

ORDINANCE NO. 2023- 59

AN ORDINANCE TO RELEASE, VACATE AND EXTINGUISH ANY AND ALL PUBLIC RIGHTS IN AND TO A PORTION OF THE RIGHT-OF-WAY BETWEEN DEMARCO DRIVE AND 2105 DEMARCO DRIVE AND APPROVING THE SALE AND TRANSFER OF THE AREA TO DAVY REALTY, LLC.

WHEREAS, Davy Realty, LLC (“Davy”) has requested the City of Vineland to vacate a portion of the right of way along DeMarco Drive, adjacent to 2105 DeMarco Drive, to be incorporated into a parking area to be used in conjunction with the Buyer’s current industrial lots, and cold storage facilities, operated by Davy Cold Storage, LLC, located at 2073 W. Garden Road and 2055 DeMarco Drive, and to provide for a vegetative buffer between a proposed parking area on 2105 DeMarco Drive, and DeMarco Drive;

WHEREAS, Davy’s cold storage facility which is adjacent to the proposed parking area and located at 2073 W. Garden Road, consists of 11.46 acres with the land having an assessed value of \$429,800.00, or \$37,504.00 per acre, and the subject area of the R.O.W. is not a lot with an assessed value;

WHEREAS, the portion of the R.O.W. to be vacated is not needed as a road or for any other public purpose and the public interest would best be served by abandoning, vacating, releasing and extinguishing any and all public rights which the City may have in and to that portion of the R.O.W. as it will facilitate the planting of a vegetative buffer shielding the proposed parking area from DeMarco Drive, thus enhancing the visual appeal along the main entrance to the Industrial Park.

NOW THEREFORE BE IT ORDAINED BY COUNCIL OF THE CITY OF VINELAND as follows:

1. The statements of the preamble, hereinabove, are incorporated herein as though fully set forth herein;
2. City hereby approves vacation of the subject R.O.W., as described in the legal description attached as **Exhibit A**, with all public rights therein extinguished; subject to, and conditioned upon, Davy: (a) paying the City of Vineland \$15,414.00 (.411 acres at \$37,594 per acre); (b) construction of a vegetative buffer between the proposed parking area and DeMarco Drive as shown that portion of Davy’s proposed site Plan attached as **Exhibit “B”** and otherwise consistent with the buffer required in the attached contract; and (c) obtaining Planning Board approval of its proposed site plan and recording a deed containing an all-inclusive description combining the subject area of the R.O.W. with 2105 DeMarco Drive;
3. All rights and privileges, if any, possessed by public utilities, as defined in N.J.S.A. 48:2-13, and by any cable television company, as defined in the Cable Television Act, P.L. 1972, c. 186, to maintain, repair and replace their existing facilities in, adjacent to, over or under the street, highway, lane, alley, square, place or park, or any part thereof, to be vacated, are expressly reserved and excepted from the vacation set forth above;
4. The Mayor of the City of Vineland is authorized and empowered to execute an Agreement with Davy concerning the vacation of the subject area of the R.O.W., and the transfer the area to Davy, substantially in the form and substance of the Agreement attached hereto; along with all documents or other instruments necessary to complete the transfer of the subject area of the R.O.W. to Davy, including, but not limited to, a confirmatory deed.

CITY OF VINELAND

This Ordinance shall take effect upon adoption and publication according to Law.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF VINELAND (Seller) and
DAVY REALTY, LLC (Buyer)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2023, by and between **DAVY REALTY, LLC** whose address is 2055 DeMarco Drive, 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").

WHEREAS, Davy Realty, LLC is the owner of certain property in the Vineland Industrial Park known as 2073 W. Garden Road, 2105 W. Garden Road;

WHEREAS, Davy Realty, LLC has requested, and the City of Vineland has agreed to vacate a portion of the right of way along DeMarco Drive, adjacent to 2105 DeMarco Drive, to be incorporated into the area used by Davy Cold Storage, LLC in connection with its cold storage business, and to provide for a buffer between the proposed parking area on 2105 DeMarco Drive, and DeMarco Drive which is the main entrance into the Vineland Industrial Park.

WHEREAS, the proposed parking area is to be used in conjunction with the Buyer's current industrial lot, and cold storage facility, operated by Davy Cold Storage, LLC, located at 2073 W. Garden Road;

WHEREAS, the Buyer's current industrial lot located at 2073 W. Garden Road, consisting of 11.46 acres has an assessed value of 429,800.00 for the land, or \$37,504.00 per acre;

WHEREAS, the portion of the right-of-way to be vacated is not needed as a road or for any other public purpose and the public interest would best be served by abandoning, vacating, releasing and extinguishing any and all public rights which the City may have in and to that portion of the R.O.W. shown on Schedule A attached hereto and made a part hereof.

