

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made on _____, 2019, between JOSEPH H. WALSH, III, as PERSONAL REPRESENTATIVE TO THE ESTATE OF SAMUEL R. BURNEY whose address is _____, Jacksonville, Florida _____, ("Seller"), and CITY OF JACKSONVILLE, a consolidated government under the laws of the State of Florida, whose address is 117 West Duval Street, Jacksonville, Florida 32202, ("Buyer").

IN CONSIDERATION of the mutual covenants of the parties in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. AGREEMENT TO SELL AND CONVEY

Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions of this Agreement the real property described on Exhibit "A", together with all hereditaments pertaining to the property, including all subsurface rights, all development rights, any right, title, and interest of Seller to adjacent streets, roads, alleys, or rights-of-way, and any easements, express or implied, benefitting the property, all referred to in this Agreement as the "Property".

2. PURCHASE PRICE; ESCROW AGENT

- a. The purchase price to be paid by Buyer to Seller for the Property is \$200,000.00 (the "Purchase Price"), paid to an "Escrow Agent" acceptable to Buyer and Seller, at Closing by wire transfer or City warrant to Escrow Agent.
- b. The escrow of the Purchase Price shall be subject to the following provisions:
 - (i) The payment of the Purchase Price to Escrow Agent is for the accommodation of the parties. The duties of the Escrow Agent shall be determined solely by the express provisions of this Agreement. The parties authorize Escrow Agent, without creating any obligation on the part of Escrow Agent in the event this Agreement or the Purchase Price becomes involved in litigation, to deposit the Purchase Price with the clerk of the court in which the litigation is pending and thereupon Escrow Agent shall be fully relieved and discharged of any further responsibility under this Agreement. The undersigned also authorizes Escrow Agent, if it is threatened with litigation, to interplead all interested parties in any court of competent jurisdiction and to deposit the Purchase Price with the clerk of the court and thereupon Escrow Agent shall be fully relieved and discharged of any further responsibility hereunder.
 - (ii) Escrow Agent shall not be liable for any mistake of fact or error of judgment or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. Escrow Agent shall be entitled to rely on any instrument or signature believed by it to be genuine and may assume that any person purporting to give any writing, notice or instruction in connection with this Agreement is duly authorized to do so by the party on whose behalf such writing, notice or instruction is given.

- (iii) Escrow Agent shall not be liable to any party except for claims resulting from the negligence or willful misconduct of Escrow Agent. If the escrow is the subject of any controversy or litigation, the parties to the Agreement shall be responsible for any and all loss, cost, damage, liability or expense, including costs of reasonable attorneys' fees to which Escrow Agent may be put or which Escrow Agent may incur by reason of or in connection with such controversy or litigation for which they are legally responsible.
- (iv) The provisions of this paragraph apply to Escrow Agent only in his or her capacity as Escrow Agent. They do not apply to Escrow Agent in any other capacity, such as closing agent, title agent, or attorney.

3. APPROVAL OF THE JACKSONVILLE CITY COUNCIL

This Agreement is not effective until the date the Jacksonville City Council approves it and it is duly executed by the Mayor ("Effective Date"). If the Jacksonville City Council does not approve this Agreement by August 28, 2019, this Agreement shall be void and of no force and effect, and the parties shall owe no obligations to each other under the provisions of this Agreement.

4. TITLE AND SURVEY

a. Title.

- (i) Within twenty (20) days following the Effective Date of the Purchase and Sale Agreement, Buyer shall order at its cost a title commitment for the full amount of the Purchase Price from a title agent and title insurance underwriter acceptable to Buyer (the "Title Company"), agreeing to issue to Buyer upon the recording of the deed provided for in this Agreement, an ALTA fee policy of title insurance Form B with Florida revisions in the amount of the Purchase Price insuring Buyer's title to the Property (the "Title Commitment").
- (ii) Buyer will have 30 days after its receipt of the later of the Title Commitment and Survey (defined below) within which to notify Seller in writing of any conditions, defects, encroachments or other objections to title or Survey not acceptable to Buyer. Any matter disclosed by the Title Commitment (other than liens removable by the payment of money) or by the Survey not timely specified in Buyer's written notice to Seller shall be a "Permitted Exception". Seller shall have a period of 10 days after receipt of Buyer's title objection letter in which to elect in writing whether to cure the title and survey objections; provided, however, that Seller is not obligated to cure or institute any litigation to cure other than liens arising through Seller and removable by the payment of money, which Seller shall be obligated to pay from its proceeds at closing. If Seller elects to cure such title objections, Seller shall use good faith efforts to cure such objections to title or survey within 30 days after its election. If Seller elects not to cure such title objections, within 30 days after Seller's response, Buyer may (i) refuse to purchase the Property and terminate this Agreement; (ii) waive the objections and close the purchase of the Property subject to the objections, with a mutually agreeable

reduction of the Purchase Price; (iii) waive the objections and close the purchase of the Property subject to the objections without a reduction of Purchase Price. If Seller is unable to cure such title objections after using good faith efforts, then in addition to the elections above, Buyer may allow Seller additional time to cure such objections, after which Buyer shall continue to have all of its elections provided in this paragraph.

Seller's inability or failure to cure the Title Objections is not a breach of this Agreement.

- (iii) Within 30 days after receipt of a Title Commitment reflecting that the Property is encumbered by a covenant to pay assessments, Seller shall obtain at its expense an estoppel certificate addressed to Buyer that all assessments are current and stating the current amount of assessments on the Property. The certificate shall be updated for closing at Seller's expense as may be required by the Title Company to delete the exception for assessments from the Title Commitment. The estoppel certificate is subject to the objection and cure provisions of this Section in the same manner as though it were a title defect.

b. Survey.

- (i) Within the time provided to order the Title Commitment, Buyer may order at its cost a new survey of the Property (the "Survey"). The Survey shall be certified to Seller, Seller's attorney, the Title Company, the Title Agent, and Buyer, shall conform to the Minimum Technical Standards for land surveying promulgated pursuant to Section 472.27, Florida Statutes, and will show and describe the exterior boundaries and corner markers or monuments of the Property, the size and location of all improvements and structures upon the Property, any encroachments, easements, rights-of-way or other conditions to which the Property is subject, and the legal description and the area of the Property.

c. Environmental Assessments.

- (i) If an environmental site assessment obtained by Buyer confirms the presence of Hazardous Substances or Petroleum Products on the Property, Buyer, at its sole option, may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should Buyer elect not to terminate this Agreement, Seller shall remove and properly dispose of all solid waste located on the property. Seller shall also remove and properly dispose of all petroleum products and hazardous substance containers and their contents located on the property. Seller shall also be responsible for the removal of all vehicles and trailers located on the property. In lieu of the Seller contracting for and paying for the services necessary for the removal and disposal of these materials, the Seller may pay to Buyer as a credit against the Purchase Price Five Thousand and no/100 Dollars (\$5,000) for Buyer to perform these activities.
- (ii) Further, if neither party elects to terminate this Agreement as provided above, Seller shall indemnify and save harmless and defend Buyer, its officers, servants, agents and employees from and against any and all claims, suits, actions, damages, liabilities, expenditures or causes of action of whatsoever kind arising from Hazardous Substances or Petroleum Products located on the Property prior to closing. Seller shall defend, at

Seller's sole cost and expense, any legal action, claim or proceeding instituted by any person against Buyer as a result of any claim, suit, or cause of action for injuries to body, life, limb or property for which Hazardous Substances or Petroleum Products located on the Property prior to closing are alleged to be a contributing legal cause. Seller shall save Buyer harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities in and about any such claim, suit, investigation or defense thereof, which may be entered, incurred or assessed as a result of the foregoing.

(iii) The provisions of this paragraph shall not be construed to limit Seller's legal liability under any Environmental Law for Hazardous Substances or Petroleum Products located on the Property or to limit Buyer's legal and equitable remedies against Seller under any Environmental Law for Hazardous Substances or Petroleum Products located on the Property.

5. CLOSING PROVISIONS

a. Closing Date.

If Buyer does not terminate the Agreement for failure to cure Title Objections, transfer of the Property ("Closing") shall occur within 30 days after Seller cures the Title Objections, (the "Closing Date".) In all events, Closing is to occur not later than February 12, 2020.

b. Location of Closing.

Buyer shall choose the time and place of closing.

c. Conditions to Buyer's Obligation to Close.

