

CITY OF GAINESVILLE
AGREEMENT FOR LAND ACQUISITION SERVICES

This **AGREEMENT** ("Agreement") is made and entered into on this _____ day of _____, 2009 between the **CITY OF GAINESVILLE**, a municipal corporation ("City") and **ALACHUA CONSERVATION TRUST, INC.**, a Florida not-for-profit corporation ("Contractor").

WHEREAS, City will receive an allocation of funds from the Wild Spaces Public Places ½ cent sales tax initiative that must be used for acquisition of conservation land, and City also has a balance of funds available in its Greenspace Trust Fund; and,

WHEREAS, Contractor has unique knowledge and experience with providing land acquisition services to the City, having completed previous projects such as the Hogtown Creek Greenway, Gumroot Swamp, Boulware Springs Additions, and the Hogtown Creek Headwaters projects, in addition to coordinating with several other agencies such as Alachua County Forever, the Water Management Districts, and the Federal government; and,

WHEREAS, City desires to retain the services of Contractor to provide land acquisition services, including negotiations and due diligence; and,

WHEREAS, the mission of the Contractor is to protect the natural, historic, scenic, and recreational resources in and around Alachua County, Florida through purchase, donation, conservation easement, and bargain sale and this Agreement is consistent with Contractor's mission.

NOW, THEREFORE, in exchange for good and valuable consideration, the City and Contractor agree as follows:

I. SCOPE OF SERVICES

Contractor shall provide land acquisition and related services, including, but not limited to the following (the "Scope of Services"):

A. Negotiate with landowners on a list of potential projects (Attachment A - "Project List") to determine those landowners who are interested and motivated to sell their land in fee simple or less-than-fee. Neither City nor Contractor shall use the threat of condemnation, and shall state this in writing to the landowners.

B. Order, receive, and review a title and encumbrance report and/or title insurance commitment certified to the City and to any partnering agency (Attachment B – "Partnering Agency"). Negotiate to have any title defects cleared by the Seller or other parties which may be involved.

- C. Order, receive, and review a Phase 1 environmental audit certified to the City and to any partnering agency. Consult with the City to review the findings of the Phase 1 environmental audit and to determine the necessity of conducting a Phase 2 environmental audit. If determined necessary, order, receive and review a Phase 2 environmental audit. Negotiate to have any environmental contamination remediated by the Seller or other parties which may be involved. Neither the City nor the Contractor shall be liable for any direct costs associated with clean-up unless this liability is specifically waived with approval by the City Commission.
- D. Order, receive, and review one or two appraisals of the Project property certified to the City and any partnering agency. For properties with an anticipated price of under \$250,000, one appraisal is sufficient; for anticipated values above this amount, two appraisals shall be required.
- E. Negotiate an assignable option contract, in the name of the Contractor, for the purchase of the Project property, using a form and content acceptable to the City and any partnering agencies (Attachment C – “Option Contract”).
- F. Negotiate any out-parcel sale(s) to third parties, provided the sale(s) of any out-parcel does not negatively affect the project. Prior to executing an assignment of option or a contract for the sale of any out-parcel, the Contractor shall consult with the City to review the effect the out-parcel sale will have on the project and to determine the need for an amendment to any agreements or land management plans.
- G. Assign the option contract, less any out-parcels, to the City for no additional consideration.
- H. In the case of a less-than-fee opportunity, negotiate the acquisition of conservation easement(s), as defined in and in accordance with Section 704.06, Florida Statutes, provided such conservation easement(s) are in the best interest of the City. Contractor shall prepare, and provide to the City, baseline documentation necessary to document the types and the condition of the natural resources found on the conservation easement property. Prior to executing a contract for the acquisition of a conservation easement or executing a conservation easement, consult with the City to review the benefit of and terms of the easement acquisition and to determine the need for an amendment to any agreements or land management plans.
- I. In the case of a partnering opportunity, negotiate intergovernmental agreements authorizing the City to manage lands co-owned by other governmental agencies, provided such agreements are in the best interest of the City. Prior to executing an intergovernmental agreement, Contractor shall consult with the City to review the benefit of and terms of the intergovernmental agreement and to determine the need for an amendment to any agreements or land management plans.
- J. Order, receive, and review boundary surveys certified to the City and any partnering agency, as appropriate. Provide the City with five sealed copies of the final boundary survey,

as well as electronic files containing the survey information. Negotiate to have any survey defects cleared by the seller or other parties which may be involved.

K. Assist the City such as by providing technical expertise and maps in preparing a land management plan, however the City shall take the lead in writing a plan.

L. Coordinate the closing on the purchase of the project property, including the provision of title insurance and closing services.

M. Coordinate and provide any necessary preliminary physical site work or trash clean-up, at an expense not to exceed \$2000.

II. CONTRACTOR OBLIGATIONS AND LIMITATIONS

A. The Contractor shall conduct its performance under this Agreement in the best interest of the City, including, by way of example, selecting the lowest cost qualified service providers, negotiating the lowest possible sales price, and working with partnering agencies to have the difference in the appraised value of the Project property and the sales price to be considered part or all of any required matching funds.

B. The Contractor shall select and retain the service providers, such as the title and closing agent, surveyor, environmental auditors and engineers, necessary for the Contractor to perform its scope of services under this Agreement.

C. The Contractor shall provide copies of all reports, documents, and information generated in the performance of the scope of services to the City for review and comment. Reports, documents, and information will be submitted in a timely fashion to the City in order to process the request.

D. The Contractor shall, in its performance under this Agreement, comply with the provisions of any agreements and applicable Florida law. In addition, the Contractor shall comply with the confidentiality rules regarding state land acquisitions as provided by Florida law.

E. The Contractor shall use its best efforts to complete the Scope of Services and other obligations under this Agreement.

F. The Contractor shall not be responsible or liable for the clean up of any hazardous materials on any project properties.

G. The Contractor shall provide regular and special reports to the City as directed, including presentations, financial and other project information. The Contractor shall meet with City representatives as needed to provide updates or review concerns. The Contractor shall provide sufficient and timely notice regarding any actions that may require City

Commission approval to ensure satisfactory preparation of any actions to be requested of or information to be transmitted or reported to the City Commission.

III. CITY OBLIGATIONS AND LIMITATIONS

A. The City shall designate a primary contact person to coordinate the City's staff review of documents and information provided by the Contractor. The City will review and comment, as it deems appropriate, on the title work, the environmental audit(s), the appraisals, option contract, contract for purchase, conservation easements, boundary survey(s), the preliminary site plan, and closing documents.

B. The City shall pay any tipping fees (or seek waivers of same) for trash or debris removed from the site by Contractor in conducting its preliminary physical site work and clean-up.

C. The City shall, during its annual budgeting process, consider appropriating the matching funds required by any agreements to close on the purchase of the any project properties.

D. The City shall complete a land management plan for the project properties in accordance with any partner agency requirements.

E. The City shall initiate petitions to change the land use or zoning of the project properties, if City deems necessary. Provided nothing contained in this Agreement shall be interpreted or construed as an approval, waiver, or agreement to approve or waive any development order, development permit, rezoning, comprehensive plan amendment, or any other governmental requirement for the project properties. Nor shall this Agreement, or any provision herein, be interpreted or construed as contracting away the exercise of the police powers of the City.

F. The City shall submit standard contracts approved by the City Attorney for use in acquisitions to complete the Scope of Services (Attachments C and D).

G. The City shall not be obligated to take an assignment of the option contract, exercise the option to purchase, or to close on the purchase of the project properties, unless and until:

(1) the results of the due diligence (including without limitation, the title work, surveys, appraisals and environmental audits) are acceptable to the City; and,

(2) the terms and conditions of the assignment, the option contract, the contract for sale and purchase and related closing documents are approved by the Gainesville City Commission; and,

(3) the City has budgeted and made available for expenditure any matching funds required by any agreements.

IV. TERM

This Agreement shall be effective upon execution by both parties and will continue for a period of one (1) year (the "Term"). At the end of the Term, upon satisfactory performance by the Contractor and availability of funding, the City may at its option, extend the contract for one (1) additional year as necessary to complete the scope of services.

V. COMPENSATION/PAYMENT

The Contractor shall be responsible for compensating all service providers (such as surveyors, appraisers, and engineers) utilized by Contractor in performing its scope of services under this Agreement. The Contractor may seek reimbursement from partnering agencies to the extent those services are eligible for reimbursement under the Grant Contract. The City shall not, under any circumstances, be responsible for payment to the service providers or for reimbursing the Contractor for same. Further, Contractor shall release and hold harmless the City from any claims made by a service provider retained by the Contractor.

Upon execution of this Agreement, payment shall be made to Contractor once monthly, at the rate of \$6,750 per month. For the twelve-month term of this Agreement, the total value of compensation is \$75,000.

In order to receive payment, the Contractor shall submit to the City an original, signed payment request/invoice that itemizes the activities of the Contractor and service providers during the Payment Period and includes backup documentation for same.

VI. DEFAULT

Failure to perform any responsibility under this Agreement shall place the non-performing party in default. Upon written notice by the non-defaulting party, the party in default shall have ten (10) days to correct the default. If the default is not corrected, this Agreement may be terminated at the option of the non-defaulting party.

VII. TERMINATION

Either party may terminate this Agreement without cause upon sixty (60) days prior written notice to the other party.

VIII. INDEPENDENT CONTRACTOR

Contractor shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled to by reason of

employment. Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the Contractor in full performance of this Agreement.

IX. INDEMNIFICATION

Contractor/consultant agrees to indemnify and hold harmless the City, its officers, agents and employees from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of the work.

X. INSURANCE

Contractor shall maintain an insurance policy for general liability with such limits as are acceptable to the City, and shall provide proof of such insurance upon execution of this Agreement.

XI. SOVEREIGN IMMUNITY

Nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity under Section 768.28 Florida Statutes.

XII. VALIDITY

If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable law, rules, or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, and shall not invalidate the remaining provisions of this Agreement.

XIII. COMPLIANCE WITH LAW

The Agreement and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Florida. Venue is in the courts of Alachua County, Florida.

XIV. AUDIT

Contractor/consultant shall maintain records sufficient to document their completion of the scope of work established by the Contact Documents. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the scope of work or termination of the Agreement, whichever first occurs. Records which relate to any

litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims

XV. NOTICE

All notices, demands, requests for approvals, or other communications shall be deemed given and delivered on the date delivered in person or on the date mailed by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

CITY:
Mr. Russ Blackburn
City Manager
City of Gainesville
Station 6
PO Box 490
Gainesville, FL 32602
(352) 334-5010

CONTRACTOR:
Mr. Robert Hutchinson
Executive Director
Alachua Conservation Trust, Inc.
Suite 201
12 West University Avenue
Gainesville, FL 32601
(352) 373-1078

These addresses may be changed from time to time in writing delivered to the other party. Until written notice is received, a party may rely upon the last address given.

XVI. ENTIRE AGREEMENT/AMENDMENT

This Agreement constitutes the entire Agreement between the City and Contractor. Any modifications, amendments, or alterations shall be in writing and executed by both parties prior to becoming effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

City of Gainesville

Alachua Conservation Trust, Inc.

Russ Blackburn
City Manager

Robert Hutchinson
Executive Director

Dated: _____

Dated: _____

Witness:

Witness:

Attachment A – List of Potential Land Acquisition Projects

Top Priority Parcels:

	Property	Size	Location	Comments	Parcels	Zoning
1	Johnson/ Demetree	87 acres	E. University Ave.	Swamp, flatwoods, sandhill, and creek directly across from Morningside.	10890-000-000 10889-000-000	R2/R1b* R2*
2	Barnes/ Kamlah	62 acres	Adjacent to I-75 (2314 SW 47 th St.)	Last remaining unprotected portion of Hogtown Prairie; adjacent to Split Rock Conservation Area.	06684-000-000 06684-001-000	Residential* R-2A*
3	Burch	40 acres	S. of Newberry Rd. Behind Creekside Mall (3663 SW 2 nd Ave.)	Hogtown Creek floodplain and important greenway connector; adjacent to Green Acres Park.	06514-000-000	
4	Barnes #2	44.5 acres	E of Lake Kana- paha near I-75	Upland woods adjacent to Hogtown Prairie; potential access point for Lake Kanapaha and Split Rock Conservation Area.	06828-000-000	Ag*
5	Rubric	17 acres	SW 62 nd Blvd. near Terwilliger Pond	Connector between existing greenway properties and SW 62 nd St.; nice hammock.	06566-000-000	PUD

2nd Priority Parcels:

	Property	Size	Location	Comments	Parcels	Zoning
6	Hogtown Creek Floodplain	191+ acres	West of SW 34 th St., south of Green Acres Park	Several undeveloped parcels containing large portions of the Hogtown Creek floodplain. Adjacent to Green Acres Park, UF conservation areas, and the city's Pinkoson property. These parcels join Pinkoson, Green Acres, and Sugarfoot Prairie conservation areas seamlessly.	06745-000-000 06743-005-000 06743-004-000 06738-000-000 06724-002-000 06724-000-000 06715-001-000 06715-000-000 06712-000-000 06695-000-000 06538-031-000	Ag* Ag* Ag* Ag* RSF1* Ag, R-3* Ag* Ag R3 Ag Ag
7	Cone Park Southwest	75 acres	Between SR 26 and SR 20, East of SE 24 th St.	Several undeveloped parcels containing the convergence of Lake Forest Creek tributaries; degraded but contains remnant flatwoods.	11243-000-000 11283-000-000 11284-000-000 11286-000-000 11287-000-000	RMF RSF 4 RMF RSF 1 RSF 1

					11356-000-000 16073-000-000 16146-000-000	RSF 1 Residential BR*
8	Henderson	23 acres	South side of SW 20 th Ave.	Adjacent to Split Rock Conservation Area; contains high quality hammock. Partial of 06677 and 06676, all of 06680-004.	06677-000-000 06676-000-000 06680-004-000	Residential* R2A* Residential*
9	Crawford	40 acres	N. of Lofton School, at end of NE 11 th Place	Separated from Morningside by undeveloped SBAC and State lands; contains extensive wetlands and flatwoods, with some sandhill-like uplands.	10860-000-000	Residential*

Possible less-than-fee acquisitions:

	Property	Size	Location	Comments	Parcels	Zoning
A	Wacahoota	200 acres	SW Williston Rd.	Already owned by City of Gainesville. Contains large area of remnant sandhill and upland pine forest, hammock in excellent condition, and has importance as a wildlife corridor between Paynes Prairie and Kanapaha Prairie.	07341-000-000	Ag*
B	Morning-side Buffers	1,236 acres	North and East of Morningside Nature Center	State-owned, undeveloped lands, not currently classified as conservation. Could potentially be protected through inter-governmental agreement; the possibility of acquiring Crawford (#9 above) and exchanging with State for lands adjacent to Morningside should be explored.	10862-000-000 10863-000-000 10885-000-000	Ag* Ag*
C	Hogtown Creek Headwaters Easements (Grant/ Everett)	12.5 acres	NW 19 th St. north of 45 th Avenue	Protection of natural values on these properties adjacent to the FCT-funded Hogtown Creek Headwaters Nature Park would allow better protection of the natural resources in the park. It is recommended that the City pursue conservation easements with the owners.	07900-000-000 07900-001-000 07893-000-000	RSF 1 RSF 1 RSF 1

*Property outside the Gainesville city limits.

Additional properties recommended by ACT (Not evaluated)

	Property	Size	Location	Comments	Parcels	Zoning
D	Newnan's Lake Southwest Corridor	172 ac. 287 ac. 15 ac. 12 ac. 16 ac.	South of Palm Point park	Several large undeveloped parcels potentially connecting the west shore of Newnan's Lake (and Palm Point park) to private conservation land (Santa Fe Land Trust), and in turn to Paynes Prairie.	17942-000-000 17944-000-000 17944-500-000 17944-500-001 17944-050-000	Ag RE-1/A, Resid. Ag Ag Ag
E	Serenola Forest	96 acres	South of SW Williston Rd., east of Oak Hammock	One large undeveloped parcel potentially connected to Paynes Prairie through several parcels of active agriculture.	07176-020-000	Planned Development
F	Blues Creek Ravine Access	48 acres	N. of Millhopper Rd. and West of NW 43 rd St.	Owned by University of Florida. ACT and ACF have pursued a lease for access to the Blues Creek Preserve (ACT) through a portion of this property. The State is asking approximately \$120,000 for a 50-year lease.	06005-000-000	Ag

Attachment B – Partnering Agencies

Contractor may seek to partner with, and request funding support from the following agencies, based on their project eligibility criteria and funding availability:

- 1) Alachua County Forever, including Wild Spaces-Public Places funds
- 2) Florida Forever, including Florida Communities Trust, the Office of Greenways and Trails, the Florida Wildlife Conservation Commission, the Division of State Lands, and the Division of Forestry
- 3) St. Johns River Water Management District
- 4) Suwannee River Water Management District
- 5) Federal programs, including the North American Wetlands Conservation Act, the Natural Resources Conservation Services, and the Land and Water Conservation Fund.

In addition to public funding, ACT will seek opportunities from private foundations, non-profit organizations, and private landowners.

DRAFT

Attachment C – Option Contract

OPTION AGREEMENT FOR THE PURCHASE AND SALE OF LAND

This Option Agreement (the “Agreement”) is entered into by and between _____, whose mailing address is Post Office Box _____, Gainesville, Florida 32604 (the “Seller”) and the **City of Gainesville**, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 6, Gainesville, Florida 32602 (the “Buyer”).

1. **Right to Purchase:** The Seller hereby grants to the Buyer an option to purchase and a right of first refusal with respect to certain real property described as follows (the “Property”):

2. **Consideration:** The consideration for this Agreement is \$2,000.00, paid by the Buyer to the Seller upon full execution of this Agreement. In the event Buyer closes on the purchase of the Property, the \$2,000 shall be applied at closing to reduce the Purchase Price. In the event Buyer elects not to purchase the Property, Seller shall retain the \$2,000 as consideration for this Agreement and neither party shall have any further liability or obligation hereunder.

3. **Right of First Refusal:** In the event Seller receives a bona-fide arms-length offer to purchase the Property from a third-party, the Seller shall provide the Buyer with a copy of the written offer of purchase containing all operative terms and conditions of the purchase and closing (the “Written Offer.”) The Buyer shall have 30 calendar days from Buyer’s receipt of the Written Offer to notify Seller of its intent to purchase the Property on the same terms and conditions as the Written Offer. In the event Buyer does not so notify Seller, Seller may close on the sale with the third party in accordance with the Written Offer and upon closing; this Agreement shall be deemed terminated without need of any further action by the parties. In the event the closing with the third party does not occur or the terms of Written Offer are modified prior to closing, this Agreement shall remain in full force and effect and Seller may not sell to any third party without first offering the Property to the Buyer on the revised terms and conditions or upon receipt of subsequent Written Offers.

