AN ORDINANCE OF THE CITY OF ORANGE TOWNSHIP
AUTHORIZING THE ACQUISITION OF 425 MAIN STREET, ORANGE
NEW JERSEY, LAND ALSO IDENTIFIED AS LOT 25, BLOCK 2201,
FOR THE PURCHASE PRICE OF $1,990,000.

WHEREAS, the City Council of the City of Orange Township ("City") in furtherance
of the Townships goal of providing quality, safe, market rate housing and a community
center with recreational opportunities for residents has agreed to acquire the hereinafter
described property for the purchase price $1,990,000.00; and

Block   Lot   Property Address   Purchase Price   Property Owners

2201   25   425 Main Street   $1,990,000.00   425 Main St Assoc.

WHEREAS, pursuant to N.J.S.A. 40A:12-5 et seq. the City may, through authority
granted by an ordinance, acquire private property for a public use through gift, purchase,
or condemnation; and

WHEREAS, the City Council of the City of Orange Township has determined that the
acquisition of the Property described above will advance the Township’s goals of
providing quality, safe, market rate housing and a community center with recreational
opportunities for residents; and

WHEREAS, The City has negotiated a proposed “Agreement of Purchase and Sale”
Contract to purchase 425 Main Street, with 425 Main Street Associates LLC for the
purchase of the above described property, a copy of which is annexed hereto;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Orange
Township in the County of Essex, State of New Jersey, as follows:

SECTION I. Purpose and Fiscal impact. The purpose of this ordinance is to authorize
the acquisition of the Property described herein. Fiscal impact will be neutral as the
cost of acquisition will be offset by reimbursement to the City of all costs of acquisition
by a designated redeveloper for parcels across High Street on the corner of High Street
and Main Street for an amount that will exceed the cost(s) of acquisition.

SECTION II. The City is empowered by N.J.S.A. 40A:12-5 et seq. to acquire lands or
rights therein by purchase, gift and or condemnation.

SECTION III. This ordinance authorizes the acquisition by the City of the property
known as Block 2201, Lot 25 on the official tax map of the City of Orange Township,
said property being known as 425 Main Street, Orange, New Jersey.
SECTION IV. Pursuant to N.J.S.A. 40A:12-1 et seq. the City Attorney of the City of Orange Township, the Mayor and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire the Property including the Contract for Sale of Real Estate, copies of which are annexed hereto.

SECTION V. Should any section, paragraph, sentence or clause of this ordinance be declared unconstitutional or invalid for any reasons, the remaining portions of this ordinance shall not be affected thereby and shall remain in full force and effect and to this end the provisions of this ordinance are hereby declared severable.

SECTION VI. This ordinance shall become effective immediately upon passage and publication, according to the law and certification by the Chief Financial Officer of the availability of funds for the acquisition described herein.

ADOPTED:

Joyce Lanier  
City Clerk

Kerry Coley  
Council President

APPROVED:

Honorable Dwayne D. Warren, Esq.  
Mayor

Purpose: The purpose of this ordinance is to authorize the acquisition of the Property described herein.

Fiscal Impact: Neutral.
ORDINANCE NO 50-2018

REGULAR MEETING -10/3/2018
INTRODUCTION-FIRST READING

MOTION TO ADOPT: Williams

SECOND: Summers-Johnson

YEAS: Eason, Jackson, Summers-Johnson, Williams, Wooten & Council Pres. Coley
NAYS: None
ABSTENTIONS: None
ABSENCES: Johnson, Jr.

SECOND READING PUBLIC/FINAL HEARING; NOVEMBER 7, 2018
AGREEMENT OF PURCHASE AND SALE

This AGREEMENT OF PURCHASE AND SALE ("Agreement") is entered into, as of the Effective Date (defined herein), by and between 425 Main Street Associates Inc., a corporation with an address at 425 Main Street, City of Orange, NJ 07050 ("Seller"), and City of Orange, or its designee, a municipal corporation of the State of New Jersey ("Purchaser").

PRELIMINARY STATEMENT

Seller is the owner of that certain Property (identified and defined in Article I herein), which Seller desires to sell, and Purchaser desires to purchase, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intended to be legally bound, the parties hereto agree as follows:

ARTICLE I
(The Property)

1.1 Sale and Purchase of Property. Seller hereby agrees to sell, assign, and convey to Purchaser, and Purchaser agrees to purchase and acquire from Seller, all of Seller's right, title, and interest in and to, the following:

(a) Land and Improvements. The land located at 425 Main Street, Orange, New Jersey 07050, identified as Block 2201, Lot 25 on the Tax Map of the City of Orange Township, County of Essex, State of New Jersey ("Land"), together with the buildings and other improvements located thereon (the "Improvements").

