

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



Memorandum

To: James L. Gillis, Jr., City Manager

From: Becky Witte, Deputy City Clerk

Date: November 18, 2024

Re: Consideration of approving the purchase of a portion of the property at 1801 James Street (lots 7 and 8) adjacent to James Street Park for \$20,000 and authorizing the Mayor and City Manager to execute the necessary closing documents.

The owner of 1801 James Street contacted the city about purchasing the rear portion of their property, which is adjacent to James Street Park. The lot at 1801 James Street is oversized and is becoming too much for the current property owner to maintain.

The owner has agreed to sell the land to the City for \$20,000, which is under the current appraised value. Since the property abuts the portion of James Street Park where our maintenance buildings are located, it would be an ideal addition to the park to expand our maintenance operations there.

With these two factors in mind, staff is recommending approval of the purchase of a portion of the property at 1801 James Street (lots 7 and 8) adjacent to James Street Park for \$20,000 and authorize the Mayor and City Manager to execute the necessary closing documents. If approved, the City will administratively separate the two lots and erect a white vinyl fence to delineate its portion.

Proposed Legal Descriptions:

Parcel A: (to remain 1801 James Street, South Daytona, Florida 32119) THE SOUTHERNLY 75 FEET OF THE NORTHERLY 95 FEET OF LOTS 5 AND 6, BLOCK 16, ALTO PINO, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 7, PAGE 121, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Parcel B: (potentially to add to James Street Park, 1700 James Street) LOTS 7 AND 8, BLOCK 16, ALTO PINO, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 7, PAGE 121, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

South Daytona, Florida 32119

FLOOD ZONE
(FOR INFORMATIONAL PURPOSES ONLY)

THIS SURVEYOR MAKES NO GUARANTEES AS TO THE ACCURACY OF THE ABOVE INFORMATION. IT IS SUGGESTED THAT A FLOOD ZONE DETERMINATION BE VERIFIED FROM THE COUNTY IN WHICH THE SUBJECT PROPERTY LIES.

Orlando LLC;
AMZ Title, LLC
WFG National
Insurance Co

Section 15, Township 33 South, Range 28 East

Drawn By: AV	Survey Number: 23-3171
4	
3	
2	
1	
NO.	REVISIONS
	BY DATE

17316 DEER ISLAND ROAD
DEER ISLAND, FL 32778
PHONE 407-385-3151
407-385-3152
FAX 1-866-941-8789
CERTIFICATE OF AUTHORIZATION 1R7723

Robert w.
Richmond

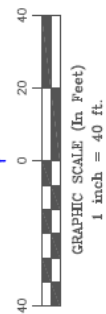
ROBERT W. RICHMOND, Professional Land Surveyor & Mapper No. 6616, State of Florida

