

CITY OF VINELAND

ORDINANCE NO. 2016-_____

ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT OF SALE BY AND BETWEEN THE CITY OF VINELAND AND ELIZABETH TESTA FOR THE ACQUISITION OF PROPERTY KNOWN AS BLOCK 2918 LOTS 6 AND 7 IN THE CITY OF VINELAND

WHEREAS, the City of Vineland Department of Public Works has been seeking a facility for maintenance and storage of equipment and vehicles utilized by the department in conjunction with its present location on Walnut Road in Vineland; and

WHEREAS, Elizabeth Test is the owner of Block 2918 Lots 6 and 7 (Property) located in the City of Vineland which has been used for vehicle maintenance and repairs which is now vacant and for sale, which has been offered for sale to the City in the amount of \$150,000.00; and

WHEREAS, the Property and improvements thereon have been determined by the Director of Public Works to be a good location and facility for the public use as a maintenance and storage facility for equipment and vehicles among other uses; and

WHEREAS, the improvements upon the Property have been vacant for in excess of one year and acquisition will not only provide a much needed facility but will put to use an otherwise vacant building in the downtown; and

WHEREAS, the City Council of the city of Vineland finds it to be in the best interest of the City to acquire the property subject to diligent investigation of the Property for environmental issues, among other matters .

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor and Clerk are authorized to execute an Agreement of Sale for the acquisition of Block 2918 Lots 6 and 7 subject to and conditioned upon the further negotiation by the Legal Department and further inspections of the Property including the need for site remediation in a form and substance similar to the attached document attached hereto and made a part hereof.

This Ordinance shall take effect upon adoption and publication according to law.

Passed first reading:

Passed final reading:

President of Council

ATTEST:

City Clerk

REAL PROPERTY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF VINELAND OR ITS ASSIGN(S) (Buyer) and
Elizabeth M. Testa(Seller)

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THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2016, by and between **Elizabeth M. Testa** whose address is 309 North Harding Highway, Landisville, New Jersey 07450 (at times referred to as "Seller"), and the **City of Vineland**, 640 E. Wood Street, Vineland, NJ 08360 (at times referred to as "City" or "Buyer"), or its Assigns.

NOW, THEREFORE, in consideration of the mutual agreements and undertakings provided herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **SALE OF PROPERTY.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, fee simple title to a parcel of real property approximately .609 acres located in the City of Vineland, County of Cumberland, State of New Jersey, known as **241 W. Wood Street, and 10 North 3rd Street, Block 2918, Lots 6 and 7, Vineland, New Jersey**, together with all rights incident thereto and all improvements and fixtures located thereon (herein at times referred to as the "Property"). Subject to Buyer's right of inspection and due diligence this property is being sold "as is". The Seller does not make any claims or promises about the condition or value of any of the property included in this sale.

2. **PURCHASE PRICE.** The total consideration or purchase price (the "Purchase Price") for the Property shall be **ONE HUNDRED AND FIFTYTHOUSAND (\$150,000.00), DOLLARS**, payable as follows:

(a) The Purchase Price will be paid by wire transfer, certified check or title company check at Settlement.

(b) The Purchase Price shall be adjusted in accordance with the provisions of **Section 13** below, which provides for various adjustments and apportionments.

3. **SELLERS REPRESENTATIONS.** Seller warrants and represents, to the best of Seller's knowledge that:

(a) Seller has good and marketable title to the Property free of all liens encumbrances except those that will be satisfied at the time of closing.

(b) No one else has any interest in the property, and the Seller has the full right and authority to enter into this Agreement, and transfer title in accordance with the terms of this Agreement.

(c) The Seller has owned Block 2918, Lot 6 since July 15, 2014, and Block 2918, Lot 7 since November 14, 2014. Since that time no one has questioned her right to possession or ownership. The Seller has sole possession of the Property. The seller has not given anyone else any rights concerning the purchase or lease of the Property.

(d) The Seller has always obtained all necessary permits and certificates of occupancy. All charges for municipal improvements such as sewers, sidewalks, curbs or similar improvements benefitting the Property have been paid in full. The Seller is not aware that anyone has filed or intends to file a construction lien or building contract relating to the Property.

(e) The Seller states that all buildings, driveways and other improvements on the property are within its boundary lines. Also, no improvements on adjoining properties extend across the

boundary lines on this property.

4. **QUALITY OF TITLE.**

(a) At closing, title to the Property shall be good and marketable and free and clear of all liens, restrictions, easements and other encumbrances and title objections, and shall be insurable as such at ordinary rates by any reputable title insurance company selected by the Buyer (the "Title Company"). In the event that title is not marketable and free and clear of all liens, restrictions, easements and other encumbrances and title objections, or not insurable at ordinary rates Buyer may cancel this Agreement, in which event this Agreement shall be NULL and VOID and neither party shall have any further liability or obligation under this Agreement.

(b) At or prior to closing, Seller shall discharge, pay and satisfy any mortgage lien, judgment or other lien of a liquidated and fixed amount (each, a "Monetary Lien") affecting the Property.

(c) Seller shall not grant or create any new or additional liens, restrictions or encumbrances or otherwise alter the quality of title through and including the closing date.

If the property does not comply with this paragraphs, the Seller will be notified and given thirty (30) days to make it comply. If the property still does not comply after that date, the Buyer may cancel this contract or give the Seller more time to comply.

5. **INSPECTION/DUE DILIGENCE.** Seller hereby grants Buyer and its agents, employees and contractors 60 days (the "Due Diligence Period"), commencing on the Effective Date of this Agreement as defined in Section 26 below, to inspect and go upon the Property to make such test borings, surveys, percolation tests and other engineering studies and site analyses as Buyer may require, (the investigations"). If after 60 days the Buyer needs additional time to complete its due diligence, the Seller shall give Buyer additional time to complete its due diligence, not to exceed thirty (30) days. Seller will cooperate with Buyer in making such Investigations. The Investigations shall be made solely at Buyer's expense. If the Investigations indicate, in Buyer's sole opinion, that the Property is not suitable for purposes contemplated by Buyer, Buyer may, at its option, cancel this Agreement, in which event this Agreement shall be NULL and VOID and neither party shall have any further liability or obligation under this Agreement. To exercise Buyer's option to cancel this Agreement, Buyer must give Seller notice consistent with Section 19 below within the Due Diligence Period. Buyer may cancel this Agreement for any reason during the due diligence period. Buyer, in Buyer's sole discretion may waive, at any time, the balance of the Due Diligence Period, in which event the parties will proceed to closing as provided by Section 15 below, unless the Agreement is otherwise terminated. Any waiver of the balance of the Due Diligence Period must be in writing and delivered in accordance with Section 19 below.

6. **ASSIGNMENT.** The Buyer's rights and obligations under the terms of this Agreement may be assigned by the Buyer in its sole discretion.

7. **APPRAISAL.** Waived.

8. **SURVEY.** During Due Diligence Period, in addition to the inspections and testings contemplated in Section 5 above, Buyer and its agents, employees and contractors shall have full access to the property for purposes of performing a survey.

9. **ENVIRONMENTAL WARRANTIES INVESTIGATION AND REMEDIATION.**

a) **Warranties.** The Property was used by its former owner as an automotive and truck repair facility. To the best of Seller knowledge (i) neither the Seller nor any previous owner of the Property or operator of a business on the Property has ever generated, stored, or disposed of any hazardous substances on the Property that were not properly disposed of, which generation, storage or disposal has or may result in a substantial fine or other substantial cost to cure as a result of a claimed violation of any statute, ordinance, by-law, rule or regulation applicable at the time of such storage or disposal; and (ii) that no other party has ever generated, stored, or disposed of such substances on the Property that were not properly disposed of, which generation, storage or disposal has or may result in a substantial fine or other substantial cost to cure as a result of a claimed violation of any statute, ordinance, by-law, rule or regulation applicable at the time of such storage of or disposal; and (iii) there has not been a release of any hazardous substances on the Property by anyone else. For the purposes of this agreement, "hazardous substances" shall mean "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, U.S.C.A. the regulations thereunder, and as defined in applicable state law.

(b) **Site Investigation/Remedial Investigation.** Seller will supply to Buyer all environmental reports, test results, communications and documents relating to all environment investigations, and testing of the property and hereby authorizes its LSRP, Calmar Associates, to release such information and documents to Buyer and its agents, contractors and professionals. In addition, at its option Buyer and its agents, employees and contractors shall have full access to the property for purposes of performing additional environmental investigations and testing.

(c) **Environmental Clean-up.** If the Site Investigation and/or Remedial Investigation discloses the need for Remedial Action, either the Buyer or the Seller may cancel this contract, in which event this Agreement shall be Null and Void and neither party shall have any further liability or obligation under this Agreement.

(d) **Definitions.** For the purposes of this Agreement the terms "Site Investigation;" "Remedial Investigation;" Remedial Action Work Plan; Remedial Action;" and "Response Action Outcome" shall have the same meanings as provided by N.J.S.A. 13:1K-8.

10. **FINANCING CONTINGENCY.** Waived.

11. **CITY COUNCIL APPROVAL.** The City of Vineland's obligations to purchase the property is contingent on approval by City Council and the Mayor of the City of Vineland. Approval shall include the publication of all required notices and applicable waiting period. In the event of a public challenge to the passage of the Ordinance approving the purchase either party may cancel this Agreement in writing and delivered in accordance with Section 19 below. Approval by the City shall be obtained within 60 days of the effective date of this Agreement. In the event City approval is not obtained within 60 days of the effective date of this Agreement either party may cancel this Agreement by notice given in accordance with paragraph 19 below.

12. **BREACH OF AGREEMENT.** In addition to any other remedy available to Buyer at law or in equity, in the event of a breach of this Agreement by Seller, Buyer shall have the right to seek specific enforcement of the terms of this Agreement.

13. ADJUSTMENTS AT SETTLEMENT AND CLOSING COSTS.

(a) **Time of Adjustments.** The Buyer and Seller agree to adjust any expenses or income relating to the property as of 11:59 pm on the date prior to the closing date, including, but not limited to taxes and utilities.

(b) **Utilities.** Buyer shall obtain readings of all utility meters to a date no sooner than two (2) days prior to settlement. At settlement, Seller shall pay all charges based upon such meter readings, plus a reasonable escrow for the additional charges due for the period from the date of the readings until settlement. Utilities shall be transferred by Seller to Buyer's name effective on the date of settlement. The Seller agrees not to interrupt utilities, provided Buyer makes the necessary transfers. Seller shall be responsible for payment of all real estate taxes up to closing.

(c) **Closing Costs and Expenses.** At closing Buyer shall pay all survey and title charges, including but not limited to, owners title insurance; all recording fees, including, but not limited to, the cost of recording the deed, and any other fee or cost which is customarily paid by Buyer. The Seller shall pay for the cost of recording the release of any mortgage on the property, the realty transfer fee, if any; and any other fee or cost which is customarily paid by Seller. The settlement/closing fee charged by the title company shall be paid by Buyer.

14. ASSESSMENTS. Certain municipal improvements such as curbs, sidewalks, water and sewer lines may result in governmental assessments against the property to pay for the improvement. All unpaid assessments against the property for work installed at the property before the date of settlement will be paid by the Seller at settlement. If the improvement is not installed at the property before the date of settlement, then the Buyer will pay the assessment. If the improvement is completed before the date of settlement but the amount of the assessment is not determined by the date of settlement, the Seller will pay an estimated amount at the settlement to be held in escrow by the title company or Buyer's attorney. When the amount of the assessment is finally determined, the Seller will pay any deficiency to the Buyer or the Buyer will return any excess to the Seller. Notwithstanding anything herein to the contrary, Buyer shall be responsible for any assessments against the property resulting from Buyer's proposed use of the property.

15. TIME AND PLACE OF SETTLEMENT. The Buyer and Seller agree to closing within 20 days of the end of the Due Diligence Period (the "Closing Date"). Both parties will fully cooperate so the closing can take place on or before the Closing Date. Closing shall be held by at the title company of Buyers choice located in Vineland, New Jersey. In the event closing is not held on or before the Closing Date, both parties shall cooperate in rescheduling the closing on a mutually convenient date. Upon Settlement, possession of the Property shall be delivered to Buyer.

16. DOCUMENTS TO BE DELIVERED AT SETTLEMENT. At Settlement, Seller will deliver to Buyer the following, executed, acknowledged and in recordable form, as appropriate:

- (a) a Bargain and Sale Deed with Covenants against Grantors Acts;
- (b) affidavit of title; and

(c) such other agreement document or writing required by the Title Company in connection with the closing.

17. **CONDITIONS OF CLOSING.** The Buyer's obligation to proceed to closing shall be contingent on the Seller compliance with the following conditions.

(a) The Property shall be free of all leasehold interests and tenants, except those approved in advance by Buyer in writing and delivered in accordance with Section 19 below;

(b) The Property shall be left broom clean, and free of all garbage and debris as of the date of closing.

(c) All of the personal property located in or about the Property, including but not limited to equipment, appliances, furniture, machinery, fixtures are included in the sale and shall be operational at the time of closing.

18. **RISK OF LOSS.** Seller shall assume all risk of loss, destruction or damage to the Property due to fire or other casualty through the completion of the Closing. If there is destruction, loss or damage, such that the Property is either destroyed or materially damaged, the Buyer's sole remedy shall be to cancel this Agreement, in which event this Agreement shall be NULL and VOID and neither party shall have any further liability or obligation under this Agreement.

19. **NOTICES.** All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally or when sent by certified mail, postage prepared as follows:

To Buyer:	City of Vineland Att: Richard Tonetta, Esq. 640 E. Wood Street Vineland, NJ 08360; and Michael E. Benson, Esq. 1138 E. Chestnut Avenue, Suite 2A Vineland, NJ 08360	To Seller:	Elizabeth M. Testa 309 North Harding Highway Landisville, New Jersey 07450
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20. **REAL ESTATE COMMISSIONS.** Seller shall be solely responsible for payment of all real estate commissions incurred as a result of the sale of the Property as contemplated by this Agreement.

21. **FLOOD AREA.** The federal and state governments have designated certain areas as "flood areas". This means they are more likely to have floods than other areas. If this property is in a "flood area" the Buyer may cancel this contract within 30 days of the date of this Agreement, by notice provided in accordance with paragraph 19, otherwise the right to cancel this Agreement in accordance with this paragraph shall be deemed waived.

22. **PARTIES BOUND.** This Agreement shall be binding upon the parties hereto and their

respective heirs, administrators, executors, successors, and assigns.

23. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon, enforceable against, and shall inure to the benefit of the assigns and successors of the parties hereto.

24. **AMENDMENT.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged, orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

25. **GOVERNING LAW.** This Agreement has been executed, delivered, and accepted in the State of New Jersey. This Agreement shall be governed, construed and interpreted in all respects in accordance with the laws of the State of New Jersey. The Superior Court of the State of New Jersey, in the County of Cumberland, shall have sole and exclusive jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Agreement, enforcement of this Agreement, or any other matter arising therefrom. The parties hereby expressly submit, and consent, in advance, to such jurisdiction in any action or proceeding commenced by either party in such Court and expressly waives any right that may otherwise exist to a trial by jury.

26. **EFFECTIVE DATE/COUNTERPARTS.** This Agreement shall be effective on the later of the date signed by either party ("Effective Date"). This Agreement may be executed in counterparts, each of which shall be binding against the party whose signature appears thereon. All such counterparts, together, shall consist of one and the same document. This Agreement may be executed and delivered by exchange of facsimile or PDF copies showing signatures of all parties, and those signatures need not be affixed to the same copy. The facsimile or PDF copy showing the signatures of all parties will constitute originally signed copies requiring no further execution.

28. **ENTIRE AGREEMENT.** This Agreement and the Exhibits attached hereto constitute the entire Agreement of the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior negotiations, understandings and agreements of the parties with respect to the subject matter hereof.

29. **EXECUTION.** The execution, delivery and performance of this Agreement by Seller has been duly authorized by the agent of the Seller and this Agreement constitutes the valid and binding obligation of Seller.

30. **TITLES AND SUBTITLES.** Titles of the paragraphs and subparagraphs are placed herein for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

31. **WORDS AND GENDER OR NUMBER.** As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

32. **SEVERABILITY.** In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

IN WITNESS WHEREOF, the Seller and Buyer have caused this Agreement to be executed on the day and year set forth in the first paragraph hereof.

BUYER:
City of Vineland

Date: _____, 2016

RUBEN BERMUDEZ, Mayor

SELLER:

Date: _____, 2016

Elizabeth Testa