

**PURCHASE AND SALE AGREEMENT**

BETWEEN

**FRANKLIN CAPUTO AND ROBERT CAPUTO**  
**Seller**

AND

**QL PROPERTIES, INC.**  
**Purchaser**

## PURCHASE AND SALE AGREEMENT

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, ( the "Effective Date") between **FRANKLIN CAPUTO AND ROBERT CAPUTO**, having an address at 617 Scotland Road, Orange, New Jersey 07050 (the "Seller") and **QL PROPERTIES, INC.**, and/or assigns, as herein permitted, having an address at \_\_\_\_\_ (the "Purchaser").

### Preliminary Statement

**WHEREAS**, the Seller owns certain real properties located in City of Orange, County of Essex and State of New Jersey, more particularly described in Schedule A, attached ("Property"); and

**WHEREAS**, the Seller desires to sell such Property to the Purchaser, and the Purchaser desires to purchase such Property, all on the terms and conditions hereinafter provided.

**NOW, THEREFORE**, in consideration of the covenants and mutual promises contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Seller and the Purchaser hereby agree as follows:

1. **Sale and Purchase.** On the terms and conditions hereinafter provided, the Seller shall sell and convey to the Purchaser, and the Purchaser shall purchase, the Property (as such term is hereinafter defined).

2. **Property.** As used herein, the term "**Property**" means that certain tracts of land situated in the City of Orange, County of Essex and State of New Jersey, being more particularly described on **Schedule A** attached hereto identified as Block 6105, Lot 4 on the official Municipal Tax Map of the City of Orange, Essex County, New Jersey; together with all buildings and improvements thereon and fixtures attached thereto; together with all rights, privileges, tenements, hereditaments, rights of way, easements, appendages and appurtenances of such land. The Property consists of vacant land.

3. **Price.** The purchase price of the Property shall be **NINE HUNDRED THOUSAND AND 00/100 (\$900,000.00) DOLLARS**, subject to closing adjustments as hereinafter provided. Such amount shall be payable as follows:

- (a) Upon the execution and delivery of this Agreement, the sum of \$90,000.00, (the "Deposit"), shall be delivered to Bendit

Weinstock Attorney Trust Account.

- (b) On the day of Closing (as hereinafter defined), Purchaser or the settlement agent shall provide the balance of the purchase price (less any deposit, payments or adjustments set forth herein) to the Seller by cash, certified or bank check or wire transfer of immediately available funds.

\$810,000.00

TOTAL:

\$900,000.00

4. **Closing.** The closing of title shall occur on or before March 1, 2022. Should the closing not occur by March 1, 2022, either party may cancel the Contract upon written notice to the other party. Upon payment to Seller of a non-refundable sum of \$30,000.00 and notwithstanding the foregoing, Purchaser may request one extension of the closing date not to exceed ninety (90) days. The \$30,000.00 payment shall NOT be applied to the purchase price, which shall remain \$900,000.00.

5. **Due Diligence.** Purchaser shall have ninety (90) days from the Effective Date of this Agreement (the "Due Diligence Period") to review all documents and materials related to the Property and to inspect and conduct non-invasive tests, inspections and investigations regarding the Property. Should Purchaser determine prior to the end of the Due Diligence Period, after written notice to Seller, to terminate this Agreement, the Deposit shall be returned to the Purchaser and the parties will have no further obligations to each other. Should Purchaser not provide written notice of termination to Seller within the Due Diligence Period, the Due Diligence contingency shall be deemed waived.

6. **Condition of Property.** The Purchaser acknowledges and confirms that the Purchaser is not relying on any representation or inducement which was or may have been made or implied by the Seller or any other party acting on behalf of the Seller with respect to the Property or any circumstances or conditions affecting the Property except as expressly set forth in this Agreement (including, without limitation, matters relating to approvals and requirements of governmental authorities and utility companies). Subject to the provisions of this Agreement, the Purchaser has investigated and otherwise inspected, and will investigate and inspect the Property, and the circumstances and conditions affecting the Property. Subject to the provisions of this Agreement, the Purchaser is purchasing the Property "**As Is**", "**Where Is**."

