

**ORDINANCE NO.: 16 - 17**

**AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY LOCATED IN BLOCK 85.01, LOT 2; BLOCK 86, LOT 5; BLOCK 87, LOT 7; BLOCK 88, LOT 1; BLOCK 89, LOT 16; BLOCK 89 LOT 22; AND BLOCK 90, LOT 13 ON THE TAX MAP OF THE BOROUGH OF MOUNT ARLINGTON, COUNTY OF MORRIS AND STATE OF NEW JERSEY**

**WHEREAS**, Robin A. Pio-Costa-Lahue, Trustee of the Anthony Pio Costa, II Subtrust B, having an address at 15 Rensselaer Road, Essex Fells, New Jersey 07021, desires to sell real property located at Block 85.01, Lot 2; Block 86, Lot 5; Block 87, Lot 7; Block 88, Lot 1; Block 89, Lot 16; Block 89 Lot 22; and Block 90, Lot 13 on the Tax Map of the Borough of Mount Arlington for \$400,000.00; and the Borough of Mount Arlington desires to purchase the real property for the purpose of the preservation of the real property located at Block 85.01, Lot 2; Block 86, Lot 5; Block 87, Lot 7; Block 88, Lot 1; Block 89, Lot 16; Block 89 Lot 22; and Block 90, Lot 13 for Open Space purposes; and

**WHEREAS**, other entities will be participating in the funding of this transaction as follows:

Morris County Open Space Trust Fund  
State of New Jersey Green Acres Grant; and

**WHEREAS**, and the Mayor and Council have determined that it is in the best interest of the Borough to purchase same; and

**WHEREAS**, the Local Lands and Buildings Law, N.J.S.A. 40A:12-5, authorizes municipalities to acquire real property.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris, and the State of New Jersey that:

Section 1. Pursuant to N.J.S.A. 40A:12-5 the Borough of Mount Arlington is authorized to acquire located at Block 85.01, Lot 2; Block 86, Lot 5; Block 87, Lot 7; Block 88, Lot 1; Block 89, Lot 16; Block 89 Lot 22; and Block 90, Lot 13; and expend \$400,000.00 plus costs to acquire the parcel.

Section 2. the Borough Mayor, Administrator and the Borough Attorney shall be authorized and empowered to sign any and all documents required to effectuate the conveyance of this parcel, including the Contract of Sale, a copy of which is incorporated herein as if set forth at length.

Section 3. A survey shall be performed by the Borough in accordance with the Contract of Sale.

Section 4. The purchase shall be conducted at a date and time selected by the Borough Administrator upon approval of all documents by the Borough Attorney and the title company. The Borough Administrator, Borough Clerk, Borough Attorney and Mayor shall be authorized and empowered to sign any and all documents required to effectuate the purchase of this parcel.

Section 5. This acquisition will be funded as noted above through the Morris County Open Space Trust Fund, State of New Jersey Green Acres funds and/or the Borough's Open Space Trust Fund. The Borough's portion of the funding for the closing costs associated with the transaction shall be paid from the Borough's Open Space Trust Fund in an amount not to exceed \$400,000.00 plus costs.

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

**SECTION 3.** If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy which such judgment shall be rendered.

**SECTION 4.** This Ordinance shall take effect immediately upon final passage and publication as provided by law.

**I HEREBY CERTIFY** this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on October 3, 2017 and will be further considered after a Public Hearing held on November 1, 2017 at the Municipal Building at 7:00 P.M.

INTRODUCED:  
PUBLISHED:  
ATTEST:

BOROUGH OF MOUNT ARLINGTON  
COUNTY OF MORRIS  
STATE OF NEW JERSEY



Linda DeSantis, Borough Clerk



Michael Stanzilis, Mayor

# **CONTRACT FOR SALE OF REAL ESTATE**

This Contract for Sale of Real Estate is made on \_\_\_\_\_, 2017 by and between Robin A. Pio-Costa-Lahue, Trustee of the Anthony Pio Costa, II Subtrust B, having an address at 15 Rensselaer Road, Essex Fells, New Jersey 07021 (hereinafter "Seller") and the Borough of Mount Arlington, a Municipality of the State of New Jersey, whose address is 419 Howard Boulevard, Mt. Arlington, New Jersey 07856 (hereinafter "Buyer").

