

#4158

Sponsor:  
Council  
Member  
D. Brown

**WHEREAS**, pursuant to Wilm. C. (Charter) §1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

**WHEREAS**, Roxbury, LLC (the "Seller"), a Delaware limited liability company, has agreed to sell, and the City has agreed to purchase, contingent upon Wilmington City Council ("Council") approval, the real property located at 201 Vandever Avenue, Wilmington, Delaware, being Tax Parcel No. 26-029.20-095 (the "Property") for Six Hundred and Fifty Thousand Dollars (\$650,000.00). That certain Agreement of Sale is attached hereto as Exhibit "A"; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the Council authorizes and approves the acquisition of the Property by the City from Seller for Six Hundred and Fifty Thousand Dollars (\$650,000.00).

**BE IT FURTHER RESOLVED** that Council authorizes the Mayor or his designee to execute any and all documents and to take all actions necessary to effectuate the purchase and transfer of the Property to the City.

Passed by City Council,  
Feb. 4, 2016

ATTEST: Maribel Seijo  
City Clerk

Approved as to form this 3<sup>rd</sup>  
day of February, 2016.

[Signature]  
Assistant City Solicitor

**SYNOPSIS:** This resolution authorizes the City to acquire Tax Parcel No. 26-029.20-095 from Roxbury, LLC for \$650,000.00.

EXHIBIT A

## AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between ROXBURY LLC, a Delaware limited liability company or it's assignee, (the "Seller") and the CITY OF WILMINGTON, a Delaware municipal corporation ("Buyer").

### WITNESSETH THAT:

WHEREAS, Seller is the legal owner of that certain parcel of real property located at 201 Vandever Avenue, Wilmington , Delaware, being Tax Parcel No. 26-029.20-095 (the "Property"); and

WHEREAS, Seller desires to sell the Property and Buyer, subject to the conditions set forth in this Agreement, desires to acquire the Property.

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties hereto, intending to be legally bound hereby, do covenant and agree with each other as follows:

1. Purchase and Sale of Property. Subject to the terms and conditions hereinafter set forth, Seller does hereby agree to sell and convey to Buyer, and Buyer does hereby agree to purchase, (i) the Property, together with all of the right, title and interest, if any, of Seller in all easements, privileges and rights belonging to and benefiting the Property and any improvements and appurtenances thereto and (ii) all of the right, title and interest, if any, of Seller in any adjacent or abutting lands lying in the beds of streets or roads.

Buyer is aware that Seller intends to perform an IRC Section 1031 tax deferred exchange. Buyer agrees to cooperate in the IRC Section 1031 tax exchange by Seller at no cost or liability to Buyer from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract by the Seller. Any assignment shall not relieve either party of its obligations.

2. Closing. Subject to the contingencies set forth in Section 11 of this Agreement, the closing under this Agreement (the "Closing") shall take place on the tenth (10<sup>th</sup>) business day following the end of the Due Diligence Period (the "Closing Date"). The Closing shall occur at the offices of the Buyer's closing attorney at 2 p.m. or at such other time and/or location that is mutually acceptable to all parties.

3. Purchase Price.

a. The purchase price (the "Purchase Price") that shall be paid to the Seller, and which the Seller agrees to accept for the Property, shall be the sum Six Hundred and Fifty Thousand Dollars (\$650,000), an amount equal to the appraised value of the property. A copy of the appraisal of the Property is attached hereto as "Exhibit A"

b. The Purchase Price will be paid to Seller at Closing, subject to any adjustments or prorations provided herein.