1. LITERAL DESCRIPTION PROVIDED BY OTHERS.
2. UNDERGROUND FEATURES, SUCH AS IMPROVEMENTS, ENCROACHMENTS, FOUNDATIONS OR UTILITIES, IF EXISTENT, WERE NOT LOCATED AS A PART OF THIS SURVEY.
3. BUILDING TIES ARE TO THE FACE OF THE WALL AND ARE NOT TO BE USED TO RECONSTRUCT BOUNDARY LINES. THE DIMENSIONS OF BUILDINGS AS SHOWN HEREON DO NOT CONSTITUTE EVIDENCE OF THE TRUE BOUNDARY LINES.
4. NO IDENTIFICATION FOUND ON PROPERTY OWNERS UNLESS OTHERWISE SHOWN.
5. DIMENSIONS SHOWN ARE PLAT AND MEASURED UNLESS OTHERWISE SHOWN.
6. BEARINGS SHOWN HEREON ARE REFERENCED TO THE LINE NOTED A-3.
7. THE SURVEY DEPICTED HEREON FORMS A CLOSED GEOMETRIC FIGURE.
8. THE SURVEY DEPICTED HEREON IS BASED ON THE FOLLOWING PARTIES:
A. THE SURVEYOR'S LIABILITY TO THIRD PARTIES MAY NOT BE TRANSFERRED OR ASSIGNED.
9. THIS DRAWING MAY NOT BE TO SCALE DUE TO ELECTRONIC TRANSFER OR COPY.
10. THIS SURVEY DOES NOT REFLECT OR DETERMINE PROPERTY OWNERSHIP OR INTERESTS.
11. THE SURVEY DEPICTED HEREON IS NOT INTENDED TO SHOW THE LOCATION OR BOUNDARIES OF ANY OTHER SURVEY OR SURVEYS.
12. THE BOUNDARIES OF THIS SURVEY THAT MAY BE CONSIDERED JURISDICTIONAL BY VARIOUS AGENCIES.
13. THIS SURVEY IS VALID IN ACCORDANCE WITH F.S. § 727.842, FOR A PERIOD OF 90 DAYS FROM THE DATE OF CERTIFICATION.
14. THIS SURVEY IS NOT TO BE USED FOR ANY PURPOSE OR PURPOSES, OTHER THAN THAT FOR WHICH IT IS EXCLUSIVELY FOR USE BY THOSE TO WHOM IT IS CERTIFIED. THIS SURVEY IS NOT TO BE USED FOR CONSTRUCTION, PERMITTING, DESIGN OR ANY OTHER USE WITHOUT THE WRITTEN CONSENT OF THE ATTESTING SURVEYOR.
- 14.1 THIS IS NOT AN ALTA/MOULD AND TITLE SURVEY. NO EXAMINATION OF TITLE WAS MADE.
15. THESE LANDS MAY BE SUBJECT TO DEDICATIONS, LIMITATIONS, RESTRICTIONS, RESERVATIONS, AND/OR OTHER RECORDED ENCUMBRANCES NOT SHOWN ON THE PLAT.

[illegible]

LEGEND & ABBREVIATIONS

TYPE OF SURVEY: BOUNDARY



OPTION CONTRACT FOR SALE AND PURCHASE

THIS OPTION CONTRACT FOR SALE AND PURCHASE (the "Contract") is made among the following parties:

Buyer: **City of South Daytona, a Florida municipal corporation**
 c/o James L. Gillis, Jr., City Manager
 1672 S Ridgewood Ave.
 South Daytona, FL 32119
 lgillis@southdaytona.org

Seller: **Orlando LLC, a Florida limited liability company**
 10831 Windsor Walk Dr., Unit 1209
 Orlando, FL 32837

Escrow Agent: **Vose Law Firm LLP**
 324 W. Morse Blvd.
 Winter Park, FL 32789
 wvose@voselaw.com

BACKGROUND

Seller is the owner of the Property (as defined in Section 1). Buyer desires to purchase the Property, and Seller desires to sell it to Buyer, subject to and upon the terms and conditions of this Contract. This Contract constitutes an option contract under Section 166.045, Florida Statutes.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements contained herein, the Earnest Money Deposit (as defined in Section 2), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and Seller (the "Parties") agree as follows:

1. Property. Seller agrees to sell, and if Buyer holds a public hearing pursuant to Section 166.045, Fla. Stat., and approves this option contract on or before **November 12, 2024** ("Final Possible Council Hearing Date"), Buyer agrees to purchase from Seller, the land described on Exhibit "A", together with any trees and landscaping located thereon and all improvements, structures and fixtures placed now or hereafter constructed or installed on the land, other items of personal property located on the land, and all other tangible and intangible personal property that is used or useful in connection with the subject property, including, without limitation, sewer and water rights, sewer deposits, sewer fees, prepaid impact fees, surveys, studies, test results, plans and specifications, leases, tenant deposits and prepaid rents, permits, utility deposits, architectural, contractor's and manufacturer's warranties, and trade names, trade symbols, trademarks and logos relating to the subject property (collectively, the "Property").

