

HOPATCONG BOARD OF EDUCATION

NOTICE TO BIDDERS

Take notice sealed bids will be received by the Hopatcong Board of Education, 2 Windsor Avenue, Hopatcong, NJ 07843 on [December 12, 2022] until [1:00 pm] prevailing time, at which time and place the bids will be publicly opened and read aloud immediately thereafter for the following:

**THE SALE OF THE LAND AND IMPROVEMENTS LOCATED AT 486
RIVER STYX ROAD, HOPATCONG, NEW JERSEY 07843, BLOCK
31604, LOT 2**

Commencing on [November 8, 2022] bid documents for the Sale will be available between the hours of 9:00 A.M. and 5:00 P.M. Monday through Friday, at the Hopatcong Borough Board of Education, 2 Windsor Avenue, Hopatcong, NJ 07843 or via our website at: <https://www.hopatcongschools.org/p/board/rfp> . For more information, please contact Jeffrey Hallenbeck, School Business Administrator/Board Secretary, at (973) 770-8844.

Bids will be opened on [December 12, 2022] at [1:00 pm] by the Board Secretary. Specifications and/or bid forms may be obtained by contacting the Hopatcong Board of Education at (973) 770-8844 or by visiting our website at: <https://www.hopatcongschools.org/p/board/rfp> .

No bidder may withdraw his bid within 60 days after the actual date of the opening, thereof.

The owner reserves the right to reject any or all bids or to waive informality in the bidding if it is in the best interest of the Owner to do so and to award contracts only to those whose proposal is deemed by the Owner to be most advantageous to the interest of the public.

Jeffrey Hallenbeck,
Business Administrator/
Board Secretary

HOPATCONG BOARD OF EDUCATION

BID SPECIFICATIONS

FOR

**THE SALE OF THE LAND AND IMPROVEMENTS LOCATED AT
486 RIVER STYX ROAD, HOPATCONG, NEW JERSEY 07843, BLOCK
31604, LOT 2**

BIDDING INSTRUCTIONS

1. DEFINITIONS

“Bidder” refers to all persons or entities that submit a bid.

“Board” refers to the Hopatcong Board of Education.

“Property” refers to the land and improvements located at 486 River Styx Road, Hopatcong, New Jersey 07843, Block 31604, Lot 2.

2. PURPOSE

The Board desires to solicit bids for the sale of real property and improvements located in Hopatcong, New Jersey, Tax Block 31604, Lot 2, commonly known as 486 River Styx Road, Hopatcong, New Jersey 07843.

3. MINIMUM PRICE

The Board has fixed a minimum price for the purchase of the Property in the amount of **\$500,000.00 (Five-hundred Thousand Dollars)**.

4. FORM OF AGREEMENTS

A form Agreement of Sale is attached hereto. The successful Bidder shall sign and return the form Agreement of Sale to the Board within ten (10) days of receiving notice of being awarded the bid. By submitting a bid, the Bidder acknowledges and agrees that it has reviewed the Agreement with an attorney or waived its right to do so and accepts the Agreement of Sale in its entirety inclusive of all of the terms and conditions set forth therein.

5. **BIDDER QUALIFICATIONS**

Each Bidder must submit the following information and documentation in triplicate:

- a. Bid Form
- b. Completed Exhibits (attached hereto), which contains the following:
 1. Affidavit Regarding List of Debarred, Suspended or Disqualified Bidders;
 2. Statement of Ownership Disclosure;
 3. Political Contribution Disclosure;
 4. Non-Collusion Affidavit; and
 5. Disclosure of Investment Activities in Iran.
- c. Any other information that the Bidder would like the Board to consider in evaluating the bid.

6. **PROPERTY DESCRIPTION**

The Property is real property and improvements located in the Borough of Hopatcong, identified on the Borough of Hopatcong municipal tax map as Tax Block 31604, Lot 2, and commonly known as 486 River Styx Road, Hopatcong, New Jersey 07843.

7. **CONDITIONS OF SITE**

The Property is in the condition: “**As Is.**” The Bidder will be acquiring the Property on an "As Is, Where Is" basis, with all faults and current and historical conditions including, any environmental contamination as described below, without any representation or warranty of any kind of nature whatsoever, express or implied, and Bidder acknowledges that no such representations or warranties have been made, except as set forth in writing herein.

