ORDINANCE NO. 2015-2

ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF OCEAN, COUNTY OF OCEAN, STATE OF NEW JERSEY REPEALING AND REPLACING CHAPTER 289 OF THE TOWNSHIP CODE TO BE ENTITLED "SECONDHAND DEALERS"

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

SECTION 1. The Township Code of the Township of Ocean is hereby amended to repeal and replace existing Chapter 289, entitled "Secondhand Dealers" with the following, which shall read as follows:

CHAPTER 289: SECONDHAND DEALERS

289:1. Purpose and Intent

The purpose and intent of this chapter is to assist law enforcement officials and victims of crime in recovering stolen precious metals and other secondhand goods by requiring minimum identification, reporting, maintenance and distribution criteria for licensed dealers in these goods.

No person shall use, exercise, or carry on the business, trade, or occupation of the buying, selling, or pawning of precious metals or other secondhand goods without complying with the requirements of this chapter in the exact manner described herein.

289:2. Definitions

"ACCEPTABLE IDENTIFICATION" means a current valid New Jersey Driver's License or Identification Card, a current valid photo driver's license issued by another US state, a valid United States Passport, or other verifiable US Government issued identification, which will be recorded on the receipt retained by the dealer and subsequently forwarded to the local police department on request.

"DEALER" means any person, partnership, limited liability company, corporation, or other entity who, either wholly or in part, engages in or operates any of the following trades or businesses: the buying for purposes of resale of precious metals, jewelry, or other secondhand goods as defined herein; pawnbrokers as defined herein; itinerant businesses as defined herein.

"ITINERANT BUSINESS" means a dealer who conducts business intermittently within the municipality or at varying locations.

"TOWNSHIP CLERK" means the statutory officer whose duties are defined in N.J.S.A. 40A:9-133.

"PAWNBROKER" means any person, partnership, association or corporation: lending money on deposit or pledge of personal property, other than choses in action, securities, or printed evidences of indebtedness; purchasing personal property on condition of selling it back at a stipulated price; or doing business as furniture storage warehousemen and lending money on goods, wares or merchandise pledged or deposited as collateral security.

"PRECIOUS METALS" means gold, silver, platinum, palladium, and their alloys as defined in N.J.S.A. 51:5-1 et seq. and N.J.S.A. 51:6-1 et seq.

"PUBLIC" means individuals and retail sellers, not to include wholesale transactions or transactions between other merchants.

"REPORTABLE TRANSACTION" means every transaction conducted between a dealer and a member of the public in which precious metals, jewelry, or any other secondhand goods as defined herein are purchased or pawned.

"SECONDHAND GOODS" means used goods such as antiques, gold, silver, platinum, or other precious metals, jewelry, coins, gemstones, gift cards, any tools, telephones, typewriters, word processors, GPS devices, computers, computer hardware and software, television sets, radios, record or stereo sets, electronic devices, musical instruments, sporting goods, automotive equipment, collectibles, game cartridges, DVDs, CDs, and other electronically recorded material, firearms, cameras and camera equipment, video equipment, furniture, clothing, and other valuable articles. For the purposes of this ordinance, secondhand goods shall not include goods transacted in the following manner: i) judicial sales or sales by executors or administrators; ii) occasional or auction sales of household goods sold from private homes; iii) auctions of real estate; iv) the occasional sale, purchase, or exchange of coins or stamps by a person at his permanent residence or in any municipally owned building who is engaged in the hobby of collecting coins or stamps and who does not solicit the sale, purchase, or exchange of such coins or stamps to or from the general public by billboard, sign, handbill, newspaper, magazine, radio, television, or other form of printed or electronic advertising.

"SELLER" means a member of the public who sells or pawns used goods such as precious metal, jewelry, or other secondhand goods to a dealer.

"TRANSIENT BUYER" means a dealer, as defined herein, who has not been in a registered retail business continuously for at least six (6) months at any address in the municipality where the Dealer is required to register or who intends to close out or discontinue all retail business within six (6) months.

289:3. License Requirement for Dealers

A. No person, partnership, Limited Liability Company, corporation, or other entity shall engage in the business of buying, selling, or pawning of precious metals or other secondhand goods, as defined above, within the jurisdiction of the municipality, without having first obtained a license therefore from the Township Clerk, which license shall bear a number issued by the Township Clerk.

B. The application for a license to the Township Clerk shall set forth the name, date of birth, and address of the dealer, whether or not he or she is a citizen of the United States, and whether or not he or she has ever been convicted of any crime(s), disorderly person's offense(s), or municipal ordinance violation(s), and the date(s) thereof.

