

TAB 3



# City of Palmetto Agenda Item

**Meeting Date**

December 19, 2011

**Presenter:** Jeff Burton/Mark Barnebey

**Department:** CRA/CRA Attorney

**Title:** Assignment of Real Estate Contract between Bob Graham and Circle K

**Background:**

On November 21, 2011, Bob Graham and Circle K entered into a contract for Mr. Graham to purchase a parcel at 301 8<sup>th</sup> Avenue W, from Circle K Stores, Inc. for a total of \$400,000. This is a part of the property which has been discussed to be purchased by the CRA for a mixed use development and expansion of the boat ramp parking. The attached Assignment would assign the right of Mr. Graham to purchase the parcel to the CRA. Mr. Graham would be paid \$40,000 upon closing by the CRA. An amendment to the contract was executed at the request of the CRA and City Attorney to extend the due diligence period, delete confidentiality requirements and indemnification requirements of the original contract.

**Discussion:**

The CRA would be stepping into the shoes of Mr. Graham for this contract. The terms of the contract between Mr. Graham and Circle K provide several potential issues for the CRA. The due diligence period is still short (January 31, 2012). This is a brownfield site and the CRA needs to be comfortable with the status of this issue. Title work, a survey, and the environmental analysis needs to be completed and analyzed. Title work is being paid for by Circle K, but the survey, environmental work and other closing costs will be responsibility of the CRA. Total cost to the CRA is expected to be approximately \$500,000.00. Funding for the purchase would come from a 2006 loan with Bank of America which had been partially paid down.

The purchase of this property is NOT contingent on a closing of the adjoining Cadence property which is also on this Agenda. However, the acquisition of both the Cadence property and the Circle K property have value to the CRA independent of each other.

<b>Budgeted Amount:</b>	\$500,000	<b>Budget Page No(s):</b>		<b>Available Amount:</b>	\$0.00	<b>Expenditure Amount:</b>	\$500,000
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**Additional Budgetary Information:** See Budget Amendment Resolution 2011-01

<b>Funding Source(s):</b>	19055961 00	<b>Sufficient Funds Available:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Budget Amendment Required:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Source:</b>	
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<b>City Attorney Reviewed:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<b>Advisory Board Recommendation:</b>	<input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> N/A	<b>Consistent With:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<b>CRA Plan</b>	
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**Potential Motion/ Direction Requested:** Approve /Not Approve the Assignment of Real Estate Contract and authorize the Mayor or the CRA Chair to execute the Assignment

**Staff Contact:**

**Attachments:** Assignment of Real Estate Contract, Vacant Land Contract, Amendment to Vacant Land Contract

## ASSIGNMENT OF REAL ESTATE SALES CONTRACT

THIS ASSIGNMENT OF REAL ESTATE SALES CONTRACT ("Agreement") is made this \_\_\_\_ day of December 2011, by and between Palmetto Community Redevelopment Agency, a public body corporate and politic ("CRA"), and Bob Graham, an individual (the "ASSIGNOR").

### INTRODUCTION

A. ASSIGNOR has contracted to purchase from Circle K. Stores, Inc. (the "Property Seller") the real property, lying, being and situate in the County of Manatee, State of Florida, described on Exhibit "A" attached to and hereby made a part of this Agreement (the "Property"), pursuant to the Real Estate Sales Contract with an effective date of November 21, 2011, including a First Amendment to the Contract dated December 15, 2011 between ASSIGNOR and the Property Seller, a copy of which is attached to this Agreement as Exhibit "B" and hereby made a part hereof (the "Contract").

B. CRA desires to purchase the Property and desires to do so by way of taking an assignment of the Contract from ASSIGNOR, and the ASSIGNOR agrees to assign the Contract to CRA, upon the terms and conditions set forth in this Agreement.

### PROVISIONS

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid by CRA to ASSIGNOR, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by ASSIGNOR to be supportive of this Agreement in its entirety, it is hereby agreed as follows:

1. Assignment of Contract. ASSIGNOR agrees to and hereby does assign and transfer to CRA all of ASSIGNOR's right, title and interest in and to the Contract and CRA agrees to and hereby does accept by assignment and assume ASSIGNOR's obligations as "Buyer" under the Contract upon the terms and conditions of this Agreement.

2. Effective Date. The "Effective Date" of this Agreement shall be the date on which the last one of the ASSIGNOR and CRA has executed this Agreement.

3. Closing Date. The Assignment Fee (defined below) for this Assignment shall be paid at the closing ("Closing") of the transaction under the Contract. The Closing shall be held at the office of counsel for CRA, Kirk-Pinkerton, P.A. in Bradenton, Florida.

4. Assignment Fee. At Closing CRA shall pay Assignor an assignment fee of \$40,000.00.

5. Feasibility Period, Inspection, Property Documents.

5.1. Investigation Period. CRA shall have until 5:00 PM EST on January 31, 2012 in which to investigate the Property for its suitability ("Feasibility Period"). If CRA determines that the Property is not suitable for its needs, CRA shall notify Assignor and Property Seller of its intent to re-assign the Contract to Assignor, no later than 5:00 P.M. on January 27, 2012 ("Reassignment Deadline"), unless the the Feasibility Period is extended, then the Reassignment Deadline shall be the later of three business days prior to the expiration of Feasibility Period or January 27, 2012. Failure of CRA to notify Assignor and Property Seller within the appropriate timeframe shall be deemed an acceptance of the Property by CRA. During the Feasibility Period, CRA, for any reason, may elect to re-assign the Contract to Assignor and CRA will then be released from any and all liability or obligations under the Contract. CRA may elect to accept the Property prior to the expiration of the Feasibility Period by notifying ASSIGNOR in writing of its acceptance. Unless the Feasibility Period is extended, as provided in Paragraph 5.5 of this Agreement, failure of CRA to notify ASSIGNOR before the Reassignment Deadline shall be deemed an acceptance of the Contract by CRA.

