



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Chief Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

DATE: November 7, 2018

TO: Joy Leggett-Murphy, Property Acquisition Division Manager, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 11-7-18*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 11-7-2018*

RE: **Fort Hamer Extension: Acquisition of 6.06 acres of land located at 11887 Darsey Road, Parrish, Florida 34219; CAO Matter No. 2018-0542**

Issue Presented:

In this Request for Legal Services (RLS) you have asked the County Attorney's Office (CAO) to review two (2) trusts, a draft contract for sale and purchase (Contract), and other conveyance documents to ensure they are legally acceptable.

Brief Answer:

I have reviewed all of the documents provided and revised the Contract, the Trustee's Deed, the two (2) Affidavits of Ownership and Encumbrances, and the two (2) Certifications of Trust.

Discussion:

The County needs to acquire 6.06 acres of land in Parrish south of Darsey Road for the Fort Hamer Extension project. Title to the land is in two (2) trusts. Staff has been instructed to consult the CAO whenever property is being acquired from a trust.

The Contract has been revised to address certain terms and conditions which have been negotiated between the seller and staff, including the seller's desire to remove certain items from

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

the property and to have extended possession for cattle owned by the seller's family. Staff should review the revised contract to ensure all the business terms are correct, as revised. The Trustee's Deed has been revised and now includes language reflecting that the property is not homestead. Prior to execution, the deed will need to be further revised depending on whether the closing is accomplished within 2018 or in 2019.

I have merged the two (2) Affidavits of Ownership and Encumbrances into one (1) document. According to the Title Search Report furnished by American Government Services Corporation, there are four (4) encumbrances on the property. They include:

1. Resolution Approving Private Easement as Private Street, dated February 12, 1981, and recorded February 13, 1981, in Official Records Book 999, Page 3990, of the Public Records of Manatee County, Florida;
2. Easement in favor of Florida Power & Light Company, dated October 12, 1981, and recorded on October 28, 1981, in Official Records Book 1015, Page 3162, of the Public Records of Manatee County, Florida
3. Reciprocal Easement Agreement for Private Street, recorded on November 3, 2015, in Official Records Book 2593, Page 5370, of the Public Records of Manatee County, Florida; and
4. Affidavit Acknowledgment and Agreement for Access by Private Street, recorded on November 3, 2015, in Official Records Book 2593, Page 5384, of the Public Records of Manatee County, Florida.

After reviewing the content of each of these documents, I have concluded that only one (1) of these four (4) documents, specifically, the easement in favor of Florida Power & Light Company, is a deed, lien, lease, contract for sale, judgment, easement, conveyance, mortgage or adverse interest affecting title to the property. If staff is going to purchase a title policy on this property, staff should insist that none of these other three (3) items constitute exceptions which are not covered by the policy. The only encumbrance which should be an exception to the title policy is the easement in favor of Florida Power & Light Company. I have, therefore, removed the other three (3) from the affidavit.

I have revised the two (2) Certifications of Trust to incorporate the language within the trusts which outlines the powers of the trustees to proceed with this transaction.

Conclusion:

Attached are revised documents for staff's use in this transaction. This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

Joy Leggett-Murphy, Property Acquisition Division Manager, Property Management Department
November 7, 2018
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Copies with attachments to:

Edwin Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Cheri Coryea, Deputy County Administrator
Charles Bishop, Director, Property Management Department
Christopher Munyon, Real Property Specialist, Property Management Department
Siamak Mollanazar, P.E., County Engineer and Deputy Director of Engineering Services,
Public Works Department
Michael Sturm, Project Engineer II, Public Works Department

THIS INSTRUMENT PREPARED BY:
Pamela J. D'Agostino, Assistant County Attorney
Manatee County Government
Office of the County Attorney
1112 Manatee Avenue West
Bradenton, Florida 34205

PROJECT NAME: Fort Hamer Extension
PROJECT NO: 304-6054765
PID NO: 484910054

CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT FOR SALE AND PURCHASE (Contract) is made and entered into this _____ day of _____, 2018, between **DARREN ALDEN GILLETT** and **DELENA LOUISE GILLETT JEFFERS**, both individually and as cotrustees of The William A. Gillett, Jr. Revocable Living Trust, dated October 22, 2007, as amended, whose mailing addresses are Post Office Box 8, Scaly Mountain, North Carolina 28775, and 5715 18th Avenue East, Bradenton, Florida 34208, respectively, and **VELMA M. GILLETT** and **DARREN ALDEN GILLETT**, both individually and as cotrustees of The Velma M. Gillett Revocable Trust, dated October 22, 2007, as amended, both of whose mailing address is Post Office Box 8, Scaly Mountain, North Carolina 28775 (collectively, **Seller**), and **MANATEE COUNTY**, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 and whose street address is 1112 Manatee Avenue West, Bradenton, Florida 34205 (**Buyer**). Seller and Buyer are sometimes collectively referred to herein as **Parties** and individually as **Party**.

WHEREAS, Seller is the owner of certain improved real property which is located in Manatee County, State of Florida, more particularly described in **Exhibit A** attached and incorporated in this Contract by this reference and all improvements thereon; and

WHEREAS, Buyer desires to acquire the Property (as defined in paragraph 2, below) for the purpose of the Fort Hamer Road Extension Project.

NOW, THEREFORE, in consideration of the aforesaid premises, the mutual covenants, promises, terms, and conditions set forth in this Contract and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **RECITALS**: The foregoing recitals are true and correct and are incorporated into this Contract by this reference.

