

CITY OF VINELAND

RESOLUTION NO. 2016- 293

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT OF SALE, DEED OF TRANSFER AND SUCH OTHER CLOSING DOCUMENTS NECESSARY FOR THE TRANSFER OF CERTAIN CITY OWNED INDUSTRIAL PROPERTY KNOWN AS 2321 INDUSTRIAL WAY, VINELAND TO LUCCA FREEZER AND COLD STORAGE LLC VINELAND NEW JERSEY

WHEREAS, the Vineland Industrial Commission has received an offer for the acquisition of City owned industrial property located in the City of Vineland Industrial Park by Lucca Freezer and Cold Storage, LLC., said property being described as Block 1003, Lot 13 on the City of Vineland Tax Map (Property) in the amount of \$236,600.00; and

WHEREAS, the Vineland Industrial Commission has recommended to the City Council of the City of Vineland to accept the offer subject to the following terms and conditions which shall be contained in the agreement of sale in the form and substance attached hereto and made a part hereof.

1. A deposit of \$23,660 upon execution of the agreement of sale and the balance at the closing of title.
2. That the City of Vineland transfer title with all permitted exceptions, including an environmental work zone easement and flood hazard area as well as any other existing restrictions of record.
3. That the Property may not be further subdivided.
4. That the sale is subject to the terms and conditions contained in N.J.S.A. 40:55B – 1 et seq., and that the purchaser provide all plans for the improvements to be constructed on the property to the Vineland Industrial Commission Properties and Building Review Committee in accordance with the terms of the contract.
5. The property is being sold in an as is condition, and the purchaser has 90 days due diligence period.
6. That the purchaser shall be responsible for all closing costs, including legal fees.
7. The purchaser shall commence construction of the improvements and complete the same within 12 months of settlement subject to any extension is provided in an agreement of sale.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute an Agreement of Sale in the form and substance as attached hereto as well as the deed of transfer, and any other closing documents necessary to consummate the transaction.

Adopted:

President of Council

ATTEST:

City Clerk

AGREEMENT OF SALE

THIS AGREEMENT, made and dated this ____ day of _____, 2016, between City of Vineland, a municipal corporation of the State of New Jersey (hereinafter referred to as "City"), and Lucca Freezer & Cold Storage, LLC, whose principal place of business is 2321 Industrial Way, Vineland, NJ 08360 or its Permitted Assignee as that term is defined in Article Two (hereinafter referred to as "Buyer");

WITNESSETH

WHEREAS, the City having formed an Industrial Commission pursuant to N.J.S.A. 40:55B-1, *et seq.*; and

WHEREAS, the Vineland Industrial Commission having been formed to promote and encourage industrial settlement within the City of Vineland; and

WHEREAS, the Vineland Industrial Commission having received an offer from the Buyer herein, and having accepted the said offer, and having given notice of such acceptance to the Mayor of the City of Vineland, and having certified to the City that, in the opinion of the Vineland Industrial Commission, the terms of the sale are favorable to all interests of the City; and

WHEREAS, pursuant to the said Notice and Certification, the Mayor and the City having, through Resolution of its governing body, approved the terms so submitted, and desiring to contract directly with the Buyer to such sale of vacant land.

NOW, THEREFORE, it is covenanted and agreed by and between the parties hereto, in consideration of the mutual undertakings herein set forth and pursuant to applicable laws and regulations, as follows:

ARTICLE ONE

The Buyer agrees to purchase from City and City agrees to sell to Buyer, all of the real Property (hereinafter referred to as the "Property"), particular described as Lot 13 of Block 1003, on the City of Vineland Tax Map as shown on Exhibit A (the "Property"). Buyer

acknowledges that Buyer has had the opportunity to inspect the physical condition of the Property to the extent deemed necessary by Buyer and agrees to purchase the Property as is in its present condition subject to its Due Diligence rights set forth in Article Six. The Property consists of approximately 11.76 acres of land for the purchase price of Two Hundred and Thirty Six Thousand Six Hundred (\$236,600.00) Dollars under the following terms and conditions:

