

RESOLUTION NO. 2023-30

RESOLUTION APPROVING THE SALE OF A PORTION OF
BLOCK 1003, LOT 14.2 TO GMR BLUE HOLE LLC FOR
\$65,000.00 BY THE CITY OF VINELAND INDUSTRIAL
COMMISSION.

WHEREAS, by Ordinance No. 2019-51 the City of Vineland transferred property formerly known as Block 1003, Lots 14 and 14.1 to the City of Vineland Industrial Commission, on the condition that the net proceeds of the sale of the property be paid to the City of Vineland;

WHEREAS, Block 14 and Block 14.1 were subsequently subdivided creating Block 1003, Lot 14.2, and Block 1003, Lot 14.3;

WHEREAS, Block 1003, Lot 14.3 was subsequently sold to, and developed by, Rovagnati US Real Estate for an industrial use;

WHEREAS, Rovagnati was also granted an option to purchase an additional 6.43 acres of Lot 14.2 adjacent to, and North of, Lot 14.3 conditioned on Rovagnati's development of the land as part of an expansion of the facility constructed on Lot 14.3.

WHEREAS, subsequently 11,708 acres of Lot 14.2 were subdivided, and sold to Levari Brothers Realty Company, LLC and added to Block 1003, Lot 16.3 and developed as part of Levari's expansion of its facility on Lot 16.3.

WHEREAS, due to topographical and environmental conditions and restrictions, the remaining portion of Lot 14.2 cannot be developed for an industrial or commercial use;

WHEREAS, J. McHale & Associates has appraised the remaining portion of Lot 14.2 for \$65,000.00;

WHEREAS, GMR BLUE HOLE, LLC has expressed an interest purchasing the property for \$65,000.00 and has agreed to develop and use the property solely for non-commercial recreational purposes, and otherwise comply with all environmental restrictions and conditions imposed on the property by the E.P.A. and D.E.P.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Vineland that the sale of the remainder of Block 1003, Lot 14.2, to GMR Blue Hold, LLC for \$65,000.00 is hereby approved on the condition that the 6.43 acres subject to the option granted to Rovagnati first be subdivided and the net proceeds of the sale be paid to the City of Vineland.

Adopted:

President of Council

ATTEST:

City Clerk

PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF VINELAND (Seller) and
MICHAEL LEVARI OR HIS PERMITTED ASSIGN(S) (Buyer)

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of this _____ day of _____, 2022, by and between **MICHAEL LEVARI**, or a Permitted Assignee, whose address is **396 N. Mill Road**, Vineland, NJ 08360 (at times referred to as or “Buyer”) and the **CITY OF VINELAND** whose address is 640 E. Wood Street, Vineland, NJ 08360 (at times referred to as the “City” or “Seller”).

NOW, THEREFORE, in consideration of the mutual agreements and undertakings provided herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. SALE OF PROPERTY. Subject to the approval by Vineland City Council, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller fee simple title to a **portion** of a vacant parcel of real property located in the City of Vineland, County of Cumberland, State of New Jersey, generally known as **Block 1003, Lot 14.2** of the tax map of the City of Vineland, New Jersey, as more particularly described in this Agreement and depicted on **Exhibit A** attached hereto, together with all rights incident thereto (herein at times referred to as the “Property”). The Buyer recognizes that the drawing attached as **Exhibit A** is a conceptual plan depicting the Property to be conveyed to Buyer. Buyer understands that this Agreement of Sale involves the sale of only a portion of Block 1003, Lot 14.2. Specifically, the Property does not include that portion of Block 1003, Lot 14.2 which the City has previously granted Rovagnati US Real Estate LLC an option to purchase as depicted by the hash marked area on the drawing attached as **Exhibit B**. During the due diligence period the Buyer may confirm the quantity and location of the Property subject to this Agreement of Sale. The Property is being sold “as is” “where is” and “with all faults” subject Buyer’s due diligence rights set forth in **Section 5** below.

