

**RESOLUTION 16-08**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Real Estate Sales Contract between the City and NWFL C Store, Inc., a Florida corporation, relating to **the purchase of property located at 11214 Front Beach Road**, for the purchase amount of Seventy Seven Thousand One Hundred Thirty Two Dollars and Fifty Cents (\$77,132.50), in substantially the form of the documents attached and presented to the Council today, draft dated September 24, 2015, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 22<sup>nd</sup> day of October, 2015.

**CITY OF PANAMA CITY BEACH**

By:   
Gayle F. Oberst, Mayor

**ATTEST:**

  
Diane Fowler, City Clerk

## REAL ESTATE SALES CONTRACT

STATE OF FLORIDA

COUNTY OF BAY

THIS REAL ESTATE SALES CONTRACT (this "Contract") is made by and between NWFL C STORE, INC., a Florida Corporation ("Seller") and the CITY OF PANAMA CITY BEACH, FLORIDA, a municipal corporation ("Purchaser"), upon the terms and conditions set forth herein.

### ARTICLE I

1.01. Seller hereby agrees to sell and convey by statutory warranty deed (the "Deed"), and Purchaser hereby agrees to purchase and pay for, all that certain real estate located in Bay County, Florida described as follows:

SEE ATTACHED EXHIBIT A—Description Parcel 5A  
(sometimes referred to as the "Property").

Seller also sells and agrees to sell and convey, and Purchaser hereby agrees to pay for, all and singular, the rights and appurtenances pertaining to the Property, including any right, title and interest of Seller in and to adjacent streets, alleys, or rights-of-way, and including any rights of Seller to any oil, gas, and other minerals, together with any improvements and fixtures situated on and attached to the Property or appurtenant thereto (all of such real property, leases, rights, and appurtenances being hereinafter collectively referred to as the "Property"), for the consideration and upon the terms and conditions hereinafter set forth. Notwithstanding the foregoing, Seller shall have the right, prior to the closing contemplated herein, to remove from the Property any of Seller's personal property, including, but not limited to any signs or other improvements placed on the Property by the Seller.

1.02 Seller also agrees to convey by license (the "License") a temporary construction easement necessary to harmonize and reconnect existing features of Seller's property with the highway improvements which are to be constructed on the Property acquired by Purchaser, which easement is located in Bay County, Florida, and described as follows:

SEE ATTACHED EXHIBIT B—Description Parcel 5B  
(sometimes referred to as the "Temporary Construction Easement").

## ARTICLE II

### PURCHASE PRICE

#### Amount of Purchase Price

2.01. The purchase price (herein called the "Purchase Price") for said Property shall be the sum of SEVENTY SEVEN THOUSAND ONE HUNDRED THIRTY TWO DOLLARS AND FIFTY CENTS (\$77,132.50).

#### Deposit

2.02. Purchaser shall deposit with Harrison Sale McCloy, Chtd. the sum of Five Thousand Dollars (\$5,000.00) as an Escrow Deposit that shall be credited to the Purchaser at Closing.

#### Payment of Purchase Price

2.03. Purchaser shall pay at Closing the sum of Seventy Two Thousand One Hundred Thirty Two Dollars and Fifty Cents (\$72,132.50) in cash or certified funds.

## ARTICLE III

### PURCHASER'S OBLIGATIONS

#### Conditions to Purchaser's Obligations

3.01. The obligation of Purchaser hereunder to consummate the transaction contemplated hereby is subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part by Purchaser at or prior to the closing):

#### Title Commitment

3.02. Five (5) days prior to Closing, Purchaser shall secure, at Purchaser's expense, a title insurance commitment ("Title Commitment"). The Title Commitment shall commit to issue to Purchase an owner's title insurance policy in an amount equal to the total Purchase Price of the Property upon recording of the deed hereinafter called for, free and clear of all liens and encumbrances except the standard exceptions or qualification usually printed in the title insurer's commitment form and permitted exceptions identified herein. Purchaser shall have five (5) days from the date of receiving the Title Commitment to examine same and, if the title is found to be defective, Purchaser shall, within (2) days, notify Seller in writing specifying the defects and Seller shall have thirty (30) days from receipt of notice within which to cure said defects. If Seller is unsuccessful in removing the defects within that time to the reasonable satisfaction of Purchaser, Purchaser shall have the option of either (i) accepting title as it then is, including the title defect, or (ii) terminating this Contract whereupon Purchaser and Seller shall be released from all obligations under the Contract. Seller agrees that it will in good faith use due diligence to correct the title defect within the time provided but Seller shall not be obligated to expend any of Seller's funds to correct any such title defect.

