirty (30) days after the Due Diligence Delivery Date (the "**Due Diligence Period**"), to conduct or cause to be conducted any and all tests, studies, surveys, inspections, reviews, assessments, or evaluations of the Property, including without limitation engineering, topographic, soils, zoning, wetlands, and environmental inspections (including Preliminary Assessments, and Phase I (not including a Licensed Site Remediation profession (LSRP)) to be performed by an environmental consultant selected by Purchaser (the "**Inspections**"), as Purchaser deems necessary, desirable, or appropriate in its sole and unfettered discretion, and analysis of the Due Diligence Materials. Purchaser shall have the unconditional right, for any reason or no reason whatsoever, to terminate this Agreement upon written notice to Seller delivered at any time prior to the last day of the Due Diligence Period. Purchaser may, in its sole and unfettered discretion, notify Seller at any time during the Due Diligence Period that it is satisfied with the condition of the Property, in which case Purchaser shall be deemed to have elected to proceed to Closing subject to the terms and conditions of this Agreement. If Purchaser does not timely notify Seller of its election to terminate this Agreement prior to the last day of the Due Diligence Period, Purchaser shall be deemed to have elected to proceed to Closing, subject to the terms and conditions of this Agreement. However, if Purchaser elects to terminate this Agreement as provided in this Section 4.02, the parties shall have no further liability hereunder (except with respect to those obligations hereunder which expressly survive the termination of this Agreement). Notwithstanding anything to the contrary contained in this Agreement, Purchaser may require, as a condition of Closing, that Seller repair or remediate any conditions identified during due diligence which would cause the Property to be outside Purchaser's specifications for the renovation and occupancy of any structure on the Property. Amendments to this Agreement to extend the Due Diligence Period may be agreed in writing or email by each party or each party's respective attorney and notices to terminate this Agreement prior to the expiration of the Due Diligence Period may be given, by Purchaser as provided in this Agreement or by Purchaser or Purchaser's attorney by fax or by email to Seller and/or Seller's attorney.

Section 4.03 **Purchaser's Access.** At any time prior to the Closing (including during the Due Diligence Period), and at all times, subject to Section 4.04, Purchaser, the Architect and its agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively, "**Purchaser's Representatives**") shall have the right to enter upon and pass through the Property during normal business hours to examine and inspect the same, as well as conduct reasonable tests, studies, investigations, and surveys to assess utility availability, soil conditions, environmental conditions, physical condition, and the like of the Property. Notwithstanding the foregoing, demolition of the Building shall commence the first week of January, 2025.

Section 4.04 **Purchaser's Right to Inspect.**

(a) In conducting the Inspections or otherwise accessing the Property, Purchaser shall at all times comply with all laws and regulations of all applicable governmental authorities and maintain adequate and necessary insurance, and provide evidence of same to Seller prior to Purchaser's or Purchaser's Representatives first entry onto the Property to conduct any Inspection.

(b) Purchaser shall schedule and coordinate all Inspections or other access thereto with Seller and shall give Seller prior written notice thereof. Seller shall be entitled to have a representative present at all times during each such inspection or other access. Seller shall allow the Purchaser's Representatives unlimited access to the Property and to other information pertaining thereto in the possession or within the control of the Seller for the purpose of the Inspections.

Section 4.05 **Indemnification.** Purchaser agrees to indemnify and hold Seller harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, Seller's reasonable attorneys' fees, court costs, and disbursements but excluding consequential and indirect damages) incurred by Seller arising from or by reason of Purchaser's and/or Purchaser's Representatives' access to, or Inspections of, the Property, except to the extent such losses, costs, damages, liens, claims, liabilities, or expenses are caused by or resulting from: (a) any acts or omissions of Seller; (b) Seller's negligence; and/or (c) any pre-existing, dangerous, illegal, or defective condition at the Property. The provisions of this Section 4.05 shall survive the Closing or earlier termination of this Agreement.

ARTICLE V
CLOSING

Section 5.01 **Closing Date.** The closing of the transaction contemplated by this Agreement (the "**Closing**") shall take place no later than October 31, 2025 at a place and on a day and time mutually agreeable to the parties (the "**Closing Date**") with prior written notice to Seller's attorney. The Closing shall not take place until a final Certificate of Occupancy has been issued for the Building and DOE has rendered its approval of the Project.

Section 5.02 **Seller's Closing Deliverables**. At Closing, Seller shall deliver or cause to be delivered to Purchaser, the following executed, certified, and acknowledged by Seller, as appropriate:

(a) The original Deed, duly executed with the appropriate acknowledgment form and otherwise in proper form for recording so as to convey title to the Property to Purchaser as required by this Agreement.