(b) Real Property. The rights, privileges, and easements appurtenant to Seller's interest in the Land and the Improvements, if any, including, without limitation, all of Seller's right, title, and interest, if any, in and to all easements, licenses, covenants, and other rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and the Improvements (the Land, the Improvements, and all such easements and appurtenances are sometimes collectively referred to herein as the "Real Property").

(c) Leases. Seller's interest in all leases and other agreements to occupy the Property (the "Leases"), or any portion thereof, as amended, in effect on the date of Closing.

(d) Tangible Personal Property. All of Seller's right, title and interest, without warranty, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Seller and now or hereafter located in and used in connection with the operation, ownership, or management of the Property, but specifically excluding any items of personal property owned by tenants at or on the Property and further excluding any items of personal property owned by third parties and leased to Seller (collectively, the "Tangible Personal Property").
(e) Intangible Property. Seller’s interest under and to (i) the assignable contracts and agreements pertaining to the operation of the Property, including all management, leasing, parking, service, and maintenance agreements, and equipment leases (“Service Contracts”), which Purchaser elects to assume; (ii) all assignable warranties and guaranties issued to or inuring to the benefit of Seller in connection with the Improvements or Tangible Personal Property; (iii) all assignable licenses and permits held by Seller at the time of Closing relating to the operation of the Property (the “Licenses”), which Purchaser elects to assume; (iv) Seller’s tradenames used in connection with the Land and the Improvements; and (v) all environmental studies and reports, promotional materials, surveys, building plans, and lease files (including any original leases) possessed by Seller and used by Seller exclusively in connection with the Land and the Improvements (items (i) - (v) are collectively known as the “Intangible Property”).

1.2 Property Defined. The Seller’s rights and interest in the Land, the Improvements, the Real Property, the Leases, the Tangible Personal Property, and the Intangible Property are collectively referred to as the “Property.”

1.3 Items Excluded from Sale. Notwithstanding the above, Property shall not include the following items: Any unattached air conditioner(s), refrigerators and/or cabinets.

ARTICLE II
(Purchase Price)

2.1 Purchase Price. The purchase price for the Property shall be ONE MILLION NINE HUNDRED NINETY THOUSAND and 00/100 DOLLARS ($1,990,000.00) (the “Purchase Price”), payable as follows:

(a) Purchaser shall pay the Deposit (defined herein) to the Escrow Agent to be held and disbursed by Escrow Agent, pursuant to the provisions hereof, and shall be paid to, or at the direction of, Seller at the Closing; and

(b) Purchaser shall pay the balance of Purchase Price, plus or minus prorations provided in this Agreement, and any closing costs, to Seller at Closing by wire transfer of immediately available funds to the Seller, or by other means acceptable to Seller.

ARTICLE III
(Deposit)

3.1 Deposit. Within two (2) business days of the Effective Date of this Agreement, Purchaser shall deposit the sum of $25,000.00 as a good faith deposit (“Initial Deposit”) with the Purchaser’s Title Company, acting as escrow agent (“Escrow Agent”). Within two (2) business days following the conclusion of the Due Diligence Period (defined herein), Purchaser shall deposit an additional sum of $75,000.00 (“Additional Deposit”) with the Escrow Agent. The Initial Deposit and the Additional Deposit are referred to collectively herein as the “Deposit.” The Escrow Agent shall hold the Deposit in escrow in a non-interest bearing trust account. Escrow Agent shall provide Seller with written confirmation it has received the Deposit within one (1) day of receipt of the
same. Purchaser's failure to timely deliver the Deposit shall constitute a material breach of this Agreement, and entitle the Seller, at Seller's sole option, to terminate the Agreement immediately.

3.2 Disposition of Deposit. If the Closing takes place under this Agreement, the Escrow Agent shall deliver the Deposit to, or upon the instructions of, the Seller on the date of the Closing. The Deposit shall not be paid over to Seller prior to the Closing, unless otherwise agreed in writing by both Purchaser and Seller. If Purchaser and Seller cannot agree on the disbursement of the Deposit, or if the Escrow Agent is uncertain for any reason whatsoever as to its duties or rights hereunder, then notwithstanding anything to the contrary in this Agreement, the Escrow Agent may continue to hold the Deposit or may deposit the Deposit into any court of competent jurisdiction. In the event the Deposit is deposited in a court by the Escrow Agent, the Escrow Agent shall be entitled to rely upon the decision of such court.

