

CITY OF VINELAND

RESOLUTION NO. 2019- 407

RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT & MUTUAL RELEASE BY AND BETWEEN THE CITY OF VINELAND AND VERC REALTY, LLC, et al.

WHEREAS, on March 30, 2015, VERC Realty, LLC (VERC) executed and delivered a Promissory Note and mortgage to the Urban Enterprise Zone Development Corporation of Vineland and Millville (UEZ) in the amount of \$1,850,000.00; and

WHEREAS, on March 21, 2017 the UEZ declared the loan in default and subsequently initiated an action against VERC Realty, LLC as well as certain guarantors of the Promissory Note; and

WHEREAS, the parties agreed to amicably resolve their differences by way of VERC as well as the personal guarantors dismissing with prejudice any and all counts that it may have by way of third party complaint against the City of Vineland; and

WHEREAS, the parties have prepared for execution a Settlement Agreement and Mutual Release in a form and substance as attached hereto whereby the complaint against the City of Vineland would be dismissed with prejudice with no cost against the City.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute the Settlement Agreement and Mutual Release, releasing the City of Vineland from any and all claims past, present, and future arising out of or interrelated with a lawsuit filed in the Superior Court of New Jersey, Law Division, Cumberland County, Docket No. CUM-L-466-17.

Adopted:

President of Council

ATTEST:

City Clerk

SETTLEMENT AGREEMENT & MUTUAL RELEASE

THIS Agreement dated the _____ day of _____, 2019 is made between, VERC Realty, LLC, Frank Guaracini, Jr., Elizabeth Guaracini, Joseph Marandino, Joan Marandino, and Frank's Realty Company (the "Debtors"), and the Enterprise Zone Development Corporation of Vineland and Millville (the "UEZ") and the City of Vineland;

RECITALS

WHEREAS, On March 30, 2015, VERC Realty, LLC executed and delivered a Promissory Note in the principal amount of \$1,850,000.00 to the UEZ secured by a first mortgage on 215 N. Delsea Drive, Vineland, New Jersey; A portion of the loan was held by the Vineland Development Corporation (the "Escrow Agent") pursuant to the terms of an Escrow Agreement between VERC Realty, LLC and the Vineland Development Corporation and to be used to pay costs associated with 215 N. Delsea Drive, including real estate taxes;

Subsequent to the exhaustion of the escrow held by the Vineland Development Corporation, the UEZ paid real estate taxes that had accrued or had become a lien on 215 N. Delsea Drive, which according to the terms mortgage were added to the principal due under the Note;

Frank Guaracini, Jr., Elizabeth Guaracini, Joseph Marandino, Joan Marandino, and Franks Realty Company, guaranteed the terms of the Note by VERC Realty, LLC;

On or about March 30, 2016, the UEZ advanced an additional \$50,000, which was added to the principal due under the Note, to VERC Realty, to be applied by the Vineland Development Corporation to pay costs associated with 215 N. Delsea Drive;

On or about March 21, 2017 the UEZ declared the loan in default, and subsequently initiated an action, in the Superior Court of New Jersey, Law Division, Cumberland County, Docket No. CUM-L- 466-17 to recover the amounts due under the terms of the Note (the

“Lawsuit”);

VERC Realty, LLC, Frank Guaracini, Jr., Elizabeth Guaracini, Joseph Marandino, Joan Marandino, and Franks Realty Company filed an Answer to the Complaint disputing the terms of the Note, guarantees, and mortgage, Affirmative Defenses, along with a Counterclaim against the UEZ and a Third Party Complaint against the City of Vineland;

As of July 12, 2019, the balance due under the terms of the Note, including principal, accrued interest, taxes and other costs paid by the UEZ in accordance with the terms of the Mortgage and Note, was \$2,580,527.78;

VERC Realty, LLC has entered into a contract of sale for 215 N. Delsea Drive with Vineland Ventures, LLC in the amount of \$2,350,000.00; and

