

RESOLUTION NO. 2018-404

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 1615 WEST GARDEN ROAD, BLOCK 1101 LOT 17, VINELAND TO V. PAULIUS & ASSOCIATES OR COMPANY TO BE FORMED.

WHEREAS, the Vineland Industrial Commission has received an offer for the acquisition of City owned property located in the City of Vineland Industrial Park by V. Paulius & Associates or company to be formed, said property being described as Block 1101, Lot 17 on the City of Vineland tax map (Property) in the amount of \$830,200.00; and

WHEREAS, the Vineland Industrial Commission has adopted Resolution 2018-2 recommending 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 \$83,020.00 upon the 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 any environmental easements and flood hazard areas as well as any other existing restrictions of record.
3. That the Property shall not be further subdivided without the consent of the Industrial Commission.
4. That this sale is subject to the terms and conditions contained in NJSA 40:55 B – 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 a settlement subject to any extension as provided in an agreement of sale.

NOW THEREFORE BE IT RESOLVED by the City 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:

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President of Council

ATTEST:

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City Clerk

**AGREEMENT OF SALE**

**THIS AGREEMENT**, made and dated this \_\_\_\_day of \_\_\_\_\_, 2018, 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 V. Paulius & Associates or its Permitted Assignee (as that term is defined herein) (hereinafter 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 1615 W. Garden Road also known as Block 1101, Lot 17 on the City of the Vineland Tax Map (the "Property"), consisting of approximately \_\_\_\_ acres of land for a purchase price of Eight Hundred and Thirty Thousand Two Hundred (\$830,200.00) 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 deposit of Eighty Three Thousand Twenty (\$83,020.00.00) Dollars, less any amounts previously paid by the Buyer, shall be made by the Buyer to the Title Company (as that term is defined in Article Two), within three (3) business days of the execution of this Agreement by all parties (“Deposit”), which sums shall be held in escrow by the Title Company pending performance by both parties hereto of the terms and conditions of this Agreement. The parties hereto shall indemnify and hold harmless the Title Company 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 Title Company. If closing does not occur, either party may submit a written request to the Title Company for distribution of the Deposit. The Title Company shall notify the other party of such demand. If an objection is not received from the other party within 5 business days after the giving of such notice, the Title Company is hereby authorized to make such distribution. If an objection is received within such time, or if for any other reason the Title Company, in good faith, elects not to make such distribution, the Title Company 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 Title Company 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 fifteen (15) days from the expiration of the Due Diligence Period set forth in **Article Six**. Both parties will fully cooperate so that settlement can take place within the fifteen (15) 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.

(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 if this Agreement is terminated by Buyer pursuant to a right set forth herein, or pursuant to a default by Seller.

(d) 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/bank check or Attorney Trust Account check and shall be made payable to the Title Company.

## **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"). 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. 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 for speculation purposes, meaning, the Lands cannot be subdivided unless said subdivision is in conjunction with the development of the subdivided portion of the Lands for a permitted use in the zone by the Buyer or any party considered a Permitted Assignee as defined herein for the time period specified in Article Two (ii) without the express written consent of the City subsequent to the date of conveyance.

(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 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 as contained within Buyer's title commitment from the Title Company obtained within the Due Diligence Period; provided however, Seller shall cause all monetary liens on the Property to be discharged of record on or before the closing. Seller shall not grant, create, permit or suffer any new or additional liens, restrictions or encumbrances or otherwise alter the quality of title from and after the date of Buyer's title commitment received from Buyer's Title Company, through and including the closing date.

### **ARTICLE THREE**

The City warrants to Buyer and represents that each tax lot making up the Property, in its present configuration, is a legally created lot in accordance with all applicable local laws and requirements. It shall be the Buyer's obligation to diligently pursue and obtain zoning variance and/or conditional use permit and/or site plan approval, together with all other necessary municipal, county, state and federal governmental approvals, permits and/or authorizations granting the Buyer permission to develop the property in accordance with the Approved Plans as defined in Article Four and use the Property for Buyer's intended use (collectively with "Approved Plans", "Approvals"). If final unappealable Approvals, containing conditions acceptable to Buyer, in Buyer's sole and absolute discretion, are not obtained prior to the end of the Due Diligence Period set forth in **Article Six**, and Buyer has and continues to diligently pursue said Approvals, at Buyer's option (i) the Due Diligence Period shall be automatically extended for

a period not exceeding 60 days for final unappealable Approvals to be obtained provided Buyer continuously pursues said Approvals; or (ii) the Buyer may terminate this contract. 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 the date of closing for verification/approval that the proposed construction meets the intent, purpose and scheme of the City Industrial Park and are otherwise acceptable (Approved Plans). Approval by the Committee shall not unreasonably be withheld. The Committee shall also verify that the restrictions contained in **Article Two** are complied with.

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 which will be 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. 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, provided that the Seller is given a reasonable opportunity to cure, and further provided that the Buyer either terminates this contract during the Due Diligence Period or the quality of title has been

materially altered subsequent to the expiration of Due Diligence Period. The parties agree, that if required by the title company insuring title to the Property that the City may transfer title to the Property to the Vineland Industrial Commission and that closing may be delayed, as provided in **Article One (b)**, to accommodate the need for the City to pass an Ordinance to allow the transfer. The Buyer agrees to accept a deed from the Vineland Industrial Commission in the event of transfer of the Property to the Industrial Commission

### **ARTICLE SIX**

Buyer shall have a period of not more than 180 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, and to investigate the environmental conditions. 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 and/or Buyer reasonably determines Buyer’s intended development of the Property is not feasible. Buyer shall also have the right to terminate this Agreement during the Due Diligence Period, in the event Buyer reasonably determines that it is unable to obtain the financing to purchase the property and construct the contemplated approvals.

All charges, costs, expenses, and liabilities in connection Buyer’s due diligence, and the cost of 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 nevertheless 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, one-half the Title Company settlement charge and the realty transfer fee, if any. The Buyer shall pay for all searches, title insurance, survey expenses, Buyer's closing costs, one-half the Title Company settlement charge and engineering fees commissioned by Buyer. 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 and/or the City of Vineland, 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**

The City has not engaged the services of a real estate agent or business broker in connection with the sale. The Buyer shall be solely responsible for any real estate commission, or similar fees that may be payable as a result of the sale of the Property.

#### **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 commencement, subject to extensions as provided for herein. Construction shall be in accordance with the Approved Plans as approved by the Vineland Industrial Commission Properties and Building Review Committee.

In the event the Buyer fails to submit the plans within 3 months, or commence 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, will reimburse the Buyer, ninety (90%) percent of the original purchase price or 90% of the sale price, whichever is less, 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 between the thirteenth (13th) month and the eighteenth (18th) month after settlement, then the City, upon the resale of the Property, will reimburse the Buyer, eighty (80%) percent of the original purchase price or 80% of the sale price, whichever is less, 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 dependent 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,

have 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 Forsisky  
Director of Economic Development  
City of Vineland  
640 E. Wood Street  
Vineland, NJ 08360

Copy to:

Buonadonna & Benson, P.C.  
Att: Alan G. Giebner, Esq.  
1138 E. Chestnut Avenue  
Suite 2A  
Vineland, NJ 08360

To the Buyer:

Helen's Acres, LLC  
  
Michael P. Fralinger, Esq.  
100 N. Main Road  
Vineland, NJ 08360

Copy to:

### **ARTICLE THIRTEEN**

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 FOURTEEN**

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 FIFTEEN**

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 SIXTEEN**

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 SEVENTEEN**

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 EIGHTEEN**

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 NINETEEN**

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 TWENTY**

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

#### **ARTICLE TWENTY ONE**

This Agreement constitutes 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 TWO**

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

#### **ARTICLE TWENTY THREE**

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:

**SELLER:**  
CITY OF VINELAND:

\_\_\_\_\_  
Keith Petrosky, City Clerk

\_\_\_\_\_  
Anthony Fanucci, Mayor

**BUYERS:**  
Helen's Acres, LLC

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\_\_\_\_\_