(a) A payment of Twenty Three Thousand Six Hundred and Sixty (\$23,660.00) Dollars, being 10% of the purchase price, in the form of cash, certified check, cashiers check or postal money order shall be made by the Buyer payable to The City of Vineland, simultaneously with the execution of this Agreement, which sum shall be held in escrow by the Business Administrator pending performance by both parties hereto of the terms and conditions of this Agreement. The parties hereto shall indemnify and hold harmless the Business Administrator from and against all costs, claims and expenses, including reasonable attorneys fees, incurred in connection with the performance of his/her duties hereunder, except with respect to actions or omissions taken or suffered in bad faith, in willful disregard of this Agreement, or involving gross negligence on the part of the Business Administrator. If closing does not occur, either party may submit a written request to the Business Administrator for return of any items delivered into his/her possession. The Business Administrator shall notify the other party of such demand. If an objection is not received from the other party within 10 business days after the giving of such notice, the Business Administrator is hereby authorized to make such distribution. If an objection is received within such time, or if for any other reason the Business Administrator in good faith elects not to make such distribution, the Business Administrator shall continue to hold such items until otherwise directed by written instructions from both parties or a final judgment of a court.

Upon completion at settlement of the terms and conditions of this Agreement, the

said deposit is to be applied to the purchase price and the Business Administrator shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The settlement date cannot be made final at this time. The Buyer and City agree that settlement shall occur within thirty days (30) days after the expiration of the due diligence period set forth in Article Six. If settlement shall not have taken place within Thirty (30) days of the expiration of the due diligence period (a) through no fault or delay of the City, then the City may terminate this Agreement and/or (b) through no fault or delay of Buyer, Buyer may terminate this Agreement, in each case upon at least ten (10) days written notice to the other. Both parties will fully cooperate so that settlement can take place within 30 days of the expiration of the Due Diligence Period. Settlement will be scheduled at a title agency located in Vineland, New Jersey or such other location mutually agreeable to the parties. At Settlement, the Buyer shall pay the balance of the purchase price, together with Buyer's closing costs and the City shall deliver a bargain and sale deed with covenants against grantor acts and any other documents reasonably requested by Buyer's title company, for the Property being sold hereunder. All payments shall be in the form of cash, certified check, cashiers check or postal money order shall be made by the Buyer payable to either The City of Vineland or the applicable title company as the case may be.

(c) If this Agreement is not terminated for one of the reasons specified herein, and, in the event the Buyer does not make settlement in accordance with the terms hereof, the payment or payments made on account shall, at the City's option be forfeited as liquidated damages for the failure of the Buyer to settle. Any and all payments made on account shall be returned to the Buyer only if this Agreement is terminated by the Buyer during the due diligence period, or City is unable to transfer marketable title to the Buyer, unless Buyer is willing to accept such title as City is able to convey.

ARTICLE TWO

At closing, title to the Premises 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"), subject only to the Permitted Title Exceptions (as hereinafter defined). The title to be delivered shall be free and clear of all encumbrances, including municipal liens and assessments and liability for assessment or improvements now constructed. The Buyer shall conduct its examination of title within the Due Diligence Period set forth in Article Six and shall be considered part of its due diligence inspections of the Property and its title in accordance with the provisions of Article Six. If the Buyer does not timely terminate this Agreement in accordance with Article Six, the Buyer shall be deemed to have accepted the quality of title existing at the end of the Due Diligence Period. Seller shall not grant or create any new or additional liens, restrictions or encumbrances or otherwise alter the quality of title thereafter through and including the closing date.

Permitted exceptions include a Environmental Work Zone Easement and the Flood Hazard Area (FHA) shown on Exhibit A which reduces the usable land from 11.76 acres to 6.76 acres. The parties acknowledge and agree that they have taken into consideration the Environmental Work Zone Easement and the Flood Hazard Area in negotiating the purchase price of the Property. Buyer further acknowledges that Buyer is aware of the terms and conditions contained In the Matter of Vineland Chemical Superfund Site CERCLA-97-0103 Agreement and Covenant Not to Sue and the Prospective Purchaser Agreement entered into between the New Jersey Department of Environmental Protection and the City of Vineland. Buyer has been provided copies of, and has had adequate opportunity and expertise to review the following two Agreements (1) Agreement to Covenant Not to Sue, City of Vineland, New Jersey, CERCLA Index No. 97-0103, dated March 21, 1997, between the Seller and the Unites States; and (2) Prospective Purchasers Agreement, dated May 7, 1997, between the State of New Jersey and Seller (collectively the "Environmental Agreements"). Buyer represents and warrants that it understands its obligations under the Environmental Agreements and agrees to assume all such obligations from the City under the Environmental Agreements. Buyer further represents

and warrants that it understands its failure to adhere strictly to the terms and conditions of the Environmental Agreements could result in their respective termination, which could give rise to liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Act, N.J.S.A. 58:10A-1, et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., among others. Permitted exceptions also include the existing easement, in favor of the City, for a sign which is located at the corner of Industrial Way and N. Mill Road as depicted on Exhibit A attached hereto.

Buyer represents and warrants it will undertake no act, nor fail to take action when so required under the Environmental Agreements which could result in a breach or termination of the Environmental Agreements. Furthermore, Buyer agrees if its acts or omissions proximately cause such breach or termination, it will hold the City harmless and will indemnify the City, from and against all losses, liabilities penalties, damages, costs and expenses (including without limitation reasonable attorney fees and court costs) that the City may incur or suffer or that may be asserted against the City by any person or entity arising out of (a) any failure by Buyer or the City to comply with its obligations under this Agreement, or (b) any action taken or omitted to be taken by the City in reliance upon information or authorization received from Buyer. Buyer shall further indemnify and hold the City harmless from and against all losses, damages, costs and expenses by reason the failure by the Buyer to complete its due diligence in accordance with the terms of this Agreement, and/or by Buyer choosing to waive any and all of the conditions set forth in this Agreement and by the City being requested by Buyer and then choosing to waive any or all of the conditions set forth in this Agreement in order to accelerate the date of closing.

In addition to any existing restrictions of record, each said deed shall be subject to the following restrictions, which shall be restrictions running with the land to be conveyed:

- (1) The Property may not be further subdivided;

(II) Neither this Agreement nor the interest created herein shall be assigned without the express written consent of the City for one year subsequent to the date of conveyance or as otherwise permitted by the Vineland Industrial Commission, except that Buyer may, prior to or subsequent to settlement, assign or convey its interest under this Agreement and/or the Property to a Permitted Assignee. Permitted Assignees are limited to an entity controlled by the Buyer or the principals of the Buyer. "Controlled" shall be defined as ownership of at least 51% of the shares of stock, 51% of the member interest, or 51% of the partnership interest of the controlled entity; and

iii. The restrictions and conditions contained in the Environmental Agreements.

The provisions set forth in Article Two shall survive closing and not merge into the deed transferring the Property to Buyer.

ARTICLE THREE

The City warrants to Buyer and represents that the premises are subdivided as indicated on the filed site plan as obtained by Buyer and in accordance with all applicable local laws and requirements.

ARTICLE FOUR

This sale is being transacted by the City in accordance with N.J.S.A. 40:55B-1, et seq. It is specifically understood that the Buyer shall submit all plans for the improvements to be constructed on the Property to the Vineland Industrial Commission Properties & Building Review Committee within 30 days of the Effective Date of this Agreement. The Committee shall verify that the restrictions contained in Article Two are complied with. Approval by the Committee shall not unreasonably be withheld. The Due Diligence Period provided as defined in Article Six shall not be extended by the failure of the Buyer to timely submit plans to the Industrial Commission Properties & Building Review Committee.

At settlement, the Buyer agrees to execute a Bargain and Sale deed with covenants as to grantor's acts conveying back the aforementioned Property to the City. The deed being held in escrow shall specifically provide that it is subordinate to any mortgage

granted by Buyer as security for construction and/or permanent financing obtained for the purpose of purchasing the Property and/or constructing the building and other site improvements on the Property. This deed shall be held in escrow by the Business Administrator, pending the Buyer's performance hereunder, as more specifically provided for in Article Ten. The parties hereto shall hereafter indemnify and hold harmless the Escrow Agent against all costs, damages or expenses which may arise in consequence of the performance of his/her escrow duties as herein provided except with respect to actions or omissions taken or suffered in bad faith, in willful disregard of this Agreement, or involving gross negligence on the part of the Business Administrator. The provisions set forth in Article Four shall survive closing and not merge into the deed transferring the Property to Buyer.

ARTICLE FIVE

In the event that title cannot be conveyed by the City as provided herein and the Buyer is unwilling to accept such title as may be conveyed by the City, then, at Buyer's option, all payments shall be returned to Buyer, unless Buyer is willing to accept such title as City is able to convey .