C. Advertising in any print or electronic media or by sign that any of those articles or secondhand goods referred to in 289:2 above are being bought in any location within the municipality shall constitute engaging in business as a dealer of secondhand goods for purposes of this chapter. No person, partnership, Limited Liability Company, corporation or other entity shall place or cause to be placed any advertisement for purchase of such articles or goods without stating in the advertising the license number issued to a person or entity by the municipality. In any print advertisement, the license number shall appear in type no smaller than eight point in the lower-right-hand corner of the advertisement. In any advertisement in electronic media, the license number shall be visually or audibly stated. Failure to state or indicate the license number shall be a violation of this chapter and shall be subject to the penalties established in 289:9.

D. Licensees may not operate at any location other than site specified in the license. Licensees operating at multiple locations must have each location separately licensed. Each location must be permanent. Itinerant businesses and transient buyers, as defined in 289:2 above, are not eligible for licensure and are prohibited from operating in the Township.

289:4. Application process for Dealers; approval or denial

A) Upon receipt of an application completed pursuant to this chapter, the Township Clerk shall refer such application to the Chief of Police, who shall make an investigation of the prospective licensee, pursuant to this chapter for the purpose of determining the suitability of the applicant for licensing. The investigation shall include, but shall not be limited to the following:

1) The experience of the applicant in the business of purchase and sale of those articles or goods referred to in 289:2 above, although nothing in this section shall be construed to warrant denial of a license solely on the basis of lack of experience;

2) The reputation of the applicant for fair dealing in the community, which shall be made among credible sources, which sources shall be disclosed to the applicant in the event of a denial of any license;

3) Any criminal record of the applicant including any past convictions for any crime(s), disorderly person's offense(s), or municipal ordinance violation(s) within this or any other jurisdiction. The Chief of Police may, as part of the application process, require a fingerprint criminal background check through the Federal Bureau of Investigation, Criminal Justice Information Services Division, which may require an additional fee from the applicant.

4) The type of operation contemplated to be conducted by the applicant, particularly whether the business is to be operated from a fixed location, whether it is to be conducted from a location primarily devoted to the purchase and sale of precious metal or other secondhand goods, and other factors bearing on whether the licensed business will be of a fixed and permanent nature.

B) The Chief of Police shall complete any investigation pursuant to this chapter within thirty (30) days of the submission of the application to the Township Clerk, fully completed by the applicant. If a criminal record check has been requested within the thirty-day period and has not been received by the Chief of Police within that period, the Chief of Police may, if all other factors are satisfactory, recommend a conditional issuance of the license subject to the finding regarding criminal record.

C) The Chief of Police shall, upon completion of the investigation, recommend "grant" or "denial" of the license to the Township Clerk, who shall grant or deny the license. Any recommendation of the Chief of Police shall be in writing and, in the case of a recommendation of denial, shall state fully and specifically the reasons for said recommendation. If the Township Clerk accepts the recommendation of the Chief of Police to deny any license, the applicant shall be notified in writing within ten (10) days of such

denial and the Clerk shall forward to the applicant a statement of the reason or reasons for such denial.

D) Grounds for recommending denial of license may include reliable information indicating that the applicant has in the past engaged in fraudulent or deceptive business practices in a business identical to or similar to a dealer in secondhand goods. A license may be denied if the investigation reveals a conviction of the applicant or any of its principal officers or employees of any crime(s), disorderly persons offense(s) in which deceit or misrepresentation is an element; or any conviction of any crime(s), disorderly persons offense involving theft or the receiving of stolen goods, regardless of whether the applicant was a principal, accessory before the fact, after the fact, or a co-conspirator; or any prior municipal ordinance violation(s) by the applicant or any of its principal officers or employees in this or any other jurisdiction. A license may be denied if the applicant fails to demonstrate an ability to satisfactorily comply with the electronic reporting requirements specified in 289:5, the retention and inspection requirements of 289:6, or any other portion of this chapter. Upon receipt of the recommendation of the Chief of Police, the Township Clerk shall issue or deny the license accordingly, contingent upon the receipt of a bond as required by 289:6 of this chapter.

E) Whenever any application for a permit is denied, the applicant shall be entitled to a hearing before a three-person panel appointed by the Chief of Police, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such denial. Any applicant exercising the right to appeal must file a written notice of appeal within ten (10) days of receiving written notice of denial of a license to act as a dealer of secondhand goods.

F) No license shall be assignable by the dealer.

289:5. Identification of seller; recordkeeping requirements for dealers

For every reportable transaction between a dealer and the public, the dealer shall be required to do as follows:

A) Require of each person selling or pawning precious metals or other secondhand goods acceptable identification as defined above in 289:2.

