

CITY OF VINELAND

RESOLUTION NO. 2017- 194

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 3500 D'IPPOLITO DRIVE, VINELAND, NJ TO GERALD R. GUZZO, JR AND DANIELLE M. GUZZO, VINELAND, NJ.

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 Gerald R. Guzzo, Jr. and Danielle M. Guzzo, said property being described as Block 303, Lot 47 on the City of Vineland Tax Map (Property) in the amount of \$30,000.00; 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 \$5,000.00 upon execution of the agreement of sale and the balance at the closing of title.
2. That the Property may not be further subdivided.
3. The property is being sold in an as is condition.
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 Buyer(s)/Purchaser(s) 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. That the Buyer(s)/Purchaser(s) shall be responsible for all closing costs, including legal fees.
6. The Buyer(s)/Purchaser(s) shall commence construction of the improvements and complete the same within 24 months of settlement subject to any extension is provided in an agreement of sale.
7. Buyer(s)/Purchaser(s), upon receipt of contract, shall have three (3) day attorney review period and a thirty (30) day due diligence period.

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

**Office of Economic Development
City of Vineland, New Jersey**

Memorandum


To: Bob Dickenson
From: F. DiGiorgio 
CC: S. Forosisky, A. Giebner, File
Date: April 11, 2017
Re: **Sale of Property – Industrial Park North**



As a follow up to the memo dated April 4, 2017 regarding sale of City of Vineland owned industrial land located at 3500 D'Ippolito Drive, Vineland, NJ, Block 303, Lot 47 please note the following:

1. Buyer: Gerald R. Guzzo, Jr. and Danielle M. Guzzo
2. Sales Price: \$30,000.00
3. Deposit: \$5,000.00 upon execution of the agreement of sale and balance at the closing of title.

Additional terms for inclusion:

- a.) The Property may not be further subdivided.
- b.) The Property is sold in as is condition.
- c.) That the sale is subject to the terms and conditions contained in N.J.S.A. 40:55B -1 et seq., and that the Buyer(s)/Purchaser(s) provide all plans for improvements to be constructed on the property to the Vineland Industrial Commission Properties and Buildings Review Committee in accordance with the terms of the contract.
- d.) That the Buyer(s)/Purchaser(s) shall be responsible for all closing costs, including legal fees.
- e.) The Buyer(s)/Purchaser(s) shall commence construction of the improvements and complete the same within ~~12~~ ²⁴ months of settlement subject to any extension is provided in an agreement of sale.  4/11/17
- f.) Buyer(s)/Purchaser(s), upon receipt of contract, shall have a three (3) day attorney review period and a thirty (30) day due diligence period.

AGREEMENT OF SALE

THIS AGREEMENT, made and dated this ____ day of _____, 2017, between City of Vineland, a municipal corporation of the State of New Jersey, or its transferee (hereinafter referred to as the "Seller" or the "City"), and Gerald R. Guzzo, Jr. and Danielle M. Guzzo or their permitted assigned (hereinafter collectively referred to as "Buyer"),

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 known as 3500 D'Ippolito Drive, also known as Lot 47 of Block 303, on the City of the Vineland Tax Map (the "Property"), consisting of approximately 2.07 acres of land for a purchase price of Thirty Thousand (\$30,00.00) Dollars. 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 in its present condition subject to its Due Diligence rights set forth in **Article Six**. The purchase of the Property shall be subject to the following terms and conditions:

(a) A payment of Five Thousand (\$5,000.00) Dollars, 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 of the City 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 distribution of the Deposit. 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 the Deposit 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 of the date on which the Ordinance passed by City Counsel either (a) approving the sale of the Property to the Buyer; or (b) approving the transfer of the Property to the Industrial Commission; becomes final and non-appealable. Both parties will fully cooperate so that settlement can take place within this thirty (30) day period. Closing shall be at a title

agency, of Buyer's choice, located in Vineland, New Jersey, or such other location mutually agreeable to the parties. Provided, however, that closing shall not occur prior to the expiration of the Due Diligence Period set forth in **Article Six** below.

(c) If this Agreement is not terminated for one of the reasons specified herein, and, in the event Buyer does not make settlement in accordance with the terms of this Agreement, the Deposit, held by the Business Administrator, shall, at the City's option, be paid to the City as liquidated damages due to the failure of the Buyer to settle. The Deposit shall be returned to the Buyer only if:

(1) Seller is unable to transfer marketable title to the Buyer, and Buyer terminates this Agreement during the Due Diligence Period; or

(2) the Buyer reasonably determines that the Property is not suitable for its proposed use, and the Buyer terminates this Agreement during the Due Diligence Period.

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.

ARTICLE TWO

At closing, title to the Property shall be good and marketable and free and clear of all liens, encumbrances, including municipal liens and assessments, liability of assessments or improvements now constructed. The City represents that there are no restrictions in any conveyance or plans of record which would prohibit the use and/or occupancy of the Property for Buyer's intended use.

In addition to any existing restrictions of record, the Deed shall be subject to the following restrictions, which shall be restrictions running with the land to be conveyed and shall survive closing:

(i) The Lands may not be subdivided; and

(ii) Neither this Agreement nor the interest created herein, including title to the Property, shall be assigned, sold or transferred by the Buyer 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

The Buyer shall conduct its examination of title within the Due Diligence Period set forth in **Article Six** and the examination of title shall be considered part of Buyer's due diligence inspections. 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 after the Effective Date of this Agreement and through and including the closing date.

ARTICLE THREE

The City warrants to Buyer and represents that the premises are subdivided as in accordance with all applicable local laws and requirements, or alternately, that such subdivision shall be secured on or before the settlement date hereof. In the event such subdivision is not so secured on or before the settlement date set forth in Article 1, Paragraph B, the Buyer shall have the right to terminate this Agreement or extend the settlement date. In the event the Buyer elects to terminate this Agreement in accordance with the terms of this Article, the deposit moneys shall be returned to the Buyer and all rights and responsibilities under this Agreement shall cease and terminate.

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 3 months of date of closing. The Committee shall verify that the restrictions contained in **Article Two** are complied with, and that the plans for the improvements to be constructed are acceptable. Approval by the Committee shall not be unreasonable be withheld.

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 shall be held in escrow, by the Business Administrator, pending Buyer's performance hereunder, as more specifically provided in **Article Ten**. The parties hereto shall hereafter indemnify and hold harmless the Business Administrator against all costs, damages or expenses which may arise in consequence of the performance of his/her escrow duties as herein provided.

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.

ARTICLE SIX

Buyer shall have a period of not more than 30 days from the Effective Date of this Agreement, as that term is defined by **Article Twenty**, (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 necessary to determine if the Property is suitable for the Buyer's proposed use. Buyer agrees to furnish the Seller with copies of all reports, inspections, and tests within seven days of receiving same. The right to enter the Property provided for by this Article shall be expressly limited to those items necessary for the Buyer to determine if the Property is suitable for the Buyer's proposed use. Buyer may cancel this Agreement during the Due Diligence Period upon written notice to the City as provided for in **Article Twelve** in the event that Buyer reasonably determines that the Property is not suitable for its proposed use.

All charges, costs, expenses, and liabilities in connection Buyer's due diligence, and the cost filing, recording, reviewing or gaining approval of any governmental agency shall be paid by and be the expense of the Buyer.

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. The Buyer shall also repair all damage done to the Property by any boring, engineering, geological study, surveying or testing performed by or for the Buyer and to restore the property to its condition as of the date of this Agreement.

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.

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 Two Thousand Five Hundred (\$2,500.00) 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

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.