5.2 Inspection. CRA, its agents, employees and representatives shall have the right to access the Property at all times subsequent to the Effective Date and prior to the Closing Date, with full right to: (a) inspect the Property; and (b) to conduct reasonable tests thereon including, but not limited to, soil borings and hazardous materials and waste studies, and to make such other examinations with respect thereto as CRA, its counsel, licensed engineers, surveyors or other representatives may deem reasonably necessary. ASSIGNOR agrees that it shall not interfere, and it shall secure the agreement of the Property Seller that it shall not interfere, with the CRA in connection with the tests and inspections to be performed by, or on

behalf of, the CRA. Any tests, examinations or inspections of the Property by CRA and all costs and expenses in connection with CRA's inspection of the Property (or any part thereof) shall be at the sole cost of CRA and shall be performed in a manner so as not to interfere with the Property Seller's reasonable use of the Property and shall not violate any law or regulation of any governmental authority. Upon completion of such inspections, examinations or tests, CRA shall restore the Property to substantially the same condition as existed prior to the inspections and testing by, or on behalf of, CRA. Any information collected from such examinations, inspections or tests shall be made available for public review as may be required by Chapter 119, Florida Statutes (2011). To the extent provided by law and subject to any limitations contained in Section 768.28, Florida Statutes, CRA hereby agrees to indemnify and hold Property Seller harmless with respect to the CRA's inspection; except as expressly provided herein, nothing in this Contract shall be considered a waiver of sovereign immunity by CRA. By execution of this Agreement to CRA, Assignor grants (to the extent it has the requisite authority) and agrees to secure from the Property Seller a grant to CRA and the Sarasota Manatee Metropolitan Planning Organization, a license to enter the Property and perform such tests, examinations and inspections as set forth herein.

5.3 Property Documents. Within three (3) business days after execution and delivery of this Assignment, ASSIGNOR will furnish CRA with all information concerning the Property which ASSIGNOR possesses, or may reasonably have within its power to obtain, including, but not limited to all leases, if any, estoppel statements from all tenants, if any, verifying the absence of any uncured defaults under the leases, service contracts, plans, surveys, recorded or unrecorded exceptions to title, title commitment, environmental studies, soil tests or reports, engineering studies, inspection reports, feasibility studies, landscape plans, governmental, quasi-governmental applications and approvals, agreements and any other documents or materials relating to the suitability, development, use or value of the Property ("Property Documents"). Those Property Documents which were prepared for ASSIGNOR in connection with its determinations of feasibility under the Contract, including, without limitation, the survey, title commitment, environmental study, and any appraisals, shall be certified to ASSIGNOR, Porges, Hamlin, Knowles, & Hawk, P.A., the CRA, the City of Palmetto and Kirk Pinkerton, P.A.

5.4 Right to Re-Assign to Assignor. Upon any cancellation and reassignment of the Contract to Assignor, CRA shall deliver any original Property Documents in CRA's possession to ASSIGNOR. If CRA re-assigns the Contract to ASSIGNOR during the Feasibility



Period, other than the obligation of CRA to deliver Property Documents to ASSIGNOR, this Agreement will be terminated and cancelled in all respects and CRA will have not any further rights or obligations hereunder, including, without limitation, any obligation with respect to the Assignment Fee.

5.5 Extension of Feasibility Period. If CRA has not completed its investigations of the Property by the Reassignment Deadline and desires to extend the Feasibility Period, then CRA shall remit Ten and NO/100 Dollars (\$10.00) as an extension payment (the "Extension Payment") to ASSIGNOR no later than 5:00 PM on January 30, 2012. ASSIGNOR shall timely deliver the Extension Payment to the Property Seller as consideration for a 30-day extension of the "Inspection Period" under the Contract, to extend the "Inspection Period" until February 28, 2012 and to extend the Reassignment Deadline hereunder to three business days before 5:00 PM EST on February 28, 2012. The Extension Payment shall be nonrefundable to CRA; except that if this Agreement is terminated and the Contract is terminated under circumstances entitling ASSIGNOR to a refund of the Extension Payment, then upon receipt of the refund of the Extension Payment under the Contract, ASSIGNOR shall remit it to CRA. CRA acknowledges, however, that the Extension Payment is nonrefundable if CRA terminates this Agreement during the Feasibility Period, as extended, because it determines that the Property is not acceptable.

6. Representations and Warranties by ASSIGNOR. ASSIGNOR hereby represents and warrants to CRA as follows:

6.1. Violations, Litigation and Adverse Information. ASSIGNOR has received no notice of and has no knowledge of: (i) any violation of any law, statute, ordinance, order, regulation, rule, restriction, or requirement of any governmental or quasi-governmental agency or tribunal affecting any portion of the Property; (ii) any suit or proceeding pending or threatened affecting ASSIGNOR or the Property Seller or the Contract or any portion of the Property in any court or before any governmental or quasi-governmental agency or tribunal which would in any manner impair ASSIGNOR's ability to perform its obligations under this Agreement or the Property Seller's ability to perform its obligations under the Contract, or (iii) any other fact or condition, which would have an adverse effect upon the Contract, the Property or its value which has not been disclosed in writing to CRA. ASSIGNOR covenants that it will have given

notice to CRA prior to the Closing Date if ASSIGNOR receives notice of or gains knowledge or any of the foregoing.

6.2. Contract Status. The copy of the Contract attached hereto as Exhibit "B" is a true, correct and complete copy of the original and it has not been disclaimed by either party to it, nor has it been modified or amended, in writing or verbally, except for the First Amendment dated December 15, 2011. The Contract has been duly authorized and executed by and on behalf of ASSIGNOR and the Property Seller respectively; neither ASSIGNOR nor the Property Seller is in default under the Contract, and ASSIGNOR has received no notice of default or assignment from the Property Seller.

6.3 Ownership. ASSIGNOR has not previously assigned the Contract in full or partially and has not pledged it as security for any indebtedness or granted anyone an interest in it, and ASSIGNOR will convey the Contract to CRA free and clear of any liens, pledges, security interests, options, rights, charges, encumbrances or restrictions of any kind whatsoever.

6.4 Agreement Does Not Violate Contract. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not result in any violation of or default under the Contract.

6.5 ASSIGNOR's Authority. ASSIGNOR has full power and authority to execute and deliver this Agreement and to consummate the transaction contemplated hereby, in accordance with law and the persons executing and delivering this Agreement for ASSIGNOR have the aggregate power and authority to do so for and on behalf of ASSIGNOR.

6.6. FIRPTA. ASSIGNOR is not a "foreign person", as defined by Section 1445 of the Internal Revenue Code, and shall comply with all requirements imposed by the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended, and, if applicable, ASSIGNOR shall execute an affidavit attesting to such fact, or shall evidence compliance with any withholding of sale's proceeds required pursuant to FIRPTA.

All representations and warranties by ASSIGNOR in this Agreement shall be deemed to apply as of the Effective Date hereof and shall be construed as continuing representations, warranties and agreement which shall survive the Closing Date.

7. ASSIGNOR's Actions Prior to Closing. Commencing as of the Effective Date and continuing for the entire period in which ASSIGNOR has any interest in the Contract:

7.1. ASSIGNOR shall not take any action or fail to take any action which would cause any of the representations or warranties made by ASSIGNOR under this Agreement to be in any way not completely true, complete and accurate;

7.2. ASSIGNOR shall cooperate fully with CRA during the Feasibility Period and at all times thereafter prior to Closing, pertaining to CRA's investigation of the Property;

7.3. ASSIGNOR shall keep the Contract in full force and effect, shall timely notify the Property Seller of this Agreement, and shall not terminate or modify the Contract or consent to an assignment, termination or modification of the Contract without CRA's prior consent; and

7.4. ASSIGNOR will not perform any act or permit any act to be performed which might cause damage, waste, or destruction to the Property.

8. Closing Deliveries by ASSIGNOR. At the Closing, ASSIGNOR shall deliver the following, which, if a document, shall be duly executed:

8.1 An estoppel certificate from the Property Seller confirming that there is no default under the Contract, that the Contract is in full force and effect, all required deposits have been paid, and other similar matters as may be required by CRA or its counsel;

8.2 FIRPTA Affidavit, if applicable; and

8.3 Such other and further documents as are provided for in this Agreement and such other and further documents as may be reasonably requested by CRA or its counsel to more fully effectuate the transactions contemplated by this Agreement.

9. Closing Delivery by CRA. On the Closing Date, CRA shall deliver to ASSIGNOR the reimbursement of Twenty Five Thousand and NO/100 (\$25,000.00) earnest money deposit paid by ASSIGNOR under the Contract. In addition, CRA shall furnish a Closing Statement.

10. Expenses. Each party shall bear its own costs, including its own attorneys' fees.

11. Brokerage. ASSIGNOR and CRA each represent to the other that neither has had any dealings with any real estate broker, finder, agent, or similar party in connection with the negotiation of this Agreement and the consummation of the purchase and sale contemplated hereby. ASSIGNOR and CRA do hereby indemnify and hold the other free and harmless from and against any and all costs, expenses, liabilities or claims for any brokerage or



other professional service fee, compensation, commission or charge claimed by any broker, finder, agent or other similar party, and shall be entitled to reasonable attorneys' fees in connection with defending same at trial and appellate levels, by reason of any action of the indemnifying party.

12. No Third Party Beneficiaries: This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary including, without limitation, the Property Seller.

13. Assignment. This Assignment may not be assigned by either party hereto without the prior written consent of the other party.

