

**MUTUAL GENERAL RELEASE, COVENANT NOT
TO SUE AND DISMISSAL OF LITIGATION**

This Mutual General Release dated July ___, 2022 (“Agreement”) is made by and between the following parties: **KEVIN MALANGA** ("MALANGA"), **TOWNSHIP OF WEST ORANGE** (“TOWNSHIP”) and **WEST ORANGE SENIOR HOUSING, LLC** and **WEST ORANGE SENIOR HOUSING URBAN RENEWAL LLC. a/k/a WEST ORANGE SENIOR HOUSING URBAN RENEWAL, LLC** (together, “WEST ORANGE SENIOR HOUSING”) (collectively, the “Parties”).

RECITALS

WHEREAS, in order to avoid the time, expense, uncertainty and risk of protracted litigation, and for other valuable consideration, the Parties now wish to settle their dispute through this Agreement; and

WHEREAS, the Township owns certain property located at 46 Mt. Pleasant Avenue, West Orange, New Jersey which is designated as part of Block 68, Lot 1 on the Township’s Tax Map (“Existing Public Library”); and

WHEREAS, all of the litigation described above and below including appeals is hereby defined collectively as the “Litigation;” and

WHEREAS, on March 19, 2019, the Township Council adopted Resolution No. 99-19 that designated the Property as an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (“LRHL”); and

WHEREAS, on May 3, 2019, Malanga filed an action in lieu of prerogative writ challenging the redevelopment designation; and

WHEREAS, on August 4, 2020, the Superior Court of New Jersey, Law Division: Essex County issued a Decision and Order dismissing Plaintiff’s Complaint; and

WHEREAS, on July 6, 2021 the Superior Court of New Jersey, Appellate Division affirmed the trial court's determination; and

WHEREAS, on August 5, 2021, Malanga filed a Petition for Certification to the New Jersey Supreme Court, Supreme Court Docket No. 086087 asking the Supreme Court to review the Appellate Division Decision (the "Petition for Certification"); and

WHEREAS, on March 8, 2022, the New Jersey Supreme Court entered an Order granting Malanga's Petition for Certification; and

WHEREAS, on April 26, 2022 the Township approved the sale of the Property to West Orange Senior Housing pursuant to N.J.S.A. 40A:11-21(l); and

WHEREAS, on June 10, 2022, Malanga filed a Complaint in Lieu of Prerogative Writ challenging Resolution No. 124-22 which is Docket No.: ESX-L-3433-22; and

WHEREAS, the Superior Court of New Jersey conducted a Case Management Conference on July 11, 2022 and the Township has moved to dismiss the action pursuant to R. 1:10-3 and other bases; and

WHEREAS, the Parties have met and agreed to this global settlement as set forth herein; and

WHEREAS, the Parties have agreed to mutually release any claims they now have or could have against each other in accordance with Sections 2 and 3, below.

AGREEMENT

1. **Effective Date**. This Agreement and the provisions contained herein shall not be effective until: (i) the Parties execute this Agreement; (ii) approval and execution of an Amendment to Sale and Purchase Agreement ("Amendment") between the Township and West Orange Senior Housing in the form annexed hereto as Exhibit "A" which, as it relates to the issues

and claims raised in Docket No. ESX-L-3433-22, may be modified by the Township only with respect to form but not substance without consent of Malanga; and (iii) dismissal of the action Docket No.: ESX-L-3433-22 with Prejudice and without Costs. Upon the Effective Date, a Stipulation of Dismissal with Prejudice and without Costs in the form annexed hereto as Exhibit “B” shall be filed with the Court concerning Docket No.: ESX-L-3433-22.