1. **AGREEMENT TO SELL.** The Seller agrees to sell and the Buyer agrees to buy the Property (called the "Property") described in this Contract.
2. **PROPERTY.** The Property to be sold consists of those parcels of land known and designated as Block 85.01, Lot 2; Block 86, Lot 5; Block 87, Lot 7; Block 88, Lot 1; Block 89, Lot 16; Block 89 Lot 22; and Block 90, Lot 13 on the Tax Map of the Borough of Mount Arlington, County of Morris and State of New Jersey; all improvements located on the land; and all of Seller's rights relating to the land. The Property is more fully described in the attached Schedule A.
3. **OWNERSHIP OF PROPERTY.** Seller represents that they are the owner of Block 85.01, Lot 2; Block 86, Lot 5; Block 87, Lot 7; Block 88, Lot 1; Block 89, Lot 16; Block 89 Lot 22; and Block 90, Lot 13 on the Tax Map of the Borough of Mount Arlington.
4. **PURCHASE PRICE.** The purchase price for the Property shall be \$400,000.00.
5. **PAYMENT OF PURCHASE PRICE.** The Buyer will pay the purchase price in full at closing of title (subject to adjustments at closing).
6. **TIME AND PLACE OF CLOSING.** The closing date is approximately \_\_\_\_\_. The Buyer and Seller agree to make the closing date thirty (30) days after all the Contingencies set forth in Paragraph 13 have been satisfied. If the closing has not taken place within nine (9) months from the date of this Contract, either party shall have the right to terminate this Contract. The closing will be held by mail.
7. **DELIVERY OF DOCUMENTS AT CLOSING.** At the closing, Seller shall deliver a Deed of Bargain and Sale with Covenants against Grantor's Acts, Morris County Clerk Cover Sheet, Affidavit of Consideration, 1099S form, GIT/REP-3 form, and a satisfactory affidavit of title; and shall deliver and/or execute such other documents as Buyer, Buyer's title insurance company and/or attorneys may reasonably request or require. Seller agrees that it shall not convey title pursuant to a power of attorney. Buyer shall obtain a survey of the property from a surveyor licensed in the State of New Jersey per the requirements of the funding agency. Seller agrees to use a legal description in accordance with such survey, provided such survey is provided to Seller by Buyer in advance of closing.
8. **TENANTS.** Seller represents and warrants that there are no tenants or other entities or individuals with any rights or interest in the Property.
9. **TITLE.**
  - a) Title to the Property shall be good, marketable, with title valid of record, and insurable at regular rates by any title insurance company of Buyer's choice authorized to do business in the State of New Jersey, subject to the following exceptions which shall be deemed "Permitted Exceptions":

- i. Laws, regulations or ordinances of federal, state, county or local entities or agencies having jurisdiction over the Property.
- ii. Such state of facts as would be shown on an accurate survey of the property, provided such facts do not render title to the Property unmarketable, nor would reveal any easements, covenants, restrictions, encroachments onto the property from adjoining properties or from the property onto adjoining properties.

10. **ADJUSTMENTS AT CLOSING.** At the time of closing and delivery of the deed, real estate taxes shall be adjusted between Seller and Buyer as of the closing date with charges for the day of closing attributable to the Seller. This conveyance to a governmental entity is exempt from realty transfer fee. Real estate taxes shall be apportioned on the basis of the calendar year for which assessed, except that if the closing date shall occur before the final tax rate is fixed, the apportionment of taxes shall be based upon the prior year's taxes. Seller shall pay all rollback taxes relating to farmland assessment whenever such assessment may be imposed by the taxing authority. The obligations of this paragraph with regard to any adjustments or payments subsequent to closing for real property taxes shall survive closing.

11. **POSSESSION AND PRE-CLOSING ENTRY.** Buyer may enter into and upon the Property upon delivery of the deed. However, Buyer, its agents, servants, contractors and assigns, shall have the right, from time to time, to enter upon the Property prior to the date of closing for the purpose of conducting inspections, surveys and tests related to Buyer's intended use of the Property and for satisfying the Contingencies.

12. **PRESERVATION OF CONDITION.** Seller agrees to take no action that would be deemed detrimental to the present condition of the Property that would damage its conservation value, such as soil mining or excavation, clear cutting of trees, removal of stone walls, removal of any historic relics that are integral to the property, or dumping of materials from off-tract. If such detrimental actions take place, Seller agrees to correct the condition to Buyer's satisfaction. Should no or insufficient remedy occur, Buyer retains the right to terminate this Contract.

13. **CONTINGENCIES.** The obligation of Buyer to consummate this Contract is specifically contingent upon the following:

- a) **Satisfactory state of title.** (see Paragraph 9 above)
- b) **Satisfactory Environmental Assessment.** The Buyer shall have the right to conduct or have conducted by its agents, servants, contractors or assigns, and at its cost and expense, such environmental inspections, audits and tests as the Buyer shall deem necessary or advisable within thirty (30) days of the signing of this Contract. The Seller shall cooperate with such inspection efforts. Such cooperation shall include, without limitation, supplying all information requested concerning the use of the Property and any hazardous Substances located at the Property. Buyer agrees that if within the thirty (30) day period it determines that the environmental assessment is unsatisfactory, it shall so advise Seller in writing, provide Seller with a copy of the environmental assessment. It shall be the Seller's sole obligation to remove and/or address any potential environmental concern discovered by the assessment including but not limited to: surface debris, ground staining, unidentifiable containers, etc. unless waived in writing by Buyer. If the Seller is unable and/or unwilling to resolve such environmental concern(s) and no waiver has been

provided by the Buyer, the Buyer shall then have the right to terminate this Contract on ten (10) days' written notice thereof to Seller.

- c) Completion of Acceptable Survey. Buyer shall have obtained, at its cost and expense, an acceptable survey of the Property, showing the Property to consist of not less than 15.7 acres. The exact acreage shall be determined by an accurate survey. If the survey should indicate any encroachments by structures, fences or other man-made improvements, which either belong to Seller and encroach on a neighboring property or belong to a neighboring property and encroach on the Property, Seller shall at its sole cost and expense attend to removal of any such encroachment prior to closing of title unless waived by Buyer.
- d) Funding Contingency.
  - i. The obligation of Buyer to consummate this Contract is specifically contingent upon Buyer, on or before the date of closing, receiving from the Morris County Open Space Trust Fund, the sum of \$ 400,000.00.
  - ii. The Buyer represents that the Buyer has received the requisite approval to purchase the Property and its application in respect of the Property with the Morris County Open Space Trust Fund has been approved.
- e) No Automatic Default. In the event that a time limitation shall expire, the other party shall be given written notice and ten (10) days to correct same or exercise their appropriate right.
- f) Corporate approval. Adoption of an ordinance and such other authorization by the Borough Council as may be needed.

#### 14. SELLER'S REPRESENTATIONS.

- a) Seller is a Trust. The execution, delivery and performance by Seller of the terms of this Agreement have been duly authorized by all necessary action and do not conflict with the trust instrument of Seller or any agreement to which Seller is bound or is a party or requires the consent of any party.
- b) Seller has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and this Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms. The execution and delivery by Seller of this Agreement and the Seller's performance hereunder will not conflict with, or result in a breach of, any of the terms, covenants and provisions of any agreement or instrument to which Seller is a party or by which it is bound, or, to the best of Seller's knowledge, any Governmental Regulation (as defined below), or judgment, writ, injunction or decree of any court or governmental authority affecting Seller. The individual executing this Agreement on Seller's behalf has been duly authorized to do so by all necessary all corporate action.
- c) No bankruptcy or insolvency proceeding or petition under the U.S. Bankruptcy Code or any state bankruptcy or insolvency law filed by or against Seller is pending and no such filing is contemplated by Seller, or, to Seller's knowledge, threatened. Seller has not caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, or made an assignment for the benefit of creditors.

15. **ENVIRONMENTAL REPRESENTATIONS.** As a material inducement to Buyer to purchase the Property, Seller hereby represents and warrants, to the best of its knowledge, as follows:
- a) The Property is not presently, nor has ever been used for the generation, manufacture, storage, treatment, discharge or disposal of Hazardous Materials; and
  - b) There has never been any release, discharge or spillage of Hazardous Materials, as hereinafter defined, upon, in or under the property, or any adjacent or neighboring property; and
  - c) There is no underground storage tank or asbestos on the Property; and
  - d) There is no pending or threatened claim, action, complaint, notice of violation or proceeding by any governmental authority or third party respecting the Property arising out of any violation or alleged violation of any Environmental Laws, as hereinafter defined; and
  - e) The property is in compliance with all Environmental Laws, as hereinafter defined.

All of the foregoing representations, covenants and warranties shall survive closing of title.

As used in this Paragraph, the term "Environmental Law" shall mean and include CERCLA, 42 U.S.C. 9601, et seq., RCRA, 42 U.S.C. 6091, et seq., ISRA, N.J.S.A. 14 1K-6 et seq., the Spill Compensation and Control Act, N.J.S.A. 58L10-23.11 et seq., all other similar federal, state and municipal statutes and ordinances governing the environmental, all as amended from time to time and all rules and regulations promulgated thereunder. The term "Hazardous Materials" shall mean and include asbestos, polychlorinated biphenyls, petroleum products and any other hazardous or toxic materials, wastes and substances which are defined as such in any Environmental Law.

16. **DEFAULT.** If all contingencies listed in Paragraph 13 have been satisfied Buyer shall notify Seller, and a closing date will be set. Should Seller wish to cancel this contract, for any reason, Seller shall reimburse Buyer, within ninety (90) days, for all due diligence costs, including but not limited to the survey, environmental assessment and title work.
17. **NO WAIVER.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
18. **REAL ESTATE BROKERAGE COMMISSION.** Any real estate commission due at the time of closing will be the sole obligation of the Seller, if any.
19. **BULK SALES FILING.** The New Jersey Bulk Sales Law, N.J.S.A. 54:50-38, (the "Law") applies to the sale of certain real property. Under the Law, the Buyer may be liable for taxes owed by the Seller if the Law applies and the Buyer does not deliver to the Director of the New Jersey Division of Taxation (the "Division") a copy of this Contract and a notice on a form required by the Division (the "Tax Form") at least 10 business days prior to the Closing. If the Buyer decides to deliver the Tax Form to the Division, the Seller Shall Cooperate with the Buyer by promptly providing the Buyer with any information that the Buyer needs to complete and deliver the Tax Form in a timely manner. The Buyer promptly shall deliver to the Seller a copy of any notice that the Buyer receives from the Division in response to the Tax Form.

20. **BULK SALES WITHHOLDING.** If, prior to the Closing, the Division notifies the Buyer to withhold an amount (the "Tax Amount") from the purchase price proceeds for possible unpaid tax liabilities of the Seller, the Buyer's attorney or the Buyer's title insurance company (the "Escrow Agent") shall withhold the Tax Amount from the closing proceeds and place that amount in escrow (the "Tax Escrow"). If the Tax Amount exceeds the amount of available closing proceeds, the Seller shall bring the deficiency to the Closing and the deficiency shall be added to the Tax Escrow. If the Division directs the Escrow Agent or Buyer to remit funds from the Tax Escrow to the Division or some other entity, the Escrow Agent or Buyer shall do so. The Escrow Agent or Buyer shall only release the Tax Escrow, or the remaining balance thereof, to the Seller (or as otherwise directed by the Division) upon receipt of written notice from the Division that it can be released, and that no liability will be asserted under the Law against the Buyer.

21. **RISK OF LOSS.** Risk of loss, by reason of fire or other casualty, shall remain with Seller until the time of closing.

22. **NOTICES.** All notices under this contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this contract, or to that party's attorney. Notices shall also be acceptable via telefax or electronic mail transmission with acknowledgment of receipt, first class mail or email. to the following addresses:

If to Seller: Robin A. Pio Costa-Lahue  
15 Rensselaer Road  
Essex Fells, New Jersey 07021

With a copy to: John M. Clyne, Jr., Esq.  
Law Offices of John M. Clyne, Jr., P.A.  
8 Ridgedale Avenue  
Cedar Knolls, New Jersey 07927

If to Buyer: Borough of Mount Arlington  
419 Howard Boulevard  
Mt. Arlington, New Jersey 07856  
Attn: Carolyn Rinaldi, Municipal Administrator

With a copy to: Matthew J. O'Donnell, Esq.,  
O'Donnell McCord, P.C.  
15 Mount Kemble Avenue  
Morristown, New Jersey 07960

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto. No amendment or modification hereof shall have any force or effect unless in writing and executed by all parties.

24. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, their heirs, executors, administrators, successors and assigns.

25. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of New Jersey. This Contract may not be changed or modified without the written consent of all parties hereto. The parties acknowledge that should any provision contained herein be later found to be unenforceable, void or illegal by a court of competent jurisdiction, such provisions shall be considered omitted from this Contract, it being the parties' intent to enter into this Contract notwithstanding the omission of such unenforceable, void or illegal provision.

26. **HEADINGS.** The article headings contained in this Agreement are for reference only for the convenience of the parties. They shall not be deemed to constitute a part of this Agreement nor shall they alter or supersede the contents of the paragraphs themselves.

27. **COUNTERPARTS.** This Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

28. **RIGHT TO ASSIGN.**

- a) Buyer shall have the right to assign this Contract to a qualified conservation organization recognized by the U.S. Internal Revenue Service as a 501(c)(3) non-profit organization.
- b) The Seller may intend for the real property which is the subject of this agreement to be the relinquished property in a tax-free exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. Seller shall have the right to assign all of its right, title and interest (but not its obligations) in and to this agreement to Section 1031 Exchange Corp., a New Jersey corporation, pursuant to an Exchange Agreement between Seller and Section 1031 Exchange Corp., or to any other individual or entity acting as a Qualified Intermediary (as defined in Treas. Reg. 1.1031(k)-1(g)(4)). Buyer agrees to acknowledge any such assignment by Seller at or before the Closing Date. Such assignment shall not release Seller of its obligations hereunder.
- c) Seller shall have the right to assign this Contract and transfer title to the Property to Robin A. Pio Costa-Lahue.

**IN WITNESS WHEREOF,** the undersigned have set their hands and seals the day and year first above written.

ATTEST:

THE ANTHONY PIO COSTA, II SUBTRUST B

\_\_\_\_\_

By: \_\_\_\_\_  
ROBIN A. PIO COSTA-LAHUE, Trustee

Date: \_\_\_\_\_

ATTEST:

BOROUGH OF MOUNT ARLINGTON

\_\_\_\_\_

By: \_\_\_\_\_  
MAYOR MICHAEL STANZILIS

Date: \_\_\_\_\_