2. PURCHASE PRICE. The total consideration or purchase price (the “Purchase Price”) for the Property shall be **SIXTY FIVE THOUSAND (\$65,000.00) DOLLARS**, payable as follows:

(a) A deposit in the amount of 10% of the purchase price (the “Deposit”) to be held in escrow by the title company of Buyer’s choice (the “Escrow Holder”) and to be applied as provided for in this Agreement.

(b) The balance of the Purchase Price will be paid by wire transfer, certified check or title company check at Closing.

(c) The Purchase Price shall be adjusted in accordance with the provisions of **Section 10** below, which provides for various adjustments and apportionments.

3. ENVIRONMENTAL AGREEMENTS. The Buyer acknowledges and agrees that the Property is subject to certain easements granted to the United States Environmental Protection Agency (the “EPA”) and/or the New Jersey Department of Environmental Protection (the “DEP”) (the Environmental Easements). The Buyer also acknowledges and agrees that this Agreement is subject to the terms, conditions and restrictions contained in the following Agreements with the EPA and the DEP”:

(a) Agreement and Covenant not to Sue between the EPA and the City of Vineland, CERCLA Index Number 2001-2012 (the “EPA Agreement”) a copy of which is attached as **Exhibit C**.

(b) Prospective Purchaser Agreement between the DEP and the City of Vineland (the “DEP” Agreement”) a copy of which is attached hereto as **Exhibit D**. Collectively the EPA Agreement and the DEP Agreement are referred to as the “Environmental Agreements”).

The Buyer’s use and occupation, as well as improvements to the Property, shall at all times be in compliance with the Environmental Easements and Environmental Agreements. The Buyer shall also complete and submit to the DEP a fully executed “CERTIFICATION OF NON-LIABILITY BY SUCCESSOR IN TITLE TO PROSPECTIVE PURCHASER UNDER AN NJDEP PPA AND SUCCESSOR’S RECIPROCAL COVENANT NOT TO SUE THE STATE” attached to the DEP Agreement attached to the DEP Agreement as Exhibit B; and complete and submit to the EPA a fully executed “PURCHASERS/LESSEES CERTIFICATE OF COMPLIANCE WITH AGREEMENT AND COVENANT NOT TO SUE” attached to the EPA Agreement as Exhibit 3. The Buyer shall also obtain all approvals required by the EPA and DEP under the terms of the Environment Agreements for the transfer of the Property. Buyer shall indemnify, defend and hold the Seller harmless from and against all claims, causes of action and losses of whatsoever kind or nature, resulting from or arising out of any violation of the Environmental Agreements or Environmental Easements.

3. QUALITY OF TITLE.

(a) At closing, title to the Property shall be good and marketable and free and clear of all liens, restrictions, easements and other encumbrances and title objections, except such easements granted to, and restrictions imposed by Environmental Agreements. Title shall be insurable 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). On or before the expiration of the Due Diligence Period (as defined below in **Section 5**), Buyer may give Seller written notice of any title objections which may affect the Property which are not acceptable to Buyer. Any title objection not objected to prior to the expiration of the Due Diligence Period (as defined below in **Section 5**) shall be deemed to be approved or waived by Buyer and shall be a Permitted Title Exception.

(b) If Buyer timely provides to Seller a written objection to title, then, within 10 days after the receipt of Buyer’s title objection, Seller shall give to Buyer a written notice stating that (i)

Seller agrees to cure one or more of the defects identified in the title objection on or before the Closing Date, or (ii) Seller does not agree to, or cannot, cure one or more of the defects identified in the title objection; it being understood and agreed that, except as expressly provided herein, Seller shall not be obligated to cure any title defects. If Seller gives Buyer notice that Seller will cure the title objection(s), then this transaction shall be closed on the Closing Date unless Seller notifies Buyer that it cannot effect the cure before the scheduled Closing Date, in which event the Closing Date shall be extended for up to fifteen (15) days to permit Seller to effect such cure. The failure of the Seller to respond to Buyer's Title Objection Notice shall be deemed a denial of the request to cure. If Seller notifies Buyer that Seller is unwilling or unable to cure a title defect this Agreement shall be deemed terminated, even if Seller has previously given Buyer Notice that Seller intend to cure the title defectttttt.