### Access and Inspection Rights

3.03. Purchaser may, prior to the Closing Date, personally or through its employees, representatives and consultants, make such inspections, tests and investigations of the Property (including, without limitation, environmental inspections, borings and physical samplings) as Purchaser deems necessary or desirable, and Seller shall cooperate fully in such inspections, tests, investigations and examinations and shall instruct its employees, representatives and agents to cooperate fully. Such inspections, tests, investigations and examinations shall be done at reasonable times and under reasonable circumstances.

Furthermore, from and during this Contract, Purchaser shall have the right to enter upon the Property for purposes of conducting any such inspections, tests, and investigations of the Property as Purchaser deems necessary or desirable and such right in Purchaser shall extend to Purchaser's agents, representatives, consultants, and contractors. Any damage to the Property or improvements caused by any such entry, inspections, tests, or investigations shall be repaired immediately by Purchaser. Purchaser shall indemnify Seller and hold Seller harmless from and in respect of any loss, costs, damage or expense as a result of any claim asserted against Seller arising out of such entry, inspections, tests or investigations.

Purchaser understands that it is purchasing the Property in "as-is, where-is" condition and that no stated or implied representations or warranties of any nature whatsoever have been made by the Seller pertaining to the size, shape, location or condition of the Property, or pertaining to the site, environmental matters, toxic waste, radon gas, etc.

### **ARTICLE IV**

#### **CLOSING**

4.01. The Closing shall be at the offices of Harrison Sale McCloy, 304 Magnolia Avenue, Panama City, Florida, on or before December 31, 2015, unless the parties agree in writing to another date and place for Closing.

4.02. Real property taxes, water rates and sewer charges, and rents, if any, shall be prorated and adjusted on the basis of thirty (30) days of each month, Seller to have the last day, to the date of Closing. Taxes for all prior years shall be paid by Seller. If the Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, with the proration to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time such actual taxes are determined. Assessments, either general or special, for improvements completed prior to the date of Closing, whether matured or unmatured, shall be paid in full by Seller. All other assessments shall be paid by Purchaser.

4.03. At the Closing, Seller shall:

(a) Deliver to Purchaser a duly executed and acknowledged special warranty deed conveying good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, other than the mortgage and liens in favor of The Bank which Seller shall discharge or release prior to Closing.

(b) Deliver to Purchaser an Affidavit of Non-Foreign Status of Seller executed by Seller.

(c) Deliver to Purchaser and the Closing Agent affidavits by knowledgeable persons that there are no liens and encumbrances, existing or contingent, against the Property.

(d) Deliver to Purchaser possession of the Property.

4.04. At the Closing, Purchaser shall:

(a) Deliver to Seller the cash portion of the Purchase Price.

4.05. Each party shall pay any attorney's fees incurred by such party. Purchaser shall pay for the following: documentary tax stamps affixed to the Deed; the cost of the Title Insurance Policy and related charges for examination, search and closing; and the cost of recording the Deed. All other costs and expenses of Closing the sale and purchase and loans shall be borne and paid by the party requesting the item or service.

## **ARTICLE V**

### **LEGISLATIVE ACTION**

5.01. This agreement and purchase is wholly contingent upon the Panama City Beach City Council voting to approve this Contract on or before December 10, 2015. If the decision is "yes," this Contract shall continue in full force and effect. If the decision is "no," this Contract shall terminate and neither party shall have any further obligations hereunder.

## **ARTICLE VI**

### **BREACH BY SELLER**

6.01. If Seller fails or refuses to comply fully with the terms of this Contract, because of failure to clear title, as outlined in Paragraph 3.02 contained herein, to Property or for any other cause other than Purchaser's default, Purchaser may, at its option, (a) rescind this Contract and recover from Seller the Deposit, or (b) proceed with this Contract and take the Property as-is, or (c) pursue a suit for specific performance.

## **ARTICLE VII**

### **BREACH BY PURCHASER**

7.01. If Purchaser shall default in the performance of any of the terms and conditions of this Contract, or if the Closing shall not occur through the fault of Purchaser, Seller may, as their sole remedy, retain the Deposit as liquidated damages, and this Contract shall be cancelled.

## ARTICLE VIII

### MISCELLANEOUS

#### Survival of Covenants

(a) The terms of this Agreement shall merge into the closing documents, notably, the deed, and shall not survive the Closing.

#### Notice

(b) Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Seller or the Purchaser, as the case may be, at the addresses set forth herein below:

#### IF TO SELLER:

NWFL C STORE, INC.  
Att: Salman Noordin  
384 Distribution Parkway  
Collierville, TN 38017

#### IF TO PURCHASER:

Mario Gisbert, City Manager  
John Alaghemand, CRA Director  
City of Panama City Beach  
110 South Arnold Road  
Panama City Beach, Florida 32407

With Copy To:

Amy E. Myers, Esquire  
Harrison Sale McCloy



304 Magnolia Avenue  
Post Office Box 1579  
Panama City, Florida 32402

Governing Law and Jurisdiction

(c) **This Contract shall be construed and enforced in accordance with the laws of the State of Florida.**

Parties Bound

(d) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.

Legal Construction

(e) In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Integration

(f) This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter. This Contract cannot be modified or changed except by the written consent of all of the parties.

Time of Essence

(g) Time is of the essence of this Contract. All times calculated in days hereunder shall be calendar days.

Attorney's Fees

(h) Any party to this Contract which is the prevailing party in any legal proceeding against any other party to this Contract brought under or with relation to this Contract or transaction shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

Gender and Number

(i) Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

Date of Contract

(j) The term "date of this Contract" as used herein shall mean the latest of the dates on which this Contract is fully signed by Seller or Purchaser, as indicated by their signatures below, which latest date shall be the date of final execution and agreement by the parties.

(k) Notwithstanding anything herein to the contrary, Seller's obligations under this Contract are specifically conditioned upon Seller's ability to procure from First Capital Bank, its successors and assigns and First City Bank, its successors and assigns, partial releases of the existing mortgages encumbering the Property in favor of both banking institutions. In the event Seller is unable to procure said partial releases, Seller shall so notify Purchaser and thereafter this Contract shall be null, void and of no further force or effect and the Escrow Deposit shall be returned to Purchaser.

Executed on the dates set forth at the signatures of the parties hereto.

DATED as to Seller this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**Witnesses**

**SELLER:  
NWFL C STORE, INC., a Florida  
corporation**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**By: \_\_\_\_\_, President**

DATED as to Purchaser this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ATTEST:**