2. **Mutual Release** – Subject to Paragraph 3 herein, with respect to any claim related to, or arising out of, Docket No.: ESX-L-3433-22, each Party, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by this release, does for itself, its past, present, and future parents, affiliates, subsidiaries, owners, officers, directors, employees, heirs, executors, agents, representatives, administrators, insurers, attorneys, successors and assigns, hereby remise, release and forever discharge the other Parties, and their respective past, present, and future affiliates, board members, owners, members, officers, directors, employees, agents, representatives, administrators, subsidiaries, insurers, attorneys, successors and assigns, of and from all actions, causes of action, suits, debts, accounts, bonds, covenants, contracts, controversies, promises, damages, claims for contractual and/or statutory and/or other attorneys’ fees and/or interest, judgments, executions, claims, liens, right to lien and demands whatsoever, in law or in equity, which any Party hereafter can, shall, or may have against the other, arising out of or related in any way to any contract (written, express or implied by law), lien, liability, fraud, matter, cause, fact, thing, act or omission whatsoever, including any and all claims that were made or could have been made or which could have been asserted, from the beginning of the world to the date of this Agreement with regard to the Litigation.

3. **New Jersey Supreme Court, Supreme Court Docket No. 086087.** In the event the Township adopts official final, non-appealable and enforceable resolutions and actions to

vacate its Resolution No. 99-19 and all other actions taken based thereon including, but not limited to, the designation of the Property as an area in need of redevelopment under the LRHL and the execution of any redevelopment agreements or adoption of redevelopment plans, the parties agree to advise the New Jersey Supreme Court of said actions and agree to abide by the Supreme Court's decision regarding the disposition of the Supreme Court Docket No. 086087. If, and when, the Supreme Court dismisses Supreme Court Docket No. 086087, the Mutual Releases set forth in Paragraph 2, above, shall include all claims related to New Jersey Supreme Court Docket No. 086087 and the actions related thereto. Nothing herein shall be deemed as an admission, agreement, or acknowledgement that the actions under review in New Jersey Supreme Court Docket No. 086087 were valid, invalid or otherwise precedential notwithstanding any decision of any Court. Nothing contained herein shall preclude the Township from adopting any financial agreement under the Long-Term Tax Exemption Law pursuant to N.J.S.A. 40A:20-1 *et seq.* or any other applicable statute or regulation.

4. **No Admission of Liability** – The Parties recognize that this Agreement is a compromise of disputed claims. Nothing in this Agreement will be considered evidence of or an admission with respect to liability or the truth of any of the allegations made in connection with the Parties' dispute, whether the allegations are of fact or law.

5. **Complete Agreement** – This Agreement constitutes a single, integrated written contract, expresses the entire agreement of the Parties with respect to the matters contained herein, and supersedes all negotiations, prior discussions and preliminary agreements, whether oral or written. Any modifications to this Agreement will be effective only if in writing and signed by the Party to be charged or otherwise adversely affected by it.

6. **Governing Law, Forum and Venue** – This Agreement, and all documents and other items executed and delivered in connection with this Agreement, will be governed by and construed under the laws of the State of New Jersey. The exclusive forum and venue for the resolution of any dispute related to this Agreement shall be the New Jersey Superior Court, Law Division – Civil Part, Essex County. The Parties expressly **WAIVE** the right to a trial by jury of any dispute relating the interpretation or enforcement of this Agreement.

7. **Counsel Fees** – The Parties agree that they have each been represented by separate counsel and are each responsible for their own counsel fees and costs.

8. **Severance** – In the event any provision of this Agreement shall be held contrary to, or invalid under, the laws of the State of New Jersey, such illegality or invalidity shall not affect, in any way, any other provision hereof, all of which shall continue nevertheless in full force and effect.

9. **Section Headings** – The section headings contained in this Agreement are solely for the purpose of reference and not part of the Agreement and shall not in any way affect the meaning or interpretation of this Agreement.

10. **Counterpart Execution; Facsimile Signatures** – This Agreement may be executed in counterparts, each of which shall be considered an original and which together shall constitute one and the same instrument. This Agreement may be executed with signatures submitted in original, by facsimile or by electronic mail.

11. **Authority** – Each Party represents that the person signing this Agreement has the authority to bind that Party.