(b) One (1) original of an affidavit of consideration for the realty transfer fee, if applicable (the "**Transfer Tax Documents**") executed by Seller, together with the required payment of the applicable realty transfer fees pursuant to requirements of state and local taxing authorities.

(c) A bill of sale (the "**Bill of Sale**") executed by Seller, conveying to Purchaser good and marketable title to the Personal Property as described in the Bill of Sale, free and clear of all encumbrances and adverse claims.

(d) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder (collectively, the "**Code**"), which certification shall be signed under penalty of perjury.

(e) An original affidavit of title from Seller showing no exceptions to title other than the Permitted Exceptions (defined in Section 6.02) and otherwise in the form acceptable to Title Insurance Company.

(f) A consent of the members of Seller authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(g) A written certificate stating that all representations and warranties contained in Section 7.01 remain, as of the Closing Date, true, correct, and complete in all material respects as when first made hereunder (the "**Bring Down Certificate**").

(h) A counterpart of a closing statement jointly prepared by Seller and Purchaser reflecting the prorations and adjustments required under Section 5.06 of this Agreement and the balance of the Purchase Price due to Seller.

(i) All keys, key cards, and access codes to any portion of the Property.

(j) An original assignment and assumption of contracts, warranties, permits, and licenses in form and substance satisfactory to Purchaser, executed by Seller and assigning to Purchaser all of Seller's right, title, and interest in the Assumed Contracts, Assumed Permits and Licenses, and Assumed Warranties and Guaranties.

(k) An original notice to each vendor under the Assumed Contracts, if required by the terms of such Assumed Contracts.

(l) Evidence of termination of all Service Contracts, except for the Assumed Contracts which Purchaser has elected to assume pursuant to Section 8.03 hereof, together with proof of payment in full by Seller of any and all liabilities, fees, costs, or other expenses of Seller resulting from the Service Contracts, the termination thereof and the release of the counterparties thereto.

(m) Originals or, if originals are not in the possession or control of the Seller, copies of Plans and Surveys, to the extent same are in Seller's possession or under Seller's control.

(n) All other documents necessary or otherwise required by the Title Insurance Company to consummate the transaction contemplated by this Agreement.

Section 5.03 Purchaser's Closing Deliverables. On the Closing Date, Purchaser shall deliver or cause to be delivered to Seller, the following, executed, certified, and acknowledged by Purchaser, as appropriate:

(a) The Final Payment as adjusted for apportionments.

(b) An acknowledgment receipt of the copies (or originals) of the Leases delivered by Seller.

(c) An affidavit of consideration for the mansion tax, if applicable.

(d) Purchaser shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under Section 5.02 of this Agreement.

(e) A resolution of Purchaser authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(f) All other documents reasonably necessary or otherwise required by the Title Company to consummate the transactions contemplated by this Agreement.

Section 5.04 Closing Costs.

(a) Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The Deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; ~~provided, however, that if any legal action is instituted under this Agreement, the prevailing party in such action shall be entitled to recover from the other party costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment, and bankruptcy proceedings.~~

(b) Seller shall pay:

(i) Any applicable seller transfer fees, and any sales taxes, including any bulk sales tax pursuant to Section 15.15, that are payable in connection with the transaction contemplated by this Agreement;

(ii) All recording fees for the release of any liens on the Property, as required pursuant to the terms of this Agreement; and

(iii) Any and all costs incurred by Seller in connection with the preparation, review, and negotiation of this Agreement and the transactions and the Closing contemplated by this Agreement, including any attorneys' or consultancy fees.

(c) Purchaser shall pay:

(i) The costs charged by Purchaser's Title Insurance Company, including, without limitation, costs related to the Title Commitment, any premiums, title endorsements, and affirmative insurance;

(ii) The costs related to the Purchaser's Survey and any other survey or survey update;

(iii) Any other fees or costs related to Purchaser's due diligence reviews; and

(iv) All costs related to the recording fees payable in connection with the recording of the deed and Purchaser's lender's security instruments, if any.

Section 5.05 **Apportionments.** The following shall be apportioned as of 11:59 p.m. of the date immediately preceding the Closing Date, unless expressly provided for otherwise:

(a) All real estate taxes based on the fiscal year for which they are assessed and any assessments, provided, however, that if any such charges are payable by any tenant under the Leases, such charges shall not be apportioned. If the Closing shall occur before a new tax rate is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the preceding fiscal period applied to the latest assessed valuation, however, adjustment will be made when the actual tax amount is determined]. If the Property shall be, or has been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts shall be paid in full by Seller.

(b) All water and sewer charges based on the fiscal year for which they are assessed, unless the meters are read on the date immediately preceding the Closing Date; provided, however, that if any such charges are payable by any tenant under the Leases, such charges shall not be apportioned.

