

Meeting Date
November 17, 2015



AGENDA	
Section	New Business
Item No.	VI A 1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Commercial Contract and Addendum for the acquisition of the William J. Page property as part of the Pineda Causeway Grade Separation Project - District 4 (Fiscal Impact: \$4,100,000.00)
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DEPT/OFFICE:	Public Works Department / Land Acquisition Section
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Requested Action:
It is requested that the Board of County Commissioners consider approval and authorization for the Chairman to execute the Commercial Contract and Addendum for the acquisition of the William Page property as part of the Pineda Causeway Grade Separation Project in the amount of \$4,100,000.00.

Summary Explanation & Background:

The subject property is located in Section 19, Township 26 South, Range 37 East.

At the regular Board meeting dated October 21, 2014, the Board of County Commissioners approved Amendment No. 2 of the Joint Participation Agreement with FDOT for the design, right-of-way acquisition and construction of an overpass on the Pineda Causeway over the Florida East Coast Railroad right-of-way. At that time, staff was directed to enter into negotiations with William Page for the acquisition of the entire Page parcel. To that end, staff has ordered and received two appraisals to establish the fair market value for the Page parcel. Those appraisals were forwarded to the Florida Department of Transportation Right-of-Way Acquisition Group for their review and comments. As a condition of FDOT's reimbursement of acquisition costs associated with the Page parcel acquisition, FDOT is to review the appraisals.

Appraisal number one was from Clayton, Roper & Marshall with a fair market value of \$2,935,000.00. Appraisal number two was from William H. Benson with a fair market value of \$2,885,000.00. The average of the two appraisals is \$2,910,000.00 and an offer was made to Mr. Page in that amount. The Commercial Contract and Addendum presented here is Mr. Page's counteroffer to the County's offer.

Agenda Summary continued on Page 2 attached.

Fiscal impact: FY 2015-2016: Grant 1700-344927-5610000
FY 2016-2017: No impact

Clerk to the Board Instructions: Return original executed Commercial Contract, original executed Addendum and Board Approval memo to the Department.

Exhibits Attached: Original Commercial Contract, Original Addendum, Property Fact Sheet , Location Map

Contract /Agreement (If attached): Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten	Assistant County Manager	John Denninghoff / 57202

Mr. Page (through his attorney) has countered that offer with an offer of \$4,100,000.00 plus expert fees per Florida Statute. There is an addendum, which, if accepted, would allow Page to maintain operation, including collecting rent on the existing warehouse units, for a period of 2 (two) years from the date of closing. Further, it provides that during the two years Page occupies the site he may, at his discretion, make repairs and modifications at the County's expense.

It is requested that the Board consider Page's offer and either:

1. Accept the offer as written (requiring a super majority vote).
2. Reject the offer as written and direct staff to proceed with eminent domain action.
3. Reject the offer as written and direct staff to negotiate with the owner and return the modified offer to the Board for consideration within 28 days (December 15, 2015 Board meeting).
Failing an acceptable modified offer, staff would be directed to promptly file for eminent domain action.

It is staff's recommendation that the Board select option three and direct staff accordingly.



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

November 19, 2015

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item VI.A.1., Approval of Commercial Contract and Addendum for the Acquisition of the William J. Page Property as Part of the Pineda Causeway Grade Separation Project

The Board of County Commissioners, in regular session on November 17, 2015, considered William J. Page's offer of \$4,100,000, for property as part of the Pineda Causeway Grade Separation Project, and approved Option 2, to reject the offer as written; and directed staff to proceed with eminent domain action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

BOARD OF COUNTY COMMISSIONERS

AGENDA: COMMERCIAL CONTRACT AND ADDENDUM (COUNTEROFFER FROM WILLIAM PAGE) FOR ACQUISITION OF THE PAGE PROPERTY AS PART OF THE PINEDA CAUSEWAY GRADE SEPARATION PROJECT - DISTRICT 4

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION

AGENCY CONTACT: DAN JONES LAND ACQUISITION SUPERVISOR

CONTACT PHONE: 321-690-6847 (5-2726)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DPJ</u>	_____	<u>11/13/15</u>
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	_____	_____	_____
PUBLIC WORKS John Denninghoff, Director	_____	_____	_____

AGENDA DUE DATE: November 2, 2015 for the November 17, 2015 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.

1* 1. PARTIES AND PROPERTY: Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida ("Buyer")

2* agrees to buy and William J. Page ("Seller")

3* agrees to sell the property as: Street Address: 2905 Pineda Causeway, Melbourne, FL 32940

4* _____

5* Legal Description: Parcel I.D. 26-37-19-00-520-00

6* _____

7* and the following Personal Property: _____

8* _____

9 (all collectively referred to as the "Property") on the terms and conditions set forth below.

10* 2. PURCHASE PRICE: \$ see addendum

11* (a) Deposit held in escrow by GrayRobinson, P.A. \$ 50,000.00
12 ("Escrow Agent") (checks are subject to actual and final collection)

13* Escrow Agent's address: 1795 West NASA Blvd., Melbourne, FL 32901 Phone: 321-727-8100

14* (b) Additional deposit to be made to Escrow Agent within _____ days after Effective Date \$ _____

15* (c) Additional deposit to be made to Escrow Agent within _____ days after Effective Date \$ _____

16* (d) Total financing (see Paragraph 5) \$ _____

17* (e) Other _____ \$ _____

18 (f) All deposits will be credited to the purchase price at closing. Balance to close, subject
19* to adjustments and prorations, to be paid with locally drawn cashier's or official bank \$ 4,050,000.00
20 check(s) or wire transfer.

21 3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME: Unless this offer is signed by Seller
22* and Buyer and an executed copy delivered to all parties on or before November 15, 2015, this offer will be
23 withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be 3
24 days from the date the counter offer is delivered. **The "Effective Date" of this Contract is the date on which the**
25 **last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer.**
26 Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5
27 days or less will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending
28 on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next business day. **Time is of the**
29 **essence in this Contract.**

30 4. CLOSING DATE AND LOCATION:

31* (a) Closing Date: This transaction will be closed on See Addendum (Closing Date), unless specifically
32 extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including, but
33 not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended on Closing
34 Date and Buyer is unable to obtain property insurance, Buyer may postpone closing up to 5 days after the
35 insurance underwriting suspension is lifted.

36* Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

37* (b) Location: Closing will take place in Brevard County, Florida. (If left blank, closing
38 will take place in the county where the property is located.) Closing may be conducted by mail or electronic means.

39 **5. THIRD PARTY FINANCING:**

40* **BUYER'S OBLIGATION:** Within N/A days (5 days if left blank) after Effective Date, **Buyer** will apply for third party
41* financing in an amount not to exceed N/A % of the purchase price or \$ N/A, with a fixed interest rate
42* not to exceed N/A % per year with an initial variable interest rate not to exceed N/A %, with points or commitment
43* or loan fees not to exceed N/A % of the principal amount, for a term of N/A years, and amortized over N/A
44 years, with additional terms as follows:
45* N/A

46 **Buyer** will timely provide any and all credit, employment, financial and other information reasonably required by any
47* lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within N/A days (45 days if
48 left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and
49 (iii) close the loan. **Buyer** will keep **Seller** and Broker fully informed about loan application status and authorizes the
50 mortgage broker and lender to disclose all such information to **Seller** and Broker. **Buyer** will notify **Seller** immediately
51 upon obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and
52* reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within N/A days (3 days if left
53 blank) deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract.
54 If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time
55 thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the
56 satisfaction, by closing, of those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes**
57 **of Paragraph 5 only):** If **Buyer** has used good faith and reasonable diligence but does not obtain Loan
58 Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the
59 lender fails or refuses to close on or before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be
60 returned to **Buyer**, whereupon both parties will be released from all further obligations under this Contract, except for
61 obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract
62 as set forth above or **Buyer** fails to use good faith or reasonable diligence as set forth above, **Seller** will be entitled to
63 retain the Deposit(s) if the transaction does not close.

64* **6. TITLE:** **Seller** has the legal capacity to and will convey marketable title to the Property by statutory warranty
65* deed other _____, free of liens, easements and encumbrances of record or
66 known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions and public utility
67 easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be
68* subject) N/A

69* _____
70 provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the
71* Property as public use

72 (a) **Evidence of Title:** The party who pays the premium for the title insurance policy will select the closing agent
73* and pay for the title search and closing services. **Seller** will, at (check one) **Seller's** **Buyer's** expense and
74* within 15 days after Effective Date or at least _____ days before Closing Date deliver to **Buyer** (check one)
75* (i.) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be
76 discharged by **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount
77 of the purchase price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the
78 evidence of title and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after
79 Effective Date.
80* (ii.) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an
81 existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable
82 to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies
83 of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and
84 certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and
85 in the update. If such an abstract or prior policy is not available to **Seller** then (i.) above will be the evidence of
86 title.