3.3 Exculpation of Escrow Agent. It is agreed by the Seller and Purchaser that the duties of Escrow Agent are herein specifically provided and are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever except for its willful misconduct or gross negligence, so long as Escrow Agent is acting in good faith. Seller and Purchaser do each hereby release Escrow Agent from any liability for any error of judgment or for any act done or omitted to be done by Escrow Agent in the good faith performance of its duties hereunder and do each hereby indemnify Escrow Agent against, and agree to hold, save, and defend Escrow Agent harmless from, any costs, liabilities, and expenses incurred by Escrow Agent in serving as Escrow Agent hereunder and in faithfully discharging its duties and obligations under this Agreement.

ARTICLE IV
(Due Diligence)

4.1 Due Diligence Materials. Within five (5) days of the Effective Date of this Agreement, Seller shall provide Purchaser with the following due diligence materials, to the extent in Seller's possession ("Due Diligence Materials"): 

1. existing title documents, including legal description, title policy, survey, and deed;
2. site plan, zoning, or other land use approvals, resolutions, and permits;
3. tenant leases, any guaranties thereof, and any other occupancy agreements, and all amendments and modifications thereof affecting the Property;
4. a signed rent roll and statement of security deposit balances (which shall be certified to by the Seller at or before the Closing);
5. a legal rent calculation for all apartment units, if applicable;
6. all Service Contracts pertaining to the operation of the Property, including all management, leasing, service and maintenance agreements, and equipment leases;
7. engineering and environmental reports;
8. documentation related to any current or former oil tanks on the Property, including, but not limited to, any No Further Action (NFA) letter issued by the New Jersey Department of Environmental Protection (DEP) or a Response Action Outcome (RAO) issued by a Licensed Site Remediation Professional (LSRP);
9. real estate tax bills and assessment notices for the previous calendar year and year to date;
10. a current "Green Card" issued by the N.J. Department of Community Affairs;
(11) details on any ongoing or threatened litigation related to the Property; and
(12) any other documents in Seller’s possession pertaining to the Property.

Notwithstanding anything in this Agreement to the contrary, Due Diligence Materials shall not include: (i) any reports, presentations, summaries and the like prepared for any of Seller’s boards, committees, partners, or investors in connection with its consideration of the acquisition of the Property, construction of the Improvements, or sale of the Property, (ii) any proposals, letters of intent, draft contracts, or the like prepared by or for other prospective purchasers of the Property or any part thereof, (iii) Seller’s internal memoranda, attorney-client privileged materials, internal appraisals, structural or physical inspection reports, projections and budgets; and (iv) any information which is the subject of a confidentiality agreement between Seller and a third party.

4.2 Due Diligence Period.

(a) Purchaser shall have sixty (60) calendar days commencing on the day after the Effective Date of this Agreement (the “Due Diligence Period”) to conduct any and all necessary due diligence which may include, but not limited to, a feasibility study, environmental testing, property inspection (including all mechanical equipment, plumbing, and electrical systems), determine availability of utilities, zoning conditions, subdivision and deed restrictions, flood zone classification, soil conditions, possibility of presence of wood-destroying insects, existence of hazardous or toxic materials, site plans, permit requirements, conformance of property to local building and fire codes, any re-platting requirement, and any other factors or conditions which might affect the property. Seller hereby authorizes Purchaser or its agents to enter upon the subject property for the purpose of making said inspections and conducting such testing. Purchaser shall not directly or indirectly contact or otherwise communicate any tenant, lessee, or other occupant of the Property without the prior written consent of the Seller.

(b) Purchaser and its officers, directors, agents, employees, attorneys, contractors, successors and assigns ("Purchaser Parties") hereby agree to release, hold harmless, defend and indemnify the Seller and its officers, directors, agents, employees, attorneys, contractors, successors and assigns ("Seller Parties") from and against all actual or threatened claims, costs (including reasonable fees of attorneys and other professionals, experts and consultants) demands, orders, losses, lawsuits, liabilities, damages and expenses whether brought collectively or individually by a governmental authority or any other third party directly arising from or related to losses or damage caused by the entry onto or inspection of the Property by the Purchaser Parties. Purchaser shall not be liable however, for losses arising from any pre-existing condition of the Property which might be discovered as a result of its inspection thereof. Purchaser will not allow any construction liens to be attached to the Property as a result of its activities, nor will Purchaser allow any damage to the Property as a result of its inspection rights and activities. Purchaser shall maintain, and shall ensure that its contractors maintain, liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of the Purchaser Parties arising out of any entry or inspections of the Property. Purchaser shall provide Seller with evidence of such insurance coverage upon request by Seller. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement. Purchaser’s right of entry, as provided in this Section shall continue up through the date of Closing.
4.3 Confidentiality. Unless Seller expressly otherwise agrees in writing, Purchaser agrees that the results of all inspections, analyses, studies and similar reports relating to the Property prepared by or for Purchaser utilizing any information acquired in whole or in part through the Purchaser’s inspection of the Property, and all information and documentation regarding the Property of whatsoever nature (including, but not limited to, the Due Diligence Materials) made available to Purchaser by Seller or Seller’s agents or representatives, is confidential and shall not be disclosed to any other person except those assisting Purchaser with the transaction, or Purchaser’s lender, if any. Purchaser agrees not to use, or allow to be used, any such information for any purpose other than to determine whether to proceed with the contemplated purchase, or if same is consummated, in connection with the operation of the Property post-closing. The provisions of this Section shall survive any termination of this Agreement.

4.4 Termination of Agreement; Waiver of Termination Right. Purchaser shall provide written notice to Seller and Escrow Agent on or before 5:00 P.M. EST on the last day of the Due Diligence Period that Purchaser (i) does not desire to acquire the Property for any reason or for no reason, which decision shall be at the sole discretion of the Purchaser; or (ii) waives its right to terminate this Agreement pursuant to this Article. In the event that Purchaser shall elect to terminate this Agreement on or before the expiration of the Due Diligence Period (for any reason or no reason, and at Purchaser’s sole discretion), the Deposit shall promptly be delivered to Purchaser and thereupon neither party shall have any further rights or obligations to the other under this Agreement. If Purchaser shall fail to timely notify Seller in writing of its determination under this Article on or before the expiration of the Due Diligence Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to the terms of this Article.

ARTICLE V
(Title and Survey)

5.1 Delivery of Title. At Closing, Seller shall convey title to the Property to the Purchaser. Seller shall convey good and marketable fee simple title to the Property insurable as such by a reputable title company, selected by Purchaser, licensed to do business in the State of New Jersey at regular rates with such endorsements as Purchaser may require.

5.2 Title Commitment and Survey. Purchaser shall as soon as practical after the Effective Date request that a licensed title company ("Title Company") issue a commitment for title insurance for an Owner’s Policy of title insurance covering the Property in the amount of the Purchase Price ("Title Commitment"). Purchaser may also elect to have a survey of the Property conducted by a licensed surveyor ("Surveyor"). Purchaser agrees to pay for the cost of the Title Commitment and Survey, and Purchaser shall also be solely responsible for the cost of any title insurance premium should Purchaser elect to purchase a title insurance policy. Purchaser shall provide, or cause to be provided, copies of the Title Commitment and the Survey, if any, to Seller within two (2) business days after receipt thereof.
5.3 **Title and Survey Objections.** Purchaser shall notify Seller, in writing, on or before the expiration of the Due Diligence Period, specifying any exceptions to title to the Property set forth in the Title Commitment or exceptions to the Survey (the “Title and Survey Objection Notice”). Any title exception not disapproved in writing in Purchaser’s Title and Survey Objection Notice within said time period shall be deemed approved by Purchaser and shall constitute a “permitted exception.” Seller shall notify Purchaser in writing within five (5) calendar days after receiving Purchaser’s Title and Survey Objection Notice whether or not Seller will cause any title objections raised therein to be removed from title, insured over, or cured. Notwithstanding anything to the contrary, Seller has no obligation to take any steps, bring any action, or incur any costs, effort or expenses whatsoever regarding any title objection. If Seller so notifies (or is deemed to have notified) the Purchaser that the Seller will not remove, insure over, or cure any or all of the title objections, then Purchaser shall within five (5) days from such notification notify the Seller in writing that the Purchaser will (i) proceed with the purchase and acquire the Property subject to the title objections, in which case the title objections are deemed approved, or (ii) terminate the Agreement, in which case the Deposit will be refunded to Purchaser. Purchaser’s failure to give Seller such notice shall be deemed to be an election by Purchaser under clause (i) above.

**ARTICLE VI**

*(Leases and Contracts)*

6.1 **Current Leases and Contracts.** Within five (5) days of Effective Date, Seller shall provide Purchaser with copies of any and all leases, contracts, and any other agreements affecting the Property. All leases, contracts, and agreements affecting the Property shall be assigned by Seller to Purchaser at the Closing. All advance rental collections, if any, and taxes due and payable in the calendar/fiscal year of Closing, shall be prorated, and all security deposits shall be transferred by Seller to Purchaser at the Closing.

6.2 **Tenant Estoppel Certificates and Letters of Attornment.** Seller shall use reasonable efforts to obtain estoppel certificates that from every tenant that (a) confirm that the tenant’s lease is in full force and effect and (b) states to the best of tenant’s knowledge that (i) Seller is not in default under the lease (or specifying the default claims, if any), (ii) the date through which rent has been paid, and (iii) the amount of the security deposit, if any. At Closing, Seller shall provide Purchaser with copies of Seller’s attornment letters to the tenants informing the tenants that the Property has been sold and directing the tenants to pay rent to the Purchaser.

6.3 **Execution of New Leases and Contracts.** After the Effective Date, Seller shall not, without written notice to the Purchaser, materially amend or terminate any leases, contracts, or agreements affecting the Property. After the Effective Date, Seller shall not, without written notice to the Purchaser, enter into (i) any contract or agreement that will be an obligation affecting the Property or binding on Purchaser after the Closing, or (ii) any new lease for the Property or any portion thereof.
ARTICLE VII
(Seller’s Representations)

7.1 Seller’s Representations. Seller represents and warrants to Purchaser that the following matters are true and correct as of the Effective Date to the best knowledge of Seller:

(a) Seller is the legal owner of the Property and has the legal power, right, and authority to enter into this Agreement and to consummate the transactions contemplated thereby.

(b) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Jersey. This Agreement has been duly authorized, executed and delivered by Seller, is the legal, valid and binding obligation of Seller, and does not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller is subject.

(c) Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally.

(d) Seller is not a foreign person within the meaning of the Internal Revenue Code, and Seller agrees to execute any and all documents necessary or required by the Internal Revenue Service or Purchaser in connection with such declaration(s).

(e) Copies of any and all leases, contracts, and agreements delivered to Purchaser by Seller pursuant to this Agreement are true and complete copies of such leases, contracts, and agreements.

(f) There are no actions, suits or proceedings (including, but not limited to, bankruptcy) pending or threatened against which, if determined adversely to Seller, would adversely affect the Seller’s ability to perform its obligations hereunder.

(g) Seller has not received any written notice from any governmental agency of Seller’s or the Property’s violation of any applicable governmental law with respect to the Property in any material respect which has not been previously cured.

(h) Seller has not received any written notice from any governmental agency of violation of any Environmental Laws (as defined herein) applicable to the Property or the release or threatened release of Hazardous Substances (as defined herein) on or from the Property in violation of applicable law in any material respect which has not been previously cured or remediated. No government suit to enforce or impose liability under any Environmental Laws is currently pending against Seller concerning the Property and no lien on the Property has been created under any applicable Environmental Laws. "Hazardous Substances" shall mean any substance, material, or waste which is regulated by any federal, state, or local government or quasi-governmental authority, and includes, without limitation, any substance, material, or waste defined, used, or listed as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous materials", "toxic substance", "pollutant", "contaminant" or other similar terms as defined, listed, classified or used pursuant to the New
Jersey Spill Compensation and Control Act (the “Spill Act”), or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any similar federal, state, or local laws (collectively the “Environmental Laws”).

7.2. **Survival of Representations.** The express representations and warranties made in this Agreement shall not merge into any instrument or conveyance delivered at the Closing, except as otherwise expressly provided herein.

**ARTICLE VIII**
(Purchaser’s Representations)

8.1 **Purchaser’s Representations.** Purchaser represents and warrants to Seller that the following matters are true and correct as of the Effective Date to the best knowledge of Purchaser:

(a) Purchaser is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey. This Agreement has been duly authorized, executed and delivered by Purchaser, is the legal, valid and binding obligation of Purchaser, and does not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject.

(b) Purchaser has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Purchaser’s creditors, suffered the appointment of a receiver to take possession of all, or substantially all, of Purchaser’s assets, suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser’s assets, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally.

8.2 **Survival.** The express representations and warranties made in this Agreement by Purchaser shall not merge into any instrument of conveyance delivered at the Closing, except as otherwise expressly provided herein.

**ARTICLE IX**
(Contingency)

9.1 **Contingency.** Notwithstanding the expiration of the Due Diligence Period, Purchaser’s obligations under this Agreement shall be conditioned on the following conditions precedent being satisfied on or before the Closing:

- Approval of the City of Orange Township City Council (“City Council”), if required.

If Purchaser is unable to satisfy any of the aforementioned contingency on or before the date of the Closing, Purchaser may cancel this Agreement without penalty and the Deposit shall be returned by the Seller to Purchaser, less property taxes due on the Property between the Effective Date of this Agreement and the termination date. Purchaser retains in its sole discretion the right to waive any of the above conditions.