

PRE-CLOSING ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this “**Agreement**”) is dated October 26, 2022 and is made by and among **THE TOWNSHIP OF WEST ORANGE**, a body corporate and politic of the State of New Jersey, having its address at 66 Main Street, West Orange, New Jersey 07052 (“**Owner**”), and **HACKMAN CAPITAL ACQUISITION COMPANY, LLC**, a Delaware limited liability company, having an address at 4060 Ince Boulevard Culver City, California 90232 (“**Entrant**”). Owner and Entrant are hereinafter collectively referred to as the “**parties**”.

RECITALS

WHEREAS, Owner is the owner of that certain real property designated as Block 115, Lots 15, 16 & 17 on the official tax maps of the Township of West Orange, Essex County, New Jersey, Lot 16 being the site of the West Orange Department of Public Works (“**DPW**”) and lots 15 and 17 commonly known as 55 Lakeside Avenue (“**Barton Press**”), and all improvements located thereon including a single story building comprising approximately 160,000 square feet and related surface parking (together with Barton Press and DPW, collectively referred to herein as the “**Premises**”);

WHEREAS, in anticipation of a possible acquisition of the Premises, Entrant desires a right of access to the Premises for itself and its officers, directors, employees, agents, principals, partners, representatives, accountants, advisors, attorneys, consultants and contractors (collectively, the “**Permitted Parties**”) for the purpose of performing certain investigatory activities at the Premises; and

WHEREAS, Owner is willing to grant Entrant and the Permitted Parties a limited right of access to the Premises upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Recitals**. The recitals set forth above are hereby incorporated herein as if set forth in full in the body of this Agreement.
2. **Definitions**. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to such terms in **Schedule 1** attached hereto.
3. **Right of Access**. Owner hereby grants to Entrant and the Permitted Parties the non-exclusive license and limited right to enter upon the Premises to perform certain investigatory activities at the Premises and to conduct due diligence reasonably related to the purchase of the Premises (including, without limitation, sampling, boring, drilling, or other physically intrusive testing, and the completion of a Phase II environmental Assessment) (collectively, the “**Activities**”), at the sole cost and expense of Entrant, but only upon the terms and conditions set forth in this Agreement.

4. Performance of Activities.

(a) Performance of the Activities shall be coordinated with a representative of Owner to minimize unreasonable interference with normal operation of the Premises. All Activities at the Premises shall be performed during normal business hours or at such other times and on such days of the week as Owner shall determine in its reasonable discretion and shall be performed in a manner that will not have any material adverse effect on Owner, or any other person or entity granted rights of use and occupancy through Owner, their respective agents, employees or invitees, or all of them.

(b) Upon completion of the Activities, Entrant shall, at its sole cost and expense, promptly remove and dispose of off of the Premises, in accordance with all Environmental Laws, all equipment, material, soil, water and debris which exists on the Premises as a result of Entrant's collection of samples from the Premises.

(c) Entrant shall use commercially reasonable efforts to cause its environmental consultant, to reasonably cooperate and coordinate with Owner for the collection of samples of any testing of soils or ground water at the Premises in accordance with Section 6 of this Agreement.

(d) All Activities performed at the Premises by Entrant or the Permitted Parties shall, once begun, be completed with reasonable diligence and paid for in full by Entrant, free and clear of all mechanic's or other liens and encumbrances, and shall be performed in accordance with all applicable statutes, ordinances, rules, regulations, orders and requirements of any Governmental Authority, including without limitation, Environmental Laws. All Activities performed by Entrant or the Permitted Parties shall be done in a good and workmanlike manner, and, subject to Section 6 of this Agreement, in such a manner so as not to cause any unreasonable damage to the Premises or unreasonable interference with the use and occupancy of the Premises by Owner, or any other person or entity granted rights of use and occupancy through Owner, or their respective agents, employees or invitees. Entrant shall restore, repair or replace, as the case may be, any damage to the Premises caused by the Activities to substantially the same condition as existed at the time the Activity which caused such damage commenced.