(c) The Buyer shall conduct its examination of title within the Due Diligence Period set forth in **Section 5** and shall be considered part of its due diligence inspections of the property and its title, and, in accordance with the provisions of **Section 5** below. If the Buyer does not timely terminate this Agreement, 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.

4. AS IS/WHERE IS/WITH ALL FAULTS. Subject to Buyers right of Inspection and Due Diligence set forth in **Section 5** below, Buyer is purchasing the Property, in its "as-is," "where is," and "with all faults." Neither Seller nor any other person acting or purporting to act on behalf of Seller has made any warranty or representation concerning the Property which is not contained in this Agreement. Buyer shall rely on his own knowledge, inspections and investigations in determining whether to purchase the Property.

5. INSPECTION/DUE DILIGENCE. Subject to such restrictions as may be imposed by the United States Environmental Protection Agency and/or the New Jersey Department of Environmental Protection, Seller hereby grants Buyer and its agents, employees and contractors **90 days** (the "Due Diligence Period") commencing on the Effective Date of Agreement, to inspect the Property, its title, or any matter relating to the Property that Buyer shall deem appropriate in its sole discretion, and go upon the Property to perform such testing, engineering studies, site analysis, wet lands delineation, and environmental investigations as Buyer may require (the "Investigations"). Seller will cooperate with Buyer in making such Investigations. The Investigations shall be made solely at Buyer's expense. If the Investigations indicate, in Buyer's sole opinion, that the Property is not suitable for purposes contemplated by Buyer, Buyer may, at its option, cancel this Agreement, in which event this Agreement shall be NULL and VOID and neither party shall have any further liability or obligation under this Agreement. To exercise Buyer's option to cancel this Agreement, Buyer must give Seller notice consistent with **Section 14** prior to 5:00 PM on the Expiration Date in which case the Escrow Holder shall be authorized to release the Deposit to Buyer. Notwithstanding the foregoing the Buyer may waive all or any portion of the due diligence period by providing Seller with written notice in accordance with **Section 14**, in which event the parties will proceed to closing in accordance with **Section 12**, unless

this Agreement is terminated for one of the reasons set forth in this Agreement.

Buyer shall indemnify, defend and hold the Seller 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 Seller copies of all test results obtained by the Buyer relating to the Property. Any damage or loss caused in connection with inspections and testing shall not be a basis for cancelling this Agreement, or adjusting the sale price. The indemnity provided for this Section shall survive closing and not merge into the deed transferring the Property to Buyer.

6. SUBDIVISION. Seller shall apply to the appropriate Board for a subdivision of Block 1003, Lot 14.2 so that the Property to be sold and transferred to Buyer is consistent in size and area with the drawing attached as **Exhibit A**. Specifically, that portion of Block 1003, Lot 14.2 subject to **Rovagnati US Real Estate LLC**'s option to purchase, as depicted in the hash marked area on **Exhibit B**, is to be subdivided by the Seller prior to closing and is not included in the sale of the Property.

7. CONTINGENCIES. The Seller's obligation to close is contingent on the occurrence of the following:

- (a) Final, non-appealable, approval of the Sale by Vineland City Council.
- (b) Final, non-appealable, approval or the sale by the Vineland Industrial Commission.
- (c) Final, non-appealable, approval of the proposed subdivision by the Vineland Planning Board or Zoning Board as the case may be.
- (d) Buyer's full and complete compliance with the Environmental Agreements and securing the necessary approvals required by the Environmental Agreements.
- (e) Final, non-appealable, approval of the sale, transfer, or subdivision of any other Board, Commission, or similar body necessary for the sale, transfer and/or subdivision.

8. NO WARRANTIES OR REPRESENTATIONS. Except as otherwise set forth herein, Buyer is purchasing the Property "as-is". Neither Seller nor any other person acting or purporting to act on behalf of Seller has made any warranty or representation concerning the property or its operation which is not contained in this Agreement. The sale is based on the Buyer's own knowledge and inspection.

9. TERMINATION OF THE AGREEMENT. In the event either party legally terminates this Agreement, each party shall be solely responsible for the costs that it has incurred in connection with this Agreement, including but not limited to attorney fees, inspections, repairs, and title searches.

10. ADJUSTMENTS AT SETTLEMENT AND CLOSING COSTS.

A. Adjustments: The Buyer and Seller agree to adjust any expenses or income relating to the property as of 11:59 pm on the date prior to the closing date, including, but not limited to taxes and utilities.

B. Closing Costs and Expenses: At closing Buyer shall pay all costs, if any, charged by the lender, including but not limited to, loan servicing fees, and document preparation fees; all survey and title charges, including but not limited to, owners and lenders title insurance; all recording fees; the “mansion tax” imposed by **N.J.S.A. 46:15-7.2**, if any, and any other fee or cost which is customarily paid by Buyer. The Seller shall pay for the cost of recording the release of any mortgage on the property, the realty transfer fee, if any; and any other fee or cost which is customarily paid by Seller. The settlement/closing fee charged by the title company shall be equally split between the Buyer and Seller.

11. ASSESSMENTS. Certain municipal improvements such as curbs, sidewalks, water and sewer lines may result in governmental assessments against the property to pay for the improvement. All unpaid assessments against the property for work installed at the property before the date of settlement will be paid by the Seller at settlement. If the improvement is not installed at the property before the date of settlement, then the Buyer will pay the assessment. If the improvement is completed before the date of settlement but the amount of the assessment is not determined by the date of settlement, the Seller will pay an estimated amount at the settlement to be held in escrow by the title company or Buyer’s attorney. When the amount of the assessment is finally determined, the Seller will pay any deficiency to the Buyer or the Buyer will return any excess to the Seller. Notwithstanding anything herein to the contrary, Buyer shall be responsible for any assessments against the property resulting from Buyer’s proposed use of the property.

12. TIME AND PLACE OF SETTLEMENT.

(a) Buyer and Seller agree that closing (the “Closing” and the actual date of closing being the “Closing Date”) shall occur not later than 30 days after the expiration of the Due Diligence Period, which Closing Date shall be considered of the essence. Closing shall be held at a title company of Buyer’s choice, located in Vineland, New Jersey, at such other location as mutually agreed to by Buyer and Seller.

(b). Upon Closing, possession of the Property shall be delivered to Buyer.

(c). At Closing the parties authorize the Escrow Holder to pay the Deposit being held in accordance with **Section 2** to the Seller, and Buyer shall be entitled to a credit in an amount equal to the payment.

(d) Upon Settlement, possession of the Property shall be delivered to Buyer. Seller shall not be responsible for the removal of any garbage, debris or and other items, or personal property left on the Property, or take any other action with respect to the condition of the Property.

13. DOCUMENTS TO BE DELIVERED AT SETTLEMENT. At Settlement, Seller will deliver to Buyer the following, executed, acknowledged and in recordable form, as appropriate:

(a) A Bargain and Sale Deed with Covenants against Grantors Acts containing a reverter clause providing that in the event the restrictions set forth in this Agreement are violated, title to the Property shall revert to the Seller. The Deed will provide that the restrictions shall run with the land, and be enforceable by the City of Vineland by an action at law or equity for injunctive relief. The Deed will also provide that the City of Vineland shall be reimbursed for all costs and expenses, including reasonable attorney fees, incurred by the City of Vineland in connection with the enforcement of the restrictions set forth in the Deed.

(b) A quit claim deed from the Buyer to the Seller re-transferring the Property to the Seller to be held in escrow pending a post-closing breach of this Agreement to secure the Seller's right of reversion.

(c) An affidavit of title.

(d) Such other agreement document or writing required by the Title Company in connection with the Closing.

14. NOTICES. All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally or when sent by certified mail, postage prepared as follows:

To Seller: Sandy Forosisky
640 E. Wood Street
Vineland, New Jersey 08360
sforsisky@vinelandcity.org

Alan Giebner, Esq.
640 East Wood Street
Vineland, New Jersey 08360
agiebner@vinelandcity.org

To Buyer: Michael Levari

396 N. Mill Road
Vineland, New Jersey 08360

15. REAL ESTATE COMMISSIONS. Both parties warrant and represent that they have not engaged the services of a real estate agent or business broker in connection with the sale. In the event either party has engaged a real estate agent, business broker, or has in any way incurred a commission expense, that party shall be solely responsible for payment of same.

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

17. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon, enforceable against, and shall insure to the benefit of the assigns and successors of the parties hereto.

18. ASSIGNMENT. Upon Thirty (30) Day Notice to the Seller, Buyer may assign his rights, duties and obligations pursuant to this Agreement to a Permitted Assignee. Permitted Assignees are limited to (a) immediate family members of Michael Levari, such as his children; or (b) a New Jersey corporation or New Jersey Limited Liability Company, in which Michael Levari and or his immediate family members are the sole shareholder(s) or member (s), as the case may be, which is formed for the purpose of acquiring and/or owning the Property. Buyer may not otherwise assign this Agreement or any interest created herein, including, but not limited to, any ownership interest in the Property, for a period of Ten (10) years from the date of closing without the prior written consent of the Seller. Any assignment of this Agreement, or interest created herein, whether to a permitted assignee or otherwise, shall be subject to, and must be in full compliance with, the Environmental Agreements. This Section shall survive closing and not merge into the deed transferring the Property to Buyer.

19. AMENDMENT. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged, orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

20. NO RECORDING. 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 Seller=s option, any such recording shall be a default by Buyer under this Agreement.

21. GOVERNING LAW/JURISDICTION/VENUE/ WAIVER OF JURY TRIAL. This Agreement has been negotiated and executed in the State of New Jersey and shall be they be governed, construed and interpreted 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, will 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 submit, and consent, in

advance, to such jurisdiction and venue in any action or proceeding commenced by any party to this Agreement and they expressly waive any right that may otherwise exist to a trial by jury.

22. EFFECTIVE DATE/COUNTERPARTS/TIME. This Agreement shall be effective on the later of the date signed and delivered by either party (“Effective Date”). This Agreement may be executed in counterparts, each of which shall be binding against the party whose signature appears thereon. All such counterparts, together, shall consist of one and the same document. If the last day of any time period stated herein shall not fall on a Business Day, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is a Business Day. For the purposes of this Agreement, “Business Day” shall mean any day that is not a Saturday, Sunday or day on which commercial banks are not authorized to be open, or required to be closed in New Jersey.

23. FAX/PDF SIGNATURES. 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.

24. ENTIRE AGREEMENT. This Agreement and the Exhibits attached hereto constitute the entire Agreement of the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior negotiations, understandings and agreements of the parties with respect to the subject matter hereof.

25. RESTRICTIONS ON USE AND DEVELOPMENT. The Property may only be developed and used for non-commercial recreational purposes. Only such improvements and structures as are reasonable and necessary for the use of the property for non-commercial recreational purposes may be constructed on the Property. In addition, the Property may not be developed or used in a manner that impedes the industrial character of the surrounding properties, or impedes the industrial use of the surrounding properties. Furthermore, the Property may only be used and developed consistent with the restrictions contained in the DEP Agreement attached as **Exhibit D**; and the EPA Agreement attached as **Exhibit C**. The Deed to be provided Seller will contain a restrictive covenant limiting the use and development of the Property consistent with **Section 25** (this “Section”) and subjecting the Property to all the terms, conditions, and restrictions contained in the DEP Agreement and the EPA Agreement. The Deed will further provide that the Property shall revert to the Seller in the event that any of the restrictions contained in this Section are violated or if the terms, conditions, or restrictions contained in the Environmental Agreements are violated. The quit-claim deed referenced in **Section 13**, which is signed by the Buyer and delivered to Seller at closing, shall act as security for Buyer’s compliance with the terms of this Section. Buyer hereby authorizes the Seller to record the quit claim deed upon ten (10) day Notice in the event the Seller reasonably determine that the terms of this Section are violated.

26. SURVIVAL. All the terms and conditions of this Agreement, including, but not limited to, the terms, conditions and restrictions set forth in **Section 25** shall survive closing and not merge into the Deed transferring the Property to Buyer.

