

CITY OF VINELAND, NJ

ORDINANCE NO. 2023 - 56

ORDINANCE AUTHORIZING THE EXECUTION OF A CONTRACT OF SALE AND OTHER DOCUMENTS NECESSARY FOR THE ACQUISITION OF CERTAIN PROPERTY IN THE CITY OF VINELAND KNOWN AS BLOCK 3020, LOT 7 A/K/A 633 E. WOOD STREET, FOR \$208,000.00, TO BE USED FOR PUBLIC PURPOSES.

WHEREAS, there is a shortage of parking for public use in and about City Hall, especially during regular working hours as most parking as most of the parking is taken by employees of the City; and

WHEREAS, on evenings when the Zoning Board and Planning meet, parking is at a premium was well; and

WHEREAS, the property known as Block 3020, Lot 7 (the "Property") has come up for sale. The Property is located on the South Side of East Wood Street, directly across from Vineland City Hall, and adjacent to a vacant lot previously purchased by the City for use as a parking lot in anticipation of, and in conjunction with, the acquisition of Block 3020, Lot 7; and

WHEREAS, it is in the City's best interest to acquire property surrounding City Hall to better provide parking for the residents and visitors to City Hall; and

WHEREAS, the property is a .129 acres, improved with a multi-tenant building; and

WHEREAS, the property is currently free of all tenancies and the owner has agreed to deliver possession of the property to City free of all tenants.

WHEREAS, the City has performed an appraisal of the Property, dated December 9, 2021, which revealed the fair market value of the Property to be \$195,000.00;

WHEREAS, market values for residential real estate in the City of Vineland have increased since the date of the appraisal, and the Seller incurred certain costs in connection the City's requirement that the Property be free of all tenants prior to closing of title, including, but not limited to, the under-utilization of the Property by leaving units vacant.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor of the City of Vineland and Clerk are hereby authorized to execute any and all documents necessary for the acquisition of 633 E. Wood Street, Block 3020, Lot 7, for a purchase price of \$208,000.00, plus costs of closing and fees, including the execution of a Purchase and Sale Agreement in the form and substance attached hereto and made part hereof.

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

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

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

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2022, by and between **Russel Swanson**, whose address is 629 E. Wood Street, Vineland, New Jersey 08360 (at times referred to as "Seller"), and the **City of Vineland**, whose address is 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 located in the City of Vineland, County of Cumberland, State of New Jersey, known as **633 E. Wood Street, Block 3020, Lot 7** of the tax map of the City of 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 Buyers 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 **THREE HUNDRED AND FIFTEEN THOUSAND (\$208,000.00) 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 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 the Property since **December 21, 2018**. Since that time no one has questioned its 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) There are, and to the Sellers knowledge, there have never been, any underground or above ground storage tank(s) located on the property.

(f) The property has never been used for a business purpose and is not subject to any wetland restrictions.

(g) 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.

(h) The property is free of all tenants and no one has a lease hold interest in the 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 Seller shall reimburse Buyer for all costs incurred in connection with any inspections performed by Buyer or on Buyers behalf.

(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** (the "Due Diligence Period"), commencing on the Effective Date of this Agreement as defined in **Section 27** below, to conduct environmental due diligence. The Buyer may inspect and go upon the Property to make such test borings, percolation tests and other engineering studies and site analyses as Buyer may require, (the "Investigations"). 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 subject to any environmental contamination, problems, or concerns, this Agreement shall be NULL and VOID and neither party shall have any further liability or obligation under this Agreement and the Deposit, if any, shall be returned to the Buyer. Buyer may cancel this Agreement for any environmental reason, during the due diligence period. 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, 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. The Seller Agrees to honor any such assignment by direct transfer of the property to the assignee at the time of closing.

7. **APPRAISAL.** Waived.

8. **SURVEY.** During Due Diligence Period, in addition to the inspections and testing 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.** All of Seller's warranties concerning the environmental conditions of the Property and possible environmental contamination are contained in the Preliminary Assessment/Phase 1 Environmental Site Assessment Report covering the Property dated March 20, 2000 prepared by Katie Kurylo for Eastern Pacific Development by MidAtlantic Engineering Partners.

(b) **Site Investigation/Remedial Investigation.** In addition to the inspections and testings contemplated in **Section 5** above, at its option Buyer and its agents, employees and contractors shall have full access to the property for purposes of performing a Preliminary Assessment, Site Investigation and if warranted by the Site Investigation, a Remedial Investigation.

(c) **Environmental Clean-up.** If the Site Investigation and/or Remedial Investigation discloses the need for Remedial Action, the Buyer, in its sole discretion, may cancel this contract.

(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.** This Agreement is subject to City Council Approval.

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, in which event Seller shall pay Buyers cost of suit including reasonable attorney fees if Buyer is successful.

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. Seller, 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 Buyer 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 equally split between the Buyer and Seller.

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 30 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;

(b) Seller shall have removed all personal property located on or about the Property, including, but not limited to, equipment, appliances, furniture, machinery, vehicles, materials, and debris. Any personal property left at the property after closing may be disposed of by the Buyer, in Buyers sole discretion.

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 has the right to cancel 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 Industrial Commission
Att: Sandra Forsosisky
640 E. Wood Street
Vineland, NJ 08360
sforsosisky@vinelandcity.org

Alan G. Giebner, Esq.
1138 E. Chestnut Avenue, Suite 2A
Vineland, NJ 08360
agiebner@vinelandcity.org

To Seller: Russel Swanson
Att: Hans Lampart
925 E. Landis Avenue
Vinland, NJ 08360

20. REAL ESTATE COMMISSIONS. In the event either party has engaged a real estate agent, business broker, or has in any way incurred a commission expense, that party shall be solely responsible for payment of same.

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 during the due diligence period, 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. BULK SALES. Seller agrees to cooperate with the Buyer in the execution and delivery of any bulk sale or asset transfer sale application forms in connection with the transactions contemplated hereunder, including, without limitation, the C-9600 Form of Notification of Sale, Transfer or Assignment in Bulk, and agree that if the New Jersey Department of Taxation, pursuant to N.J.S.A. 54:50-38, notifies the Buyer that a possible claim for state taxes from a Seller exists, the Buyer shall hold back from the Purchase Price payable at Closing such amount as indicated by the New Jersey Department of Taxation (hereinafter referred to as the "Holdback"), and the parties will execute and deliver to one another a reasonable escrow agreement whereby the Title Company or the Buyer's counsel will hold such Holdback in a non-interest bearing account until such time as the New Jersey Department of Taxation issues a letter confirming (i) the amount of taxes which are due, in which case the Holdback shall be used for the payment of such taxes (with the balance of the Holdback, if any, to be released to the Seller) or (ii) no such taxes are due, at which time the Holdback funds, will be released to Seller

27. EFFECTIVE DATE/COUNTERPARTS. This Agreement shall be effective on the later of the date signed by either party. ("Effective Date"). The last party to sign the Agreement shall immediately e-mail a copy of the fully executed Agreement to the other party. 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: _____, 2023

Anthony Fanucci, Mayor

SELLER:

Date: _____, 2023

Russel Swanson