To allow the sale to proceed, the UEZ has agreed to accept the net proceeds of the sale, as that term is defined in paragraph 3 below, provided that the net proceeds are \$2,000,000.00 or more in exchange for a release of VERC Realty, LLC and the Guarantors from their obligations under the terms of the Notes and Guarantees and for discharge of the mortgage, assignment of rents and leases and UCC financing statements covering 215 N. Delsea Drive;

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the parties agree as follows:

1. The net proceeds, as defined by paragraph 3 below, from the sale of 215 N. Delsea Drive shall be paid to the UEZ at the time of closing of the contract of sale between VERC Realty, LLC and Vineland Ventures, LLC.

2. In the event the net proceeds of the sale, as defined in paragraph 3 below, are less than \$2,000,000.00, Debtor’s agree to make up the difference, by cash payment to the UEZ at, or prior to, closing.

3. The net proceeds of the sale shall mean the amount generated by the sale of 215 N. Delsea Drive for \$2,350,000.00 after payment of a realtor's commission of 6%, the realty transfer fee, and other closing costs typically paid by the Seller. Net proceeds shall be determined without a deduction for any attorney fees, whether incurred in connection with the litigation or the sale of 215 N. Delsea Drive, liens or encumbrances covering 215 N. Delsea Drive, or any bulk sales taxes/escrow, arrears in real estate taxes, or arrears in utility payments, regardless of whether same have become a lien on 215 N. Delsea Drive. All attorney fees, liens, bulk sales taxes/escrows, arrears in taxes, and arrears in utility payments shall be the sole obligation of the Seller. To assure compliance with this paragraph, the UEZ shall be provided with the final HUD-1 or Settlement Statement for approval.

4. Upon payment of the net proceeds of the sale, but in no event payment of less than \$2,000,000.00, to the UEZ pursuant to the terms of this Agreement, approval of the HUD-1 or Settlement Statement by the UEZ, and execution and delivery of a resolution executed by all the members of VERC Realty, LLC authorizing the execution of this Settlement Agreement, the following shall occur or be deemed to have occur: (a) the UEZ will deliver Trident Abstract Title Agency, LLC a discharge of the mortgage and assignment of rents and leases covering 215 N. Delsea Drive; (b) the parties will execute and file with the New Jersey Superior Court a stipulation of dismissal, dismissing the Lawsuit, with prejudice and without costs to either party; (c) the UEZ will deliver to Trident Abstract Title Agency, LLC a discharge of any and all UCC financing statements covering 215 N. Delsea Drive and the fixtures attached thereto; (d) the UEZ will file terminations of all UCC financing statements filed with the Secretary of State covering the assets of VERC Realty, LLC; (e) the parties shall be deemed to have released and to have forever discharged the other parties, including, but not limited to the City of Vineland, and the Vineland

Development Corporation, their heirs, personal representative, successors, assigns, employees, officers, officials, agents and attorneys of and from all claims and demands whatsoever, in law or in equity resulting from anything which has happened up to now, which have been or could have been brought in the Lawsuit, including claims not specifically mentioned in this Agreement, and any unknown claims; and (f) the Debtors shall be deemed to have released the Vineland Development Corporation (which is intended to be a third party beneficiary of this Settlement Agreement) of all claims and demands that may have arisen out of, or are in anyway connected with, the Vineland Development Corporation's having acted as the Escrow Agent. Debtors do not release the Zoning Board of Adjustment of the City of Vineland and/or the City of Vineland from those claims asserted in the Superior Court of New Jersey action titled Frank's Realty Company v. Zoning Board of Adjustment of the City of Vineland and Village Super Market, Inc., under Docket Number CUM-L-501-19. Debtors also do not give up their rights as taxpayers to appeal the assessment of real estate owned by them in the City of Vineland.

5. This Settlement Agreement shall become null and void in the event the contract of sale for 215 N. Delsea Drive between VERC Realty, LLC and Vineland Ventures, LLC in the amount of \$2,350,000.00 is terminated by either the Seller or the Purchaser.

6. VERC Realty, LLC shall cause a copy of the final HUD-1 or Settlement Statement to be delivered to the UEZ for approval, prior to disbursement of any of the proceeds of the sale or the recording of the Deed transferring title to Vineland Ventures, LLC. The UEZ shall promptly review the HUD-1 or Settlement Statement and approve same, provided it complies with the terms of this Settlement Agreement. Notice of the UEZ's approval or disapproval of the HUD-1 or Settlement Statement shall be provided to Debtors' attorney within 48 hours of the receipt of the HUD-1 or Settlement Statement by the office of the UEZ's attorney.

7. VERC Realty, LLC shall provide the UEZ with any information or documents reasonably requested by the UEZ relating to the sale of 215 N. Delsea Drive to Vineland Ventures, LLC, including, but not limited to title searches, and title commitments. The UEZ acknowledges that it has already received the fully executed contract for sale and the commitment for title insurance. Without request VERC Realty shall provide the UEZ with copies of (a) preliminary HUD-1's, the deed, affidavit of title and affidavit of consideration.

8. VERC Realty shall promptly inform the UEZ of: (a) the termination of or any modifications to the agreement of sale for 215 N. Delsea Drive; (b) the expiration of the due diligence period; and (c) the time and place of closing.

9. The UEZ may terminate this Settlement Agreement, in its sole discretion, in the event the contract of sale for 215 N. Delsea Drive with Vineland Ventures, LLC in the amount of \$2,350,000.00 is modified or amended in any way.

10. This Agreement and the releases contained in this Agreement shall be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and assigns.

11. 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 all parties to this Agreement.

12. This Agreement has been negotiated, delivered, and accepted by the parties 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, or any other matter arising therefrom. The Parties to this Agreement hereby expressly submit, and consent, in

advance, to such jurisdiction in any action or proceeding commenced by any of the Parties in such Court and expressly waives any right that may otherwise exist to a trial by jury

13. This Agreement shall be effective on the later of the date signed by any of the parties (AEffective 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.

14. 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.

15. 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 prepaid as follows:

To the UEZ and the City:

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

With a Copy to:

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

To Debtors

Frank Guaracini, III, Esq.
2123 Dune Drive
Suite 111
Avalon, NJ 08202

16. 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.

17. This Settlement Agreement shall survive the closing and the discharge of the Mortgage held by the UEZ.

18. This Settlement Agreement and Mutual Release is a compromise of disputed claims and is not an admission of liability or wrongdoing by any party. It is entered into as a business judgment bearing in mind the cost and uncertainty of protracted litigation. The parties expressly deny that they have violated any law, statute, ordinance, contract, duty, or obligation whatsoever, or that either committed any tort or engaged in any improper conduct. By virtue of the Settlement Agreement and Mutual Release, neither party shall be construed as a prevailing party under any rules of court or fee shifting statute.

19. Each party shall be responsible for its own attorney fees, costs, and expenses incurred in connection with this matter.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year set forth in the first paragraph hereof.

Witness:

VERC Realty, LLC,

Frank Guaracini, Jr., Managing Member

FRANK'S REALTY CO.

Frank Guaracini, Jr. , Partner

Joan Marandino, Partner

Elizabeth Guaracini, Partner

Joseph Marandino, Partner

Loretta LaPorta, Partner

Lawrence Marandino, Partner

Sophia Laun, Partner

INDIVIDUALS:

Frank Guaracini, Jr., individually

Joan Marandino, individually

Elizabeth Guaracini, individually

Joseph Marandino, individually

Witness:

THE CITY OF VINELAND:

By: _____
Anthony Fanucci, Mayor

Witness:

**ENTERPRISE ZONE DEVELOPMENT
CORPORATION OF VINELAND AND
MILLVILLE:**

By: _____
Anthony Fanucci, Chairman

**VINELAND DEVELOPMENT
CORPORATION:**

Witness:

By: _____

Name:

Title: