

CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT is made and entered into between **RICHARD E. FAUNDA & ELIZABETH K. FAUNDA**, jointly referred to herein after as Seller, whose address is 1309 West Main Street, Leesburg, FL 34748, and **THE CITY OF LEESBURG, FLORIDA**, Buyer, whose address is P.O. Box 490630, Leesburg, FL 34749 - 0630, who hereby agree that Seller shall sell and Buyer shall buy the following described real property (referred to as the "Property") upon the following terms and conditions:

- I. DESCRIPTION. (a) The legal description of the Property in the County of Lake, State of Florida, is as follows:

From the Northeast corner of Lot 1, Block 20, in the City of Leesburg, Florida, recorded in Plat Book 7, Page 19 of the Public Records of Lake County, Florida. Run West 10.00 feet to the intersection of the West Right-of-Way of Twelfth Street as now exists and the South Right-of-way of Main Street; run thence southerly along the West Right-of-Way of said Twelfth Street 138.37 feet; run thence S 35°23'33" W, along the Westerly Right of Way of Twelfth Street 80.05 feet; run thence S 34°31'20" W along the Westerly Right of Way of Twelfth Street 20.43 feet to the Point of Beginning; run thence S 34°31'20" W along the Westerly Right of Way of Twelfth Street 36.10 feet to the Northerly line of Bonaire Heights Subdivision, according to the Plat thereof as recorded in Plat Book "6", Page 60 of the Public Records of Lake County, Florida; run thence Westerly along the Northerly line of Block "A" of said Bonaire Heights Subdivision (said line having a Radius of 788.50 feet) through a central angle of 44°19'28", an arc distance of 609.99 feet, a chord bearing and distance of S 78°21'32" W 594.09 feet; thence N 62°42'21" W 59.00 feet to a point that is 30 feet when measured at right angles there to the existing centerline of the S.C.L. railroad; thence run Northerly parallel with and 30 feet from said centerline of S.C.L. railroad (said line having a radius of 917.15 feet) through a central angle of 16°34'29", an arc distance of 265.40 feet, a chord bearing and distance of N 19°39'56" E, 764.48 feet; run thence S 70°55'59" E 65.16 feet; run thence N 64°01'56" E 65.34 feet; run thence S 47°17'37" E 93.74 feet; run thence S 79°38'50" E, 383.78 feet to the aforesaid westerly Right of Way of Twelfth Street and the Point of Beginning. Containing 1.59 acres. Subject to all easements, Rights of Way and restriction of record, if any.

- (b) The street address of the Property is: South 12th Street, Leesburg, Florida.

- II. PRICE AND TERMS: The purchase price for the Property and terms of payment are:

PURCHASE PRICE:	<u>\$120,000.00</u>
(a) DEPOSIT to be held in escrow by McLin & Burnsed P.A.:	<u>\$ 500.00</u>
(b) Mortgage to be assumed by Buyer in the approximate amount of:	<u>\$ 0.00</u>
(c) Purchase Money Mortgage under terms set forth below in the amount of:	<u>\$ 0.00</u>
(d) BALANCE TO CLOSE to be paid at Closing by cashier's check or wire transfer:	<u>\$119,500.00</u>

III. **TIME FOR ACCEPTANCE, EFFECTIVE DATE:** If this offer is not fully executed by all parties on or before November 29, 2011, the deposit is to be returned to Buyer and the offer is to be considered withdrawn. The Effective Date of this Contract shall be the date when the last party to sign affixes his or her signature hereto.

IV. **FINANCING:** There will be no seller or third party financing. Buyer will pay cash at closing for the Property.

V. **TITLE EVIDENCE:** Not later than 15 days after the Effective Date, Seller shall at Seller's expense deliver to Buyer or Buyer's attorney a commitment for issuance of an owner's policy of title insurance to Buyer at closing, showing title to be in accordance with the terms of Standard A below. Seller shall pay the premium for the owner's policy of title insurance at closing.

VI. **CLOSING DATE:** This transaction shall be closed on or before December 21, 2011, unless that date is extended by other terms of this Contract.

VII. **RESTRICTIONS, EASEMENTS AND LIMITATIONS:** Buyer agrees to accept title subject to zoning, restrictions, prohibitions and other limitations and requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record; taxes for the year of closing and subsequent years; assumed mortgages and purchase money mortgages (if applicable), and: NONE. However, none of the foregoing shall prevent the use of the Property for the purpose of public right of way.

VIII. **OCCUPANCY:** Seller warrants that there are no persons in occupancy of the Property other than Seller. Seller agrees to deliver occupancy of the Property at the time of closing.

IX. **TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Any typewritten or handwritten provisions added to this Contract, once initialed by all parties hereto, shall control over all originally printed provisions in conflict therewith.

X. **FIRPTA:** The parties shall comply fully with the Foreign Investment In Real Property Tax Act and applicable regulations, which could require Seller to provide additional funds at closing to meet withholding requirements. If Seller is not a "foreign person" as defined in FIRPTA then Seller shall provide an affidavit to that effect in compliance with FIRPTA at closing.

XI. **ASSIGNABILITY:** This Contract may not be assigned by Buyer or any of Buyer's duties hereunder delegated to any other person or entity without the prior, written consent of Seller. As a condition of approving such an assignment or delegation, Seller may require the potential assignee to submit financial and personal information sufficient to demonstrate that the proposed assignee is able to perform the duties of the Buyer hereunder. No such assignment of rights or delegation of duties by Buyer hereunder shall relieve Buyer of liability to Seller under this Contract unless Seller specifically so agrees in writing.

XII. **COMMISSION:** Buyer and Seller warrant, for each other's benefit and reliance, that neither has engaged the services of any licensed real estate broker or salesperson in connection with this transaction and that no real estate brokerage commission will be due on this transaction. If a claim for such a commission is asserted, the party whose actions or failure to act led to the claim shall indemnify the other party and hold it harmless against any loss or damage as a result of the claim, along with reasonable attorneys' fees and court costs incurred by the indemnified party due to the claim.

XIII. **STANDARDS GOVERNING THIS TRANSACTION:** This transaction shall be governed by the following Standards:

A. **EVIDENCE OF TITLE:** The title insurance commitment shall be issued by a title insurer licensed in Florida, shall show marketable title to be vested in the Seller, and shall agree to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, subject only to liens, encumbrances, exceptions and qualifications set forth in this Contract and those which shall be discharged by Seller prior to closing. Marketability of title shall be determined in accordance with the Title Standards adopted by the Florida Bar, and in accordance with law. Buyer shall have 5 days from receipt of the title insurance commitment to examine it. If Buyer finds the title to be defective, Buyer shall within 3 days thereafter notify Seller in writing specifying such defects. If the defects render title unmarketable, Seller shall have 120 days from receipt of notice within which to remove the defects, failing which Buyer may either accept title as is or demand a refund of Buyer's deposit(s) which shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of any further obligation to one another under this Contract. If title is found unmarketable, Seller shall use diligent effort to correct the defects within the time provided, including the bringing of any necessary suits.

B. **SURVEY:** Buyer, at Buyer's expense, within the time allowed for delivery of the title insurance commitment and its examination, may have the Property surveyed by a registered Florida land surveyor. If the survey shows any encroachment onto the Property or that improvements on the Property encroach on setback lines, easements, lands of others, or that any restrictions, covenants of this Contract, or governmental regulations, applicable to the Property, are violated, Buyer shall give written notice thereof to Seller within 3 days of receipt by Buyer of the survey, and such defects shall be treated as title defects and shall be subject to the terms set forth in Standard A for the curing of such title defects.

C. **INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Property sufficient for the intended use described in Paragraph VII of this Contract, and that there are sufficient utility easements serving the property for such use. Title to the easements for ingress, egress and utilities shall be in accordance with the requirements of Standard A.

D. **LEASES:** Seller warrants that no person or entity other than Seller has or claims any right to possess the Property or any portion thereof under any lease, license, rental agreement or other arrangement of any kind, verbal or written.

E. **LIENS:** Seller shall furnish to Buyer at closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of lien or potential lienors known to Seller, and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding closing. If there have been repairs or improvements within that time, Seller shall deliver releases or waivers of mechanics' liens from all general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could be the basis for a lien on the Property or a claim for damages have been paid in full.

F. **PLACE OF CLOSING:** Closing shall be held in the county where the Property is located, at the office of the lawyer or closing agent designated by Seller.

G. **TIME:** Time is of the essence of this Contract. Time periods of less than 6 days hereunder shall exclude Saturdays, Sundays and state or national legal holidays, and any time period hereunder which would expire on Saturday, Sunday or a legal holiday shall be extended to 5:00 p.m. on the next business day.

H. **HAZARDOUS WASTES:** Seller represents and warrants that to the best of Seller's knowledge, information and belief, the Property has not been used to manufacture, store, handle, transport, or dispose of any toxic or hazardous waste or substance as defined in and regulated by CERCLA and

related laws and regulations, and that the Property is free and clear of all contamination by such substances and liens, claims or pending enforcement proceedings concerning contamination by or cleanup of such substances. Buyer is aware of the possibility of contamination of the Property or portions thereof as a result of arsenic on the adjacent railroad right of way or the migration of petroleum contamination from adjacent property where a petroleum bulk plant formerly was located, and agrees that it shall not have any right or claim against Seller by reason of those items.