2. **DESCRIPTION OF PROPERTY**: Seller shall sell and Buyer shall buy, upon the terms and conditions contained in this Contract, improved real property situated, lying, and being in Manatee County, State of Florida, described in attached **Exhibit A**, and, except for fences and gates, all improvements and fixtures thereon (**Property**). The legal description and sketch of the Property is incorporated into and made of part of this Contract.

3. **EFFECTIVE DATE**: For purposes of this Contract, the **Effective Date** shall be the date upon which the Contract is approved by the Manatee County Board of County Commissioners (**Board**).

4. **PURCHASE PRICE AND DEED:** At closing, Buyer shall pay to Seller **THREE HUNDRED THOUSAND DOLLARS (\$300,000) (Purchase Price)**, subject to adjustment upon closing as hereinafter provided. Seller shall simultaneously deliver to Buyer a good, sufficient, and properly recordable Trustee's Deed conveying to Buyer marketable, fee simple title to the Property, free and clear of all liens and encumbrances, executed and acknowledged by Seller, subject to restrictive covenants, reservations, easements of record, and county zoning restrictions or regulations in effect, if any, except as hereinafter provided. The deed shall be in substantially the form attached to this Contract as **Exhibit B** and incorporated in this Contract by this reference.

5. **TITLE EVIDENCE AND DEFECTS:** During the period commencing **TEN (10)** days after the Effective Date and ending **TEN (10)** days prior to closing (**Inspection Period**) Buyer may conduct whatever title search Buyer deems necessary. If, during the Inspection Period, Buyer notifies Seller of existing title defects other than those to which the conveyance is to be made subject by the terms of this Contract and other than those for which recordable discharges are, in accordance with local custom, to be furnished at the closing, then Seller shall promptly make a diligent effort to perfect the title to Buyer's reasonable satisfaction and to the extent called for by this Contract within **THIRTY (30) days (Cure Period)** from the date Seller receives written notice of any title defect. In the event closing is scheduled to occur within the Cure Period, closing will be extended to the first day following removal of the title defects or the termination of the Cure Period, whichever date occurs first. If any defect in title identified by Buyer is not cured to Buyer's reasonable satisfaction within the Cure Period, Buyer may either waive such defect or withdraw its offer to purchase thereby releasing Buyer and Seller from all further obligations under this Contract.

6. **DOCUMENTS AND REPORTS:** Within **TEN (10)** days after the Effective Date of this Contract, Seller shall provide to Buyer copies of all written reports in Seller's possession relating to the environmental condition of the Property; all boundary surveys of the Property; and any existing title policy or commitment pertaining to the Property.

7. **ENVIRONMENTAL SITE ASSESSMENT:** During the Inspection Period, Seller will permit representatives of Buyer to access all of Seller's records relating to the Property, and to enter upon the Property for the purposes of conducting tests, inspections, or examinations that Buyer desires in regard to the environmental conditions of the Property, including, but not limited to, tests, borings, percolation tests and other tests, inspections or examinations that Buyer may order, at its expense, to determine subsurface or topographic conditions of the Property. Buyer shall, subject to the limitations set forth in Section 768.28, Florida Statutes, indemnify and hold Seller harmless for any damages to the Property to the extent caused by the failure of Buyer or Buyer's representatives to exercise reasonable care in the conduct of such tests, inspections, or examinations. If Buyer, in its sole and absolute discretion, concludes from the results of the tests or for any other reason or factor that the Property is not feasible or desirable for Buyer's intended purpose, Buyer shall notify Seller in writing of Buyer's conclusion on or before the end of the Inspection Period and this Contract shall then terminate and be of no further force and effect, and no Party shall have any rights or claims against one another which might otherwise result from this Contract, unless Buyer and Seller negotiate and enter into a mutually acceptable amendment to this Contract to address such concern.

8. **SURVEY**: During the Inspection Period, Buyer may, at Buyer's expense, survey the Property. If the survey discloses, reveals, or shows any encroachment on the Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations, Buyer may deliver written notice of such matters, together with a copy of the survey, to Seller. Upon receipt of notice by Seller of same, any such encroachments or violations shall be treated as a title defect and shall be governed by the terms of numbered paragraph 5, above.

9. **REPRESENTATIONS AND WARRANTIES OF SELLER**: Seller hereby covenants, represents, and warrants now and through the date of closing that:

A. Seller shall not enter into any new lease agreements, occupancy agreements, parking agreements, or any brokerage, maintenance, management, service or similar contracts, or amend, modify or renew any such existing agreements or contracts which will extend beyond the closing without the prior written consent of Buyer.

B. During the time of Seller's ownership of the Property, Seller warrants that, to the best of Seller's knowledge and belief, no hazardous wastes, hazardous substances, pollutants, and/or contaminants were buried, disposed, dumped, placed, released, or stored on the Property.

C. Seller has no knowledge of any aboveground, buried, or partially buried containers, drums, storage vessels, or tanks in, on, or under the Property.

D. Seller has no knowledge of any material defects relating to the Property or improvements located thereon, if any, including, but not limited to archaeological sites, sinkholes, structural defects, termite infestation, or unstable soil conditions.

E. The Property is not the homestead of Seller or any other person.

10. **MORTGAGES, LIENS AND OTHER ENCUMBRANCES**: Unless otherwise provided for herein, prior to the date of closing, Buyer shall furnish to Seller an Affidavit of Ownership and Encumbrances, in substantially the form attached to this Contract as **Exhibit C** and incorporated in this Contract by this reference, attesting to the absence of any financing statements, claims of lien, or potential lienors known to Seller and further attesting, if such is the case, that there have been no improvements to the Property for **NINETY (90)** days immediately preceding the date of closing. Seller shall complete said affidavit and return it to Buyer on or before the date of closing.