4. **Option to Purchase:** At any time during the term of this Agreement, the Buyer may elect to exercise its option to purchase the Property, by doing the following:
 - a. At such time as the Buyer wishes to exercise the Option, Buyer, at its expense, shall have the Property appraised. The Buyer shall provide the Seller with a copy of the appraisal report to establish the proposed purchase price for the Property. If the Seller does not agree with the proposed purchase price, then the Seller, at its expense, may have the Property appraised and the difference between the two appraised values shall be deemed the purchase price. By way of example, if the Buyer’s appraised value is \$100,000 and the Seller’s appraised value is \$150,000, then the purchase price is deemed to be \$125,000. All appraisals shall be prepared in accordance with the Uniform Standards of Professional Appraisal Practice by an appraiser holding a current license in good standing through the Florida Department of Business and Professional Regulation. In addition, if issuing an appraisal report for residential real property of one to four units, the appraiser must hold a current certification as a Certified Residential Appraiser or Certified General Appraiser; or must hold a current MAI, SRA, or SRPA designation. If issuing an appraisal report for property other than residential property of one to four units, the appraiser shall hold a current MAI designation.

- b. After establishing the Purchase Price pursuant to subsection a above, if the Buyer desires to purchase the Property, the Buyer may exercise the option by executing two copies of the Contract for Sale and Purchase (the "Contract") which is attached hereto as **Exhibit "A"** and incorporated into this Agreement by reference, and delivering both copies, together with a written notice that the Buyer is thereby exercising the option, to the Seller. The option shall be effectively exercised upon the Buyer's delivery of the executed Contract and notice. Within fifteen (10) business days following Buyer's receipt of same, the Seller shall execute and deliver to the Buyer one of the copies of the Contract.

5. **Term of the Agreement:** This Agreement shall expire at **5 p.m. on January 31, 2011**. Time is considered to be of the essence by both parties. This Agreement shall be binding on the heirs, legatees, executors, administrators, personal representatives, successors, and assigns of the Seller. This Agreement shall inure to the benefit of the successors or assigns of the Buyer.

6. **Assignment of the Agreement:** This Agreement is freely assignable by the Buyer.

7. **Authority; Transfer of the Property Subject to the Agreement:** Seller warrants and covenants that Seller has title to the exclusion of all other persons or entities to the fee simple interest in the Property, and as such Seller has full authority to enter into this Agreement without requiring the consent or approval of any other person or entity. During the term of this Agreement, the Property may be mortgaged or gratuitously (for no consideration) transferred by the Seller. However, any such mortgage or gratuitous transfer of the property shall be subject to, and shall not defeat the rights of the Buyer, its successors or assigns.

8. **Recording:** A memorandum of this Agreement shall be recorded by the Buyer in the Public Records of Alachua County, Florida.

9. **Default:** Failure to perform any responsibility under this Agreement shall place the non-performing party in default. Upon written notice by the non-defaulting party, the party in default shall have ten days to correct the default. If the default is not corrected, this Agreement may be terminated at the option of the non-defaulting party or the non-defaulting party may pursue all remedies available at law or in equity.

10. **Applicable Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.

11. **Amendment:** This Agreement may not be amended, unless evidenced in a writing executed by all parties.

12. **Notice:** Any and all notice(s) or demand(s) by either party shall be made in writing and served by personal delivery or by US Mail certified return receipt requested. If served by certified mail, service shall be conclusively deemed made forty-eight (48) hours after the deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom such notice or demand is to be given, as hereinafter provided.

Any notice or demand to Buyer may be given at the following address:

AS TO BUYER:

Russ Blackburn, Manager
City of Gainesville
P.O. Box 490, MS 6
Gainesville, Florida 32602-0490

COPY TO: Attention: City Attorney
City of Gainesville
P.O. Box 1110
Gainesville, Florida 32602-1110

Any notice or demand to SELLER may be given to the following address:

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

Seller

Witness: _____

Witness: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me on _____, 2008, by _____, who is personally known to me or who has produced _____ as identification, and duly sworn, acknowledged that she executed the foregoing instrument for the uses and purposes set forth and contained in this instrument.

Print Name _____
Notary Public, State of Florida

Buyer
City of Gainesville

Witness: _____

Russ Blackburn, Manager

Witness: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me on _____, 2008, by Russ Blackburn, Manager, City of Gainesville, a Florida municipal corporation, who is personally known to me and duly sworn, acknowledged that as such officer, and pursuant to authority from said Agency, he executed the foregoing instrument for the uses and purposes set forth and contained in this instrument.

Print Name: _____

Notary Public, State of Florida

DRAFT

OPTION CONTRACT EXHIBIT A
CONTRACT FOR PURCHASE

PARTIES: _____, a Florida corporation, whose mailing address is _____ ("Seller"), and the **City of Gainesville**, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 06, Gainesville, Florida 32602 ("Buyer"), hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

1. DESCRIPTION:

(a) Preliminary legal description of the Real Property located in Alachua County, Florida: This preliminary legal description is approximately depicted on Exhibit "A" attached hereto and by this reference made a part hereof. The parties agree that the final legal description will be prepared by the Buyer's surveyor within the time provided in Section 8A below. The parties further agree that the purchase price in Section 2 is subject to an appraisal and negotiations.

(b) Street address, city, zip, of the Property: _____, Gainesville, Florida (also known as Alachua County Tax Parcel _____-000)

(c) Personal Property: None, Vacant Property.

(d) Other items included are: None, Vacant Property.

(e) Items of Personal Property (and leased items, if any) excluded are: None, Vacant Property.