87 (b) **Title Examination:** **Buyer** will, within 15 days from receipt of the evidence of title deliver written notice to **Seller**
88 of title defects. Title will be deemed acceptable to **Buyer** if (1) **Buyer** fails to deliver proper notice of defects or

89* **Buyer** () () and **Seller** (WJ PWF P) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

90* (2) **Buyer** delivers proper written notice and **Seller** cures the defects within **60** days from receipt of the notice
91 ("Curative Period"). If the defects are cured within the Curative Period, closing will occur within 10 days from receipt
92 by **Buyer** of notice of such curing. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect
93 cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, **Buyer** will have
94 10 days from receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or
95 accept title subject to existing defects and close the transaction without reduction in purchase price.

96 (c) **Survey:** (check applicable provisions below)

97* (i.) **Seller** will, within _____ days from Effective Date, deliver to **Buyer** copies of prior surveys, plans,
98 specifications, and engineering documents, if any, and the following documents relevant to this transaction:

99* _____
100 prepared for **Seller** or in **Seller's** possession, which show all currently existing structures. In the event this
101 transaction does not close, all documents provided by **Seller** will be returned to **Seller** within 10 days from the
102 date this Contract is terminated.

103* **Buyer** will, at **Seller's** **Buyer's** expense and within the time period allowed to deliver and examine title
104 evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals
105 encroachments on the Property or that the improvements encroach on the lands of another, **Buyer** will
106 accept the Property with existing encroachments such encroachments will constitute a title defect to be
107 cured within the Curative Period.

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

109 **7. PROPERTY CONDITION:** **Seller** will deliver the Property to **Buyer** at the time agreed in its present "as is"
110 condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition.
111 **Seller** makes no warranties other than marketability of title. In the event that the condition of the Property has
112 materially changed since the expiration of the Due Diligence Period, **Buyer** may elect to terminate the Contract and
113 receive a refund of any and all deposits paid, plus interest, if applicable. By accepting the Property "as is", **Buyer**
114 waives all claims against **Seller** for any defects in the Property. (Check (a) or (b))

115* (a) **As Is:** **Buyer** has inspected the Property or waives any right to inspect and accepts the Property in its "as is"
116 condition.

117* (b) **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within _____ days from Effective Date ("Due
118 Diligence Period"), determine whether the Property is suitable, in **Buyer's** sole and absolute discretion, for **Buyer's**
119 intended use and development of the Property as specified in Paragraph 6. During the Due Diligence Period,
120 **Buyer** may conduct any tests, analyses, surveys and investigations ("Inspections") which **Buyer** deems necessary
121 to determine to **Buyer's** satisfaction the Property's engineering, architectural, environmental properties; zoning and
122 zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of
123 access to public roads, water, and other utilities; consistency with local, state and regional growth management and
124 comprehensive land use plans; availability of permits, government approvals and licenses; compliance with
125 American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections
126 that **Buyer** deems appropriate to determine the suitability of the Property for **Buyer's** intended use and
127 development. **Buyer** will deliver written notice to **Seller** prior to the expiration of the Due Diligence Period of
128 **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice
129 requirement will constitute acceptance of the Property in its present "as is" condition. **Seller** grants to **Buyer**, its
130 agents, contractors and assigns, the right to enter the Property at any time during the Due Diligence Period for the
131 purpose of conducting Inspections; provided, however, that **Buyer**, its agents, contractors and assigns enter the
132 Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses,
133 damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any
134 person, arising from the conduct of any and all inspections or any work authorized by **Buyer**. **Buyer** will not engage
135 in any activity that could result in a mechanic's lien being filed against the Property without **Seller's** prior written
136 consent. In the event this transaction does not close, (1) **Buyer** will repair all damages to the Property resulting
137 from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and
138 (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a result of the
139 Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that **Buyer's**
140 deposit will be immediately returned to **Buyer** and the Contract terminated.

141 (c) **Walk-through Inspection:** **Buyer** may, on the day prior to closing or any other time mutually agreeable to the

142* **Buyer** (____) (____) and **Seller**  (____) (____) acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

143 parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and
144 to ensure that all Property is on the premises.

145 **8. OPERATION OF PROPERTY DURING CONTRACT PERIOD:** Seller will continue to operate the Property and any
146 business conducted on the Property in the manner operated prior to Contract and will take no action that would
147 adversely impact the Property, tenants, lenders or business, if any. Any changes, such as renting vacant space, that
148 materially affect the Property or Buyer's intended use of the Property will be permitted only with Buyer's consent
149 without Buyer's consent.