B) Require each seller to execute a "Declaration of Ownership," which shall contain the following certification: "*My signature confirms that I*

am the sole legal owner of and am legally authorized to sell the goods being sold. By signing below I certify that I did not obtain and do not possess the identified goods through unlawful means. I am the full age of eighteen years and the identification presented is valid and correct."

C) Record and issue to each person selling or pawning such goods on a sequentially numbered receipt:

1) the name, address, and telephone number of the purchaser, including the clerk or employee of the licensee making the purchase;

2) the name, address, date of birth, and telephone number of the seller or sellers;

3) a photographed recording of the seller in a format acceptable to the Chief of Police, along with a physical description of the seller, including height and weight (approximate), hair color, eye color, facial hair, if any, etc.;

4) a photographed recording of the seller's presented acceptable identification, as set forth in 289:2, in a format acceptable by the Chief of Police;

5) A photographed recording of all items sold in a format acceptable by the Chief of Police. When photographing, all items must be positioned in a manner that makes them readily and easily identifiable. Items should not be grouped together when photographing or imaging. Each item should have its own photograph;

6) the receipt number;

7) a detailed, legible description of the item(s) and the manufacturer and model of the item(s) if known; in the case of jewelry, the descriptions must include style, length, color, design, and stones, if any; any identifying marks, including numbers, dates, sizes, shapes, initials, names, monograms, social security numbers engraved thereon, serial numbers, series numbers, or any other information, which sets apart the particular object from others of like kind;

8) the price paid for the purchase or pawn of the item(s);

9) if precious metals, the net weight in terms of pounds Troy, pennyweight (Troy) or kilograms/grams; fineness in terms of karats for gold, and sterling or coin for silver, in accordance with N.J.S.A. 51:5-1, N.J.S.A. 51:6-1 et seq.;

10) The time and date of the transaction.

D) The information outlined in subsection (C) above, must additionally be electronically documented through the use of an electronic database system authorized by the Chief of Police. Installation and training in this software will be made mandatory as of the effective date of this chapter and licensing will be conditional upon compliance with proper use of the system as described herein. These records shall be subject to the inspection of any authorized police officer or any sworn law enforcement officer acting in the performance of their duty as set forth in subsection (F) below. Through the use of applicably required computer equipment, and using the electronic format approved by the Chief of Police, every dealer shall enter all reportable transactions into the electronic database by the end of the close of business on the same date as the purchase or receipt of property for pawn. The information entered must contain all pertinent information outlined in subsection (C) above.

E) In the event of a database failure, or dealer's computer equipment malfunction, all transaction information is required to be submitted on paper forms approved by the Chief of Police within twenty-four (24) hours from the date of purchase. In the event that paper forms are used, the dealer is responsible to enter all transaction information set forth in subsection (C) above into the database as soon as possible upon the dealer's equipment being repaired or replaced, or the database coming back into service. Failure by the dealer to properly maintain computer equipment in a reasonable fashion, or failure by the dealer to replace faulty computer equipment, may result in the dealer being cited for a violation of this chapter and subsequently being subject to the penalties for doing so including revocation of the dealer's license as described in 289:6.

F) It shall be the requisite duty of every dealer, and of every person in the dealer's employ, to admit to the premises during business hours

any member of the police department to examine any database, book, ledger, or any other record on the premises relating to the reportable transactions of precious metals or other secondhand goods, as well as the articles purchased or received and, where necessary, relinquish custody of those articles as provided in 289:6.

289:6. Retention; revocation; other restrictions

A) All precious metals and other secondhand goods purchased, received for pawn, as described above, are to be made available for inspection by the Chief of Police or designee thereof at the designated business address for a period of at least ten (10) calendar days from the date the transaction information is actually reported to the Chief of Police in the approved manner described above in 289:5 except for jewelry, which must be maintained for at least ten (10) calendar days or for the statutory period provided in N.J.S.A 2C:21-36(d). All precious metal or other secondhand goods subject to inspection must remain in the same condition as when purchased or received for pawn and shall not be sold, disposed of, changed, modified, or melted by the dealer until the ten-day retention period has expired.

B) Upon probable cause that goods held by a dealer are stolen, and providing that the seller signed the mandatory statement required by 289:5(B) upon the sale of those goods, a law enforcement officer with jurisdiction should charge the seller with theft by deception under N.J.S.A. 2C:20-4 on behalf of the dealer, who shall be considered the "victim" of the offense for the purposes of N.J.S.A. 2C:43-3. The officer shall seize the goods, provide the dealer with a receipt, and issue a criminal complaint against the seller for theft by deception and any other criminal charges for which the officer has probable cause that the seller has committed. If convicted of theft by deception and if so found by an order of a court of valid jurisdiction, the seller will be responsible for providing restitution to the dealer under N.J.S.A. 2C:44-2 for the amount paid by the dealer to the seller for the stolen goods.