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 REAL ESTATES. Subject to the conditions set forth in Paragraph 6 below, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller a strip of real estate containing 17,908 sq. feet (.411 acres) to be created by vacating a portion of the right of way along DeMarco Drive adjacent to 2105 W. Garden Road described in the legal description attached as **Exhibit A**. The Property is being sold "as is" "where is" and with "all faults" subject Buyer's due diligence rights set forth in **Section 4** below.

2. PURCHASE PRICE. The total consideration or purchase price (the "Purchase Price") for the Property shall be **FIFTEEN THOUSAND FOUR HUNDRED AND FOURTEEN (\$15,414.00) DOLLARS**, calculated as follows \$37,504/acre x .411 acres. The purchase price shall be paid as follows:

(a) A deposit in the amount of 10% of the purchase price to be held in escrow by the title company of Buyer's choice 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 Settlement.

(c) The Purchase Price shall be adjusted in accordance with the provisions of **Section 9** below, which provides for various adjustments and apportionments.

3. QUALITY OF TITLE.

(a) At closing, title to the Premises shall be good and marketable and free and clear of all liens, restrictions, easements and other encumbrances and title objections, and shall be insurable as such at ordinary rates by any reputable title insurance company selected by the Buyer (the "Title Company"), subject only to the Permitted Title Exceptions (as hereinafter defined).

(b) At or prior to closing, Seller shall discharge, pay and satisfy any mortgage lien, judgment or other lien of a liquidated and fixed amount (each, a "Monetary Lien") affecting the Premises.

(c) The Buyer shall promptly conduct its examination of title. Buyer may only terminate this Agreement in the event the Seller is unable to deliver marketable title as described in Section 3 (a) above. Buyer shall have thirty (30) days from the effective date of this Agreement to conduct its examination and terminate this Agreement and only if Seller is unable to deliver marketable title. 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. INSPECTION/DUE DILIGENCE. OMITTED.

5. INCLUDED PERSONALTY AND FIXTURES. OMITTED.

6. CONDITIONS TO BUYER'S AND SELLER'S OBLIGATION TO CLOSE.

(a) Buyer's obligation to close is specifically conditioned on receipt of preliminary and final site plan approval from the City of Vineland's Planning Board, and any outside agencies required by such approval, for the Site Plan attached as **Exhibit B**, subject to such reasonable adjustments and conditions as may be necessary. If Buyer's Site Plan application is denied, Buyer may terminate this Agreement upon notice to Seller, and the deposit shall be returned to Buyer.

(b) Seller's obligation to close is specifically conditioned on Vineland City Council's passing a final non-appealable Ordinance vacating a portion of the right of way, described in **Exhibit A**, and approving the sale and transfer of the area to Buyer for \$15,414.00 Dollars.

7. NO WARRANTIES OR REPRESENTATIONS. Except as otherwise set forth herein, Buyer is purchasing the Property in its "as-is" condition. 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. The sale is based on the Buyer's own knowledge and inspection.

8. 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.

9. 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) Utilities: Omitted.

(c) Closing Costs and Expenses: At closing Buyer shall pay all survey and title charges, including but not limited to, owners title insurance; all recording fees, including, but not limited to, the cost of recording the deed, 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 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.

10. 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.

11. TIME AND PLACE OF SETTLEMENT.

(a) Buyer and Seller agree that closing shall occur not later than 30 days after the Buyer receives approval of the site plan, or the date the Ordinance vacating the portion of the right of way subject to this Agreement becomes effective, whichever shall occur last. Closing shall be held by the title company of Buyer's choice, located in Vineland, New Jersey. Buyer shall diligently pursue site plan approval. In the event that closing does not occur within 45 days of the effective date of the Ordinance vacating the portion of the right of way subject to this agreement, either party may terminate this Agreement, and the City shall be under no obligation to record the Ordinance.

(b) Upon Settlement, the Ordinance vacating the portion of the right of way subject to this Agreement shall be recorded.

(c) At Settlement 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.

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

(a) Ordinance vacating the portion of the right of way subject to this Agreement;

(b) A deed confirming that the transfer of the portion of the right-of-way to be vacated to Davy Realty, LLC; and

- (c) such other agreement document or writing required by the Title Company in connection with the closing.

13. RISK OF LOSS. Omitted.

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

To Seller: **City of Vineland**
c/o Sandra Forosisky,
640 E. Wood Street
Vineland, New Jersey 08360
sforosisky@vinelandcity.org

Alan G. Giebner, Esq.
Associate Solicitor
City of Vineland
640 E. Wood Street
Vineland, New Jersey 08360
agiebner@vinelandcity.org

To Buyer: Steven Fabietti, Esq.
Hyland, Levin, and Shapiro
6000 Sagemore Drive
Suite 6301
Marlton, NJ 08053
fabietti@hylandlevin.com

15. REAL ESTATE COMMISSIONS. The Buyer shall be responsible for all real estate commissions incurred in connection with the sale of the Property.

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. Buyer may not assign its rights, duties and obligations under the terms of this Agreement.

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. 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.

22. EFFECTIVE DATE/COUNTERPARTS. This Agreement shall be effective on the later of the date signed 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.

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. BUFFER AREA TO BE CONSTRUCTED. Buyer shall construct a vegetative buffer consistent with the buffer shown the Site Plan attached as **Exhibit B**. The screening shall be evergreen trees planted in two staggered rows, 5 feet apart. The evergreens shall be 10 feet apart center-to-center in each row, resulting in a tree every 5 feet in two rows. Additionally, the trees shall be 6-8 feet in height at the time of planting. The terms, conditions, and requirements set forth in this Paragraph shall survive closing and not merge into the deed, or the recording of the Ordinance vacating that portion of the right of way subject to this Agreement.

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

BUYER:
Davy Realty, LLC, a New Jersey
Limited Liability Company

Date: _____

John J. Davy, Jr., Member

Date: _____

Dolores J. Davy, Member

Date: _____

Michael S. Davy, Member

SELLER:
City of Vineland, a Municipal
Corporation of the State of New Jersey

Date: _____

Anthony Fanucci, Mayor



**CONSULTING ENGINEERS • PLANNERS
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Albert A. Fralinger, Jr., PE, PLS & PP
J. Michael Fralinger, Sr. (1957-2009)
Charles M. Fralinger, PLS
Carl R. Gaskill, PE, PLS, PP & CME
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Barry S. Jones, PLS & PP
Guy M. DeFabrites, PLS & PP
William J. Olbrich, PLS
Robert A. Mulford, III, PE, CME
Corey R. Gaskill, PE, CME & CFM
J. Michael Fralinger, Jr., PE, CME

EXHIBIT A

Civil Engineering
Land Use Planning & Design
Site Engineering
Traffic Engineering
Land Surveying
Municipal Engineering
Soils Investigation
Traffic Impact Studies
NJDOT Permitting
Phase I Environmental Studies
Permeability Testing
Septic System Design
Wetlands Delineation
Global Positioning Surveying (GPS)
Geographic Information Systems (GIS)
Planning/Zoning Board Representation
3D Laser Scanning

**VACATION DESCRIPTION
P/O DEMARCO DRIVE (WIDTH VARIES)
CITY OF VINELAND
SEPTEMBER 12, 2023**

ALL that certain part and parcel of land situate, lying, and being in the City of Vineland, County of Cumberland, State of New Jersey and being more particularly described as follows:


BEGINNING at the common corner of Demarco Drive (width varies) and Lot 1 of Block 1005, as shown on the Lot Consolidation and Surrounding Structures Plan for the Davy Cold Storage Tractor Trailer Parking Expansion, Prepared by Fralinger Engineering PA, 629 Shiloh Pike, Bridgeton, New Jersey, dated 08/14/23, last revised 08/25/23; (said beginning point having NJPCS NAD '83 ('11) values N 250,422.21 feet and E 333,190.56 feet and being located a South 03° 46' 23" West 725.00 feet from the southeasterly corner of the intersection of Demarco Drive and W. Garden Road (50' wide) and from said beginning point and in the said bearing system running, thence:

- (1) along the northerly line of Lot 14 of Block 1005, North 86° 08' 42" West, 40.00 feet, to a point for a corner; thence
- (2) over and through Demarco Drive, North 03° 46' 23" East, 422.12 feet, to a point for a corner; thence
- (3) still over and through same, North 17° 25' 54" East, 28.75 feet, to a point for a corner; thence
- (4) still over and through same, South 86° 13' 37" East, 33.21 feet, to a point for a corner in the westerly line of Lot 1 of Block 1005, thence.

(5) along said westerly line, South 03° 46' 23" West, 450.11 feet, to the place of beginning.

CONTAINING 0.411 of an acre of land.

BEING a part of the right-of-way of Demarco Drive to be vacated and consolidated into Lot 2 of Block 1005 along with Lot 1 of Block 1005, as shown on said Lot Consolidation and Surrounding Structures Plan and to be shown on the City of Vineland Tax Assessment Map.



William J. Olbrich, Jr.
Professional Land Surveyor
New Jersey License No. 43246
Date: September 12, 2023
Job No.: 24418.14

WJO/cg