150 **9. CLOSING PROCEDURE:** Unless otherwise agreed or stated herein, closing procedure shall be in accordance with
151 the norms where the Property is located.

152 ~~(a) Possession and Occupancy: Seller will deliver possession and occupancy of the Property to Buyer at~~
153 closing. Seller will provide keys, remote controls, and any security/access codes necessary to operate all locks,
154 mailboxes, and security systems.

155 (b) **Costs:** Buyer will pay Buyer's attorneys' fees, taxes and recording fees on notes, mortgages and financing
156 statements and recording fees for the deed. Seller will pay Seller's attorneys' fees, taxes on the deed and
157 recording fees for documents needed to cure title defects. If Seller is obligated to discharge any encumbrance at or
158 prior to closing and fails to do so, Buyer may use purchase proceeds to satisfy the encumbrances.

159 (c) **Documents:** Seller will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable
160 service and maintenance contracts that will be assumed by Buyer after the Closing Date and letters to each
161 service contractor from Seller advising each of them of the sale of the Property and, if applicable, the transfer of its
162 contract, and any assignable warranties or guarantees received or held by Seller from any manufacturer,
163 contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium
164 documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters; tenant
165 subordination, non-disturbance and attornment agreements (SNDAs) required by the Buyer or Buyer's lender;
166 assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in
167 ownership/rental agent. If any tenant refuses to execute an estoppels letter, Seller will certify that information
168 regarding the tenant's lease is correct. If Seller is an entity, Seller will deliver a resolution of its Board of Directors
169 authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and
170 setting forth facts showing the conveyance conforms to the requirements of local law. Seller will transfer security
171 deposits to Buyer. Buyer will provide the closing statement, mortgages and notes, security agreements, and
172 financing statements.

173 (d) **Taxes and Prorations:** Real estate taxes, personal property taxes on any tangible personal property, bond
174 payments assumed by Buyer, interest, rents (based on actual collected rents), association dues, insurance
175 premiums acceptable to Buyer, and operating expenses will be prorated through the day before closing. If the
176 amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due
177 allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request
178 of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

179 (e) **Special Assessment Liens:** Certified, confirmed, and ratified special assessment liens as of the Closing Date
180 will be paid by Seller. If a certified, confirmed, and ratified special assessment is payable in installments, Seller will
181 pay all installments due and payable on or before the Closing Date, with any installment for any period extending
182 beyond the Closing Date prorated, and Buyer will assume all installments that become due and payable after the
183 Closing Date. Buyer will be responsible for all assessments of any kind which become due and owing after Closing
184 Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially
185 completed as of the Closing Date but has not resulted in a lien before closing, Seller will pay the amount of the last
186 estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and
187 does not apply to condominium association special assessments.

188 (f) **Foreign Investment in Real Property Tax Act (FIRPTA):** If Seller is a "foreign person" as defined by FIRPTA,
189 Seller and Buyer agree to comply with Section 1445 of the Internal Revenue Code. Seller and Buyer will
190 complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply
191 with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or

192* Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is Page 4 of 8 Pages.

193 Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the
194 withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the
195 requirement.

196 **10. ESCROW AGENT:** **Seller** and **Buyer** authorize Escrow Agent or Closing Agent (collectively "Agent") to
197 receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance
198 with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of
199 escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross
200 negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option,
201 (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent
202 jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of
203 the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the parties of such action,
204 Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If
205 Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent
206 interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover
207 reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and
208 charged and awarded as court costs in favor of the prevailing party.

209 **11. CURE PERIOD:** Prior to any claim for default being made, a party will have an opportunity to cure any alleged
210 default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-
211 complying party specifying the non-compliance. The non-complying party will have ___ days (5 days if left blank) after
212 delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

213 **12. RETURN OF DEPOSIT:** Unless otherwise specified in the Contract, in the event any condition of this Contract is
214 not met and **Buyer** has timely given any required notice regarding the condition having not been met, **Buyer's** deposit
215 will be returned in accordance with applicable Florida Laws and regulations.

216 **13. DEFAULT:**

217 (a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make
218 the title marketable after diligent effort, **Buyer** may either (1) receive a refund of **Buyer's** deposit(s) or (2) seek
219 specific performance. If **Buyer** elects a deposit refund, **Seller** will be liable to Broker for the full amount of the
220 brokerage fee.