C) If market conditions would create a hardship on the dealer by holding precious metals or other secondhand goods for such period, the dealer may present the property to the Chief of Police in order that it may be photographed and, if deemed necessary by the Chief of Police, an investigation may be implemented. The Chief of Police shall have the authority to grant the dealer a waiver of the requirement under this section.

D) In addition to all other reporting requirements, every dealer shall maintain for at least five years, a written record of all purchases of

precious metals and other secondhand goods in the form prescribed in 289:5(C).

E) No dealer shall purchase any item covered by this chapter from any person under the age of 18 or in the absence of providing prior notification of such purchase to the Chief of Police or business designee identifying the individual from whom such purchase is to be made and the item to be purchased.

F) Suspension. The Chief of Police or a designee thereof is hereby empowered to temporarily suspend for cause any dealer's license and rights to operate there under. This penalty shall be in addition to any fines and penalties the dealer may incur pursuant to 289:9 of this chapter.

i. Grounds for suspension. The following shall constitute grounds for suspension: violation of any provisions of this chapter, including failure to comply with any training or fees associated with the electronic database software system in use by the municipality; violation of any other statute, regulation, or local ordinance; or any other illegal, improper, or fraudulent activity.

ii. Procedure for suspension. Upon determination that appropriate grounds exist and that a suspension is warranted, the Chief of Police or a designee thereof shall issue a written notice of suspension of license to the offending dealer and to the Township Clerk, which shall set forth the grounds for the suspension and notify the dealer of his or her right to appeal pursuant to subsection (H). A temporary suspension shall issue immediately, pending the outcome of any appeal taken. Suspended dealers must immediately cease engaging in the business of purchasing for resale, receiving for pawn, and/or selling of precious metals and/or other secondhand goods in the municipality until reinstatement.

iii. Reinstatement. Suspended dealers may be reinstated only when the grounds leading to the suspension have, in the determination of the Chief of Police or the Chief's designee, been cured, corrected, or appropriately rectified; or if reinstatement is deemed appropriate by the three-person panel appointed by the Chief of Police, upon the timely filing of an appeal as provided in subsection (H).

G) Revocation. A license issued under this chapter may be revoked by the Township Clerk upon written recommendation from the Chief of

Police or the Chief's designee that the dealer is no longer qualified, capable or competent to comply with the requirements of this chapter. This penalty shall be in addition to any fines and penalties the dealer may incur under 289:9.

i. Grounds for revocation. The following shall constitute grounds for revocation: a third violation under this chapter; a second violation under this chapter less than one year after an earlier violation under this chapter; conviction for a criminal offense within this or any jurisdiction; or multiple violations of any other regulations or local ordinances within this or any jurisdiction.

ii. Procedure for revocation. Upon a determination that appropriate grounds exist and that a revocation is warranted, the Chief of Police of the Chief's designee shall so report to the Township Clerk in writing. A temporary suspension will immediately and automatically issue, if one is not already in effect, pending the outcome of the charge. A three-person panel, appointed by the Chief of Police, shall review the stated grounds for revocation and the panel shall issue an appropriate disposition of suspension, revocation, or reinstatement. If the panel determines that revocation is the appropriate disposition, it shall set forth the grounds for the same in writing in the form of a notice of revocation, which shall be provided to the dealer. The notice shall advise the dealer of the right to appeal. If the panel determines that suspension is the appropriate disposition, it shall provide the dealer with a notice of suspension that shall advise the dealer of the right to appeal. Following revocation, the dealer must relinquish his or her license and must immediately and indefinitely cease operating as a dealer of precious metals or other secondhand goods within the municipality.

H) Appeal. Any applicant wishing to appeal an issuance of a suspension or revocation shall be entitled to a hearing before a three-person panel, appointed by the Chief of Police, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such suspension or revocation. Any applicant exercising the right to appeal must file a written notice of appeal within ten (10) days of receiving written notice of revocation or suspension of license.

l) A dealer shall have the right to change the location of the licensed business, provided that he or she notifies the Township Clerk, in writing, of the street address of said new location.

