

44

**RESOLUTION OF THE BOARD OF FREEHOLDERS
COUNTY OF ESSEX**

RESOLUTION NO. _____ **AUTHORITY FOR RESOLUTION:** N.J.S.A. 40:41A-38(n)

PROPOSED BY: COUNTY EXECUTIVE **AUTHORITY FOR ACTION:** N.J.S.A. 40:41A-36(i)

SUBJECT:

OFFICE OF COUNTY COUNSEL - RESOLUTION OF THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ESSEX AUTHORIZING THE PURCHASE OF BLOCK 1891.01, LOT 26, 27 AND 28 NEWARK, NJ FROM 12 MYRTLE AVENUE CORPORATION IN THE AMOUNT OF \$310,000.00

WHEREAS, On or about March 2016, construction began on the Essex County Congressman Donald M. Payne, Sr. Vocational Technical school.

WHEREAS, Block 1891.08, Lot 26,27 and 28 as shown on the tax maps of the City of Newark, NJ is located adjacent to the site of the new Essex County Congressman Donald M. Payne, Sr. Vocational Technical School; and

WHEREAS, The County of Essex wishes to use the property identified as Block 1891.01, Lot 26, 27, and 28 as shown on the tax map of the City of Newark NJ for public purposes use in connection with the new Essex County Congressman Donald M. Payne, Sr. Vocational Technical School; and

WHEREAS, The County of Essex negotiated a Contract of Sale with the owner of this property in the amount of \$310,000.00 with a closing to take place on or before February 28, 2017;

WHEREAS, For the benefit of the Seller, the parties have agreed that a Deed in lieu of Condemnation be delivered by Seller to the Purchaser, County of Essex.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ESSEX AS FOLLOWS:

1. The purchase in the amount of \$310,000.00 of Block 1891.01, Lot 26, 27, and 28 as shown on the tax map of the City of Newark (59-61 S. 11th Street, Newark, NJ) in the form of agreement attached hereto and made part hereof is hereby approved.
2. That three (3) certified copies of this resolution and Contract of Sale be forwarded to Courtney M. Gaccione, Essex County Counsel.

RECEIVED
CLERK OF THE BOARD
2017 FEB 14 PM 3:58
ESSEX COUNTY
BOARD OF
CHOSEN FREEHOLDERS

Approved as to form and legality Austrey Sacconi Date 2/14/17

ESSEX COUNTY COUNSEL

RECORD OF VOTE (X=Vote N.V.=Abstention ABS=Absent)

Moved By Freeholder _____
 Second by Freeholder _____

Freeholder	Yes	No	N.V.	ABS	Freeholder	Yes	No	N.V.	ABS
Bobadilla					Richardson				
Gill, V.P.					Sebold				
Johnson					Timberlake, Pres.				
Jones					Toro				
Luciano									

It is hereby certified that the foregoing Resolution was () adopted () defeated () tabled by roll call vote at a _____ meeting of the Board of Chosen Freeholders of the County of Essex, New Jersey held on _____.

Is Publication Required () Yes () No

Date Published _____
 Britnee N. Timberlake, President

Purchase of 12 Myrtle Avenue Corporation

jf2/10/17

February 15, 2017
Meeting Back-up
Documentation for
Resolution No. 44



COUNTY OF ESSEX

DECISION MEMORANDUM

COUNTY EXECUTIVE

BOARD AGENDA ITEM

COUNTY ADMINISTRATOR

DEPARTMENT: _____

DIVISION: _____

DECISION MEMORANDUM

TO: Ralph Ciallella, County Administrator
FROM: Courtney M. Gaccione, Essex County Counsel
DATE: February 14, 2017
RE: **Freeholder Authorization to Approve the Contract of Sale to Acquire Block 1891.01, Lots 26, 27, and 28 from 12 Myrtle Avenue Corporation for Use at the New Essex County Congressman Donald M. Payne, Sr. Vocational Technical School site**