(c) Utilities, fuel, gas, and electric charges based on most recently issued bills, unless the meters are read on the date immediately preceding the Closing Date; provided, however, that if any such charges are payable by any tenant under the Leases, such charges shall not be apportioned.

(d) Administrative fees allowable by law on tenant security deposits.

(e) All other items customarily apportioned in connection with sales of buildings substantially similar to the Property in the State of New Jersey.

Section 5.06 **Miscellaneous**. Any errors in calculations or apportionments shall be corrected or adjusted as soon as practicable after the Closing Date. The provisions of this Section 5.05 and Section 5.06 shall survive the Closing.

ARTICLE VI
TITLE MATTERS AND REVIEW

Section 6.01 **Acceptable Title**. Seller shall convey to Purchaser good and marketable fee simple title to the Property, insurable at regular rates by a reputable title insurance company authorized to do business in the State of New Jersey (the "**Title Insurance Company**") selected by the Purchaser, free and clear of any and all liens, security interests, encumbrances, easements and restrictions, and subject only to:

(a) The Permitted Exceptions; and

(b) Such other matters as any Title Insurance Company shall be willing to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Property. As a condition to Purchaser's obligation to close, the Title Insurance Company shall issue to Purchaser, and Purchaser shall accept, without payment of an extraordinary premium, an owner's policy of title insurance with extended coverage in an amount not less than the Purchase Price, insuring that the entire fee simple title to the Property is vested in Purchaser, subject only to the Permitted Exceptions (the "**Title Insurance Policy**").

Section 6.02 **Permitted Exceptions.** The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject only to the following matters (collectively, the "**Permitted Exceptions**"):

(a) Rights of tenants of the Property pursuant to the Leases and any and all amendments, assignments, subleases, with Seller, or any predecessor fee owner of the Property or other statutory tenants, and others claiming by, through, and under such tenants.

(b) All real estate taxes not due and payable as of the Closing Date, subject to adjustment.

(c) Any lien or encumbrance arising out of the acts or omissions of the Purchaser.

(d) Any exceptions disclosed on Schedule B of the Title Commitment (as hereinafter defined) which will be extinguished by the Seller at Closing.

Section 6.03 **Title.**

Purchaser shall promptly order, at its sole cost and expense: (i) a commitment for title insurance for the Title Insurance Policy from the Title Insurance Company, together with true, legible (to the extent available), and complete copies of any tax search, departmental or municipal searches, and all instruments giving rise to any defects or exceptions to title to the Property (collectively, the "**Title Commitment**"), which Title Commitment shall be delivered to counsel for both Purchaser and Seller concurrently; and (ii) either an update of Seller's existing survey or a new survey of the Property, prepared by a surveyor licensed in the State of New Jersey ("**Survey**"), which Survey shall be delivered to counsel for both Purchaser and Seller concurrently.

(a) Purchaser shall deliver to Seller, and Seller's attorney, in writing (the "**Title Objection Notice**"), any objections to the exceptions to title set forth in the Title Commitment or Purchaser's Survey, other than the Permitted Exceptions (each a "Title Objection," and collectively, hereinafter the "**Title Objections**"). If, after giving the Title Objection Notice to Seller and Seller's attorney, Purchaser receives any amendment or update to the Title Commitment or to the Survey showing any title defects which Purchaser claims are not Permitted Exceptions, Purchaser shall give written notice thereof to Seller promptly after the date Purchaser receives such evidence (unless an additional matter shown on such subsequent update first arises on the Closing Date, in which event notice of same may be given on the Closing Date and the Closing Date shall be extended day for day without need for additional action by either party). Except for those items which Seller is obligated to cure pursuant to the terms of this Agreement, any such matter not the subject of a timely Title Objection Notice shall be deemed a Permitted Exception. Notwithstanding anything to the contrary contained herein, Purchaser shall have no need to object to any Mandatory Title Removal Item, which Mandatory Title Removal Items shall be automatically deemed Title Objections.

Section 6.04 Seller's Inability to Convey.

(a) Seller shall use best efforts to eliminate all Title Objections by the Closing Date. If Seller is unable to eliminate any Title Objection by the Closing Date, Seller shall provide written notice of same to Purchaser and then, unless the same is waived by Purchaser in writing, in its sole and absolute discretion, Purchaser may either: (i) terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) with such title as Seller is able to convey on the Closing Date.

(b) Notwithstanding anything in Section 6.04(a) to the contrary, Seller shall be required to cause to be released, satisfied, and removed of record as of the Closing Date: (i) any Title Objections which have been voluntarily recorded or otherwise placed, or permitted to be placed, by Seller against the Property on or following the date hereof (other than with the prior written approval of Purchaser, which approval shall not be unreasonably withheld, conditioned, or delayed with respect to the granting or denial of Purchaser's approval in connection with requests for instruments to be recorded for the benefit of any utility or governmental authority but in all other cases in Purchaser's sole and absolute discretion); and (ii) any mortgages, deeds of trust, security instruments, financing statements, or other instruments which evidence or secure indebtedness, judgments, and liens against the Property, including, without limitation, construction liens, tax liens and real estate taxes, water rates, and sewer rents and taxes, in each case, which are due and payable but which remain unpaid and/or of record as of the Closing Date (subclauses (i) and (ii), collectively, the "**Voluntary Liens**"); or (iii) any Title Objections which would not constitute Voluntary Liens, but which can be removed by the payment of a liquidated sum of money (items set forth in this subclause (iii), collectively, "**Monetary Liens**"; and, together with the Voluntary Liens, the "**Mandatory Title Removal Items**"). If Seller fails to discharge and remove of record any Mandatory Title Removal Items on or prior to the Closing Date, at Purchaser's election, such failure shall constitute a Seller Default pursuant to Section 11.01(b) and Purchaser shall be entitled to such remedies as are set forth in Section 11.01(b).

(c) Notwithstanding anything in this Section 6.04 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller. The acceptance of the Deed by Purchaser shall be deemed to be full performance of, and discharge of, every agreement and obligation on Seller's part to be performed under this Agreement, except for such matters which are expressly stated to survive the Closing hereunder.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 7.01 Seller's Representations and Warranties. Seller represents and warrants to Purchaser on and as of the date of this Agreement and on and as of the Closing Date, as follows:

(a) Seller is comprised of two limited liability companies duly organized, validly existing, and in good standing under the laws of the State of New Jersey, is qualified to conduct business in the State of New Jersey, and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(b) The execution, delivery, and performance of this Agreement by Seller and all agreements, instruments, and documents herein provided to be executed by Seller on the Closing Date: (i) do not violate the organizational documents of Seller, or any contract, agreement, commitment, lease, order, judgment, or decree to which Seller is a party; and (ii) have been duly authorized by the consent of the members of Seller and the appropriate and necessary action has been taken by such members on the part of Seller. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof. This Agreement is valid and binding upon Seller, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Seller which has not been previously obtained.

(d) Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

(e) Seller is not debarred or otherwise prohibited from providing goods or services to municipalities or other public entities in the State of New Jersey (or elsewhere).

(f) There is no litigation, arbitration, or other legal or administrative suit, action, proceeding, or investigation pending or threatened against or involving Seller or the ownership or operation of the Property, including, but not limited to, any condemnation action relating to the Property.

(g) Seller has not entered into any service, maintenance, supply, leasing, brokerage, and listing and/or other contracts relating to the Property (along with all amendments and modifications thereof, the "**Service Contracts**") which will be binding upon the Purchaser after the Closing, other than the Leases and the Assumed Contracts. Each of the Service Contracts can and, at Purchaser's option, will be terminated by Seller on or before the Closing Date. The Seller has performed all its obligations under each of the Service Contracts and no fact or circumstance has occurred which, by itself or with the passage of time or the giving of notice or both, would constitute a default by any party under any of the Service Contracts. Seller has delivered to Purchaser true, correct, and complete copies of all Service Contracts.

(h) Seller has not received notice of any material violation of any law or municipal ordinance, order, or requirement noted or issued against the Property by any governmental authority having jurisdiction over the Property, that has not been cured, corrected, or waived as of the Effective Date.

(i) Seller has or will deliver or make available to Purchaser complete copies of all the Due Diligence Materials to the extent in Seller's possession or under Seller's control with regard to the Property, and there are no other documents or information included within the definition of Due Diligence Materials that have not been provided to the Purchaser. To Seller's knowledge, none of such Due Diligence Materials contains any untrue statement of a material fact or omits to state a fact necessary to make the statement of fact contained therein not misleading in any material respect.

(j) Seller has not placed any, and to Seller's knowledge, there are no Hazardous Materials installed, stored in, or otherwise existing at, on, in, or under the Property in violation of any Environmental Laws. "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials. "**Environmental Laws**" shall mean all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 5101 *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 *et seq.*), the Clean Air Act, as amended (42 U.S.C. §§ 7401 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f *et seq.*), the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 *et seq.*), the New Jersey Industrial Site Recovery Act (N.J.S.A. 13:1K-6 *et seq.*), the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 *et seq.*), the New Jersey Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1.1 *et seq.*), the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 *et seq.*), the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 *et seq.*), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*), and any other state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes.

(k) Seller has not: (i) filed any voluntary or had involuntarily filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (ii) had a receiver, conservator, or liquidating agent or similar person appointed for all or a substantial portion of its assets; (iii) suffered the attachment or other judicial seizure of all, or substantially all, of its assets; (iv) given notice to any person or governmental body of insolvency; or (v) made an assignment for the benefit of its creditors or taken any other similar action for the protection or benefit of its creditors. Seller is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement.