221 (b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1) retain
222 all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the
223 execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek
224 specific performance. If **Seller** retains the deposit, **Seller** will pay the Brokers named in Paragraph 20 fifty percent
225 of all forfeited deposits retained by **Seller** (to be split equally among the Brokers) up to the full amount of the
226 brokerage fee. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1) terminate
227 the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving
228 any remedy for **Buyer's** default.

229 **14. ATTORNEY'S FEES AND COSTS:** In any claim or controversy arising out of or relating to this Contract, the
230 prevailing party, which for purposes of this provision will include **Buyer**, **Seller** and Broker, will be awarded reasonable
231 attorneys' fees, costs, and expenses.

232 **15. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or
233 electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice,
234 document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker)
235 representing a party will be as effective as if given by or delivered to that party.

236 **16. DISCLOSURES:**

237 (a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales
238 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of commercial
239 real estate for any commission earned by the broker under a brokerage agreement. The lien upon the owner's net

240 Buyer () and Seller () acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

241 proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not attach to any
242 interest in real property. This lien right cannot be waived before the commission is earned.

243 **(b) Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special
244 assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such
245 liens, if any, shall be paid as set forth in Paragraph 9(e).

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

250 **(d) Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by
251 Section 553.996, Florida Statutes.

252 **17. RISK OF LOSS:**

253 **(a)** If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, **Seller** will bear
254 the risk of loss and **Buyer** may cancel this Contract without liability and the deposit(s) will be returned to **Buyer**.
255 Alternatively, **Buyer** will have the option of purchasing the Property at the agreed upon purchase price and **Seller**
256 will credit the deductible, if any and transfer to **Buyer** at closing any insurance proceeds, or **Seller's** claim to any
257 insurance proceeds payable for the damage. **Seller** will cooperate with and assist **Buyer** in collecting any such
258 proceeds. **Seller** shall not settle any insurance claim for damage caused by casualty without the consent of the
259 **Buyer**.

260 **(b)** If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the
261 right of eminent domain, or proceedings for such taking will be pending or threatened, **Buyer** may cancel this
262 Contract without liability and the deposit(s) will be returned to **Buyer**. Alternatively, **Buyer** will have the option of
263 purchasing what is left of the Property at the agreed upon purchase price and **Seller** will transfer to the **Buyer** at
264 closing the proceeds of any award, or **Seller's** claim to any award payable for the taking. **Seller** will cooperate with
265 and assist **Buyer** in collecting any such award.

266* **18. ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise is
267* not assignable is assignable. If this Contract may be assigned, **Buyer** shall deliver a copy of the assignment
268 agreement to the **Seller** at least 5 days prior to Closing. The terms "**Buyer**," "**Seller**" and "**Broker**" may be singular or
269 plural. This Contract is binding upon **Buyer**, **Seller** and their heirs, personal representatives, successors and assigns
270 (if assignment is permitted).

271 **19. MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between **Buyer** and **Seller**.
272 Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound.
273 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated
274 electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or
275 typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract
276 is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be
277 construed under Florida law and will not be recorded in any public records.

~~278* **20. BROKERS:** Neither **Seller** nor **Buyer** has used the services of, or for any other reason owes compensation to,
279 a licensed real estate Broker other than:~~

280* **(a) Seller's Broker:** _____
281 (Company Name) (Licensee)
282* _____
283 (Address, Telephone, Fax, E-mail)

284* who is a single agent is a transaction broker has no brokerage relationship and who will be compensated
285* by **Seller** **Buyer** both parties pursuant to a listing agreement other (specify) _____

286*

287* **Buyer** () () and **Seller** () () acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

288* ~~(b) Buyer's Broker.~~ _____
289 _____ (Company Name) _____ (Licensee)
290* _____
291 _____ (Address, Telephone, Fax, E-mail)

292* who is a single agent is a transaction broker has no brokerage relationship and who will be compensated
293* by Seller's Broker Seller Buyer both parties pursuant to an MLS offer of compensation other (specify)
294* _____

295 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to
296 inquiries, introductions, consultations, and negotiations resulting in this transaction. **Seller and Buyer** agree to
297 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including
298 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is
299 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to
300 Paragraph 10, (3) any duty accepted by Broker at the request of **Seller** or **Buyer**, which is beyond the scope of
301 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and
302 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of **Seller** or **Buyer**.