12. **Covenant Not to Sue** – The Parties represent and covenant that they shall not sue each other with regard to the Property, any future zoning change concerning the Property, any

subdivision of the Property, any land use application or approval concerning the Property and any financing concerning the Property, and any other issues related to the Property provided that same is consistent with the Amendment. If any litigation is commenced, the prevailing Party shall be entitled to reasonable attorneys' fees and expenses.

13. **OPRA** – The Parties understand that the provisions of this Agreement may be subject to the Open Public Records Act pursuant to applicable law.

Signed and agreed to as of the date first written above.

TOWNSHIP OF WEST ORANGE

Kevin Malanga

By:_____
Mayor Robert D. Parisi

WEST ORANGE SENIOR HOUSING
URBAN RENEWAL LLC. a/k/a WEST
ORANGE SENIOR HOUSING URBAN
RENEWAL, LLC

WEST ORANGE SENIOR HOUSING, LLC

By:_____
Joseph Alpert, Managing Member

By:_____

EXHIBIT A

AMENDMENT TO SALE AND PURCHASE AGREEMENT

UPDATED 7/15/2022 – 5 PM

AMENDMENT TO SALE AND PURCHASE AGREEMENT

Between

Township of West Orange as “Seller”

-and-

West Orange Senior Housing, LLC
as “Purchaser”

This amendment To The Sale and Purchase Agreement (“Amendment”) is made this 26th day of July, 2022 (“Effective Date”) between, the Township of West Orange, a public body politic and corporate of the State of New Jersey, having an address at 66 Main Street, West Orange, New Jersey (the “Seller”), and West Orange Senior Housing, LLC, having an address of 1 Parker Plaza, Fort Lee, New Jersey, as nominee for an Urban Renewal Entity to be formed (the “Purchaser”)

WHEREAS, Purchaser and Seller entered into an Agreement of Sale and Purchase dated April 26, 2022 (the “Original Agreement”) for the real property commonly known as the Library property, West Orange, New Jersey, otherwise known as a portion of Block 68, Lot 1 on the tax map of the Township of West Orange and adjacent unnamed right-of-way, and more particularly described on Exhibits A and B attached to the Original Agreement (“Property”); and

WHEREAS, Purchaser intends to utilize the Property solely for (i) the construction and operation of age-restricted low and/or moderate-income housing, and (ii) the construction of a 7,500 square foot public use room to be controlled by the Seller (“Project”); and

WHEREAS, the parties have agreed it is to their mutual benefit to amend the Original Agreement.

NOW, THEREFORE, Seller and Purchaser agree, for good and valuable consideration, as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Original Agreement, unless the context otherwise requires.

2. The parties agree that the deed restriction encumbering the individual units within the Property restricting their use to low- and moderate-income residential housing shall run in perpetuity. Accordingly, Paragraphs 4 and 5(a)(v) of the Agreement are hereby amended to state the following:

4. Condition Regarding Use of Property. Performance by Seller under this Agreement, including but not limited to conveyance of title to the Property, is conditioned upon the representation by Purchaser that Purchaser will utilize the Property solely for (i) the construction and operation of at least 40 age-restricted low and/or moderate-income housing, and (ii) the construction of a 7,500 square foot public use room to be controlled by the Seller (to serve as a community room, satellite library, or other public use as determined by the Township)(the "Community Room Use"), all in accordance with and subject to the provisions of *N.J.S.A. 40A:12-21*. These conditions shall be effectuated by:

a. the preparation of a perpetual deed restriction, in accordance with and subject to the provisions of *N.J.S.A. 40A:12-21*, for the benefit of the general public that restricts the use of the Property to the construction and operation of at least 40 age-restricted low and/or moderate-income housing, and that all residential units, except one (1) on-site superintendent unit, shall be restricted to occupancy by low- and moderate-income residents in compliance with applicable State and Municipal laws and regulations related to development and marketing of affordable housing units.

The superintendent unit shall be the residential unit which is reserved for the use of an individual and his/her family that is responsible for routine maintenance and repairs of the Property; and

b. the preparation and recording of an easement on, over, in, upon and through the Property reserved for by the Seller for the public benefit for use of the Community Room Use (the "Easement"). The Community Room Use and Easement shall be perpetual and recorded as a deed restriction.

c. This provision shall survive Closing.