(l) The improvements on the Property are not within an area determined to be flood-prone under the Federal Flood Protection Act of 1973.

(m) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(n) Subject to the terms and conditions of Article XI, the representations and warranties of Seller set forth in this Section 7.01 shall survive the Closing and will not be affected by any investigation, verification, or approval by any party or anyone on behalf of any party to this Agreement.

Section 7.02 Purchaser's Representations and Warranties. Purchaser represents and warrants that:

(a) Purchaser is a public body corporate and politic formed under the laws of the State of New Jersey and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(b) The execution, delivery, and performance of this Agreement by Purchaser and all agreements, instruments, and documents herein provided to be executed by Purchaser on the Closing Date: (i) do not violate any contract, agreement, commitment, lease, order, judgment, or decree to which Purchaser is a party; and (ii) have been duly authorized by Purchaser. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Purchaser have the legal power, right, and actual authority to bind Purchaser to the terms and conditions hereof and thereof. This Agreement is valid and binding upon Purchaser, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Purchaser to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Purchaser which has not been previously obtained.

(d) The Property, including Seller's renovations thereto, shall be paid for with public funds and used for a public purpose pursuant to the prevailing Wage Act, N.J.S.A. 34:11-56-25, et. seq.; subject, however, to Seller's representations set forth in Section is not a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations OFAC (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(e) To the best of Purchaser's knowledge, there are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, nor any actions, suits, or other legal or administrative proceedings pending or, to the best of Purchaser's actual knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(f) The representations and warranties set forth in this Section 7.02 shall be continuing and shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made at that time. The representations and warranties set forth in this Section 7.02 shall survive the Closing and will not be affected by any investigation, verification, or approval by any party or anyone on behalf of any party to this Agreement.

Section 7.03 **Bring Down Certificate.** Seller shall deliver a bring down certificate reaffirming the accuracy and truthfulness of each of Seller's representations and warranties in Section 7.01 (or, if any has ceased to be true, so indicating), and providing that such representations and warranties shall survive the Closing and the delivery of the Deed at Closing in accordance with the terms and conditions of this Agreement.

ARTICLE VIII
SELLER'S COVENANTS

Section 8.01 **Leases.** During the period from the Effective Date until the Closing Date, Seller shall not:

(a) Enter into any lease, submit or consider any proposal for a lease, use any tenant security deposit under any Lease from the date of this Agreement through the Closing Date, or terminate, amend, or modify any Lease without Purchaser's prior written consent (except any Leases which are extended pursuant to the exercise by the tenant of an option in such Lease and such option is exercised between the date hereof and the Closing Date).

(b) Enter into any new agreements with any brokers in connection with any prospective tenants for new leases from the date of this Agreement through the Closing Date, or earlier termination of this Agreement, without Purchaser's consent and Purchaser shall assume at the Closing all obligations under such agreements. There shall be no apportionment between Seller and Purchaser of any commission payments arising under such agreements and originating from prospective tenants who after the Closing Date become tenants of the Property.

Section 8.02 **Maintenance and Repairs.** During the period from the Effective Date until the Closing Date, Seller shall cause the Property, and the Improvements, to be maintained in substantially the same manner as prior to the date of this Agreement pursuant to Seller's normal course of business. Seller shall not cause or make any new improvements, alterations, or demolition to the Property.

Section 8.03 **Service Contracts.** Following the Effective Date, Seller shall not enter into any new Service Contract which is not terminable on thirty (30) days prior notice without Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion. On or before to the Closing, Seller shall, at its sole cost and expense, terminate all Service Contracts, except for those Service Contracts (including any new Service Contracts entered into by Seller in accordance with this Section 8.03) which Purchaser elects (in its sole discretion) to assume (the "**Assumed Contracts**).

ARTICLE IX
RISK OF LOSS; Force Majeure

Section 9.01 **Risk of Loss.** If prior to the Closing Date any portion of the Property shall be taken by condemnation or eminent domain or damaged or destroyed by fire or other casualty, neither party shall have the right to cancel this Agreement, except as otherwise provided in Section 9.02 of this Agreement. If this Agreement is not terminated in strict accordance with such Section 9.02, Purchaser shall purchase the Property in accordance with this Agreement, and the Purchase Price shall not be reduced; provided, however, that

Seller's rights to any award resulting from such taking or any insurance proceeds resulting from such fire or other casualty shall be assigned by Seller to Purchaser at the Closing. Purchaser shall also receive a credit against the Purchase Price for any deductible applicable under any insurance policy (less any [reasonable] sums expended by Seller for repair or restoration through the Closing Date). Purchaser and Seller hereby irrevocably waive the provision of any New Jersey statute that provides for a different outcome or treatment in the event the Property shall be taken or damaged or destroyed by fire or other casualty.