2. PURCHASE PRICE (Fixed Price, U. S. currency): \$ _____,000.00

PAYMENT:

(a) Deposit to be made within 10 days after City Commission approval of this Contract and to be held in escrow by First American Title (Escrow Agent) in the amount of \$50,000.00. \$ (50,000.00)

(b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date (see Paragraph 3) in the amount of _____\$. \$ 0.00

(c) Other: \$ _____ (,000.00)

(d) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations. \$ _____,000.00

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

(a) If this offer is not executed by the Seller on or before **September 30, 2009**, and by the Buyer on or before **October 31, 2009**, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. The offer is contingent upon approval of the Contract by the City Commission. If the City Commission of the City of Gainesville does not act to approve and ratify this Contract within sixty (60) days of the date of execution by the Seller, this Contract shall be terminated and Seller and Buyer shall be relieved of all obligations under this contract.

(b) The effective date of Contract will be the date when the last of the following three events have occurred (the "Effective Date"): the Seller has signed this Contract, the Buyer has signed this Contract and the City Commission has approved or ratified this Contract. .

4. FINANCING:

This is a cash transaction with no contingencies for financing.

5. TITLE EVIDENCE: Within 10 days of the effective date:

(a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms); or

(b) Abstract of title or other evidence of title (see rider for terms), shall be obtained by (CHECK ONLY ONE):

(1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or

(2) Buyer at Buyer's expense.

6. CLOSING DATE: This transaction shall be closed and the closing documents delivered on **December 31, 2009** ("Closing"), unless modified by other provisions of this Contract. Closing shall occur at First American Title, 2632 Northwest 43rd Street in Gainesville, Florida.

7. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7½ feet in width as to the side lines); taxes for year of Closing and subsequent years; provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for a municipal fire station (the "Buyer's Intended Use").

8. SURVEY AND DUE DILIGENCE:

A. **EXISTING DOCUMENTS:** Within 15 business days after the Effective Date of this Contract, Seller shall provide Buyer with a copy of all surveys, title reports or title insurance policies, environmental and engineering reports and any other reports that pertain to the Property that are in the Seller's possession.

B. **SURVEY:** The Buyer shall have 60 days from the Effective Date of this Contract to have the property surveyed at its expense. If the survey shows any encroachments upon or shortages in the land herein described or that the improvements located on the land herein described encroach on the land of others, a copy of such survey shall be furnished to the Seller and the

Seller shall have the time to cure such defect as the Contract allows to cure defects of title. Failure to so cure shall be regarded as a default by the Seller.

C. DUE DILIGENCE:

(1) Commencing on the Effective Date, Buyer and its engineers, architects, and other agents shall have a period of **sixty (60) days** (the "Due Diligence Period") within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Property as may be necessary in order for Buyer to evaluate the physical characteristics of the Property, including environmental conditions, as well as such other matters as may be deemed by Buyer to be reasonably necessary to generally evaluate the Property and determine the feasibility and advisability of Buyer's purchase of the Property for the Buyer's Intended Use. In the event Buyer determines in its sole discretion, that the Property is not suitable for Buyer's Intended Use, Buyer may by written notice provided to Seller on or prior to expiration of the Due Diligence Period, terminate this Contract, upon which the Deposit shall be promptly returned to Buyer and except as otherwise provided herein, neither party shall have any further liability or obligation hereunder.

(2) For purposes of undertaking physical inspections and investigations of the Property, including but not limited to the Survey, Appraisal, Environmental Phase I, Environmental Phase II, soil studies, asbestos studies, topographical survey, land use and zoning review, water and sewer availability and capacity, ingress/egress, preliminary planning review, covenants and restrictions, coverage ratio, concurrency compliance, and construction time, Seller hereby grants to Buyer and its agents full right of entry upon the Property and any part thereof during the Due Diligence Period and, as long as this Contract has not been terminated, thereafter until Closing. Buyer, as a condition to its exercise of such right of entry, agrees to indemnify the Seller for claims brought against the Seller only to the extent that they are found to result from the sole negligence of the Buyer, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the Buyer. This indemnification shall not be construed as a waiver of the Buyer's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the Buyer could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against the Buyer unless the claimant presents the claim in writing to the Risk Manager within three years after such claim accrues or the Risk Manager denies the claim in writing. For purposes of this paragraph, the requirements of notice to the Risk Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provisions of this paragraph, the value of this indemnification is limited to the maximum sum of \$200,000 as the result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$100,000 for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the Buyer to only those damages caused by the Buyer's sole negligence, and shall specifically exclude any attorney's fees or costs associated therewith.

(3) Buyer shall utilize its own consultants, engineers and all other related professionals to make its own investigation and determination as to the accuracy or acceptability of any and all matters regarding the Property and the documents.

9. SPECIAL CONDITIONS/CONTINGENCIES:

CONTINGENCIES: It is understood and agreed that the Closing is contingent on Buyer obtaining final approval by the appropriate governmental authorities and expiration of any period for legal challenges and appeals thereof (the "Final Approval") of the following:

- (1) Land Use and Zoning changes as necessary to allow Buyer's Intended Use.
- (2) Lot Split or Minor Subdivision as necessary to allow Buyer's Intended Use.
- (3) Final Development Plan for the Buyer's Intended Use.
- (4) All necessary governmental permits, excluding building permits, for the Buyer's Intended Use.

The Buyer, at its sole expense, will apply for and diligently pursue such Final Approvals. The Seller agrees to cooperate with Buyer's efforts, including without limitation signing or consenting to any necessary applications and permits. In the event the Buyer is unable to obtain the Final Approvals, on or before the Closing, Buyer may: (1) continue to diligently pursue the Final Approvals and Closing shall be automatically extended by one-month periods until Buyer is able to obtain the Final Approvals, or (2) terminate this Contract and receive a return of Buyer's Deposit, upon which neither party shall have any further liability or obligation hereunder.

NO CONTRACTUAL ZONING; NO CONTRACTING OF POLICE POWERS. The parties recognize that the Buyer is also the government entity that is vested with authority to grant or deny many of the above Final Approvals. The parties agree that nothing contained in this Contract shall be interpreted or construed as an approval, waiver or Contract to approve or waive any development plan, development permit, rezoning, comprehensive plan amendment or any other governmental requirement for the Buyer's Intended Use. Nothing contained in this Contract shall be interpreted or construed as contracting away the exercise of the police powers of the City.

10. WARRANTIES & COVENANTS OF SELLER:

A. LITIGATION: Seller covenants and warrants that, to the best of its knowledge, there are no suits, actions, or proceedings pending, whether involving governmental authority or private party, to which Seller is a party and relating to the ownership or operation of the Property, nor has Seller any knowledge of any contemplated actions; and Seller agrees to give Buyer prompt notice of any suits instituted between the date hereof and the closing date.