By executing the Agreement of Sale, the Bidder acknowledges that (i) the Property has been the subject of environmental investigation pursuant to New Jersey Department of Environmental Protection ("NJDEP") PI number 006350 and is subject to an approved Remedial Action Permit (“RAP”) for groundwater (RAP180001 and/or RAP200001); and (ii) that upon completion of the closing for the Property, the Bidder shall assume all liability, responsibility, costs and expenses for any and all obligations of the referenced RAPs; and any and all environmental investigation and remediation obligations, existing now or in the future, arising or required to be conducted, whether by the United States Environmental Protection Agency (“EPA”), the NJDEP, any other regulatory or governmental agency or pursuant to any and all applicable environmental laws including but not limited to, any remedial measures now existing or hereafter to be investigated and/or implemented on or relating to the Property and any hazardous substances currently in, on, at, under or migrating to or from the Property, including but not limited to NJDEP SRP PI # 006350.

The Bidder may visit and inspect the Property prior to submitting its bid for the purchase of the Property and become fully acquainted with the site, problems, conditions, and other factors that may be applicable to the bid. Inspections of the Property must be arranged during normal business hours and upon the request of the Board, the Bidder must deliver or cause to be delivered liability insurance coverage naming the Board as an additional insured and otherwise in form and substance acceptable to the Board in connection with any such entry onto the Property and inspections. At no time, either prior to or after submission of the bid, does the Board have any right or obligation to maintain or improve the Property. In deciding whether to acquire the Property, Bidder is relying solely on Bidder's investigation of the Property. Please call the School Business Administrator/Board Secretary at (973) 770-8844 to schedule an inspection.

8. PREPARATION OF BIDS

Bids must be submitted on the prescribed forms and returned in their entirety. Failure to include any of the required documents, affidavits, certifications, or forms may be grounds for rejection of the bid in its entirety. All bids must be manually signed. All blank spaces for bid prices must be filled in a legible manner. If any part of the bid is illegible it may be grounds for rejection of the bid in its entirety. If erasures or other changes appear on the forms, each such erasure or change must be initialed by the person signing the bid. The Board assumes no responsibility for proper or timely delivery of the bids.

9. PRE-BID MEETING

It is strongly recommended that all Bidders attend a mandatory pre-bid meeting to be held at the Property on [November 22, 2022] at [11:00 am].

10. BID SUBMISSION DATE AND BID OPENING DATE

All bid submission must be received by the Board no later than [December 9, 2022] by [3:00 pm], either in person or by certified mail. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of the Bid Proposals. **Any Bids not received at the required time and location will be rejected.**

The Board will open and read all timely bids at [1:00 pm] on [December 12, 2022]. The Board shall not be responsible for its failure to open any bid that is not properly addressed and/or identified.

11. ACCEPTANCE AND REJECTION OF BIDS

The Board's acceptance of any bid shall be based upon its review of the information contained in the bid and in accordance with the best interests of the Board. Once a bid has been submitted, it cannot be withdrawn within sixty (60) days of the opening date of the bid. A final selection shall be made by Resolution adopted by a majority of the Board at a scheduled Board meeting. The Board shall promptly notify the chosen Bidder. Thereafter,

the winning Bidder must be prepared to enter into the Agreement of Sale in accordance with these specifications, and in the form attached hereto acceptable to the Board to memorialize the Bidder's performance. The Board or its counsel will present such contracts to the Bidder following notification to the Bidder that it has been selected. The Board President and Secretary shall be authorized by Resolution to enter into the contracts on behalf of the Board. The Board shall have the right to determine whether the alternate shall be included in the final determination.

The Board shall reserve the right to accept or reject the highest bid, or any other bid, if it determines it to be in the public interest to do so.

In the event that no bids are received or if bids are received but subsequently rejected by the Board, the Board shall reserve the right to enter into negotiations with any interested party for the sale.

12. ADDENDA AND INTERPRETATIONS

Requests for interpretations or clarifications must be made in writing to the School Business Administrator/Board Secretary, 2 Windsor Ave, PO Box 1029, Hopatcong, NJ 07843, and must be received no later than [December 5, 2022]. Interpretations and clarifications will not be given orally and will be issued only in writing in the form of written addenda to the specifications. All such addenda will be mailed/emailed to all prospective Bidders no later than [December 6, 2022]. Failure of any Bidder to receive any addendum shall not relieve the Bidder from any obligation under its submitted bid. All addenda shall become part of the contract documents.

The Board reserves the right to postpone the opening of bids if necessary to adequately respond to a request for interpretation or clarification and/or to issue an addendum.

13. REJECTION OF BIDS & RIGHTS RESERVED

The Board reserves the right to accept or reject any and all bids when such rejection is in the interest of the Board and appropriate under applicable law. The Board reserves the right to reject the bid of a Bidder that has previously failed to perform contracts of a similar nature, and to reject the offer of a Bidder who is not, in the opinion of the Board or its designee, in a position to perform the contract.

The Board shall not be liable or held responsible, in whole or in part, for any unintentional misstatements or inaccuracies contained in this Bid Specification packet and/or made by the Board, its officials and/or representatives regarding the bids. Nor shall the Board be liable or held responsible for any damages, harm, cost or expenses borne by any Bidder and caused by the Bidder's reliance on any unintentional misstatements or inaccuracies contained in this Bid Specification packet and/or made by the Board, its officials and/or representatives regarding the bids.

No Bidder may withdraw its bid for a period of sixty (60) days after the actual date of the opening thereof.

Any challenge to the Bid Specifications must be filed with the Board no later than three (3) days prior to the bid opening.

14. ASSIGNMENT OF RIGHTS AND RESPONSIBILITIES

In the event that the successful Bidder disposes of its business by or through acquisition, merger, sale or transfer or any other means of conveyance of the interest of the business, and all of the successful Bidder's obligations are thereby transferred, the transferee shall provide the Board with all documentation, certifications and assurances provided initially by the successful Bidder.

Any assignee or successor in interest who is approved by the Board shall be bound by the terms set forth herein.

15. OWNERSHIP DISCLOSURE STATEMENT

Pursuant to N.J.S.A. 52:25-24.2, all forms of corporations and partnerships (including limited partnerships, limited liability corporations, limited liability partnerships and subchapter S corporations) shall submit a statement with its bid which sets forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock or of all individual partners in the partnership who own a 10% or greater interest therein. If one or more such stockholder or partner is itself a corporation or partnership, the stockholders holding 10% or more of that corporation's stock or the individual partners owning 10% or greater interest in that partnership shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder and individual partner exceeding the 10% ownership criteria has been listed.

Any bidder whose stockholders or partners own less than ten percent (10%) of the stock shall certify such fact to the Board.

A form affidavit is included as part of the bidding documents and must be completed by the Bidder.

16. POLITICAL CONTRIBUTIONS

The contractor is advised of the responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, s.3) if the contractor receives contracts in excess of \$50,000 from public entities in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

In addition, pursuant to N.J.A.C. 6A:23A-6.3, no business entity which has made a reportable contribution (as defined in N.J.S.A. 19:44A-1 et seq.) to a member of the Board of Education during the preceding one (1) year shall be awarded a contract in excess of \$17,500.

Any business entity doing business with the School District is precluded from making any reportable contributions to any member of the Board of Education during the term of the Contract.

When a business entity is a natural person, a contribution by that person's spouse or child that resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by the person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

A political contribution disclosure form is required to be submitted for all contracts greater than \$17,500. No contract award shall be made unless the completed political contribution form is submitted to the Board office prior to the award. Failure to submit the political contribution form shall result in the rejection of the bid.

A Sample Form is included as part of the bidding documents and must be completed by the bidder.

17. NON-COLLUSION

No official or employee of the Board who is authorized in his or her official capacity to negotiate, make, accept or approve or to take part in such decision regarding a contract in connection with a school facilities project shall have any financial or other personal interest in any such contract. The Board and its officers and employees shall comply with the School Ethics Law, N.J.S.A. 18A:12-21 et seq. and N.J.A.C. 6A:28.

No bidder shall directly or indirectly enter into any agreement, participate in any collusion or otherwise take any action in restraint of free, competitive bidding in connection with this project.

A form affidavit of non-collusion is included as part of the bidding documents and must be completed by the bidder.

18. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/>

[Chapter25List.pdf](#). Bidders must review this list prior to completing the below certification. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

Failure to complete, sign and submit the Disclosure of Investment Activities in Iran form with the proposal shall be cause for rejection of the proposal.