Section 9.02 **Major Taking or Casualty.** Notwithstanding the provisions of Section 9.01, above, if prior to the Closing Date any portion of the Property shall be: (a) taken by any condemnation or eminent domain which permanently and materially impairs the current use of the Property; or (b) damaged or destroyed by fire or other casualty which materially impairs the current use of the Property, then Purchaser may terminate this Agreement by giving Seller written notice thereof ("**Purchaser's Termination Notice**") within thirty (30) days from the date Purchaser receives written notice of any such taking, fire, or other casualty. Upon receipt of Purchaser's Termination Notice, this Agreement shall terminate and neither party shall have any further rights and/or obligations with respect to each other or this Agreement, except for any obligations that expressly survive termination of this Agreement.

Section 9.03 **Force Majeure.**

(a) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by a "**Force Majeure Event**" (defined as acts of God, natural disaster, war, invasions, terrorist threats, epidemics, pandemics or other national health emergencies, strikes, labor stoppages, shortage of supplies, adequate power or transportational facilities). The failure or inability of either party to perform its obligations in this Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay.

(b) Either party ("**Noticing Party**") shall give the other party notice within three (3) days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use best efforts to minimize the effects of such Force Majeure Event. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

ARTICLE X
NOTICES

Section 10.01 **Delivery of Notices.** Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications (for purposes of this Section 10.01 collectively referred to as "**Notices**") shall be in writing and delivered to Purchaser, Seller, or Escrow Agent, at the addresses set forth in Section 10.02, by one of the following methods:

(a) Personal delivery, whereby delivery is deemed to have occurred at the time of delivery;

(b) Overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier;

(c) Registered or certified mail, postage-prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or

(d) Electronic transmission (facsimile or email) provided that the transmission is completed no later than 5:00 pm EST on a Business Day and the original also is sent by personal delivery, overnight delivery or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed.

Section 10.02 Parties Addresses.

(a) Unless changed in accordance with Section 10.02(b) of this Agreement, the addresses for all communications and notices shall be as follows:

If to Seller:

Name: 777 Nutley, LLC
Address: 777 Bloomfield Avenue
Nutley, New Jersey 07110
Email:

With a copy to:

Name: Thomas S. Dibiasi, Esq.
Address: 345 Centre Street
Nutley, New Jersey 07110
Email: tom@dibiasilaw.com

-and-

Name: 413 Nutley, LLC
Address: 777 Bloomfield Avenue
Nutley, New Jersey 07110

Attention: Robert Grogan
Email:

-and-

With a copy to:

Name: Thomas S. Dibiasi, Esq.
Address: 345 Centre Street
Nutley, New Jersey 07110
Email: tom@dibiasilaw.com

If to Purchaser:
Name: Township of Nutley
Address: 1 Kennedy Drive
Nutley, New Jersey 07110
Attention: Commissioner J. Thomas Evans
Director of Revenue and Finance
Email: commissionerevans@nutleynj.org

With a copy to:

Name: Inglesino Taylor
Address: 600 Parsippany Road, Suite 204,
Parsippany, NJ 07054
Attention: Justin A. Marchetta, Esq.
Email: jmarchetta@itfirm.law

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

ARTICLE XI
REMEDIES

Section 11.01 Remedies.

(a) If Purchaser shall default in the observance or performance of Purchaser's obligations under this Agreement and the Closing does not occur as a result thereof (a "**Purchaser Default**"), Seller's sole and exclusive remedy shall be to retain the Deposit, and any interest earned thereon, as liquidated damages for Purchaser's Default. Upon payment of the Deposit and any interest earned thereon to Seller, this Agreement shall be terminated and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement. SELLER AND PURCHASER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER UPON A PURCHASER DEFAULT AND THAT THE DEPOSIT AND ANY INTEREST EARNED THEREON, AS THE CASE MAY BE, REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER UPON A PURCHASER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF NEW JERSEY LAW. THE PARTIES ALSO AGREE THAT THESE LIQUIDATED DAMAGES SHALL BE IN LIEU OF ANY OTHER RELIEF TO WHICH SELLER MIGHT BE ENTITLED BECAUSE OF PURCHASER'S BREACH OR DEFAULT AND THAT SELLER HEREBY WAIVES ANY RIGHT IT MIGHT HAVE HAD TO AN ACTION FOR SPECIFIC PERFORMANCE AND ALL RIGHTS SELLER MAY HAVE TO SEEK OTHER DAMAGES, INCLUDING WITHOUT LIMITATION, ACTUAL OR CONSEQUENTIAL DAMAGES.

(b) If Seller shall default in the performance of any of Seller's obligations to be performed under this Agreement (including, without limitation the failure to meet the Installment Payments or Seller's failure to deliver the fully renovated Property to Purchaser at Closing) and the Closing does not occur as a result thereof (a "**Seller Default**"), Purchaser's remedies shall be to: (i) terminate this Agreement by delivery of written notice to Seller whereupon this Agreement shall terminate and neither party shall have any further rights or obligations with respect to each other or this Agreement, except those that are expressly provided in this Agreement to survive the termination hereof, (ii) continue this Agreement and seek any all remedies available to it at law or in equity including, without limitation, to seek specific performance of Seller's obligations hereunder, (iii) proceed to close title under this Agreement and shall have the right to pay Seller a reduced Purchase Price (including all Installment Payments) in the amount of Two Million, Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) and/or enforcement of the Performance Bond. IN ADDITION TO APPROVED PROGRESS PAYMENTS. JGM

(c) If Seller shall fail to close on the transaction because of a defect in title or the Seller willfully defaults in its obligation to close the transaction hereunder on the Closing Date and specific performance shall not be a legally available remedy to Purchaser as a result thereof, then Purchaser shall: (x) have the right to receive a return of any Installment Payment; and (y) be entitled to (and Seller shall reimburse Purchaser for) Purchaser's Costs (which reimbursement obligation shall survive the termination of this Agreement). The term "**Purchaser's Costs**" is defined for the purpose of this Agreement as the expenses, if any, actually incurred by Purchaser for: (i) title examination, survey and municipal searches, including the issuance of Purchaser's Title Commitment and any continuation thereof, without issuance of a title insurance policy; (ii) fees paid to Purchaser's engineers and consultants for preparing any environmental and engineering reports with respect to the Property; and (iii) the actual and reasonable third-party costs incurred by Purchaser in connection with the negotiation of this Agreement and Purchaser's due diligence with respect to the Property, ~~including, without limitation, reasonable attorneys' fees~~. JGM

(d) Upon the release of the Deposit and Installment Payments, and any interest accrued thereon, to either Purchaser or Seller, as the case may be, and reimbursement of Purchaser's Costs (if applicable), this Agreement shall be deemed null and void and no party hereto shall have any obligations to, or rights against, the other hereunder, except as expressly provided herein.

ARTICLE XII
INTENTIONALLY DELETED

ARTICLE XIII
INTENTIONALLY OMITTED

ARTICLE XIV
BROKERS

Section 14.01 Brokers. Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about this transaction. Seller and Purchaser shall each indemnify, defend, and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with this transaction if such claim is based in whole or in part by, through, or on account of, any acts of the indemnifying party or its agents, employees, or representatives and from all losses, liabilities, costs, and expenses in connection with such claim, including without limitation, reasonable attorneys' fees, court costs, and interest.

Section 14.02 Survival. The provisions of this Article XIV shall survive the Closing or the termination of this Agreement prior to the Closing.

ARTICLE XV
MISCELLANEOUS

Section 15.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

Section 15.02 Merger; No Representations. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party is relying upon any statement or representation, not set forth in this Agreement, made by any other party.

Section 15.03 No Survival. Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller set forth in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

Section 15.04 **Business Days.** Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a nonbusiness day, then such period (or date) shall be extended until the next succeeding business day. As used herein, the term "**Business Day**" shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of New Jersey.

Section 15.05 **Modifications and Amendments.** This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

Section 15.06 **Successors and Assigns; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser shall have the right to assign, transfer, or convey its rights and obligations under this Agreement or in the Property without the prior written consent of Seller, provided that any assignee shall assume all of Purchaser's obligations hereunder and succeed to all of Purchaser's rights and remedies hereunder and written notice to Seller of the assignment and assumption must be delivered to Seller prior to the Closing. If an assignee assumes all of Purchaser's obligations under this Agreement in writing, then upon the effective date of the assignment of this Agreement to such assignee, Purchaser shall be released from all obligations under this Agreement.

Section 15.07 **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 15.08 **Further Assurances.** Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of New Jersey and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 15.09 **Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

Section 15.10 **Headings.** The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

Section 15.11 **No Waivers.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 15.12 **No Offer.** This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

Section 15.13 **Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY SELLER AND PURCHASER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE PARTIES ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

Section 15.14 **Notice to New Jersey Division of Taxation; Tax Clearance Letter.** Seller shall cooperate in providing the information needed so that Purchaser can file and serve the notice required by N.J.S.A. 54:50-38 *et seq.*, and any other applicable state statute, concerning this impending sale of commercial real property, including notice to the Bulk Sales Unit of the State of New Jersey, Division of Taxation (the "**Division**"), and Seller agrees to fully comply with N.J.S.A. 54:50-38 *et seq.* and applicable statutes. Such cooperation shall include promptly supplying to Purchaser the information requested of Seller on the State form known as the "Notification of Sale, Transfer, or Assignment in Bulk," and any other and additional information that may be reasonably requested by the Division, such as, for example, the information requested in any Asset Transfer Tax Declaration form. Purchaser and Seller acknowledge that it is within the authority of the Division, to direct that a portion of the Purchase Price be withheld from Seller and placed into escrow at Closing. Purchaser and Seller agree to abide by all notifications of the Division. Purchaser and Seller agree that in the event that such an escrow is required by the State of New Jersey, the Title Company shall act as the escrow holder in connection with any required escrow. The escrow monies will be held in escrow in a non-interest-bearing account until the Division makes a final determination as to the amount of any State taxes owed by Seller, and the escrow monies will be released in accordance with, and only upon receipt of, a Tax Clearance Letter from the Division. The Title Company shall be authorized to pay to the State of New Jersey such amounts as may be ultimately determined by the Division to be due and owing. In no event shall Purchaser be required to complete Closing until such time as the Division has issued a Tax Clearance Letter. If the amount of the escrow directed to be held by the Division shall exceed the amount of the sale proceeds otherwise to be paid to Seller at Closing, then Seller shall fund the balance of the escrow amount from Seller's funds.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

PURCHASER:
Township of Nutley

By:________________________
Name: John V. Kelly, III
Title: Mayor

SELLER:
777 Nutley, LLC, a Limited Liability Company

By:________________________
Name: ROBERT GROGAN
Title: MEMBER

SELLER:

413 Nutley, LLC, A New Jersey Limited Liability Company

By:________________________
Name: ROBERT GROGAN
Title: MEMBER

ARCHITECT:
DMR Architects

By:________________________
Name: FRANCIS REINER
Title: PARTNER

EXHIBIT A

<u>Description of Land</u>

LEGAL DESCRIPTION

Tract #1:

ALL that (those) certain lot(s), tract(s) or parcel(s) of land, with the buildings and improvements thereon erected, situate, lying and being in the Township of Nutley, County of Essex, and State of New Jersey and is bounded and described as follows:

BEING known and designated as Unit No. A1, A2, A3 and B, situated in Nicols Park, a condominium, together with 16.66% undivided interest in the Common Elements of said Condominium in accordance with and subject to the terms, limitations, conditions, covenants, restrictions, easements, agreements and other provisions set forth in the Master Deed, which was dated 05/21/1975 and recorded 06/13/1975 in the Office of the Clerk of Essex County in Deed Book 4506, Page 910, as amended in , and Instrument No. 2023076851, as the same may now or hereafter be lawfully amended.

Tract #2:

ALL that (those) certain lot(s), tract(s) or parcel(s) of land, with the buildings and improvements thereon erected, situate, lying and being in the Township of Nutley, County of Essex, and State of New Jersey and is bounded and described as follows:

BEGINNING at a point in the westerly line of Bloomfield Avenue forty six and sixty seven hundredths feet South, thirty six degrees forty two minutes West from the corner formerly formed by the intersection of the southerly line of Kingsland Street with the westerly line of Bloomfied Avenue; and running thence

1. Along the westerly line of a triangular plot granted and conveyed by Nutley Realty Company to the Town of Nutley for street purposes North seventeen degrees fifty-four minutes West, seventy and eighty hundredths feet to the southerly line of Kingsland Street; thence

2. North fifty-eight degrees, fifty-four minutes West, along the southerly line of Kingsland Street, eighty three and ninety-four hundredths feet to the easterly line of lands now or formerly of Charles Cure; thence

3. Along the same South forty-two degrees forty-five minutes West, one hundred and eight and thirty five hundredths feet to land now or formerly of American Home Recorder, Inc, thence

4. South fifty-two degrees, forty-eight minutes East, along said land, one hundred and fifty two and sixty eight hundredths feet to the westerly line of Bloomfield Avenue; and thence

5. North thirty six degrees, forty two minutes East, along the westerly line of Bloomfield Avenue, seventy six and twenty six hundredths feet to the point or place of BEGINNING.

NOTE: Being Lot(s) Lot: 18, Block: 2304; Lot: 18, Block: 2304; Lot: 18, Block: 2304; Lot: 18, Block: 2304; Tax Map of the Township of Nutley, County of Essex, State of New Jersey.

NOTE: Being Lot(s) Lot: 17, Block: 2304; Tax Map of the Township of Nutley, County of Essex, State of New Jersey.

NOTE: Lot and Block shown for informational purposes only.

EXHIBIT B

Plans and Specifications