

ORDINANCE NO. 2014- 20

AN ORDINANCE AUTHORIZING THE EXECUTION OF A REAL PROPERTY PURCHASE AND SALES AGREEMENT BY AND BETWEEN JOFFE LUMBER AND SUPPLY CO., INC., AND THE CITY OF VINELAND FOR THE ACQUISITION OF BLOCK 7110, LOT 29, IN THE FORM APPROVED BY THE CITY SOLICITOR.

WHEREAS, on February 11, 2014, City Council adopted Ordinance No. 2014-7 authorizing the acquisition of Block 7110, Lot 1, and Block 7110, Lots 31 & 32, said properties to be used for further economic development projects; and

WHEREAS, adjacent to Block 7110, Lots 31 & 32, and located along the Conrail Right of Way is Block 7110, Lot 29, which is an 18' parcel; and

WHEREAS, in order to gain access for rail frontage for Block 7110, Lots 1, 31 & 32, acquisition of Block 7110, Lot 29, is necessary; and

WHEREAS, Joffe Lumber & Supply Co., Inc., the owner of Block 7110, Lot 29, has offered for sale said property for Six Thousand, Five Hundred (\$6,500.00) Dollars; and

WHEREAS, the CFO has certified the availability of funds for acquisition.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor and Clerk are authorized to execute a Property Purchase & Sales Agreement with Joffe Lumber & Supply Co., Inc., and all other documents necessary to consummate said sale as approved by the City Solicitor for the price of Six Thousand, Five Hundred (\$6,500.00)

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2014, by and between JOFFE LUMBER AND SUPPLY CO., INC. whose address is P.O. Box 2309, Vineland, New Jersey 08360 (at times referred to as "Seller"), and CITY OF VINELAND of 640 E. Wood Street, Vineland, NJ 08360 (at times referred to the "City" or "Buyer"), or its ASSIGNS.

WHEREAS, on February 24, 2014 the parties entered into a Agreement for the purchase of a parcel of real property approximately 1.266 acres of vacant land located in the City of Vineland, County of Cumberland, State of New Jersey, located on South East Boulevard and known as, Block 7110, Lot31 and Lot 32, Vineland, New Jersey, together with all rights incident thereto and all improvements and fixtures located thereon (herein at times referred to as the "Property").

WHEREAS, Joffe Lumber and Supply Co., Inc. has also agreed to sell Block 7110, Lot 29 to the City of Vineland.

WHEREAS, the City of Vineland has agreed to purchase Block 7110, Lot 29 for the sum of \$6,500 from Joffe Lumber and Supply Co., Inc.

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 narrow strip of vacant land highlighted in blue on the attached tax map, located in the City of Vineland, County of Cumberland, State of New Jersey, and known as Block 7110, Lot 29, Vineland, New Jersey, together with all rights incident thereto and all improvements and fixtures located thereon (herein at times referred to as the "Property").

2. PURCHASE PRICE. The total consideration or purchase price (the "Purchase Price") for the Property shall be SIX THOUSAND FIVE HUNDRED (\$6,500.00), DOLLARS payable at the time of closing.

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.

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.

5. **INSPECTION/DUE DILIGENCE.** The Buyers right to inspect the property and perform its due diligence shall be the same as, and coincide with, its rights under the February 24, 2014 Real Property Purchase and Sale Agreement for Block 7110, Lot 31 and Lot 32.

6. **TERMINATION OF AGREEMENT.** This Agreement of Sale shall automatically terminate in the event that the the February 24, 2014 Real Property Purchase and Sale Agreement is terminated or the purchase of Block 7110, Lot 31 and Lot 32 is not consummated.

7. **ASSIGNMENT.** The Buyer's rights and obligations under the terms of this Agreement may be assigned by the Buyer in its sole discretion.

8. **SURVEY.** During Due Diligence Period, in addition to the inspections and testings 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.** Seller warrants and represents that (i) neither the Seller nor any previous owner of the Property or operator of a business on the Property has ever generated, stored, or disposed of any hazardous substances on the Property that were not properly disposed of, which generation, storage or disposal has or may result in a substantial fine or other substantial cost to cure as a result of a claimed violation of any statute, ordinance, by-law, rule or regulation applicable at the time of such storage or disposal; and (ii) that no other party has ever generated, stored, or disposed of such substances on the Property that were not properly disposed of, which generation, storage or disposal has or may result in a substantial fine or other substantial cost to cure as a result of a claimed violation of any statute, ordinance, by-law, rule or regulation applicable at the time of such storage of or disposal; and (iii) there has not been a release of any hazardous substances on the Property by anyone else. For the purposes of this agreement, "hazardous substances" shall mean "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, U.S.C.A. the regulations thereunder, and as defined in applicable state law.