**PURCHASER:  
PANAMA CITY BEACH, FLORIDA**

\_\_\_\_\_

\_\_\_\_\_  
**Diane Fowler, City Clerk**

\_\_\_\_\_  
**By: Mario Gisbert, City Manager**

## EXHIBIT A

### Legal Description:

#### Parcel 5A:

Commence at an existing concrete monument marking the intersection of the East boundary line of Original Government Lot 1 of Section 35, Township 3 South, Range 16 West, Bay County, Florida with the Northerly right of way line of Front Beach Road (U.S. Highway 98)(State Road 30) and thence run North 55 degrees 38 minutes 07 seconds West 1387.72 feet to a point on the Westerly right of way line of R. Jackson Boulevard (formerly Beckrich Road); thence run North 34 degrees 26 minutes 02 seconds East, along said Westerly right of way line, 349.80 feet to a nail and disc marking the Southeast corner of the JTL Properties, LLC property as described in Official Records Book 2586, Page 1827, of the Public Records of Bay County, Florida and being the intersection of the Westerly right of way line of said R. Jackson Boulevard (formerly Beckrich Road) with the Northerly right of way line of said Front Beach Road (U.S. Highway 98)(State Road 30) for the Point of Beginning; thence from said Point of Beginning run North 55 degrees 37 minutes 55 seconds West, along the Northerly right of way line of said Front Beach Road, 48.61 feet to an iron rod; thence departing said Northerly right of line run North 89 degrees 22 minutes 05 seconds East 47.71 feet to a point; thence North 34 degrees 27 minutes 39 seconds East 78.03 feet to a point; thence run South 55 degrees 32 minutes 21 seconds East 2.0 feet to a point; thence North 34 degrees 27 minutes 39 seconds East 72.04 feet to an X cut in concrete, said X cut being on a curve concave to the Northwest; thence run in a Northeasterly direction along said curve having a radius of 4969.0 feet, through a central angle of 00 degrees 15 minutes 48 seconds for an arc length of 22.85 feet, chord of said arc being North 34 degrees 18 minutes 38 seconds East 22.85 feet to an X cut in concrete on the Northerly boundary line of said JTL Properties, LLC property; thence run South 55 degrees 38 minutes 14 seconds East, along said Northerly boundary line, 7.54 feet to an iron rod marking the Northeast corner of said JTL Properties, LLC property and being on the Westerly right of way line of said R. Jackson Boulevard (formerly Beckrich Road); thence run South 34 degrees 26 minutes 02 seconds West, along said Westerly right of way line, 200.28 feet to the Point of Beginning.

## EXHIBIT B

### Legal Description

Commence at an existing concrete monument marking the intersection of the East boundary line of Original Government Lot 1 of Section 35, Township 3 South, Range 16 West, Bay County, Florida with the Northerly right of way line of Front Beach Road (U.S. Highway 9B) (State Road 30) and thence run North 55 degrees 38 minutes 07 seconds West 1387.72 feet to a point on the Westerly right of way line of R. Jackson Boulevard (formerly Beckrich Road), thence run North 34 degrees 26 minutes 02 seconds East, along said Westerly right of way line, 349.80 feet to a nail & disc marking the Southeast corner of the JTL Properties, LLC. property as described in Official Record Book 2586 page 1827 of the Public Records of Bay County, Florida and being the intersection of the Westerly right of way line of said R. Jackson Boulevard (formerly Beckrich Road) with the Northerly right of way line of said Front Beach Road (U.S. Highway 9B) (State Road 30), thence run North 55 degrees 37 minutes 55 seconds West, along the Northerly right of way line of said Front Beach Road, 48.61 feet to an iron rod, thence departing said Northerly right of way line run North 89 degrees 22 minutes 05 seconds East 35.73 feet to an iron rod for the POINT OF BEGINNING, thence from said Point of Beginning continue North 89 degrees 22 minutes 05 seconds East 11.98 feet to a point, thence run North 34 degrees 27 minutes 39 seconds East 78.03 feet to a point, thence run South 55 degrees 32 minutes 21 seconds East 2.0 feet to a point, thence run North 34 degrees 27 minutes 39 seconds East 72.04 feet to an X cut in concrete, said X cut being on a curve concave to the Northwest, thence run in a Northeasterly direction along said curve having a radius of 4969.0 feet, through a central angle of 00 degrees 15 minutes 48 seconds for an arc length of 22.85 feet, chord of said arc being North 34 degrees 18 minutes 38 seconds East 22.85 feet to an X cut in concrete on the Northerly boundary line of said JTL Properties, LLC. property, thence run North 55 degrees 38 minutes 14 seconds West, along the Northerly boundary line of said JTL Properties, LLC. property, 4.0 feet to a nail and disc, said nail and disc being on a curve concave to the Northwest, thence departing said Northerly boundary line run in a Southwesterly direction along said curve having a radius of 4965.0 feet, through a central angle of 00 degrees 16 minutes 55 seconds for an arc length of 24.44 feet, chord of said arc being South 34 degrees 19 minutes 11 seconds West 24.44 feet to an iron rod, thence run South 34 degrees 27 minutes 39 seconds West 70.44 feet to a nail and disc, thence run North 55 degrees 32 minutes 21 seconds West 7.80 feet to a nail and disc, thence run South 34 degrees 27 minutes 39 seconds West 84.92 feet to the Point of Beginning.