

101

2011 RESOLUTION

WHEREAS, the Township of Bloomfield and John DeSimone have negotiated a contract to purchase real property known as Block 792, Lots 130, 131 and 132 in the Township of Bloomfield, County of Essex, State of New Jersey also know as Lot 130, 131 and 132, Block 792 on the Tax Maps of the Township of Bloomfield.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Township of Bloomfield hereby authorize the Mayor to sign and the Clerk to attest to the attached Contract of Sale for Commercial Real Estate after it has been amended as indicated herein; and

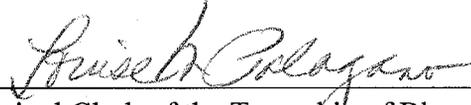
BE IT FURTHER RESOLVED, that the Finance Director is hereby authorized to pay for work done on the property in furtherance of the sellers obtaining a No Further Action Letter as long as the work to be done and the costs are approved by the Township Administrator or his designee and these costs should not exceed \$100,000.00 as outlined in the contract; and

BE IT FURTHER RESOLVED, this Resolution is being passed with the understanding that there shall be NO expiration of the contingencies that the Township of Bloomfield receive funds in the sum of \$1,800,000.00 from the New Jersey Green Acres Program and funds in the sum of \$100,000.00 from NY/NJ Baykeeper. Therefore, if for any reason the Township of Bloomfield does not, or is not able to receive the funds the Agreement shall be void and the Township will be under NO obligation to purchase the property.

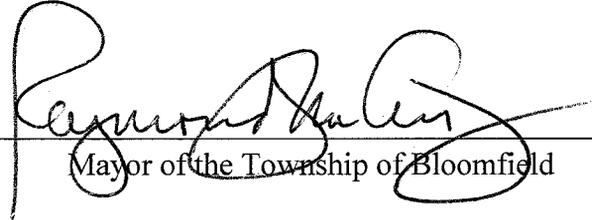
* * *

APPROVED AS TO FORM AND PROCEDURE
ON BASIS OF FACTS SET FORTH
of Law Township Administrator
[Signature]

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on February 22, 2011.



Municipal Clerk of the Township of Bloomfield



Mayor of the Township of Bloomfield

ROLL CALL VOTE

MAYOR & COUNCIL	YES	NO	ABSTAIN	ABSENT
COUNCILWOMAN MALY	✓			
COUNCILMAN JOANOW	✓			
COUNCILMAN RUANE		✓		
COUNCILMAN VENEZIA	✓			
COUNCILWOMAN DUNIGAN	✓			
COUNCILMAN HAMILTON				✓
MAYOR McCARTHY	✓			

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**CONTRACT OF SALE
FOR COMMERCIAL
REAL ESTATE**

Prepared by:

STEVEN J. MARTINO, ESQ.

This Contract for Sale is made on
_____, 2010

BETWEEN JOHN DE SIMONE, whose address is, P.O. Box 517, Madison, NJ 07940, referred to as the Sellers,

AND TOWNSHIP OF BLOOMFIELD, whose address is 1 Municipal Plaza, Bloomfield, NJ 07003, referred to as the Buyer.

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

PREAMBLE

WHEREAS, the Seller is the owner of the real property known as Block 792, Lots 130, 131, and 132 (+/- 5.704ac.), Township of Bloomfield, County of Essex, and State of New Jersey, also known as Lot 130, 131, and 132, in Block 792, on the tax maps of the above stated municipality, (hereinafter, "The Property"), and more particularly described in Schedule A attached hereto and made a part hereof.

WHEREAS, the Seller desires to transfer and convey the Property to the Buyers, and the Buyers desire to purchase the Property from the Seller, all upon the terms and conditions contained in this Contract.

NOW THEREFORE, in consideration of and in reliance on promises and undertakings made in this Contract and the mutual benefits to be derived therefrom, the parties hereto AGREE as follows:

1. **SALE AND PURCHASE OF PROPERTY:** Subject to the terms and conditions herein set forth, the Buyers shall purchase from the Seller and the Seller shall sell and convey to the Buyers, the Property.
2. **PURCHASE PRICE.** The purchase price is \$2,200,000.00
3. **PAYMENT OF PURCHASE PRICE.** The Buyer will pay the purchase price to Seller as follows:

At Seller's option via wire transfer, certified
or bank cashier's check or attorney's trust account check \$2,200,000.00
4. **TRANSFER FUNDS:** That the contract is contingent on the Township of Bloomfield receiving funds in the sum of \$1,800,000.00 from the New Jersey Green Acres Program and funds in the sum of \$100,000.00 from NY/NJ Baykeeper. This contingency shall expire on December 15, 2010. Such expiration may be extended at Seller's sole and absolute discretion. The only circumstances upon which the Seller is not obligated to reimburse the Buyer for the money advanced to the Seller to obtain a No Further Action Letter, is if the Township Counsel does not exercise the option to renew this contract.
5. **TIME AND PLACE OF CLOSING:** The closing of title ("the Closing"), shall take place on or before December 31, 2010, or as set forth herein, at the office of the Buyer's Attorney. Subject to receipt of the No Further Action Letter pursuant to paragraph 9 of this Contract of Sale.
6. **TRANSFER OF OWNERSHIP:** At the closing, the Seller will transfer ownership of the Property to the Buyers. The Seller will give the Buyers a properly executed deed and an affidavit of title in customary form. The

interest to be acquired is fee simple absolute.

7. **TYPE OF DEED:** The Seller shall provide and the Buyers shall accept a deed known as bargain and sale with covenant as to grantors acts.

8. **PREVIOUS USE OF PROPERTY:** During Seller's ownership of this property, the property a formerly contained garage and warehouse, the property has remained vacant. Buyer is purchasing vacant land and to the best of the Seller's knowledge, Buyer's records should demonstrate those uses by owners and/or tenants preceding that of Seller's ownership.

9 **NO FURTHER ACTION LETTER:** A No Further Action Letter issued for unrestricted park standard. The No Further Action Letter shall be issued to the Seller and the Buyer as co-permittees.

A. Buyer shall approve a resolution which allows for the maximum distribution to Seller of One Hundred Thousand Dollars (\$100,000.00) and eliminates the need for the Township of Bloomfield governing body to approve each and every individual payment by resolution. The resolution will permit the chief financial officer, or equivalent title, permission to draw payments, without governing body consent, up to a total of One Hundred Thousand Dollars (\$100,000.00). As such, prior to performing any work on the Property in connection with the No Further Action Letter, Buyer shall forward funds in the amount of such costs to the Seller within ten (10) days of receipt of the invoice. Payment shall be made to the party who issues the invoice. Seller or any third party being paid for their services shall not perform any work until the requisite funds are paid by Buyer.

B. At closing, Seller will proffer a credit to Buyer for the amount of funds advanced, without interest, which will be applied against the purchase price.

C. In the event that the Seller obtains a No Further Action Letter (NFA) and the Buyer does not purchase the property, or the new governing body does not approve the purchase of the property, the Seller shall retain the actual amount advanced, and the Agreement shall be null and void and neither party shall have any further obligations or liability to each other.

D. The new governing body ("2011 governing body") shall have until January 31, 2011 to exercise the option to purchase and memorialize same in a 2011 resolution; unless Seller extends the time for the Buyer to exercise the option and memorialize the exercising of the option to purchase. The 2011 governing body shall purchase the property prior to March 31, 2011, provided Seller has obtained the NFA. In the event the Seller has not obtained the NFA by March 31, 2011, then Buyer and Seller shall close title to the property within forty-five (45) days of receipt of the NFA. In the event the closing does not take place by December 31, 2011, then either party may terminate the Agreement.

E. In the event that the Seller is unable to obtain the NFA, Seller shall only be responsible to reimburse the Buyer for the actual amount that is disbursed, without interest.

10. **PRE-CLOSING INSPECTION OF THE PROPERTY:** The Seller agrees to permit the Buyers to inspect the Property at any reasonable time before the closing. The Seller will permit access for all inspections provided for in this Contract. Buyer shall provide Seller with forty-eight (48) hours notice prior to inspecting the property. Buyer, subsequent to entering the property, shall return the property to its previous condition immediately before Buyer entered the property.

11. **OWNERSHIP:** The Seller agrees to transfer and the Buyers agree to accept ownership of the Property free of all claims and rights of others, except for:

- (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 or running to the building on 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, or (3) unreasonably limit the normal use of the Property; and

- (c) Such facts are shown on a survey.

In addition to the above, the ownership of the Buyers must be marketable and insurable at regular rates by any title insurance company authorized to do business in New Jersey, subject only to the above exceptions.

12. **RISK OF LOSS:** The Seller is responsible for any damage to the Property, except for normal wear and tear, until the closing. If there is damage, the Buyers can proceed with the closing and either:

- (a) request that the Seller, at Seller's option, repair the damage prior to the closing. In the event Seller does not repair such damage prior to closing, then the Buyer or Seller may terminate the Agreement; or
- (b) deduct from the purchase price a mutually agreeable estimate of the cost to repair the Property. In the event the Buyer and Seller cannot agree on an estimate of the repairs, then either party may terminate the Agreement. In addition, either party may cancel this Agreement if the cost of repair is more than 10% of the purchase price.

13. **ASSESSMENTS FOR MUNICIPAL IMPROVEMENTS:** All unpaid charges for municipal improvements against the Property for work completed before the closing will be paid by the Seller at or before the closing. If the improvement is not completed before the closing, then only the Buyers will be responsible. If the improvement is completed, but the amount of the charge (assessment) is not determined, the Seller will pay an estimated amount at the closing. When the amount of the charge is finally determined, the Seller will pay any deficiency to the Buyers (if the estimate proves to have been too low), or the Buyers will return any excess to the Seller (if the estimate proves to have been too high).

14. **ADJUSTMENTS AT CLOSING:** The Buyers and the Seller agree to adjust the following expenses as of the closing date: municipal water charges sewer charges and municipal real estate taxes,

15. **FIRPTA:** The Seller represents that he is a citizen of the United States and is not a foreign person under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). At the closing, the Seller will deliver to the Buyers, a Certification of Non-Foreign Status under Section 1445 of the Internal Revenue Code.

16. **APPLICABLE LAW:** The Buyers and the Seller agree that this Contract shall be governed and construed in accordance with the laws of the State of New Jersey.

17. **NOTICES:** All notices under this Contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, commercial courier, or telefax with receipt of transmission retained, to the other party at the address written in this Contract, or to that party's attorney as follows:

As to the Seller:
Ninuccio A. Coviello, Esq.
Saiber, LLC
18 Columbia Turnpike
Florham Park, NJ 07932
973-622-3333 phone
973-622-3349 fax

As to the Buyer:
Steven J. Martino, Esq.
Iacullo Martino, L.L.C.
247 Franklin Avenue, P.O. Box 110129
Nutley, NJ 07110
973-235-1550 phone
973-661-1653 fax

18. **ADDITIONAL CONTINGENCIES:** The following additional contingencies shall apply:

- a. Seller receipt of NJDEP Soil Remediation Action Permit.
- b. Seller receipt of NJDEP Groundwater Remediation Permit containing established Classification Exemption Area.
- c. Seller evidence of recorded NJDEP Deed Notice. Prior to recordation, however, said Deed Notice Document shall be reviewed and approved in writing by Bloomfield Township, and shall contain

supplemental site plans, landscape construction and topographic drawings and engineered designs submitted by Bloomfield Township or its agents, as required for municipal park use and issuance of NJDEP permits and reimbursement purchase funds.

- d. Seller shall remove personal property, construction debris and equipment and Buyer shall have the right to inspect the property and reasonably approve that such items have been removed.
- e. Seller responsible for delivering marketable, insurable title by a title company selected by Bloomfield Township.
- f. Buyer responsible for metes-and-bounds or outbound survey by a professional land surveyor of its election. This contingency shall expire on January 31, 2011 and Buyer shall be solely responsible for all costs associated with such metes and bounds or outbound survey.

19. **APPROVALS:** In accordance with the laws of New Jersey, purchase funding and acceptance of title are subject to reasonable approval by the Bloomfield Township Council held at a regularly scheduled public meeting.

20. In the event Seller does not obtain the NFA as a result of the Buyer's submission of drawings, applications and the like to designate the referenced property as a park, then the Buyer shall address immediately any such issues which preclude the issuance of an NFA. Buyer shall pay any and all additional cost, fees, expenses and the like incurred by Seller as a result of obtaining such park designation, as well as the delay in obtaining the NFA. In the event an NFA is not obtained as a result of the Buyer's attempt to designate the property as a park, then Seller shall retain the amount that is billed and disbursed.

21. The Buyer shall retain ownership of the "Meola" engineering file and the "Escot Sciences" environmental file including all boundary surveys, survey mapping documents, reports, site plans, etc.

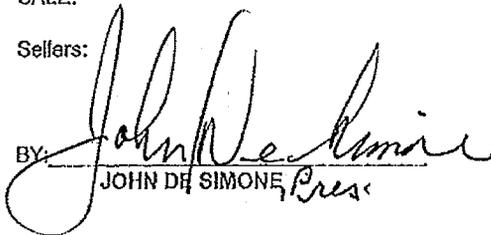
22. **COMPLETE AGREEMENT:** This Contract is the entire and only agreement between the Buyers and the Seller. This Contract can only be changed by an agreement in writing signed by both the Buyers and the Seller. The Seller states that he has not signed any other contract to sell or lease the Property to anyone else.

23. **SIGNATURES.**

THE UNDERSIGNED APPROVE AND ACCEPT AND ACKNOWLEDGE THE TERMS OF THIS CONTRACT OF SALE.

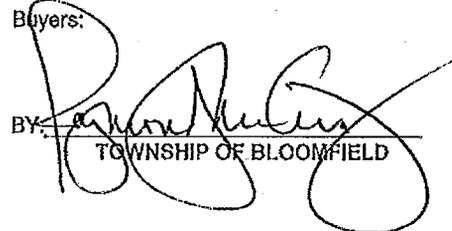
Sellers:

BY:


JOHN DE SIMONE, Pres.

Buyers:

BY:


TOWNSHIP OF BLOOMFIELD

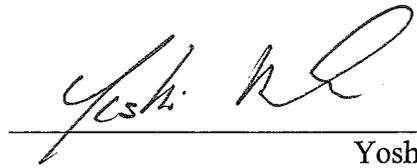
Dated: _____

Dated: 11/11/10

SCHEDULE B - TENANT ROSTER

<u>Address</u>	<u>Type</u>	<u>Tenant</u>	<u>Monthly Rent</u>
Total Monthly Rents			

I hereby approve / disapprove of the passage of the attached Resolution.



Yoshi Manale
Township Administrator

If the Township Administrator disapproves of the attached resolution the reasons are as follows:

I hereby approve / disapprove of the passage of the attached resolution.

Robert Renna
Director of Finance

If the Director of Finance disapproves of the attached resolution the reasons are as follows: