

AGREEMENT TO PURCHASE AND SELL REAL ESTATE  
BETWEEN INDIAN RIVER COUNTY  
AND  
INDIAN RIVER SURGERY PROPERTIES, LLC

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between Indian River County, a political subdivision of the State of Florida (“the County”), and Indian River Surgery Properties, LLC, a Florida limited liability company (“the Seller”) who agree as follows:

**WHEREAS**, Seller owns property located at 1200 37<sup>th</sup> Street, Vero Beach, FL 32960. A legal description of the property is attached to this agreement as Exhibit “A” and incorporated by reference herein; and

**WHEREAS**, the County is purchasing the former medical office building for right-of-way and a future stormwater treatment system; and

**WHEREAS**, the County contacted the Seller to purchase the property of approximately 95,700 +/- square feet or 2.20 +/- acres of property as depicted on Exhibit “A”, and after negotiations with the County, the Seller has agreed to sell the property to the County; 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 1200 37<sup>th</sup> Street, Vero Beach, Florida 32960 and more specifically described in the legal description attached as Exhibit “A”, fee simple, containing approximately 2.20 acres, all improvements thereon, together with all easements, leases 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 \$1,550,000.00 (One Million Five Hundred and 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 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. The execution of this Agreement by the County shall be evidence of such approval.

3. Title. Seller shall convey marketable title to the Property by special 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 ("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 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 five (5) days from receipt of notice from County of title defects ("Curative Period"). If the title defects are not cured within the Curative Period, County, as its sole remedy, 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 without a reduction in the Purchase Price and proceed to Closing.

3.2 This agreement is contingent upon a "clean" Phase 1 Environmental Assessment of the Property for the County's intended use, which County shall receive within ninety (90) days following the Effective Date of this Agreement (the "Review Period"). The Seller shall permit access to the County (or its agent) for such testing and examination needed for the Phase 1 Assessment upon reasonable notice by the County; provided that County shall not perform any invasive testing at the Property without the prior written consent of Seller. At the conclusion of the Phase 1 Assessment, Property shall be returned by County to its original condition, ordinary wear and tear excepted. In the event the Phase I is not acceptable to County, County has the right to terminate this Agreement prior to the end of the Review Period by written notice to Seller, whereupon this Agreement shall be of no further force and effect.

4. Representations of the Seller. Seller makes the following representations and warranties as of the date of this Agreement:

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, other than the Permitted Exceptions.

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.

4.2.1 To the knowledge of Seller, 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 special warranty deed conveying marketable title to the Property, free and clear of all liens and encumbrances, other than the Permitted Exceptions, and in the condition required by paragraph 3.

(b) If Seller is obligated to discharge any monetary 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.

(e) The Seller shall execute and deliver to County an assignment of leases in effect at the time of closing. Seller shall transfer to County all deposits and rents held in escrow at closing.

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 and special assessments 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 The following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixtures(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), security gate and other access devices, and storm shutters/panels.

7.3 Seller shall deliver at Closing all keys, garage door openers, access devices and codes 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 special 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 special 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.

8.2.2 Any real estate commissions, fees or cost associated with listing 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: Indian River Surgery Properties, LLC  
569 Brookwood Village, Suite 901  
Birmingham, Alabama 35209  
Attn: Real Estate Department

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 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

INDIAN RIVER SURGERY PROPERTIES,  
LLC, a Florida Limited Liability Company

\_\_\_\_\_  
Bob Solari, Chairman

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

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

\_\_\_\_\_  
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"**

Lot 2, CGN Subdivision, according to the plat recorded in Plat Book 13, Pages 38 and 38-A, Public Records of Indian River County, Florida

Commonly known as: 1200 37<sup>th</sup> Street, Vero Beach, FL 32960 Parcel ID Number: 32-39-26-00012-0000-00002.0