

RESOLUTION 2018-18

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, APPROVING A PURCHASE AND SALE AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, FOR THE TRANSFER OF A SMALL PORTION OF CITY-OWNED PROPERTY LOCATED AT SIMMONS ROAD AND FIRST AVENUE TOTALING APPROXIMATELY 66 SQUARE FEET FOR A MULTI-USE TRAIL; AUTHORIZING EXECUTION OF A DEED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Nassau County is currently planning and constructing a multi-use trail to the Atlantic Ocean along Simmons Road to South Fletcher Avenue in the right-of-way; and

WHEREAS, Nassau County has requested that the City of Fernandina Beach transfer a very small portion (66 square feet) of a City-owned parcel at First Avenue in order to accommodate the multi-use trail.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, THAT:

SECTION 1. The City Commission hereby approves the Purchase and Sale Agreement with the Board of County Commissioners of Nassau County, Florida, attached hereto as Exhibit "1", for a small portion of City-owned property located at Simmons Road and First Avenue totaling approximately 66 square feet, in the amount of ZERO DOLLARS.

SECTION 2. The City Manager and City Clerk are hereby authorized to execute the Purchase and Sale Agreement and the Special Warranty Deed, attached hereto as Exhibit "B", upon review and approval of the City Attorney.

SECTION 3. This Resolution shall take effect immediately upon adoption.

ADOPTED this 6th day of February, 2018.

ATTEST:

Caroline Best

Caroline Best
City Clerk

CITY OF FERNANDINA BEACH

John A. Miller

John A. Miller
Commissioner – Mayor

APPROVED AS TO FORM AND LEGALITY:

Tammi E. Bach

Tammi E. Bach
City Attorney

**Resolution 2018-18
Exhibit "1"**

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is entered into by **CITY OF FERNANDINA BEACH, FLORIDA**, a Florida municipal corporation existing under the laws of the State of Florida, whose address is 204 Ash Street, Fernandina Beach, Florida 32034 ("SELLER"), and **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the state of Florida, whose address is 96135 Nassau Place, Suite 1, Yulee, Florida 32097 ("BUYER"), for the purchase by BUYER from SELLER of the real property consisting of 66 Square Feet ~~acres~~ of land MOL, located in Nassau County, Florida, as more particularly described or identified on EXHIBIT A, attached hereto and incorporated herein (the "Land")

WITNESSETH

SELLER hereby agrees to sell, and BUYER hereby agrees to buy, the Land on the following terms and conditions:

1. **PURCHASE PRICE:** **\$1.00**

PAYMENT:

- (a) Earnest Money Deposit: **\$0**
(which shall be paid by certified or cashier's check and delivered and made payable to Seller at the time of BUYER's execution and delivery of this Agreement, and applied at Closing)
- (b) Balance due at Closing: **\$1.00**
(U.S. wire transfer value dated upon date of sale, subject to adjustments and prorations)

2. **DEED.** It is understood that the Land will be conveyed by SPECIAL WARRANTY DEED limiting SELLER's warranties to claims arising by, through or under SELLER and subject to current taxes, any other provision referred to in this Agreement, existing cemeteries, if any, easements, encroachments, servitudes, covenants, restrictions, zoning ordinances, rights-of-way, outstanding mineral interests, riparian rights, title to lands lying below the mean high water line of any bodies of water, and all matters apparent from inspection of the Land or the public records. SELLER shall convey to BUYER any and all mineral rights as they may have in and to the Lands.

3. **SELLER'S COSTS.** SELLER shall only pay for SELLER's attorneys' fees, the preparation of the Deed, and SELLER's prorated amount of ad valorem taxes, if any.

4. **BUYER'S COSTS.** BUYER shall pay all other transaction and closing costs, including any sales tax imposed on the transfer of personal property, title examination fees, title insurance premium, BUYER's real estate commission, if any, and all recording or filing fees, documentary, transfer and stamp tax on the deed, closing fee of title company, title agent or closing attorney, local or county assessments, and BUYER's prorated amount of ad valorem taxes pursuant to Paragraph 5.

5. **TAXES.** Ad valorem taxes for the year of closing shall be prorated between BUYER and SELLER as of the date of closing based on the amount of the latest taxes assessed against the Land, less the maximum discount for early payment. SELLER shall not be responsible for any portion of increased taxes resulting from any use changes initiated or pursued by BUYER or as a result of BUYER's actions with regards to the Land, or change in the use of the Land from its present designation. BUYER's portion of the prorated ad valorem taxes shall include the day of closing and shall be payable to SELLER at Closing and SELLER shall be responsible for making the payment for the taxes for the year of Closing.

6. **TITLE EXAMINATION AND CLOSING.**

(a) SELLER shall convey to BUYER a good and marketable fee simple title to the Land by SPECIAL WARRANTY DEED (as noted in Paragraph 2), subject to the matters previously herein stated and terms herein at "Closing". BUYER shall have until thirty (30) days prior to Closing to examine the title of the Land. The parties agree that if the title is such as would permit a nationally-recognized title insurance company mutually agreeable to both parties to insure the title consistent with its underwriting standards, on standard forms, for its usual fee, and subject to exceptions for the items set forth in this Agreement, then said title shall be conclusively presumed to be good and marketable as to all matters covered by said policy and not excepted from it. The title search and title policy (if acquired), and any title insurance premium, shall be at BUYER's sole expense.

(b) If the title examination shows that SELLER is vested with good and marketable title to the Land, subject to the reservations and exceptions and criteria noted in sub-paragraph (a) above and Paragraph 2 herein, the transaction shall be closed and SELLER and BUYER shall perform the agreements made herein on or before the Closing date of April 9, 2018.

(c) If the title examination reveals any defects which render the title of the Land unmarketable, BUYER shall give to SELLER written notice of such defects within fifteen (15) days prior to Closing. Any defects that BUYER does not timely address with SELLER in writing prior to closing shall be waived by BUYER. SELLER shall have the right to cure the properly noticed defects, but shall not be required to do so. If the defects are cured, this transaction shall be closed within the time allowed for Closing hereunder.

(d) If SELLER is unable to convey to BUYER marketable title to the Land in accordance with this Agreement, BUYER shall have the right to (i) abandon any legal or equitable rights in the Land to SELLER, executing a full and complete release of SELLER for all claims arising under or associated with this Agreement or the purchase of the Land, and returning to SELLER any title evidence, surveys or other similar documents received from SELLER and BUYER's copy of this Agreement (unless one of the parcels has or is expected to close), whereupon all rights and liabilities of the parties hereunder shall cease and terminate as to any parcel without said marketable title, except for the indemnification provisions of Paragraph 10 and Paragraph 19 hereunder, which shall survive such termination, together with any other provisions which expressly survive termination of this Agreement; or (ii) accept such title with such defects, and close this transaction upon the other terms as stated herein. These are

BUYER's sole and exclusive remedies for failure of SELLER to convey marketable title to BUYER.

(e) The Closing of the purchase and sale of the Land shall be held at such location as the parties may agree. The Closing may be conducted by or through BUYER's title insurance company or other reputable escrow agent and, as to SELLER, may be conducted as a mail-away escrow-style closing through such escrow or a closing agent.

(f) Due Diligence and Contingency Period:

Upon execution of this Agreement by BUYER, BUYER shall have the right to a due diligence period of thirty (30) days from the date of full execution of the Agreement to determine the suitability of the Land for its intended use (the "Inspection Period"). If BUYER's investigation reveals that the Land is not suitable for its intended use, BUYER shall provide written notice thereof to SELLER on or before the end of the Inspection Period, and upon tender and assignment of BUYER's site specific investigation reports (if any), including an assignment of the contracts by which the reports were undertaken, and all site specific planning, engineering, environmental investigations, testing, and support data, and all work product referred to in Paragraph 6(g) of this Agreement, together with certification that all work performed is paid for, and execution of a complete release by BUYER of SELLER of all claims arising under or associated with this Agreement or the purchase of the Land, BUYER shall have the right to cancel this Agreement, at the same time abandoning any legal or equitable rights in the Land to SELLER and returning to SELLER any surveys or other information received from SELLER, and BUYER's counterpart of this Agreement, whereupon all rights and liabilities of the parties hereunder shall cease, except for the indemnification obligations of Paragraph 10 and Paragraph 19 hereunder and any other provisions which expressly survive termination of this Agreement. This shall constitute BUYER's sole and exclusive remedy hereunder. If BUYER does not provide said written notice, then this transaction shall proceed to Closing.

(g) Work Product:

In the event this Agreement is terminated for any reason other than SELLER's default, BUYER shall within fifteen (15) days after the termination, transfer and assign to SELLER all of BUYER's right, title and interest in and to all surveys, approvals, permits, applications for governmental approvals or permits, environmental reports and studies, correspondence relating to any of the foregoing, land use plans, engineering drawings, feasibility and marketing studies, and all other material of any kind or character relating to BUYER's intended use and development of the Land, together with such evidence as SELLER may reasonably require evidencing that all such plans, specifications, approvals, permits, data and the like have been fully paid for, as well as execution of a complete release by BUYER of SELLER of all claims arising under or associated with this Agreement or the purchase of the Land. Upon SELLER's request, BUYER shall promptly execute such release and assignment and transfer documents as SELLER may reasonably require to confirm the fact of the assignment and give notice thereof to the vendors and suppliers of such goods, materials and services. This provision shall survive termination of this Agreement.

7. DEFAULT BY BUYER OR SELLER.

(a) Default by BUYER. If BUYER fails to complete the purchase of the Land for any reason within the time specified above, except default by SELLER or any right provided to BUYER herein to terminate this Agreement, then all rights of BUYER hereunder shall automatically cease, the sum being agreed to be reasonable liquidated damages. Thereupon, BUYER shall forthwith return to SELLER any title evidence, surveys, or other similar documents received from SELLER, and BUYER's copy of this Agreement, satisfy the obligations of Paragraph 6(g), and as well BUYER shall execute a full and complete release of SELLER for any claims arising under or associated with this Agreement or the purchase of the Land, whereupon all rights and liabilities of the parties hereunder shall cease and terminate, except for the indemnification provisions of Paragraph 10 and Paragraph 19 hereunder, which shall survive such termination, together with any other provisions which expressly survive termination of this Agreement.

(b) Default by SELLER. If SELLER shall default in its obligations to close this transaction as provided in this Agreement for any reason other than conditions of title, as provided in Paragraph 6 above, or BUYER's default, BUYER shall be entitled to enforce specific performance of this Agreement. If BUYER elects not to seek specific performance of this Agreement, all rights and liabilities of the parties hereunder or in any way related to the potential purchase of the Land shall cease and terminate, except for the indemnification provisions of Paragraph 10 and Paragraph 19 hereunder, which shall survive such termination, together with any other provisions which expressly survive termination of this Agreement.

(c) Liquidated Damages. BUYER and SELLER agree that (i) the foregoing remedy provisions set forth in subparagraphs (a)(i) and (a)(ii) and (b) constitute the sole and exclusive remedies of each party in the event of a default by the other, except for any default by BUYER following the closing, (ii) these damages provisions of this Agreement do not constitute a penalty or forfeiture, (iii) actual damages are difficult or impossible to measure, and (iv) the remedy of liquidated damages or, as applicable, specific performance, is a proper and mutually accepted negotiated remedy for the parties due to the fact that the damages suffered by the parties are not ascertainable at the time of execution of this Agreement and that such remedy takes into account the peculiar expenses and risks assumed by each party.

8. RECORDING. This Agreement shall not be recorded without the express, prior written consent of both parties hereto.

9. POSSESSION/INSPECTION.

(a) BUYER shall have the right to enter upon and take possession of the Land from the date of Closing.

(b) BUYER is given the right to enter upon the Land at all times since it is the BUYER's leasehold and has been occupied by BUYER for many years. The BUYER shall determine its suitability for BUYER's intended purposes, and to conduct thereon such surveys, tests and examinations as BUYER deems necessary, upon the express condition that BUYER shall exercise its privileges under this right of entry at BUYER's own risk and its sole cost and expense. BUYER agrees to notify SELLER prior to surveying or conducting tests. Subject to the provisions of Florida law relating to sovereign immunity, BUYER shall defend, indemnify

and hold SELLER harmless from and against any and all liability for injury, damage, cost, loss and expense (including attorneys' fees and expenses) resulting from, arising out of or in any way connected with BUYER's or its agents', contractors', invitees' or guests' use and occupancy of the Land, whether such injury or damage is sustained by BUYER, SELLER, or any third-party. BUYER shall further defend, indemnify and hold harmless SELLER from any cost, charge or claim arising under or by reason of any work performed at or upon the Land by engineers, environmental consultants, surveyors or other agents or contractors performing services at the request of BUYER. SELLER shall not be liable to BUYER if, for any reason, BUYER's occupancy or use of the Land prior to closing shall be hindered or interrupted for any reason whatsoever. The provisions of this Paragraph 9(b) shall survive any termination of this Agreement or Closing hereunder.

(c) In the event that the Land is not acquired by BUYER, BUYER agrees to restore the Land to its pre-assessment/-investigation condition. BUYER agrees that where it is unable to restore said Land, it will compensate SELLER for any such damage that may be done to any timber or the Land. The provisions of this Paragraph 9(c) shall survive any termination of this Agreement.

(d) It is understood and agreed to that BUYER accepts the Land "AS IS" "WHERE IS" and "WITH ALL FAULTS", without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability, or any other warranty, express or implied, except as specifically provided in this Agreement or in the documents provided at Closing. SELLER specifically disclaims any warranty, guaranty or representation, oral or written, past or present, express or implied, concerning the Land, except as otherwise provided in this Agreement. This specifically includes but is not limited to (i) the present or future physical conditions or suitability of the Land; (ii) the availability of roadway access, water, sewer, or electrical, gas or other utility services; (iii) the location of the Land or any portion thereof within any flood plain, evacuation zone, flood-prone area, or watershed; (iv) the number of acres of the Land; (v) the current or future zoning classification; (vi) applicable federal, state or local land use restrictions, regulations or covenants; or (vii) any other matter or thing affecting or relating to the Land or to its suitability for any purpose whatsoever other than the historic purpose for which the land was used by SELLER. BUYER acknowledges that BUYER is acquiring the Land based solely upon BUYER's own independent investigation and findings concerning the Land and except as otherwise specifically provided in this Agreement, not in reliance upon any information provided by SELLER or SELLER's agents, employees, contractors or any brokers. The provisions of this Paragraph 10(d) shall survive Closing or any termination of this Agreement.

(e) BUYER may request from SELLER and SELLER may provide to BUYER, in SELLER's sole and absolute discretion, certain documents in the course of this Agreement. In the event that SELLER agrees to furnish to BUYER any documents, such documents will be made available by SELLER to BUYER without representation or warranty as to the accuracy or any other aspect contained in such documents, including but not limited to any information provided by any third-party, and as an accommodation only. BUYER hereby acknowledges, covenants and agrees that the above documents are provided to BUYER without representation or warranty of any kind whatsoever, either express or implied, and BUYER is without any recourse against SELLER or its affiliated or related companies or their employees, officers,

directors, representatives or agents with respect to the accuracy of any information or statements contained therein. BUYER further acknowledges that it will not rely upon any such documents and will make its own independent investigation or inquiry as to the accuracy of the information or statements contained in the documents. BUYER hereby absolutely, unconditionally, expressly and knowingly waives any and all claims, rights and causes of action BUYER may have against SELLER or its affiliated or related companies and their respective employees, officers, directors, representatives or agents and hereby releases SELLER, its affiliated or related companies and their respective employees, officers, directors, representatives and agents from any and all liability relating to, or arising in connection with, directly or indirectly, the provision of any documents and the information or statements contained therein. Further, BUYER unconditionally and absolutely covenants not to bring any action against SELLER, its related or affiliated companies, or their respective employees, officers, directors, representatives or agents for any claim whatsoever relating to or involving the documents or the information therein. The provisions of this Paragraph 9(e) shall survive Closing or termination of this Agreement.

10. **REPRESENTATIONS AND WARRANTIES OF SELLER.** SELLER hereby represents and warrants to BUYER that:

(a) It is a municipal corporation, validly existing and in good standing under the laws of the State of Florida;

(b) It has the authority and power with City Commission approval at a public meeting, to enter into and carry out the terms of this Agreement;

(c) The persons who have or will have executed and/or delivered this Agreement, the deed, any assignments and any and all other instruments, affidavits, certified resolutions and any other documents shall be or have been duly authorized to do so;

(d) It is not a party to any actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, affecting any portion of the Land or relating to or arising out of the ownership of the Land, in any court or before or by any federal, state, or local agency or other governmental instrumentality; there are no such actions, suits or proceedings pending;

(e) All bills for labor, services materials, and utilities, and all trade accounts, which could adversely affect title to the Land, are current;

(f) No work has been done upon, or materials delivered to, the Land prior to the date hereof which are not fully paid for, nor does any person, firm or corporation now have, nor shall it have after notice or passage of time, or otherwise, any lien or rights with respect to the Land or any part or parcel thereof as the result of services performed on, or materials delivered to, the Land;

(g) No person, firm or other legal entity whatsoever, other than SELLER, and BUYER pursuant to that certain Lease dated February 7, 1995, has any contract right or option whatsoever to acquire the Land or any portion or portions thereof or any interest or interests therein, except as provided herein or on public record.

(h) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not and do not constitute a violation or breach by SELLER of any provisions of any agreement or other instrument to which it is a party or to which it may be subject although not a party, or result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against SELLER; and

(i) It has not engaged any broker or agent in connection with the sale of the Land.

11. **REPRESENTATIONS AND WARRANTIES OF BUYER.** BUYER hereby represents and warrants to SELLER that:

(a) It is duly organized as a Florida corporation existing under the laws of the State of Florida and is qualified to do business and in good standing under the laws of the State of Florida;

(b) It has the authority and power, without the necessity of consent by any person, to enter into and carry out the terms of this Agreement; and

(c) The persons who have or will have executed and/or delivered this Agreement, and any and all other instruments, affidavits, certified resolutions and other documents required or permitted hereunder shall have been duly authorized and empowered to do so;

(d) The execution and delivery of this Agreement and the transactions contemplated herein have been duly authorized and evidence thereof provided to SELLER;

(e) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not and do not constitute a violation or breach by BUYER of:

(i) any provision of any agreement or other instrument to which it is a party or to which it may be subject although not a party; or

(ii) any judgment, order, writ, injunction or decree issued against BUYER;

(f) It has not engaged any broker or agent in connection with the purchase of the Land, except as herein disclosed, and BUYER will indemnify, defend and hold harmless SELLER from any claims, losses, damages, suits or proceedings, including attorneys' fees, for commissions, fees or comparable brokerage arrangements arising by or under BUYER, from any person or entity whatsoever, including but not limited to the following designated procuring and affiliated Broker(s): [None].

This Section 11 shall survive Closing or any termination of this Agreement.

12. **CONDITIONS TO SELLER'S OBLIGATIONS.** The obligations of SELLER hereunder are subject to satisfaction of the following conditions as of the date of Closing:

(a) The representations and warranties of BUYER contained herein shall be true and correct in all material respects and SELLER shall have received an appropriate certificate or affirmation of BUYER's authority to effectuate the terms of this Agreement; and

(b) BUYER shall not be in material default of any of its obligations under this Agreement.

13. **CONDITIONS TO OBLIGATIONS OF BUYER.** The obligations of BUYER hereunder are subject to satisfaction of the following conditions as of the date of Closing:

(a) The representations and warranties of SELLER contained herein shall be true and correct in all material respects and BUYER shall have received a certificate from the City Attorney to such effect, if timely requested;

(b) SELLER shall not be in default of any of its obligations under this Agreement; and

(c) BUYER shall have received a title commitment for the Land in accordance with the provisions of Paragraph 6 hereof and subject to the matters referred to in Paragraph 2 and Paragraph 6(a), and the exceptions, reservations and covenants as would arise in a deed by reason of this Agreement.

14. **ENVIRONMENTAL ACCOUNTABILITY.**

(a) This transaction is a commercial transaction and the Land has been valued by and through negotiations, and is sold and purchased by and between commercial enterprises, private, municipal, or otherwise. SELLER represents that the Land has been used by BUYER for commercial interests pursuant to a Lease. The records of SELLER do not reflect use of any Hazardous Materials on the Land, other than gasoline, diesel fuel, oil and grease, solvents and/or detergents as might be used ancillary to operation of motor vehicles.

(b) SELLER has no knowledge of any claim or notice of violation of any federal, state or local law, regulation or ordinance governing the use, handling, storage or disposition at or upon the Land of any Hazardous Materials.

(c) BUYER has the opportunity to examine the Land during the Inspection Period indicated in Paragraph 6(f). It is BUYER's responsibility to have site investigations completed within the Inspection Period, and Closing shall not be deferred by reason of site investigations being delayed or incomplete. If the site investigations are delayed or incomplete, BUYER shall be deemed to have elected to proceed to Closing as if it had waived the site investigations. Subject to the waiver above, if BUYER's site investigations reveal the presence of Hazardous Materials which would mandate remediation under USEPA, or Florida EPD laws or regulations, BUYER shall provide immediate notice thereof to SELLER and SELLER shall have sole and exclusive responsibility to provide any notification to any federal, state or local governmental agency, if notification is required by Environmental Law. As BUYER's sole and exclusive remedy for the presence of Hazardous Materials on the Land, and upon tender and assignment of BUYER's site investigations reports, including an assignment of the contract by which the report was undertaken, and all engineering, testing and supporting data, and execution of a full and

complete release of SELLER and its affiliated or related companies for any claims arising under or associated with this Agreement or the purchase of the Land, all of which must occur prior to the end of the Inspection Period, BUYER shall have the right to unilaterally cancel this Agreement. At the same time BUYER shall abandon any legal or equitable rights in the Land to SELLER and return to SELLER any title evidence, surveys or other similar documents received from SELLER and BUYER's copy of this Agreement, and comply with the provisions of Paragraph 10(e) hereunder, whereupon all rights and liabilities of the parties hereunder or in any way associated with the potential purchase of the Land shall cease, except for the provisions of Paragraph 10 and Paragraph 19 and other portions of this Agreement that specifically provide that they shall survive termination of this Agreement. If on the other hand BUYER (i) does not undertake site investigations, or (ii) site investigations are undertaken and reports reveal no Hazardous Materials above applicable federal or state cleanup standards, or (iii) BUYER chooses not to terminate this Agreement in accordance with the above provisions, then this Agreement shall proceed to Closing. At each Closing the Land shall be conveyed from SELLER to BUYER, and as between BUYER and SELLER, for themselves, and their respective successors and assigns, the conveyance by deed shall effectuate the parties' intent that all liability and responsibility under the Environmental Laws shall be transferred to BUYER (including specifically, but without limitation, liabilities under the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 USC 9601 et seq.); "CERCLA"), and corresponding state statutory authorities, for which SELLER and its affiliated or related companies shall thereafter be held harmless and blameless by BUYER, its successors and assigns, in any proceeding or with respect to any claim.

(d) Following Closing and as between BUYER and SELLER, BUYER hereby agrees to hold SELLER, its affiliated or related companies and their directors, officers, shareholders, employees, affiliates, assigns and successors harmless from any claims, demands or causes of action brought pursuant to Environmental Laws by any third-party, including governmental entities and agencies (including without limitation third-party claims for personal injury or real or personal property damage) for judgments, damages (including Natural Resource Damages as defined by CERCLA and corresponding state statutory authorities), punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest or losses including attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees and expert fees that arise directly or indirectly from or in connection with the operation of the Land or the condition of the Land, including but not limited to the presence, suspected presence, release or suspected release of any Hazardous Material of any kind, past, present or future, whether into the environment, pavement, structures, tanks, containers, or other personalty at or on the Land or any other real property in which BUYER has or may acquire any interest.

(e) For purposes of this Agreement the following terms shall have the following meanings:

(i) "Environmental Laws" shall mean all federal, state and local laws, statutes, regulations, ordinances, applicable agency guidance, administrative and judicial determinations relating to the protection of the environment, safety and health, or to any Hazardous Material, including, without limitation, CERCLA, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act and all laws pertaining to reporting, licensing, permitting, investigation or remediation of releases or

threatened releases of Hazardous Materials as well as their counterpart state authorities, whether in effect as of the date of closing or subsequent thereto.

(ii) "Hazardous Materials" shall mean all household waste or trash, construction debris, hazardous, toxic, explosive, radioactive or harmful materials, wastes, pollutants, contaminants or substances of any kind or nature that are regulated pursuant to any Environmental Law.

15. **GOVERNING LAW.** This Agreement, and any ancillary agreements, shall be governed by and enforced in accordance with the laws of the State of Florida.

16. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between SELLER and BUYER with respect to the purchase and sale of the Land, including all prior communications, whether in person, in writing, or via SELLER's website or otherwise, and the terms of this Agreement may be amended only in writing and signed by both SELLER and BUYER.

17. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

18. **BROKER'S FEES.** SELLER and BUYER each agrees to indemnify, defend and hold harmless the other against any claims, losses, damages, suits, or proceedings, including costs and attorneys' fees (whether or not suit be brought and whether at trial or appeal) on account of any broker's fee or commission owing due to the acts or omissions of such party or alleged to be owing in connection with the purchase and sale of the Land.

19. **NOTICES.** Notices required or permitted by this Agreement shall be given to BUYER at:

County Manager
Nassau County, Florida
96135 Nassau Place, Suite 1
Yulee, Florida 32097

with a copy to:

County Attorney
Nassau County, Florida
96135 Nassau Place, Suite 6
Yulee, Florida 32097

and to SELLER at:

City Manager
City of Fernandina Beach
204 Ash Street
Fernandina Beach, FL 32034

with a copy to:

City Attorney

City of Fernandina Beach
204 Ash Street
Fernandina Beach, FL 32034

Any notice or demand which must or may be given under this Agreement or by law shall be in writing or by electronic facsimile or mail and shall be deemed to have been given when delivered either by verified electronic facsimile or mail, personal delivery, by means of an overnight courier delivery service (such as Federal Express) or by certified mail, return receipt requested, full postage prepaid, addressed to the respective parties at the addresses stated herein. The foregoing addresses may be changed by the giving of a written notice as provided in this paragraph.

20. **TIME OF ESSENCE.** Time shall be of the essence in this Agreement.
21. **NO ASSIGNMENT.** The rights of BUYER hereunder may not be assigned by BUYER without the express written consent of SELLER, and any attempt to do so shall be void. If BUYER requests an assignment to a third-party entity not affiliated with Buyer, then the Purchase Price in Paragraph 1 shall increase by ten percent (10%) upon approval of said assignment by SELLER, and the increased price shall be payable at Closing. SELLER shall convey title to the Land by means of a single deed for each parcel at Closing. Any assignment by BUYER shall not adversely affect the rights of SELLER hereunder or release BUYER from its obligations to SELLER hereunder, and shall be in a form prepared by SELLER.
22. **BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of SELLER and BUYER, when executed by both SELLER and BUYER. The term "BUYER" shall include any permissible assignee of BUYER.
23. **WAIVER.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof; provided, however, that any party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such party without affecting any of the other terms and provisions of this Agreement.
24. **JOINT AND SEVERAL OBLIGATIONS.** If there is more than one BUYER, the agreements, obligations and representations herein shall be jointly and severally binding on each BUYER.
25. **DISCLAIMER.** SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE LAND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY RELATING TO THE CONDITION OF THE LAND, ITS SUITABILITY FOR BUYER'S PURPOSES OR THE STATUS OF THE LAND UNDER LOCALLY APPLICABLE LAW FOR ANY PURPOSE OTHER THAN SELLER'S HISTORIC USE. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, THE LAND IS TO BE CONVEYED BY SELLER AND ACCEPTED BY

BUYER "AS IS, WHERE IS" AS OF THE TIME OF CLOSING. ANY DOCUMENTS OR INFORMATION PROVIDED BY SELLER TO BUYER ARE AS AN ACCOMMODATION ONLY AND SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF SUCH DOCUMENTS. THIS DISCLAIMER SHALL SPECIFICALLY SURVIVE CLOSING AND ANY TERMINATION OF THIS AGREEMENT.

26. **EXHIBITS AND INCORPORATED PROVISIONS.** This Agreement includes and incorporates the following additional documents, which are incorporated herein by this reference:

EXHIBIT "A" The Land

27. **EFFECTIVE DATE.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the date upon which both BUYER and SELLER have executed this Agreement.

28. **SURVIVING PROVISIONS.** The provisions of Paragraphs 9, 10, 11, 14, 15, 18, and 25 and other obligations of the parties not actually carried out by the time of Closing and noted on the closing statement or other agreement executed by the parties at Closing, shall survive the Closing and not be merged into the deed of conveyance. All other provisions of this Agreement shall be merged into the delivery of the deeds of conveyance and shall not survive Closing.

29. **EXCHANGE.** The parties hereby acknowledge and agree that either SELLER or BUYER may elect to consummate the purchase and sale of the Property as part of a like kind exchange (the "Exchange"), pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that (i) the Closing shall not be delayed or affected by reason of any Exchange nor shall the consummation or accomplishment of any Exchange be a condition precedent or condition subsequent to BUYER's or SELLER's obligations under this Agreement; (ii) the party consummating the Exchange (the "Exchanging Party") shall not be released from any of its obligations under this Agreement; and (iii) the Exchanging Party shall pay any additional costs that would not otherwise have been incurred had the Exchanging Party not consummated the sale or purchase of the Property through the Exchange.

THIS DOCUMENT CONSTITUTES AND PRESENTS FOR BUYER'S REVIEW THE USUAL TERMS UNDER WHICH SELLER WILL CONSIDER OFFERS FROM BUYER FOR REAL ESTATE PURCHASE REQUESTS, AND DOES NOT CONSTITUTE AN OFFER BY SELLER TO SELL THE LAND IDENTIFIED HEREIN ON THE STATED TERMS, OR UPON ANY TERMS. THIS DOCUMENT WILL BE TREATED AS AN AGREEMENT OF PURCHASE AND SALE ONLY WHEN SIGNED BY BOTH PARTIES.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

CITY OF FERNANDINA BEACH, FLORIDA

BUYER:

**BOARD OF COUNTY COMMISSIONERS
OF NASSAU COUNTY, FLORIDA**

BUYER'S Witnesses:

Brenda Linville

Witness #1: Brenda Linville

Peggy Snyder

Witness #2: Peggy Snyder

By: [Signature]

Name:

Title:

Date: 4-9-18

[Exhibit follows below]

Attest:

Caroline Best
Caroline Best
City Clerk

a Florida municipal corporation

By: Dee Dupont
Name: Dale Martin
Title: City Manager
Date: 2/6/18

Approved as to form and legality:

Tammi E. Bach
Tammi E. Bach
City Attorney

EXHIBIT A
Purchase and Sale Agreement

The Land

**Resolution 2018-18
Exhibit "A"**

MAP SHOWING SKETCH OF DESCRIPTION

DESCRIPTION:

A PARCEL OF LAND LYING IN TRACT A, SOUTH BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 11 OF THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE: COMMENCE AT THE INTERSECTION OF THE EXISTING WESTERLY RIGHT OF WAY LINE OF SOUTH FLETCHER AVENUE (STATE ROAD A-1-A), A 75 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED WITH THE EXISTING SOUTHERLY RIGHT OF WAY LINE OF SIMMONS ROAD, A VARIABLE WIDTH RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 79° 29' 33" WEST ALONG SAID EXISTING SOUTHERLY RIGHT OF WAY LINE AND THE WESTERLY PROLONGATION THEREOF, A DISTANCE OF 263.97 FEET TO THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING: THENCE WESTERLY ALONG THE ARC OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 546.43 FEET, THROUGH A CENTRAL ANGLE OF 03° 25' 15" HAVING AN ARC LENGTH OF 32.62 FEET TO A POINT LYING ON SAID EXISTING SOUTHERLY RIGHT OF WAY LINE OF SIMMONS ROAD. SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 87° 13' 38" WEST, 32.62 FEET; THENCE NORTH 10° 30' 27" EAST, ALONG SAID EXISTING SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 4.39 FEET; THENCE SOUTH 79° 29' 33" EAST, CONTINUING ALONG SAID EXISTING SOUTHERLY RIGHT OF WAY LINE AND ALONG THE EASTERLY PROLONGATION THEREOF, A DISTANCE OF 32.32 FEET TO THE POINT OF BEGINNING.


CONTAINING 66 SQUARE FEET, MORE OR LESS.

LEGEND:

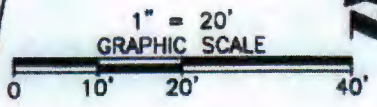
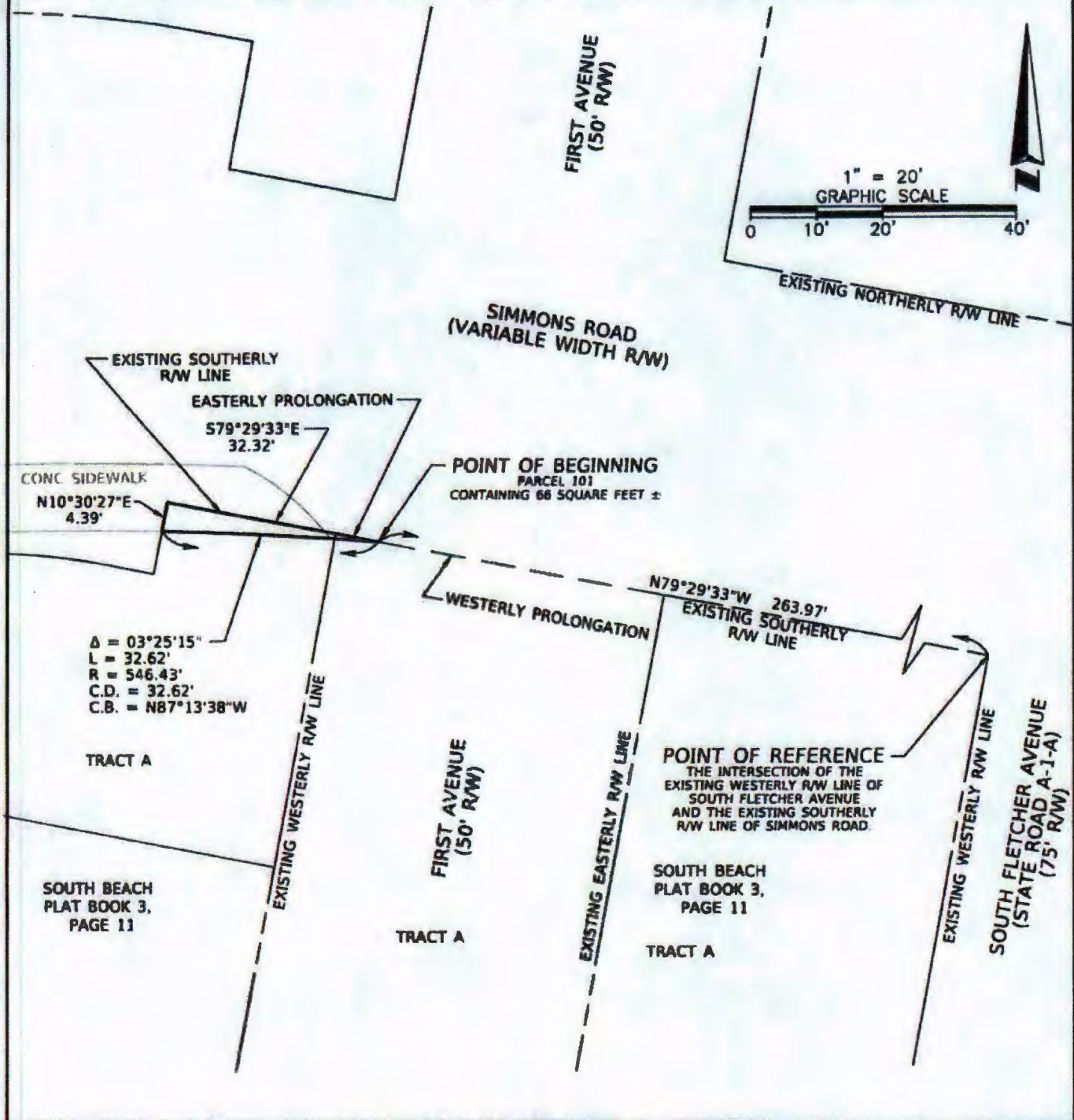
- R/W RIGHT OF WAY
- Δ DELTA
- L ARC LENGTH
- R RADIUS
- C.D. CHORD DISTANCE
- C.B. CHORD BEARING
- CONC CONCRETE

SURVEYOR'S REPORT:

1. THIS IS NOT A BOUNDARY SURVEY.
2. BEARINGS SHOWN HEREON ARE BASED ON THE EXISTING SOUTHERLY RIGHT OF WAY LINE OF SIMMONS ROAD AS BEING NORTH 79° 29' 33" WEST.
3. I HEREBY CERTIFY THAT THE "SKETCH OF DESCRIPTION" OF THE ABOVE DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS RECENTLY DRAWN UNDER MY DIRECTION AND THAT IT MEETS THE STANDARDS OF PRACTICE FOR LAND SURVEYING CHAPTER 5J-17 REQUIREMENTS.
4. THIS IS A MULTI-SHEET DRAWING AND IS NOT VALID WITHOUT ALL SHEETS.

| | | | | | | |
|-----------------------|-----------------|--|--|---|--------------------|---|
| REVISION | REVISION | BY | SKETCH AND DESCRIPTION | | | Certified to: |
| | | | Project: SIMMONS ROAD AND FIRST AVENUE NASSAU COUNTY, FLORIDA | | | NASSAU COUNTY, FLORIDA CITY OF FERNANDINA BEACH, FLORIDA |
| | | | Survey Date: 12/01/2017 | Drawn By: MDB | Scale: 1" = 20' | |
| DRAWING NUMBER | | Digitally signed by Robert Gardner DN: c=US, st=Florida, 1=Jacksonville, o=Southeastern Surveying and Mapping Corporation, ou=Survey, cn=Robert Gardner, email=rgardner@ssmc.us Date: 2017.12.01 09:11:29 -0500 | | SOUTHEASTERN SURVEYING AND MAPPING CORPORATION | |  |
| PARCEL 101 | | | | 8641 Baypine Road, Suite 6 | | |
| SHEET NUMBER | | | | Jacksonville, Florida 32256 | | |
| 1 OF 2 | | | | (904) 737-5990 Fax (904) 737-5995 e-mail: info@ssmc.us | | |

MAP SHOWING SKETCH OF DESCRIPTION



$\Delta = 03^{\circ}25'15''$
 $L = 32.62'$
 $R = 546.43'$
 $C.D. = 32.62'$
 $C.B. = N87^{\circ}13'38''W$

| REVISION | BY | DATE | DESCRIPTION | CERTIFIED TO: | |
|----------|----|-------------------------|--|---|-----------------|
| | | | Project: SIMMONS ROAD AND FIRST AVENUE MASSAU COUNTY, FLORIDA | MASSAU COUNTY, FLORIDA CITY OF FERNANDINA BEACH, FLORIDA | |
| | | Survey Date: 12/01/2017 | Drawn By: MDS | | Scale: 1" = 20' |
| | | | | | |

| | |
|-------------------------------------|---|
| DRAWING NUMBER PARCEL 101 | SEE SHEET 1 FOR NOTES, LEGEND, SIGNATURE AND SEAL. |
| SHEET NUMBER | |
| 2 OF 2 | |

SOUTHEASTERN SURVEYING AND MAPPING CORPORATION
 8841 Baypine Road, Suite 5
 Jacksonville, Florida 32256
 (904) 737-5990 Fax (904) 737-8995
 e-mail: info@ssemc.us

Resolution 2018-18
Exhibit "B"

SPECIAL WARRANTY DEED

February, 2018, by CITY OF FERNANDINA BEACH, a municipal corporation organized under the laws of the State of Florida (the "Grantor"), whose address 204 Ash Street, Fernandina Beach, FL 32034, to BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, a political subdivision of the State of Florida (the "Grantee"), whose address is 96135 Nassau Place, Suite 1, Yulee, FL 32097.

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, its successors and assigns forever, all that certain parcel of land lying and being in the County of Nassau, State of Florida, as more particularly on Exhibit "A" attached hereto and made a part hereof (the "Property").

To have and to hold, the same in fee simple forever.

Grantor is NOT conveying by this Deed any rights that it retains under Florida Statutes Section 270.11 (1).

SUBJECT TO: Taxes and assessments for the year 2018 and all subsequent years; all applicable governmental, zoning and land use ordinances, restrictions, and prohibitions and other requirements imposed by governmental authority; agreements and easements of record.

And the said Grantor hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple, and has good right, full power, and lawful authority to sell and convey said land, and hereby warrants the title to the Property and will defend the same against the lawful claims of all persons whomsoever, claiming by, through or under the Grantor, but against no others.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed the day and year first above written.

| | |
|--|---|
| ATTEST: <i>Caroline Best</i> | CITY OF FERNANDINA BEACH, FLORIDA |
| Printed Name: <u>Caroline Best</u> Title: <u>City Clerk</u> | By: <u><i>Sale L Martin</i></u> Printed Name: <u>Sale L Martin</u> Title: <u>City Manager</u> |


STATE OF FLORIDA
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 6th day of February 2018, by Sale L. Martin, as Caroline Best and attested by Caroline Best, as City Clerk, of the CITY OF FERNANDINA BEACH, FLORIDA, a municipal corporation organized under the laws of the State of Florida, on behalf of said municipal corporation, who:

- is personally known to me, or
- have produced _____ as identification.

Kimberly Elliott-Briley
 Notary Public - State of Florida
 Printed Name: _____
 My Commission Expires: _____

KIMBERLY ELLIOTT-BRILEY
 Notary Public, State of Florida
 My Comm. Expires Feb. 5, 2020
 Commission No. FF 947535



(Notary Seal)

Approved as to form and legality:

TAMMI BACH
 Printed Name: TAMMI BACH
 Title: City Attorney