5(a)(v). The preparation and execution of a deed restriction that restricts the rent, occupancy or use of the units as low- and moderate-income residential housing in accordance with Paragraph 4 herein for each residential unit to be recorded with the Closing Deliverables listed in paragraph 7.

3. Prior to, and as a condition precedent to Closing, the parties shall negotiate in good faith the following: (i) an easement on, over, in upon and through the Property for the Community Room and for the provision of ingress and egress to and from the Community Room, and (ii) an easement on, over, in upon and through certain property of the Seller for the purpose of providing egress and ingress to certain parking spaces to be used as part of the Project ("Parking Space Easement"). The parties recognize that mutual indemnification provisions shall be provided for in said easement agreements. Accordingly, Paragraph 7 shall be amended and supplemented to state the following:

7. Closing Deliverables. At the Closing, the Seller shall deliver the following to the Purchaser:

e. an easement on, over, in upon and through certain property of the Seller for the purpose of providing egress and ingress for vehicular and pedestrian access to, and use of six parking spaces in connection with and to be used as part of the Project ("Parking Space Easement"), which shall be negotiated in good faith by the parties and include the following provision:

Indemnification. Each party hereby agrees to indemnify, defend and hold harmless the other Party, its successors and assigns, its officers, contractors, agents, employees, servants or any of them, from and against

any and all losses, damages, suits, claims, fines, penalties, costs and expenses whatsoever (including death and defense of any such claims), which it, they or any of them may directly or indirectly suffer, sustain, or be subject to, (or be held liable for) in any way arising from, connected with or growing out of this Agreement, as a result of the negligence of the indemnifying Party, its successors, contractors, assigns and any other users or beneficiaries of this Agreement.

At the Closing, the Purchaser shall deliver the following to the Seller:

e: the Easement on, over, in upon and through the Property for access to, and use of, the Community Room, which shall be negotiated in good faith by the parties and include the following provision:

Indemnification. Each party hereby agrees to indemnify, defend and hold harmless the other Party, its successors and assigns, its officers, contractors, agents, employees, servants or any of them, from and against any and all losses, damages, suits, claims, fines, penalties, costs and expenses whatsoever (including death and defense of any such claims), which it, they or any of them may directly or indirectly suffer, sustain, or be subject to, (or be held liable for) in any way arising from, connected with or growing out of this Agreement; as a result of the negligence of the indemnifying Party, its successors, contractors, assigns and any other users or beneficiaries of this Agreement.

4. The parties desire to amend the Agreement to provide mutual indemnification provisions. Accordingly, the Agreement shall be amended to add an additional paragraph entitled Indemnification, which shall state the following:

19. **Indemnification.** Each party hereby agrees to indemnify, defend and hold harmless the other Party, its successors and assigns, its officers, contractors, agents, employees, servants or any of them, from and against any and all losses, damages, suits, claims, fines, penalties, costs and expenses whatsoever (including death and defense of any such claims), which it, they or any of them may directly or indirectly suffer, sustain, or be subject to, (or be held liable for) in any way arising from, connected with or

growing out of this Agreement, as a result of the negligence of the indemnifying Party, its successors, contractors, assigns and any other users or beneficiaries of this Agreement. This Paragraph 19 shall survive Closing.

5. The parties further agree that Purchaser shall use commercially reasonable efforts to commence construction of the Project within five (5) years of the Effective Date of this Amendment. Accordingly, the Agreement shall be amended to add an additional paragraph entitled Reversionary Interest, which shall state the following:

20. Reversionary Interest. The Bargain and Sale Deed with Covenants Against Grantor's Acts conveyed to the Purchase by Seller at the time of Closing pursuant to Paragraph 7(a) of this Agreement, shall contain the following provision:

This conveyance is made on the condition that Grantee or Grantee's assigns use commercial reasonable efforts to Commence Construction of the Project within five (5) years of the Effective Date of a certain Amendment to Purchase and Sale Agreement between West Orange Senior Housing, LLC and the Township of West Orange. For purposes of this provision, the term "Commence Construction" shall mean commencing and undertaking the continuous and uninterrupted actual physical construction of the Project (or applicable phase thereof), including demolition, site preparation, environmental remediation, construction of Improvements or construction or upgrading of infrastructure. All other Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Amendment to Purchase and Sale Agreement, unless the context otherwise requires.

