

14. Consideration of a purchase offer from Palm Bay Landings, LLC, for surplus property, municipally owned vacant land located on Water Drive (Tax ID: 2832805, Parcel ID: 28-37-24-27-3-4.01) (\$100,000).



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Ibis Berardi, Community & Economic Development Acting Director

DATE: May 16, 2024

RE: Consideration of a purchase offer from Palm Bay Landings, LLC for surplus property, Municipally Owned Vacant Land located on Water Drive (Tax ID: 2832805, Parcel ID: 28-37-24-27-3-4.01) (\$100,000).

SUMMARY:

The City owns a 2.12-acre parcel located on Dixie Highway NE, which runs north and south of Palm Bay Road (Parcel ID: 28-37-24-27-3-4.01 / Tax ID: 2832805). The parcel serves as dry retention and has an existing lift station and baffle box. The parcel is zoned Bayfront Mixed Use Village (BMUV). The parcel was deeded free and clear to the City by Brevard County on November 9, 1978, who obtained ownership of the right-of-way upon abandonment by the Florida State Road Department.

On September 23, 2023, the City Manager received a written request from Palm Bay Landing LLC (Mike Timmons) to vacate the right-of-way to the adjacent upland landowners for whom he perceived have claim to the right-of-way. On October 3, 2023, the City Attorney received the opinion of outside legal counsel, Rumberger | Kirk, evaluating the request and claims contained in the letter. The legal opinion provides the recommendation that the City should decline Mr. Timmons' request to convey the parcel and notes that the deed was vested free and clear of such claims to the City of Palm Bay. Further, the deed from Brevard County contains a reverter clause providing that if the parcel is not utilized for a Chamber of Commerce building or other public purpose, the title immediately reverts to and reverts in Brevard County. Finally, the opinion also notes that the City cannot convey title of the parcel without the consent of Brevard County. This letter was provided to Mike Timmons.

Subsequently, in December 2023, the City received an unsolicited offer from Palm Bay Landings, LLC for the City-owned parcel, which was presented to City Council at the March 7, 2024 Regular Council Meeting. City Council voted to designate this parcel as surplus and authorized staff to list the parcel for sale with the City's contract commercial real estate broker, ONE Sotheby's International, for no less than 30 days. On March 11, 2024, the City executed the Broker's Price Opinion (BPO) which estimated the value of the parcel at \$206,832, or \$5.18 PSF. The parcel has been listed for sale through the commercial broker since March 14, 2024.

The Broker received only one (1) purchase offer from Palm Bay Landing, LLC totaling \$100,000 (Attachment 5). The contract provides for an initial deposit of \$10,000 within three (3) days of the Effective Date and the remaining \$90,000 to be paid at the time of Closing. The contract provides a Closing Date of 14 days after the Due Diligence Period, which is 60 days from the Effective Date of the purchase contract.

The offer stipulates that the Buyer (Palm Bay Landing, LLC) will obtain the site survey at the Seller's (City) expense; however, the Buyer will pay for any excess costs for the survey over \$2,500.00. Further, the offer notes that the Buyer shall grant exclusive easements to the City for the existing lift station and baffle box; however, the easements shall be recorded with the Brevard County Clerk of Court at the Seller's expense. Finally, the Buyer acknowledges the existing deed restriction and agrees to hold the City harmless in the event that title cannot be conveyed.

REQUESTING DEPARTMENTS:

Community & Economic Development

FISCAL IMPACT:

Upon closing, sale proceeds will be deposited into the General Fund account 001-0000-388-1001 (Sales Proceeds) to be transferred to account 307-0000-381-1001 (Road Maintenance Fund).

STAFF RECOMMENDATION:

Motion to consider the purchase offer from Palm Bay Landings, LLC in the amount of \$100,000 for a City-owned parcel, Unassigned Water Drive NE.

ATTACHMENTS:

1. Tax Account 2832805 BCPAO Property Description
2. Broker's Price Opinion Tax Account 2832805
3. Unassigned Water Drive Property Listing
4. Unassigned Water Drive Subject Property Location (Exhibit A)
5. Vacant Land Contract – Palm Bay Landing, LLC
6. Vesting Deed for Tax Account 2832805
7. Legal Opinion from Rumberger Kirk

REAL PROPERTY DETAILS

Account 2832805 - Roll Year 2023

Owners	PALM BAY, CITY OF
Mailing Address	120 MALABAR RD SE PALM BAY FL 32909
Site Address	NONE
Parcel ID	28-37-24-27-3-4.01
Taxing District	34U0 - PALM BAY
Exemptions	EXMU - MUNICIPALLY OWNED PROPERTY
Property Use	8080 - MUNICIPALLY OWNED LAND - VACANT
Total Acres	2.12
Site Code	0300 - U S 1
Plat Book/Page	0002/0003
Subdivision	PALM BAY MAP NUMBER 1
Land Description	PALM BAY MAP NUMBER 1 THAT PART OF BLOCKS 3 & 5 LYING EAST OF OLD U S HWY NO 1 R/W PAR 1.01 BLK 5



VALUE SUMMARY

Category	2023	2022	2021
Market Value	\$461,740	\$461,740	\$461,740
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$461,740	\$422,870	\$384,430
Assessed Value School	\$461,740	\$461,740	\$461,740
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$461,740	\$422,870	\$384,430
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

SALES / TRANSFERS

Date	Price	Type	Instrument
No Data Found			

No Data Found

Exhibit "A"

SALES ADDENDUM TO MASTER LISTING AGREEMENT

This Sales Addendum to Master Listing Agreement ("Addendum") is made with respect to that certain Master Listing Agreement ("Agreement") by and between by and between ☐ **CITY OF PALM BAY** ("Seller"), a Florida municipal corporation and / or the ☐ **BAYFRONT COMMUNITY REDEVELOPMENT AGENCY**, a special dependent district of the City (also "Seller"), with offices located at 120 Malabar Road S.E., Palm Bay, Florida 32907, and **ONE SOTHEBY'S INTERNATIONAL REALTY** ("Broker"), with offices located at 1331 S. Harbor City Blvd, Melbourne, FL 32901.

City and Broker hereby agree to supplement the Agreement as follows:

1. This Addendum is made with respect to the following Property:
 - i. Address: None Approx: 39,929 sf
 - ii. Parcel ID: TBD from 28-37-24-27-3-4.01
 - iii. Tax ID: TBD from 2832805
2. The term of Broker's exclusive listing for this Property shall
 - i. begin on [Seller to insert date] and
 - ii. expire at midnight on [Seller to insert date].
3. The Property shall be listed at \$ \$5.18 psf or \$206,832.00.
4. Seller designates the following entity as closing agent (title company/law firm) to conduct the closing on the Property: Supreme Title.
5. Broker hereby accepts assignment of the Property and agrees to perform the services and duties stated in the Agreement. All of terms and provisions of the Agreement are by this reference expressly incorporated into this Addendum.

SELLER:

CITY OF PALM BAY

By: 

Title: City Manager

Date: 3-11-2024

BROKER:

ONE SOTHEBY'S INTERNATIONAL
REALTY

By: Mel Howard

Title: Broker - Sales Person

Date: 3-6-24

Exhibit "B"

BROKER STATUS REPORT

Report Date: 3-6-2024

Property Identification

i. Address: TBD
ii. Parcel ID: TBD taken from 28-37-24-27-3-4.01
iii. Tax ID: TBD taken from 2832805

Current Listing Price: None

Suggested Listing Price: \$206,832

Date of Last Visit to Property: 3-4-2024

Date of Last Showing: None

Number of Inquiries Since Last Report:

Suggestions to expedite the sale of the Property:

Current or new listings competing with the Property:

None

Other comments (status of repairs, etc.):

By: Mel Howard

Title: Broker-Salesperson

Date: 3-6-2024

Land Active MLS# 1007750	0000 Unknown Drive, Palm Bay, FL 32905 County: Brevard	\$206,832
---	--	------------------



Senior Community:	No	Property Sub Type:	Unimproved Land
Lot Size Acres:	2.12	Subdivision Name:	Palm Bay Map Number 1
Lot Size Square Feet:	92,347	Pool:	None
Lot Size Dimensions:	39929	Features:	
Lot Dimensions:	Estimated	CDD Fee:	No
Source:		Land Lease YN:	No
County:	Brevard	Tax Account:	2832805
General County Location:	South	Tax Annual Amount:	\$0
MLS Area Major:	340 - NE Palm Bay	Tax Legal Description:	PALM BAY MAP NUMBER 1 THAT PART OF BLOCKS 3 & 5 LYING EAST OF OLD U S HWY NO 1 R/W PAR 1.01 BLK 5
Parcel Number:	28-37-24-27-00003.0-0004.01		

Waterfront YN:	No	Association YN:	No
Elementary School:	Palm Bay Elem		
Middle School:	Stone		
High School:	Palm Bay		

Public Remarks: This land is being sold for development purposes. Buyer is responsible for a survey. Final price will be determined by survey: this parcel is part of two parcels located on US Hwy 1. Easement must be granted to the City of Palm Bay for lift station and baffle box.

