

AGREEMENT TO PURCHASE AND SELL REAL ESTATE
BETWEEN INDIAN RIVER COUNTY
AND
WAYNE C. MCCLAIN AND NANCY A. MCCLAIN

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE ("Agreement") is made and entered into as of the _____ day of _____, 2020, by and between Indian River County, a political subdivision of the State of Florida ("the County"), Wayne C. McClain and Nancy A. McClain ("the Seller") who agree as follows:

WHEREAS, Seller owns property located at 3745 58th Avenue, Vero Beach, Florida 32966. 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 at the 58th Avenue and 37th Street intersection in the future and the road expansion will impact the Seller's property; and

WHEREAS, in order to proceed with the road expansion plans, the County needs to purchase property to be used as right-of-way from landowners adjacent to the 58th Avenue/37th Street intersection; and

WHEREAS, the County has contacted the Seller and has offered to purchase right-of-way of approximately 1,855 square feet or 0.042 acres of property as depicted on Exhibit "A"; 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 recited, 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 3745 58th Avenue, Vero Beach, Florida 32966 and more specifically described in the legal description attached as Exhibit "A", fee simple, containing approximately 0.042 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 \$6,500.00 (Six Thousand Five Hundred 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.

2.2 During construction of the improvements to 58th Avenue/37th Street the County will perform the following:

- (a) Drainage. The County will reestablish the swale drainage system to ensure that the offsite drainage, drainage from the property and the backside of the roadway will drain south and not affect the property owner.
- (b) Sprinkler System. As part of the Purchase Agreement the County will move the sprinklers to the new right-of-way line in the location requested by the property owner.
- (c) Sod. As part of the Purchase Agreement the County will replace the current sod with Saint Augustine sod based on the property owner's request.
- (d) Culvert. The culvert will be replaced and a new driveway apron will be installed from the edge of the pavement or sidewalk to the new right-of-way line.

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 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 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 this agreement 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 Seller represents that 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) The Seller shall have removed all of their personal property and equipment from the Property and shall deliver possession of the Property to County in the same or better condition that existed at the Effective Date hereof.

(c) 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.

(d) 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.

(e) 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.

(a) All ad valorem taxes which are a lien on the property or on prior to the closing date Shall be paid by Seller.

(b) All non-valorem taxes, whether not yet assessed not due and payable shall be paid for by the Seller. The non-ad valorem taxes shall not be prorated, rather they shall be paid in full by the seller.

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

7.1 County shall pay all expenses at Closing:

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

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

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

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

7.3 The estimated closing costs for this purchase transaction is \$600.00.

8. Miscellaneous.

8.1 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.

8.2 Condemnation. In the event that all or any part of the Property shall be acquired or condemned for any public or quasi-public use or purpose, or if any acquisition or condemnation proceedings shall be threatened or begun prior to the Closing of this transaction, County shall have the option to either terminate this Agreement, and the obligations of all parties hereunder shall cease, or to proceed, subject to all other terms, covenants, conditions, representations and warranties of this Agreement, to the Closing of the transaction contemplated hereby and receive title to the Property; as well as receiving, however, any and all damages, awards or other compensation arising from or attributable to such acquisition or condemnation proceedings. County shall have the right to participate in any such proceedings.

8.3 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.

8.4 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.

8.5 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: Wayne C. McClain & Nancy A. McClain
3745 58th Avenue
Vero Beach, FL 32966

If to County: Indian River County
1801 27th Street
Vero Beach, FL. 32960
Attn: Land Acquisition/Monique Filipiak
Fax Number: (772) 778-9391.

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

8.6 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.

8.7 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.

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

8.9. County Approval Required: This Agreement is subject to approval by the Indian River County Board of County Commissioner or County Administrator as set forth in paragraph 2.

8.10 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

Susan Adams, Chairman

Date Approved by BCC _____

Wayne C. McClain

Wayne C. McClain Date

Nancy A. McClain

Nancy A. McClain 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:

County Attorney

Sketch and Legal Description for: INDIAN RIVER COUNTY

Legal Description (Right of Way Acquisition)

BEING THE EAST 15.0 FEET OF THE FOLLOWING DESCRIBED PARCEL TO WIT:

LOT 9, PALM VILLA ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 58,
OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA.

CONTAINING 1,855 SQUARE FEET, MORE OR LESS

EXHIBIT "A"

Surveyor's Notes

- 1). THIS SKETCH AND LEGAL DESCRIPTION WAS PREPARED WITH THE BENEFIT OF A TOPOGRAPHIC SURVEY PREPARED BY INDIAN RIVER COUNTY ENGINEERING DEPARTMENT, JOB NO. 1356, DATED JULY 24, 2015.
- 2). THIS LEGAL DESCRIPTION SHALL NOT BE VALID UNLESS:
 - (A) PROVIDED IN ITS ENTIRETY CONSISTING OF 2 SHEETS , WITH SHEET 2 SHOWING THE SKETCH OF THE DESCRIPTION.
 - (B) REPRODUCTIONS OF THE DESCRIPTION AND SKETCH ARE SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
- 4). THIS SKETCH AND LEGAL DESCRIPTION WAS PREPARED WITHOUT THE BENEFIT OF A TITLE POLICY. THEREFORE, THERE MAY EXIST EASEMENTS, RESERVATIONS, RESTRICTIONS OR OTHER ENCUMBRANCES NOT SHOWN HEREON, BUT CAN BE FOUND IN THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA.

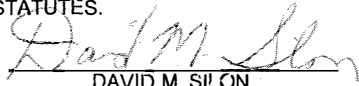
Certification

(NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER)

I HEREBY CERTIFY THAT THE SKETCH AND LEGAL DESCRIPTION OF THE PROPERTY SHOWN AND DESCRIBED HEREON WAS COMPLETED UNDER MY DIRECTION AND SAID SKETCH AND LEGAL IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

I FURTHER CERTIFY THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARDS OF PRACTICE FOR SURVEYS SET FORTH BY THE FLORIDA PROFESSIONAL BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 5J-17.052 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATE STATUTES.

2-21-2019
DATE OF SIGNATURE


DAVID M. SILON
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6139

Legend and Abbreviations

I.R.F.W.C.D. = INDIAN RIVER FARMS
WATER CONTROL DISTRICT
L = LENGTH OF ARC
O.R.B.= OFFICIAL RECORD BOOK
(P) = PLAT
P.B.= PLAT BOOK
PG = PAGE
PBS = PLAT BOOK ST. LUCIE
Δ=DELTA ANGLE
SQ. FT. = SQUARE FEET
R = RADIUS
R/W = RIGHT-OF-WAY

This is not a Boundary Survey

PROVIDED IN ITS ENTIRETY CONSISTING OF 2 SHEETS
WITH SHEET 2 BEING THE SKETCH OF DESCRIPTION

Wayne and Nancy McClain - 3745 58th Avenue

AGENCY: **INDIAN RIVER COUNTY, FL
PUBLIC WORKS DEPT./ENGINEERING DIV.**

DATE: **2/19/19** DRAWN BY: **R. INGLETT**

SCALE: **N/A** APPROVED BY: **D.SILON**

SHEET: **1 OF 2** JOB NO: **1357**

*Sketch and Legal Description
for:
INDIAN RIVER COUNTY
(3745 58th Avenue)*