2. Earnest Money Deposit. Buyer shall pay to Escrow Agent the sum of **\$1,000.00** by check or wire transfer as earnest money, payable upon Seller's execution of this Contract, and thereafter, Seller shall be bound by the terms hereof. Such sum is hereinafter referred to as the "Earnest Money Deposit". The Escrow Agent shall deposit such Earnest Money Deposit in the Escrow Agent's IOTA account. The Earnest Money Deposit shall be retained or refunded, as the case may be, in accordance with the terms of this Contract and shall be applied as a credit against the Purchase Price (as defined in Section 3) at Closing (as defined in Section 6).

3. Purchase Price. The purchase price (the "Purchase Price") of the Property shall be **TWENTY THOUSAND DOLLARS (\$20,000.00).**

3.1 Payment of Purchase Price. The Purchase Price for the Property shall be paid at Closing by cashier's check drawn on a local bank or by wired funds, subject to adjustments and prorations. Escrow Agent shall pay over to Seller at Closing the Earnest Money Deposit as a part of this balance.

4. Costs and Prorations.

4.1 Seller shall pay the documentary stamp or transfer tax due on the deed, the cost of the title search, the municipal lien search, the title examination fees, the owner's title insurance premium, and the brokerage commission, if any. Buyer shall pay the cost of recording the deed, and the cost of any surveys, soil tests, inspections, or other testing Buyer obtains. Each Party shall pay its own attorney's fees.

4.2 Ad valorem taxes assessed against the Property for the year in which the Closing occurs shall be prorated as of the day of Closing based on the maximum available discount, if any, for the early payment of taxes. If the proration is not based on the actual tax bill for the year of Closing, the proration shall be based upon the most recent tax bill and shall be adjusted when the actual tax bill is available.

5. Title. Seller shall convey good, marketable and insurable title to the Property to Buyer by statutory warranty deed, which shall expressly be made subject only to the matters approved or waived by Buyer as set forth below. Without limiting the generality of the foregoing, the Property shall not be subject to any (i) mortgage, security agreement, judgment, lien or claim of lien, or any other title exception or defect that is monetary in nature, or (ii) any leases, rental agreements or other rights of occupancy of any kind, whether written or oral, or (iii) any easement, restriction, zoning, prohibition, or requirement of private parties or governmental authorities that would prevent the use of the Property for its Intended Use as described hereafter. Seller hereby agrees to pay and satisfy of record any such title defects or exceptions prior to or at Closing at Seller's expense. The title shall be subject to current and future ad valorem property taxes. Seller shall at its expense furnish to Buyer, within fifteen (15) days from the Date of this Contract by the parties hereto, a commitment for title insurance covering the Property and issued by a title insurance company acceptable to Buyer with copies of all exceptions contained therein. Such commitment shall agree to issue to Buyer, upon Closing of this transaction, an ALTA Form B, Marketability owner's policy in the full amount of the Purchase Price. Buyer shall have thirty (30)

days in which to examine the commitment and to give Notice (as defined hereafter) to Seller of any objections which Buyer may have.

If Buyer fails to give any Notice to Seller by such date, Buyer shall be deemed to have waived this right to object to any other title exceptions or defects. If Buyer does give Seller Notice of objection to any other title exceptions or defects, Seller shall then have the obligation to cure or satisfy such objection within 90 days of such Notice. Seller will, if title is found unmarketable, use diligent effort to correct the defect(s) within the time provided, including the bringing of necessary suits. If the objection is not so satisfied by Seller, then Buyer shall have the right to Terminate (as defined hereafter) this Contract by Notice to Seller, in which case the Earnest Money Deposit shall be returned to Buyer, or take such actions as may be necessary to cure the objection and deduct the cost thereof from the Purchase Price. If Seller does so cure or satisfy the objection, within the time provided, then this Contract shall continue in effect. Buyer shall have the right at any time to waive any objections that it may have made and thereby preserve this Contract in effect. Seller agrees not to further alter or encumber in any way Seller's title to the Property after the Date of this Contract.

