

EXHIBIT "A"

ORIGINAL

10-24-06

11.1.3

2006-374

AGREEMENT TO PURCHASE AND SELL REAL ESTATE

THIS AGREEMENT TO PURCHASE AND SELL REAL ESTATE ("Agreement") is made and entered into as of the 24 day of October, 2006, by and between Indian River County, a political subdivision of the State of Florida ("County"), and Gina Hower ("Seller"), who agree as follows:

1. 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 8865 91<sup>st</sup> Avenue County of Indian River, State of Florida and more specifically described on Exhibit "A" attached hereto and incorporated by this reference containing approximately 13407 square feet, and all improvements thereon, together with all easements, rights and uses now or hereafter belonging thereto (collectively, the "Property").

2. Purchase Price, Effective Date. The purchase price (the "Purchase Price") for the Property shall be two hundred four thousand and 00/100 Dollars (\$ 204,000 ). 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 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 60 days following the Effective Date of this Agreement. 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 its personal property and equipment from the Property and Seller shall deliver possession of the Property to County vacant and 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 Prorations. 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. If the Closing Date occurs during the time interval commencing on November 2 and ending on December 31, Seller shall pay all current real estate taxes and special assessments levied against the Property, prorated based on the "due date" of such taxes established by the taxing authority having jurisdiction over the Property. If the Closing Date occurs between January 1 and November 1, the Seller shall, in accordance with Florida Statutes section 196.295, pay an amount equal to the current real estate taxes and assessments, prorated to the Closing Date.

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

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

7.2.1 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.

7.3 The Seller and County shall each pay their own attorneys' fees.

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; 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:            Seller: Gina Hower  
                              Address: 8865 91<sup>st</sup> Avenue  
                              City, State, Zip: Vero Beach, FL 32967  
                              Facsimile #

If to County:            Indian River County  
                              1840 25<sup>th</sup> Street, Vero Beach, FL 32960  
                              Attn: Lesley Benyon, RE Acquisition Agent  
                              Facsimile # (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 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.

8.11 County may obtain a survey of the Property. If the size of the Property differs from the size shown on the tax map, County shall within fifteen (15) days following the Effective Date of this Agreement, determine whether or not the size difference substantially affects County's unsuitable for County's planned use, County shall within said fifteen (15) days, terminate this Agreement by written notice to Seller, whereupon shall be of no further force and effect.

8.12 Lease-back: The Seller will be allowed to lease back the property, legally described in Exhibit "A", at no charge until October 31, 2008 or until the CR 510 road-widening construction starts, whichever comes sooner. Should the project start date be postponed, the County may extend the Lease at the County's discretion. The County and the Seller will enter into a Lease substantially in the form of Exhibit "B" attached hereto and incorporated by this reference. The Lease will commence on the closing date.

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

SELLER:

Name: Gina Hower

By Gina Hower

Date Signed: 10/18/06

COUNTY:

INDIAN RIVER COUNTY, FLORIDA

By Arthur R. Neuberger  
Arthur R. Neuberger, Chairman

Date Signed: October 24, 2006

Attest: J. K. Barton, Clerk

By Attiana Adams  
Deputy Clerk

By Lesley Blynn  
Acquisition Agent

Approved:

By Joseph A. Board  
County Administrator

Approved as to form and legal sufficiency:

By William A. Board  
County Attorney

Exhibit A

Vero Lake Estates, Unit A, Block A, Lot 1 (BK-PG 4-70)

Commonly known as: 8865 91<sup>st</sup> Avenue, Vero Beach, FL 32967

Parcel #: 31382700004001000001.0



Exhibit B

LEASE

This LEASE, executed this \_\_\_\_ day of October, 2006, in consideration of the following covenants, agreements, limitations, and conditions entered into by the parties hereto, the BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, a political subdivision of the State of Florida, 1840 25<sup>th</sup> Street, Vero Beach, FL 32960, hereinafter called LANDLORD, doth lease unto Gina Hower, hereinafter (collectively) called TENANT, the real property and facilities situated thereon, located in Indian River County, Florida, and more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference, to be occupied only as a private, single-family residence, and for no other purpose, for the terms commencing on the \_\_\_\_ day of \_\_\_\_\_, 2006, and ending on the 31st day of October, 2008 (a twenty-four month period commencing on the day of closing by County on the property) at the rent of \$ -0- .

THIS LEASE SHALL NOT BE EXTENDED BEYOND THE TERM STATED. Tenant must vacate the premises on or before the 31st day of October, 2008. Tenant may opt out of this LEASE anytime during the lease period by providing written notice to Landlord as such.

THIS LEASE MAY NOT BE ASSIGNED by the TENANT nor shall TENANT sublet or grant any license to use the premises or any part of them.

PROVIDED ALWAYS, and the TENANT hereby covenants:

1. To make any and all repairs to the said premises, plumbing, fixtures, wiring, etc. when the damage was in any way caused by the fault or negligence of the said TENANT; TENANT will at the end of this lease surrender and deliver up said premises, without demand, in as good order and condition as when entered upon, loss by fire, inevitable accident, ordinary wear and decay only excepted. TENANT shall not make any alterations or improvements to the premises without the prior written consent of the LANDLORD.
2. That in the event the premises are destroyed or so damaged by fire or other unavoidable casualty as to be unfit for occupancy or use, then this LEASE shall thereby be determined ended. LANDLORD shall not be liable to rebuild or replace said premises.
3. To permit LANDLORD or his agent, at any reasonable time, to enter said premises or any part thereof for the purpose of exhibiting the same or making repairs thereof.
4. TENANT agrees to keep and maintain at all time during the lease term, at TENANT'S expense, a renter's insurance policy protecting LANDLORD against any internal damage to the house, and a general liability policy protecting LANDLORD against all claims and demands that may arise or be claimed on account of TENANT'S use of the premises in an amount of at least \$100,000 for individual injuries and \$200,000 per occurrence. On the insurance policy, the LANDLORD must be named as co-insured, and the LANDLORD must be given 30-days written notice of insurance company's intent to cancel or terminate the policy.