EXHIBIT LIST

1. Bid Form
2. Affidavit Regarding List of Debarred, Suspended or Disqualified Bidders
3. Statement of Ownership Disclosure
4. Political Contribution Disclosure
5. Non-Collusion Affidavit
6. Disclosure of Investment Activities in Iran
7. Form Agreement of Sale

**AFFIDAVIT REGARDING LIST OF DEBARRED,
SUSPENDED OR DISQUALIFIED BIDDERS**

STATE OF NEW JERSEY/ _____
Specify, of other

COUNTY OF _____
I, _____ of the (City, Town, Borough) of

_____ State of _____ of full age,
being duly sworn according to law on my oath depose and say that:

I am _____ of the firm
of _____ the Bidder
making the Proposal, and that I executed the said Bid with full authority to do so; that said Bidder
is not at the time of the making this bid included on the New Jersey State Treasurer's, the Economic
Development Authority's or the Federal Government's List of Debarred, Suspended or
Disqualified Bidders as a result of action taken by any State or Federal Agency.

Name of Bidder; _____

By; _____
(signature of authorized representative)

Subscribed and sworn to before me this

_____ day of _____, 2014
(Seal) Notary Public of New Jersey/
Specify Other State

My Commission expires _____ 20 ____

STATEMENT OF OWNERSHIP DISCLOSURE

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

Name of Organization: _____

Organization Address: _____

Part I Check the box that represents the type of business organization:

- Sole Proprietorship (skip Parts II and III, execute certification in Part IV)
- Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)
- For-Profit Corporation (any type) Limited Liability Company (LLC)
- Partnership Limited Partnership Limited Liability Partnership (LLP)
- Other (be specific): _____

Part II

- The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. (**COMPLETE THE LIST BELOW IN THIS SECTION**)

OR

- No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. (**SKIP TO PART IV**)

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed.**

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

Please list the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II other than for any publicly traded parent entities referenced above. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

Part IV Certification

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the Hopatcong Board of Education is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with Hopatcong Board of Education to notify the Hopatcong Board of Education in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the Hopatcong Board of Education to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

FORM OF NON-COLLUSION AFFIDAVIT
(To accompany the bid)

State of New Jersey
County of _____

ss:

I, _____ residing in _____
(name of affiant) (name of municipality)
in the County of _____ and State of _____ of full
age, being duly sworn according to law on my oath depose and say that:

I am _____ of the firm of _____
(title or position) (name of firm)

_____ the bidder making this Proposal for the bid

entitled _____, and that I executed the said proposal with
(title of bid proposal)

full authority to do so that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the Hopatcong Board of Education relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by _____.
(name of bidder)

Subscribed and sworn to

before me this day

Signature

_____, 2 _____

(Type or print name of affiant under signature)

Notary public of

My Commission expires _____

(Seal)

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN
(To accompany bid)

Bidder/Offeror's Name:

PART 1: CERTIFICATION

BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX. FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE.

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders **must** review this list prior to completing the below certification. **Failure to complete the certification will render a bidder's proposal non-responsive.** If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party

PLEASE CHECK THE APPROPRIATE BOX

I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to Pi. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. **I will skip Part 2 and sign and complete the Certification below.**

OR

I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO
INVESTMENT ACTIVITIES IN IRAN –**

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the box below.

PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION.

Name: _____	Relationship to Bidder/Offeror _____
Description of Activities _____	

Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and the State at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name
Print: _____ Signature: _____

Title: _____ Date: _____

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement"), is made as of _____, 2022 ("Effective Date"), by and between HOPATCONG BOARD OF EDUCATION, with an address at 2 Windsor Avenue, Hopatcong, NJ 07843 (the "Seller"); and _____ with an address at _____ (the "Buyer").

In consideration of the covenants and agreements contained in this Agreement, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

- 1.01 Seller owns certain real property located in the Borough of Hopatcong, County of Sussex, State of New Jersey and identified on the official tax map for same as Block 31604, Lot 2 and commonly known as 486 River Styx Road, Hopatcong, New Jersey 07843 ("Property").
- 1.02 Seller agrees to sell the Property and Buyer agrees to Purchase the Property in accordance with the terms hereof.
- 1.03 The Property consists of (a) the land and all the buildings, other improvements and fixtures on the land; and (b) all of the Seller's rights relating to the land.

