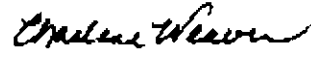

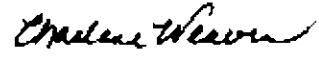


<b>Date:</b> 04/16/2015		<b>AGENDA ITEM</b>		<b>Item:</b> 09
<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Budget Resolution	<input type="checkbox"/> Other	
<b>Department:</b> Leadership <b>Division:</b> Leadership				
<b>Subject:</b> Purchase of property for off-beach parking.				
Charlene Weaver, CPA, CFO  Department Approval		Legal  Jamie E. Seaman County Attorney  Approved as to Form and Legality	County Manager's Office  Charlene Weaver, CPA, CFO Deputy County Manager 	
Division Approval	Phyllis Schwarz Proxy for Tammy Bong Director Management and Budget Approved as to Budget Requirements			
<b>Council Action:</b>				
<b>Modification:</b>				
<b>Fund Number(s):</b>	<b>Description:</b>	<b>Amount:</b>		
001 General Fund	001-150-6100-6100 Land purchase. Reserve funds for future capital to be transferred to the Coastal division/land purchase	\$900,000.00		
160 Volusia Echo	160-680-6015-6100 land account	\$900,000.00		
<b>Total Item Budget: \$1,800,000.00</b>				
<b>Staff Contact(s):</b>		<b>Phone:</b>	<b>Ext.</b>	
James T. Dinneen		386 736 5920		
Jamie E. Seaman		386 736 5950		
<b>Summary/Highlights:</b> Attached is a contract for purchase of property on the northwest corner of A1A and Cardinal Drive in Ormond Beach for \$1,800,000. The property is approximately 1.82 acres, which calculates to \$22.70 a square foot. The most recent sale of property on the west side of A1A is Julian's Steakhouse, which sold for \$22.95 a square foot.  This is the first property proposed on the west side of A1A under the current program to purchase off beach parking. The Cardinal Drive beach approach is the location of a lifeguard control tower and public restrooms. There is a traffic light and a crosswalk for pedestrians.  The property has a gas station with two years left on a ten year lease at approximately \$24,000 per year. This lease requires the tenant to remove the fuel storage tanks and provide a clean site upon vacancy. There are two month to month tenants, the DARE Program of Ormond Beach for \$1 per year and Brent Allan Inskeep for \$7332 per year.  To provide off beach parking, the building would need to be demolished. The site would provide potentially 150 parking spaces.				

Minor closing costs will be transferred from general fund reserves upon completion.

**Recommended Motion:** Approve.



  Subject Parcels

1 inch = 150 feet  
2012 Pictometry Aerial Photo



Map prepared by: Volusia County Growth & Resource Management Department

**AGREEMENT FOR PURCHASE AND SALE**

**THIS AGREEMENT FOR PURCHASE AND SALE** (the "Agreement"), is made and entered into as of this \_\_\_\_ day of March, 2015, by **ELLINOR ATB, LLC and ELLINOR LINDA, LLC as Tenants in Common** whose address is: c/o 444 Seabreeze Boulevard, Suite 1000, Daytona Beach, FL 32118 (the "Seller") and **THE COUNTY OF VOLUSIA**, a political subdivision of the State of Florida, whose mailing address is: Volusia County Administration Center, 123 West Indiana Avenue, DeLand, Florida, 32720-4612 (the "Buyer").