5. To pay all charges for electricity, waste disposal, water, and gas used on said premises; not to hold the LANDLORD responsible for any delay in the installation of electricity, water, or gas, or meters therefore, or interruption in the use and services of such commodities.

6. Not to use the demised premises, or any part thereof, or permit the same to be used for any illegal, immoral, or improper purposes; not to make, or permit to be made, any disturbance, noise, or annoyance whatsoever detrimental to the premises or the comfort and peace of the inhabitants of the vicinity of the demised premises. TENANT'S use of the property shall at all times comply with all laws and ordinances in effect in Indian River County, Florida.

7. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from you county public health unit. This paragraph is included pursuant to the requirement of Florida Statutes Chapter 404.056 for the purpose of public information and notification.

8. IT IS FURTHER UNDERSTOOD AND AGREED between the parties hereto, that if TENANT shall violate any of the covenants and conditions of this lease, then the TENANT shall become a TENANT AT SUFFERANCE, and in the event TENANT is evicted by suit at law, said TENANT agrees to pay to said LANDLORD all costs of such suit including a reasonable attorney's fee; that no assent, expressed or implied, to any breach of one or more of the covenants and agreements hereof shall be deemed or taken to be a waiver of any succeeding or other breach.

AND IT IS FURTHER UNDERSTOOD AND AGREED that all covenants and agreements of this lease shall not be binding upon, nor apply to the heirs or personal representatives of the respective parties hereto.

BOARD OF COUNTY COMMISSIONERS  
Indian River County, Florida

By Arthur R. Neuberger  
Arthur R. Neuberger, Chairman

Approved by BCC: October 24, 2006  
(Date)

Attest: J. K. Barton, Clerk of Circuit Court

By Attene Adams  
Deputy Clerk

Approved as to form and legal sufficiency:

By William K. Adams  
County Attorney

TENANT

Gina Hower  
Gina Hower

Date: 10/18/06.

Signed in the presence of:

Pat Adams  
Witness

Lesley Benyon  
Witness



Exhibit A

Vero Lake Estates, Unit A, Block A, Lot 1 (BK-PG 4-70)

Commonly known as: 8865 91<sup>st</sup> Avenue, Vero Beach, FL 32967  
Parcel #: 31382700004001000001.0

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## LEASE EXTENSION

This Agreement for Lease Extension ("Amendment") entered into on the 9th day of June, 2009, by Indian River County, a political subdivision of the State of Florida, 1801 27<sup>th</sup> Street, Vero Beach, FL 32960 ("County"), Gina Hower, ("Tenant") whose address is 8865 91<sup>st</sup> Avenue, Vero Beach, FL 32967.

### WITNESSETH:

The County contracted to purchase Tenant's property on October 24, 2006. The property consists of a 0.31 acre lot and a single family home where Tenant resides; and

WHEREAS, the purchase of the property was in lieu of eminent domain, as the County is planning widening and improvements to 89<sup>th</sup> Street, and CR510, and

WHEREAS, as part of the consideration for purchase of the property, the County agreed to lease-back the property to Tenant. The current lease expires April 30, 2009; and

WHEREAS, the Tenant has requested an extension to the lease and the County is not planning to begin road construction of the 89<sup>th</sup> Street, and CR510 project within the next 12 months; and

WHEREAS, the County has no objection to extending its lease with Tenant, with the lease extension to expire no later than twelve months prior to the commencement of any phase of construction of 89<sup>th</sup> Street and CR510 project, including utility relocation, drainage construction or roadway construction.

NOW, THEREFORE, in consideration of the mutual terms and promises stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Tenant agree as follows:

1. The foregoing recitals are incorporated as if fully restated herein.
2. The first and second paragraph of that certain Lease dated October 24, 2006 is hereby amended to terminate twelve months prior to commencement of any phase of construction of 89<sup>th</sup> Street and CR510 project.
3. Except as amended herein, the terms and conditions of the Lease shall remain in full force and effect. To the extent of any conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

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IN WITNESS WHEREOF, this Lease Extension is executed by the authorized representatives of the parties, as of the day and year first above written.

Gina Hower

Gina Hower 6/3/09  
Date

BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA

BY: Wesley S. Davis  
Wesley S. Davis, Chairman

Approved by the BCC: June 9, 2009

WITNESS:

Joanne P. Pirothy

WITNESS:

Louise Gates

ATTEST: J. K. Barton, Clerk of Court

BY:

Leann Allen  
Deputy Clerk of Court

Joseph A. Baird  
Joseph A. Baird, County Administrator

Approved as to form and legal sufficiency

William K. DeBraal  
William K. DeBraal  
Deputy County Attorney

**EXHIBIT "A"**

Vero Lake Estates, Unit A, Lot 1 (Bk-Pg 4-70)

Commonly known as: 8865 91<sup>st</sup> Avenue, Vero Beach, FL 32967

PID #31-38-27-00004-0010-00001.0