TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E

ORDINANCE NO. 001-2015

RE: AN ORDINANCE AUTHORIZING SALE OF LANDS, TO WIT BLOCK 417, LOTS 4, 5, 6, 7, 8, 9, AND 10

WHEREAS, the Township of Upper is the owner, in fee, of certain parcels of vacant ground located within the Township of Upper, County of Cape May, and State of New Jersey, set forth on the municipal tax map as Block 417, Lots 4, 5, 6, 7, 8, 9, and 10; and

WHEREAS, the Township has received an offer from Dolores M. Clayton, individually, and Ralph Clayton of Clayton Industries, Inc., formerly known as Clayton Equipment Corp., (hereinafter jointly "Claytons"), the owners of Block 417, Lots 1-3 and 11-61, real property contiguous with said parcels owned by the Township, to jointly purchase said parcels owned by the Township; and

WHEREAS, after discussion and deliberation, the Township Committee is of the opinion that the sale of said parcels will be in the best interest of the Township and will provide for the consolidation of existing nonconforming lots with a conforming lot; and

WHEREAS, the Township Committee has determined that the fair market value of such lots is the sum of $4,645.00 pursuant to the appraisal prepared by Louis A. Bonato on June 23, 2014; and

NOW, THEREFORE, BE IT ORDAINED by the Township Committee in the Township of Upper, County of Cape May and State of New Jersey as follows:

SECTION 1: The Township of Upper is hereby authorized to sell to Claytons the real property commonly known as follows:

Block 417, Lots 4, 5, 6, 7, 8, 9, and 10

since said persons are the owners of the only real property contiguous thereto in accordance with N.J.S.A. 40A:12-13(b)(5). Pursuant to said statute such sale shall not be for less than the fair market value of said real property and the fair market value of said parcels sold as well as the purchase price of same is hereby established as follows:

Block 417, Lots 4, 5, 6, 7, 8, 9, and 10

Fair Market Value: $4,645.00

SECTION 2: Prior to said sale, the Township will obtain a title report from a title company or abstract company licensed to do business in the State of New Jersey. Said report shall be available to the purchaser prior to final adoption of this Ordinance.

SECTION 3: The list of property authorized to be sold together with the minimum price thereof shall be posted at Township Hall and advertisement of the sale shall be made in a newspaper circulating in the Township within 5 days following enactment of this ordinance. Offers for the property may thereafter be made to the Township Committee for 20 days following said advertisement. The Township Committee may reconsider this ordinance not later than 30 days after enactment and thereafter advertise the property for public sale pursuant to N.J.S.A. 40A:12-13(a). The Township Clerk shall file with the Director of the Division of Local Government Services in the Department of Community Affairs sworn affidavits verifying the publication of the foregoing advertisements.

SECTION 4: Claytons shall pay the following sum to the Township Clerk prior to the adoption of this Ordinance: $500.00. This amount shall be used by the Township to defray Township expenses involved in Authorizing the Sale and terms thereof; Engineer's review; Attorney's review; legal advertising; title review; closing costs and other expenses.

SECTION 5: In the event the Township Committee receives no offers for the property pursuant to the advertisement of same in accordance with N.J.S.A. 40A:12-13(b), the adjacent property owner requesting such sale, Claytons, shall purchase same in accordance with this Ordinance and shall appear before the Township Clerk and execute the agreement to purchase same pursuant to this Ordinance. The Township Committee expressly reserves the right to revoke its authorization to sell the subject real property at any time prior to said sale. The Township Committee is authorized to confirm the sale by resolution to complete the transaction pursuant to this Ordinance and N.J.S.A. 40A:12-13.

SECTION 6: In the event the Township Committee revokes its authorization for the sale of the subject property in its sole judgment and discretion, then, all deposit monies made by Claytons shall be refunded except for the $50.00 application fee which shall be non-refundable.

SECTION 7: All payments required to be made pursuant to said sale to the Township Clerk must be made by personal check, cash or certified check, or any combination of the foregoing. All payments required to be made hereunder to a title company or abstract company

conducting the closing shall be made in collected funds, that is, by cash, certified check, cashier's check or wire transfer.

SECTION 8: A sum equal to ten percent (10%) of the purchase price for said parcel or parcels shall be paid to the Township of Upper by Claytons within 14 days of written notice requiring same from the Township Clerk to Claytons. Said notice shall be sent by the Township Clerk after the posting and advertisement required by SECTION 3 above has not resulted in an offer and the Township Committee has not reconsidered this Ordinance pursuant to N.J.S.A. 40A:12-13(b). The remaining balance of ninety percent (90%) of the highest bid for the parcel or parcels shall be paid to the Township of Upper, and must be received by the Township Clerk, not later than thirty (30) days after the date of said notice. In addition to the deposit of ten percent (10%), Claytons shall also be required to pay or tender within 14 days of said written notice from the Township Clerk the following:

(A) (i) The sum of $100.00 for the preparation of the Deed.