Directions: Corner of Water Drive and Hessey Dr

Current Use: Other
Development Status: Proposed
Listing Terms: Cash
Lot Features: Irregular Lot; Other

Possession: Other
Road Frontage Type: State Road
Road Surface Type: Asphalt
Sewer: Public Sewer
Special Listing Conditions: Standard
Utilities: Sewer Available; Water Available
Water Source: Public

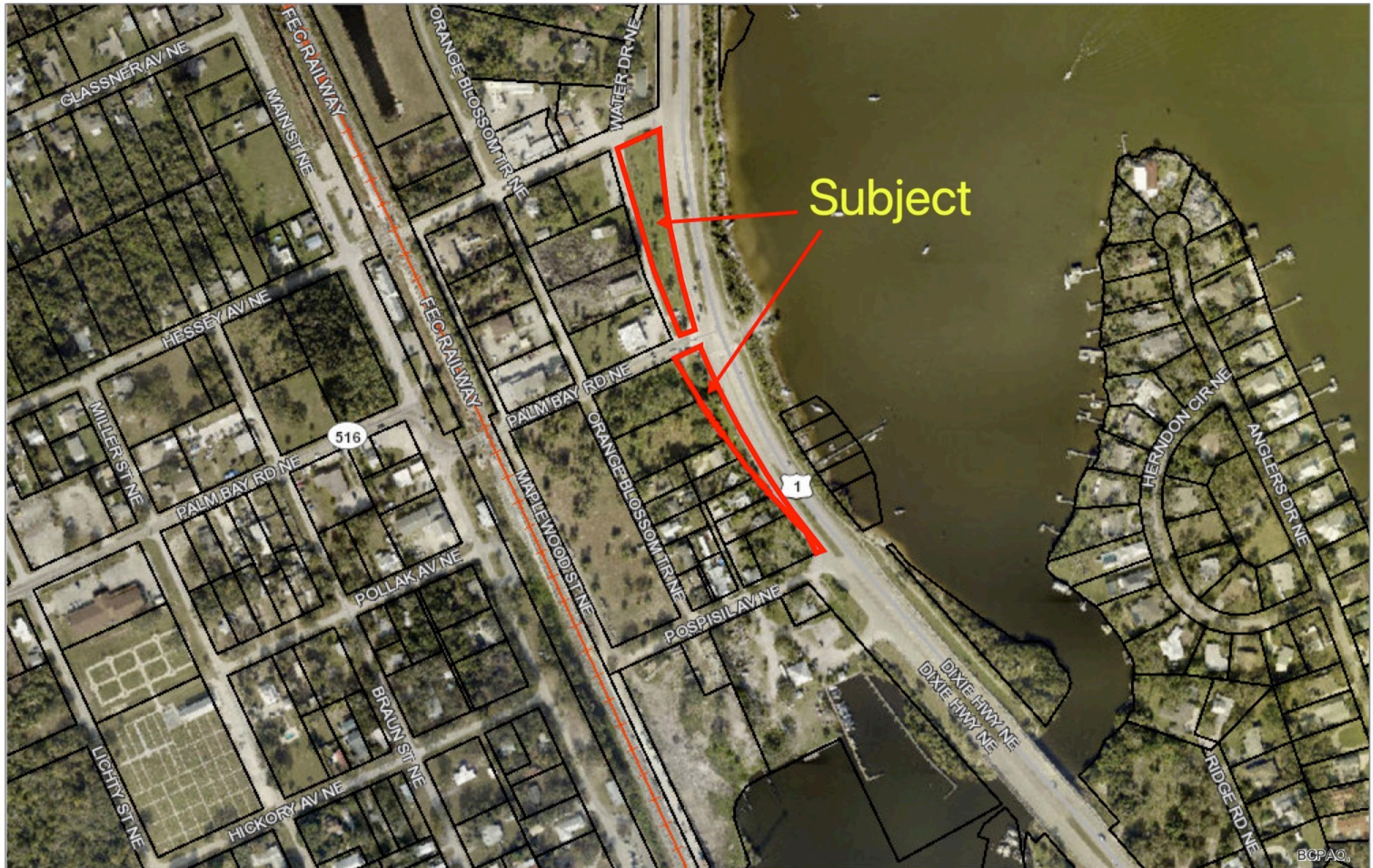
Provided as a courtesy of



Mel Howard
License: 3047085
 One Commercial Real Estate
 1331 S Harbor City Blvd
 Melbourne, FL 32901
 321-960-1959
 305-666-0562
 321-960-1959
mhoward@onecommercialre.com

<http://www.melbournefloridacommercialrealestate.com>

Information is deemed to be reliable, but is not guaranteed. © 2024 MLS and FBS. Prepared by Mel Howard on Thursday, March 14, 2024 2:46 PM. The information on this sheet has been made available by the MLS and may not be the listing of the provider. The listing broker's offer of compensation is made only to participants of Space Coast MLS as well as Florida Realtors® MLS Advantage Participants and Participants in the Coast2Coast datashare.



All BCPAO maps and/or map applications are maintained for assessment and illustrative purposes only and do not represent surveys, plats, or any other legal instrument. Likewise, measurement and location tools are for assessment and illustrative purposes only and do not necessarily reflect real-world conditions. Due to the nature of Geographic Information Systems (GIS) and cadastral mapping, map layers may not precisely align and may not represent precise location, shape, and/or legal boundaries. Only a Florida-licensed surveyor can determine legally-relevant property boundaries, elevation, distance, area, and/or location in Florida.

Map created May 3, 2024 (map data dates may vary)

BCPAO,

Vacant Land Contract

1 * **1. Sale and Purchase ("Contract"):** _____ City of Palm Bay _____ ("Seller")
2 * and _____ Palm Bay Landing LLC _____ ("Buyer")
3 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")
4 described as:
5 * Address: _____ 0000 Water Dr - address to be determined _____
6 * Legal Description: Size and legal description is to Be Determined by Survey - Tax Account: 2832805
7 Parcel ID 28-37-24-27-3-4.01
8 _____
9 _____
10 _____
11 * SEC ____/TWP /____/RNG ____ of _____ Brevard _____ County, Florida. Real Property ID No.: _____ 28-37-24-27-3-4.01
12 * including all improvements existing on the Property and the following additional property: _____
13 _____
14 * **2. Purchase Price:** (U.S. currency) \$ _____ 100,000.00
15 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:
16 * Escrow Agent's Name: _____ Supreme Title
17 * Escrow Agent's Contact Person: _____ Cyndy Little
18 * Escrow Agent's Address: _____ 125 W New Haven Ave, Melbourne, FL 32901
19 * Escrow Agent's Phone: _____ 321-725-0115
20 * Escrow Agent's Email: _____ cyndy@supremetitlellc.com
21 **(a) Initial deposit (\$0 if left blank) (Check if applicable)**
22 * ☐ accompanies offer
23 * ☒ will be delivered to Escrow Agent within _____ 3 _____ days (3 days if left blank)
24 * after Effective Date \$ _____ 10,000.00
25 **(b) Additional deposit will be delivered to Escrow Agent (Check if applicable)**
26 * ☐ within _____ days (10 days if left blank) after Effective Date \$ _____ 0.00
27 * ☐ within _____ days (3 days if left blank) after expiration of Due Diligence Period \$ _____ 0.00
28 * **(c) Total Financing (see Paragraph 6) (express as a dollar amount or percentage) \$ _____ 0.00**
29 * **(d) Other:** \$ _____ 0.00
30 **(e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)**
31 * to be paid at closing by wire transfer or other Collected funds \$ _____ 90,000.00
32 * **(f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The**
33 * **unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): _____**
34 * **prorating areas of less than a full unit. The purchase price will be \$ _____ per unit based on a**
35 * **calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in**
36 * **accordance with Paragraph 8(c). The following rights of way and other areas will be excluded from the**
37 * **calculation: _____**
38 **3. Time for Acceptance; Effective Date:** Unless this offer is signed by **Seller** and **Buyer** and an executed copy
39 * delivered to all parties on or before _____ until recinded _____, this offer will be withdrawn and **Buyer's** deposit, if
40 any, will be returned. The time for acceptance of any counter-offer will be 3 days after the date the counter-offer is
41 delivered. **The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer**
42 **has signed or initialed and delivered this offer or the final counter-offer.**
43 * **4. Closing Date:** This transaction will close on _____ see section 23 _____ ("Closing Date"), unless specifically
44 extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including,
45 but not limited to, Financing and Due Diligence periods. However, if the Closing Date occurs on a Saturday,
46 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business
47 day. In the event insurance underwriting is suspended on Closing Date and **Buyer** is unable to obtain property
48 insurance, **Buyer** may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If
49 this transaction does not close for any reason, **Buyer** will immediately return all **Seller** provided documents and
50 other items.
51 **5. Extension of Closing Date:** If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not
52 available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements

Buyer ^{MPT} (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 1 of 8 pages.

("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.

6. Financing: (Check as applicable)

(a) ☒ **Buyer** will pay cash for the Property with no financing contingency.

(b) ☐ This Contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s) specified below ("Financing") within _____ days after Effective Date (Closing Date or 30 days after Effective Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within _____ days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the Financing within the Financing Period, either party may terminate this Contract and **Buyer's** deposit(s) will be returned.

- (1) ☐ **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ _____ or _____% of the purchase price at **(Check one)** ☐ a fixed rate not exceeding _____% ☐ an adjustable interest rate not exceeding _____% at origination (a fixed rate at the prevailing interest rate based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to **Seller** and Broker.
- (2) ☐ **Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to **Seller** in the amount of \$ _____, bearing annual interest at _____% and payable as follows:

The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller** to obtain credit, employment, and other necessary information to determine creditworthiness for the financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not **Seller** will make the loan.

- (3) ☐ **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to

LN# _____ in the approximate amount of \$ _____ currently payable at \$ _____ per month, including principal, interest, ☐ taxes and insurance, and having a ☐ fixed ☐ other (describe) _____ interest rate of _____% which ☐ will ☐ will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds _____% or the assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing which this Contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves **Buyer**, this Contract will terminate; and **Buyer's** deposit(s) will be returned.

- 7. Assignability: (Check 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 ☐ may not assign this Contract.

- 8. Title:** **Seller** has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty deed ☒ special warranty deed ☐ other (specify) _____, free of liens, easements, and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____, provided there exists at closing no violation of the foregoing.

(a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay for the title search, including tax and lien search (including municipal lien search) if performed, and all other fees charged by closing agent. **Seller** will deliver to **Buyer**, at

(Check one) ☒ **Seller's** ☐ **Buyer's** expense and

(Check one) ☒ within 10 days after Effective Date ☐ at least _____ days before Closing Date,

(Check one)

- (1) ☒ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the

MPT
Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 2 of 8 pages.

amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

- (2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within 10 days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within 60 days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 8(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

9. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections: (Check (1) or (2))**

- (1) ☒ **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 60 days (30 days if left blank) ("Due Diligence Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Due Diligence Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Due Diligence Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Due Diligence Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this Contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

MPT

Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 3 of 8 pages.

(2) ☐ **No Due Diligence Period:** **Buyer** is satisfied that the Property is suitable for **Buyer's** purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to **Buyer**. This Contract is not contingent on **Buyer** conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect **Buyer's** intended use of the Property will not be grounds for terminating this Contract if the Due Diligence Period has expired or if Paragraph 9(a)(2) is selected.

(c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☐ **Buyer** waives the right to receive a CCCL affidavit or survey.

10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** (in local cashier's check if **Seller** requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 21. In addition to other expenses provided in this Contract, **Seller** and **Buyer** will pay the costs indicated below.

(a) Seller Costs:

Taxes on deed

Recording fees for documents needed to cure title

Title evidence (if applicable under Paragraph 8)

Estoppel Fee(s)

Other:

See section 23

(b) Buyer Costs:

Taxes and recording fees on notes and mortgages

Recording fees on the deed and financing statements

Loan expenses

Title evidence (if applicable under Paragraph 8)

Lender's title policy at the simultaneous issue rate

Inspections

Survey

Insurance

Other:

See section 23

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and **Buyer** will pay all other amounts. If special assessments may be paid in installments, ☒ **Seller** ☐ **Buyer** (**Buyer** if left blank) will pay installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY:** **BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY**

Buyer ^{MPT} () () and Seller () () acknowledge receipt of a copy of this page, which is 4 of 8 pages.

IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at closing.
- (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

11. Computation of Time: Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this Contract.**

12. Risk of Loss; Eminent Domain: If any portion of the Property is materially damaged by casualty before closing or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may terminate this Contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification, and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this Contract and receive all payments made by the governmental authority or insurance company, if any.

13. Force Majeure: **Seller** or **Buyer** will not be required to perform any obligation under this Contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this Contract by delivering written notice to the other; and **Buyer's** deposit(s) will be returned.

14. Notices: All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by this Contract, regarding any contingency will render that contingency null and void, and this Contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.**

15. Complete Agreement; Persons Bound: This Contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this Contract.** Modifications of this Contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This Contract, signatures, initials, documents referenced in this Contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this Contract. This Contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This Contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of **Seller**, **Buyer**, and Broker.

16. Default and Dispute Resolution: This Contract will be construed under Florida law. This Paragraph will survive closing or termination of this Contract.

- (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this Contract, **Buyer** may elect to receive a return of **Buyer's** deposit(s) without thereby waiving any action for damages resulting

MPT

Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 5 of 8 pages.

from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

(b) **Buyer Default:** If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this Contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this Contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this Contract.

17. Attorney's Fees; Costs: In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

18. Escrow Agent; Closing Agent: **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

19. Professional Advice; Broker Liability: Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this Contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value.** **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This Paragraph will survive closing.

20. Commercial Real Estate Sales Commission Lien Act: If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

21. Brokers: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or listing broker to cooperating brokers.

Mel Howard 3047085

Seller's Sales Associate/License No.

Mel Howard 3047085

Buyer's Sales Associate/License No.

MPT
Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 6 of 8 pages.

329 * mhoward@onecommercialre.com mhoward@onecommercialre.com
330 Seller's Sales Associate Email Address Buyer's Sales Associate Email Address
331
332 * 321-960-1959 321-960-1959
333 Seller's Sales Associate Phone Number Buyer's Sales Associate Phone Number
334
335 * One Commercial Real Estate One Commercial Real Estate
336 Listing Brokerage Buyer's Brokerage
337
338 * 1331 S Harbor City Blvd Melbourne 32901 1331 S Harbor City Blvd Melbourne FL 32901
339 Listing Brokerage Address Buyer's Brokerage Address

340 22. Addenda: The following additional terms are included in the attached addenda and incorporated into this Contract
341 (Check if applicable)
342 * ☐ A. Back-up Contract
343 * ☐ B. Kick Out Clause
344 * ☐ C. Other _____

345 * 23. Additional Terms: 10a Other: SELLER will pay for survey at closing to determine metes and bounds for City of
346 Palm Bay easements to baffle box and lift station. The BUYER will pay for any excess cost for the survey over
347 \$2,500.00
348
349 Closing will commence 14 days after the due diligence period.
350
351 The BUYER shall be responsible for obtaining a survey at the SELLER'S expense for the property outlining the metes
352 and bounds for the existing lift station and baffle box. Upon closing, the BUYER shall grant exclusive easements to
353 the City of Palm Bay for the lift station and baffle box. The easements shall be recorded with the Brevard County Clerk
354 of Court at the SELLER'S expense and a copy of the recorded easements provided to the City Clerk of the City of
355 Palm Bay. The BUYER acknowledges the existing deed restriction on this parcel and agrees to hold the City of Palm
356 Bay harmless in the event title cannot be conveyed.
357
358
359
360

361 COUNTER-OFFER/REJECTION
362 * ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
363 deliver a copy of the acceptance to Seller).
364 * ☐ Seller rejects Buyer's offer

367 [The remainder of this page is intentionally left blank.
368 This Contract continues with Line 367 on Page 8 of 8.]

MPT

Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 7 of 8 pages.

367 This is intended to be a legally binding Contract. If not fully understood, seek the advice of an attorney before
368 signing.

369 **ATTENTION: SELLER AND BUYER**

370 **CONVEYANCES TO FOREIGN BUYERS:** Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023
371 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers
372 who are associated with a "foreign country of concern", namely: the People's Republic of China, the Russian
373 Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the
374 Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property**
375 **in violation of the Act.**

376 **At time of purchase, Buyer must provide a signed Affidavit which complies with the requirements of the Act.**
377 Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

378 *Michael P Timmons*
379 * **Buyer:** _____ Date: *05/03/2024*
380 * Print name: _____
381 * **Buyer:** _____ Date: _____
382 * Print name: _____
383 **Buyer's address for purpose of notice:**
384 * Address: _____
385 * Phone: _____ Fax: _____ Email: _____
386 * **Seller:** _____ Date: _____
387 * Print name: _____
388 * **Seller:** _____ Date: _____
389 * Print name: _____
390 **Seller's address for purpose of notice:**
391 * Address: _____
392 * Phone: _____ Fax: _____ Email: _____

Florida REALTORS® makes no representation as to the legal validity or adequacy of any provision of this form in any specific transaction. This standardized form should not be used in complex transactions or with extensive riders or additions. This form is available for use by the entire real estate industry and is not intended to identify the user as REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. The copyright laws of United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or computerized forms.

Buyer *MPT* (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is 8 of 8 pages.

Prepared by: William H. Arnold, Esquire
P. O. Box 37
Titusville, Florida 32780

COUNTY DEED

THIS DEED, made this 9th day of November, 1978, by
BREVARD COUNTY, a political subdivision of the State of Florida,
Party of the First Part, and CITY OF PALM BAY, a municipal
corporation existing under the laws of the State of Florida, Party
of the Second Part:

WITNESSETH, that the said Party of the First Part, for and
in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) to
it in hand paid by the Party of the Second Part, receipt whereof
is hereby acknowledged, has granted, bargained and sold to the
Party of the Second Part, his heirs, successors and assigns forever,
the following described land lying and being in Brevard County,
Florida:

Parcel No. 1: That part of Lot N lying East of old
U. S. Highway No. 1 (formerly Palm Bay Boulevard) and
west of new U. S. Highway No. 1 (State Road No. 5),
PLAT OF TILLMAN, according to the plat thereof as
recorded in Plat Book 2, Page 4, Public Records of
Brevard County, Florida.

Parcel No. 2: Vacated portion of old U. S. Highway
No. 1 located in the City of Palm Bay, Section 24,
Township 28 South, Range 37 East, Brevard County,
Florida, from Hickory Avenue (M.P. 13.801) to Kinney
Avenue (approximately M.P. 14.222).

In the event the subject property is at any time vacated or
abandoned, or, in the event said property is not utilized
for a Chamber of Commerce building or other public purpose,
then, in that event, all right, title and interest of the
City of Palm Bay, its successors and assigns, in and to
the subject property shall immediately revert and revest in
Brevard County, Florida.

IN WITNESS WHEREOF, the said Part of the First Part has caused
these presents to be executed in its name by its Board of County
Commissioners, acting by the Chairman or Vice Chairman of said
Board, the day and year aforesaid.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By Lee Wenner
Lee Wenner, Chairman

ATTEST:
R. C. Winstead, Jr.
R. C. Winstead, Jr., Clerk

(OFFICIAL SEAL)

275511

NOV 20 PM 1:44

October 3, 2023

VIA E-MAIL ONLY - Patricia.Smith@palmbayflorida.org

Patricia D. Smith
City Attorney
City of Palm Bay
120 Malabar Road SE
Palm Bay, FL 32907

Re: Parcel 28-37-24-27-3-4.01
Our File No.: 144184

Dear Ms. Smith:

You requested that I review Michael Timmons' September 23, 2023 letter addressed to Suzanne Sherman, City Manager, City of Palm Bay. I have reviewed Mr. Timmons' letter as well as the following items you provided to me:

1. Right of Way Easement dated April 25, 1961 from William R. Pierpont and Ida Pierpont to the State of Florida recorded at O.R. Book 381, Page 356, Public Records of Brevard County, Florida.
2. August 5, 1965 Office Communication Florida State Road Department from P. N. Pappas to J. E. Warnock, Subject: Abandonment State Roads Section 70010.
3. County Deed from Brevard County to City of Palm Bay recorded at O.R. Book 1969, Page 577.
4. September 28, 1977 letter from Terry B. Graham Information Office, Florida Department of Transportation to Alice Huffer, City Clerk, City of Palm Bay.
5. May 30, 1978 letter from Alice Huffer, City Clerk, City of Palm Bay to the Honorable Val Steele, County Commissioner.
6. October 26, 1978 letter from Alice Huffer, City Clerk, City of Palm Bay to Bob Guthrie, Attorney, Brevard County.

7. October 29, 1978 letter from Alice Huffer, City Clerk, City of Palm Bay to Don Williams, c/o Commissioner Val Steele.

I also reviewed the Brevard County Property Appraiser maps for the above referenced parcel (hereinafter the "Subject Property"). Based upon my review of the above items, I recommend that the City of Palm Bay decline Mr. Timmons' request to convey the Subject Property for the reasons explained below.

The Plat of the Town of Palm Bay recorded in 1912 includes a public road known as Riverside Drive bisecting the lots which fronted on Turkey Creek Bay n/k/a Palm Bay. Riverside Drive later became part of the Dixie Highway established by the United States Government. Later, the State of Florida acquired the roadway and expanded and relocated the roadway also known as State Road 5. After doing so, the Florida State Road Department (now Florida Department of Transportation) elected to abandon to Brevard County a portion of the former State Road 5.

In his letter, Mr. Timmons suggests that the former State Road 5 should have been abandoned to the adjoining property owners rather than Brevard County. Mr. Timmons cites no legal authority for his suggestion. I know of no legal authority requiring the Florida State Road Department to abandon roadways only to the adjoining property owners. Reviewing the correspondence from the Florida State Road Department, its policy was to abandon roads to the local county or city. The records provided show that the Florida State Road Department in fact abandoned the portion of State Road 5 in question to Brevard County, declining to abandon the road to Palm Bay.

Thereafter, questions arose regarding ownership of the abandoned State Road 5. The question of ownership concerned whether the abandoned roadway was owned by Brevard County or the City of Palm Bay. None of the correspondence suggests that the abandoned roadway should have been owned by the adjoining landowners or that any adjoining landowners asserted such a claim. To resolve the questions of ownership, Brevard County deeded the Subject Property to the City of Palm Bay in November 1978.

The deed has been a record almost forty-five years. Under the Florida Marketable Record Title Act, title is vested in the City of Palm Bay free and clear of all claims. Assuming *arguendo* that Mr. Timmons or any of the other adjoining property owners had some claim to the Subject Property, which they do not, such claims have now been extinguished by the Marketable Record Title Act.

Even if the City of Palm Bay elected to convey the Subject Property to Palm Bay Landing, LLC, as requested by Mr. Timmons, such a conveyance would be ineffective to vest title in Palm Bay Landing, LLC. The deed from Brevard County contains a reverter clause providing that if the Subject Property is not utilized for a Chamber of Commerce building or other public purpose, title to the Subject Property immediately reverts to and

Ms. Smith
October 3, 2023
Page 3

reverts in Brevard County, Florida. The conveyance requested by Mr. Timmons would trigger the reverter clause and vest title in Brevard County. Thus, the City of Palm Bay cannot convey title to the subject property to a private landowner without the consent of Brevard County.

Should you have any questions, please call me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. Willis", with a horizontal line underneath.

DAVID C. WILLIS

DCW/mmw

RECEIVED SEP 25 REC'D

Michael Timmons
Palm Bay Landing LLC
Space Coast Marinas LLC
587 Young Street
Melbourne, FL 32907

September 23, 2023

Suzanne Sherman
City Manager
City of Palm Bay
120 Malabar Road, SE
Palm Bay, FL 32907

Dear Suzanne:

Following up on our previous discussions, I am writing to address a matter that represents a critical roadblock for development in Palm Bay. It is an issue regarding the ownership of two specific parcels of land in the Palm Bay Bayfront. PALM BAY MAP NUMBER 1 THAT PART OF BLOCKS 3 & 5 LYING EAST OF OLD US HWY NO 1 R/W PAR 1.01 BLK 5 referred to as 28-37-24-27-3-4.01 Plat of Palm Bay Map No. 1.

It is my opinion that legally these parcels should have been vacated to the original landowners and their land and riparian rights on the water preserved.

I currently own or have under contract the original parcels adjacent to the subject property in question. These parcels are crucial to any development plans, and its ownership status is critical for the successful realization of the project. Although this issue has persisted for a considerable period, I believe it is in everyone's best interest in finding a definitive and fair resolution.

As outlined in the attached timeline of events (Exhibit A-L), there has been considerable uncertainty and confusion surrounding the ownership of this land, which was previously a Right of Way Easement for State Road 5 abandoned by Florida State Road Department in 1965.

To bring closure to this matter and to foster a more transparent and mutually beneficial resolution, we propose three potential courses of action:

1. Quit-Claim Deed: We kindly request that the City of Palm Bay consider issuing a Quit-Claim Deed for the parcel 28-37-24-27-3-4.01 to Palm Bay Landing LLC. This would provide a clear and unambiguous transfer of title, thus resolving any uncertainties regarding ownership rights. Such a deed would greatly assist in facilitating the rightful ownership transfer and preserve the land and water rights for the original properties.
2. Vacation of Property: We request the City of Palm Bay vacate the parcel 28-37-24-27-3-4.01 to the adjacent property owners. This would provide a clear and unambiguous transfer of title, thus resolving any uncertainties regarding ownership rights. Such a deed would greatly assist in facilitating the rightful ownership transfer and preserve the land and water rights for the original properties.

3. Purchase of Land: Alternatively, we are open to the possibility of purchasing parcel 28-37-24-27-3-4.01 from the City of Palm Bay. We believe that this approach could offer a fair and equitable solution to all parties and would help resolve this matter conclusively.

I believe that by resolving this matter, we can contribute to the overall clarity and efficiency of land ownership in the City of Palm Bay, while allowing for the continued progress of future development plans. We look forward to your response and a positive resolution to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Timmons', with a stylized flourish at the end.

Michael Timmons
Palm Bay Landing LLC
Space Coast Marinas LLC
587 Young Street
Melbourne, FL 32907

Timeline of Events				
1961	March 7 th	Right of Way Easement	State Road 5 is granted a Right of Way Easement for road construction	Exhibit A
1965	April 16 th	Florida State Road Department – Office Communication	Florida State Department completes the road construction and expresses the intention to abandon it to Brevard County	Exhibit B
	August 5 th	Florida State Road Department – Office Communication	Official notice of abandonment is issued	Exhibit C
1966	July 28 th	Florida State Road Department to Palm Bay Mayor	Florida State Road Department informs that interests cannot be conveyed to the City of Palm Bay	Exhibit D
1975	July 29 th	Florida State Road Department to city of Palm Bay	State Road Abandonment – Resolved to disclaim to Brevard County and/or City of Balm Bay that portion of the old road relocated by new construction. Abandoned from State Highway System.	Exhibit E
1977	September 28 th	Florida Department of Transportation to City of Palm Bay	Ownership determination is still pending	Exhibit F
1978	Unknown Date	Brevard County Appraiser Letter to City of Palm Bay?	Letter addresses the unclear statements from the Department of Transportation regarding the highway's abandonment and suggests obtaining Quit-Claim deeds from the county for the City's benefit	Exhibit G
	April 17 th	Brevard County Appraiser to City of Palm Bay City Clerk	The statements in the information supplied by the DOT are not clear whom the parcels were abandoned to, nor do they have an instrument officially vacating or abandoning the parcels.	Exhibit H
	May 30 th	City of Palm Bay to County Commissioner	Ownership of the land is questioned again, citing the County Appraiser's unclear description of the highway's abandonment.	Exhibit I
	October 20 th	City of Palm Bay to County Commissioner	The City inquires whether additional information has been obtained to determine the property's ownership, now appearing in the tax rolls under the name of Brevard County	Exhibit J
	October 26 th	City of Palm Bay to Brevard County Attorney	City is informed by Mr. Williamson, County Commissioner, that the County Attorney is handling the matter. The City seeks information on the determination of property ownership	Exhibit K
	November 9 th	Brevard County Deed	Quit Claim Deed from Brevard County to Palm Bay made	Exhibit L

A

SRD NO. 128-1
SECTION 70010-2277
STATE ROAD 5
COUNTY BREVARD INDEXED LEGAL

<u>B</u>	<u>A</u>
CHECKED	FILED

RIGHT OF WAY EASEMENT

404

KNOW ALL MEN BY THESE PRESENTS that WILLIAM R. PIERPONT and IDA PIERPONT, his wife, as Grantors, in consideration of One Dollar and other valuable considerations to them in hand paid, receipt whereof is acknowledged, do hereby grant and convey unto the STATE OF FLORIDA, as Grantee, and its assigns, a perpetual and exclusive easement for right of way for public road purposes over, under, upon and across the following described lands situate in BREVARD County, Florida, to-wit:

That part of:

Let 4, Block 3, Flat of Palm Bay, being a part of Section 24, Township 28 South, Range 37 East, recorded in Plat Book 2, page 3, public records of Brevard County, Florida, except right of way of State Road 5 (formerly State Road 4), together with riparian rights to said property;

lying within 110 feet Northeastly of a Base Line of Right of Way for State Road 5, Section 70010; said Base Line being described as follows:

Commencing on an Easterly extension of the North line of Lot 5, Block "M", Hiawatha Gardens, as recorded in Plat Book 6, page 46, public records, Brevard County, Florida, at a point 2.72 feet Easterly along said line from the Northeast corner of said Lot 5, said point being on the arc of a curve concave to the Northeastly and having a radius of 3274.17 feet; thence from a tangent bearing of South 26°32'42" East, run Southeastly along said curve thru a central angle of 8°08'18", a distance of 465.04 feet to end of curve; thence South 34°41' East 552.30 feet thence North 55°19' East, 52 feet for the POINT OF BEGINNING of this Base Line description; From said Point of Beginning run South 34°41' East, 429.33 feet to the beginning of a curve concave to the Northwesterly and having a radius of 1432.69 feet; thence along said curve thru a central angle of 34°37', a distance of 865.42 feet to the end of curve; thence South 0°04' East, 667.05 feet to the beginning of a curve concave to the Northeastly and having a radius of 1910.08 feet; thence along said curve thru a central angle of 48°57', a distance of 1365 feet to the end of said curve and the end of this Base Line description.

The land herein described contains 680 square feet, more or less,

STATE ROAD DEPARTMENT OF FLORIDA
DIVISION OF RIGHTS OF WAY
DESCRIPTION APPROVED
MAR 7 1961

40
5 1/2
95

TO HAVE AND TO HOLD the same unto said Grantee and its assigns, together with the right to enter upon said land and construct and maintain a public road thereon, with all such fills, cuts, drains, ditches and other incidents which the Grantee may deem necessary or convenient in connection therewith, and together with immunity unto the said Grantee from all claims for damage to Grantors' contiguous lands, if any, arising from or growing out of such construction and/or maintenance.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals this 25th day of April, 1961.

Signed, sealed and delivered in presence of:

Robert L. Lee
Walter A. Mace

William R. Pierpont (Seal)

Ida Pierpont (Seal)

STATE OF Florida
COUNTY OF Brevard } ss.

Before me personally appeared William R. Pierpont
and Ida Pierpont, his wife, to me well known
and known to me to be the individuals described in and who executed the foregoing instrument, and acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal this 25th day of April, 1961.

Robert L. Lee
Notary Public in and for the State of Florida
My commission expires

(NOTARIAL SEAL)

FILED AND RECORDED
BREVARD COUNTY, FLA.
VERIFIED

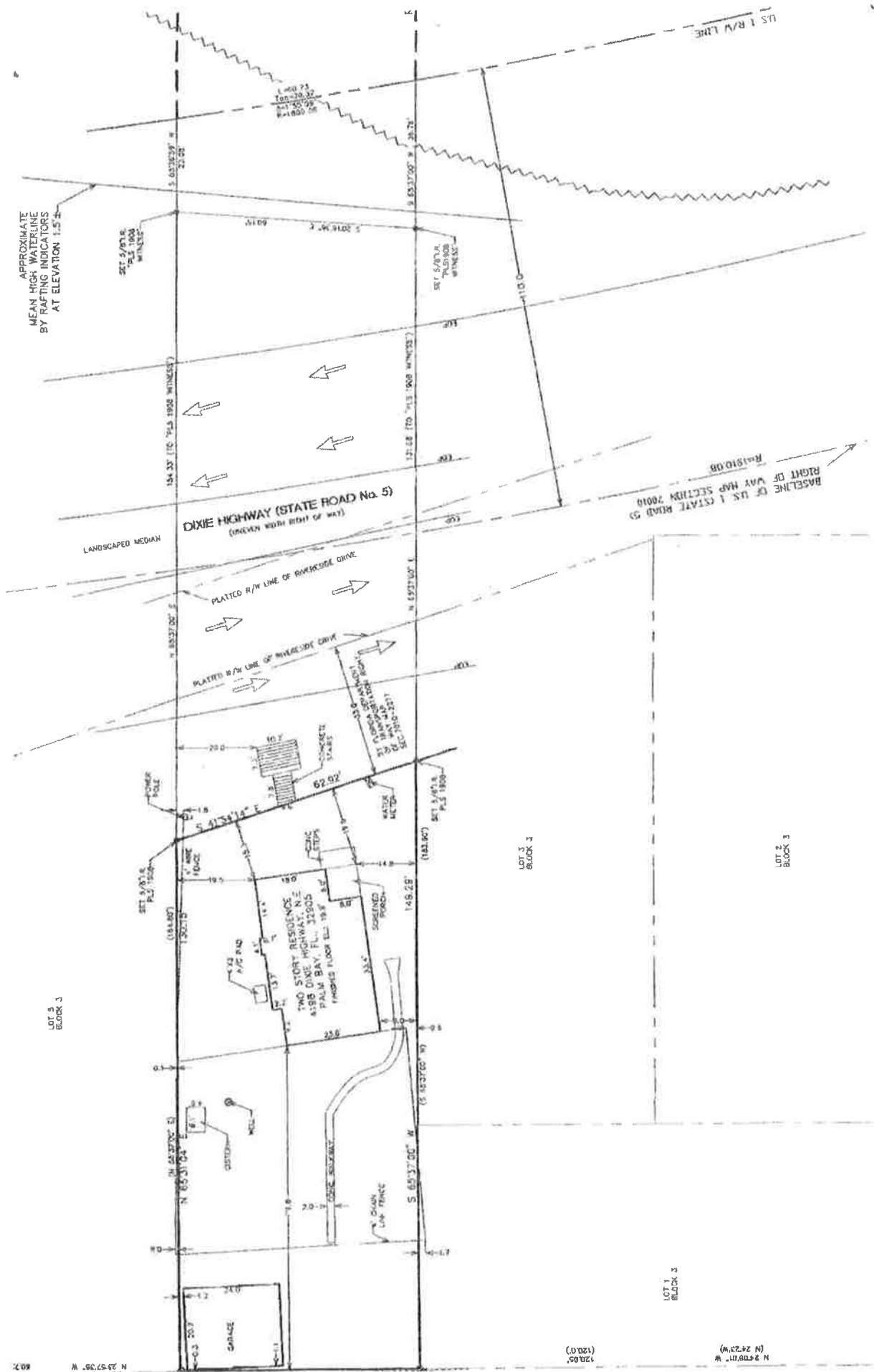
260482

1961 MAY 9 PM 3 20

For
Sta
rec
an
int
for
Sta
int
That

W. R. Pierpont

RI



DATE April 16, 1965
 FROM Richey Green
 TO Mr. Jay Brown - Attn: Mr. Rolfe Mickler
 COPIES TO Mr. Willard Peebles
 Mr. Lawrence Robbins
 SUBJECT Section 70010-(3277)

OFFICE COMMUNICATION

FLORIDA STATE ROAD DEPARTMENT

DELAND

*8d. memo for Abandon
 5-17-65*

We finished the above numbered job some time ago and there is one short stretch down in Palm Bay that we wish to abandon to Brevard County.

We wish to abandon that part lying outside of fifty feet (50') westward from the south bound lane between Hickory Avenue (M. P. 13.801) and Kinney Avenue (M. P. 14.134).

We are enclosing three prints of the location sketch map covering the section to be abandoned to the County.

We will appreciate your further handling of this request.

Richey Green

RG:d

Encls.

*14.134 ✓
 13.801
 .333 Add*

*14.222
 13.801
 .421 Abandon*

C

DATE August 5, 1965
FROM P. N. Pappas
TO Mr. J. E. Warnock

DMP

COPIES TO Mr. H. P. Boggs

SUBJECT Abandonment - State Roads
Section 70010

OFFICE COMMUNICATION
FLORIDA STATE ROAD DEPARTMENT

RECEIVED

APR 21 2022

CITY OF PALM BAY
PUBLIC WORKS

Attached for your information is copy of official notice
of abandonment of a portion of SR 5, from Hickory Avenue
to Kinney Avenue, which was relocated by new construction.

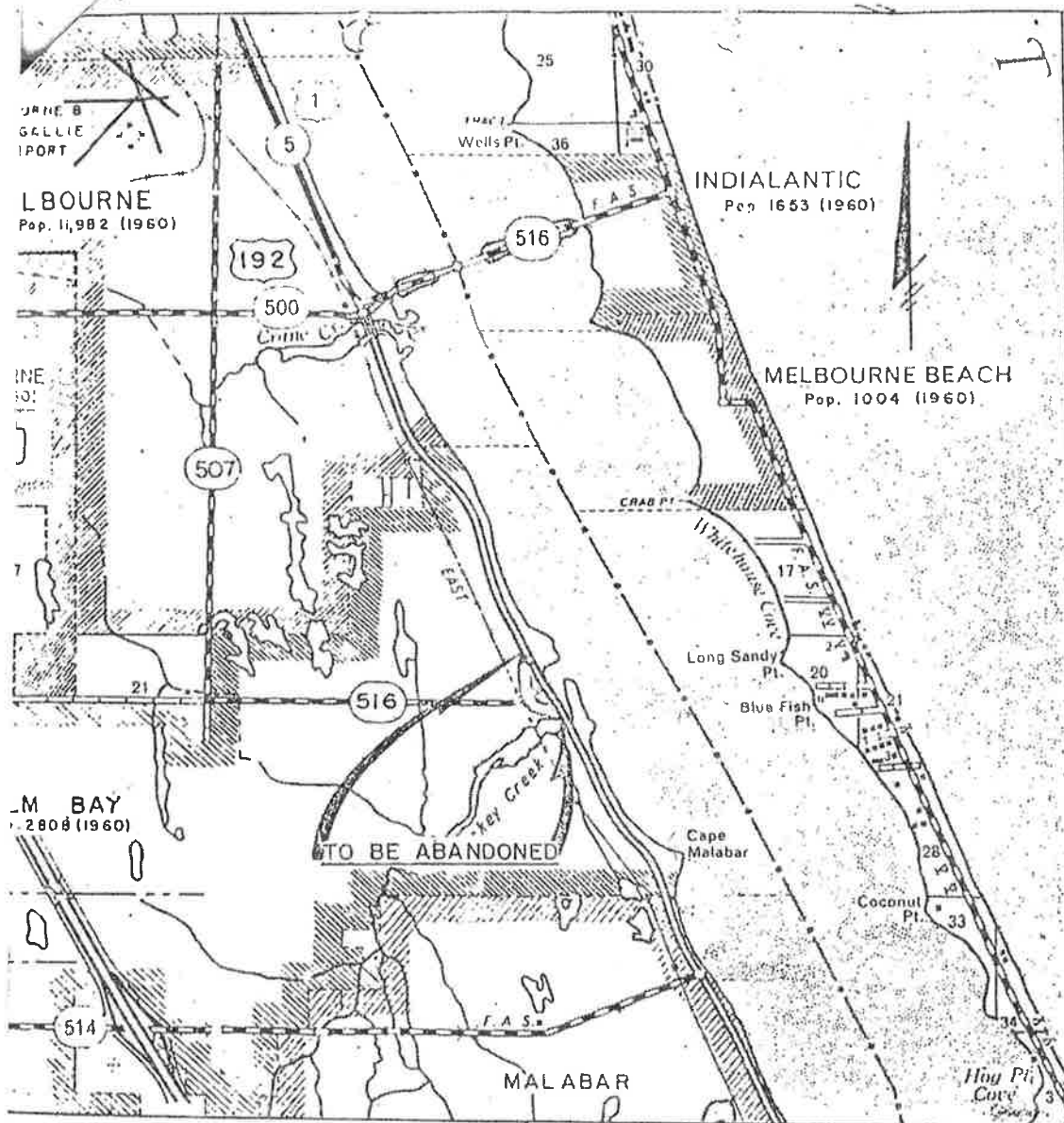


PNP/aj
Attach.

RECEIVED

AUG 6 1965

STATE ROAD DEPT.
MAINT. OFFICE
COC



LEGEND
 RETURNED TO CITY
 OTHER ROADS

FLORIDA
 STATE ROAD DEPARTMENT
 BREVARD COUNTY
 PORTION OF STATE ROAD 5 TO BE
 RETURNED TO CITY
 SCALE: 1" = 1 MILE

DATE _____ SIGNED _____

(D)

FLORIDA STATE ROAD DEPARTMENT

FLOYD E. POWEN
Chairman

MEMBERS
VINCENT PHILIP NUCCIO TAMPA
C. WILLIAM BEAUFORT JACKSONVILLE
JAMES LEE CRESTVIEW
CHELSEA J. GEMERCHIA MIAMI
WILLARD PEEBLES WILDBOOD

DELAND, FLORIDA
July 28, 1966

Hon. Louis A. Burn
Mayor, City of Palm Bay
Palm Bay, Florida

Re. Section 70010-(2277)

Dear Mayor Burn:

We have investigated your request furnished us in Resolution No. 66-17, dated June 16, 1966, for the State Road Department to convey to the City of Palm Bay a parcel of land described as lying in Government Lots 2 and 3, Section 24, Township 28 South, Range 37 East, Brevard County.

The records of this office indicate that the State Road Department acquired the described property from numerous individual owners for the improvement of State Road 5, the interest acquired being a right of way easement and not including or impairing the riparian rights of the owners. Therefore, the interest as held under these instruments can not be conveyed to the City of Palm Bay.

Yours very truly,



C. A. Benedict
District Engineer

RECORDED
cc: Chairman, Floyd Powen
and Mr. Willard Peebles

FLORIDA STATE



ROAD DEPARTMENT

MEMBERS

FLOYD B. BOWEN
CHAIRMAN

TALLAHASSEE

VINCENT PHILIP NUCCIO
C. WILLIAM BEAUFORT
JAMES LEE
CHELSIE J. SENERCHIA
WILLARD PEEBLESTAMPA
JACKSONVILLE
CRESTVIEW
MIAMI
WILWOOD

July 29, 19-Safety-5

Mr. Curtis R. Barnes
Clerk of Circuit Court
Brevard County
Titusville, FloridaMr. Lawrence J. Robbins
City Clerk
Palm Bay, Florida

Gentlemen:

Subject: State Road Abandonment

The State Road Department recently completed construction on the relocation of a portion of old SR 5 from Hickory Avenue to Kinney Avenue in Palm Bay and the State Road Board at its meeting on May 27, 1965, resolved to disclaim to Brevard County and/or City of Palm Bay that portion of the old road relocated by new construction.

You are hereby officially advised of this action of the Board and informed that the State Road Department has abandoned this portion of road from the State Highway System. The approximate location is shown in heavy solid band on the attached map.

Very truly yours,

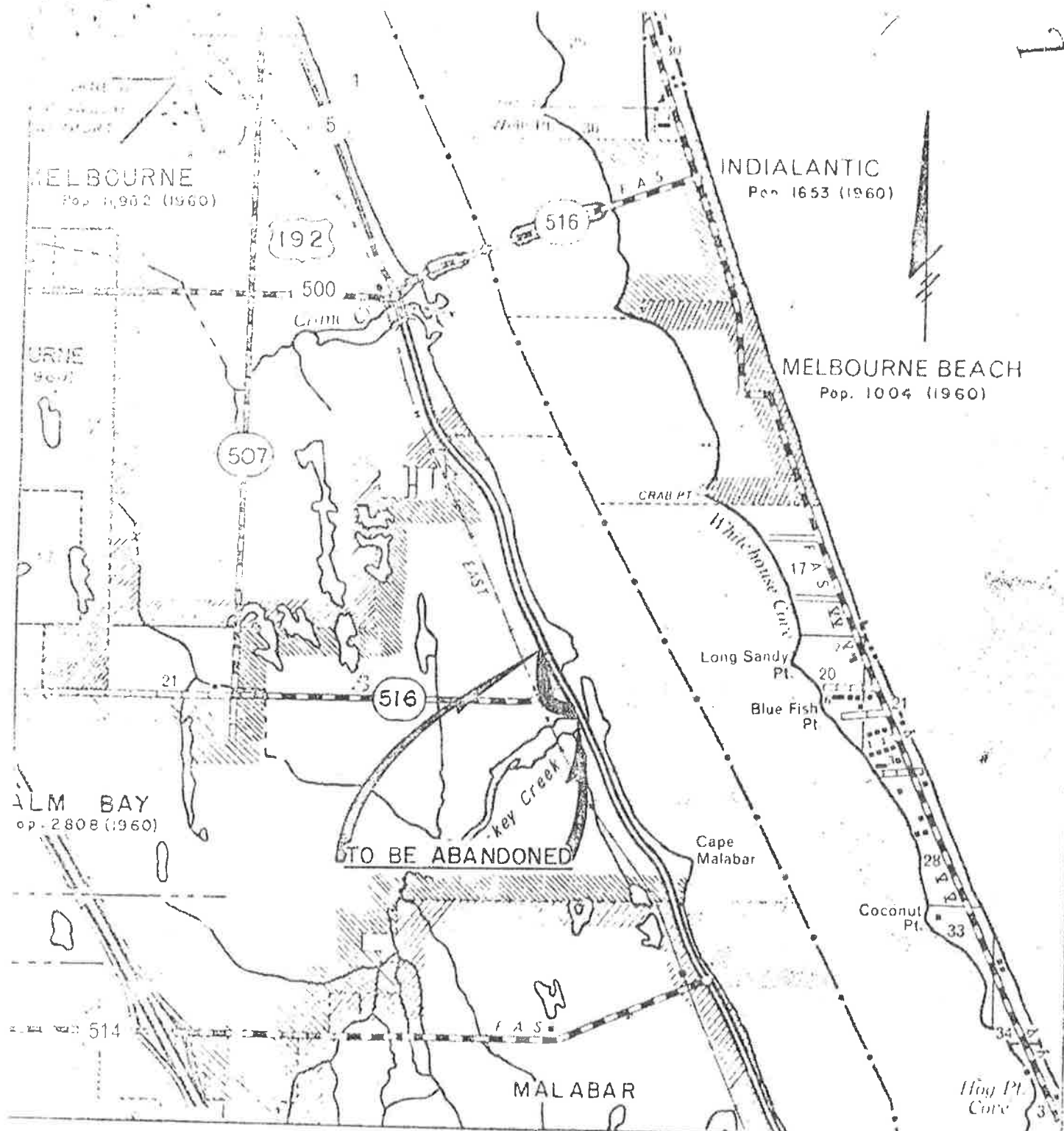
Floyd B. Bowen
Chairman

FB:ld

Enclosure

cc: Mr. J. W. Brown
Mr. R. G. L'Amoreaux
Mr. H. N. Yancey
Mr. Richey Green

C O D V



RECEIVED OCT - 3 1977

Florida

REUBIN O'D. ASKEW
GOVERNOR



Department of Transportation

Haydon Burns Building, 805 Suwannee Street, Tallahassee, Florida 32304, Telephone (904) 488-6772
TOM WEBB, JR.
SECRETARY

September 28, 1977

Ms. Alice Huffer
City Clerk
City of Palm Bay
Post Office Drawer 338
Palm Bay, Florida 32905

Dear Ms. Huffer:

Enclosed are portions of the official minutes of the Florida State Road Board meeting of May 27, 1965 in which portions of U.S. 1 in Brevard County were added and deleted from the State Highway System.

In addition to the minute records, I also am enclosing related correspondence which I hope will be helpful to you in determining ownership of the vacated right of way.

If I can help you in any other matter involving the Florida Department of Transportation, please contact me.

Sincerely,

Terry B. Graham

(Mrs.) Terry B. Graham
Information Office

TBG:pw

Enclosures



CFA
CLARK MAXWELL
APPRAISER

RECEIVED MAY - 5 1978

OFFICE OF THE

BREVARD COUNTY PROPERTY APPRAISER

P.O. Drawer 'O'
Brevard County Courthouse
Titusville, Florida 32780

Telephone
(305) 269-8511

April 17, 1978

Mrs. Alice Huffer,
City Clerk
City of Palm Bay
175 NW Palm Bay Rd.
Palm Bay, FL 32905

Dear Mrs. Huffer:

This letter is in answer to your questions concerning city property as it appears on the county tax roll.

14-28-37-76-P "The Shire" a subdivision shown in Plat
R.1 Book 24 Pg. 47 includes three parks and
R.2 a dedication of those parks to "The Public".
Since the property is within the city of
Palm Bay, the public authority is con-
sidered to be the city.

14-28-37-50-2-19 This office has not done an in-depth
20 search of the public records to de-
termine a chain of title to these lots.
POWELLS S/D Our records show that the city owns Lot
19 by ORB 630 Pg 496, and that lot 20 is
owned by Claudia Brown, by ORB 1054 Pg
866. Copies of both deeds are enclosed.

24-28-37-25E Again, our office has not done an in-depth
search of the public records, but show
PLAT OF TILLMAN that our Lot E was deeded from the City
to Frank Laibl by ORB 185 Pg 369, and
that no deed from Laibl to anyone for Lot
E has been recorded since. A copy of
185/369 is enclosed.

24-28-37-25-1-1.01 As to the legal description, this office
agrees that this property should correct-
ly be described as being part of lot N,
and the necessary change has been made.
PLAT OF TILLMAN It also appears that the county still
That part of Blk 1 holds title to this parcel based on Deed
lying East of Old Book 227 Pg 468. This office has made
US-1 the ownership change on its records.



CLARK MAXWELL
APPRAISER

OFFICE OF THE
BREVARD COUNTY PROPERTY APPRAISER

P.O. Drawer 'O'
Brevard County Courthouse
Titusville, Florida 32780

Telephone
(305) 269-8511

24-28-37-27-3-4.01
PLAT OF PALM BAY MAP NO. 1
That part of Blks 3 & 5
lying E of Old US Hwy 1
R/W

The statements in the information supplied by the Department of Transportation are not clear as to whom the highway was actually abandoned to. Also, they don't supply an instrument officially vacating and abandoning the highway. Since its common knowledge that the road was abandoned, and since the property is in the city, it is considered by this office to be city owned.

As to the park dedications, our records have been changed to reflect the city ownership. In four cases, the entire subdivision is carried as a single entry on the tax roll with the dedicated tracts included. When these subdivisions are split into individual lots and tracts, the city ownership will be worked.

The county deed to the city for Knecht Park was not recorded until January 19, 1978. The property will be listed on the 1978 roll as city owned.

In the questionable ownership areas (the chamber of commerce site and the abandoned highway) it would probably be in the city's best interests to obtain Quit-Claim deeds from the county.

I thank you for bringing these problems to our attention, and I hope my explanations are clear.

If you have further questions, please advise.

Sincerely,

Terry L. Strickland

TERRY L. STRICKLAND, C.F.E.
SUPERVISOR
MAP & DEED DEPARTMENT

/bmr

encl:



CITY OF

PALM BAY

FLORIDA

175 NW PALM BAY RD. • 32905

May 30, 1978

The Honorable Val Steele
County Commissioner
1311 E. New Haven Avenue
Melbourne, FL 32901

Dear Mr. Steele:

Enclosed please find a copy of a letter from Mr. Terry Strickland regarding property within the City of Palm Bay. As you will note, there is question as to the ownership of those parcels of land described as:

24-28-37-25-1.01
Plat of Tillman, That part of Block 1
lying east of Old US Highway No. 1, and

24-28-37-27-3-4.01
Plat of Palm Bay Map No. 1, That part
of Blocks 3 and 5 lying east of Old US
Highway No. 1 right-of-way.

These parcels have been listed on the tax rolls for some time as owned by the City of Palm Bay. Enclosed herewith is information on file with the City on each parcel.

It appears that the first parcel described above was never deeded to the City based on Deed Book 227, Page 468. Our Chamber of Commerce building is located on this parcel of land.

The second parcel described was abandoned by the State, but as mentioned in Mr. Strickland's letter, it was not clear as to whom the highway was actually abandoned to.

Mr. Strickland recommended obtaining quit-claim deeds to the two parcels of land from the County. Therefore, I am asking that this matter be scheduled as an agenda item for the next regular Commission meeting to request the County to execute quit-claim deeds to the City of Palm Bay for these two parcels of land.

Mr. Val Steele


-2-

May 30, 1978

Your assistance in this matter will be greatly appreciated.
If you should desire additional information, please advise.

Sincerely,

CITY OF PALM BAY

A handwritten signature in cursive script, appearing to read "Alice Huffer".

Alice Huffer
City Clerk

aih
Enclosures

2



CITY OF

PALM BAY

FLORIDA

- 175 NW PALM BAY RD. • 32905

October 20, 1978

Mr. Don Williamson
C/O Commissioner Val Steele
1311 E. New Haven Avenue
Melbourne, FL 32901

Dear Mr. Williamson:

Several months ago, we discussed in my office the possibility of determining who owned the following described property, located within the City of Palm Bay:

24-28-37-27-4.01
Plat of Tillman, that part of Blocks 3 and 5
lying east of Old US Highway No. 1.

At that time, you stated you would do further research on the matter. Have you been able to obtain any information which would determine who actually owns the property?

We also discussed the parcel of land located just north of the aforementioned property, legally described as follows:

24-28-37-25-3-1.01
Plat of Tillman, that part of Block 1 lying
east of Old US Highway No. 1.

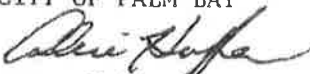
Apparently it has been determined that this property belongs to the County as it now appears on the tax rolls in the name of Brevard County.

Would it be possible to schedule this particular piece of property as an agenda item for a Board of County Commissioners' meeting to ask for their consideration in deeding the property and the building situated thereon (Palm Bay Chamber of Commerce building) to the City of Palm Bay?

We appreciate your cooperation and assistance in the aforementioned matters and look forward to hearing from you soon.

Sincerely,

CITY OF PALM BAY


Alice Huffer
City Clerk

aih



CITY OF
PALM BAY
FLORIDA

175 NW PALM BAY RD. • 32905

October 26, 1978

Mr. Bob Guthrie, Attorney
Brevard County
50 South Nieman Avenue
Melbourne, FL 32901

Dear Mr. Guthrie:

Several months ago, I discussed with Mr. Don Williamson, of Commissioner Steele's office, the possibility of determining who owned the following described property located within the City of Palm Bay:

24-28-37-27-4.01
Plat of Tillman, that part of Blocks 3 and 5
lying east of Old US Highway No. 1.

We also discussed the parcel of land located just north of the aforementioned property, legally described as follows:

24-28-37-25-3-1.01
Plat of Tillman, that part of Block 1 lying
east of Old US Highway No. 1.

I spoke with Mr. Williamson today and he advised me that your office was now handling the matter.

Apparently, it has been determined that the property within Block 1 belongs to the County as it now appears on the tax rolls in the name of Brevard County. Could this particular matter be scheduled as an agenda item for a Board of County Commissioners' meeting to ask for their consideration in deeding the property and the building situated thereon (Palm Bay Chamber of Commerce) to the City of Palm Bay?

Have you been able to determine who actually owns the property that is part of Blocks 3 and 5, lying east of Old US Highway No. 1?

We appreciate your cooperation and assistance in the aforementioned matters and look forward to hearing from you soon.

Sincerely,

Alice Huffer
City Clerk

aih

CC: Billy Arnold

Prepared by: William H. Arnold, Esquire
P. O. Box 37
Titusville, Florida 32780

RECORDED
CLERK OF DISTRICT COURT
BREVARD COUNTY, FLA.