6. Closing. The Closing ("Closing") of the transaction contemplated hereby shall be held in the offices of Escrow Agent or by a mail-away escrow closing at a time and on a date which shall be no later than five (5) days after the Inspection Period ends, unless extended pursuant to Section 5 hereof. The exact time, date and place of Closing shall be selected by Buyer by Notice to the Parties at least three (3) days prior to the date so selected, or, if no date is selected, it shall be said fifth day.

7. Broker. Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to, a licensed real estate Broker other than [NONE], who is a single agent and will be compensated by Seller.

8. Survey. Seller shall furnish Buyer with copies of all surveys it has on the Property, if any, within ten (10) days after the Date of this Contract. Prior to the Closing, Buyer may have Property re-surveyed at Buyer's expense. If the survey (or re-survey, if applicable) shows any encroachments on the Property, or that improvements on the property located on the Property encroach on setback lines, easements, lands of others, or violate any restrictions, contract, covenants or applicable governmental regulation, or that any gaps exist so that the Property is not contiguous or does not have access, then the same shall constitute a title defect. Buyer shall give Seller Notice of such defect within 30 days of receipt of the survey (or re-survey, if applicable). Thereafter, Seller and Buyer shall proceed under Section 5.

9. Inspection.

9.1 Inspection Period. The inspection period ("Inspection Period") shall commence on the Date of this Contract and terminate on the 30th day following the Date of this Contract.

9.2 Plans and Reports. Seller shall furnish Buyer within 10 days after the Date of this Contract with copies of all permits, environmental reports, wetland studies, wetland

determinations, engineering reports, soil studies, master plan agreements, development approvals, concurrency vesting determinations, stormwater management permits, declaration of covenants and restrictions (actual or proposed), property owners association articles of incorporation and by-laws, and similar reports and studies owned or in possession of Seller with respect to the Property. Without limiting the generality of the foregoing, Seller shall furnish Buyer with copies of any environmental management, protection, assessment or impact reports and any permits, certificates of compliance or certificates of non-compliance relating to the Property or the handling, treatment, storage, use, transportation, spillage, leakage, dumping, discharge, disposal or clean-up of any substances or wastes regulated under local, state or federal law or regulation, upon or about the Property whether prepared or obtained by or for Seller, any tenant of the Property, any government agency or authority, or any other person or entity, and any approvals, conditions, orders, declarations and correspondence to or issued by any governmental agency or authority relating thereto which as to any or all of the above. Seller shall immediately deliver to Buyer copies of any of the foregoing that come as received by Seller during the term of this Contract.

9.3 Inspection. Following advanced notice to Seller, Buyer and Buyer's agents, employees and independent contractors shall have the right and privilege (but not the obligation) to enter upon the Property prior to Closing to survey and inspect the Property and the structures thereon and to conduct soil borings and other geological tests, engineering tests and such other inspections and studies as Buyer may desire, all at Buyer's sole cost and expense. Following advanced notice to Seller, the Buyer and Buyer's agents shall be allowed access to the Property by appointment during normal business hours to inspect the Property and to show the Property to any prospective tenants of the Property. Seller is entitled to receive copies of all inspection reports and studies in the event the transaction does not close.

9.4 Termination and Repairs. If, in its sole discretion, Buyer determines that the Property is not satisfactory for its purposes, or if the Buyer determines that any of Seller's representations or warranties are inaccurate or untrue, Buyer shall have the right to terminate this Contract by written notice delivered to Seller prior to the expiration of the Inspection Period, whereupon the Earnest Money Deposit shall be returned to Buyer and this Contract shall be terminated. In the event Buyer does not notify Seller in writing prior to the expiration of the Inspection Period that Buyer has elected to terminate this Contract, then Buyer shall have waived its right to terminate this Contract pursuant to this Paragraph.

10. Eminent Domain. If, after the Date of this Contract and prior to Closing, Seller receives notice of the commencement or threatened commencement of eminent domain or other like proceedings against the Property or any portion thereof, Seller shall immediately give Notice thereof to Buyer. Buyer shall elect within thirty (30) days by Notice to Seller either (i) to Terminate this Contract, in which event the Earnest Money Deposit shall be refunded to Buyer, or (ii) to close the transaction contemplated hereby in accordance with its terms but subject to such proceedings, in which event the Purchase Price shall not be reduced but Seller shall assign to Buyer Seller's rights in any condemnation award or proceeds. If Buyer does not give Notice timely, Buyer shall be deemed to have elected to close the transaction contemplated hereby in accordance with clause (ii) above.

11. Documents. Seller shall deliver to Buyer at Closing (i) Seller's statutory warranty deed; (ii) a bill of sale transferring the personal property which is a part of the Property; (iii) possession of the Property; (iv) affidavits sufficient to permit the title company to issue the owner's title policy without standard exceptions for construction, mechanic's, materialmen's, or other statutory liens or rights of parties in possession; (v) estoppel letters with respect to any contracts being assumed; (vi) affidavits or other appropriate resolutions authorizing the sale; and (vii) reasonable evidence that Seller is not a foreign person against whom withholding is required under the Internal Revenue Code, and such other documents as may be required to perfect the conveyance of the Property to Buyer.

12. Default and Remedies. If Buyer fails or refuses to perform its obligations under this Contract, and such failure or refusal is not cured within twenty (20) days after Notice from Seller, then the Seller may as its sole and exclusive remedy have the Earnest Money Deposit as full liquidated damages. The Parties hereby acknowledge the difficulty of ascertaining Seller's actual damages in such circumstance and agree that the Earnest Money Deposit represents a good faith resolution thereof. If Seller fails or refuses to convey the Property in accordance with the terms of this Contract or otherwise perform its obligations hereunder, and such failure or refusal is not cured within twenty (20) days after Notice from Buyer, then Buyer shall have the right to seek specific performance, or elect to receive the return of the Earnest Money Deposit without thereby waiving any action for damages resulting from Seller's breach.

13. Seller's Agreements. Seller warrants, represents and agrees that:

13.1 Seller is the owner of the Property free and clear of all liens and encumbrances.

13.2 That no one is in possession of any portion of the Property except Seller.

13.3 The Seller is not subject to any rule, agreement or restriction of any kind or character which would prevent the consummation of this Contract. This Contract has been validly authorized, executed and delivered by Seller and constitutes a valid and binding obligation of Seller in accordance with its terms.

13.4 Seller represents and warrants that, to their knowledge (i) there are no hazardous materials in violation of any environmental laws located on the Property, and (ii) the Property is not listed or formally proposed for listing under CERCLA, the Comprehensive Environmental Response, Compensation Liability Information System ("CERCLIS") or on any similar state list that is the subject of federal, state, or local enforcement actions or other investigations that may lead to claims against Seller for clean-up costs, remedial work, damages to natural resources, or for personal injury claims, including, but not limited to, claims under CERCLA, and (iii) there is no reasonable basis for Seller to be named in such claims or for any similar action to be brought against Seller, and (iv) neither the Property, nor the use or operation thereof by Seller, violates any land use, environmental, hazardous or regulated material and/or waste handling, storage, treatment, disposal or discharge laws or other laws, building codes, zoning or other ordinances, rules or regulations, fire insurance regulations, or covenants, conditions and restrictions whether federal, state, local or private; and (v) there exists no violation of any

covenants or agreements of any kind with tenants, or with any governmental jurisdiction or private party purporting or acting to restrict in any way the individual use of the Property; and (vi) neither the Property nor the present operation and use, constitute an illegal use under any zoning or land use law or regulation, and none of the foregoing is the subject of any variance pursuant to any zoning or land use law or regulation; and (vii) there has not occurred upon or about the Property, any spillage, leakage, discharge or release into the air, soil or groundwater of any hazardous or regulated materials or wastes.

13.5 Seller has received no notice and has no knowledge of any pending or contemplated proceedings (i) to modify or amend any building code or zoning or land use law or regulation or development order which affects the Property; (ii) to impose any special assessment against or upon the Property or any portion thereof; (iii) to condemn the Property or any portion thereof; (iv) to modify, amend, suspend, revoke or terminate any environmental, occupancy, use, operating or other permit issued or pending in connection with the Property, or the occupancy, use of operation thereon of any tenant thereon; or (v) with respect to any environmental, hazardous or regulated material violation affecting the Property.

13.6 The representations and warranties in this Section 13 shall survive the Closing.

14. Risk of Loss. Seller shall bear all risk of casualty loss to Property occurring prior to Closing and shall maintain in full force and effect all hazard insurance now in force and insuring Property against loss and damage or destruction through the Closing Date. In the event of any damage or destruction to any of the improvements on Property prior to Closing, not restored by Closing, Buyer shall have the option to either:

14.1 Rescind this Contract; or

14.2 Close this transaction and be entitled to receive the full amount of any proceeds of such insurance payable on the account of loss, damage, or destruction.

In the event Buyer elects to close this transaction under subsection 14.2 of this Section, any loss shall be settled with the insurers only with the written consent of Buyer, and, if at Closing there shall be any losses which shall not have been settled or adjusted, Seller shall transfer and assign the insurance claim to Buyer, and this transaction shall be consummated in the same manner as if there had been no damage or destruction to Property. The determination of the insurance adjuster for the respective insurance carrier regarding the extent of such loss shall be determinative as between Buyer and Seller relative to the value placed on such loss. Buyer acknowledges that the payment of insurance proceeds shall be subject to the rights of Seller's mortgage lender.

15. Leases. The Property is **NOT LEASED TO ANYONE.**

16. Conditions to Buyer's Obligations. The Buyer's obligations under this Contract are, at the option of Buyer, subject to conditions at Closing that:

16.1 The Seller has fulfilled all the terms and conditions required to be fulfilled by Seller hereunder.

16.2 Seller's representations and warranties contained in this Contract shall, as a condition to Closing, be true at the time of Closing as though such representations and warranties were made at such time.

16.3 The Buyer has scheduled, noticed, and held a public hearing in accordance with Section 166.045, Florida Statutes, during which the South Daytona City Council has approved and ratified this Contract. The determination as to whether to schedule, notice, and hold a public hearing in accordance with Section 166.045, Florida Statutes, and for the South Daytona City Council to approve and ratify this Contract, shall be in Buyer's sole and absolute discretion.

17. Notice. Wherever in this Contract it shall be required or permitted that notice, request, consent, or demand be given by either party to this Contract to or on the other (hereafter collectively "Notice" for the purpose of this Section), such Notice shall not be deemed to have been duly given unless in writing, and either personally delivered, mailed, sent by overnight commercial delivery service or emailed to the addresses for the parties as set forth on Page 1 of this Agreement.

Counsel for the parties set forth herein may deliver or receive notice on behalf of the parties.

Any Notice sent by United States Mail, registered or certified, postage prepaid, return receipt requested, shall be deemed received three days after it is so mailed. All other Notices shall be deemed delivered only upon actual delivery at the address or email address set forth herein. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day shall be regarded as delivered on the next business day. Saturdays, Sundays and legal holidays of the United States government (when the U.S. Post Office where Buyer is located is closed) shall not be regarded as business days.

If any time for giving Notice or other time period contained in this Contract would otherwise expire on non-business day, the Notice period shall be extended to the next succeeding business day. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in address or email address or addresses to whom copies are to be sent to which Notices shall be sent by six (6) days written notice to the parties and addressees set forth herein.

When any period of time prescribed herein is less than six (6) days, intermediate non-business days shall be excluded in the computation.

All notices given pursuant to this Contract from Seller to Buyer or from Buyer to Seller shall be effective if executed and sent by counsel for the respective party.

18. Assignment of Contract by Buyer. Buyer may not assign this Contract, except to another governmental or quasi-governmental entity.

19. Time of Essence. Time is of the essence of this Contract.

20. Entire Agreement. This Contract constitutes the entire agreement of the Parties and may not be amended except by written instrument executed by the Parties.