**WITNESSETH:**

**WHEREAS**, the Seller are the owners of the fee simple title to certain lands (the "Property") legally described as follows:

ALL OF BLOCK "H", ELLINOR HEIGHTS SUBDIVISION, AS RECORDED IN MAP BOOK 11, PAGE 199, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY FLORIDA, PER OR 2815 PG 0420 PER OR 4163 PG 1996  
Volusia County Short Parcel ID **4223-09-08-0010**, and  
Volusia County Short Parcel ID **4223-09-08-0020**

**WHEREAS**, the Buyer is a political subdivision of the State of Florida, which is authorized to purchase real property in its name; and

**WHEREAS**, the Buyer desires to purchase said Property from the Seller for purposes hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable considerations, the parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

1. **The Purchase.** The Seller agrees to sell and the Buyer agrees to purchase the Property described herein together with all of the tenements and improvements appertaining thereto and all of the Seller's right, title and interest therein, on the terms and conditions set forth herein. Buyer shall pay Ellinor ATB, LLC a purchase price of NINE HUNDRED THOUSAND (\$900,000.00) DOLLARS for its 50% interest in the property; and Buyer shall pay Ellinor Linda, LLC a purchase price of NINE HUNDRED THOUSAND

(\$900,000.00) DOLLARS for its 50% interest in the property, for a Total Purchase Price of ONE MILLION EIGHT HUNDRED THOUSAND (\$1,800,000.00) DOLLARS.

2. **Proration of Taxes and other Expenses.** Water and other utility charges, fuels, real estate taxes, and other similar items shall be adjusted ratably as of the Closing Date. If the amount of the current real estate taxes is not then ascertainable, the adjustment thereof, except for that amount which may accrue by reason of new or additional improvements, recently voted millage or changes in valuation, shall be on the basis of the amount of the most recent ascertainable taxes. Seller shall pay all special assessments or installments of special assessments (if payable by the installment method) due on or prior to the Closing Date. Special assessments or installments of special assessments (if payable by the installment method) for the year in which the Closing occurs which are not yet due and payable on the Closing Date shall be prorated to the Closing Date and assumed by Purchaser. In addition, the following expenses may apply:
  - a. It is the parties understanding that documentary stamps will not be due on this transaction pursuant to F.A.C. 12B-4.013(4). If for any reason they are due, Seller shall pay documentary stamps on the deed and the cost for recording corrective instruments.
  - b. At least thirty (30) days prior to closing, Seller shall provide to Buyer at Seller's expense, a title insurance commitment and subsequent owner's policy of title insurance.
  - c. Buyer's closing expenses shall include recording fees for the deed, environmental site assessment and attorney's fees incurred by Buyer in connection with this Agreement.
  - d. Any real estate commission owed shall be paid solely by the Seller.
3. **Survey.** The Seller, at its own expense, within time allowed to examine evidence of title and to examine same, will provide Buyer with its latest survey. Buyer may have the Property surveyed and certified by a registered Florida surveyor within thirty (30) days of the date hereof. If the survey shows any encroachments on the Property or that improvements intended to be located on the Property in fact encroach on setback lines, easements, lands of others, or violate any restrictions, the agreement, covenants or applicable governmental regulations, the same shall be treated as a title defect.

4. **Title to be Conveyed.** The Seller shall convey to the Buyer marketable title to the Property, free and clear of all liens and encumbrances, except as may be specifically set forth herein. Seller shall select a title company/closing agent within ten (10) days of executing the contract.
5. **Defective Title.** The Buyer shall have ten (10) days from date of receiving the title insurance commitment to examine the commitment. If the title is found defective, the Buyer shall, within three (3) days thereafter, notify the Seller in writing, specifying the defects. If said defects render the title unmarketable/or uninsurable, the Seller will have thirty 30 days from receipt of notice within which to remove said defects, but the removal of said defects shall be at the Seller's expense and in no event shall the Seller be required to expend more than \$5,000 in such efforts. If the Seller is unsuccessful in removing them within said time, the Buyer shall have the option of either accepting the title as it is, or terminating the Agreement. If the Agreement is terminated, the Seller and the Buyer shall be released as to one another of all further obligations under this Agreement.
6. **Right of Inspection and Access.** From the Effective Date hereof through the date of closing, the Buyer through its agents, consultants and employees, will be authorized to enter upon the Property for the purposes of scientific investigation, surveying and the taking of soil borings and upon contiguous lands owned by the Seller for the purpose of access to the Property provided that any such agents, consultants or employees of the Buyer shall give reasonable advance notice to the Seller and shall be responsible to close and lock any gates through which they pass in the exercise of such right of entry. Any boring holes made by the Buyer shall be promptly filled and packed to the surrounding earth level, and be fully restored to original condition by the Buyer. To the extent permitted by law and as limited by paragraph 16, the Buyer shall at all times save the Seller harmless from any and all suits or claims made by any person or legal entity as a result of any boring tests or other action of the Buyer, its agents, employees or representatives, while entering, leaving or on the Property. Such right of entry shall lapse in its entirety if the Buyer fails to close the purchase of the Property on or before the date provided herein or upon the closing on the Property with the Buyer.
7. **Environmental Audit.** Within forty-five (45) days of the effective date, Buyer, at its sole cost and expense, may conduct an environmental investigation of site conditions of the

Property to determine the existence and extent, if any, of any conditions that may preclude Buyer's purchase of the Property.

8. **Buyer's Termination Period.** Buyer shall have forty-five (45) days from the Effective Date to notify Seller in writing of its desire to terminate this contract for any reason, and if Buyer fails to terminate, this Agreement shall be binding and Buyer shall proceed to closing.
9. **The Closing.** The closing of title for the Property shall take place on or before June 1, 2015, at the office of the Buyer's agent and at a time of mutual agreement between the Seller and the Buyer, unless extended by other provisions of this Agreement. Notwithstanding any provision in this Agreement to the contrary, if the closing does not occur on or before June 1, 2015, for any reason other than the default of the Seller hereunder, then the Seller, at its option, may elect to terminate this Agreement. In the event this Agreement is terminated pursuant to the provisions of this subparagraph, the parties hereto shall thereafter be relieved of all liability hereunder. Buyer's agent will be Volusia Title Services, Inc., acting as escrow agent in disbursing the proceeds, which are to be fully accounted for in the closing statement.
10. **Documents to be Delivered.**

The Seller shall execute, acknowledge and deliver the following documents at the closing hereunder:

- a. Special Warranty Deed from the Seller conveying the fee simple title to the Property, in proper form for recording, which shall be duly executed, acknowledged and witnessed.
- b. An affidavit executed by the Seller, in a form acceptable to the Buyer, confirming the Seller's representations as set forth in Paragraph 11 of this Agreement.
- c. Such other documentation as may reasonably be required by the Buyer or the Closing Agent, including, but not limited to the closing statement, in order to close this transaction in accordance with the terms of this Agreement.

The Buyer shall execute, acknowledge, and deliver such other documentation as may reasonably be required by the Seller or the Closing Agent in order to close this transaction in accordance with the terms of this Agreement.



11. **The Seller's Representations and Warranties.** The Sellers represent and warrant to the Buyer as follows:

- a. The Seller has full power and authority to enter into and perform this Agreement in accordance with its terms.
- b. Other than as disclosed to Buyer, the Seller has no actual knowledge of and has not received any notice with respect to any of the lands subject to this Agreement: (i) of violation of any city, county, state or federal law, ordinance, regulation or code, or (ii) of existence of dangerous or illegal conditions requiring corrective action.
- c. There is no pending litigation or to the best of Seller's knowledge, dispute involving or concerning the location of the boundaries of the Property.
- d. While the Seller has been in possession of the Property, no hazardous material, pollutant or contaminant has been released or discharged onto the Property or into any water body on the Property, and, except as set forth in Exhibit A, Seller has no knowledge of hazardous material, pollutant or contaminant being released or discharged on the Property or into any water body on the Property. The Seller shall indemnify, defend and hold the Buyer harmless from any and all liability, claims, costs, fines, penalties, fees, actions or sanctions asserted by or on behalf of any person or governmental authority arising from or in connection with the Seller's use or misuse, handling or mishandling, storage, spillage, discharge, seepage into water bodies or the groundwater supply, or release into the atmosphere of any hazardous material, pollutant or contaminant.
- e. The Seller has not entered into any leases, contracts or other agreements relating to any of the Property which are unrecorded, other than the lease agreements with **Atlantic Mobil Corporation**, a Florida corporation, dated June 1, 1997, the City of Ormond Beach under a lease agreement dated January 20, 2015, and month to month tenancies with Brent Allen Salon and Atlantic Mobil for a separate storage space.
- f. The Seller represents that there are no mechanics' liens, claims of lien or other claims against the Property and that the Seller has no unpaid bills for labor or services performed on, or for materials supplied to the Property, except for those unpaid bills which will be paid prior to the closing.



- g. That no person is now, or will at the time of closing be entitled to, or in possession of any portion of the Property, except for lessees and persons employed by the Seller who may be on the Property in connection with the performance of their duties. Persons employed by the Seller will vacate the premises when the Buyer takes possession.
- h. The Seller is not a "foreign person" as such term is defined in §1445(f) of the Internal Revenue Code.
- i. At the time of closing, the Seller will provide the Buyer with an affidavit to the effect that the above warranties and representations are true and correct as of the Closing Date, and the Seller will indemnify and hold the Buyer harmless from and against all liability, claims, demands, damages, fines, penalties, expenses, suits, proceedings, actions and costs of action, including reasonable attorneys' fees and attorneys' fees and costs on appeal, arising out of or related to the untruthfulness or incorrectness of any and all warranties and representations in this Agreement.

12. **Environmental Compliance.** Subject to matters set forth in Exhibit A hereto, Seller warrants that so far as Seller has any knowledge or information the real property is not now and will not be in violation of any federal, state, or local law, ordinance or regulations relating to industrial hygiene or to the environmental conditions on, under, or about the real property including, but not limited to, soil and ground water conditions, up to the time of closing. During the time in which Seller owned the real property, neither Seller nor, to the best of Seller's knowledge, any third party has generated, manufactured, or disposed of, on, under or about the real property, any flammable explosives, friable asbestos, radioactive materials, hazardous waste, toxic substances or related injurious materials, whether injurious by themselves or in combination with other materials (collectively, "hazardous materials"). To the best of its actual knowledge, Seller warrants there is no proceeding or inquiry by any governmental authority (including, without limitation, the Florida State Department of Environmental Protection) with the respect to presence of such hazardous material, on the real property or the migration thereof from or to other property. For the purpose of this contract, hazardous materials shall include, but not be limited to, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980,

as amended, 42 USC §9601, et seq; the Hazardous Materials Transportation Act, et seq; the Resource Conservation and Recovery Act, 42 USC §6901, et seq; and those substances described in the Florida Substance List promulgated under Chapter 442 of the Florida Statutes; and in the regulations adopted and publications promulgated pursuant to said laws

13. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except by writing signed by the parties hereto or their authorized assignees.
14. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested, (ii) by hand delivery to the named individuals representing the party to be notified, or (iii) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of a change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

If to the Seller:

Charles S. Lichtigman, Manager  
Ellinor ATB, LLC  
444 Seabreeze Boulevard, Suite 1000  
Daytona Beach, FL 32118

And

David F. Neubauer, Manager  
Ellinor Linda, LLC  
487 John Anderson Drive  
Ormond Beach, FL 32176

If to the Buyer:

The County of Volusia  
County Administration Building  
123 West Indiana Avenue  
DeLand, Florida 32720-4612  
Attn: \_\_\_\_\_

Notices, consents, approvals, waivers and elections given or made as aforesaid shall be deemed to be given and received on the date of the mailing, delivery or transmission thereof as aforesaid.