303 **21. OPTIONAL CLAUSES:** (Check if any of the following clauses are applicable and are attached as an addendum to
304 this Contract):

- | | | |
|--|--|---|
| 305* <input type="checkbox"/> Arbitration | <input type="checkbox"/> Seller Warranty | <input type="checkbox"/> Existing Mortgage |
| 306* <input type="checkbox"/> Section 1031 Exchange | <input type="checkbox"/> Coastal Construction Control Line | <input type="checkbox"/> Buyer's Attorney Approval |
| 307* <input type="checkbox"/> Property Inspection and Repair | <input type="checkbox"/> Flood Area Hazard Zone | <input type="checkbox"/> Seller's Attorney Approval |
| 308* <input type="checkbox"/> Seller Representations | <input type="checkbox"/> Seller Financing | <input type="checkbox"/> Other _____ |

309 **22. ADDITIONAL TERMS:**

310* See Addendum, the terms of which, if in conflict with paragraphs 1 through 21 above, shall be superior to
311* and override the provisions set forth herein, which provisions will become null and void and of no further
312* effect.
313* _____
314* _____
315* _____
316* _____
317* _____
318* _____
319* _____
320* _____

321 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE**
322 **ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL**
323 **FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE**
324 **PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE**
325 **EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR**
326 **REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER**
327 **ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL**
328 **REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER**
329 **REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF**
330 **THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS**
331 **AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE**
332 **AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.**

333* Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

288*
289
290*
291

(b) Buyer's Broker: Spectrum, Inc.

(Company Name)

Paul Rufo, Broker

(Licensee)

(Address, Telephone, Fax, E-mail)

292*
293*
294*

who is a single agent is a transaction broker has no brokerage relationship and who will be compensated by Seller's Broker Seller Buyer both parties pursuant to an MLS offer of compensation other (specify)

295
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(collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to inquiries, introductions, consultations, and negotiations resulting in this transaction. Seller and Buyer agree to indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to Paragraph 10, (3) any duty accepted by Broker at the request of Seller or Buyer, which is beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of Seller or Buyer.

303
304

21. OPTIONAL CLAUSES: (Check if any of the following clauses are applicable and are attached as an addendum to this Contract):

305*
306*
307*
308*

- Arbitration
- Section 1031 Exchange
- Property Inspection and Repair
- Seller Representations
- Seller Warranty
- Coastal Construction Control Line
- Flood Area Hazard Zone
- Seller Financing
- Existing Mortgage
- Buyer's Attorney Approval
- Seller's Attorney Approval
- Other _____

309

22. ADDITIONAL TERMS:

310*
311*
312*
313*
314*
315*
316*
317*
318*
319*
320*

See Addendum, the terms of which, if in conflict with paragraphs 1 through 21 above, shall be superior to and override the provisions set forth herein, which provisions will become null and void and of no further effect.

321
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THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

333*

Buyer () () and Seller (*WJR WJR*) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

334 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other
335 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its
336 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized
337 to do so.

Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida

338* _____ Date: _____
339 (Signature of **Buyer**)

340* _____ Tax ID No: _____
341 (Typed or Printed Name of **Buyer**)

342* Title: _____ Telephone: _____

343* _____ Date: _____
344 (Signature of **Buyer**)

345* _____ Tax ID No: _____
346 (Typed or Printed Name of **Buyer**)

347* Title: _____ Telephone: _____

348* **Buyer's** Address for purpose of notice: _____

349* Facsimile: _____ Email: _____

350*  Date: 11-5-15
351 (Signature of **Seller**)

352* William J. Page Tax ID No: _____
353 (Typed or Printed Name of **Seller**)

354* Title: _____ Telephone: _____

355* _____ Date: _____
356 (Signature of **Seller**)

357* _____ Tax ID No: _____
358 (Typed or Printed Name of **Seller**)

359* Title: _____ Telephone: _____

360* **Seller's** Address for purpose of notice: _____

361* Facsimile: _____ Email: _____

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

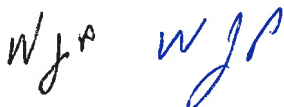
362* **Buyer** () () and **Seller**  acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

ADDENDUM

THIS ADDENDUM to that certain Agreement between **WILLIAM J. PAGE** and **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida being entered into contemporaneously with the Agreement this 15th day of November 2015.

1. The parties acknowledge that this contract was negotiated in lieu of the Buyer's proceeding with an eminent domain proceeding to acquire some or all of Seller's Property currently being used for commercial storage rental. In order to accommodate Seller's need to replace its current business located on the Property, Buyer agrees that Seller will have the right to continue its present occupancy on the Property post-closing for a two (2) year period commencing with the date of the closing on the Property to Buyer. Seller shall pay Buyer the sum of Ten and 00/100 (\$10.00) Dollars per year for the rental of the Property. Seller's continue use of the Property shall include the renting and receiving of rental income from the Property. The Buyer shall have no responsibility for maintaining or replacing any structures on the Property nor shall Buyer have any liability associated with Seller's use of the Property. Seller shall have the right to decide which repairs and replacement if any shall be made during the two (2) year rental period. Seller's right to remain on the property shall survive the closing of this contract and be fully enforceable. Seller shall maintain liability insurance on the Property during the rental period. A written lease covering the rental period shall be entered into during the forty-five (45) day period set forth in Paragraph 3 below.

2. The Purchase Price for the Property shall be Four Million One Hundred Thousand and 00/100 (\$4,100,000.00) Dollars ("Purchase Price"), and Buyer in addition to the Purchase Price shall be responsible for and pay for the fees of Seller's expert as allowed under Florida's



eminent domain law, including without limitation appraisals, engineers, land planners, and attorneys' fees in representing Seller in connection with the Buyer acquiring of the Property.

3. Buyer shall have forty-five (45) days from Effective Date of the Agreement within which to determine whether or not it wishes to go forward with the purchase of the Property, and during that period of time, the parties shall enter into a written Lease conditioned upon Buyer acquiring the Property, under which Seller shall be entitled to retain possession of the Property for a two (2) year period starting with the Closing Date of the sale. During the forty-five (45) day period, the parties shall negotiate in good faith the amount of money that Buyer shall pay Seller's expert witness and attorneys' fees as set forth above.

4. Closing shall occur on the thirtieth (30th) day following the expiration of the forty-five (45) day time period set forth in Paragraph 3 above, or such earlier date as the parties may agree.

5. The following paragraphs in the Agreement are hereby deleted in their entirety:

- a. Paragraph 9.(a), (b), and (c);
- b. Paragraph 16.(a); and
- c. Paragraph 20.

6. **1031 Exchange:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

WJP WJP

7. The terms set forth in this Addendum shall supersede any terms and conditions in conflict with the Agreement, and with this Addendum being superior and controlling in the event of a conflict.

IN WITNESS WHEREOF the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered

in the presence of:



Witness 1

KAREN S. HERB

Print Name of Witness 1

Witness 2

Print Name of Witness 2



WILLIAM J. PAGE

ATTEST:



SCOTT ELLIS, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA, a
political subdivision of the State of Florida**


JIM BARFIELD, Chairman

(SEAL)

As approved by the Board on 11/17/15

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 2nd day of November, 2015, by **WILLIAM J. PAGE**. He is [] personally known to me or [] produced as identification and did/did not take an oath.



JANE L. VELEZ
MY COMMISSION # FF 130137
EXPIRES: October 28, 2016
Bonded Thru Budget Notary Services

Jane L. Velez
Notary Public

My commission expires:

SEAL
Commission No.:

Jane L. Velez
(Name typed, printed or stamped)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, **CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political, subdivision of the State of Florida, who is [] personally known to me or [] produced as identification and did/did not take an oath.

My commission expires:

Notary Public

SEAL
Commission No.:

(Name typed, printed or stamped)