INTRODUCTION

On or about March 2016, construction began on the Essex County Congressman Donald M. Payne, Sr. Vocational Technical school located in Newark, New Jersey. The County of Essex has endeavored to acquire and purchase surrounding residential properties for public use. Block 1891.01, Lots 26, 27 and 28 (10, 12, and 14, Myrtle Avenue, Newark, NJ) is located adjacent to the site of the new Essex County Congressman Donald M. Payne, Sr. Vocational Technical School. The County of Essex wishes to use the property identified as Block 1891.01, Lots 26, 27 and 28 for public purposes use in connection with the new Essex County Congressman Donald M. Payne, Sr. Vocational Technical School. The County of Essex has negotiated a Contract of Sale with the owner of this property for a Deed in Lieu of Condemnation in the amount of \$310,000.00 with a closing to take place on or before February 28, 2017.

RECOMMENDATION

It is recommended that the Board of Chosen Freeholder's authorize the Contract of Sale (attached) between the County of Essex and 12 Myrtle Avenue Corporation.

REASON FOR RECOMMENDATION

The purchase of this property will enhance and improve the areas surrounding the new Essex County Vocational School.

FISCAL IMPACT

The purchase of this property is at a cost of \$ 310,000.00.

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "*Agreement*") is made this 9th day of February, 2017 (the "*Effective Date*"), between **12 MYRTLE AVENUE CORPORATION**, having an address of 555 Passaic Avenue, West Caldwell, New Jersey ("*Seller*") and the **COUNTY OF ESSEX**, a body politic and corporate of the State of New Jersey, with an address of 465 Dr. Martin Luther King, Jr. Boulevard, Newark, New Jersey 07102 ("*Buyer*").

1. SALE AND PURCHASE OF PROPERTY

Upon and subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, transfer and convey to Buyer, and Buyer hereby agrees to purchase and accept from Seller, the following:

(a) Those certain tracts or parcels of land located at 10, 12 and 14 Myrtle Avenue, Newark, NJ and known as Lots 26, 27 and 28, in Block 1891.01 as shown on the Tax Map of the City of Newark, in the County of Essex, State of New Jersey, which is more fully described in and shown on Exhibit A attached hereto (the "*Land*"); together with (i) the buildings erected thereon (the "*Building*") and any and all other fixtures and improvements erected thereon (the Building and such other fixtures and improvements being hereinafter collectively referred to as the "*Improvements*"), (ii) the land lying in the bed of any street, highway, road or avenue, opened or proposed, public or private, in front of or adjoining the Land, to the center line thereof, and (iii) any rights of way, appendages, appurtenances, easements, sidewalks, alleys, gores or strips of land adjoining or appurtenant to the Land or any portion thereof and used in conjunction therewith.

All of the above enumerated property, rights and interests to be sold to Buyer pursuant to this Agreement (including, without limitation, the Building and Improvements erected on the Land or any part thereof) are hereinafter sometimes collectively referred to as the "*Property*".

It is expressly understood and agreed that the Seller is entering into this Agreement in lieu of condemnation and that the Deed of Conveyance (as hereinafter defined) to be delivered to Buyer pursuant to the terms of this Agreement shall be considered a Deed in Lieu of Condemnation.

2. PURCHASE PRICE

In total consideration for the Property to be transferred by Seller to Buyer, Buyer shall pay to Seller, and Seller shall accept from Buyer, the sum of THREE HUNDRED TEN THOUSAND AND 00/100 (\$310,000.00) DOLLARS (the "*Purchase Price*"), which shall be payable at the time of Closing (as hereinafter defined) after making such customary adjustments as are necessary and appropriate pursuant to this Agreement. The Purchase Price shall be paid by attorney trust account check, title company trust account, wire or electronic transfer to an account designated by Seller.

3. **CLOSING**

Closing (the "*Closing*") shall take place at the offices of Buyer's attorney, Chiesa Shahinian & Giantomasi PC, 1 Boland Drive, West Orange, New Jersey 07052 or at an alternate location that is mutually acceptable to the parties on or before February 28, 2017.