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

(c) **Environmental Clean-up.** Subject to the Buyers right to terminate this Agreement during the Due Diligence Period, if the Site Investigation and/or Remedial Investigation discloses the need for Remedial Action, the Seller shall be responsible for the preparation of a Remedial Action Work Plan, and to perform and pay the cost of all Remedial Action. Seller shall also provide Buyer Response

Action Outcome by a licensed site remediation professional that the contaminated site was remediated in accordance with all applicable statutes and regulations, and based upon an evaluation of the historical use of the site, or of any area of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no contaminants present at the site, or at any area of concern, at any other site to which a discharge originating at the site has migrated, or that any contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations, and all applicable permits and authorizations have been obtained.

(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. **PURCHASE OF BLOCK 7110 LOT 1.** The Buyers obligation to purchase the Property is contingent on Buyer's ability to purchase and close on property known as Block 7110, Lot1 (the "Other Property). In the event that Buyer is unable to purchase and close on the Other Property, Buyer may cancel this Agreement. Buyer agrees to make a good faith effort to purchase the Other Property, upon terms and conditions similar to those contained in this Agreement, provided that Buyer shall not be obligated to pay more than \$650,000.00 for the Other Property. The parties agree that the closing under the terms of this Agreement shall occur simultaneously with the closing on the "Other Property." In the event of an extension of the closing date on the Other Property, the closing date under the terms of this Agreement shall be automatically extended to coincide with the closing date on the "Other Property." Buyer shall have option of canceling this Agreement pursuant to the contingency provided in this Section at any time prior to the recording of the Deed to the Property subject to this Agreement of Sale.

11. **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.

12. **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) **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.

13. **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.

14. TIME AND PLACE OF SETTLEMENT. The Buyer and Seller agree to closing at the same time as the closing on Block 7110, Lot 31 and Lot 32, Vineland, New Jersey. The parties agree that closing on Block 7110, Lot 29, Lot 31 and Lot 32 shall be combined as a single closing. Upon Settlement, possession of the Property shall be delivered to Buyer.

15. 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.

16. CONDITIONS TO 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, except those approved in advance by Buyer in writing and delivered in accordance with Section 18 below;

(b) Seller shall have removed all personal property located on or about the Property, and the Property shall be free of waste garbage or debris of any kind.

16. 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. Notwithstanding the above, it shall be Buyer's responsibility to complete and timely file any bulk sale or asset transfer sale application forms required by the State of New Jersey in connection with the transactions contemplated hereunder, including, without limitation, the C-9600 Form of Notification of Sale, Transfer or Assignment in Bulk with the New Jersey Department of Taxation.

18. 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
Att: Sandra Forosisky
640 E. Wood Street
Vineland, NJ 08360

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

To Seller: Joffe Lumber and Supply Co., Inc.
Att: Steven Wolf
P.O. Box 2309
Vineland, New Jersey 08360

20. **REAL ESTATE COMMISSIONS.** Both parties warrant and represent that they have not engaged the services of a real estate agent or business broker in connection with the sale. 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. **PARTIES BOUND.** This Agreement shall be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and assigns.
22. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon, enforceable against, and shall insure to the benefit of the assigns and successors of the parties hereto.
23. **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.
24. **GOVERNING LAW.** This Agreement shall be construed and governed in all respects in accordance with the laws of the State of New Jersey and any litigation arising from alleged breach of this Agreement shall be filed in the Superior Court, Cumberland County, State of New Jersey.
25. **EFFECTIVE DATE/COUNTERPARTS.** This Agreement shall be effective on the later of the date signed by either party ("Effective Date"). This Agreement may be executed in counterparts, each of which shall be binding against the party whose signature appears thereon. All such counterparts, together, shall consist of one and the same document. 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.
26. **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.
27. **EXECUTION.** The execution, delivery and performance of this Agreement by Seller has been duly authorized by the President of Sellers and the Agreement constitutes the valid and binding

obligation of Seller and that a properly certified Resolution to this effect will be presented to Buyer at or before the Closing Date.

28. 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.

29. 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.

30. 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: _____, 2014

RUBEN BERMUDEZ, MAYOR

SELLER:
JOFFE LUMBER AND SUPPLY CO., INC.

Date: _____, 2014

STEVEN WOLF, CEO

