

**ORDINANCE OF THE TOWNSHIP OF LAKEWOOD,
COUNTY OF OCEAN, STATE OF NEW JERSEY
AUTHORIZING THE EXCHANGE OF CERTAIN
LANDS WITHIN THE TOWNSHIP OF LAKEWOOD,
IN PARTICULAR, THE TOWNSHIP OF LAKEWOOD
TO ACQUIRE BLOCK 445 LOT 6 (VACANT LAND
NO ASSIGNED ADDRESS IN THE AREA OF
COLUMBUS AVENUE) AND TO CONVEY BLOCK
1264 LOT 1 (VACANT LAND NO ASSIGNED
ADDRESS IN THE AREA OF WICKS STREET AND
SHORROCK STREET) AS PART OF AN
EXCHANGE OF LANDS PURSUANT TO N.J.S.A.
40A:12-16**

WHEREAS, Diamond Triumph Properties LLC is the owner of real property known as Block 445, Lot 6 in the Township of Lakewood, County of Ocean, State of New Jersey, and said land is vacant land with dimensions of approximately 40 ft. by 100 ft. in the RM zone ("Diamond Triumph Properties Lot"); and

WHEREAS, the Township is the owner of certain vacant lands that are located adjacent to Diamond Triumph Properties LLC Lot; and

WHEREAS, the Township is the owner of certain vacant land east of Shorrock Street, next to the Costco building on the south side of Route 70, known as Block 1264 Lot 1 located in the B-2 consisting of 1.16 acres ("Township Lot"); and

WHEREAS, the Township Lot is undersized, adjacent only to paper streets and is of no practical use to the Township; and

WHEREAS, the Township believes that it would be more advantageous for the Township to own the Diamond Triumph Properties Lot for future combination with adjacent lots owned by the Township; and

WHEREAS, the 2018 tax assessment for the Township Lot is \$32,000.00 and the 2018 tax assessment for the Diamond Triumph Properties Lot is \$19,000.00; and

WHEREAS, the Township Committee of the Township of Lakewood based on the foregoing is desirous of authorizing the exchange of lands based on the appraised values; and,

WHEREAS, pursuant to law, the municipality may enter into an exchange of lands when the governing body determines that the lands or rights or interests therein to be conveyed to such municipality or such lands or rights or interests therein are at least of equal value to, and their acquisition is more advantageous to, the municipality for public use, than the lands or rights or interests therein to be conveyed by the municipality, and that it is in the public interest that such exchange of lands or rights or interests therein be consummated; and

WHEREAS, in any case in which the value of the Township land to be exchanged exceeds the value of the land or rights or interests therein to be received by the Township shall exact additional cash consideration equal to the difference of the two values.

WHEREAS, based on the assessments, the Township has determined and the Township Tax Assessor agrees that the value of the Township Lot exceeds the value of the Diamond Triumph Properties Lot by \$13,000.00; and

WHEREAS, the Township of Lakewood now desires to undertake an exchange of the aforementioned properties pursuant to N.J.S.A. 40A:12-16 provided Diamond Triumph Properties pays to the Township the sum of \$13,000.00.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Lakewood, County of Ocean, State of New Jersey as follows:

SECTION 1. The Township of Lakewood in the County of Ocean is the owner of Block 1264, Lot 1 located within the Township of Lakewood.

SECTION 2. Diamond Triumph Properties LLC is the owner of real property known as Block 445, Lot 6 in the Township of Lakewood, County of Ocean, State of New Jersey.

SECTION 3. The Township Committee has determined it to be in the public interest to exchange these parcels pursuant to *N.J.S.A. 40A: 12-16* inasmuch as the lands or rights or interests therein to be conveyed to the Township of Lakewood is \$13,000.00 less in value to, and the acquisition of said property is more advantageous to the Township of Lakewood for public use than are the lands or rights or interests therein to be conveyed by the Township of Lakewood and that it is in the public interest of the Township of Lakewood that such exchange of lands or rights or interests therein be consummated provided Diamond Triumph Properties pays to the Township the sum of \$13,000.00.

SECTION 4. Thus the Township Committee of the Township of Lakewood does hereby approve the conveyance by the Township of the Township Lot to Diamond Triumph Properties in exchange for the acquisition by the Township from Diamond Triumph Properties of the Diamond Triumph Properties Lot provided Diamond Triumph Properties pays to the Township the additional sum of \$13,000.00.

SECTION 5. The following conditions for the exchange of the properties shall apply:

(a) The exchange of the Property is being made subject to the terms, conditions, restrictions and limitations of a Contract of Sale that shall be entered into between the parties in the form annexed hereto which shall include but not be limited to the following terms and conditions:

- 1) The properties being exchanged are being sold in an “AS IS” WHERE-IS” condition. Both the municipality and Diamond Triumph Properties LLC are responsible for conducting any and all inspections and testing of the property at their own cost

and expense.