4. **TITLE**

Title to the Property shall be marketable and insurable at regular rates by any reputable title insurance company to be selected by Buyer and shall be free and clear of all liens and encumbrances, including municipal liens and assessments. Buyer shall obtain a title search (the "*Commitment*") and shall provide a copy of same to Seller. Seller shall be obligated to clear title of all exceptions shown in the Commitment which may be removed by the payment of monetary sums in fixed or ascertainable amounts ("*Monetary Exceptions*"). If any other exceptions, including but not limited to restrictions of record ("*Other Exceptions*") appear in the Commitment which are for any reason objectionable to Buyer, Buyer shall notify Seller in writing of such Other Exceptions. Within five (5) days of receipt of such notice, Seller shall notify Buyer whether Seller shall clear the title of the Other Exceptions, which shall be done at Seller's sole cost and expense. If Seller elects to clear title of the Other Exceptions and proceed, Seller shall do so forthwith and the clearing of title of the Other Exceptions shall be an affirmative obligation of Seller and a condition precedent to Closing. If Seller, at its option, does not agree to clear the title of the Other Exceptions, Buyer shall have the option, to be exercised in writing not later than five (5) business days after receipt of Seller's notification, to terminate this Agreement, or in the alternative, to proceed to Closing and to accept title subject to the Other Exceptions without abatement of the Purchase Price.

5. **DELIVERIES AT CLOSING**

(a) At or prior to Closing, Seller shall deliver the following to Buyer:

(i) A bargain and sale deed with covenants against grantor's acts, in recordable form, conveying the Property (the "*Deed of Conveyance*");

(ii) An affidavit of title in standard form, reasonably acceptable to Buyer and Buyer's title insurance company;

(iii) Discharge(s) of any mortgage, lease or other liens affecting the Property, if any, suitable for recording;

(iv) An executed IRS Form 1099S reporting form;

(v) A certification that Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986;

(vi) any certificate of occupancy, smoke certificate, zoning certificate or other similar municipal approval required by law in connection with the purchase of the Property by the Buyer. In the event any repairs are required to the Property in order for Seller to

obtain a Certificate of Code Compliance, Seller will obtain a temporary Certificate of Code Compliance and deliver same to Buyer at Closing, Buyer shall be responsible, post-closing to remove any of the conditions to the temporary CCC. The Buyer will cooperate reasonably in obtaining same, but at no cost to the Buyer;

and (vii) A closing statement mutually agreed upon by Buyer and Seller;

(viii) Such other documents and instruments as are reasonably required by Buyer or Buyer's title company to complete Closing and effectuate the intent and purpose of this Agreement.

(b) Buyer shall deliver the following documents and materials to Seller at Closing pursuant to this Agreement:

(i) A closing statement mutually agreed upon by Buyer and Seller;

(ii) The Purchase Price; and

(iii) Such other documents and instruments as are reasonably required to complete Closing and effectuate the intent and purpose of this Agreement.

(c) Real estate taxes and other municipal utility charges shall be adjusted as of the date of the Closing.

6. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Buyer to enter into this Agreement, Seller represents, warrants and covenants to Buyer as of the Effective Date, and, if applicable, as of the date of Closing as follows:

(a) Seller has received no notice of any pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof. There is no action, suit or proceeding pending or, to the best of Seller's knowledge, threatened against or affecting all or any portion of the Property in any court, or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality having jurisdiction over the Property;

(b) There are no contracts or agreements affecting the operation, use and maintenance of the Property which will survive the Closing;

(c) Seller has received no notice of any pending public improvements in, about or outside the Property which shall in any manner affect access to the Property;

(d) There are no options to purchase, rights of first refusal or conditional sales agreements, whether oral or written, which affect any portion of or all of the Property;

(e) There has not been filed by or against Seller a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee, under the state or federal law, nor has Seller made an assignment for the benefit of creditors or filed a petition for an arrangement or entered into an arrangement with creditors which petition, proceedings, assignment or arrangement was not dismissed by final, unappealable order of the court or body having jurisdiction over the matter, and Seller is not insolvent nor has Seller admitted in writing the inability to pay its debts as they become due;

(f) Seller is not a foreign person for purposes of the withholding provisions of Section 1445 of the Internal Revenue Code of 1986;

