

AGREEMENT TO PURCHASE AND SELL REAL ESTATE
BETWEEN INDIAN RIVER COUNTY
AND
THE CITY OF VERO BEACH

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE (“Agreement”) is made and entered into as of the _____ day of February, 2019, by and between Indian River County, a political subdivision of the State of Florida (“the County”), whose mailing address is 1801 27TH Street, Vero Beach, FL 32960 and the City of Vero Beach, a Florida municipal corporation, (the City) whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389 who agree as follows:

WHEREAS, the City owns a 35.24 acre parcel of property (the Property) located at the south east corner of 43rd Avenue and 26th Street, that lies within the city limits of the City of 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 owns Historic Dodgertown, the adjacent parcel to the east of the Property; and

WHEREAS, the property was at one time part of the Historic Dodgertown complex, formerly known as Dodgertown Golf Course;

WHEREAS, the County has been contacted by Major League Baseball, Inc. (MLB) concerning operations at Historic Dodgertown with an eye toward expansion of baseball and other sports for financially disadvantaged youths; and

WHEREAS, the County is concerned that the Dodgertown Golf Course property may be needed for future development of Historic Dodgertown, parking and open space compatible with Historic Dodgertown operations; and

WHEREAS, the County has also demonstrated a need for additional parking for large events held at Historic Dodgertown, such as the Jackie Robinson Game, concerts and other large gatherings; and

WHEREAS, the County is in the final phase of right-of-way acquisition for the State Road 60/43rd Avenue Improvement Project, which will expand 43rd Avenue along the west side of the Property, and

WHEREAS, the County has future plans to expand Aviation Boulevard and 26th Street to the north of the Property and additional right-of-way and stormwater ponds will be needed from landowners adjacent to Aviation and 26th Street; and

WHEREAS, purchase of the Property would benefit the County in its negotiations with MLB, future road expansion and current parking for large events at Historic Dodgertown, and

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and premises hereinafter, the COUNTY and CITY 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 City hereby agrees to sell to the County, and the County hereby agrees to purchase from the City, upon the terms and conditions set forth in this Agreement that certain parcel of real property located at the south east corner of 43rd Avenue and 26th Street, lying within the city limits of the City of Vero Beach, Indian River County, Florida and more specifically described in the legal description attached as Exhibit "A", fee simple, containing approximately 35.24 acres, 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 \$2,450,000.00 (Two Million, Four Hundred Fifty 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 Commission or the City Council shall have approved the execution of this Agreement, which ever date is later.

3. Title and Appraisal. The City shall convey marketable title to the Property by warranty deed free of claims, liens, easements and encumbrances of record or known to The City; 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 thirty (30) days following the Effective Date of this Agreement deliver written notice to the City 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 the City cures the defects within thirty (30) days from receipt of notice from County of title defects ("Curative Period"). The City 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 the City, 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.

3.2 The Parties agree that Fla. Stat. §125.335 (2018) is applicable to this Agreement and two appraisals supporting the purchase price of the Property are required by this statute. The County shall obtain these appraisals within 45 days of the effective date and notify the City of its receipt upon completion.

3.3 Prior to or after the effective date, the County may obtain a survey and conduct a Phase I examination of the Property, both at the County's expense. If the survey reveals encroachments or other significant defects, they shall be considered title defects and dealt with as outlined in this paragraph, above. Should the Phase I examination reveal contamination on the Property, the County may accept the Property and proceed to closing or may terminate this Agreement.

3.4 By a restriction recorded with the deed, the County agrees to exclude residential development from the permitted or allowable uses of the Property. As a further restriction to be recorded with the deed, for so long as the Amended and Restated Facility Lease Agreement for the Dodgertown Property is in effect, the property will be used for passive recreation, environmental projects, or activities that are ancillary to and consistent with the use of the Dodgertown Property by Verotown, LLC.

3.5 The County shall convey to the City a grant of first refusal, in accordance with the Addendum to Agreement attached to this Agreement as Exhibit "B" and incorporated by reference herein.

3.6 Upon completion of the State Road 60/43rd Avenue Improvement Project or within 36 months of closing on the Property, the County shall plant additional trees and landscaping along the east side of 43rd Avenue.

4. Representations of the City.

4.1 The City 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, the City 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 City 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 City 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 City 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 City 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 City; or (ii) obtain specific performance of the terms and conditions hereof; or (iii) waive the City's default and proceed to Closing:

6. Closing.

6.1 The closing of the transaction contemplated herein ("Closing" and "Closing Date") shall take place on or before April 15, 2019. The parties agree that the Closing shall be as follows:

(a) The City 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 the City 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) The City 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, if any, 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 City.

7. Personal Property.

7.1 The City shall have removed all of its personal property, equipment and trash from the Property. The City 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 The City shall deliver at Closing all keys to locks and codes to access devices to County, if applicable.

8. Closing Costs; Expenses. County, or its agent, 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 the City 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 The City 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 City 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 the City 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 the City: James O'Connor, City Manager
1053 20th Place
Vero Beach, FL 3296

If to County: Jason E. Brown, County Administrator
1801 27th Street
Vero Beach, FL 32960

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

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

Bob Solari, Chairman

Approved by BCC _____

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. DeBaal, Deputy County Attorney

ATTEST:

CITY OF VERO BEACH

Tammy K. Bursick
City Clerk

By: _____
Harry Howle III
Mayor

[SEAL]

Date signed: _____

CITY ADMINISTRATIVE REVIEW
(For Internal Use Only–Sec. 2-77 COVB Code)

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

Kira C. Honse
Interim City Attorney

James R. O'Connor
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

Monte K. Falls
Public Works Director

Cynthia D. Lawson
Finance Director