ARTICLE II PURCHASE PRICE

2.01 Purchase Price. The purchase price for the Property is _____ and 00/100 (\$____) Dollars (the "Purchase Price").

2.02 Payment of Purchase Price. Buyer agrees to pay the Purchase Price as follows:

(A) (i) Within one (1) business day of the Effective Date, a deposit in an amount equal to five percent (5%) of the Purchase Price (the "Deposit"), shall be provided to Porzio Bromberg & Newman P.C. Attorney Trust Account (the "Escrow Agent"). The Deposit shall be applied against the Purchase Price at the closing of title.

(ii) The Deposit shall be held by Escrow Agent in one or more non-interest bearing trust accounts until Closing or earlier termination of this Agreement pursuant to its terms. The Deposit shall be sent by certified or bank check or wire transfer by Buyer to the account maintained by the Escrow Agent not later than one (1) business day following the date on which a fully executed copy of this Agreement is returned to Buyer's attorney. The Deposit shall be fully refundable if this Agreement is terminated during the Due Diligence Period or if this Agreement is validly terminated in accordance with its terms. If Buyer does not terminate this Agreement during the Due Diligence Period, the Deposit shall become **non-refundable**, except for valid termination of this Agreement pursuant to its terms.

The Escrow Agent shall act as stakeholder, and shall have no liability, with respect to the funds deposited, except to hold and apply same in accordance with this Agreement. Buyer and Seller agree to provide W-9 or similar tax forms to the Escrow Agent as reasonably required for the Deposit, and to execute and deliver escrow and deposit agreements not

inconsistent with the provisions of this Agreement as may be reasonably requested by the Escrow Agent. The parties hereto shall indemnify and hold harmless the Escrow Agent from and against any and all liability, and the consequences thereof, in connection with its acting as stakeholder, except in the event of willful misfeasance or negligence on the part of the Escrow Agent in fulfilling its responsibilities pursuant to this Agreement. In the event of a dispute with respect to the funds deposited, the Escrow Agent either shall hold same until the earlier of a written agreement between the parties or the entry of an order of a court of competent jurisdiction, or shall interplead the funds with the Clerk of the Superior Court of New Jersey in Sussex County.

(B) The balance of the Purchase Price in the amount of _____ together with any closing adjustments, if any, shall be paid to Seller at closing of title by wire transfer or bank cashier's check.

ARTICLE III
REPRESENTATIONS AND AGREEMENTS BY BUYER

- 3.01 Buyer has sufficient funds to consummate this transaction and Buyer represents that it has been advised by Seller and hereby confirms that the Buyer's obligations under this Agreement are not subject to Buyer's ability to obtain a financing commitment for the Property.
- 3.02 Buyer represents that there are no suits, actions or proceedings pending or, to the knowledge of the Buyer, threatened against Buyer which, if determined adversely to Buyer, would adversely affect his ability to perform Buyer's obligations hereunder.

ARTICLE IV
CLOSING OF TITLE

- 4.01 Closing of Title. Closing of title shall be held at the offices of Seller's attorney, located at Porzio Bromberg & Newman P.C., 100 Southgate Parkway, Morristown, N.J. 07962, within fifteen (15) business days of completion of the Due Diligence Period (the "Closing Date"). All conditions and contingencies shall be satisfied at or prior to the Closing Date.
- 4.02 Conditions of Closing. The closing of this transaction and Buyer's obligations under this Agreement are conditioned on the following:
- (A) Title to the portion of the Property shall be good, marketable and insurable at regular rates by a title insurance company licensed to do business in the State of New Jersey, subject to easements, restrictions of record and such facts as an accurate survey shall disclose as follows:
- a. 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 provided same do not interfere with Buyer's proposed development of the Property;
- b. 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; (3) limit the use of the Property as contemplated by Buyer or encroach upon any proposed improvements or buildable areas of the Property; and

(B) Buyer shall order a title report and if desired by Buyer a survey and Buyer shall thereafter provide Seller with written notice of its objections to title not later than ten (10) business days prior to the expiration of the Due Diligence Period. Seller shall use its best efforts to remove any objections to title which arise or are discovered. In the event Seller cannot remove any such objections within thirty (30) days after notice of objections, Seller shall promptly send Buyer written notice indicating that Seller is unable to remove such exceptions. Upon receipt of such notice, Buyer shall have the right, within five (5) days of such notice, to waive any title exceptions and agree to accept title as is, without any reduction or abatement in the Purchase Price, or to terminate this Agreement by written notice to Seller. In the event Buyer does not so notice Seller, Buyer will be deemed to have accepted the title condition with the existing objections and/or exceptions.