ARTICLE SIX

Buyer shall have a period of not more than 90 days from the Effective Date of this Agreement (the "Due Diligence Period") to go upon the Property for the purpose of obtaining engineering data, preparing plans, conducting such tests and for completion of such other due diligence as is customary for transactions of this type. This includes, without limitation confirmation of the following: (a) that the title, soils, property conditions, environmental, zoning, hazardous materials, plans and specifications relating to the Property are acceptable to Buyer; (b) that the terms of the Environmental Agreements and other contracts affecting the Property are acceptable to Buyer; (c) that Buyer will be able to complete the permitting, if any, required for its intended use; (d) obtaining confirmation from the NJDEP that the Property is within the sewer service area and that the NJDEP will

not object to or withhold the issuance of a Treatment Works Approval ("TWA") to the Buyer, if applicable; and (e) obtaining approval for the improvements to be constructed on the Property by the Vineland Industrial Commission Properties & Building Review Committee, provided plans for the improvements have been timely submitted as provided for in Article Four. Buyer may cancel this Agreement during the Due Diligence Period upon written notice to the City as provided for in Article Twelve for any of the reasons set forth above.

Buyer shall indemnify, defend and hold the City of Vineland harmless from and against all claims, causes of action and losses of whatsoever kind or nature, including, but not limited to, all liability by reason of injury (including death) to persons and damage to any property and mechanics liens or similar charges which may affect the Property, resulting from the entry onto the Property or work conducted thereon by or on behalf of the Buyer. In the event the Buyer terminates this Agreement in accordance with the terms of this Article, the deposit shall be returned to the Buyer and neither Party shall have any further obligations under the terms of this agreement, except the Buyer's obligation to indemnify the Seller as provided by this Article. In the event Buyer elects to terminate this Agreement in accordance with the terms of this Agreement, the Buyer shall deliver to the City copies of all test results obtained by the Buyer relating to the Property. The indemnity provided for by Article Eight shall survive closing and not merge into the deed transferring the Property to Buyer.

ARTICLE SEVEN

The City shall pay for the drawing of the deeds and the realty transfer fee, if any. The Buyer shall pay for all searches, title insurance, survey expenses, closing costs and engineering fees. The City Solicitor representing the Vineland Industrial Commission shall be supplied with the title search, title insurance and certified survey of the Property for the City and its Industrial Commission from a licensed New Jersey title company and surveyor. At settlement, Buyer shall also be responsible for all reasonable fees incurred by the

Solicitor representing the Vineland Industrial Commission, the said fees to be paid at the then current hourly rate charged by the Solicitor to the City of Vineland; however, said fees shall not exceed the sum of Five Thousand (\$5,000.00) Dollars.

ARTICLE EIGHT

Taxes and other municipal charges, if any, shall be adjusted as of the date of settlement. 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. 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.

ARTICLE NINE

The City warrants and represents that it has not engaged the services of a real estate agent or business broker in connection with the sale. Buyer is represented by M. L. Ruberton Agency, LLC a licensed real estate broker in this transaction. The City agrees to pay M. L. Ruberton Agency, LLC a commission of 2.5% of the sale price of the Property, provided that payment of such a commission is not in violation of N.J.S.A. 40A:12-13 or other applicable law.

ARTICLE TEN

The Buyer warrants that it will commence construction of the improvements to be constructed on the Property and completed within twelve (12) months after settlement, subject to extensions as provided for herein. Construction shall be in accordance with the plans approved by the Vineland Industrial Commission Properties and Building Review

Committee. Additionally, the Buyer at settlement shall furnish evidence or proof satisfactory to the City that it has adequate financial commitments to enable it to complete the proposed construction as outlined in the plans approved by the Vineland Industrial Commission Properties & Building Review Committee within the aforementioned time limitation. At settlement, if the City has not received such evidence or proof thereof, the City may terminate this Agreement and the deposit monies shall be returned to the Buyer and all rights and responsibilities under this Agreement shall cease and terminate. In the event the Buyer fails to complete construction within the above allotted time, as extended, if applicable, the City, upon not less than fifteen (15) days written notice to the Buyer, as provided for in Article Twelve, shall have the right to regain ownership of the Property by submitting for recording the deed of conveyance being held in escrow in accordance with Article Four. In the event the City regains ownership and resells the Property within twelve (12) months from the date of settlement, then the City upon the resale of the Property shall reimburse the Buyer, ninety (90%) percent of the original purchase price or \$212,940.00, minus all costs incurred by the City in regaining ownership and reselling of the Property. If the City regains ownership of the Property at any time between the thirteenth (13th) month and the eighteenth (18th) month after settlement, then the Buyer is entitled to an eighty (80%) percent refund of the original purchase or \$189,280.00, minus all costs incurred by the City in regaining ownership and reselling of the Property. In the event the City regains ownership of the Property at any time after eighteen (18) months from the date of settlement, then the Vineland Industrial Commission, upon notice to the Buyer shall recommend to the governing body of the City, what amount of the original purchase price, if any, shall be refunded to the Buyer upon the resale of the Property. In the event the City regains ownership of the Property, and provided that Buyer was entitled to a refund, no monies shall be refunded to the Buyer until such time as the Property is sold, which the City shall use commercially reasonable efforts to do promptly. In the event

