

AGREEMENT TO PURCHASE AND SELL REAL ESTATE  
BETWEEN INDIAN RIVER COUNTY  
AND  
GENE PERRY & KENNETH JOHNSON

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”), and Gene Perry and Kenneth Johnson, (“the Sellers”) who agree as follows:

**WHEREAS**, Seller owns property located at 2390 45<sup>th</sup> Street, Vero Beach, Florida 32967. A legal description of the property is attached to this agreement as Exhibit “A” and incorporated by reference herein; and

**WHEREAS**, the County has plans to improve the US Highway 1 and 45<sup>th</sup> Street intersection to include a dedicated left turn lane; and

**WHEREAS** in order for the County to proceed with road expansion plans, the County needs to purchase property to be used as right-of-way from landowners along the south side of 45<sup>th</sup> Street; and

**WHEREAS**, the County contacted the Seller and offered to purchase right-of-way of 301 square feet of property as depicted on Exhibit “B”; and

**WHEREAS**, the Seller has agreed to sell for the stated purchase price on the understanding that the project will be constructed, and the parcel taken will be used, in substantial accordance with Contract Plans, 45<sup>th</sup> Street and US Highway 1 Roadway and Signalization Improvements, IRC Project No.: 1355, 90% Plans Submittal, December, 2015, bearing date and time at the bottom of the cover page (copy attached as Exhibit “C”) of 12/18/2015, 7:48:13 AM, which plans are incorporated herein by reference and made a part of this agreement; 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 exchange of mutually good and valuable consideration the COUNTY and SELLER hereby affirm each of the representations contained hereinabove and hereby agrees to be bound by the terms contained herein below.

1. Recitals. The above recitals are affirmed as being true, correct, and material to induce the parties to enter into this Agreement 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 2390 45<sup>th</sup> Street, Vero Beach, Florida and more specifically described in the legal description attached as Exhibit “B”, fee simple, containing approximately 301 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 \$5,500.00 (Five Thousand Five Hundred 00/100 Dollars) plus \$6,605.00 appraisal fee, and \$1,950.00 engineer fees. 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 Costs and Fees. The County shall pay the Seller's attorney fees and costs in the amount of \$17,400.00.

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"). Seller's title search indicates that a predecessor in title, Ruby Stubbs, may not have released her interest in the property; however, Seller's understanding is that any defect is cured by the Marketable Record Title Act and will convey subject to, and not be responsible, for removing any record interest of Ruby Stubbs, which matter shall be considered a permitted exception.

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, other than a County Landfill fee and the Gifford Street Light 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, without any right to claim or recover damages of any kind or nature whatsoever

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. The County shall cause the Property Appraiser to prorate any taxes, assessments, and non-ad valorem assessments as of the closing date so that the amount due for Seller to pay taxes and assessments when due is reduced and prorated accordingly.

6.3 Disbursement. At Closing the Closing Agent is directed to disburse following amounts:

6.3.1 The total sum of \$ \$22,205 to Neill Griffin Marquis, PLLC, for the purpose of paying those attorney's fees, appraisal fees, and engineers fees incurred.

6.3.2 The total amount of \$3,750.00 to Holloman Law for the purpose of paying those attorney's fees incurred.

6.3.3 The remaining amount shall be split evenly between Gene Perry and Kenneth Johnson and paid by separate checks, \$2,750.00 each, delivered in care of their respective counsels.

6.4 The County shall submit this Agreement and transaction for formal approval by the Indian River County Board of Commissioners at a public meeting within 30 days of the last of the Seller's to sign this Agreement. Further, if this Agreement is not so submitted for approval or if the Board of County Commissioners fails to accept this offer at that time, then, unless all parties have previously agreed to extend the time for consideration, the same shall be deemed rejected and of no further force or effect.

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.

8.1.3 All other costs associated with closing, unless otherwise expressly stated to the contrary herein.

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: Gene Perry  
2390 45<sup>th</sup> Street  
Vero Beach, FL 32967

With Copy to: Richard V. Neill, Jr.  
Neill Griffin Marquis, PLLC  
311 S. 2<sup>nd</sup> Street, Suite 200  
Fort Pierce, FL 34950

Kenneth Johnson  
2629 Monte Carlo Trail  
Orlando, FL 32805

Charles Holloman, II  
502 North Armenia Avenue  
Tampa, FL 33609

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. This limitation shall not apply to any claim or controversy arising out of or relating to failure of the County to comply with the terms of Section 9.10, below. Nor shall it apply to any further taking or acquisition of any property interest.

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.

9.10 Understanding: The Seller has agreed to sell for the stated purchase price on the understanding that the project will be constructed, and the parcel taken will be used, in substantial accordance with Contract Plans, 45<sup>th</sup> Street and US Highway 1 Roadway and Signalization Improvements, IRC Project No.: 1355, 90% Plans Submittal, December, 2015, bearing date and time at the bottom of the cover page (copy attached as Exhibit "C") of 15/18/2015, 7:48:13 AM, which plans are incorporated herein by reference and made a part of this agreement. This provision of the Agreement shall survive the closing date and consummation of the transaction.

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

\_\_\_\_\_  
Gene Perry Date

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

\_\_\_\_\_  
Kenneth Johnson Date

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

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

Approved:

Approved as to Form and Legal Sufficiency:

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

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

## **EXHIBIT "A"**

LOT IN SW 1/4 OF SE 1/4 OF SW 1/4 209.00 - FT SQUARE AS IN D BK 23 PP 566

**Parcel ID: #32-39-23-00000-5000-00014.0**

**Commonly known as: 2390 45<sup>th</sup> St, Vero Beach, FL 32967**