- 4.03 Closing Documents. At the closing, the Seller will transfer ownership of the Property to the Buyer with a Bargain and Sale Deed with Covenants Against Grantor's Acts and an affidavit of title in form approved by Buyer's title insurance company. Seller will also provide any other documents reasonably required by Buyer's title insurance company.
- 4.04 Adjustments. The Buyer and Seller agree to adjust the following expenses as of the closing date: water charges, sewer charges, taxes, municipal assessments fully charged and any other charges ordinarily adjusted in due course as of the Closing Date.
- 4.05 Recording Costs. Seller shall pay the Realty Transfer Tax at the time of closing. Buyer shall pay any Mansion Tax due and owing.

ARTICLE V

DUE DILIGENCE PERIOD

- 5.01 Due Diligence Period. Buyer may, at its sole cost and expense, conduct a due diligence review of matters pertaining to the Property for the period commencing on the Effective Date and expiring on the forty-fifth (45th) day after the Effective Date (the "Due Diligence Period"). Buyer shall have through the last day of the Due Diligence Period in which to examine, inspect, and investigate the portion of the Property which is the subject matter of this Agreement and, in Buyer's sole and absolute judgment and discretion, to determine whether same is acceptable to Buyer. Buyer may not conduct any invasive investigations hereunder without Seller's consent. Buyer will treat any and all data and site investigation results, generated during Due Diligence activities, as confidential and will not share such information with any third party, including, but not limited to, Seller except that Buyer may provide such information to Seller upon Seller's request therefore, to a lender and/or insurer, and/or as may be required by law.
- 5.02 Termination. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period. If Buyer does not give the Due Diligence Termination Notice to Seller on or before the last day of the Due Diligence Period, Buyer shall be deemed to have irrevocably waived its right to terminate this Agreement pursuant to this Section 5.02 and this Agreement shall continue in full force and effect. If Buyer timely and properly terminates this Agreement on or before the last day of the Due Diligence Period, then Escrow Agent shall, upon receipt of notice from Buyer, return the Deposit to Buyer in accordance with Article 2 above.

- 5.03 Buyer shall keep the Property free and clear of any liens and will upon demand indemnify, defend, and hold Seller harmless from all claims and liabilities asserted against, and any damages, costs, expenses or liabilities incurred by, Seller as a result of any such entry by Buyer, its agents, employees, or representatives. If any inspection or test disturbs the Property or any improvements thereon, Buyer will restore the Property or such improvements to substantially the same condition as existed prior to any such inspection or test prior to the expiration of the Due Diligence Period.
- 5.03 Buyer shall require that its consultants and contractors maintain at all times during the conduct of its due diligence activities at the Property, at no cost to Seller, and keep in force the following levels of insurance. Prior to the entering upon the Property, Buyer shall provide Seller with proof of the following:
- (a) Workers' Compensation and Employers' Liability Insurance in accordance with any law or regulation that may be applicable to all of its employees, agents, and/or subcontractors engaged in performing any of the sampling at the Property;
 - (b) Comprehensive General Liability and Automobile Liability Insurance against any claims for bodily injury, death, or property damage occurring in or about the Property in connection with any of the activities conducted at the Property by or on behalf of Buyer with limits of not less than \$2,000,000 for bodily injury or death to any one person and aggregate limits of \$5,000,000 for bodily injury or death to any number of persons and property damage with limits of not less than \$2,000,000;
 - (c) Umbrella Insurance of not less than \$10,000,000 and Pollution Liability Insurance of not less than \$2,000,000;
 - (d) At least five (5) business days prior to entering upon the Property, Buyer or Buyer's consultant shall provide Seller with Certificates of Insurance and Policy Endorsements in satisfactory form to Seller that name Seller as an "additional insured". Each policy shall provide that it cannot be cancelled without at least thirty (30) days prior notice to Seller, and shall be issued by a recognized, responsible insurance company licensed to do business in the State of New Jersey. Proof of payment of the premium of each policy and each replacement policy shall also be delivered to Seller; and
 - (e) Seller shall accept no liability or responsibility whatsoever for the identification of or location of any underground utilities. As between Seller and Buyer, Buyer shall remain solely and completely liable for any and all claims, damages and the like associated with underground utilities. Buyer shall independently take whatever steps are necessary and prudent to identify any such underground utilities.