289:7. Bond

Each dealer covered under this chapter shall deliver a bond to the Township Clerk executed by the applicant as principal and executed by a surety company authorized to do business under the laws of the State of New Jersey as surety. The bond shall be subject to review and approval by the Township Attorney, and shall be in the penal sum of $1,000.00, conditioned for the due and proper observance of and compliance with the provisions and requirements of all ordinances of the municipality in force or which may be adopted respecting the conduct of this business and conditioned also that the bond shall be and remain for the benefit of any person or persons who shall have received judgment against the dealer licensed under this chapter, which damage shall be established by a judgment of a court of proper jurisdiction. Said bond shall contain the following language: "The obligation of this bond shall, in addition to the Township of Ocean, be and remain for the benefit of any person who shall obtain a judgment against obligor as a result of damage sustained in operation pursuant to any license granted under this chapter." Said bond shall be kept for a minimum of one year from the date of issuance of license and must be renewed annually along with the license.

289:8. Fees; period of license validity

A nonrefundable fee for initial application and license for a pawnbroker or a dealer in precious metals or other secondhand goods, as covered under this chapter, is $100.00. The annual renewal fee for a license is $100.00. These fees are separate from and in addition to any fees the dealer must pay in relation to the mandatory electronic database system designated by the Chief of Police, as provided by 289:5(D) of this chapter. Payments are to be made in the manner directed by the Township Clerk. Licenses issued pursuant to this chapter are valid for one year, from January 1 through December 31. Initial applications and applications for renewal must be submitted no later than October 1.

289:9. Violations and penalties

Violation of any provision of this chapter by any dealer shall, upon conviction thereof, be punished by a fine not exceeding $2,000, or by a term of imprisonment or a period of community service not exceeding ninety (90) days, in addition to a suspension or revocation of operating license as provided in 289:6(F) and (G) above. Each and every violation shall be considered a separate violation. Each violation shall result in an additional suspension period. Any person who is found guilty of violating the provisions of this chapter within one year of the date of a previous violation and who was fined for the previous

violation may be sentenced by the court to an additional fine as a repeat offender and, in addition, may be subject to revocation proceedings as provided in 289:6(G). The additional fine imposed as a repeat offender shall not be less than the minimum or exceed the maximum fine provided herein, and same shall be calculated separately from the fine imposed for the violation of this chapter

289:10 Implementation

Effective July 1, 2015, no existing licensee may continue to operate without having been re-licensed pursuant to this chapter. Dealers holding existing licenses scheduled to expire at any time in 2015 must be relicensed pursuant to this chapter effective July 1, 2015. No fee is due for the transition. Fees will be due upon renewal in 2016 and beyond.

289:11. Time limit for conformance; repealer; severability

A) Any person, partnership, Limited Liability Company, corporation, or other entity engaging in the business of a pawnbroker, or a dealer in precious metals or other secondhand goods shall conform to the provisions of this chapter within ninety (90) days following the effective date of this chapter.

B) All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

C) Nothing contained in this chapter is intended to replace any pre-existing statutory requirements governing pawnbrokers, as in N.J.S.A. 45:22-1 *et seq.*, the sale of precious metals as in N.J.S.A. 51:6A-1 *et seq.*, the sale of secondhand jewelry as in N.J.S.A. 2C:21-36 *et seq.*, or any other statutory provision regarding any subject matter discussed herein.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3. All other provisions of the Township Code, except as set forth herein, shall remain unchanged.

SECTION 4. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6. This ordinance shall become effective after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Ocean held on the 23rd day of April, 2015, and will be considered for second reading and final passage at a regular meeting of the Township Committee to be held on the 14th day of May, 2015 at 6:30 p.m., at the Municipal Building located at 50 Railroad Avenue, Waretown, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

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DIANE B. AMBROSIO, RMC
Municipal Clerk, Township of Ocean

CERTIFICATION

I, **DIANE AMBROSIO,** RMC, Township Clerk of the Township of Ocean, do hereby certify that the foregoing ordinance was duly adopted on second reading by the Township Committee of Ocean Township at a meeting held on the 14th day of May, 2015.

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DIANE B. AMBROSIO, RMC
Municipal Clerk, Township of Ocean

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SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6. This ordinance shall become effective after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Ocean held on the 23rd day of April, 2015, and will be considered for second reading and final passage at a regular meeting of the Township Committee to be held on the 11th day of June, 2015 at 6:30 p.m., at the Municipal Building located at 50 Railroad Avenue, Waretown, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

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DIANE B. AMBROSIO, RMC
Township Clerk, Township of Ocean

CERTIFICATION

I, **DIANE AMBROSIO,** RMC, Township Clerk of the Township of Ocean, do hereby certify that the foregoing ordinance was duly adopted on second reading by the Township Committee of Ocean Township at a meeting held on the 11th day of June, 2015.

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DIANE B. AMBROSIO, RMC
Township Clerk, Township of Ocean

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