(g) Seller has not received any notice, citation, summons, directive, order or other communication, in written or oral form, and Seller has no knowledge of the filing or giving of any such notice, citation, summons, directive, order or other communication by, any governmental or quasi-governmental authority or agency or any other person concerning the presence, generation, treatment, storage, transportation, transfer, disposal, release or other handling of any Hazardous Substances (as hereinafter defined) within, on, from, related to or affecting the Property. Seller is neither in possession of nor has any knowledge of any other reports, letters or other documents concerning the environmental condition of the Property. To the extent Seller locates such material concerning the environmental condition of the Property after the date of this Agreement, Seller shall promptly forward a copy of such material to Buyer. Seller states, to the best of its knowledge, without any independent inquiry, that it is not aware of the presence of any Hazardous Substance at the Property. The term "*Hazardous Substances*" means a substance, element or compound defined as a "Hazardous Substance" in either the New Jersey Industrial Site Recovery Act (13:1K-6 et seq.) or the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 ("*CERCLA*");

(h) Seller has received no notices of violations of any federal, state or municipal or other health, zoning, safety, environmental protection or other applicable code, law, ordinance or regulation pertaining to the Property;

(i) Seller owns the Property and is authorized to execute this Agreement and this Agreement is a valid and binding agreement of Seller, enforceable in accordance with its terms;

(j) Seller represents, to the best of its knowledge, without any independent inquiry that there are no underground oil tanks at or under the Property;

(k) Seller represents, to the best of its knowledge, without any independent inquiry that there are no septic tanks at or under the Property;

(l) There are no leases or rights of occupancy that affect the Property, written or oral, that will continue in effect subsequent to Closing. The Property shall be delivered vacant and free any tenants, occupants and/or leases or other occupancy agreements;

(m) Neither the execution and delivery of this Agreement or any other documents necessary to complete this transaction, nor the consummation of the transactions

contemplated hereby or thereby in the manner herein or therein provided, nor the fulfillment of or compliance with the terms and conditions hereof shall: (i) violate, be in conflict with, constitute a default under, cause the acceleration of any payments pursuant to, or otherwise impair the good standing, validity, or effectiveness of any agreement, contract, indenture, lease or mortgage to which Seller is a party; or (ii) to the best of Seller's knowledge, violate any provision of law, rule, regulation, order, permit or license to which Seller is subject or pursuant to which Seller conducts its business.

(n) Seller is not now nor shall it be at any time prior to or at the Closing an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a "**Person**") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "**U.S. Person**"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Person may not transact business or must limit their interactions to types approved by OFAC, such Person, "**Specially Designated Nationals and Blocked Person**") or otherwise. Neither Seller nor any Person who owns an interest in Seller (collectively, a "**Seller Party**") is now nor shall be at any time prior to or at the Closing a Person with whom a U.S. Person, including a United States Financial Institution as defined in 31 U.S.C. 5312, as periodically amended ("**Financial Institution**"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States Law, regulation, executive orders and lists published by OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise;

(o) Neither Seller nor any Seller Party, nor any Person providing funds to Seller: (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violations of any Anti-Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (c) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. For purposes of this subsection, the term "**Anti-Money Laundering Laws**" shall mean laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a Financial Institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA Patriot Act of 2001, Pub. L. No. 107-56 (the "**Patriot Act**"), the Bank Secrecy Act, 31, U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency

Economic Powers Act, 50 U.S.C. Section 1701 et. seq. and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and Section 1957; and

(p) To Seller's knowledge Seller is in compliance with any and all applicable provisions of the Patriot Act.

The foregoing representations and warranties shall survive the Closing of title.