7. **Tax Abatement.** During the period commencing on the Effective

Date and expiring 6:00 p.m. on the date that is ninety (90) days thereafter ("Tax Abatement Period"), Purchaser will work with the City of Orange to obtain an approved and non-appealable Financial Agreement related to a 60 unit or more multifamily project to be built on the Property. The Financial Agreement will need to contain an Annual Service Charge equal to a percentage of Annual Gross Revenue for at least 15 years. If Purchaser is unable to obtain such Financial Agreement, it may elect, prior to the expiration of the Tax Abatement Period Purchaser may terminate this Agreement on written notice to Seller, in which event the Deposit would be returned to Purchaser. If Purchaser does not provide written notice of termination of the Purchase Agreement prior to expiration of the Tax Abatement Period, Purchaser will be deemed to have elected to waive its right to terminate the Purchase Agreement during the Tax Abatement Period. Purchaser will have the right to extend the Tax Abatement Period for an additional 90 days.

8. **Documents to be Delivered by Seller.** At the closing, the Seller shall also deliver to the Purchaser:

- (I) the customary New Jersey form of bargain and sale deed, with covenants against grantor's acts, duly executed by the Seller in form for recordation (the "**Deed**").
- (ii) the customary New Jersey form of affidavit of title, duly executed by the Seller.
- (iii) a certified copy of a resolution adopted by the board of directors of the Seller authorizing the transaction contemplated by this Agreement.
- (iv) a closing statement showing the applicable closing adjustments, duly executed by the Seller.
- (v) such other documents as may be reasonably required by Purchaser's mortgage lender or title company in order for it to insure title.
- (vi) A certification that Seller is not a foreign person within the meaning of Sections 1445 and 7701 (a) (I) of the Internal Revenue Code of 1986.
- (vii) A 1099-B Information Return with respect to the sale of the Premises, if applicable.
- (viii) A FIRPTA affidavit (Non-Foreign Person Affidavit) per IRC §1445.

9. **Documents to be Delivered By Purchaser at Closing.** At closing,

the Purchaser shall deliver to the Seller:

- (i) the balance of the purchase price as described in Paragraph 3.
- (ii) a closing statement showing the applicable closing adjustments as set forth in Paragraph 18 herein, duly executed by the Purchaser.
- (iii) such other document as required by Purchaser's title insurance company.

10. **Possession.** At the Closing, the Seller shall give the Purchaser possession of the Property free and clear of all tenants, encumbrances and rights of possession.

11. **Adjustments.** (A) At the Closing, the Purchaser and the Seller shall adjust for collected rents, real estate taxes and assessments as set forth in paragraph 10 on the Property, municipal water and sewer charges, and/or fuel, if any, such adjustments to be calculated as of 11:59 p.m. as of the day immediately preceding the closing date. Seller shall receive a credit on a per diem basis for all rents due but not collected at time of closing. This credit shall be paid by Purchaser to Seller, post closing, upon receipt by the Purchaser of any such rent. Seller and Purchaser shall document any rents due but not collected at closing. Seller shall be responsible for expenses up to and through the date immediately before the date of closing. Thereafter, Purchaser shall have the right to collect and retain all such arrears from the Tenants.

(B) Purchaser shall be transferred the amount of the security deposits paid by the tenants at the Property, plus accrued interest, if any. This amount will be credited at closing against the Purchase Price.

(C) Seller and Purchaser shall cause all utility service to be transferred to Purchaser as of the day of closing and Seller shall pay all final billings, providing Purchaser with a copy thereof, when they become available to Seller.

12. **Entry on Property.** At reasonable times and upon reasonable notice, the Seller shall allow the Purchaser and its agents to enter upon the Property for the purposes of conducting inspections and surveys. The Purchaser shall indemnify the Seller against any and all liability that may be incurred by the Seller as a result of such entry onto the Property. The description set forth on Schedule A shall be revised to conform to Purchaser's survey which shall be certified to Seller.

The Purchaser shall fully indemnify and hold the Seller harmless against any and all liability, including, but not limited to, reasonable attorneys fees and costs

that may be incurred by the Seller as a result of such entry onto the Property. Seller's rights and Purchaser's obligation pursuant to this paragraph shall survive the closing.