14. Notices. Any notices required to be given by the terms of this Agreement or under any applicable law by either party shall be in writing and shall be (i) hand delivered, (ii) sent by certified or registered mail, postage prepaid, return receipt requested, or (iii) sent by Federal Express or similar overnight courier service, and shall be effective upon receipt. Notice given by or to the attorney representing either party shall be effective as if given by or to said party. Such written notice shall be addressed as follows:

If given to ASSIGNOR, any such notice shall be addressed as follows:

Bob Graham  
5201 Cone Road  
Tampa, Florida 33610

If given to: CRA, any such notice shall be addressed as follows:

City of Palmetto Community Redevelopment Agency  
715 4<sup>th</sup> Street West  
Palmetto, Florida 34221  
Attn: Jeff Burton, Executive Director

With a copy to:  
City of Palmetto

516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221  
Attn: Mayor Shirley G. Bryant

With copies to:

Mark P. Barnebey, Esq. and  
Sue Jacobson, Esq.  
Kirk Pinkerton, P.A.  
1301 6<sup>th</sup> Avenue West, Suite 102  
Bradenton, Florida 34205

15. Default. If the transaction contemplated by this Agreement is not consummated through or because of the default of ASSIGNOR, or in the event any warranties or representations of ASSIGNOR are incorrect, CRA may elect to terminate this Agreement and all obligations and liabilities of CRA shall end. In such event, CRA shall also have the rights and remedies afforded under Florida law, including the right to recover actual and consequential damages and/or seek specific performance of this Agreement by ASSIGNOR. If such transaction is not consummated through or because of the default of CRA, then ASSIGNOR shall have the rights and remedies afforded under Florida law, including the right to seek specific performance of this Agreement by CRA.

16. Choice of Law and Venue. This Agreement shall be construed and interpreted under the laws of the State of Florida. ASSIGNOR and CRA agree that the proper venue with respect to any state or federal litigation in connection with this Agreement shall be Manatee County, Florida.

17. Powers and Privileges. The Parties shall also be governed by the following:

17.1 All rights, powers, and privileges conferred hereunder upon the parties shall be cumulative.

17.2 The failure of either party to exercise any power given hereunder or to insist upon strict compliance by another party with its obligation hereunder and no custom or

practice of the parties at variance with the terms hereof shall constitute a waiver of the party's later right to demand exact compliance with the terms hereof.

17.3 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors.

18. Agreement Not Recordable And Other Agreements. Neither this Agreement nor any notice thereof shall be recorded by any party hereto, or any agent of same, in any public records. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement.

19. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement; provided, however, that each of the counterparts shall have been executed by the parties hereto.

20. Headings. The captions used in connection with the paragraphs of this Agreement are for convenience and reference and in no way define, describe, extend, or limit the scope of intent of any provision hereof.

21. Survival of Agreement. The terms, conditions, representations and warranties hereof shall survive the Closing Date hereof.

22. Litigation. In connection with any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, including any appellate proceedings.

23. Entire Agreement, Amendments. This Agreement contains the entire understanding between ASSIGNOR and CRA concerning the Contract and the Property. It may be altered or amended only by a written Agreement between CRA and ASSIGNOR. There are no promises, agreements, conditions, undertakings, inducements or waivers, oral or written, express or implied, between ASSIGNOR and CRA, other than as set forth in this Agreement.

24. Severability. If any provision contained in this Agreement is declared or held to be invalid or unenforceable, such declaration or holding shall be limited to its most narrow application and shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

25. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

26. Time. Time is of the essence concerning this Agreement, and for all acts required to be done and performed by both parties hereto, including, but not limited to, each, every and all of the terms and conditions of this Agreement.

27. Time Periods. The calculation of the number of days that have passed during any time period prescribed based on calendar days, and any such period shall commence on the day immediately following the action or event giving rise to the commencement of the period and shall expire at 5:00 p.m., eastern standard time, on the last day of the time period. Furthermore, any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday, shall extend to 5:00 p.m., eastern standard time, of the next full business day.

28. Public Disclosure Affidavit. Prior to the Closing, CRA shall send a notice required by F.S. Section 286.23(a) to the Property Seller; and it shall be a condition of CRA's obligation to close the transaction that the Property Seller shall provide to CRA the disclosure affidavit or proof of exemption as required by Section 286.23(1), Florida Statutes at or before the Closing, if applicable.

29. Authorization. The Mayor of the City of Palmetto or the Chairperson of the CRA is authorized to execute any documents related to this Contract on behalf of the CRA, including but not limited to, extensions, notices of termination and any documents related to Closing.

IN WITNESS WHEREOF, each of the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESSES:

ASSIGNOR:

\_\_\_\_\_  
\*  
\_\_\_\_\_  
\*(Print Name of Witness)

\_\_\_\_\_  
Bob Graham  
Date executed: \_\_\_\_\_, 2011

\_\_\_\_\_  
\*  
\_\_\_\_\_  
\*(Print Name of Witness)



CRA:

	The PALMETTO COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic
Signature _____	By: _____
Print Name _____	Its: _____
Signature _____	ATTEST: _____
Print Name _____	Date Executed: _____, 2011
Approved to Form and Legal Sufficiency By: _____	

This contract is presented for Buyer's consideration only. It shall not be binding unless and until it is executed by an officer or other representative of Seller with specific authority to bind Seller.

## REAL ESTATE SALES CONTRACT

Unit No. 2783801

### A. BASIC TERMS/ DEFINITIONS: PARTIES

As used herein, the following terms (listed alphabetically) shall have the meanings as so stated. It is intended by the parties that the definitions as set forth in this Section A below are the crux of this transaction and shall take precedence; any conflict between a defined term in this Section A and the contract provisions of Section B shall be resolved in favor of the Section A definition.

1. **"Additional Escrow Deposit"** Buyer, if required by the terms of this Contract, shall deposit with Escrow Agent the additional sum of N/A Dollars (\$N/A) which ☐ shall ☐ shall not be applicable to the Purchase Price.
2. **"Broker"** If checked here ☒ the Broker representing the Seller in this transaction is Tom Chamblee of Colliers International, with mailing address of 4350 W Cypress St, Suite 300, Tampa, FL 33607, Telephone (813) 871-8525, Email: [Tom.Chamblee@Colliers.com](mailto:Tom.Chamblee@Colliers.com).
3. **"Buyer"** The Buyer is Bob Graham, and/or assigns, with mailing address of 5201 Cone Rd, Tampa, FL 33610. Telephone (813) 623-2856, Email: [Nick.Easterling@live.com](mailto:Nick.Easterling@live.com).
4. **"Closing"** The Closing shall mean the completion of the sale transaction contemplated by this Contract.
5. **"Closing Date"** The Closing Date shall be the date which is thirty (30) days after the Investigation Period.
6. **"Commission"** Upon and only upon Closing, the Broker shall be entitled to payment of a brokerage fee equal to five percent (5%) of the Purchase Price, payable by the Seller out of escrow, as more particularly set forth in a separate agreement between Broker and Seller.
7. **"Contract"** This Real Estate Sales Contract (when accepted and executed by Seller), together with all Exhibits and the following addenda as designated:

- |  |   |
|--|---|
| <input type="checkbox"/> None                      | <input checked="" type="checkbox"/> Use Restriction Addendum            |
| <input type="checkbox"/> Environmental Addendum    | <input type="checkbox"/> Open Store Addendum                            |
| <input type="checkbox"/> Tenant Addendum           | <input checked="" type="checkbox"/> Remediation by Third Party Addendum |
| <input type="checkbox"/> Supply Agreement Addendum | <input type="checkbox"/> Bulk Sale Addendum                             |
| <input type="checkbox"/> Sale to Dealer Addendum   | <input type="checkbox"/> CA Liquidated Damages Addendum                 |
| <input type="checkbox"/> Easement Addendum         | <input type="checkbox"/> Permits Addendum                               |

Received Time Dec. 5. 8:30AM

shall collectively constitute this Contract.

8. **"Effective Date"** This Contract shall become effective only upon acceptance by Seller, full execution by both Buyer and an authorized officer of Seller, and delivery to and receipt by Chicago Title Insurance Company of this Contract, with the Buyer's Escrow Deposit, for opening of escrow. The Effective Date of this Contract shall be Nov 21, 2001  
[to be filled in by Chicago Title]
9. **"Escrow Agent"** The Escrow Agent with respect to this transaction shall be an agent of **Chicago Title Insurance Company**, and escrow shall be opened through Chicago Title, National Commercial Services office, with mailing address of 5400 LBJ Freeway, Suite 1450, Dallas, TX 75240, Telephone (972) 770-2364, Fax (972) 770-2361, Attention: Nancy Shirar. Upon assigning this transaction to the agent, Chicago Title shall provide to Buyer and Seller such agent's name, address and telephone numbers.
10. **"Escrow Deposit"** The Escrow Deposit shall be the sum of the Initial Escrow Deposit and the Additional Escrow Deposit (if any). Escrow Agent shall deposit, hold and disburse the Escrow Deposit in accordance with the terms and provisions of this Contract.
11. **"Extensions"** If checked here ☐, Buyer may extend the Investigation Period [not applicable] days by delivering to Seller and Escrow Agent at least five (5) days prior to the expiration of the Investigation Period a written notice of Buyer's desire to extend the Investigation Period. If checked here ☐, Buyer may extend the Closing Date [not applicable] days by delivering to Seller and Escrow Agent at least ten (10) days prior to the Closing Date a written notice of Buyer's desire to extend the Closing Date, along with the Additional Escrow Deposit.
12. **"Initial Escrow Deposit"** The Initial Escrow Deposit shall be the sum of Twenty Five Thousand Dollars (\$25,000.00).
13. **"Inventory"** If checked here ☐, Inventory is included in this sales transaction and shall be more specifically described in the Open Store Addendum which has been attached to and made a part of this Contract.
14. **"Inventory Purchase Price"** shall mean the amount to be paid by Buyer for the Inventory, as more specifically set forth in the Open Store Addendum (if any).
15. **"Investigation Period"** The Investigation Period shall commence on the date which Seller's predecessor in interest receives notice of Right of First Refusal, and shall expire at 5:00 p.m. EST forty-five (45) days thereafter.
16. **"Personal Property"** If checked here ☒ Personal Property is included in this transaction as more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof.

17. "Property" The Property to be conveyed by this Contract is collectively the Real Property, the Personal Property (if any), and the Inventory (if any).

18. "Purchase Price" The Purchase Price for the Real Property and the Personal Property shall be Four Hundred Thousand Dollars (\$400,000.00). Whenever in this Contract the term "Purchase Price" is used, it shall not include the Inventory Purchase Price.

19. "Real Property" The Real Property is the land and, if checked here ☒ any buildings, fixtures and improvements (except as may be excluded or limited pursuant to the terms of any addenda attached to and made a part of this Contract) on the land, located at 301 Eighth Avenue, Palmetto, in Manatee County, Florida, together with all appurtenances thereto, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

20. "Seller" The Seller is Circle K Stores Inc., a Texas corporation, with mailing address of 12911 N Telecom Parkway, Tampa, FL 33637, and delivery address of SAME, Attention: Real Estate Department; Telephone 813-910-6885, Fax 813-910-6912.

21. "USTs" Seller's known underground storage tanks, if any, on the Property. The Property is being offered for sale to Buyer:

	<input type="checkbox"/>	with USTs in place .....Exhibit UST-1 attached
or	<input type="checkbox"/>	with no known USTs in place .....Exhibit UST-2 attached
or	<input checked="" type="checkbox"/>	with USTs previously removed by Seller.....Exhibit UST-3 attached
or	<input type="checkbox"/>	with USTs to be removed by Seller.....Exhibit UST-4 attached

and that the indicated Exhibit shall constitute part of this Contract.

{The balance of this page intentionally left blank.}

## B. AGREEMENTS

### 1. ACCEPTANCE AND ESCROW DEPOSIT

This document represents an invitation to offer and Seller reserves the right prior to Seller's acceptance of the offer to withdraw the invitation at any time without notice. The offer may not be acceptable to Seller if this document is submitted with qualifications, modifications or conditions. If accepted, Seller shall sell and convey to Buyer and Buyer shall purchase from Seller the Property upon the terms and conditions herein. This Contract shall become effective only on the Effective Date.

### 2. PURCHASE PRICE AND PAYMENT

Buyer agrees to pay the full Purchase Price and Inventory Purchase Price (if any), on or before the Closing Date (including the Initial Escrow Deposit submitted herewith and any Additional Escrow Deposit paid subsequently) in the form of cashier's check or wire transfer, to be deposited with Escrow Agent.

### 3. BUYER'S INVESTIGATION

3.1 INVESTIGATION. Buyer shall have until the expiration of the Investigation Period for investigation of all relevant matters concerning the Property. During the Investigation Period, Buyer, at its sole cost and risk, may enter upon the Real Property at any reasonable time (subject to the conditions contained herein) for the purpose of making inspections, surveys and conducting such other investigation as it deems necessary and proper. Buyer acknowledges that it is acquiring the Property on an "AS IS, WHERE IS" basis, with all faults, and that it will have adequate opportunity to inspect the Property and review information during the Investigation Period. Buyer will rely solely upon its own investigation, analysis and evaluation and upon Seller's express warranties and representations contained herein. Buyer shall investigate and accept or reject the following items:

3.1.1 TITLE MATTERS. Within twenty (20) days after the Effective Date, Escrow Agent shall provide Buyer and Seller with a current preliminary title commitment, disclosing all matters of record (and other matters of which Escrow Agent has knowledge) relating to the title of the Real Property, together with legible copies of all instruments referred to in the report. Escrow Agent will also provide to the parties its requirements to close this escrow and to issue a standard coverage owner's policy of title insurance. Buyer shall not object to (a) any normal utility, ingress, egress, access or similar easements or other matters affecting the Land which do not or will not materially interfere with the use of the Real Property or (b) any standard CLTA, ALTA or similar preprinted form Title Policy exception ("Permitted Exceptions"), or (c) recorded Access Agreement between Seller's predecessor in interest and Seller, or (d) Branding Covenant.

3.1.2 SURVEY MATTERS. During the Investigation Period, Buyer may obtain a survey of the Real Property at its sole expense. Upon request from Buyer, Seller shall promptly provide Buyer with copies of any surveys of the Real Property in its files. Buyer acknowledges that this is offered as an accommodation to Buyer, that Seller makes no warranties, express or implied,



as to the age or accuracy of any such survey and that Seller shall incur no liability as a result of providing any such survey. Buyer's investigation shall be deemed to include all matters which would be revealed by an accurate survey of the Real Property, including without limitation, size, boundaries, set backs, improvements, easements, utilities, rights-of-way and encroachments.

3.1.3 ENVIRONMENTAL INFORMATION. Buyer acknowledges that the Real Property is or may have been used for the storage and/or sale of motor vehicle fuels, that UST's are or may have been installed at the Real Property, and that there is or may be surface and/or subsurface contamination at the Real Property. During the Investigation Period, Seller shall make its environmental files relating to the Real Property available for Buyer's review at a mutually acceptable time. Seller shall deliver to Buyer copies of those file materials which Seller believes in good faith accurately reveal the present environmental condition of the Real Property. This information shall constitute the "Baseline Report" for the Real Property. Buyer may obtain copies of Seller's other environmental files by specifying the materials desired and paying Seller the reasonable cost of such copying. In the event the Real Property has never been assessed, Seller shall have the right to specify the methodology for such testing.

3.1.4 OTHER MATTERS. During the Investigation Period, Buyer shall investigate all other matters relating to the Real Property as it deems necessary, including without limitation, zoning; access; availability of utilities and services; development potential; existing leases; the existence and effect of assessments, improvement districts or other associations; restrictions; physical inspection of any improvements located on the Real Property; the possibility of contamination at the Real Property and any other matters concerning the Real Property.

3.2 OBJECTION TO INVESTIGATION ITEMS. Buyer shall give written notice to Seller by the end of the Investigation Period: (a) that the Real Property is not suitable for its purposes, whereupon the Contract shall be terminated in accordance with Section 3.4; or (b) accepting the Real Property and specifically identifying any and all objections which must be satisfied by Seller prior to Closing. Any item not objected to (or failure to notify Seller of objections) shall be deemed to be acceptance of all investigation matters by Buyer. Buyer agrees that the requirements of the Special Warranty Deed and the Access Agreement attached hereto as Exhibit C shall not be the basis for objection.