4. Title and Conveyance. At Closing, the title to the Property shall be conveyed to Buyer in fee simple by special warranty deed and shall be good and marketable and free and clear of all liens, encumbrances, easements, reservations, restrictions and encroachments of any nature, except for those non-monetary title defects designated as "Permitted Exceptions" as provided in this paragraph (the "Permitted Exceptions"). During the Due Diligence Period, Buyer shall, at Buyer's expense, order a title report (the "Title Report") for the Property. On or before the end of the Due Diligence Period, Buyer shall give written notice to Seller of any objections which Buyer may have to title defects disclosed by the Title Report. If Buyer fails to give notice to Seller by such date, Buyer shall be deemed to have waived its right to object to any non-monetary title defects disclosed by the Title Report, which shall thereafter be deemed to be Permitted Exceptions. Within five (5) business days of receipt of any such notice of objection, Seller shall give notice to Buyer of whether Seller intends to attempt to cure such title defects prior to Closing. In the event Seller elects to refuse to attempt to cure such title defects or if, having commenced attempts to cure any objection, Seller later notifies Buyer that Seller will be unable to effect a cure thereof by Closing or no longer desires to attempt to cure such objection, Buyer shall have five (5) business days from the receipt of Seller's refusal notice in which to elect (i) to proceed to Closing notwithstanding such title defects, or (ii) to terminate this Agreement, and the parties shall have no further rights or obligations hereunder except for any right or obligation under any Section of this Agreement which by its terms survives any termination hereof. In the event Seller elects to attempt to cure all such title defects, then this Agreement shall continue in effect, subject to Buyer's termination right as set forth herein if Seller subsequently is unable or declines to cure a matter to which Buyer has objected. Seller agrees not to voluntarily encumber the Property from and after the Effective Date through the Closing or termination of this Agreement without Buyer's consent. Buyer may object to any title matters arising or being recorded after the effective date of the Title Report, in which case, Seller shall have the same option to attempt to cure and Buyer shall have the same option to accept title subject to such matters or to terminate this Agreement as those which apply to any notice of objections made by Buyer on or before the end of the Due Diligence Period. The deed for the sale of the Property to the Buyer shall only include the nominal sum of \$10 as the listed consideration.

5. Possession and Lease to Seller. At the Closing, Seller shall deliver to Buyer actual possession of the Property, subject to the lease to Seller described below, by delivery of a deed.

Buyer and Seller agree that Buyer shall lease the Property to Seller for One Hundred and Eighty (180) days following Closing for \$1.00. This time frame is designed to provide Seller with sufficient time to remove personal and business property (as described as furniture, equipment, cars, trucks, boats, trailers, RV's, parts, personal belongings, including, but not limited to, tools, materials, compressors, hand tools, forklifts, computers, filing cabinets, desks, office chairs, storage racks and any other items that are not buildings, structures or fixtures) from the Property and may be reduced in time by Seller providing written notice to Buyer that Seller has removed all of its personal and business property from the Property.

6. Due Diligence.

a. Buyer and its employees, agents, representatives, contractors and subcontractors shall have an investigation period beginning on the Effective Date and ending on the earlier to occur of (i) ninety (90) days after the Effective Date or (ii) the date that the City Contingencies listed in clauses (iii) and (iv) of Section 11(a) of this Agreement have been satisfied (the “Due Diligence Period”) to access and inspect the Property and to conduct such tests, investigations and other due diligence matters that Buyer, in its sole and absolute discretion, deems necessary or advisable to determine the suitability of the Property, including but not limited to, the right to conduct surveys, engineering studies, soil tests, environmental studies and any other tests or studies which Buyer may deem necessary or appropriate in connection with its acquisition of the Property. Within ten (10) days of the Effective Date, Seller shall promptly turn over to Buyer or otherwise make available to Buyer all information, surveys, plans, reports, tests, studies or other related documents, that are in the possession, custody or control of Seller or Seller’s employees, agents, contractors or subcontractors with respect to past or present generation, use, handling, storage, treatment, release, discharge, emission, leakage, spillage, removal or disposal of any Regulated Substances (hereinafter defined) at the Property in violation of any applicable federal, state and local environmental statutes, regulations, ordinances and permits (collectively “Environmental Laws”). For the purpose of this Agreement, the term “Regulated Substances” shall mean hazardous substances (as that term is defined in the Comprehensive Environmental Response Compensation and Liability Act, 45 U.S.C. Paragraph 9601 et seq., or any applicable state laws), hazardous materials (as defined in the Hazardous Materials Transportation Act, 49 U.S.C. Paragraph 1801 et seq. or any applicable state law) or petroleum or petroleum related products.

b. Seller will reasonably cooperate with Buyer and Buyer’s employees, agents, representatives, contractors and subcontractors in Buyer’s investigation of the Property, including without limitation: (i) complying with reasonable requests for information and records; and (ii) assisting Buyer in obtaining governmental agency and other records.