ARTICLE TEN

The Buyer warrants that it will commence construction of the improvements to be constructed on the Property within twelve (12) months and complete same within twenty-four (24) 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 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 submit the plans within 3 months, or commence and 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 \$27,000.00, minus all costs incurred by the City in regaining ownership and reselling of the Property. If the City regains ownership and resells 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 \$24,000.00, minus all costs incurred by the City in regaining ownership and reselling of the Property.

In the event the City regains ownership and resells 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.

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 completion of construction in accordance with the terms of this Agreement and in accordance with the plans approved by the Industrial Commission, and the issuance of a C.O., if applicable, the City agrees that the deed of conveyance being held in escrow shall be returned to the Buyer.

ARTICLE ELEVEN

It is the express condition of this Agreement that consummation of the sale of the Property, as provided for herein, shall be and is directly dependant upon such approval of this Agreement as may be required by the City of Vineland and the Vineland Industrial Commission pursuant to **N.J.S.A. 40:55B-1** et seq. The execution of this Agreement by the City shall be conclusive proof that such approval has been granted and that notice of this Agreement has been given to the Mayor of the City of Vineland as provided in **N.J.S.A. 40:55B-8.1**, and that a period of Ten (10) Days, Saturdays, Sundays and holidays excepted, has elapsed after such notice and that the Mayor of the City of Vineland has not exercised the veto power given in accordance with **N.J.S.A. 40:55B-8.1**.

ARTICLE TWELVE

All notices to be given hereunder by either party to the other shall be in writing by certified mail, or by delivering it personally or by overnight delivery. The certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the other party. Service by overnight deliver shall be effective upon delivery. All notices shall be addressed as stated below or to such other address as the addressee may have specified in a notice duly given to the other party.

To the Seller:

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

Copy to:

Sandra Forosisky
Director of Economic Development
City of Vineland
640 E. Wood Street

Vineland, NJ 08360

Copy to:

Buonadonna & Benson, P.C.
1138 E. Chestnut Avenue
Suite 2A
Vineland, NJ 08360

To the Buyer:

Jerry Guzzo, Jr.
c/o Guzzo Massonry, Inc.
3501 D'Ippolito Drive
Vineland, New Jersey 08360

ARTICLE THIRTEEN

The parties agree that all of the Covenants, terms and conditions of this Agreement shall survive the closing of title and the delivery and recording of the deed, and shall remain in full force and effect.

ARTICLE FOURTEEN

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 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, their successors or assigns, or transferees.

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 has been executed, delivered, and accepted in the State of New Jersey. This Agreement shall be governed, construed and interpreted in all respects in accordance with the laws of the State of New Jersey. The Superior Court of the State of New Jersey, in the County of Cumberland, shall have sole and exclusive jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Agreement, enforcement of this Agreement, or any other matter arising therefrom. The parties hereby expressly submit, and consent, in advance, to such jurisdiction in any action or proceeding commenced by either party in such Court and expressly waives any right that may otherwise exist to a trial by jury.

ARTICLE TWENTY

The Buyer may choose to have an attorney review this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be

legally binding at the end of this three-day period unless an attorney for the Buyer reviews and disapproves of the contract. Time is to be counted from the date that the Buyer is in possession of a fully executed contract as determined by Article **Twenty One** below. Saturdays, Sundays or legal holidays are not counted. If an attorney for the Buyer reviews and disapproves of this contract, the attorney must notify the Seller, in accordance with **Article Twelve**, within the three-day period. Otherwise, this contract will be legally binding as written.

ARTICLE TWENTY ONE

This Agreement shall be effective the expiration of the Attorney Review Period provided in **Article Twenty** (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. 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.

ARTICLE TWENTY TWO

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.

ARTICLE TWENTY THREE

This Agreement shall be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and assigns.

ARTICLE TWENTY FOUR

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 parties hereto have executed this Agreement on the day and year first above written.

WITNESS:

Keith Petrosky, City Clerk

WITNESS

SELLER:
CITY OF VINELAND:

Anthony Fanucci, Mayor

BUYERS:

Gerald R. Guzzo, Jr.

Danielle M. Guzzo