3.3 RESPONSE TO OBJECTIONS. In the event Buyer objects to any of the above items, Seller shall attempt in good faith to satisfy such objections prior to the Closing Date, but shall not be required to incur any cost to do so. If Seller is unable or unwilling to satisfy such objections, Seller shall so notify Buyer, in writing, and Buyer shall, within ten (10) days after receipt of such notice, elect to: (a) waive such objections and close the transaction subject to the objections; or (b) terminate this Contract. Buyer shall notify Seller in writing of its election. Buyer's failure to so notify Seller shall be deemed a waiver of the objections. The Closing Date shall be extended if necessary to allow the Buyer the ten (10) day time period set forth herein.

3.4 CANCELLATION. If the Contract is terminated as provided herein, Escrow Agent shall return to Buyer its Escrow Deposit, plus accrued interest, if any. Escrow Agent shall return all documents deposited with it to the party who originally deposited such document, and this Contract shall be null and void and the parties shall be relieved of all further liability hereunder, except for liabilities or obligations arising under the indemnity provisions herein.

and to cancel the escrow without the need for cancellation instructions or other documentation requiring Buyer's signature.

The liability of each party for the breach of any warranty or representation or the failure to abide by any other provision hereunder shall be limited to actual damages and shall not include lost profits, incidental, consequential, punitive or indirect damages.

Buyer hereby agrees that its remedies against Seller are set forth in their entirety herein, and forever waives and releases any claim that it may now or in the future have against Seller under this Contract for rescission, damages or equitable relief by reason of: (a) contamination at the Real Property which is not Covered Contamination; (b) the existence of any endangered species on the Real Property; (c) any part of the Real Property being a critical habitat, wetland, or subject to flooding; and/or (d) any other condition of the real property or improvements that impairs or may impair the value of the Real Property. This release shall remain in effect, notwithstanding the discovery or existence of additional facts or claims and notwithstanding California Civil Code §1542, or any comparable, applicable provision, which provides that "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor". This waiver and release shall not apply to damages arising from Seller's breach of specific warranties or representations hereunder or Seller's failure to comply with its environmental obligations herein. For purposes of this Contract, the term "Covered Contamination" means environmental contamination of the Property, which is either (i) covered by Motiva's indemnification obligation under the Asset Purchase and Sale Agreement between Seller and Motiva, dated October 4, 2006 pursuant to which Seller obtained title to the Property or (ii) caused by Seller after it took title to the Property.

## 9. INDEMNITIES

9.1 SELLER'S INDEMNITY. In addition to any other indemnities herein, Seller, as of the Closing Date, shall indemnify, defend and hold harmless Buyer against any and all damages suffered by Buyer related to Seller's ownership and/or operation of the Real Property and/or any claim against Buyer arising from Covered Contamination. This indemnity shall not apply to: (a) costs and expenses to be borne by Buyer pursuant to this Contract; (b) damages arising out of a breach of any warranty or representation by Buyer; or (c) damages relating to contamination which is not Covered Contamination.

9.2 BUYER'S INDEMNITY. In addition to any other indemnities herein, Buyer, as of the Closing Date, shall indemnify, defend and hold harmless Seller against any and all damages suffered by Seller related to Buyer's ownership and/or operation of the Real Property and its assumption of Seller's duties and obligations hereunder. This indemnity shall apply to damages arising from contamination, which is not Covered Contamination, but shall not apply to costs and expenses to be borne by Seller pursuant to this Contract or damages arising out of a breach of any warranty or representation by Seller.

## 10. MISCELLANEOUS PROVISIONS

10.1 TIME. Time is of the essence to this Contract.

10.2 APPLICABLE LAW. This Contract shall be governed by, and construed in accordance with the laws of the state of in which the Property is located.

10.3 NO ASSIGNMENT. The provisions of this Contract and the offer to sell the Property shall be personal to Buyer, and may not be assigned by Buyer, except however, that Buyer shall have the right to assign its right, title and interest under this Contract, provided that the Buyer is not released from its obligations hereunder and the Contract is assigned to a corporation, partnership or limited liability company of which Buyer is the managing partner or managing member or in which Buyer or any of its principals holds an interest.

10.4 SELLER'S EXCHANGE OPTION. Prior to the Closing, Seller may elect to have this transaction treated as an exchange as to Seller under the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended. Buyer shall cooperate with Seller to effect such exchange, provided that Buyer shall incur no extra cost with respect to such exchange.

10.5 NOTICES. Any notice required or permitted to be given herein shall be in writing and shall be delivered by hand, mailed by first class mail, postage prepaid, telecopied or sent by overnight courier to the addresses set forth at the beginning of this Contract. Any such notice shall be deemed to be received: (a) if delivered personally, on the date of such delivery; (b) if mailed, on the third business day following mailing; (c) if telecopied, on the date of confirmed transmission; or (d) if sent by overnight courier, on the first business day following delivery to courier.

10.6 BROKERAGE COMMISSIONS. The parties warrant and represent that except for the Commission payable to Broker, neither has incurred any liability to any broker or agent for the payment of any commission arising from the Closing of the sale contemplated hereby. Accordingly, any claims for commissions or fees made against any party in connection with this transaction shall be handled and paid by the party whose actions form the basis of such claims.

10.7 INTERPRETATION; SEVERABILITY. This Contract has been reached through the negotiations of Buyer and Seller; it shall not be construed either for or against either party by virtue of mere drafting. Capitalized terms shall carry the meaning ascribed to such terms, even if such terms appear before the actual definition thereof. If any provision hereof shall be held invalid, illegal or unenforceable in any respect, such provision shall not affect any other provision hereof, and this Contract shall be construed as if such provision had never been contained herein.