Buyer's obligation to close is subject to the satisfaction or waiver, as of the Closing, of each of the following conditions (any of which may be waived in whole or in part in writing by Buyer at or prior to the Closing):

- (i) The representations and warranties of Seller set forth in this Agreement shall be true as of the date of Closing.
- (ii) Seller shall have complied with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by Seller as of the Closing.
- (iii) The Title Commitment shall be marked down at Closing subject only to "Permitted Exceptions".
- (iv) If Seller is selling in a representative capacity, Seller shall have executed the beneficial interest affidavit as required by Section 286.23, Florida Statutes.

d. Seller's Obligations at Closing. At Closing Seller shall:

- (i) Execute, acknowledge, and deliver to Buyer a general warranty deed in recordable form (the "Deed") conveying the Property to Buyer subject only to the Permitted Exceptions accepted by Buyer.
- (ii) Execute and deliver to Buyer an assignment of all contracts, licenses, leases (that are not canceled by Closing Date), and other similar intangibles or rights pertaining to the Property that Buyer has elected to accept.
- (iii) Deliver to the Title Company evidence satisfactory to it of Seller's authority to execute and deliver the documents reasonably necessary to complete this transaction.
- (iv) Deliver to the Title Company and to Buyer an affidavit of possession and no liens satisfactory to the Title Company enabling it to remove the construction lien and parties-in-possession standard exceptions from the Title Commitment.
- (v) Deliver to the Title Company all other documents required under the Title Commitment to permit the Title Company to issue its policy to the Buyer subject only to the exceptions accepted by Buyer.
- (vi) Deliver to the Title Company a certificate that Seller is not a foreign person in accordance with Section 1445 of the Internal Revenue Code.
- (vii) Deliver to Buyer originals (if available) or copies (if originals are not available) of all licenses and permits applicable to the Property and execute and deliver to Buyer any application, transfer form or notification given to Seller by Buyer necessary to transfer to Buyer all applicable permits if transfer is requested by Buyer.
- (viii) Execute and deliver the closing statement and any other documents reasonably required to complete the transaction contemplated by this Agreement.
- (ix) Execute and deliver a Bill of Sale conveying any personal property to Buyer free and clear of all liens or encumbrances, together with such transfer certificates, certificates of title and other documents as may be necessary to convey Personal Property used in connection with the operation on the Property as may be requested by Buyer, and remove from the Property all personal property not requested by Buyer.
- (x) Seller's obligation to close is expressly conditioned on the closing of that Purchase and Sale Agreement of even date herewith between Joseph H. Walsh, III, and the City of Jacksonville.

e. Buyer's Obligations at Closing.

- (i) Subject to the terms of this Agreement, and at the same time as the performance by Seller of its obligations under this Agreement, Buyer shall make payment to the Title Company by wire transfer or City warrant, in an amount equal to the Purchase Price after credits and prorations.

(ii) Buyer shall execute and deliver the closing statement and any other documents reasonably required to complete the transaction contemplated by this Agreement.

f. Closing Costs.

(i) At Closing, Seller shall pay:

- (a) The cost of satisfying any liens or encumbrances against the Property;
- (b) The costs of recording any corrective instruments;
- (c) The documentary stamp taxes due on the Deed;
- (d) Ad valorem taxes on the Property to the date of closing;
- (e) Seller's brokerage fees.

(ii) Buyer shall pay:

- (a) The insurance premium for the Title Policy;
- (b) All costs incurred in obtaining the Survey;
- (c) The cost of recording the Deed;
- (d) All costs incurred for Buyer's inspection of the Property.

(iii) Each party shall pay any fees incurred by it for legal or other consultants.

Seller is solely responsible for the allocation of Seller's expenses and all other costs incurred by Seller arising from the terms of this Agreement between his individual account and his account as Personal Representative.

g. Prorations.

(i) Amounts payable under any contracts assigned to Buyer pursuant to the terms of this Agreement shall be prorated as of 12:00 a.m. on the date of Closing.

(ii) All remaining bills of every nature relating to the Property, including those for labor, materials, services, and capital improvements incurred by Seller for the period ending at 12:00 a.m. on the date of Closing shall be paid by Seller.

h. Real Estate Taxes.

Ad valorem real estate taxes on the Property shall be escrowed at closing as provided in §196.295, F.S.

i. Possession.

Exclusive possession of the Property shall be delivered to Buyer at Closing.

j. **Title Checkdown.**

Prior to disbursement of the proceeds of Closing the Title Company shall mark down the Title Commitment by indicating satisfaction of all requirements, deleting all but the exceptions to which Buyer has not objected, and changing the effective date of the Title Commitment to the date and time of recording of the Deed to the Buyer.

6. DEFAULT

a. **Default by Seller.**

If Seller defaults under the provisions of this Agreement Buyer may, at Buyer's election (i) waive the default and proceed to Closing; (ii) seek specific performance; or (iii) refuse to Close, terminate this Agreement and the parties shall have no further rights or obligations under this Agreement (except as to those that expressly survive termination).

b. **Default by Buyer.**

If Buyer defaults under the provisions of this Agreement, Seller's sole remedy is to terminate this Agreement.

7. BROKERAGE COMMISSIONS

Each party represents to the other that no brokers or finders have been involved in this transaction other than Sam Folds, Inc. Realtors, and Seller shall pay any brokerage fees, agents' commissions, or other compensation for which it is responsible arising from the transaction contemplated by this Agreement. In no event is Buyer responsible for the payment of any brokerage fees, agents' commission or other compensation arising from this Agreement, nor shall the Property be liable for any such fees.

8. OTHER CONTRACTUAL PROVISIONS

a. **Assignability.**

This Agreement may not be assigned by Seller without the express written consent of Buyer, in its sole discretion.

b. **Survival.**

The provisions of this Agreement shall survive Closing.

c. **Notices.**

Any notices to be given to either party in connection with the provisions of this Agreement must be in writing and given by hand delivery, by reputable overnight courier, or certified mail, return receipt requested. A notice is effective when received, except if a party fails or refuses to collect certified mail, the notice shall be effective on the date the second delivery

is attempted, whether or not the party collects the certified mail after the second delivery attempt. The addresses for notices are as follows or as otherwise designated in writing.

To Buyer:

Chief, Real Estate Division
Department of Public Works
214 N. Hogan Street, 10th Floor
Jacksonville, FL 32202

With a Copy to:

Corporation Secretary
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

To Seller:

Joseph H. Walsh, III as Personal Representative
14696 Longview Drive
Jacksonville, Florida 32223

With a Copy to:

William B. Ryan, Jr.
Ryan, Marks and Stromberg Attorneys, LLP
3000-8 Hartley Road
Jacksonville, Florida 32256

d. Timeliness.

If the deadline or date of performance for any act under the provisions of this Agreement falls on a Saturday, Sunday, or City legal holiday the date shall be extended to the next business day.

e. Entire Agreement; Modifications.

This Agreement contains the entire agreement between the parties. All prior agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. This Agreement cannot be modified or terminated except by an instrument in writing.

f. Applicable Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida.

g. **Headings.**

Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

h. **Counterparts.**

This Agreement may be executed in several counterparts, each constituting a duplicate original. All such counterparts shall constitute one and the same agreement.

i. **Interpretation.**

Whenever the context of this Agreement shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter and vice versa. This Agreement was drafted through the efforts of both parties and shall not be construed in favor of or against either party.

j. **Severability.**

If any provision of this Agreement is held invalid, illegal or unenforceable and the unenforceability of the provision does not adversely affect the purpose and intent of this Agreement, in Buyer's sole discretion, such invalidity, illegality or unenforceability shall not affect any other provision. This Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this Agreement.

k. **Risk of Loss.**

All risk of loss or damage to the Property until the Closing shall be borne by Seller.

l. **Recording.**

This Agreement shall not be recorded.

m. **Waiver.**

Each party reserves the right to waive in whole or part any provision which is for that party's benefit. Any waiver must be in writing and shall be limited to the matter specified in the writing. No waiver of one provision or default shall be considered a waiver of any other provision or subsequent default, and no delay or omission in exercising the rights and powers granted in this Agreement shall be construed as a waiver of those rights and powers.

n. **Time of Essence.**

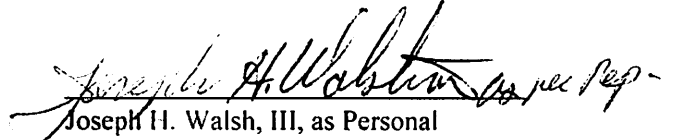
Time is of the essence of this Agreement.

Signatures begin on the following page

IN WITNESS WHEREOF, the parties have executed this Agreement the date set forth above.

SELLER:

**JOSEPH H. WALSH, III,
AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF SAMUEL R. BURNEY**


Joseph H. Walsh, III, as Personal
Representative

BUYER:

CITY OF JACKSONVILLE

Lenny Curry as Mayor

ATTEST:

James R. McCain, Jr. as Corporation
Secretary

Approved as to Form
As to City Only

Office of General Counsel

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Exhibit "A"
Legal Description of Property

The following described property includes the homestead of Samuel R. Burney. He was not survived by a spouse or by minor children.

ORANGE PICKERS & BRADY LOCATION MAPS