21. Interpretation.

21.1 The Section headings are inserted for convenience only and are in no way intended to interpret, define, or limit the scope or content of this Contract or any provision hereof. If any Party is made up of more than one person or entity, then all such persons and entities shall be included jointly and severally, even though the defined term for such Party is used in the singular in this Contract. If any right of approval or consent by a Party is provided for in this Contract, the Party shall exercise the right promptly, in good faith and reasonably, unless this Contract expressly gives such Party the right to use its sole discretion. To the extent that there are any ambiguities or uncertainties contained herein, they will not be construed for or against any Party hereto as the drafter of the Contract.

21.2 If any time period under this Contract ends on a day other than a Business Day (as hereinafter defined), then the time period shall be extended until the next business day. The term "Business Day" shall mean Monday through Friday excluding legal holidays recognized by the United States government when the U.S. Post Office where Buyer is located is closed.

22. Attorney's Fees. In any litigation arising out of this Contract, the prevailing party shall be entitled to recover attorney's fees and costs.

23. Survival.

23.1 The provisions of this Contract shall survive Closing unless and to the extent expressly provided otherwise.

23.2 The provisions of this Contract concerning disbursement of the Earnest Money Deposit, brokerage commissions, Buyer's entering upon the Property and any others expressly so indicated shall survive Termination.

24. Termination. "Terminate" or "Termination" shall mean the termination of this Contract pursuant to a right to do so provided herein, or additionally, the South Daytona City Council not approving this option contract at a public hearing pursuant to Section 166.045, Florida Statutes, on or before the Final Possible Council Hearing Date. Upon Termination, the Earnest Money Deposit and all interest earned thereon shall be returned to Buyer if this Contract has been terminated by Buyer pursuant to a right of Buyer to terminate as provided herein. If this Contract has been terminated by Seller pursuant to a right of Seller to terminate provided herein, the interest on the Earnest Money Deposit shall be disbursed to Buyer and the Earnest Money Deposit shall be disbursed as provided herein, and the Parties shall have no further rights or duties under this Contract except as expressly provided herein.

25. Possession. Seller shall vacate and deliver actual Possession of Property no later than five (5) days after Closing, free and clear of all tenancies.

26. Applicable Law. This Contract shall be construed and interpreted in accordance with the laws of the State of Florida.

27. Persons Bound. This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns as provided herein.

28. Exhibits. The exhibits and schedules referred to in and attached to this Contract are incorporated herein in full by reference.

29. Escrow Agent. In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect (i) to any action taken or omitted in good faith upon advice of its counsel or (ii) to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Contract, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Contract. The Escrow Agent is hereby specifically authorized to refuse to act except upon the written consent of Seller and Buyer. Seller and Buyer hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance or the performance of its duties hereunder, including any litigation arising from this Contract or involving the subject matter hereof. In the event of a dispute between Seller and Buyer sufficient in the discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property in its hands under this Contract, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Contract. Any such legal action may be brought in such court as the Escrow Agent shall determine to have jurisdiction thereof. Seller and Buyer shall bear all costs and expenses of any such legal proceedings. Each Party agrees that the mere fact that Escrow Agent shall serve as Escrow Agent hereunder shall not disqualify said Escrow Agent or any of its individual attorneys from representing any party to this transaction.

30. Proposal of Option Contract, Acceptance, Approval and Ratification by City Council, and Contract. This document shall constitute an option contract, which is a proposed agreement by a municipality to purchase a piece of property, subject to the approval of the local governing body at a public meeting. The transmittal of this option contract is open for acceptance by Seller until the end of business on the date of the Deadline for Seller's Acceptance specified below. Seller agrees to immediately provide to Buyer a complete counterpart of this Contract signed by Seller. Seller's acceptance of this proposed option contract shall become an irrevocable offer subject to acceptance in accordance with Section 166.045, Fla. Stat., by the City Council. This option contract shall become a binding contract upon presentation to, approval of and