The obligations of the Buyer pursuant to this Article V shall survive the Closing of this transaction or the termination of this Agreement.

ARTICLE VI

"AS IS" CONDITION OF PROPERTY

6.01 Condition of Property. At the Closing, Buyer shall accept the Property in the "as is", "where is" condition, including without limitation any contamination of any soil, groundwater, surface water, air or subsurface strata (hereinafter "Environmental Conditions"), with all faults as

of the Closing Date. Buyer has not relied and is not relying upon any representations or warranties, or upon any statements made in any informational materials with respect to the Property provided by Seller or any other person or entity, if any.

Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the condition, including the environmental condition, or history of the Property.

Buyer acknowledges that the Property has been the subject of environmental investigation pursuant to NJDEP PI number 006350 and is subject to an approved Remedial Action Permit ("RAP") for groundwater (RAP180001 and/or RAP200001). Upon completion of Closing, as between Seller and Buyer, Buyer shall assume all liability, responsibility, costs and expenses for: any and all obligations of the referenced RAPs; and any and all environmental investigation and remediation obligations, existing now or in the future, arising or required to be conducted, whether by the United States Environmental Protection Agency ("EPA"), the New Jersey Department of Environmental Protection ("NJDEP"), any other regulatory or governmental agency or pursuant to any and all applicable environmental laws ("Environmental Laws"), including but not limited to, any remedial measures now existing or hereafter to be investigated and/or implemented on or relating to the Property and any hazardous substances currently in, on, at, under or migrating to or from the Property (the "Assumed Environmental Liabilities"), including but not limited to NJDEP SRP PI # 006350. The provisions of this Paragraph, and the subparagraphs below, shall survive Closing.

Buyer shall perform any and all environmental investigation and remediation required in connection with the Assumed Environmental Liabilities in accordance with Environmental Laws. On the Closing Date, to the extent required by New Jersey regulation, Buyer shall retain an Licensed Site Remediation Professional ("LSRP") to meet its obligations with respect to the Assumed Environmental Liabilities and shall file an LSRP Notification of Retention Form with the NJDEP. Additionally, Buyer shall file a Site and Contact Information Update Form with the NJDEP wherein Buyer shall acknowledge its obligation to conduct and be responsible for the Assumed Environmental Liabilities as the Person Responsible for Conducting the Remediation. Buyer shall meet all of its mandatory and regulatory time frames required pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1, et seq., the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, et seq., and pursuant to any other applicable Environmental Laws. Buyer and Seller expressly acknowledge and agree that nothing in this Agreement shall preclude Buyer from challenging any determination by NJDEP or EPA as to the nature and extent of any Assumed Environmental Liabilities; provided that Buyer shall not undertake any action that would result in the Seller becoming the primarily responsible or primarily liable for any Assumed Environmental Liabilities.

On and following the Closing Date, Buyer agrees to release, indemnify, defend and hold harmless the Seller, any principal, member, officer, partner, parent, subsidiary, predecessor (including predecessor owners), successor, assign, official, employee, agent or attorney of Seller upon demand from and against any and all claims that relate to, arise out of, in any way result from, or are alleged to relate to, have arisen from or resulted from the Assumed Environmental Liabilities, including but not limited to, those that are alleged to have occurred because of the environmental condition of the Property.

BY EXECUTING THIS AGREEMENT, BUYER AFFIRMS AND AGREES THAT (A) BUYER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE, (B)

SELLER MAKES NO WARRANTY THAT SAME OR ANY COMPONENT THEREOF ARE FIT FOR ANY PARTICULAR PURPOSE, (C) THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR BY OPERATION OF LAW, WITH RESPECT TO THE PROPERTY OR ANY COMPONENT THEREOF, (D) BUYER HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT SAME AND EACH COMPONENT THEREOF AND HAS DETERMINED TO CONSUMMATE THIS AGREEMENT BASED ON SUCH INSPECTION, AND (E) UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, AND BUYER, ON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, CAUSES OF ACTION IN TORT, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, THAT BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PROPERTY.