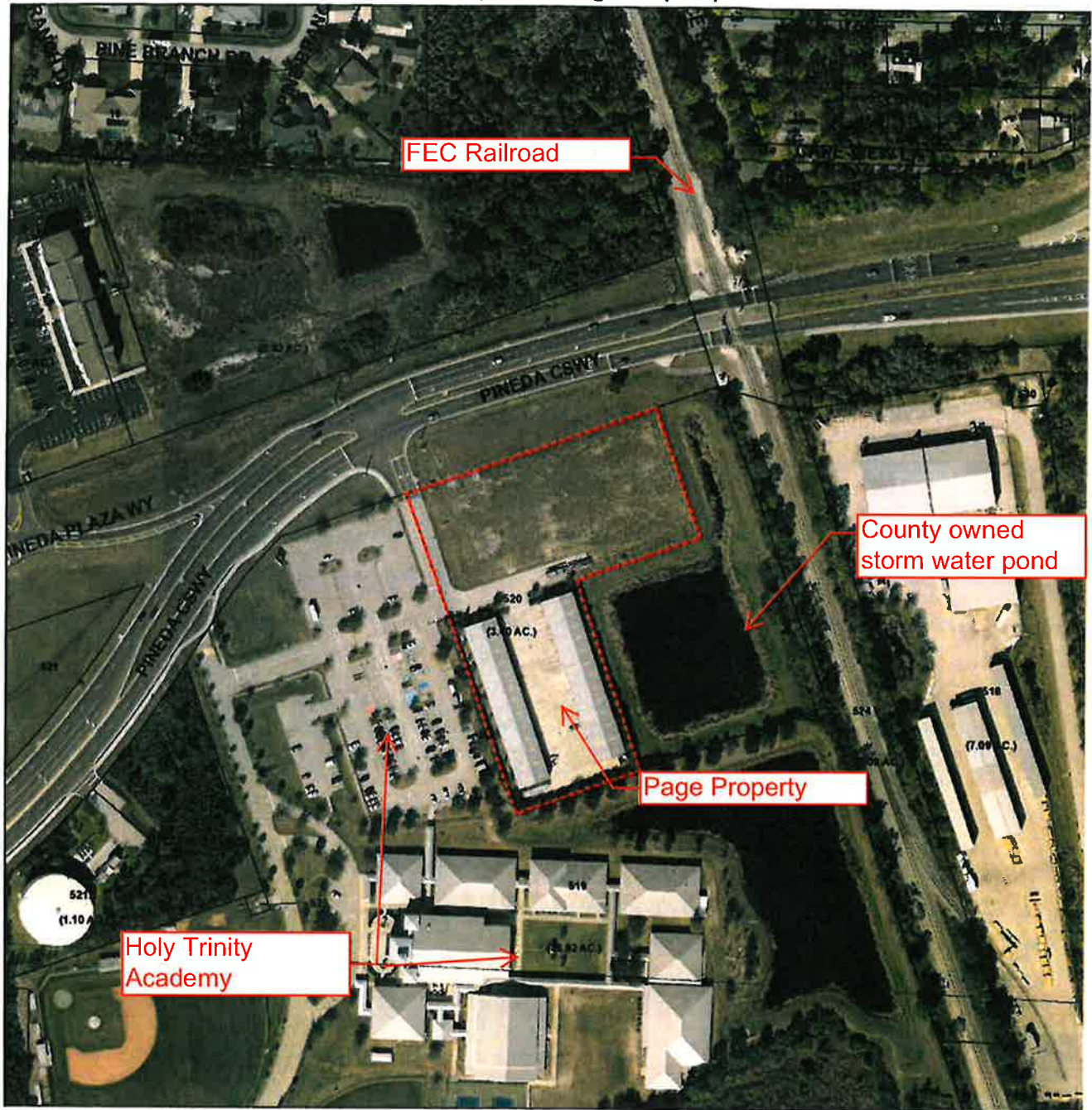
**PROPERTY FACT SHEET
PROJECT: PINEDA CAUSEWAY FLYOVER**

OWNER:	William J. Page
PARCEL LOCATION:	2905 Pineda Causeway, Melbourne, FL
PARCEL SIZE:	3.39 acres – whole acquisition
ZONING/LANDUSE:	C – Warehousing, Distribution and Trucking Terminal, Van & Storage Warehousing
IMPROVEMENTS:	Two building – 13,050 square feet per building
TOPOGRAPHY:	Level with road grade, no wetlands indicated
FLOOD ZONE:	X (outside 500-year flood)
TAX PARCEL ID#:	26-37-19-00-00520.0-0000.00
MARKET VALUE:	\$925,000.00 (2014 Assessment)(Property Appraiser's Records)
PUBLIC UTILITIES:	All utilities
PROPERTY TRANSACTION: (Clerk of the Court Records)	Purchase date: February 28, 1996 Sale amount: \$220,000.00
ROPER APPRAISAL DATE: Appraisal Amount:	01/19/15 \$2,935,000.00
BENSON APPRAISAL DATE: Appraisal Amount:	1/27/15 \$2,885,000.00
AVERAGE:	\$2,910,000.00



Dana Blickley, CFA
Brevard County Property Appraiser

Pineda Flyover – Page Property



North Government Complex
400 South St. 5th Floor
Titusville, FL 32780
Phone: (321) 264-6700
Fax: (321) 264-6954

Merritt Island Services Complex
2575 N Courtenay Pkwy
Merritt Island, FL 32953
Phone: (321) 454-6620
Fax: (321) 454-6618

Viera Government Center
2725 Judge Fran Jamieson Wy
Viera, FL 32940
Phone: (321) 690-6880
Fax: (321) 690-6883

South Services Complex
1515 Sarno Rd
Melbourne, FL 32935
Phone: (321) 255-4440
Fax: (321) 255-4439

Palm Bay Service Complex
450 Cogan Dr. SE
Palm Bay, FL 32909
Phone: (321) 952-4574
Fax: (321) 952-4573

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