4

COUNTY DEED

THIS DEED, made this 9th day of November, 1978, by
BREVARD COUNTY, a political subdivision of the State of Florida,
Party of the First Part, and CITY OF PALM BAY, a municipal
corporation existing under the laws of the State of Florida, Party
of the Second Part:

WITNESSETH, that the said Party of the First Part, for and
in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) to
it in hand paid by the Party of the Second Part, receipt whereof
is hereby acknowledged, has granted, bargained and sold to the
Party of the Second Part, his heirs, successors and assigns forever,
the following described land lying and being in Brevard County,
Florida:

Parcel No. 1: That part of Lot N lying East of old
U. S. Highway No. 1 (formerly Palm Bay Boulevard) and
west of new U. S. Highway No. 1 (State Road No. 5),
PLAT OF TILLMAN, according to the plat thereof as
recorded in Plat Book 2, Page 4, Public Records of
Brevard County, Florida.

Parcel No. 2: Vacated portion of old U. S. Highway
No. 1 located in the City of Palm Bay, Section 24,
Township 28 South, Range 37 East, Brevard County,
Florida, from Hickory Avenue (M.P. 13.801) to Kinney
Avenue (approximately M.P. 14.222).

In the event the subject property is at any time vacated or
abandoned, or, in the event said property is not utilized
for a Chamber of Commerce building or other public purpose,
then, in that event, all right, title and interest of the
City of Palm Bay, its successors and assigns, in and to
the subject property shall immediately revert and revest in
Brevard County, Florida.

275511

IN WITNESS WHEREOF, the said Part of the First Part has caused
these presents to be executed in its name by its Board of County
Commissioners, acting by the Chairman or Vice Chairman of said
Board, the day and year aforesaid.

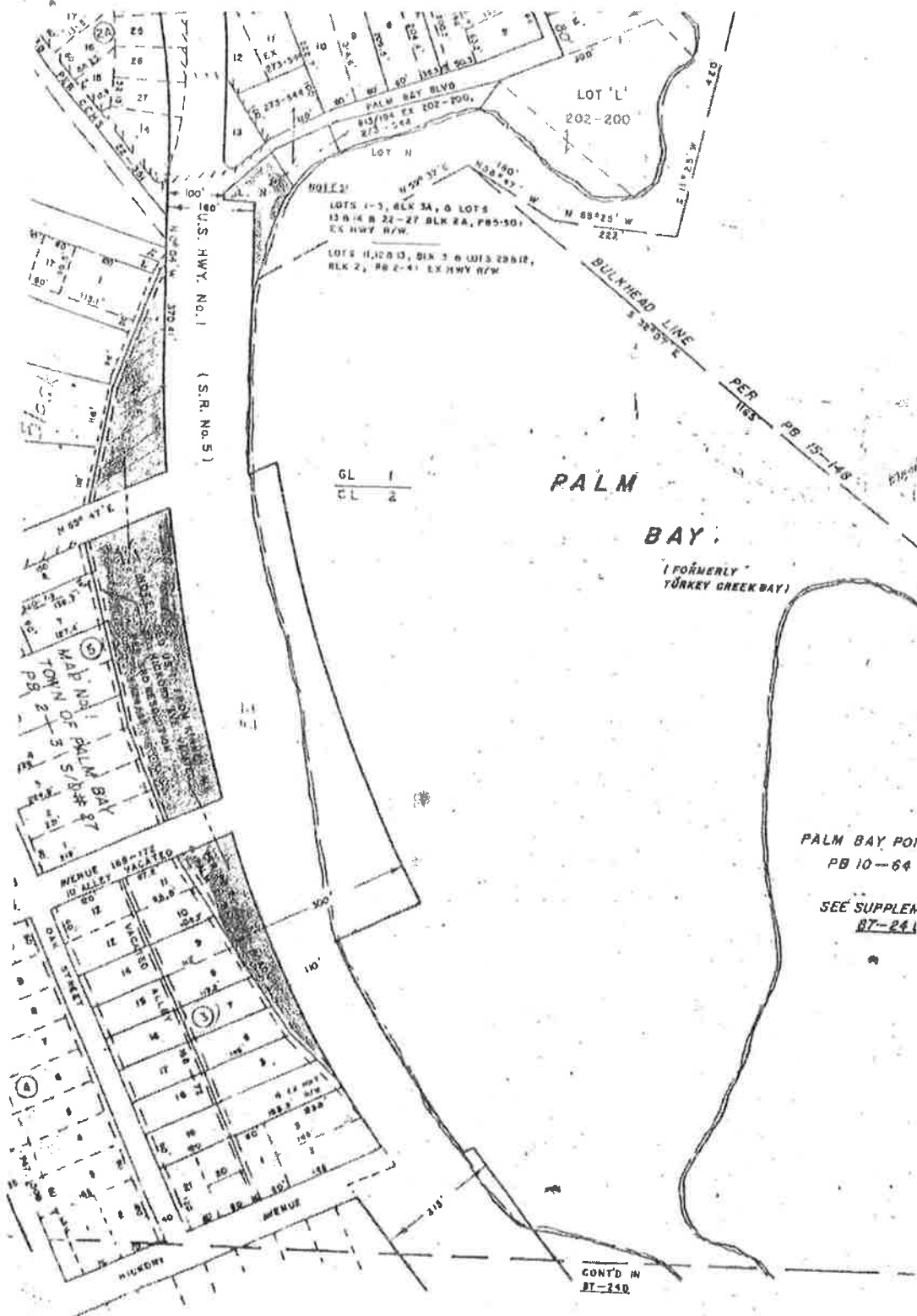
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By Lee Wenner
Lee Wenner, Chairman

ATTEST:
R. C. Winstead, Jr.
R. C. Winstead, Jr., Clerk

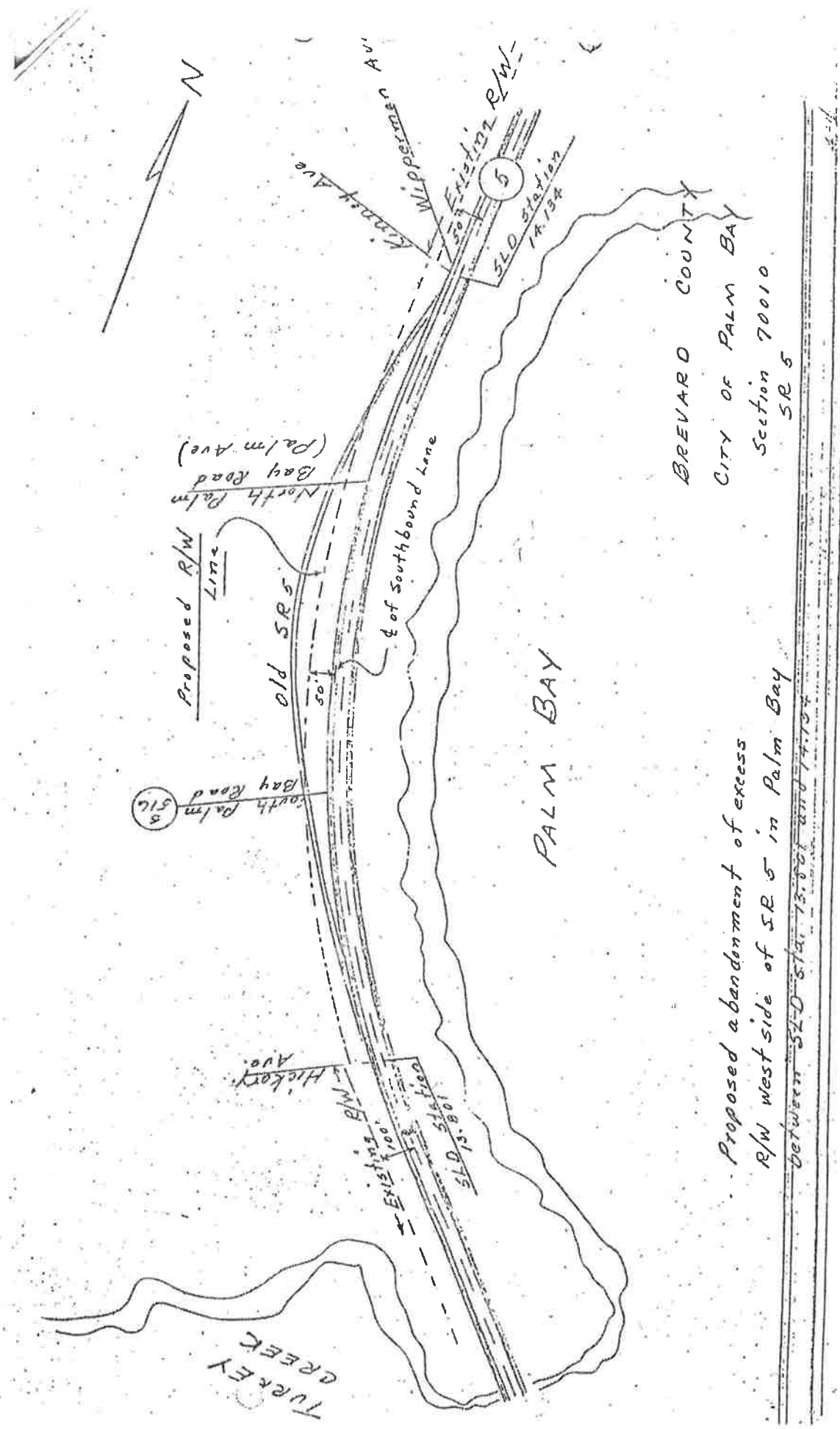
OFFICIAL SEAL

1978 NOV 20 PM 1:44



87-24 AB

Don Williamson



Proposed abandonment of excess

R/W west side of SR 5 in Palm Bay

between SLD 13.801 and 14.134

BREVARD COUNTY

CITY OF PALM BAY

Section 70010

SR 5