7. REPRESENTATIONS AND WARRANTIES OF BUYER

In order to induce Seller to enter into this Agreement, Buyer hereby warrants and represents to Seller, as of the date hereof and as of the date of Closing, that:

(a) Buyer is a body corporate and politic organized under the laws of the State of New Jersey which has full right, power and authority to enter into, execute and deliver this Agreement, which, once executed by Buyer, shall be the legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms; and

(b) Neither the execution and delivery of this Agreement or any other documents necessary to complete this transaction, nor the consummation of the transactions contemplated hereby or thereby in the manner herein or therein provided, nor the fulfillment of or compliance with the terms and conditions hereof shall: (i) violate, be in conflict with, constitute a default under, cause the acceleration of any payments pursuant to, or otherwise impair the good standing, validity, or effectiveness of any agreement, contract, indenture, lease or mortgage to which Buyer is a party; or (ii) to the best of Buyer's knowledge, violate any provision of law, rule, regulation, order, permit or license to which Buyer is subject or pursuant to which Buyer conducts its business.

8. INTENTIONALLY OMITTED

9. DEFAULT

(a) Default by Seller: Seller shall be in "*Default*" of this Agreement in the event (i) Seller fails to perform any of its obligations pursuant to this Agreement, which failure remains uncured for ten business (10) days after Buyer's written notice to Seller thereof; or (ii) of a material breach of any representation or warranty by Seller expressly set forth in this Agreement. If Seller shall be in Default of this Agreement at any time prior to Closing, Buyer may either (x) terminate this Agreement, (y) seek specific performance of Seller's obligations hereunder, and/or (z) pursue any other remedy available to it at law or in equity. In the event Buyer is successful in an action for specific performance of any of Seller's obligations hereunder, Seller shall reimburse Buyer for all reasonable costs incurred by Buyer, including reasonable legal fees, in connection with such action for specific performance.

(b) Default by Buyer: Buyer shall be in "*Default*" of this Agreement in the event (i) Buyer fails to perform any of its obligations pursuant to this Agreement, which failure remains uncured for ten business (10) days after Seller's written notice to Buyer thereof; or (ii)

of a material breach of any representation or warranty by Buyer expressly set forth in this Agreement. If Buyer shall be in Default of this Agreement, Seller shall have the right to seek all remedies available to it at law and in equity.

10. **COSTS**

Seller shall pay the New Jersey Real Estate Transfer Tax, if any, and Buyer shall pay for recording the deed and all searches, surveys, title insurance and its other closing expenses. Title company settlement charges shall be paid for by Buyer. Each party shall pay its own legal fees.

11. **NOTICES**

All notices to be given by either party to the other shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or overnight commercial courier to the parties as provided for below.

(a) If to Seller:

12 Myrtle Avenue Corporation
555 Passaic Avenue
West Caldwell, New Jersey 07006

With a required copy to:

Elizabeth M. Durkin, Esq.
The Durkin Firm, LLC
354 Eisenhower Parkway, Suite 2550
Livingston, New Jersey 07039

(b) If to Buyer:

County of Essex
Attn: Courtney Gaccione, Esq.
465 Dr. Martin Luther King, Jr. Boulevard
Newark, New Jersey 07102

With a required copy to:

Gemma M. Giantomasi, Esq.
CHIESA SHAHINIAN AND GIANTOMASI PC
One Boland Drive
West Orange, NJ 07052

All notices shall be deemed to have been given on the date hand-delivered, three (3) business days after mailed by certified mail, and one (1) business day after delivered to a commercial overnight courier for delivery the following business day.

12. **REAL ESTATE BROKERS' COMMISSIONS**

Seller and Buyer each warrant to the other that neither worked with, nor incurred any obligation for real estate commission with respect to this transaction. Each party agrees to indemnify and hold harmless the other party for any loss, cost or expense (including reasonable attorneys' fees) which the non-defaulting party may suffer as a result of a breach of this warranty. This warranty shall survive Closing.

13. **ASSIGNMENT**

Buyer shall have no right to assign this Agreement.