A. **Existing Encumbrances**: Seller shall convey the Property at closing, free and clear of all liens and encumbrances, subject to any restrictive covenants, reservations, easements of record, and county zoning restrictions or regulations in effect, if any, except those specifically consented to in writing by Buyer at closing. Seller shall be responsible for discharging any and all mortgage liens at or prior to closing.

B. Construction Liens: If the Property has been improved within **NINETY (90)** days immediately preceding the date of closing, Seller shall deliver releases or waivers of all construction liens executed by general contractors, subcontractors, suppliers, and material men, in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers, and material men, and further reciting that, in fact, all bills for work on the Property which could serve as a basis for a construction lien have been paid or will be paid prior to closing.

11. CLOSING: This transaction shall be closed on or before **SIXTY (60)** days from the Effective Date, subject to the curative periods provided in this Contract, as well as other conditions of this Contract. The date and time of closing shall be mutually agreed upon between the Parties and shall occur at the following location: Manatee County Government Administration Building, 1112 Manatee Avenue West, Bradenton, Florida 34205, or at any other location agreeable to both Parties or, if mutually agreed to by the Parties, via simultaneous electronic delivery of documents and funds. The closing may be extended by the Parties for a mutually agreeable period of time in order to complete any conditions of closing or other requirements of this Contract.

A. Conditions to Closing: Unless waived by Buyer in writing, the obligation of Buyer to close this transaction is expressly conditioned upon satisfaction of all conditions as contained within this Contract, by the date of closing. If such conditions are not so met, Buyer may elect either to terminate this Contract by written notice to Seller or close the transaction contemplated in this Contract and thereby waive Seller's performance of those conditions which have not been satisfied.

B. Documents for Closing: Seller shall deliver to Buyer a Trustee's Deed, an Affidavit of Ownership and Encumbrances and such other documents as may reasonably be required pursuant to this Contract and any state or federal law, on or before the date of closing.

C. Insurance: Seller shall keep all existing coverage and insurance policies insuring Seller or the Property against claims arising from property damage or liability, if any, in full force and effect pending the closing.

D. Condition of Property: Seller shall not commit, or permit anyone else to commit, any loss, destruction, or damage to the Property, which has not been repaired or restored by Seller prior to the date of closing. Seller shall not permit any adverse changes in the condition of the Property from the Effective Date of this Contract to the date of closing, except for reasonable wear and tear. If Buyer so requests, a walk-through of the Property shall be scheduled and conducted prior to the closing to assure compliance with this Contract.

E. Closing Agent: American Government Services shall serve as the Closing Agent. All funds held by the Closing Agent under this Contract, if any, shall be placed in a non-interest bearing account and shall be disbursed in accordance with this Contract.

12. TAXES AND CLOSING EXPENSES:

A. The Closing Agent shall withhold from Seller's proceeds at closing an amount equal to Seller's pro rata share of real estate taxes and special assessments, if any, allocated to the Property as prorated to the date of closing, and such amounts shall be paid to the Manatee County Tax Collector.

B. If applicable, Seller shall, in accordance with the statutory requirements set forth in Section 196.295, Florida Statutes, deposit in escrow with the Manatee County Tax Collector an amount equal to the current year's taxes allocated to the Property prorated to the date of closing, same being the date upon which transfer of title shall occur. This amount shall be based upon the current assessment and millage rates on the Property owned by Seller. Under either this subparagraph 12.B. or subparagraph 12.A., above, where taxes are prorated based upon the preceding year's tax assessment, the Parties agree to re-prorate taxes, with maximum discount, upon the request of either Party within **SIX (6)** months from the date the taxes for the year of closing have been certified by Manatee County.

C. Costs to be Paid by Seller: Seller shall pay costs of curing title defects and Seller's attorney's fees, if any.

D. Costs to be Paid by Buyer: Buyer shall pay the cost of recording the deed, totaling **SIXTY ONE DOLLARS (\$61)**. Buyer shall also pay for an owner's title insurance policy and related title costs, closing agent fees, and Buyer's attorney's fees, if any.

E. Documentary Stamp Taxation: This Contract is made and executed under threat of and in lieu of eminent domain proceedings, and is thus not subject to documentary stamp taxation.

13. AMENDMENTS: This Contract may not be amended, canceled, changed, discharged, modified, rescinded, supplemented, or terminated other than as expressly provided herein, except by an instrument in writing executed by all Parties hereto. All amendments are subject to acceptance and approval by the Board.

14. ASSIGNABILITY: The Parties may not assign this Contract or any right or obligation of this Contract without prior written consent of the other Party.

15. ATTORNEYS' FEES AND COSTS: Each Party shall be solely responsible for paying its attorneys' fees and costs in any dispute, litigation, dispute resolution proceeding, settlement negotiation or pre-litigation negotiation arising under this Contract.

16. AUTHORIZATION: Each Party represents to the other that such Party has the requisite power and authority under all applicable laws to enter into this Contract, that all of the procedural requirements imposed by law upon each Party for the approval and authorization of this Contract have been properly completed, and that the persons who have executed the Contract on behalf of each Party are authorized and empowered to execute said Contract.

17. **AVAILABILITY OF FUNDING:** The obligations of Buyer under this Contract are subject to the availability of funds lawfully appropriated annually for its purposes by the Board and the availability of funds through contract or grant programs. In the event that such funds are, in good faith, not appropriated or are terminated during the term of this Contract, Buyer shall have the option of terminating this Contract and all covenants and obligations hereunder by providing **THIRTY (30)** days' written notice to Seller. If Buyer terminates this Contract due to a lack of funding pursuant to this provision, all rights and liabilities of the Parties arising under this Contract shall terminate.

18. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and permitted assigns. The covenants, warranties, representations, indemnities, and undertakings of Seller as set forth in this Contract will survive delivery and recording of the deed and possession.

19. **BROKER'S FEES:** Neither Party will pay a commission to any broker in connection with the sale and purchase of the Property. Both Parties warrant that they have assumed no obligation to pay any such commission in connection therewith.

20. **DEFAULT AND REMEDIES:** Except as otherwise provided in this Contract, if Seller is not in default pursuant to any of the terms of this Contract and Buyer fails to purchase the Property or to perform any of the covenants, conditions, or warranties of this Contract, Seller, at Seller's option, may proceed at law or in equity to enforce Seller's legal rights under this Contract. If Seller for any reason fails to perform any of the covenants, conditions, or warranties of this Contract, Buyer may, at Buyer's option, (a) terminate this Contract by written notice to Seller or (b) waive the nonperformance and proceed with closing or (c) have the remedy of specific performance of this Contract.

21. **ENTIRE CONTRACT:** This Contract and the Exhibits attached to it contain the final and entire agreement between the Parties with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. This Contract supersedes all prior negotiations, understandings, representations, or agreements, both written and oral. Buyer and Seller shall not be bound by any terms, conditions, statements, warranties, or representations, written or oral, not contained in this Contract. No change or modification of this Contract is valid unless the same is in writing and signed by the Parties.

22. **FLORIDA LAW AND MANATEE COUNTY VENUE:** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Florida. Venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in Manatee County, Florida.

23. **FORCE MAJEURE:** No Party shall be required to perform any obligation under this Contract or be liable to the other for any delay or failure to perform or damages for said delay or failure so long as performance or non-performance of the obligation is delayed, caused, or prevented by an act of God, an act of terrorism, a civil commotion, an earthquake, a failure or disruption of utility services, a fire, a flood, a hurricane, an insurrection, a sinkhole, a tornado, an unusual transportation delay, or other like cause, and which by exercise of reasonable diligent

effort, the non-performing party is unable in whole or in part to prevent or overcome (**Force Majeure Event**). All time periods shall toll for the period that the Force Majeure Event prevents performance under this Contract, provided, however, if such Force Majeure Event continues to prevent performance under this Contract more than **FOURTEEN (14)** days beyond the date of closing, then either party may terminate this Contract by delivering written notice to the other, thereby releasing Buyer and Seller from all further obligations under this Contract.

24. HEADINGS: The headings contained in this Contract are for convenience and reference and shall not affect the meaning or interpretation of this Contract.

25. INTERPRETATION: Neither this Contract nor any uncertainty or ambiguity in this Contract shall be construed against Seller or Buyer, whether under any rule of construction or otherwise. On the contrary, this Contract shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of the Parties. The Parties have each carefully read the terms and conditions of this Contract and know and understand the contents and effect of this Contract.

26. NOTICE: Any and all notices, approvals, claims, consents, demands, requests, or other communications between the Parties (**Notices**) shall be in writing. All Notices shall be given by hand delivery in person or by registered or certified mail, postage prepaid to the following addresses:

If to Seller: Velma Gillett and Darren Gillett
Post Office Box 8
Scaly Mountain, North Carolina 28775

and Delena Gillett Jeffers
5715 18th Avenue East
Bradenton, Florida 34208

If to Buyer: Manatee County Government
Attention: Property Acquisition Division Manager
Property Management Department
1112 Manatee Avenue West, 8th Floor, Suite 800
Bradenton, Florida 34205

and Manatee County Government
Attention: County Attorney
County Attorney's Office
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205

All Notices shall be deemed effective and received upon actual receipt by the Party to which such notice is given or **FIVE (5)** days after mailing, whichever occurs first.

27. OCCUPANCY AND POSSESSION: Seller shall, on or before the expiration of the Extended Possession Period (as defined in paragraph 33.E.i., below), deliver occupancy and possession of the Property to Buyer free of tenants, occupants, and future tenancies. Before delivering occupancy and possession of the Property to Buyer, Seller shall have removed all personal items, trash and waste materials from the Property including, but not limited to, all automotive accessories and parts, batteries, chemicals, equipment, fluorescent lighting, oil and paint cans, petroleum products and tires, and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer.

28. RADON GAS: Pursuant to the requirements of Section 404.056(5), Florida Statutes, the following notification is provided within this Contract:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to person 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 health department.

29. SEVERABILITY: If any one or more of the provisions of this Contract should be held contrary to law or public policy, or should for any reason whatsoever be held invalid or unenforceable by a court of competent jurisdiction, then such provision or provisions shall be null and void and shall be deemed separate from the remaining provisions of this Contract, which remaining provisions shall continue in full force and effect, provided that the rights and obligations of the Parties contained herein are not materially prejudiced and the intentions of the Parties continue to be effective.

30. SURVIVABILITY: Any term, condition, covenant, or obligation which requires performance by either Party subsequent to the closing shall remain enforceable against such Party subsequent to the closing.

31. TIME OF THE ESSENCE: Time is of the essence with regard to all dates and times set forth in this Contract. Any reference herein to time periods of **SEVEN (7)** days or less shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays under the laws of the State of Florida or the United States of America. Any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday under the laws of the State of Florida or the United States of America, shall extend to **FOUR (4)** P.M. of the next day that is not a Saturday, Sunday, or legal holiday under the laws of the State of Florida or the United States of America. The terms "days" as used in this Contract shall in all cases mean calendar days.

32. WAIVER: The failure or neglect by any Party to enforce any right under this Contract shall not be deemed to be a waiver of that Party's rights. Unless otherwise specifically provided for herein, a waiver shall not be effective unless it is in writing and signed by the Party who possesses the right to waive enforcement of same.

33. SPECIAL PROVISIONS:

A. This Contract serves as authorization for the Manatee County Clerk of the Circuit Court Finance Department to issue a check made payable to the Closing Agent for the amount indicated on line 303 of the Closing Statement for proper disbursement by the Closing Agent to any of the following, if applicable, including the Seller, the Manatee County Clerk of Court, the Manatee County Tax Collector, and the Closing Agent.

B. This Contract is subject to acceptance and approval by the Board.

C. Eminent Domain: This Contract is made and executed under threat of and in lieu of eminent domain proceedings. Seller, through the terms of this Contract with Buyer, accepts the Purchase Price as full compensation for the property taken, severance damages, business damages, and all other damages of whatsoever nature claimed by Seller, and its successors and assigns, now and in the future arising from the acquisition of the Property, as well as for any and all attorney's fees, (including attorney's fees for both monetary and non-monetary benefits), attorney's costs, and expert's fees and costs due and owing.

D. Certification of Trust: Prior to the date of closing, Buyer shall furnish to Seller **TWO (2)** Certifications of Trust, in substantially the forms attached to this Contract as **Exhibit D** and **Exhibit E** and incorporated in this Contract by this reference. Seller shall complete said Certifications of Trust and return them to Buyer on or before the date of closing.

E. Extended Possession: Buyer agrees to grant Seller extended possession of the Property subject to the following terms and conditions:

- i. From closing until **FOUR (4) P.M.** on February 25, 2019 (hereinafter **Extended Possession Period**).
- ii. The Parties agree that **SIXTY THOUSAND DOLLARS (\$60,000)** of Seller's proceeds under this Contract shall be retained by Buyer, in a non-interest bearing account, to ensure the appropriate and timely surrender of possession of the Property by Seller pursuant to the extended possession terms and conditions. Provided Seller surrenders the Property on or before the expiration of the Extended Possession Period in full compliance with these terms and conditions, Buyer shall promptly remit all retained proceeds to Seller.
- iii. Prior to closing, Seller shall obtain a personal injury and liability insurance policy with minimum coverage of **ONE MILLION DOLLARS (\$1,000,000)**, which covers any and all claims for injury and damage to persons or property and for the loss of life or property occurring about, in, or on the Property arising out of the

act, negligence, omission, malfeasance, or nonfeasance of Seller, its agents, contractors, customers, employees, invitees, and licensees. Seller shall name **MANATEE COUNTY, a political subdivision of the State of Florida**, as an additional insured and shall provide Buyer with a certificate of coverage no later than **FIVE (5)** days prior to closing. Seller shall deliver said certificate to the Manatee County Risk Management Department, Attention: Risk Manager, 1112 Manatee Avenue West, Suite 969, Bradenton, Florida 34205. Seller shall maintain such policy throughout the Extended Possession Period.

- iv. During the Extended Possession Period, Seller shall deliver any notices of accidents or occurrences and notices of claims associated with Seller's possession promptly to the Manatee County Risk Manager and to the insurer. Procurement of the insurance, as required herein, shall not relieve or otherwise limit Seller's obligations to indemnify Buyer.
- v. During the Extended Possession Period, Seller shall be responsible for all utilities, which shall be maintained in Seller's name, and charges for same, including but not limited to electricity, garbage, water, sewer, gas, internet, telephone, and television.
- vi. During the Extended Possession Period, Seller shall abide by all laws, ordinances, rules, and regulations of all governmental bodies and their respective regulatory agencies having jurisdiction over the Property, and shall not use or allow the use of the Property for any obnoxious, offensive, or unlawful activity.
- vii. During the Extended Possession Period, Seller shall not store or use any fertilizers, pesticides, or hazardous substances on the Property without prior written approval of Buyer.
- viii. During the Extended Possession Period, Seller, at Seller's expense, shall be responsible for all landscaping and lawn maintenance activities, including but not limited to mowing, pruning, and watering. Buyer has no obligation to repair or maintain the Property during the Extended Possession Period. Seller shall keep the Property in a good, safe, and sanitary condition and will surrender the Property to Buyer in substantially the same good, safe, and sanitary condition as existed on the day of closing.
- ix. During the Extended Possession Period, Buyer, its agents, employees, and officials shall have the right of entry on to the Property for the purposes of planning, surveying, and testing in furtherance of proposed construction.

- x. Seller shall indemnify, defend, and hold Buyer harmless for any damage to persons or property that may result on the Property during the Extended Possession Period due to the negligence of Seller, its agents, contractors, customers, employees, invitees, and licensees.
- xi. Seller shall indemnify, defend, and hold Buyer harmless from and against any claims, demands, liabilities, losses, costs, damages, suits, or expenses of every kind (including without limitation, attorneys' fees, accountants' fees, court costs, and interest) resulting or arising from any and all injuries to any person, including death of any person, or damage to any property caused by or as a result of the occupancy of the Property by Seller or Seller's cattle during the Extended Possession Period.
- xii. During the Extended Possession Period, Seller shall not lease or authorize others to occupy or use the Property without the prior written consent of Buyer, which consent may be withheld at the sole discretion of Buyer.
- xiii. Seller shall, in writing, notify Buyer **TWENTY-FOUR (24)** hours in advance of vacating the Property and shall secure the Property.
- xiv. Seller shall surrender all keys, garage door openers, access devices and codes, as applicable, to Manatee County Government, Attention: Property Acquisition Division Manager, Property Management Department, 1112 Manatee Avenue West, 8th Floor, Bradenton, Florida 34205.
- xv. Seller has the right, but not the obligation to remove fences and gates. Seller shall comply with federal, state and local building, housing and health codes, laws and regulations in removing any fencing and gates from the Property. If Seller fails to remove any items of personal property, fences, or gates from the Property on or before the end of the Extended Possession Period, all such items of personal property, fences and gates shall be deemed abandoned by Seller and any rights of Seller in those items are forfeited by Seller.
- xvi. Failure of Seller to abide by these extended possession terms and conditions shall constitute a default requiring Seller to vacate the Property upon **FIVE (5)** days' written notice by Buyer.

SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date first above written.

Signed, sealed, and delivered in the presenceof:

SELLER:

DARREN ALDEN GILLETT, individually and as cotrustee of The William A. Gillett, Jr. Revocable Living Trust, dated October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

By: _____
Signature

As: Cotrustee _____
Title

SELLER:
DELENA LOUISE GILLETT JEFFERS,
individually and as cotrustee of The William
A. Gillett, Jr. Revocable Living Trust, dated
October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

By: _____
Signature

As: Cotrustee _____
Title

SELLER:

VELMA M. GILLETT, individually and as cotrustee of The Velma M. Gillett Revocable Living Trust, dated October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

By: _____
Signature

As: Cotrustee
Title

SELLER:

DARREN ALDEN GILLETT, individually and as cotrustee of The Velma M. Gillett Revocable Living Trust, dated October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

By: _____
Signature

As: Cotrustee
Title

BUYER:
**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: its Board of County Commissioners

By: _____
Chairperson

Date: _____

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

THIS INSTRUMENT PREPARED BY:
Pamela J. D'Agostino, Assistant County Attorney
Manatee County Government
Office of the County Attorney
1112 Manatee Avenue West
Bradenton, Florida 34205

PROJECT NAME: Fort Hamer Extension
PROJECT NO: 6054765
PID NO: 484910054

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TRUSTEE'S DEED

THIS TRUSTEE'S DEED is made this _____ day of _____, 2018, by **DARREN ALDEN GILLETT** and **DELENA LOUISE GILLETT JEFFERS**, both individually and as cotrustees of The William A. Gillett, Jr. Revocable Living Trust, dated October 22, 2007, as amended, whose mailing addresses are Post Office Box 8, Scaly Mountain, North Carolina 28775, and 5715 18th Avenue East, Bradenton, Florida 34208, respectively, and **VELMA M. GILLETT** and **DARREN ALDEN GILLETT**, both individually and as cotrustees of The Velma M. Gillett Revocable Trust, dated October 22, 2007, as amended, both of whose mailing address is Post Office Box 8, Scaly Mountain, North Carolina 28775 (collectively, **Grantor**), and **MANATEE COUNTY**, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 and whose street address is 1112 Manatee Avenue West, Bradenton, Florida 34205 (**Grantee**).

WITNESSETH that Grantor, for and in consideration of the sum of **ONE DOLLAR (\$1)** and other valuable consideration paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and transferred to Grantee, said Grantee's heirs and assigns forever, the following described land, to wit:

**See legal description in Exhibit A, attached
to and incorporated in this Trustee's Deed by reference.**

TO HAVE AND TO HOLD, the same in fee simple forever.

GRANTOR covenants with Grantee that Grantor has good right and lawful authority to sell and convey the property and Grantor warrants the title to the property for any acts of Grantor and will defend the title against the lawful claims of all persons claiming by, through, or under Grantor and that said land is free of all encumbrances, except taxes accruing for the year [*insert year, e.g. 2018 or 2019, depending on when closing occurs*] and subsequent years.

THIS TRUSTEE'S DEED is made and executed under threat of and in lieu of eminent domain proceedings, and is thus not subject to documentary stamp taxation.

THE PROPERTY is not the homestead of the Grantor under the laws and constitution of the State of Florida and none of the persons who comprise, collectively, the Grantor nor any members of their households reside on the property.

SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed, and delivered in the presence of **TWO (2)** witnesses as required by law:

GRANTOR:

DARREN ALDEN GILLETT, individually and as cotrustee of The William A. Gillett, Jr. Revocable Living Trust, dated October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

STATE OF _____
COUNTY OF _____

By: _____
Signature

As: Cotrustee
Title

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **DARREN ALDEN GILLETT** who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

GRANTOR:

DELENA LOUISE GILLETT JEFFERS,
individually and as cotrustee of The William
A. Gillett, Jr. Revocable Living Trust, dated
October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

STATE OF _____
COUNTY OF _____

By: _____
Signature

As: Cotrustee
Title

The foregoing instrument was acknowledged before me this _____ day of _____,
2018, by **DELENA LOUISE GILLETT JEFFERS** who ___ is personally known to me or ___ has
produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

GRANTOR:

VELMA M. GILLETT, individually and as cotrustee of The Velma M. Gillett Revocable Living Trust, dated October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

STATE OF _____
COUNTY OF _____

By: _____
Signature

As: Cotrustee
Title

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **VELMA M. GILLETT** who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

GRANTOR:

DARREN ALDEN GILLETT, individually and as cotrustee of The Velma M. Gillett Revocable Living Trust, dated October 22, 2007, as amended

First Witness Signature

First Witness Printed Name

Second Witness Signature

Second Witness Printed Name

STATE OF _____
COUNTY OF _____

By: _____
Signature

As: Cotrustee
Title

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **DARREN ALDEN GILLETT** who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

THIS INSTRUMENT PREPARED BY:
Pamela J. D'Agostino, Assistant County Attorney
Manatee County Government
Office of the County Attorney
1112 Manatee Avenue West
Bradenton, Florida 34205

PROJECT NAME: Fort Hamer Extension
PROJECT NO: 304-6054765
PID NO: 484910054

SPACE ABOVE THIS LINE FOR RECORDING DATA

AFFIDAVIT OF OWNERSHIP AND ENCUMBRANCES

BEFORE US, the undersigned notary publics, personally appeared **DARREN ALDEN GILLETT, DELENA LOUISE GILLETT JEFFERS, and VELMA M. GILLETT** who being first duly sworn, depose and say that, to the best of each of their independent knowledge and belief:

1. I have personal knowledge of all matters set forth in this affidavit.
2. Darren Alden Gillett and Delena Louise Gillett Jeffers are the only cotrustees of The William A. Gillett, Jr., Revocable Living Trust, dated October 22, 2007, as amended.
3. Velma M. Gillett and Darren Alden Gillett are the only cotrustees of The Velma M. Gillett Revocable Living Trust, dated October 22, 2007, as amended.
4. We are the owners of the fee simple title to certain real property (**Property**) situated in Manatee County, Florida, more particularly described in **Exhibit A** attached to this affidavit and by this reference made a part of this affidavit.
5. Together we have full authority to sell or encumber the Property.
6. We have sole and exclusive possession of the Property.
7. The Property is not the homestead of any of us or any other person.
8. Neither our title to nor possession of the Property has ever been disputed or questioned and we are not aware of any facts by reason of which the title to or possession of the Property or any part of it or any personal property located on it might be disputed or questioned or by reason of which any claim to the Property or any portion of it or any personal property located on it might be adversely asserted.
9. No person or entity other than us claims or is presently entitled to the right to possess or is in possession of the Property and there are no tenancies, leases, or other occupancies that affect the Property.
10. There are no disputes concerning the location of the boundary lines of the Property.
11. We have not violated any of the restrictions, declarations, or covenants in connection with the Property, nor know of any prior owner violating said restrictions, declarations, or covenants.

12. There are no outstanding or unpaid taxes or assessments (pending or certified) due to any governmental agency for improvements to or for the benefit of the Property for which we are responsible or any unpaid or unsatisfied mortgages, claims of lien, or other matters that constitute or could constitute a lien or encumbrance against the Property or any improvements on it or any part of it or against any personal property located on it. Should any bill be found which relates to the period of our possession, I shall pay such bill upon demand. No notice has been received regarding future pending zoning by any government instrumentality.

13. There are no security agreements, financing statements, title retention contracts or personal property leases affecting any materials, fixtures, appliances, furnishings or equipment placed on or installed in or on the Property or the improvements located on it.

14. There are no actions, proceedings, judgments, bankruptcies, liens or executions recorded among the Public Records of Manatee County, Florida, or any other county in Florida or pending against me in the courts of Manatee County, Florida, or any other courts.

15. There are no matters pending against me that could give rise to a lien that would attach to the Property or cause a loss of title or impair the title between the effective date of the title insurance commitment and the recording of the interest to be insured by the title insurance company, and I have not and will not execute any instrument that would adversely affect the title or interest to be insured in the Property, including but not limited to mortgaging or conveying the Property or any interest in it or causing any liens to be recorded against the Property or the Owner.

16. There has been no labor performed or materials furnished on or to the Property during the past **NINETY (90)** days, or, if labor has been performed or materials furnished during such **NINETY (90)** days, all persons performing or furnishing the same have been fully paid and there are no unpaid bills for labor or materials for which valid liens could be filed.

17. No notice of commencement concerning the Property has been filed in the past **NINETY (90)** days, nor are there any unsatisfied construction liens of record concerning such Property, nor have any notices to owner been received by me during the past **NINETY (90)** days.

18. There are no outstanding, unrecorded deeds, unsatisfied liens, leases, contracts for sale, judgments, easements or rights-of-way for users, conveyances, mortgages, or adverse interests affecting title to the Property, except the following:

- a. Easement in favor of Florida Power & Light Company, dated October 12, 1981, and recorded October 28, 1981, in Official Records Book 1015, Page 3162, of the Public Records of Manatee County, Florida.**

19. The representations embraced herein are made to induce Manatee County, a political subdivision of the State of Florida, to purchase the Property and for the purpose of assisting in the sale of the Property, and to induce the issuance of a title insurance policy insuring title to the Property, if necessary.

20. This affidavit is made and given by me with full knowledge of applicable Florida laws regarding sworn affidavits and the penalties and liabilities resulting from false statements and misrepresentations therein.

DARREN ALDEN GILLETT

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Darren Alden Gillett, who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

DELENA LOUISE GILLETT JEFFERS

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Delena Louise Gillett Jeffers, who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

VELMA M. GILLETT

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Velma M. Gillett, who ___ is personally known to me or ___ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

THIS INSTRUMENT PREPARED BY:
Pamela J. D'Agostino, Assistant County Attorney
Manatee County Government
Office of the County Attorney
1112 Manatee Avenue West
Bradenton, Florida 34205

PROJECT NAME: Fort Hamer Extension
PROJECT NO: 304-6054765
PID NO: 484910054

SPACE ABOVE THIS LINE FOR RECORDING DATA

CERTIFICATION OF TRUST

BEFORE US, the undersigned notary publics, personally appeared **DARREN ALDEN GILLETT** and **DELENA LOUISE GILLETT JEFFERS (Affiants)** who being first duly sworn, depose and say that:

1. Affiants are the only cotrustees of The William A. Gillett, Jr. Revocable Living Trust, dated October 22, 2007, as amended (**WAG Trust**).
2. The WAG Trust exists and the trust instrument was executed on October 22, 2007.
3. The settlor (creator/grantor) of the WAG Trust was William A. Gillett, Jr.
4. Darren Alden Gillett's mailing address is Post Office Box 8, Scaly Mountain, North Carolina 28775.
5. Delena Louise Gillett Jeffers' mailing address is 5715 18th Avenue East, Bradenton, Florida 34208.
6. Affiants certify that this Certification of Trust pertains to the trust property described in **Exhibit A**, attached to and incorporated into this Certification of Trust by this reference.
7. Title to an undivided one half (1/2) interest in the property described in **Exhibit A** is currently vested in the cotrustees of the WAG Trust.
8. Affiants, as cotrustees of the WAG Trust, have the power to sell, assign, exchange, transfer, partition, and convey, or otherwise dispose of any trust estate property, real, personal, or mixed, upon such terms and conditions as deemed advisable, at either public or private sale, and to make, execute, acknowledge, and deliver any and all documents of conveyance, deeds of trust, and assignments, in such form, and with such warranties and covenants, as the Affiants may deem expedient and proper.
9. The WAG Trust is irrevocable.
10. Pursuant to the WAG Trust, the authority of both cotrustees is required to exercise powers of the trustee.
11. The Trust has not been revoked, modified, or amended in any manner that would cause the representations herein to be incorrect.

12. The property described in **Exhibit A** is not the homestead of Affiants under the laws and constitution of the State of Florida and no members of Affiants' respective households reside on the property.

13. Affiants are familiar with the applicable Florida laws regarding sworn statements and the penalties and liabilities resulting from false statements and misrepresentations made in instruments of this nature.

DARREN ALDEN GILLETT

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Darren Alden Gillett, who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

DELENA LOUISE GILLETT JEFFERS

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Delena Louise Gillett Jeffers, who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

THIS INSTRUMENT PREPARED BY:
Pamela J. D'Agostino, Assistant County Attorney
Manatee County Government
Office of the County Attorney
1112 Manatee Avenue West
Bradenton, Florida 34205

PROJECT NAME: Fort Hamer Extension
PROJECT NO: 304-6054765
PID NO: 484910054

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CERTIFICATION OF TRUST

BEFORE US, the undersigned notary publics, personally appeared **VELMA M. GILLETT** and **DARREN ALDEN GILLETT (Affiants)** who being first duly sworn, depose and say that:

1. Affiants are the only cotrustees of The Velma M. Gillett Revocable Living Trust, dated October 22, 2007, as amended (**VMG Trust**).
2. The VMG Trust exists and the trust instrument was executed on October 22, 2007.
3. The settlor (creator/grantor) of the WAG Trust is Velma M. Gillett.
4. Affiants' mailing address is Post Office Box 8, Scaly Mountain, North Carolina 28775.
5. Affiants certify that this Certification of Trust pertains to the trust property described in **Exhibit A**, attached to and incorporated into this Certification of Trust by this reference.
6. Title to an undivided one half (1/2) interest in the property described in **Exhibit A** is currently vested in the cotrustees of the VMG Trust.
7. Affiants, as cotrustees of the VMG Trust, have the power to sell, assign, exchange, transfer, partition, and convey, or otherwise dispose of any trust estate property, real, personal, or mixed, upon such terms and conditions as deemed advisable, at either public or private sale, and to make, execute, acknowledge, and deliver any and all documents of conveyance, deeds of trust, and assignments, in such form, and with such warranties and covenants, as the Affiants may deem expedient and proper.
8. The VMG Trust is revocable and only Velma M. Gillett holds the power to revoke the VMG Trust.
9. Pursuant to the VMG Trust, the authority of both cotrustees is required to exercise powers of the trustee.
10. The Trust has not been revoked, modified, or amended in any manner that would cause the representations herein to be incorrect.

11. The property described in **Exhibit A** is not the homestead of Affiants under the laws and constitution of the State of Florida and no members of Affiants' respective households reside on the property.

12. Affiants are familiar with the applicable Florida laws regarding sworn statements and the penalties and liabilities resulting from false statements and misrepresentations made in instruments of this nature.

VELMA M. GILLETT

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Velma M. Gillett, who ___ is personally known to me or ___ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date

DARREN ALDEN GILLETT

Signature

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed), acknowledged, and subscribed before me this _____ day of _____, 2018, by Darren Alden Gillett, who _____ is personally known to me or _____ has produced _____ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date