15. **Personal Property, Equipment, Trash and Debris.** All personal property, equipment, trash and debris located on the property shall be removed from the Property by Seller prior to closing. The obligations of Seller pursuant to this paragraph shall survive the closing hereunder.
16. **Non-Waiver of the Buyer's Regulatory Powers.** Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the Buyer as it now or hereafter exists under applicable laws, rules and regulations.
17. **Non-Waiver of Sovereign Immunity.** Nothing contained in this Agreement or in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Buyer of its sovereign immunity under the constitution and laws of the state of Florida; provided, however, that this paragraph shall not be construed as an attempt by the Buyer to negate any partial waiver of sovereign immunity made by the Legislature under the provisions of The Tort Claims Act, §768.28, Florida Statutes or any future statute or Act adopted by the Florida Legislature.
18. **Time is of the Essence.** Time is of the essence with respect to all matters set forth in this Agreement.
19. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Florida. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms.
20. **Recording of this Agreement.** Neither this Agreement for Purchase and Sale nor any memorandum hereof may be recorded in the Public Records of any county in the State of Florida.
21. **Construction of Agreement.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Seller and the Buyer have contributed substantially and materially to the preparation hereof.

22. **Default.** Either party shall be entitled to enforce the terms of this Agreement by action for specific performance in the event of a default by the other party. In the event of litigation, the prevailing party shall be entitled to recover costs and attorney's fees from the other party.
23. **Further Documentation.** The parties agree that at any time following a request therefore by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transaction contemplated hereby. The obligations of the Seller and the Buyer pursuant to this paragraph shall survive the closing hereunder.
24. **Effective Date.** For all purposes of this Agreement, the Effective Date hereof shall mean the date when the last of the Seller or the Buyer has executed the same, and that date shall be inserted at the top of the first page hereof.
25. **Contingencies.** This Agreement is contingent upon acceptance by the Volusia County Council at appropriate Public Hearing.
26. **Off Beach Parking.** The Buyer has initiated a program for providing off beach parking of vehicles and has identified this property as needed for public parking. The Buyer and Seller have agreed upon the above purchase price in lieu of proceeding under the threat of condemnation by the Buyer.
27. **1033 Cooperation.** Buyer and Seller are aware that Seller may wish to effectuate a 1033 tax deferred exchange in connection with this transaction. Seller agrees to cooperate with Buyer in order to facilitate the 1033 tax deferred exchange.

**SIGNATURE PAGE FOLLOWS**

# SIGNATURE PAGE

Signed, sealed and delivered  
in the presence of:

Joanne Shubler

Deborah W. W. W.

## SELLERS:

CHARLES S. LICHTIGMAN, AS MANAGER  
Ellinor ATB, LLC

Charles S. Lichtigman  
By:

DAVID F. NEUBAUER  
Ellinor Linda, LLC

David F. Neubaum  
By:

## BUYER:

COUNTY COUNCIL  
COUNTY OF VOLUSIA

ATTEST:

James T. Dinneen, County Manager

By: Jason P. Davis, Chair

APPROVED AS TO FORM AND CONTENT  
FOR COUNTY OF VOUSIA

BY: Jamie E. Seaman, Deputy County Attorney

**ECS FLORIDA, LLC***"Setting the Standard for Service"*

Geotechnical • Construction Materials • Environmental • Facilities

February 17, 2015

Mr. Ted Lightman  
Weeki-Wachee Lease, LLC  
2300 Maitland Center Parkway  
Maitland, Florida 32751

SUBJECT: Summary Letter of Regulatory File Review  
Ormond Gas Station  
650 South Atlantic Avenue  
Ormond Beach, Florida 32176  
ECS Project No. 24:2889-A

Dear Mr. Lightman:

Per your request yesterday, ECS Florida, LLC (ECS) has conducted a Florida Department of Environmental Protection (FDEP) OCULUS file review for regulatory information related to petroleum storage and releases at the above referenced site. We have also conducted several interviews with agency personnel. Below you will find what we believe to be pertinent information.

The subject site is a retail gasoline station located at 650 South Atlantic Avenue, Ormond Beach. As described in more detail below, a historical resigned underground storage tank ("UST") release occurred on the Property in 1983. The Property is a registered site for Florida Department of Environmental Protection's ("FDEP") Early Detection Incentive ("EDI") Program to address the historical release. Finally, based on the July 2008 Phase II Report, the historical petroleum release appears to have attenuated, though further assessment would be required to formally close this matter with FDEP.