B. SELLER'S OWNERSHIP: Seller warrants and covenants that Seller has title to the exclusion of all other persons or entities to the fee simple interest in the Property, and the same shall be conveyed by Seller to Buyer at the closing; that Seller has an unrestricted right to so transfer, that there are no Contracts, leases or understandings affecting the Property or improvements thereon other than those that have been or will be disclosed by provisions of this Contract.

C. COMPLIANCE WITH LAW: Seller warrants and covenants that, to the best of its knowledge, there are no violations of federal, state, or local law, regulations or ordinances affecting the Property and Seller covenants to cure any and all such violations, if such are found to exist, prior to closing.

D. ZONING: Seller warrants and covenants that the Property is presently zoned Limited Industrial 1 (I-1). Seller further warrants and covenants that it has no knowledge or information

of any existing or anticipated federal, state, county, municipal or other orders or actions which might adversely affect Buyer's construction or proposed use, as applicable.

E. **CONDEMNATION:** Seller warrants and covenants that it has not received any written or official notice or otherwise been notified or have any knowledge of any condemnation proceedings against the whole or any part of the Property, by any other government entity.

11. **OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard E. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.
12. **TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.
13. **ASSIGNABILITY: (CHECK ONLY ONE):** Buyer ___ may assign and thereby be released from any further liability under this Contract; ___ may assign but not be released from liability under this Contract; or X may not assign this Contract.
14. **DISCLOSURES:**
- A. ___ CHECK HERE if the property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing and, if so, specify who shall pay amounts due after Closing: ___ Seller ___ Buyer ___ Other (see addendum).
- B. ~~Radon is a naturally occurring radioactive gas that when 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 and radon testing may be obtained from your County Public Health unit.~~
- C. If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.
15. **MAXIMUM REPAIR COSTS:** ~~Seller shall not be responsible for payment in excess of:~~
- A. ~~\$ N/A for treatment and repair under Standard C (if blank, then 2% of the Purchase Price).~~
- B. ~~\$ N/A for repair and replacement under Standard M not caused by Wood Destroying Organisms (if blank, then 3% of the Purchase Price).~~
16. **RIDERS; ADDENDA; SPECIAL CLAUSES:**
CHECK those riders which are applicable AND are attached to this Contract:
- ___ CONDOMINIUM
___ HOMEOWNERS' ASSOCIATION
___ LEAD-BASED PAINT

- 21. **ENTIRE CONTRACT:** This Contract and Exhibits thereto, constitute the entire understanding between the parties hereto with respect to the subject matter hereof and cannot be changed, modified, amended, terminated or any provision hereof waived except by an instrument in writing signed by the parties hereto.
- 22. **CAPTIONS:** The parties mutually agree that the headings and captions contained in this Contract are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Contract.
- 23. **COUNTERPARTS:** This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 24. **GOVERNING LAW:** The Laws of the State of Florida shall govern this Contract, venue in Alachua County, Florida.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

BUYER:

City of Gainesville, Florida, a municipal corporation

By: _____ Date: _____
Russ Blackburn, City Manager

WITNESSES:

_____	_____
Name	Print Name
_____	_____
Name	Print Name

Buyer's address for purposes of notice: Post Office Box 490, Mail Station 6, Gainesville, Florida 32602-0490. Phone: 352-334-5010.

APPROVED AS TO FORM AND LEGALITY

City Attorney
City of Gainesville

SELLER(S):

_____ Date: _____

WITNESSES:

Name	Print Name
------	------------

Name	Print Name
------	------------

Seller's address for purposes of notice:

Phone:

DEPOSITS : Deposits under Paragraph 2(a) received (Checks are subject to clearance):

First American Title, Escrow Agent

By: _____

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph 7. and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying the defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachment on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

C. WOOD DESTROYING ORGANISMS: Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") at least 10 days prior to Closing to determine if there is any visible active Wood Destroying Organism infestation or visible damage from Wood Destroying Organism infestation, excluding fences. If either or both are found, Buyer may, within 5 days from date of written notice thereof, have cost of treatment of active infestation estimated by the Operator and all damage inspected and estimated by an appropriately licensed contractor. Seller shall pay costs of treatment and repair of all damage up to the amount provided in Paragraph 15(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction and receive a credit at Closing on the amount provided in Paragraph 15(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.

D. INGRESS AND EGRESS: Seller warrants and represents that there is or will be ingress and egress to the Real Property sufficient for its intended use as described in Paragraph 7 hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

E. LEASES: Seller shall, at least 90 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm

such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

F. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing of this Contract.

G. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the title insurance, or, if no title insurance, designated by Seller.

H. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided herein which shall end on a Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

I. CLOSING DOCUMENTS: Buyer shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments.

J. EXPENSES: Buyer will pay taxes and recording fees on notes, mortgages and financing statements, and recording fees for the deed. Seller will pay taxes on the deed and recording fees for documents needed to cure title defects. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph 5.

K. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

L. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

M. INSPECTION, REPAIR AND MAINTENANCE: Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage of the Property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or an appropriately licensed Florida contractor make inspections of those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph 15(b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph 15(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Conditions" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

N. RISK OF LOSS: If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of the Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall either take the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

O. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following

closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

P. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

Q. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer, and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

R. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; ~~or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract.~~ If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

S. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or

to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

T. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph 7 and those otherwise accepted by Buyer. Personal property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

U. OTHER CONTRACTS: No prior or present Contracts or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

V. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

Buyers Initials: _____

Sellers Initials:

DRAFT

Attachment D – Contract for Purchase

CONTRACT FOR PURCHASE

PARTIES: _____, a Florida corporation, whose mailing address is _____ ("Seller"), and the **City of Gainesville**, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 06, Gainesville, Florida 32602 ("Buyer"), hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

1. DESCRIPTION:

(a) Preliminary legal description of the Real Property located in Alachua County, Florida: This preliminary legal description is approximately depicted on Exhibit "A" attached hereto and by this reference made a part hereof. The parties agree that the final legal description will be prepared by the Buyer's surveyor within the time provided in Section 8A below. The parties further agree that the purchase price in Section 2 is subject to an appraisal and negotiations.