14. **BULK SALE**

Buyer may file with the New Jersey Division of Taxation a Notification of Sale, Transfer, or Assignment in Bulk (Form C-9600) (the "**Notification**"), together with an executed copy of this Agreement, as required by the New Jersey Division of Taxation, at least ten (10) days prior to Closing. Seller shall cooperate with Buyer in connection with the preparation and filing of such Notification. If the New Jersey Division of Taxation issues a notice instructing Buyer as to what portion of the Purchase Price, if any, must be withheld at Closing (a "**Tax Claim**"), the amount ("**Bulk Sale Escrow**") set forth in such notice shall be withheld from the Purchase Price at Closing and will be delivered to Buyer's counsel to be held in escrow under a mutually satisfactory escrow agreement. Thereafter, as and when the New Jersey Division of Taxation or another governmental authority issues an order requiring the payment of some or all of the Bulk Sale Escrow, Buyer shall inform Seller and Buyer's counsel of same, and Buyer's counsel shall promptly pay and disburse same to the applicable governmental authority from the escrowed funds. Upon receipt by Buyer of a tax clearance certificate issued by the New Jersey Division of Taxation confirming that all of Seller's taxes are paid in full or the New Jersey Division of Taxation otherwise informs Buyer or Buyer's counsel that the New Jersey Division of Taxation will not assert liability against Buyer pursuant to N.J.S.A. 54:50-38 in connection with the transfer of the Property and informing Buyer (or Buyer's counsel) that there is no further requirement that Buyer withhold any amount from the Purchase Price, Buyer shall inform Seller and Buyer's counsel of same, whereupon Buyer's counsel shall release the remaining balance of the Bulk Sale Escrow to Seller.

15. **FUTURE OPERATIONS.**

Between the Effective Date and the Closing, Seller covenants as follows:

(a) Seller shall, at its sole cost, (i) maintain the Property in its present condition, reasonable wear and tear excepted; (ii) at all times observe and perform its obligations relating to the Property pursuant to applicable laws, codes and ordinances; (iii) cure any notes or notices of violation of any law, code, ordinance, order or requirement issued by any

governmental authority regarding the Property and pay any fee, fine or penalty associated therewith prior to the Closing; and (iv) promptly notify Buyer of the institution of any litigation, arbitration, other proceeding, or the commencement by any governmental authority of any investigation, involving Seller or the Property.

(b) Seller shall not, without Buyer's consent (which may be granted or withheld by Buyer in its sole discretion), (i) enter into any lease or other occupancy agreement with respect to any portion of the Property, or otherwise permit any person or entity, whether orally or in writing, to enter, use or occupy any portion of the Property; (ii) enter into any contract or other agreement relating to the Property which would remain in effect, or which would otherwise bind Buyer or the Property after the Closing; (iii) cause or permit any alteration, construction, reconstruction or renovation at or on the Property or any portion thereof; or (iv) enter into, record or file, or permit the recording or filing, of any lien, easement, restriction, encumbrance or other instrument of any kind against the Property.

16. MISCELLANEOUS

(a) This Agreement constitutes the entire agreement by and between the parties hereto with respect to the transactions contemplated herein, superseding all prior understandings or agreements between the parties. No change, alteration, amendment, modification or waiver of any of the terms or provisions of this Agreement shall be valid unless the same shall be in writing and signed by both Seller and Buyer.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, devisees, personal representatives, successors and assigns.

(c) Failure of Buyer or Seller to insist upon or to enforce any of their rights hereunder shall not constitute a waiver thereof and nothing shall constitute a waiver of Buyer's or Seller's right to insist upon strict compliance with the provisions hereof.

(d) This Agreement shall be governed by and construed under the substantive laws of the State of New Jersey and no application of the conflicts of laws or rules of the State of New Jersey shall cause any law to apply other than that of the State of New Jersey. The parties waive any right to a trial by jury in connection with any dispute arising under this Agreement.

(e) The article headings as herein used are for the convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or to limit the provisions or scope of any article.

(f) If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be deemed invalid or unenforceable, then and in such event the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to whom or to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable thereto to the fullest extent permitted by law.

(g) Each of the rights, benefits and remedies provided by this Agreement, and any instruments or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other rights, remedies and benefits allowed by this Agreement to the parties.

(h) All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

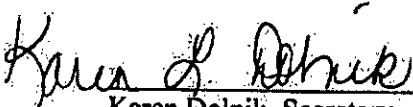
(i) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. This Agreement may be executed by facsimile or by email in PDF format. Any signature delivered by facsimile or by email in PDF format shall constitute valid and binding delivery for all purposes by such signatory, it being understood and agreed that each such signatory shall nonetheless deliver an original ink signature to the Agreement promptly after such delivery by facsimile or by email in PDF format.