13. **Default.** In the event of Purchaser's default under this Agreement, Seller agrees to provide Purchaser with written notice of such default specifying the nature thereof. Any alleged default must have a reasonable basis in fact. Purchaser shall have fourteen (14) calendar days from the date of receipt of said notice to cure such default, with a reasonable extension of time if such cure requires more than fourteen (14) calendar days to cure and Purchaser is diligently pursuing same. In the event Purchaser does not cure any default during the fourteen (14) calendar day cure period, and the parties will have no further obligation to the other.

14. **Risk of Loss.** Subject to the provision herein, the risk of loss due to condemnation or damage to the Property by fire or other casualty before the closing of title is assumed by the Seller. Nothing contained herein shall be construed to require the Seller to remedy or give the Purchaser a credit at closing due to any pre-existing environmental physical or other condition of the Property, or loss or damage attributable to any such condition. Notwithstanding the foregoing, should the damage to any of the Property exceed fifty thousand dollars (\$50,000.00), either party may cancel this Agreement.

15. **Brokerage.** The Purchaser and Seller acknowledge and represent to the other that no real estate broker was used in connection with this transaction.

16. **Expenses.** The Seller shall pay the realty transfer fee in connection with the conveyance of the Property and the cost of cancelling any liens or encumbrances. Each party shall bear all other fees, charges and expenses incurred by it, without contribution from the other.

17. **Taxes.** All taxes will be prorated through the day of closing.

18. **Notices.** All communications under this Agreement shall be in writing, and shall be deemed to be sufficiently given when presented personally (including by fax transmission, Federal Express or other recognized courier for which receipt is given) or two days after having been mailed by certified mail, return receipt requested, to a party at the following addresses, or to such other address as such party may designate to the other party in writing:

To the Buyer:

QL Properties, Inc.

With a copy to:

To the Seller: Franklin Caputo and Robert Caputo  
617 Scotland Road  
Orange, New Jersey 07050

With a copy to: Roger J. Desiderio, Esq.  
Bendit Weinstock  
80 Main Street, Suite 260  
West Orange, New Jersey 07052

19. **No Survival.** Except as otherwise provided, none of the provisions of this Agreement shall survive the delivery of the deed.

20. **1031 Exchange.** Seller will reasonably cooperate with structuring its sale of its interest in the Property as a like-kind exchange under Section 1031 of the Internal Revenue Code. Seller would reasonably cooperate with Purchaser in connection with structuring its purchase of the Property as such a like-kind exchange.

21. **Further Assurances.** From time to time at the request of either the Seller or the Purchaser (whether before, at or after closing), the other party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request to better effectuate the provisions of this Agreement.

22. **Entire Agreement; Merger Clause.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous representations, agreements and understandings, whether written or oral.

23. **Miscellaneous.**

- (I) No provision of this Agreement may be changed or waived orally, but only by an instrument in writing signed by the party to be charged therewith.
- (ii) This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without giving effect to the principles of conflicts of law.
- (iii) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together

shall constitute one and the same Agreement.

- (iv) As used herein, the term "including" shall be deemed to mean "including without limitation."
- (v) This Agreement is binding on the parties and their successors and assigns.
- (vi) The parties agree that any omissions or errors in making the final adjustments at the time of closing shall be corrected and paid no later than fourteen (14) days after written notification of such error, by either party is given to the other party or to their respective attorney. This paragraph shall survive closing of title, notwithstanding delivery and acceptance of the deed and the execution of a closing statement.
- (vii) In the event of a dispute regarding the terms of this Purchase and Sale Agreement, the parties agree to submit the matter to a retired New Jersey Superior Court Judge for arbitration. The parties shall agree to upon the selection of an arbitrator. Each party shall pay one half of the cost of the arbitrator.
- (viii) Other than to limited liability companies to be formed by Purchaser, this Agreement may not be assigned by the Purchaser.



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_  
**FRANKLIN CAPUTO**

\_\_\_\_\_

By: \_\_\_\_\_  
**ROBERT CAPUTO**

**QL PROPERTIES, INC.**

\_\_\_\_\_

By: \_\_\_\_\_

**SCHEDULE A**  
(Property Description)