c. If Buyer’s inspections, surveys, studies or tests reveal any condition that is unacceptable to Buyer, then Buyer, in its sole and absolute discretion, shall have the right (but not the obligation) to terminate this Agreement by giving written notice to Seller at any time on or before the last day of the Due Diligence Period. Upon the termination of this Agreement by the Buyer in accordance with this Section 6(c), the parties hereto shall have no further rights or obligations hereunder except for any right or obligation under any Section of this Agreement which by its terms survives any termination hereof.

d. During the Due Diligence Period, Seller hereby grants to Buyer and its agents, contractors, engineers and employees the right to enter upon the Property, at their own risk, at all reasonable times, upon twenty-four (24) hours prior notice, in order to conduct said inspections, examinations and audits. Buyer shall indemnify and save Seller harmless from any and all liability arising from the negligent or willful misconduct of Buyer or Buyer’s agents or contractors entering upon the Property. If the Property is disturbed in any manner, Buyer shall restore the same to its original state.

7. Representations or Warranties of Seller. Seller does hereby represent and warrant that, the following representations and warranties are true and correct at the time of execution of this Agreement, and Seller shall be deemed to have reaffirmed such representations and warranties as of the date of Closing:

a. Seller is a validly existing limited liability company and in good standing under the laws of the State of Delaware, with all legal power and authority to undertake, observe and perform all of Seller's agreements and obligations hereunder and under Seller's Closing Documents (hereinafter defined).

b. Seller's entry into this Agreement and the observance and performance of each of Seller's agreements and obligations hereunder have been duly authorized by all necessary action of Seller.

c. The execution and delivery of this Agreement will not conflict with or result in a breach of any law, regulation or order, or any agreement or instrument to which Seller is a party or by which Seller is bound or the Property is subject, and this Agreement and the documents to be delivered by Seller pursuant to this Agreement, will each constitute the legal, valid, and binding obligations of Seller; and there are no claims, defenses (personal or otherwise) or offsets to the validity of or enforceability against Seller of this Agreement and the documents to be delivered pursuant hereto.

d. Except for the lease back described in paragraph 5, there are no leases, options, agreements of sale, licenses, rights of first refusal, restrictive covenants, unrecorded easements, rights of possession or any other occupancy or access agreements are presently in existence, or shall be in existence at the date of Closing hereunder, with regard to the Property or any portion thereof, and no individual or entity other than the Seller shall be in possession of any portion of the Property at Closing.

e. Seller has not received notice of any pending or threatened actions, proceedings or potential actions from any (i) governmental agency, (ii) entity, or (iii) individual, involving the Property or any portion of the Property.

f. To Seller's knowledge, there are no underground storage tanks located on the Property.

8. Brokers. Seller is represented by Gary M. Betty ("Broker") of Deaton McCue Commercial Real Estate Brokers in connection with this transaction and the Broker will receive a 6% commission from Seller upon the sale of the Property. Buyer and Seller each agrees to indemnify and hold the other harmless from any breach of such representation and warranty contained in Paragraph 8 herein.

9. Adjustments and Incidental Costs. Real estate taxes and water, sewer and storm water fees payable to the City of Wilmington for the Property, shall be apportioned as of the date of Closing. Seller shall be solely responsible for petitioning New Castle County for the return of

any County real estate taxes previously paid by Seller or paid at Closing from the Purchase Price that may be refundable due to the sale of the Property to Buyer.

10. Closing Documents.

a. At Closing, Seller shall execute and deliver to Buyer the following (all of which shall be in a form reasonable acceptable to Buyer and all of which are sometimes collectively referred to herein as "Seller's Closing Documents"):

i. A special warranty deed for the Property, which shall be prepared by Buyer (subject to Seller's reasonable approval of form and content), and any transfer tax affidavits or forms required to record such deed;

ii. All documents reasonably required by Buyer's title company that are necessary in order for the title company to issue an ALTA form of owner's title insurance policy at its regular rates to Buyer for the Property, which policy shall only have the Permitted Exceptions as exceptions to such policy;

iii. All documents reasonably required by Buyer evidencing the authority and power of Seller to consummate the transactions contemplated herein;

iv. A signature page for a mutually agreed-upon closing statement;

v. A certification under Section 1445 of the Internal Revenue Code, stating that Seller is not a foreign person, in form sufficient to absolve Buyer from liability for failing to withhold ten (10%) of the Purchase Price; and

vi. Such other documents reasonably requested by Buyer to effectuate the transfer of the Property to Buyer.

b. At Closing, Buyer shall execute and deliver to Seller the following (all of which are sometimes collectively referred to herein as "Buyer's Closing Documents"):

i. A signature page for a mutually agreed-upon closing statement.

ii. Any and all documents required to be signed by Buyer to transfer this property under IRC Section 1031 tax exchange, if any.

11. City Contingencies.

a. Buyer shall not be obligated to complete Closing unless and until the following conditions have been satisfied in full (collectively, the "City Contingencies"):

i. Seller must not be in default of any of its obligations hereunder.

ii. All of the Seller's representations or warranties in Paragraphs 7 of this Agreement must be true and accurate as of the date of the Closing, and title to the Property must be as described in Paragraph 4 of this Agreement.

iii. The Wilmington City Council must have approved of the acquisition of the Property pursuant to this Agreement.

iv. Buyer must have entered into a Brownfields Development Agreement with the Division of Waste and Hazardous Substances, Site Investigation and Restoration Section for the State of Delaware's Department of Natural Resources and Environmental Control for the Property. Buyer shall make application for a Brownfields Development Agreement with the Department of Natural Resources and Environmental Control, Site Investigation and Restoration Program ("DNREC-SIRS") within sixty (60) days of the Effective Date.

b. In the event that the City Contingencies have not been satisfied by the Closing Date, unless further extended by written agreement of the parties, Buyer may elect to have this Agreement terminated and become null and void, so that the parties will have no further obligation to or claims against one another under this Agreement, or Buyer may waive, in its sole discretion, any or all of such conditions and complete Closing.

12. Time is of the Essence. Time is of the essence for the performance of this Agreement.

13. Default by Seller/Buyer. In the event that either party shall violate or fail to fulfill and perform any of the terms and conditions of this Agreement required to be performed by them, then the other non-violating party shall be permitted to exercise any right or remedy available to them at law or in equity on account of the violating parties' default hereunder, including, but not limited to, the right to compel specific performance of the obligations hereunder. Formal tender of purchase monies is hereby waived.

14. Entire Agreement. This is the entire agreement between the parties in connection with the purchase of the Property. There are no oral promises, conditions, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition is to be made to this Agreement except by written agreement executed by both parties hereto. No provision shall be construed for or against any party to this Agreement on the ground that such party drafted this Agreement.

15. Governing Law. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Delaware.

16. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be sent prepaid by (i) certified mail, return receipt requested, (ii) overnight courier of national or regional recognition (such as Federal Express), or (iii) personal delivery:

- a. If intended for Seller:  
Roxbury LLC  
P.O. Box 275  
Montchanin, Delaware 19710



with a copy to:

Carl W. Heckert, Esquire  
Joseph W. Benson, P.A.  
1701 N. Market Street  
P.O. Box 248  
Wilmington, Delaware 19899

b. If intended for Buyer:

City of Wilmington Department of Real Estate & Housing  
Louis L. Redding City/Cty. Bldg., 7<sup>th</sup> Floor  
800 N. French Street  
Wilmington, DE 19801  
Attn: Director

with a copy to:

City of Wilmington Law Department  
Louis L. Redding City/Cty. Bldg., 9<sup>th</sup> Floor  
800 N. French Street  
Wilmington, DE 19801  
Attn: City Solicitor

17. Assignability. Buyer shall have the right to assign or otherwise transfer this Agreement and its rights hereunder to any government entity designated by Buyer. Seller shall have the right to assign or otherwise transfer this Agreement and its rights hereunder to any other assignee.

18. Captions and Headings. The captions and headings of the paragraphs hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Agreement.

19. Binding Agreement. This Agreement (and the benefits and burdens thereof) shall extend to and bind the heirs, administrators, executors, successors and assigns of the respective parties hereto.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and when attached hereto shall constitute a single instrument. Any executed signature page may be transmitted to the other party by facsimile transmission or as an electronic file (such as .PDF).

[the remainder of this page was intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first written above.

**SELLER:**

**ROXBURY LLC**

By: \_\_\_\_\_

Name:

Title:

**BUYER:**

**CITY OF WILMINGTON**

By: \_\_\_\_\_

Name:

Title:

Approval as to form this  
\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Assistant City Solicitor