5. Insurance.

(a) Prior to entry upon the Premises, Entrant shall deliver or, as applicable, cause the Permitted Parties to deliver, to Owner ACORD certificates evidencing that Entrant and/or the Permitted Parties, as applicable, maintain: (i) commercial general liability insurance in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00), combined single limit in form and substance adequate to insure against all liability of Entrant and the Permitted Parties, respectively, and each of their respective agents, employees and contractors, arising out of Activities at the Premises or any part thereof made on Entrant's behalf, including: (A) contractual liability insurance providing coverage for Entrant's indemnity obligations under this Agreement and (B) an endorsement for hired and non-owned automobile coverage against

8567849 v1

#13423370.1

#13443682.1

personal injury and death and property damage with a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00); (ii) not less than Two Million and 00/100 Dollars (\$2,000,000.00) of excess/umbrella liability insurance; and (iii) workers' compensation insurance in statutory limits to cover the employees, agents, representatives and contractors of Entrant and/or the Permitted Parties (as applicable) engaged in Activities at the Premises. Such insurance certificates shall be endorsed to name Owner as an additional insured with respect to the foregoing coverage. Each policy shall provide (whether by endorsement or otherwise) that it cannot be canceled without at least thirty (30) days' prior written notice to Owner, and each policy shall be issued by a recognized, responsible insurance company licensed to do business in the State of New Jersey.

(b) Entrant shall furnish or cause the applicable Permitted Parties to furnish to Owner and cause to be maintained and kept in effect, without expense to Owner, at all times that any entry is made upon the Premises for purposes of any invasive testing or sampling, contractor's pollution liability insurance of not less than One Million and 00/100 Dollars (\$1,000,000.00), naming Owner as an additional insured. Each policy shall provide (whether by endorsement or otherwise) that it cannot be cancelled without at least thirty (30) days' prior written notice to Owner, and each policy shall be issued by a recognized, responsible insurance company licensed to do business in the State of New Jersey. Reasonable proof of payment of the premium of each policy and each replacement policy shall also be delivered to Owner.

6. Invasive Testing. Notwithstanding anything to the contrary contained in this Agreement, each of the Permitted Parties shall only undertake soil borings, water samplings or any other physically intrusive or invasive physical investigations in accordance (in all material respects) with an approved sampling plan submitted to Owner at least two (2) Business Days prior to access to the Premises. Additionally, Entrant shall be solely responsible to arrange (or cause the Permitted Parties to arrange) for any utility mark-outs necessitated by any proposed sub-surface investigations prior to undertaking any invasive testing.

7. Notice of Entry. Prior to each entry upon the Premises, Entrant shall, at least two (2) Business Days in advance of each entry if such entry pertains to physically invasive testing, and at least one (1) Business Days in advance of all other entries, notify Owner, in writing, which notice may be by email to jgross@westorange.org, rtrenk@trenkisabel.law, and rbeckelman@wilentz.com, and which shall set forth:

- (a) the date and time of the proposed entry upon the Premises;
- (b) the identity of all persons and entities who will enter upon the Premises;
- (c) the nature, location and extent of all Activities to be performed upon the Premises;
- (d) whether the persons entering upon the Premises shall be wearing any environmental protective gear; and

8567849 v1

#13423370.1

#13443682.1

(e) the estimated duration of the entry.

8. Documents Generated by Activities. Entrant shall promptly deliver to Owner copies (on a non-reliance basis and without representation or warranty as to the truth, accuracy, or completeness of the information contained therein) of the written results of any inspections, tests, studies, evaluations and/or investigations prepared by third parties for, or otherwise obtained by, Entrant or any of the Permitted Parties in connection with Entrant's Activities, except to the extent subject to the attorney/client privilege, or otherwise confidential. The obligations of Entrant pursuant to this Section will survive any termination of this Agreement.

9. Confidentiality. Entrant and its Permitted Parties and their respective employees, agents and contractors shall keep the Activities, including but not limited to the results of all sampling and all documents generated with respect to the Activities, confidential, except to the extent that (i) applicable law or OPRA does not permit confidentiality, or (ii) Entrant or its Permitted Parties is required to disclose such information pursuant to any orders (including, without limitation, any regulation or order of a regulatory agency), by subpoena or any other legal, administrative or legislative process. The matters and items described in clauses above are herein referred to as the "**Confidential Information**", provided, however, notwithstanding anything contained herein to the contrary, Confidential Information shall not include any information (i) that is or becomes generally available to the general public other than as a result of a disclosure in violation of this Agreement, (ii) that is or becomes available to Entrant or its Permitted Parties from a third party on a non-confidential basis other than through the Activities, (iii) which was or is independently developed by Owner or its Permitted Parties without the use of or reference to Confidential Information provided by Owner or intentionally obtained by Entrant under this Agreement, and (iv) that was available to Entrant or its Permitted Parties prior to the date of this Agreement. If disclosure of the Confidential Information is required pursuant to applicable law, or OPRA, or pursuant to court order or other administrative process, then Entrant, its employees, agents or contractors, as the case may be, shall give immediate written notice to Owner, specifying to whom and why such disclosure is required. Owner shall have the right to interpose all objections that Owner may have to the disclosure, and Entrant shall, and shall cause Entrant's Permitted Parties and their respective employees, agents and contractors, at no cost to Owner, to reasonably cooperate with Owner in connection with such objections, including giving testimony and signing affidavits, certifications or other documentation as may be required by Owner, provided the information contained in the affidavits, certifications or other documentation is true and accurate. Notwithstanding anything to the contrary hereinabove set forth, Entrant may disclose Confidential Information on a need-to-know basis to its and its affiliates' employees, officers, lenders, investigators, and partners and any agents, consultants and members of professional firms serving it, its affiliates, or their respective potential lenders or investors. If the parties have not entered into a purchase agreement with respect to the Premises prior to the termination of this Agreement, Entrant shall, upon Owner's written request, promptly return (or, at Entrant's election, certify as having destroyed) all copies of materials furnished by Owner or Owner's representatives to Entrant relating to the Premises, provided, however, Entrant may retain such materials (and any derivative thereof) that (a) may be required by law, regulation or stock exchange rules, (b) are contained in electronic records and files are retained

8567849 v1

pursuant to automated electronic archiving or IT back-up procedures, and (c) are back-up copies of such materials that are retained pursuant to regulatory or investigatory requirements of any Governmental Authority. Prior to the initial entry upon the Premises, Entrant shall advise anyone acting on behalf of Entrant, including the Permitted Parties, of the terms of this confidentiality provision and their obligation to be bound by it. This confidentiality provision shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

10. Indemnification. Except to the extent that any of the following arise in whole or in part from (i) any mere discovery by Entrant or any of Permitted Parties of any pre-existing conditions at the Premises, (ii) any diminution in the value of the Premises as a consequence of the results revealed by any tests, inspections, examinations and/or investigations, or (iii) the gross negligence or willful misconduct of the Owner Parties or any other person or entity granted rights of use and occupancy through Owner, Entrant shall indemnify, defend and hold the Owner Parties harmless from and against all claims, liabilities, actual losses, penalties, damages (excluding punitive, consequential, special, or indirect damages) and actual out-of-pocket costs, including, without limitation, reasonable third-party legal, engineering and other professional or expert fees and expenses, which are caused by Entrant and/or the Permitted Parties' Activities on the Premises. Except to the extent that any personal injury or property damage arises in whole or in part from the gross negligence or willful misconduct of the Owner Parties, Entrant releases and covenants not to sue the Owner Parties with respect to any personal injury or property damage suffered by Entrant, any of the Permitted Parties, their respective employees, representatives, agents and/or any third party, resulting directly or indirectly, wholly or partly, from the breach of this Agreement or the Activities of Entrant or the Permitted Parties or both. This Section 10 shall survive the termination of this Agreement for a period of one (1) year.

11. Notices. Except for the notices provided pursuant to Section 7 of this Agreement, all notices or other communications required or permitted hereunder shall be in writing, and shall be given by any nationally recognized overnight delivery service with proof of delivery, or by e-mail (provided that such e-mail is confirmed by the sender by expedited delivery service in the manner previously described), sent to the intended addressee at the addresses set forth below, or to such other addresses or to the attention of such other persons as the addressee will have designated by written notice sent in accordance herewith. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

If to Owner:

Township of West Orange
Attention: John O. Gross, CFO
66 Main Street
West Orange, New Jersey 07052
Email: jgross@westorange.org

with a copy to:

8567849 v1

#13423370.1

#13443682.1

Trenk Isabel, P.C.

Attention: Richard Trenk, Esq.
290 W. Mt. Pleasant Ave., Suite 2350
Livingston, New Jersey 07039
Email: rtrenk@trenkisabel.law

and:

Wilentz, Goldman & Spitzer, P.A.

Attention: Carmella Seslar
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, New Jersey 07095
Email: rbeckelman@wilentz.com

If to Entrant:

Hackman Capital Partners, LLC

4060 Ince Boulevard
Culver City, California 90232
Attn: Brent Ilouljian, General Counsel and Managing Principal
Phone: (310) 943-8742
Fax: (310) 473-8827
E-mail: bilouljian@hackmancapital.com

with a copy to:

Cecilia I. Lassiter, Esq.
Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, NJ 07102
classiter@sillscummis.com

and

Gibson, Dunn & Crutcher LLP
2029 Century Park East, Suite 4000
Los Angeles, California 90067
Attention: Stuart A. Graiwer, Esq.
Phone: (310) 551-8718
Fax: 310-552-7028
E-mail: SGraiwer@gibsondunn.com:

8567849 v1

#13423370.1

#13443682.1

Notices given by (i) overnight delivery service as aforesaid shall be deemed received and effective on the first Business Day following such dispatch and (ii) e-mail as aforesaid (including but not limited to sending a copy of the e-mail via overnight courier) shall be deemed given at the time and on the date of the e-mail provided same is sent prior to 4:00 p.m. (Eastern Time) on a Business Day (if sent later, then notice shall be deemed given on the next Business Day). Notices may be given by counsel for the parties described above, and such notices shall be deemed given by said party for all purposes hereunder.

12. Termination.

(a) Owner shall have the right to terminate this Agreement, with or without cause, and without any liability to Entrant, upon written notice to Entrant following the termination of negotiations for the potential purchase of the Premises by Entrant or its affiliate.

(b) This Agreement and the right of access shall automatically terminate on the earliest of: (a) the date that is forty-five (45) days after the date hereof; (b) the date of the parties' mutual execution and delivery of a purchase agreement for the Premises; and (c) the date of Owner's delivery of a written notice to Entrant terminating this Agreement.

13. Survival. Except as otherwise expressly set forth herein, the obligations imposed upon Entrant shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

14. Cumulative Rights. Nothing contained herein shall constitute a waiver of any rights that Owner may have against Entrant.

15. Choice of Law. This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

16. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No change, addition or modification to this Agreement shall be effective unless signed in writing by all parties.

17. Prohibition on Assignment. Entrant and the Permitted Parties shall not assign any rights or delegate any responsibility imposed under this Agreement.

18. References. In all references in this Agreement to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender and number as the text of this Agreement may require.

19. Binding Nature. This Agreement shall be binding upon Entrant, its successors and permitted assigns, and shall inure to the benefit of Owner, its successors and assigns.

20. Counterparts. This Agreement may be executed in multiple counterparts, each of which, when assembled to include a signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed agreement. All such fully executed counterparts will collectively constitute a single agreement. The delivery of an executed counterpart of this Agreement via electronic means, such as e-mail, shall be as legally binding on the party so delivering same as the delivery of a counterpart bearing an original signature.

21. Prohibition on Recordation. Entrant shall not record this Agreement.

22. Exculpation. Neither the direct or indirect members, managers, employees or agents of Owner or Entrant, nor the shareholders, officers, directors, employees or agents of any of them shall be liable under this Agreement and all parties hereto shall look solely to the assets of Owner or Entrant, as applicable, for the payment of any claim or the performance of any obligation by Owner or Entrant, as the case may be.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

OWNER:

TOWNSHIP OF WEST ORANGE

a body corporate and politic of the State of New Jersey

By: _____

Name: John O. Gross

Title: Business Administrator

[Signatures continue on the following page.]

ENTRANT:

HACKMAN CAPITAL ACQUISITION COMPANY, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: Authorized Signatory

8567849 v1

#13423370.1

#13443682.1

SCHEDULE 1

DEFINED TERMS

“Activities” has the meaning ascribed to such term in Section 3 of this Agreement.

“Agreement” has the meaning ascribed to such term in the heading.

“Business Day” means any day other than a Saturday, Sunday or a day on which national banking associations are authorized or required to close.

“Confidential Information” has the meaning ascribed to such term in Section 10 of this Agreement.

“Entrant” has the meaning ascribed to such term in the heading of this Agreement.

“Environmental Laws” mean all applicable federal, state and local laws, ordinances, rules, regulations, codes or orders, including, without limitation, any requirement imposed under any permits, licenses, judgments, decrees, agreements or recorded covenants, conditions, restrictions or easements, the purpose of which is to protect the environment, human health, public safety or welfare, or which pertain to Hazardous Materials.

“Governmental Authority” means the federal, state, county or municipal government, and any department, agency, bureau or other similar type body obtaining authority therefrom or created pursuant to any Environmental Laws and having jurisdiction over the Premises.

“Hazardous Materials” means any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, processing, treatment, storage, disposal, transportation, spill, or release is regulated, monitored, or subject to reporting by any governmental authority, including, but not limited to, hydrocarbons, petroleum, gasoline, asbestos containing materials, crude oil or any products or byproducts thereof.

“Owner” has the meaning ascribed to such term in the heading of this Agreement.

“Owner Parties” means, collectively, (1) Owner; (2) Owner’s property manager (if any); (3) any direct or indirect owner of any beneficial interest in Owner; and (4) any officer, director, employee, representative or agent of Owner, Owner’s property manager, or any direct or indirect owner of any beneficial interest in Owner.

“Parties” has the meaning ascribed to such term in the heading of this Agreement.

“Permitted Parties” has the meaning ascribed to such term in the recitals of this Agreement.

8567849 v1

#13423370.1

#13443682.1

“Premises” has the meaning ascribed to such term in the recitals of this Agreement.

105732318.5

8567849 v1

#13423370.1

#13443682.1