The obligations of the Buyer pursuant to this Article VI shall survive the Closing of this transaction or the termination of this Agreement.

**ARTICLE VII
MISCELLANEOUS**

- 7.01 Assignment. Buyer's interest under this Agreement or any part thereof may not be assigned or transferred by Buyer. Any assignment or transfer of this Agreement contrary to the terms of this Section 7.01 shall be void and such assignee or transferee shall acquire no rights hereunder
- 7.02 Notices. Any notice required to be given hereunder shall be given in writing and may be served either in person or by recognized overnight carrier properly addressed or directed to the part to receive the same at the following address or at such other address as may hereafter be substituted by notice in writing hereof. All mailed notices shall be deemed to have been given when delivered by a recognized overnight carrier.

To Seller:

With copy to Seller's Attorney:
Carmen Andrade, Esq.
Porzio Bromberg & Newman P.C.
100 Southgate Parkway
Morristown, N.J. 07962
e-mail: candrade@pbnlaw.com

To Buyer:

With copy to Buyer's Attorney:

Fax:
e-mail:

- 7.03 Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.
- 7.04 Entire Agreement. This document represent the entire Agreement between the parties and contains all of the representations and supersedes all prior negotiations, representations, or Agreements, either written or oral.
- 7.05 Parties Bound. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, representatives, successors, and assigns. The parties hereto agree for themselves arid their heirs, executors, administrators, representatives, successors and assigns to execute any instruments in writing which may be necessary or proper for the carrying out of the intent and purpose of this Agreement.
- 7.06 Recording. This Agreement shall not be recorded.
- 7.07 Amendment. This Agreement may not be modified or amended except by a subsequent agreement in writing signed by both parties. Buyer and Seller may waive any of the conditions and contingencies contained herein or any of the obligations of other party hereunder, but such waiver shall be effective only if it is in writing.
- 7.08 Counterparts/Electronic Signatures. This Agreement may be executed in counterparts and transmitted electronically which when taken together shall constitute one document.
- 7.09 Bulk Sales. Seller shall provide to Buyer within fifteen (15) days from the conclusion of the Due Diligence Contingency Period a seller completed Bulk Sale Notification for filing by Buyer. Seller's attorney shall hold in escrow any sum required by the New Jersey Division of Taxation until further direction by the New Jersey Division of Taxation.
- 7.09 FIRPTA. Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Buyer that withholding of tax is not required upon Seller's disposition of a U.S. real property interest, Sellers hereby certify that they are not non-resident aliens for the purposes of U.S. income taxation.
- 7.10 Condemnation/Risk of Loss. If a condemnation proceeding is threatened or instituted against the Property or any portion thereof, Buyer shall have the right to either (i) terminate this Agreement, Seller shall promptly refund the Deposit, and the parties shall have no further liability or obligation to each other except for those that expressly survive termination of this Agreement; or (ii) receive an assignment at Closing of all of Seller's right to receive any condemnation award together with all of Seller's rights to litigate such claim and to negotiate a settlement with the condemning authority. With respect to any casualty, the risk of loss remains with Seller. In the event of a casualty affecting less than thirty percent (30%) of the improvements on the Property, Seller shall have no obligation to restore the Property and all proceeds of insurance carried by Seller shall be assigned to Buyer at the Closing. In the event of a casualty affecting more than thirty percent (30%) of the improvements on the Property, Buyer may terminate this Agreement and in the event of such termination, Seller shall promptly refund the Deposit, and the parties shall

have no further liability or obligation to each other except for those that expressly survive termination of this Agreement.

ARTICLE VIII
DEFAULT

8.01 Default.

If either party to this Agreement shall default in any obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived, such failure to perform shall constitute a default under this Agreement and the non-defaulting party shall have the right to terminate this Agreement, receive a return of the Deposit (if Buyer shall be the non-defaulting party) or, if Seller shall be the non-defaulting party, Seller may retain the deposit as liquidated damages. In addition, the non-defaulting party may also pursue such remedies as may be available to it under applicable law.

[Signature page to follow.]

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

WITNESS:

WITNESS:

Seller:

Buyer: