

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) dated as of October 1, 2019 (the “Effective Date”) is entered into by and between West Orange Office Executive Park LLC (the “Owner”) and Township of West Orange (the “Township”). Each of the Owner and the Township is referred to as a “Party” and, collectively, as the “Parties”.

RECITALS:

WHEREAS, the Owner owns the following four properties (collectively, the “Properties”) located in the Township:

1. 10 Rooney Circle; Block 155, Lot 41.02 (“10 Rooney”)
2. 100 Executive Drive; Block 155, Lot 40.02 (“100ED”)
3. 200 Executive Drive; Block 155, Lot 42.02 (“200ED”)
4. 300 Executive Drive; Block 155, Lot 42.01 (“300ED”); and

WHEREAS, the Township’s tax assessor assessed the Properties in 2018 and 2019, as follows:

1. 10 Rooney: \$6,322,000
2. 100 ED: \$8,468,400
3. 200 ED: \$9,739,700
4. 300 ED: \$11,298,700; and

WHEREAS, the Owner challenged the 2018 and 2019 assessments of the Properties by filing complaints in the Tax Court of New Jersey under Docket No. 005838-2018 (for the 2018 tax year) and Docket No. 006730-2019 (for the 2019 tax year) (collectively, the “Tax Appeals”); and

WHEREAS, the Owner has entered into a certain amended and restated real estate contract dated as of January 25, 2019 with BNE Acquisitions, LLC (“BNE”), as purchaser, for the sale of 100 ED and 200 ED to BNE (the “Sale Contract”); and

WHEREAS, the closing under the Sale Contract is to occur forty-five (45) days after BNE receives all development approvals for BNE’s proposed development with respect to which the time to appeal such approvals has expired without any appeals therefrom having been filed or, if filed, until any such appeals have been resolved in a manner the comports with the requirements of the Sale Contract satisfactory to BNE and the time to challenge such resolution has expired without any appeal or other challenge having been filed or institute; and

WHEREAS, the Parties desire to settle the Tax Appeals on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of and for the promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. The Parties shall jointly request that the Tax Court of New Jersey (the “Tax Court”) place the Tax Appeals on the inactive list until the closing occurs under the Sale Contract.

2. Within three (3) business days after the closing under the Sale Contract, the Owner shall withdraw the Owner’s complaints in the Tax Appeals (and the Township shall withdraw the Township’s counterclaims, if any).

3. If for any reason the Sale Contract is canceled or terminated, then the Owner may proceed to prosecute the Tax Appeals.

4. As an integral part of this settlement, the Parties agree that for tax year 2020, and for each subsequent tax year through and including the year of the closing under, or the cancellation or termination of, the Sale Contract, the three Properties listed below (inclusive of all improvements completed as of the Effective Date) shall be assessed as follows:

- (1) 10 Rooney: \$2,575,200
- (2) 100 ED: \$1,888,500
- (3) 200 ED: \$2,832,700

5. The Township reserves the right to file an appeal from each of such assessments. Within three (3) business days after the closing under the Sale Contract, the Township shall withdraw the Township’s complaints, if any, challenging the assessments of the above properties (and the Owner shall withdraw the Owner’s counterclaims, if any).

6. If the 2020, 2021 and 2022 assessments as established by the tax assessor for any of the three Properties listed in paragraph 4 are greater than the assessments set forth in paragraph 4 above, then upon request by the Owner of such Properties, the Township shall execute and file with the Essex County Tax Board or the Tax Court a Stipulation of Settlement with respect to any tax appeal for tax year 2020 filed by the Owner of any of the Properties requesting that the Tax Board or the Tax Court, as the case may be, enter judgment fixing the 2020 assessment for the subject property in accordance with paragraph 4 of this Agreement. The Township further agrees that to the extent applicable by law the provisions of the Freeze Act, N.J.S.A. 54:3-26 or N.J.S.A. 54:51A-8, as the case may be, shall apply to any judgment entered for tax year 2020 pursuant to any such Stipulation. Anything to the contrary, if BNE does not close under the Sale Contract, or if the Sale Contract and/or the Redevelopment Agreement with BNE are terminated for any reason, the Township and the Owner will agree to vacate any Freeze Act judgment and if the Court does not permit such a condition in the judgment then the Township will be bound by the judgment.

7. **Counterparts.** This Agreement may be executed in counterparts. In addition, facsimile or electronically transmitted signatures on this Agreement shall be treated as original.

8. **Binding Agreement.** This Agreement and each provision hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, assigns, officers, directors, members, managers, agents, shareholders, principals, employees, and successors, and all persons, firms and legal entities legally responsible for the actions of the Parties hereto.

9. **Non-Severability.** If any term or provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, all other terms and provisions of this Agreement will likewise be illegal or unenforceable and the rights and remedies of the Parties thereafter will be the same as immediately prior to the execution and delivery of this Agreement.

10. **Written Modifications Only.** No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be binding unless made in writing and signed by the Parties. Additionally, no Party may assign its respective rights or its respective obligations hereunder without the prior written consent of the other Party hereto.

11. **Authority.** Each Party warrants that it has full right, power, and authority to execute this Agreement and to be bound in accordance with the terms hereof. Each Party further warrants that each of them has read this Agreement carefully and has been represented by counsel prior to the execution hereof.

12. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. The Parties acknowledge that they are not relying on any prior representation and are relying solely on the terms of this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party hereto to the other Party concerning the subject matter hereof, other than as set forth herein. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

OWNER:

TOWNSHIP:

West Orange Office
Executive Park LLC

West Orange Township

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned has been consulted by the attorney for the Township with respect to this settlement and concurs, as of the Effective Date.

Kevin Dillon, Tax Assessor