(b) Street address, city, zip, of the Property: _____, Gainesville, Florida (also known as Alachua County Tax Parcel _____-000)

(f) Personal Property: None, Vacant Property.

(g) Other items included are: None, Vacant Property.

(h) Items of Personal Property (and leased items, if any) excluded are: None, Vacant Property.

2. PURCHASE PRICE (Fixed Price, U. S. currency): \$ _____,000.00

PAYMENT:

(a) Deposit to be made within 10 days after City Commission approval of this Contract and to be held in escrow by First American Title (Escrow Agent) in the amount of \$50,000.00. \$ (50,000.00)

(b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date (see Paragraph 3) in the amount of _____ \$ 0.00

(c) Other: \$ _____ (,000.00)

(d) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations. \$ _____,000.00

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

(a) If this offer is not executed by the Seller on or before **September 30, 2009**, and by the Buyer on or before **October 31, 2009**, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. The offer is contingent upon approval of the Contract by the City Commission. If the City Commission of the City of Gainesville does not act to approve and ratify this Contract within sixty (60) days of the date of execution by the Seller, this Contract shall be terminated and Seller and Buyer shall be relieved of all obligations under this contract.

(c) The effective date of Contract will be the date when the last of the following three events have occurred (the "Effective Date"): the Seller has signed this Contract, the Buyer has signed this Contract and the City Commission has approved or ratified this Contract. .

4. FINANCING:

This is a cash transaction with no contingencies for financing.

5. TITLE EVIDENCE: Within 10 days of the effective date:

(a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms); or

(b) Abstract of title or other evidence of title (see rider for terms), shall be obtained by (CHECK ONLY ONE):

(1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or

(2) Buyer at Buyer's expense.

6. CLOSING DATE: This transaction shall be closed and the closing documents delivered on **December 31, 2009** ("Closing"), unless modified by other provisions of this Contract. Closing shall occur at First American Title, 2632 Northwest 43rd Street in Gainesville, Florida.

7. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7½ feet in width as to the side lines); taxes for year of Closing and subsequent years; provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for a municipal fire station (the "Buyer's Intended Use").

8. SURVEY AND DUE DILIGENCE:

A. **EXISTING DOCUMENTS:** Within 15 business days after the Effective Date of this Contract, Seller shall provide Buyer with a copy of all surveys, title reports or title insurance policies, environmental and engineering reports and any other reports that pertain to the Property that are in the Seller's possession.

B. **SURVEY:** The Buyer shall have 60 days from the Effective Date of this Contract to have the property surveyed at its expense. If the survey shows any encroachments upon or shortages in the land herein described or that the improvements located on the land herein described encroach on the land of others, a copy of such survey shall be furnished to the Seller and the

Seller shall have the time to cure such defect as the Contract allows to cure defects of title. Failure to so cure shall be regarded as a default by the Seller.

C. DUE DILIGENCE:

(1) Commencing on the Effective Date, Buyer and its engineers, architects, and other agents shall have a period of **sixty (60) days** (the "Due Diligence Period") within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Property as may be necessary in order for Buyer to evaluate the physical characteristics of the Property, including environmental conditions, as well as such other matters as may be deemed by Buyer to be reasonably necessary to generally evaluate the Property and determine the feasibility and advisability of Buyer's purchase of the Property for the Buyer's Intended Use. In the event Buyer determines in its sole discretion, that the Property is not suitable for Buyer's Intended Use, Buyer may by written notice provided to Seller on or prior to expiration of the Due Diligence Period, terminate this Contract, upon which the Deposit shall be promptly returned to Buyer and except as otherwise provided herein, neither party shall have any further liability or obligation hereunder.

(2) For purposes of undertaking physical inspections and investigations of the Property, including but not limited to the Survey, Appraisal, Environmental Phase I, Environmental Phase II, soil studies, asbestos studies, topographical survey, land use and zoning review, water and sewer availability and capacity, ingress/egress, preliminary planning review, covenants and restrictions, coverage ratio, concurrency compliance, and construction time, Seller hereby grants to Buyer and its agents full right of entry upon the Property and any part thereof during the Due Diligence Period and, as long as this Contract has not been terminated, thereafter until Closing. Buyer, as a condition to its exercise of such right of entry, agrees to indemnify the Seller for claims brought against the Seller only to the extent that they are found to result from the sole negligence of the Buyer, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the Buyer. This indemnification shall not be construed as a waiver of the Buyer's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the Buyer could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against the Buyer unless the claimant presents the claim in writing to the Risk Manager within three years after such claim accrues or the Risk Manager denies the claim in writing. For purposes of this paragraph, the requirements of notice to the Risk Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provisions of this paragraph, the value of this indemnification is limited to the maximum sum of \$200,000 as the result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$100,000 for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the Buyer to only those damages caused by the Buyer's sole negligence, and shall specifically exclude any attorney's fees or costs associated therewith.

(3) Buyer shall utilize its own consultants, engineers and all other related professionals to make its own investigation and determination as to the accuracy or acceptability of any and all matters regarding the Property and the documents.

9. SPECIAL CONDITIONS/CONTINGENCIES:

CONTINGENCIES: It is understood and agreed that the Closing is contingent on Buyer obtaining final approval by the appropriate governmental authorities and expiration of any period for legal challenges and appeals thereof (the "Final Approval") of the following:

- (1) Land Use and Zoning changes as necessary to allow Buyer's Intended Use.
- (2) Lot Split or Minor Subdivision as necessary to allow Buyer's Intended Use.
- (3) Final Development Plan for the Buyer's Intended Use.
- (4) All necessary governmental permits, excluding building permits, for the Buyer's Intended Use.

The Buyer, at its sole expense, will apply for and diligently pursue such Final Approvals. The Seller agrees to cooperate with Buyer's efforts, including without limitation signing or consenting to any necessary applications and permits. In the event the Buyer is unable to obtain the Final Approvals, on or before the Closing, Buyer may: (1) continue to diligently pursue the Final Approvals and Closing shall be automatically extended by one-month periods until Buyer is able to obtain the Final Approvals, or (2) terminate this Contract and receive a return of Buyer's Deposit, upon which neither party shall have any further liability or obligation hereunder.