I. **EXPENSES:** Seller shall pay for documentary stamps on the deed, the costs for the title search and examination, and the owner's commitment and policy of title insurance, and the recording of corrective instruments. Buyer shall pay for the recording of the deed and for the appraisal of the Property prepared by Larry King.

J. **PRORATIONS AND CREDITS:** Taxes shall be prorated through the date of closing based on the gross amount of taxes due for the tax year of closing, if that figure is available, otherwise the proration shall be based on the gross tax amount for the year preceding the date of closing, and the Seller's share of the prorated taxes shall be paid out of the closing proceeds to the Tax Collector at the time of closing, whereupon the Property shall be removed from the tax rolls. If additional taxes are due for the portion of the year of closing during which Seller owned the Property, as a result of changes in assessment or millage rate, or other reasons, the Seller shall pay such taxes when they are billed by the Tax Collector.

K. **SPECIAL ASSESSMENT LIENS:** Certified, confirmed and ratified special assessment liens as of the date of closing are to be paid by the Seller. Pending liens as of the date of closing shall be assumed by Buyer. If the improvement for which the pending lien was imposed has been substantially completed at closing, Buyer shall receive a credit at closing equal to the last estimate of the assessment for the improvement by the public body.

L. **ESCROW:** Any escrow agent ("Agent") receiving funds or equivalent is authorized to and does by their acceptance agree to deposit them promptly, hold them in escrow, and (subject to clearance) disburse them in accordance with the terms hereof. Failure of clearance shall not excuse performance by Buyer. If in doubt as to the disposition of any funds, Agent may hold them until the parties mutually agree to the terms of disbursement, or until a judgment of a court of competent jurisdiction determines the rights of the parties, or Agent may commence an action for interpleader and deposit the funds into the registry of the court, whereupon all liability of the Agent shall terminate, except for accounting for any items previously delivered out of escrow. In any suit between Buyer and Seller where Agent is made a party on account of acting in that capacity, or in any interpleader suit filed by Agent, the Agent shall recover reasonable costs and attorney's fees with such fees and costs to be assessed as court costs in favor of the prevailing party. Agent shall not be liable for misdelivery of any items out of escrow unless such misdelivery is due to willful breach by or gross negligence of Agent.

M. **ATTORNEY'S FEES AND COSTS:** In any litigation arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, including at trial, on appeal, in any proceedings in bankruptcy or insolvency, and in any proceedings to collect or enforce any judgment entered in other proceedings hereunder.

N. **FAILURE OF PERFORMANCE:** If Buyer fails to perform under this Contract, including the payment of all deposit(s) required, the deposit(s) paid by Buyer may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of all claims hereunder, whereupon Buyer and Seller shall be relieved of all obligations under this Contract. If, for any reason other than the failure of Seller to render title marketable or to cure survey defects after reasonable diligence, Seller fails, neglects or refuses to perform under this Contract, Buyer shall have the option either to receive the return of Buyer's deposit(s) as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of all claims

hereunder, whereupon Buyer and Seller shall be relieved of all obligations under this Contract, or to seek the remedy of specific performance.

O. **CONTRACT NOT RECORDABLE, PERSONS BOUND, AND NOTICE:** Neither this Contract nor any notice of it shall be recorded in any public records by Buyer, Seller or Broker. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits or requires, the singular shall include the plural and one gender shall include all. Notice hereunder shall be in writing and if sent to the intended recipient by certified mail, return receipt requested, all postage and fees prepaid, shall be effective 3 calendar days after mailing; otherwise, notice shall be effective only upon receipt by the addressee. Notice given by or to an attorney representing a party shall be as effective as notice given by or to that party.

P. **CONVEYANCE:** Seller shall convey title to the Property by warranty deed subject only to those matters listed in Paragraph VII or otherwise accepted in writing by Buyer prior to closing.

Q. **OTHER AGREEMENTS:** This Contract sets forth the entire understanding of the parties with regard to its subject matter. It supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, all of which are deemed to have merged into this Contract and to have been extinguished except to the extent specifically set forth herein. This Contract may not be amended orally, by implication, by course of conduct, or in any other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors. This Contract shall be construed in accordance with the laws of Florida and venue for any action or proceeding arising out of this Contract shall be in the county where the Property is located. This Contract shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this Contract in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth within this Contract.

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

IN WITNESS WHEREOF, the parties have set their hands and seals.

SELLER:

DATE: NOV 2, 2011


RICHARD E. FAUNDA

DATE: NOV 2, 2011


ELIZABETH K. FAUNDA

BUYER:
THE CITY OF LEESBURG, FLORIDA

DATE: _____

BY: _____
BILL POLK, Mayor

ATTEST: _____
BETTY RICHARDSON, City Clerk

APPROVED AS TO FORM AND CONTENT:

CITY ATTORNEY