- 2) The properties being exchanged are subject to existing zoning; however, Diamond Triumph Properties LLC should be aware that the Township has adopted a Smart Growth Plan which could require future changes in zoning for the Property. A copy of the Smart Growth Plan can be reviewed in the office of the Township Clerk.
- 3) The property being transferred to Diamond Triumph Properties LLC, to wit Block 1264, Lot 1 shall be consolidated with adjoining properties owned by Diamond Triumph Properties, LLC, if any.
- 4) Diamond Triumph Properties LLC shall bear the burden of paying any and all required sewer service and/or connection fees associated with the use of the property.
- 5) Diamond Triumph Properties LLC shall pay prorated real estate taxes for the balance of the current year as of the date of closing of title.
- 6) Diamond Triumph Properties LLC shall bear the burden of obtaining any and all approvals from the appropriate municipal, county or government agency, if applicable. Diamond Triumph Properties shall also bear the burden of obtaining and paying for any and all necessary permits, connections and/or arrangements to provide for water, electric, sewer, or solid waste disposal.
- 7) The closing of this land exchange is made "TIME OF THE ESSENCE" and must take place within 30 days of the execution of the proposed Contract attached hereto.
- 8) Each party shall pay the cost of recording fees.
- 9) Each party shall pay any and all realty transfer taxes that may be assessed in connection with this transaction.
- 10) With respect to this land exchange, NO real estate commission is owed.
- 11) No representation is made by the Township as to the utility, usability or environmental condition of the property being transferred to Diamond Triumph Properties LLC.

(b) This transfer must satisfy any requirements and meet any terms and conditions of the Contract of Sale. Diamond Triumph Properties LLC will execute the Contract upon

adoption of this Ordinance. To execute the Contract, Diamond Triumph Properties, LLC shall properly execute the Contract in the signature spaces at the end. Failure to execute the Contract properly shall not affect the obligation of Diamond Triumph Properties LLC or the validity of the exchange. The deed given by Lakewood Township for the Property will be a quit claim deed. No title contingencies or conditions are permitted.

(c) The exchange shall be subject to adjournment or cancellation by the Township Committee.

(d) The property being exchanged by the Township is being sold "AS IS" "WHERE IS." The property thus being exchanged is subject to existing encumbrances, liens, easements, zoning ordinances, other restrictions of record, such facts as an accurate survey would reveal and any present or future assessments for the construction of improvements benefiting the Property. A survey of the property may be conducted by Diamond Triumph Properties LLC at its discretion, as part of its due diligence.

(e) It is suggested and recommended that Diamond Triumph Properties LLC perform title searches and/or last owner and lien searches on the property being transferred by the municipality prior to execution of the Contract. It is further suggested and recommended that Diamond Triumph Properties LLC exercise due diligence with respect to every state of facts including open permits, local fines, penalties, taxes, assessments, etc., which may not be of record but which may nonetheless affect the use and enjoyment of the property or properties. The Township of Lakewood shall not be responsible for the costs associated with such searches in the event that the Township of Lakewood is unable to convey title.

(f) Lakewood Township shall perform title searches and/or last owner lien searches on the property being transferred by Diamond Triumph Properties LLC.

SECTION 6. The Mayor is authorized to execute and the Clerk to attest to any Deeds, closing statements or documents necessary to consummate the aforementioned exchange of lands.

SECTION 7. The conveyance by Diamond Triumph Properties shall be by Bargain and Sale Deed with Covenants against Grantors Acts.

SECTION 8. If any section, subsection, paragraph, sentence or any part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance not directly involved in the controversy in which such judgment shall have been rendered.

SECTION 9. This Ordinance shall take effect upon final passage and publication in accordance with law.

NOTICE

PUBLIC NOTICE is hereby given that the foregoing Ordinance was introduced at a meeting of the Township Committee of the Township of Lakewood, in the County of Ocean and State of New Jersey on **July 12, 2018**, and was then read for the first time. The said Ordinance will be further considered for final passage by the Township Committee in the Town Hall at 7:30 p.m. on **August 16, 2018**. At such time and place or any time or place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said Ordinance.

Kathryn Hutchinson, RMC, CMC, CMR, RPPS
Township Clerk

CERTIFICATION

I, Kathryn Hutchinson, Township Clerk of the Township of Lakewood, do hereby certify the foregoing to be a true and exact copy of the ordinance which was adopted by the Township Committee of the Township of Lakewood at a meeting held on **August 16, 2018** at 7:30 P.M., at the Municipal Building, located at 231 Third Street, Lakewood, NJ 08701.

Kathryn Hutchinson, RMC, CMC, CMR, RPPS
Township Clerk