ratification by the South Daytona City Council on or before the Final Possible Council Hearing Date. As used herein, the phrase "Date of this Contract" shall mean the date upon which the South Daytona City Council approves and ratifies this Contract. Acceptance of the proposed option contract by Seller shall be immediately communicated to Buyer. Buyer shall likewise immediately communicate approval and ratification of the acceptance to Seller. Each person signing below represents and warrants that he or she is fully authorized to execute and deliver this Contract in the capacity set forth beneath his or her signature. The Buyer will not be under any obligation to exercise the option and purchase the Property unless this option contract is approved by the governing body at the public hearing as specified in Section 166.045, Fla. Stat., which determination shall be at the sole and absolute discretion of the governing body.

31. Further Contingencies.

31.1 Use of Property. The Contract is contingent upon the Buyer being able to use the Property for **municipal** purposes, and similar related uses.

32. FIRPTA Affidavit. Seller represents and warrants to Buyer that Seller is not a "foreign person," as defined in the Federal Foreign Investment in Real Property Tax Act ("FIRPTA"). At closing, Seller shall execute and deliver to Buyer a "Non-Foreign Certificate," in form and substance satisfactory to Buyer which shall state, among other items, the taxpayer identification number of Seller and that Seller is not a foreign person, as defined by FIRPTA. Seller acknowledges that in the event Seller fails to deliver the Non-Foreign Certificate, the Buyer shall then be authorized to withhold from the closing proceeds an amount equal to ten (10%) percent of the gross amount of the Purchase Price and to remit the same to the Internal Revenue Service, as required by FIRPTA. Seller does hereby forever release and discharge Buyer from all liabilities resulting from, or arising out of, Buyer's good faith compliance with the requirements of FIRPTA. Further, Seller hereby agrees to indemnify, defend and hold harmless Buyer and Buyer's attorneys, Vose Law Firm LLP, in connection with any loss, cost, damage or expense, including attorney's fees and court costs, and including such costs on appeal, incurred by Buyer or Buyer's attorneys because of Seller's noncompliance with the requirements of FIRPTA, which indemnifications shall survive the closing of this transaction.

33. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

34. Counterparts: Facsimiles and Electronic Signatures. The Contract and any Addendum may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile and electronic signatures on the Contract and any Addendum shall be considered the same as original signatures for all purposes.

35. Special Terms. Because this Contract contemplates the purchase of only a portion of a tax parcel, Paragraph 4.2 is stricken, and Seller shall pay at Closing the entire

amount of the ad valorem taxes and assessments assessed against the Property for the year in which the Closing occurs.

THE PARTIES have set their hands and seals hereto as of the day and year indicated below their signatures.

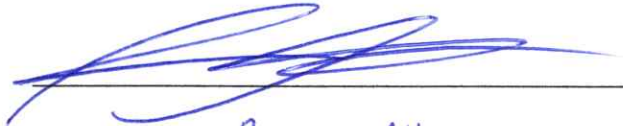
*F.S. 166.045 Option Contract transmitted by representative of Buyer, for acceptance by Seller no later than the end of business on the **Deadline for Seller's Acceptance, which is October 1, 2024.***

By: _____
James L. Gillis, Jr., City Manager

Date: _____

SELLER:

Orlando LLC, a Florida limited liability company



Print Name: RENAN ALBUQUERQUE

Title: Owner

Date: 9/30/2024

ESCROW AGENT:

Vose Law Firm LLP

Wade C. Vose, Esq.

Date: _____

Approved by City Council at Public Hearing held on _____:

BUYER:

CITY OF SOUTH DAYTONA

ATTEST:

By: William C. Hall, Mayor

James L. Gillis, Jr., City Manager

Date: _____
(Seal)

Certified as to form:

By: Wade C. Vose, City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

Legal Description: Lots 7 and 8, Block 16, Alto Pino, according to the map or plat thereof as recorded in Plat Book 7, Page 121, Public Records of Volusia County, Florida.

Size: 0.31 acres, more or less.

Parcel No.: Portion of 532801160050

Site Location: Portion of 1801 James St., South Daytona, FL 32119