**Property Background.** A petroleum release appears to have occurred in 1983 during replacement of a then-existing UST system with new USTs. Assessment and remediation of the release was conducted from 1984 through 1990. Based on historical reports, the petroleum contamination was located primarily southeast of the UST system location, consistent with groundwater flow in the area. In 1987, FDEP approved the 1983 discharge for the EDI Program; therefore the site is eligible for reimbursement for eligible assessment and remediation costs associated with the petroleum release.

We are not aware of any further petroleum releases since the petroleum release in 1983. FDEP Storage Tank Facility Annual Site Inspection Reports dated January 17, 2007 and April 18, 2007 state that the Property's UST system was in compliance with FDEP regulation. In April 2007, two new, double-walled USTs were installed on the Property in a similar location to the former UST systems. A FDEP Storage Tank Facility Annual Site Inspection Report dated November 26, 2007 confirms that the Property's new, current UST system was installed compliant with FDEP regulations.

**Early Detection Incentive (EDI) Program.** Qualified sites are eligible for state-led assessment

File Review Summary Letter  
Ormond Gas Station

and remediation as well as reimbursement for approved assessment and reimbursement costs incurred by private parties. Funding is available on a prioritized basis, with sites posing the greatest risk to the environment receiving priority. The Property's current rank is 26, based on FDEP's EDI Score Tracking Sheet dated October 25, 2006. The EDI Program is currently funding assessment and remediation of eligible sites with scores of 30 or higher, and therefore the Property's priority ranking does not yet warrant state-led cleanup or reimbursement.

ECS was retained to conduct a soil and groundwater assessment of the Property in June 2008 to gauge the current status of the historical petroleum release. ECS collected thirteen (13) soil samples from the area of the UST pit and along the dispenser lines and pumps. No contaminants were detected in any of the soil samples collected at the Property. ECS also installed four (4) groundwater monitoring wells. In light of the historical assessment reports for the Property and groundwater flow, the groundwater monitoring wells were located in the area most likely to identify any existing petroleum groundwater contamination relating to the former or current UST system on the Property. Monitoring wells TMW-1, -3, and -4 did not detect any contaminants. Monitoring well TMW-2 detected a trace amount of one petroleum constituent, toluene, at 0.29 parts per billion, which is well below the FDEP Groundwater Cleanup Target Level for toluene of 40 parts per billion.

**Summary.** A petroleum release occurred on the Property in 1983, relating to a former UST system. Since that time, the Property has been certified into the State's EDI Program so that qualified assessment and remediation activities at the Property will be eligible for reimbursement from the State. The Property's priority ranking is 26; the State is currently addressing sites with priority rankings of 30 or higher. Recent soil and groundwater assessment of the Property conducted by ECS did not detect any soil contamination in the area near the UST pit, dispenser lines or pumps, which are the areas most likely to harbor existing petroleum contamination in the soils. The four groundwater monitoring wells were installed in locations most likely to detect groundwater contamination from the UST system. Three of the monitoring wells did not detect any contaminants. Only TMW-2 detected a trace amount of a single petroleum constituent, well below the state standards.

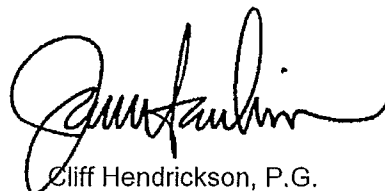
While additional assessment would be required to close the Property's regulatory matter with FDEP, it appears that the historical petroleum release has naturally attenuated over time and does not present a significant issue of environmental concern. Should you have any questions, please do not hesitate to contact us.

Sincerely,

ECS FLORIDA, LLC



Allison Kaufmann  
Staff Scientist



Cliff Hendrickson, P.G.  
Principal Geologist