the Buyer cannot complete construction within the time period provided for above because of reasons beyond its control, including, but limited to, the acts or negligence of the contractor employed by the Buyer or by changes ordered in the work or by labor disputes, fires, unusual delays in transportation, adverse weather conditions, unavoidable casualties or strikes, the Buyer shall be granted a reasonable time extension to complete construction. Upon construction completion in accordance with the terms of this Agreement and the issuance of a C.O., if applicable, the City agrees that the deed of conveyance being held in escrow shall promptly be returned to the Buyer. The provisions set forth in Article Ten shall survive closing and not merge into the deed transferring the Property to Buyer.

ARTICLE ELEVEN

The execution of this Agreement by the City shall be conclusive proof that all requisite appropriate approvals of this Agreement required by the City of Vineland and/or the Vineland Industrial Commission pursuant to N.J.S.A. 40:55B-1 et seq. have been granted

ARTICLE TWELVE

All notices to be given hereunder by either party to the other shall be in writing and shall be deemed delivered if mailed by United States Registered or Certified Mail, Postage Prepaid, Return Receipt Requested, addressed as stated below or to such other address as the addressee may have specified in a notice duly given to the other addressees or by overnight delivery service providing proof of delivery:

To the Seller:

City of Vineland
Att: Richard Tonetta, Esq.
640 E. Wood Street
Vineland, NJ 08360

Buyer:

ARTICLE THIRTEEN

The City of Vineland represents that the Property is located in an "enterprise zone" as defined in N.J.S.A. '52:27H-60 et seq., and that the designation of such enterprise zone was granted in April 1986.

ARTICLE FOURTEEN

Buyer shall indemnify and hold the City harmless from and against all losses, damages, costs and expenses by reason the failure by the Buyer to complete its due diligence in accordance with the terms of this Agreement, and/or by Buyer choosing to waive any and all of the conditions set forth in this Agreement and by the City being requested by Buyer and then choosing to waive any or all of the conditions set forth in this Agreement in order to accelerate the date of closing. The term of this hold harmless and indemnity obligation shall remain in effect for the complete term of the Environmental Agreements. The provisions set forth in Article Fourteen shall survive closing and not merge into the deed transferring the Property to Buyer.

ARTICLE FIFTEEN

The words "City" and "Buyer" in this Agreement shall be construed to mean both the plural and singular number and to mean not only the party hereby designated, but also his, her or their respective heirs, executors or administrators, and in the case of corporations, its or their successors or assigns.

ARTICLE SIXTEEN

Except as otherwise set forth herein, Buyer is purchasing the Property as-is. Neither the City nor any other person acting or purporting to act on behalf of City has made any warranty or representation concerning the Property or its operation which is not contained in this Agreement. The Buyer agrees that neither the City nor anyone on the City's behalf has made any representation or warranty, express or implied, as to the physical condition of the Property, as to the suitability of the Property for any particular purpose or with respect to the surface

or subsurface condition thereof, except as expressly stated in this Agreement. The sale is based on the Buyer's own knowledge, inspection and due diligence.

ARTICLE SEVENTEEN

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.

ARTICLE EIGHTEEN

Neither this Agreement nor any document referring to this Agreement shall be recorded by Buyer, or by anyone acting on its behalf, in any public office; at City's option, any such recording shall be a default by Buyer under this Agreement.

ARTICLE NINETEEN

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 or in any way concerning this Agreement shall be filed in the Superior Court, Cumberland County, State of New Jersey.

ARTICLE TWENTY

This Agreement shall be effective on the later of the date signed by either party (the "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.

ARTICLE TWENTY ONE

This Agreement 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESS:

Keith Petrosky, City Clerk

WITNESS:

SELLER:
CITY OF VINELAND:

Ruben Bermudez, Mayor

BUYER:
**LUCCA FREEZER & COLD
STORAGE, LLC**