(j) This Agreement shall be deemed drafted by both parties and their counsel and shall not be construed against either party as the drafter.

Signatures to follow on next page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the Effective Date.

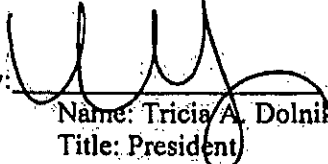
ATTEST:



Karen Dolnik, Secretary

SELLER:

12 MYRTLE AVENUE CORPORATION

By: 

Name: Tricia A. Dolnik Mac Evoy
Title: President

Date signed: February 9, 2017

BUYER:

COUNTY OF ESSEX

Deborah Davis Ford
Clerk of the Board

By: _____
Joseph N. DiVincenzo, Jr.
Essex County Executive
Date signed: _____, 2017

Signature Page to Agreement of Sale

EXHIBIT A

File Number: 15PTD-052709

Legal Description

ALL THAT CERTAIN LOT, PARCEL OR TRACT OF LAND, SITUATE AND LYING IN THE CITY OF NEWARK, COUNTY OF ESSEX, STATE OF NEW JERSEY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1 (LOTS 26 & 27):

BEGINNING AT A POINT IN THE WESTERLY SIDELINE OF MYRTLE AVENUE, SAID POINT BEING DISTANT 190.0 FEET NORTHERLY, ALONG THE SAME, FROM ITS INTERSECTION WITH THE NORTHERLY SIDELINE OF SUSSEX AVENUE; FROM THENCE RUNNING

- (1) NORTH 57 DEGREES 26 MINUTES WEST, 64.34 FEET TO A POINT; THENCE
- (2) NORTH 13 DEGREES 38 MINUTES 28 SECONDS EAST, 42 FEET MORE OR LESS TO A POINT IN THE SOUTHERLY SIDELINE OF N.J. STATE HIGHWAY ROUTE 280; THENCE
- (3) EASTERLY, ALONG THE SAME, ON A CURVE TO THE LEFT HAVING A RADIUS OF 2290.0 FEET AN ARC LENGTH OF 90.8 FEET MORE OR LESS TO A POINT IN THE WESTERLY SIDELINE OF MYRTLE AVENUE; THENCE
- (4) ALONG THE SAME, SOUTH 32 DEGREES 35 MINUTES WEST, 61 FEET MORE OR LESS TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE DESCRIPTION WAS DRAWN IN ACCORDANCE WITH A SURVEY PREPARED BY GREGORY PROCHOREN, P.L.S., INC. DATED NOVEMBER 3, 1989.

TRACT 2 (LOT 28):

BEGINNING IN THE WESTERLY LINE OF MYRTLE AVENUE AT A POINT THEREIN DISTANT NORTHERLY 158.75 FEET FROM THE NORTHWEST CORNER OF SAME AND SUSSEX AVENUE, THE SAID POINT OF BEGINNING BEING ALSO DIRECTLY IN RANGE WITH THE CENTER LINE OF A PARTY WALL; THENCE RUNNING NORTHERLY AND ALONG SAID WESTERLY LINE OF MYRTLE AVENUE 31.25 FEET; THENCE WESTERLY AND AT RIGHT ANGLES WITH SAID MYRTLE AVENUE 64.34 FEET TO REAR LINE OF LOTS FRONTING ON WARREN STREET; THENCE SOUTHERLY ALONG SAID REAR LINE 32.60 FEET TO A POINT DIRECTLY IN RANGE WITH THE CENTER LINE OF THE PARTY WALL AFORESAID; AND THENCE RUNNING EASTERLY AND ALONG SAID CENTER LINE OF PARTY WALL AND CONTINUATION THEREOF AND AT RIGHT ANGLES WITH MYRTLE AVENUE AFORESAID 64.74 FEET TO PLACE OF BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY: ALSO KNOWN AS LOTS 26, 27 & 28 IN BLOCK 1891.01 ON THE CITY OF NEWARK TAX MAP.