(ii) The sum of $70.00 for recording the Deed.

AT THE TIME OF CLOSING Claytons shall be required to pay the following sums:

(B) Any additional sum required for title search or title insurance.

(C) The cost of any survey ordered by the purchaser. The purchaser shall place such order directly with the surveyor or with the title company conducting closing, but the survey must be prepared in time to permit the closing to take place as scheduled.

(D) Title company settlement fees covering services to both the Seller and the Buyer.

(E) Any additional fees or costs chargeable by the title company.

SECTION 9: The closing of title shall take place as designated by the Township as follows:

(A) Township Hall, Petersburg, New Jersey; or

(B) Office of the Township Solicitor; or

(C) At the office of a title insurance company or title abstract company located within Cape May County.

SECTION 10: If the purchaser fails to close or fails to comply with the provisions hereof, the purchaser shall be in default and all amounts paid to the Township by or on behalf of the purchaser shall be retained by the Township as **LIQUIDATED DAMAGES AND NOT AS A PENALTY.**

SECTION 11: The Deed from the Township of Upper shall be what is commonly known as a Quitclaim Deed.

SECTION 12: The title to be delivered by the Township shall be free and clear of all taxes up to and including the date when the Deed is delivered and closing takes place. Purchaser shall be responsible for all taxes thereafter. Unless otherwise specified herein, the purchaser shall be liable for payment of all assessments, of any nature, against said land.

SECTION 13: The title to be delivered by the Township shall be under and subject to all easements and rights of way, recorded and unrecorded, whether for utilities or for others, and shall also be subject to all conditions, reservations and restrictions of record, if any. If the title report discloses an unmarketable condition of title, except as specified herein, the remedy of the purchaser shall be limited to the return of payments made to the Township of Upper on account of the purchase price and closing costs only. Any and all other amounts paid to the Township shall be non-refundable. This sale is under and subject to any riparian claim which may affect said property. If any such claim exists, it shall be the sole responsibility of the purchaser to meet and satisfy all requirements of the State of New Jersey with respect to said riparian claim and the payment of any compensation to the State of New Jersey on account thereof. Nothing herein shall be construed as obligating the Township of Upper to construct or maintain access roads to any portion of the property being sold. Such property may not qualify for a building permit due to lack of water supply, lack of sewer or septic facilities, lack of access, inadequate lot size, or other reasons, including those reasons set forth below. The purchaser is required to comply with all applicable zoning, building and health ordinances and codes and regulations. The property being sold may be situated in a Flood Hazard Zone. The Township of Upper makes no warranties or representations, expressed or implied, as to the property being offered for sale, the condition or marketability of the title or any other matter. The Township of Upper makes no warranties or representations, expressed or implied, as to whether or not the property being offered for sale contains wetlands anywhere on

the property. The Township makes no warranties or representations as to any matter of an environmental nature, or otherwise, which may prevent or limit building or construction.

SECTION 14: All references to Lots and Blocks described herein are to the Lots and Blocks as shown on the Current Official Tax Map of the Township of Upper.

SECTION 15: The purchaser shall be required to execute a document acknowledging that the sale is governed by the provisions of this Ordinance as well as N.J.S.A. 40A:12-13.

SECTION 16: The provisions of this Ordinance pertaining to this sale shall survive the closing of title and shall not merge into the Deed.

SECTION 17: It is a requirement of this sale that the purchasers of the subject property be the only contiguous property owner. Said purchasers shall be required to take immediate action to cause a consolidation of the property being purchased with all of the purchaser's existing adjacent lots so as to constitute all such lots in Block 417 as a single parcel of ground which shall not be further subdivided into more than one lot. This restriction shall be included in the deed of conveyance and shall run with the land. The purchasers shall complete the consolidation as a condition of the sale. The provisions of this Section shall survive closing and shall not merge into the Deed.

SECTION 18: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

ATTEST:

BARBARA L. YOUNG, Township Clerk

RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 9th DAY OF FEBRUARY, 2015 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 9th DAY OF MARCH, 2015 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

BARBARA L. YOUNG, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: February 9, 2015

Publication: February 13, 2015

Newspaper(s): The Press of Atlantic City

Second Reading & Public Hearing: March 9, 2015

Final Adoption: March 9, 2015

Final Publication Date: March 12, 2015

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on March 9, 2015 and notice of adoption was thereafter published pursuant to law in The Press of Atlantic City on March 12, 2015.

BARBARA L. YOUNG, Township Clerk