If Grantee or Grantee's assigns fails to use commercial reasonable efforts to commence construction as required above, the property conveyed herein will revert to Grantor. Upon such reversion, seller shall within thirty (30) days of said reversion, refund to Purchaser or Purchaser's assigns the full Purchase Price.

If the Property reverts to Seller pursuant to the terms contained within the deed and this Paragraph 5, Seller shall, within thirty (30) days of said reversion, refund to Purchaser or

UPDATED 7/15/2022 – 5 PM

Purchaser's assigns the full Purchase Price. The obligation of Seller to refund the Purchase Price pursuant to this Paragraph 5 shall survive Closing.

6. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same instrument. This Amendment may be transmitted between Purchaser and Seller by facsimile machine or by email transmission. Purchaser and Seller intend that signatures so transmitted constitute original signatures and that this Amendment containing the signatures (original or as so transmitted) of all the parties is binding on Purchaser and Seller.

7. All provisions of the Original Agreement that are not expressly amended herein shall remain in full force and effect. In the event any provisions of the Original Agreement are inconsistent with this Amendment, the provisions of this Amendment shall control.

(Signatures are on the following pages.)

UPDATED 7/15/2022 - 5 PM

IN WITNESS WHEREOF, each party hereto, being authorized to do so and intending to be legally bound hereby, has duly entered into this Amendment on the date set forth above.

Seller

Township of West Orange

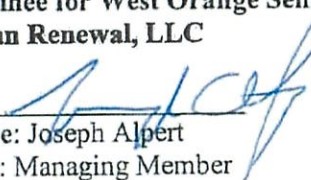
By: 

Name: Robert D. Parisi

Title: Mayor

Purchaser

**West Orange Senior Housing, LLC as
Nominee for West Orange Senior Housing
Urban Renewal, LLC**

By: 

Name: Joseph Alpert

Title: Managing Member

EXHIBIT B

STIPULATION OF DISMISSAL WITH PREJUDICE AND WITHOUT COSTS

TRENK ISABEL SIDDIQI & SHAHDANIAN P.C.

290 W. Mt. Pleasant Avenue

Building 3, Suite 2350

Livingston, New Jersey 07039

(973) 533-1000

Richard D. Trenk, Esq. (016951982)

Attorneys for Defendant Township of West Orange

KEVIN MALANGA,

Plaintiff,

v.

TOWNSHIP OF WEST ORANGE, TOWNSHIP
OF WEST ORANGE COUNCIL,

Defendants,

and

WEST ORANGE SENIOR HOUSING URBAN
RENEWAL, LLC a/k/a WEST ORANGE
SENIOR HOUSING LLC.,

Intervenor.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

Docket No.: ESX-L-3433-22

Civil Action

**STIPULATION OF DISMISSAL WITH
PREJUDICE AND WITHOUT COSTS**

This matter having been amicably resolved by and between the parties, that the above-referenced matter be and is hereby dismissed in its entirety **WITH PREJUDICE AND WITHOUT COSTS.**

THE TURTELTAUB LAW FIRM LLC

Attorneys for Plaintiff Kevin Malanga

By _____
James M. Turteltaub

Dated: July __, 2022

**GREENBAUM, ROWE, SMITH
& DAVIS LLP**

Attorneys for West Orange Senior Housing
Urban Renewal, LLC a/k/a West Orange Senior
Housing Urban Renewal LLC.

By _____
Robert S. Goldsmith

Dated: July __, 2022

TRENK ISABEL SIDDIQI & SHAHDANIAN P.C.

Attorneys for Defendants Township of West Orange
and Township of West Orange Council

By: _____
Richard D. Trenk

Dated: July __, 2022