

AGREEMENT TO PURCHASE AND SELL REAL ESTATE  
BETWEEN INDIAN RIVER COUNTY  
AND  
GARY M. RUST & LINDA M. RUST

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE ("Agreement") is made and entered into as of the      day of      , 2018, by and between Indian River County, a political subdivision of the State of Florida ("the County"), and Gary M. Rust and Linda M. Rust ("the Seller) who agree as follows:

**WHEREAS**, Seller owns property located at 6680 65th Street, Vero Beach, Florida. A legal description of the property is attached to this agreement as Exhibit "A" and incorporated by reference herein; and

**WHEREAS**, the County is scheduled to do road improvements on 66<sup>th</sup> Avenue between 49<sup>th</sup> Street and 81<sup>st</sup> Street in the future and the road expansion will impact the Seller's property; and

**WHEREAS**, in order for the County to proceed with its road expansion plans, the County needs to purchase property to be used as right-of-way from landowners along and adjacent to 66<sup>th</sup> Avenue; and

**WHEREAS**, the County contacted the Seller and offered to purchase right-of-way of approximately 1,191 square feet or 0.03 acres of property as depicted on Exhibit "B", and

**WHEREAS**, the County also needs a 10 foot Temporary Construction Easement (TCE) from Seller as described on Exhibit "C" attached to facilitate the Project, and

**WHEREAS**, the Parties agree this is an arm's length transaction between the Seller and the County, without the threat of eminent domain.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises, covenants and premises hereinafter, the COUNTY and SELLER agree as follows:

1. Recitals. The above recitals are affirmed as being true and correct and are incorporated herein.
2. Agreement to Purchase and Sell. The Seller hereby agrees to sell to the County, and the County hereby agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement that certain parcel of real property located at 6680 65th Street, Vero Beach, FL and more specifically described in the legal description attached as Exhibit "B", fee simple, containing approximately 1,191 square feet, all improvements thereon, together with all easements, rights and uses now or hereafter belonging thereto (collectively, the "Property").

2.1 Purchase Price, Effective Date. The purchase price ("Purchase Price") for the Property shall be \$3,000.00 (Three Thousand and 00/100 Dollars). The Purchase Price shall be paid on the Closing Date. The Effective Date of this Agreement shall be the date upon which the County shall have approved the execution of this Agreement, either by approval by the Indian River County Board of County Commissioners at a formal meeting of such Board or by the County Administrator pursuant to his delegated authority.

3. Title. Seller shall convey marketable title to the Property by warranty deed free of claims, liens, easements and encumbrances of record or known to Seller; but subject to property taxes for the year of Closing and covenants, restrictions and public utility easements of record provided (a) there exists at Closing no violation of any of the foregoing; and (b) none of the foregoing prevents County's intended use and development of the Property ("Permitted Exceptions").

3.1 County may order an Ownership and Encumbrance Report or Title Insurance Commitment with respect to the Property. County shall within fifteen (15) days following the Effective Date of this Agreement deliver written notice to Seller of title defects. Title shall be deemed acceptable to County if (a) County fails to deliver notice of defects within the time specified, or (b) County delivers notice and Seller cures the defects within thirty (30) days from receipt of notice from County of title defects ("Curative Period"). Seller shall use best efforts to cure the defects within the Curative Period and if the title defects are not cured within the Curative Period, County shall have thirty (30) days from the end of the Curative Period to elect, by written notice to Seller, to: (i) to terminate this Agreement, whereupon shall be of no further force and effect, or (ii) extend the Curative Period for up to an additional 90 days; or (iii) accept title subject to existing defects and proceed to closing.

4. Representations of the Seller.

4.1 Seller is indefeasibly seized of marketable, fee simple title to the Property, and is the sole owner of and has good right, title, and authority to convey and transfer the Property which is the subject matter of this Agreement, free and clear of all liens and encumbrances.

4.2 From and after the Effective Date of this Agreement, Seller shall take no action which would impair or otherwise affect title to any portion of the Property, and shall record no documents in the Public Records which would affect title to the Property, without the prior written consent of the County.

4.3.1 There are no existing or pending special assessments affecting the Property, which are or may be assessed by any governmental authority, water or sewer authority, school district, drainage district or any other special taxing district.

5. Default.

5.1 In the event the County shall fail to perform any of its obligations hereunder, the Seller shall, at its sole option, be entitled to: (i) terminate this Agreement by written notice

delivered to the County at or prior to the Closing Date and thereupon neither the Seller nor any other person or party shall have any claim for specific performance, damages, or otherwise against the County; or (ii) waive the County's default and proceed to Closing.

5.2 In the event the Seller shall fail to perform any of its obligations hereunder, the County shall, at its sole option, be entitled to: (i) terminate this Agreement by written notice delivered to the Seller at or prior to the Closing Date and thereupon neither the County nor any other person or party shall have any claim for specific performance, damages or otherwise against the Seller; or (ii) obtain specific performance of the terms and conditions hereof; or (iii) waive the Seller's default and proceed to Closing:

## 6. Closing.

6.1 The closing of the transaction contemplated herein ("Closing" and "Closing Date") shall take place within 45 days following the execution of the contract by the Chairman of the Board of County Commissioners. The parties agree that the Closing shall be as follows:

(a) The Seller shall execute and deliver to the County a warranty deed conveying marketable title to the Property, free and clear of all liens and encumbrances and in the condition required by paragraph 3.

(b) If Seller is obligated to discharge any encumbrances at or prior to Closing and fails to do so, County may use a portion of Purchase Price funds to satisfy the encumbrances.

(c) If the Seller is a non-resident alien or foreign entity, Seller shall deliver to the County an affidavit, in a form acceptable to the County, certifying that the Seller and any interest holders are not subject to tax under the Foreign Investment and Real Property Tax Act of 1980.

(d) The Seller and the County shall each deliver to the other such other documents or instruments as may reasonably be required to close this transaction.

6.2 Taxes. All taxes and special assessments which are a lien upon the property on or prior to the Closing Date (except current taxes which are not yet due and payable) shall be paid by the Seller.

## 7. Personal Property.

7.1 The Seller shall have removed all of its personal property, equipment and trash from the Property. The Seller shall deliver possession of the Property to County vacant and in the same or better condition that existed at the Effective Date hereof.

7.2 Seller shall deliver at Closing all keys to locks and codes to access devices to County, if applicable.

8. Closing Costs; Expenses. County shall be responsible for preparation of all Closing documents.

8.1 County shall pay the following expenses at Closing:

8.1.1 The cost of recording the warranty deed and any release or satisfaction obtained by Seller pursuant to this Agreement.

8.1.2 Documentary Stamps required to be affixed to the warranty deed.

8.1.3 All costs and premiums for the owner's marketability title insurance commitment and policy, if any.

8.2 Seller shall pay the following expenses at or prior to Closing:

8.2.1 All costs necessary to cure title defect(s) or encumbrances, other than the Permitted Exceptions, and to satisfy or release of record all existing mortgages, liens or encumbrances upon the Property.

9. Miscellaneous.

9.1 Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue shall be in Indian River County for all state court matters, and in the Southern District of Florida for all federal court matters.

9.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to this transaction and supersedes all prior agreements, written or oral, between the Seller and the County relating to the subject matter hereof. Any modification or amendment to this Agreement shall be effective only if in writing and executed by each of the parties.

9.3 Assignment and Binding Effect. Neither County nor Seller may assign its rights and obligations under this Agreement without the prior written consent of the other party. The terms hereof shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

9.4 Notices. Any notice shall be deemed duly served if personally served or if mailed by certified mail, return receipt requested, or if sent via "overnight" courier service or facsimile transmission, as follows:

If to Seller:

Gary M. Rust & Linda M. Rust  
~~823 Orange Park Avenue~~ 914 SUCCESS AVE.  
~~Lakeland, FL 33801~~ LAKELAND, FL. 33803

*J.M.F.*

If to County:

Indian River County  
1801 27th Street  
Vero Beach, FL 32960  
Attn: Land Acquisition/Monique Filipiak

Either party may change the information above by giving written notice of such change as provided in this paragraph.

9.5 Survival and Benefit. Except as otherwise expressly provided herein, each agreement, representation or warranty made in this Agreement by or on behalf of either party, or in any instruments delivered pursuant hereto or in connection herewith, shall survive the Closing Date and the consummation of the transaction provided for herein. The covenants, agreements and undertakings of each of the parties hereto are made solely for the benefit of, and may be relied on only by the other party hereto, its successors and assigns, and are not made for the benefit of, nor may they be relied upon, by any other person whatsoever.

9.6 Attorney's Fees and Costs. In any claim or controversy arising out of or relating to this Agreement, each party shall bear its own attorney's fees, costs, and expenses.

9.7 Counterparts. This Agreement may be executed in two or more counterparts, each one of which shall constitute an original.

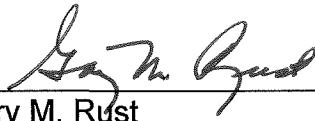
9.8 County Approval Required: This Agreement is subject to approval by the Indian River County Board of County Commissioners as set forth in paragraph 2.

9.9 Beneficial Interest Disclosure: In the event Seller is a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for **others, Seller shall provide a fully completed, executed, and sworn beneficial interest** disclosure statement in the form attached to this Agreement as an exhibit that complies with all of the provisions of Florida Statutes Section 286.23 prior to approval of this Agreement by the County. However, pursuant to Florida Statutes Section 286.23 (3) (a), the beneficial interest in any entity registered with the Federal Securities and Exchange Commission, or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public, is exempt from disclosure; and where the Seller is a non-public entity, that Seller is not required to disclose persons or entities holding less than five (5%) percent of the beneficial interest in Seller.

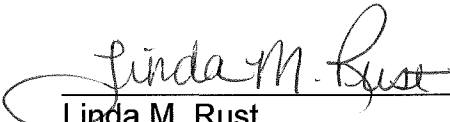
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

INDIAN RIVER COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Peter D. O'Bryan, Chairman

  
\_\_\_\_\_  
Gary M. Rust Date

Approved by BCC \_\_\_\_\_

  
\_\_\_\_\_  
Linda M. Rust Date

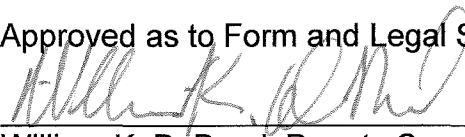
ATTEST:  
Jeffrey R. Smith, Clerk of Court and  
Comptroller

By: \_\_\_\_\_  
Deputy Clerk

Approved:

\_\_\_\_\_  
Jason E. Brown, County Administrator

Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
William K. DeBraal, Deputy County Attorney

## EXHIBIT "A"

The West 10 acres of the East 30 acres of Tract 8, Section 7, Township 32 South, Range 39 East, according to the last general plat of lands of the Indian River Farms Co., filed in Plat Book 2, Page 25, Public Records of St. Lucie County, Florida, now Indian River County, Florida, less the South 60 feet thereof for road Right of way and also less the East 266.35 feet of the South 770.4 feet of the above described parcel.

Commonly known as: 6680 65th Street, Vero Beach, FL 32967

Parcel ID Number: 32-39-07-00002-0000-00001.0

**EXHIBIT "B"**

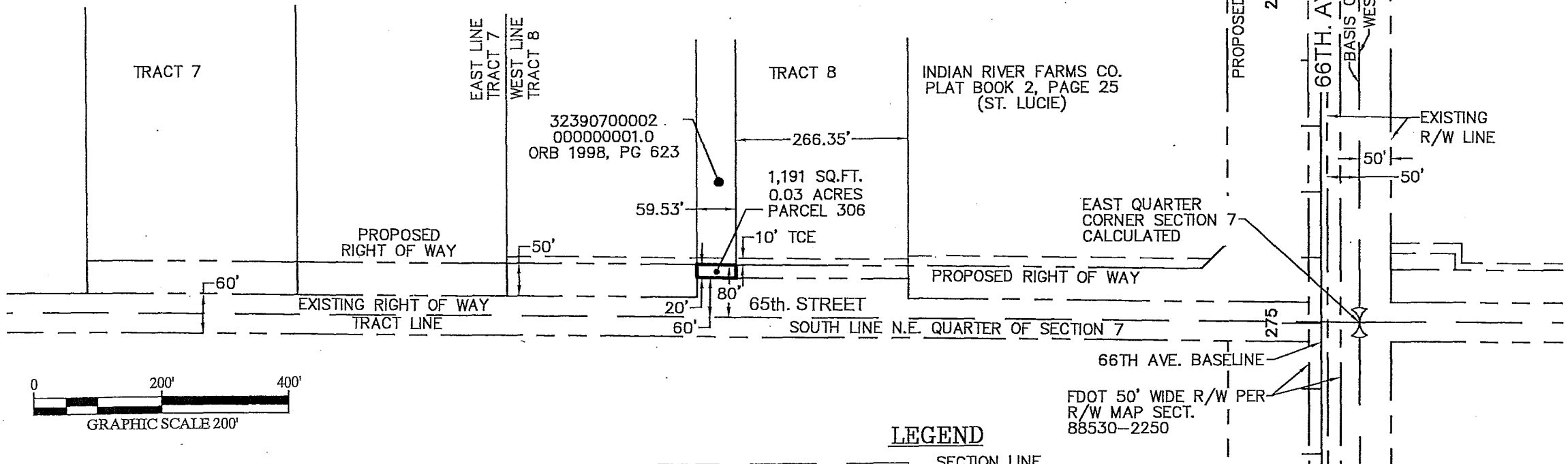
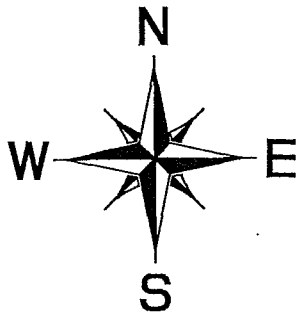
**LEGAL DESCRIPTION**  
RIGHT OF WAY PARCEL

THE NORTH 20.00 FEET OF THE SOUTH 80 FEET OF THE FOLLOWING DESCRIBED PARCEL AS RECORDED IN OFFICIAL RECORDS BOOK 1998, PAGE 623, PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA.

PARCEL 1 AFFIDAVIT OF EXEMPTION FROM SUBDIVISION IMPROVEMENTS WITH A PLAT FILING FOR GORE, AS RECORDED IN OFFICIAL RECORDS BOOK 1905, PAGE 72, PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST 10 ACRES OF THE EAST 30 ACRES OF TRACT 8, SECTION 7, TOWNSHIP 32 SOUTH, RANGE 39 EAST, ACCORDING TO THE LAST GENERAL PLAT OF LANDS OF THE INDIAN RIVER FARMS COMPANY FILED IN PLAT BOOK 2, PAGE 25, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, NOW INDIAN RIVER COUNTY, FLORIDA, LESS THE SOUTH 60 FEET THEREOF FOR ROAD RIGHT OF WAY, AND ALSO LESS THE EAST 266.35 FEET OF THE SOUTH 770.04 FEET OF THE ABOVE DESCRIBED PARCEL.

CONTAINING 1,191 SQUARE FEET OR 0.03 ACRES, MORE OR LESS.



**SURVEYORS NOTES**

- 1) THIS IS A SKETCH OF LEGAL DESCRIPTION ONLY, NOT A BOUNDARY RETRACEMENT SURVEY.
- 2) THE BEARING BASE FOR THIS SURVEY, IS THE WEST LINE OF SECTION 8. SAID LINE BEARS NORTH 00°00'25" EAST.
- 3) THE SCALE OF THIS DRAWING MAY HAVE BEEN DISTORTED DURING REPRODUCTION PROCESSES.
- 4) THIS DRAWING IS BASED ON THE PRELIMINARY RIGHT OF WAY MAP FOR 66TH AVENUE PREPARED BY BURDETTE AND ASSOCIATES, DATED 10-10-06, AS DIRECTED BY INDIAN RIVER COUNTY, FLORIDA.

	SECTION LINE
	EASEMENT LINE
	PROPERTY LINE
	PROPOSED RIGHT OF WAY
	RIGHT OF WAY LINE
	P.O.C. POINT OF COMMENCEMENT
	P.O.B. POINT OF BEGINNING
	R/W RIGHT OF WAY
	ORB OFFICIAL RECORDS BOOK
	PG PAGE
	TCE TEMPORARY CONSTRUCTION
	EASEMENT

*This certifies that a legal description and sketch of the property shown hereon was made under my supervision and that this legal description and sketch meets the standards of practice set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes, and that this drawing is a true and accurate representation thereof to the best of my knowledge and belief. Subject to notes and notations shown hereon.*

*E.C. Demeter*

E.C. DEMETER, P.S.M. NO. 5179

DATE: 1-13-17

Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

66th AVENUE  
PARCEL 306

SHEET NUMBER  
1 OF 1

LEGAL DESCRIPTION AND SKETCH OF  
PARCEL 306  
INDIAN RIVER COUNTY, FLORIDA

DATE  
1/12/17  
PROJECT NO.  
047035041

**Kimley Horn**  
© 2017 KIMLEY-HORN AND ASSOCIATES, INC.  
445 24TH STREET, SUITE 200, VERO BEACH, FL 32990  
PHONE: 772-794-6100 FAX: 772-794-6130  
WWW.KIMLEY-HORN.COM

SCALE 1"=200'  
DESIGNED BY PCS  
DRAWN BY PCS  
CHECKED BY EDD