NO CONTRACTUAL ZONING; NO CONTRACTING OF POLICE POWERS. The parties recognize that the Buyer is also the government entity that is vested with authority to grant or deny many of the above Final Approvals. The parties agree that nothing contained in this Contract shall be interpreted or construed as an approval, waiver or Contract to approve or waive any development plan, development permit, rezoning, comprehensive plan amendment or any other governmental requirement for the Buyer's Intended Use. Nothing contained in this Contract shall be interpreted or construed as contracting away the exercise of the police powers of the City.

10. WARRANTIES & COVENANTS OF SELLER:

A. LITIGATION: Seller covenants and warrants that, to the best of its knowledge, there are no suits, actions, or proceedings pending, whether involving governmental authority or private party, to which Seller is a party and relating to the ownership or operation of the Property, nor has Seller any knowledge of any contemplated actions; and Seller agrees to give Buyer prompt notice of any suits instituted between the date hereof and the closing date.

B. SELLER'S OWNERSHIP: Seller warrants and covenants that Seller has title to the exclusion of all other persons or entities to the fee simple interest in the Property, and the same shall be conveyed by Seller to Buyer at the closing; that Seller has an unrestricted right to so transfer, that there are no Contracts, leases or understandings affecting the Property or improvements thereon other than those that have been or will be disclosed by provisions of this Contract.

C. COMPLIANCE WITH LAW: Seller warrants and covenants that, to the best of its knowledge, there are no violations of federal, state, or local law, regulations or ordinances affecting the Property and Seller covenants to cure any and all such violations, if such are found to exist, prior to closing.

D. ZONING: Seller warrants and covenants that the Property is presently zoned Limited Industrial 1 (I-1). Seller further warrants and covenants that it has no knowledge or information

of any existing or anticipated federal, state, county, municipal or other orders or actions which might adversely affect Buyer's construction or proposed use, as applicable.

E. **CONDEMNATION:** Seller warrants and covenants that it has not received any written or official notice or otherwise been notified or have any knowledge of any condemnation proceedings against the whole or any part of the Property, by any other government entity.

11. **OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard E. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.
12. **TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.
13. **ASSIGNABILITY: (CHECK ONLY ONE):** Buyer ___ may assign and thereby be released from any further liability under this Contract; ___ may assign but not be released from liability under this Contract; or X may not assign this Contract.
14. **DISCLOSURES:**
- A. ___ CHECK HERE if the property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing and, if so, specify who shall pay amounts due after Closing: ___ Seller ___ Buyer ___ Other (see addendum).
- B. ~~Radon is a naturally occurring radioactive gas that when 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 and radon testing may be obtained from your County Public Health unit.~~
- C. If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.
15. **MAXIMUM REPAIR COSTS:** ~~Seller shall not be responsible for payment in excess of:~~
- A. ~~\$ N/A for treatment and repair under Standard C (if blank, then 2% of the Purchase Price).~~
- B. ~~\$ N/A for repair and replacement under Standard M not caused by Wood Destroying Organisms (if blank, then 3% of the Purchase Price).~~
16. **RIDERS; ADDENDA; SPECIAL CLAUSES:**
CHECK those riders which are applicable AND are attached to this Contract:
- ___ CONDOMINIUM
___ HOMEOWNERS' ASSOCIATION
___ LEAD-BASED PAINT

- 21. **ENTIRE CONTRACT:** This Contract and Exhibits thereto, constitute the entire understanding between the parties hereto with respect to the subject matter hereof and cannot be changed, modified, amended, terminated or any provision hereof waived except by an instrument in writing signed by the parties hereto.
- 22. **CAPTIONS:** The parties mutually agree that the headings and captions contained in this Contract are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Contract.
- 23. **COUNTERPARTS:** This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 24. **GOVERNING LAW:** The Laws of the State of Florida shall govern this Contract, venue in Alachua County, Florida.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

BUYER:

City of Gainesville, Florida, a municipal corporation

By: _____ Date: _____
Russ Blackburn, City Manager

WITNESSES:

_____	_____
Name	Print Name
_____	_____
Name	Print Name

Buyer's address for purposes of notice: Post Office Box 490, Mail Station 6, Gainesville, Florida 32602-0490. Phone: 352-334-5010.

APPROVED AS TO FORM AND LEGALITY

City Attorney
City of Gainesville

SELLER(S):

_____ Date: _____

WITNESSES:

_____ _____
Name Print Name

_____ _____
Name Print Name

Seller's address for purposes of notice:

Phone:

DEPOSITS : Deposits under Paragraph 2(a) received (Checks are subject to clearance):

First American Title, Escrow Agent

By: _____

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph 7. and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying the defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachment on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

C. WOOD DESTROYING ORGANISMS: Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") at least 10 days prior to Closing to determine if there is any visible active Wood Destroying Organism infestation or visible damage from Wood Destroying Organism infestation, excluding fences. If either or both are found, Buyer may, within 5 days from date of written notice thereof, have cost of treatment of active infestation estimated by the Operator and all damage inspected and estimated by an appropriately licensed contractor. Seller shall pay costs of treatment and repair of all damage up to the amount provided in Paragraph 15(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction and receive a credit at Closing on the amount provided in Paragraph 15(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.

D. INGRESS AND EGRESS: Seller warrants and represents that there is or will be ingress and egress to the Real Property sufficient for its intended use as described in Paragraph 7 hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

E. LEASES: Seller shall, at least 90 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm

such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

F. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing of this Contract.

G. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the title insurance, or, if no title insurance, designated by Seller.

H. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided herein which shall end on a Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

I. CLOSING DOCUMENTS: Buyer shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments.

J. EXPENSES: Buyer will pay taxes and recording fees on notes, mortgages and financing statements, and recording fees for the deed. Seller will pay taxes on the deed and recording fees for documents needed to cure title defects. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph 5.

K. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

L. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

M. INSPECTION, REPAIR AND MAINTENANCE: Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage of the Property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or an appropriately licensed Florida contractor make inspections of those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph 15(b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph 15(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Conditions" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

N. RISK OF LOSS: If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of the Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall either take the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

O. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following

closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

P. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

Q. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer, and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

R. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; ~~or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract.~~ If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

S. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or

to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

T. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph 7 and those otherwise accepted by Buyer. Personal property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

U. OTHER CONTRACTS: No prior or present Contracts or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

V. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

Buyers Initials: _____

Sellers Initials:

DRAFT