10.8 BINDING EFFECT; SURVIVAL. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs and successors in interest. Any provision which could extend beyond the Closing Date is hereby deemed to survive the Closing.

10.9 FORCE MAJEURE. Whenever a period of time is provided for in this Contract for either party to do or perform any act or thing, said party shall not be responsible for any delay due to acts of God or other causes beyond the reasonable control of said party, and in such event the time period shall be extended for the amount of time said party is so delayed.

10.10 WAIVER. No delay or failure to exercise any right or remedy accruing to Seller upon any breach by Buyer under this Contract shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver of any condition or the

breach of any term or condition herein shall not be deemed to be a waiver of any other condition or of any subsequent breach of any term, covenant or condition herein.

10.11 ATTORNEY'S FEES. If it becomes necessary for either Buyer or Seller to hire an attorney or to file an action at law or other proceeding to enforce this Contract, the prevailing party shall be entitled to recover from the other party its costs, expenses, and reasonable attorney's fees.

10.12 CONFIDENTIALITY. Buyer shall obtain Seller's consent prior to issuing any public statement concerning this Contract or the transaction contemplated herein. Buyer agrees that all information provided by or on behalf of Seller in connection herewith is confidential and shall not be disclosed, except to those persons with a specific need to know such information, and then only if such persons agree to protect the confidential nature of the information.

10.13 TRADE NAME AND TRADEMARK INFRINGEMENT. It is agreed and acknowledged by the Parties hereto, that this Real Estate Sales Contract does not include the right to use or display Seller's trade names, trademarks, trade dress or brand images. Buyer shall not use or display any representation of Seller's trade names, trademarks, trade dress or brand images (e.g., colors, paint schemes, signage, structural designs, proprietary product displays, etc.), and shall not display any trade names, trademarks, trade dress or brand images that are confusingly similar to Seller's, and shall not do any of the foregoing with respect to the trade names, trademarks, trade dress or brand images of Circle K Stores Inc., its parents, affiliates or subsidiaries. This provision shall not limit any right to use or display such trade names or trademarks granted by separate agreement. In the event Buyer does not or ceases to have the right to use such trade names or trademarks by other agreement, should Buyer use the word or symbol "Circle", and/or "K" for identification of the business located on the subject Property, Seller shall have the right to take any and all action and seek all remedies allowable under law, including injunctive relief, to prohibit such use. Seller requires that this agreement and acknowledgement by Buyer be incorporated into the deed of conveyance. THIS PROVISION SHALL SURVIVE THE CLOSING.

10.14 ENTIRE AGREEMENT; MODIFICATION. The Contract, attached exhibits, other addenda and any prior confidentiality agreement executed by the parties shall constitute the entire agreement between Seller and Buyer with respect to the sale of the Property. All prior or contemporaneous agreements, representations and statements, oral or written, are merged herein. This Contract may not be amended, altered, modified or discharged except by an instrument in writing signed by authorized representatives of Buyer and Seller.

10.15 COUNTERPARTS. This Contract may be executed in any number of counterparts; each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Contract.

10.16 FENCES. All portable, non-permanent fencing that may be found on the Property to secure the property is not included in this transaction.

[Signatures appear on next page.]



IN WITNESS WHEREOF, the parties have executed this Contract as of the date hereof, which shall be the last day either of the parties hereto executes this Contract.

**SELLER:**

Circle K Stores Inc., a Texas corporation

By: Name: **Darrell Davis**Its: **Vice President**Date: **11.17.2011****BUYER:**

Bob Graham

By: 

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: **11.17.2011**

Tax ID: \_\_\_\_\_

**ACCEPTANCE BY ESCROW AGENT**

The undersigned, on behalf of Escrow Agent, hereby acknowledges receipt of the Escrow Deposit and agrees to accept, deposit, hold and disburse or return the Escrow Deposit and any other funds received in accordance with the provision of this Contract.

Chicago Title Insurance Co.

By: 

Authorized Signatory

Date: 



EXHIBIT A  
LEGAL DESCRIPTION

All that certain tract or parcel of land situated in the city of Palmetto, county of MANATEE, state of FLORIDA, with a physical address of 301 - 8<sup>th</sup> Avenue, and more particularly described as follows:

Commence at the Northeast corner of the NW 1/4 Section 23, Township 34 South, Range 17 East, Manatee County, Florida; thence South along the East line of said NW 1/4, Section 23, being the center line of 8<sup>th</sup> Avenue (U.S. 41), 656.45 feet; thence West 30.0 feet to a railroad spike at the NW corner of the intersection of said 8<sup>th</sup> Avenue and Riverside Drive for the point of beginning, said point being shown on the recorded Plat of Green Bridge, as recorded in Plat Book 6 page 79, of the Public Records of Manatee County, Florida; thence North 87° 50' 00" West 174.50 feet to an iron pipe; thence North 00° 03' 55" East, 227.32 feet to an iron pipe lying 10 feet, more or less, East of a fence corner; thence North 89° 50' 55" East, 175.0 feet to an iron pipe on the West Right-of-Way line of said 8<sup>th</sup> Avenue; thence South along said r/w line, 234.40 feet to the point of beginning, LESS that part taken by Order of Taking recorded in Official Records Book 1070 page 2408 of the Public Records of Manatee County, Florida.

EXHIBIT B  
PERSONAL PROPERTY

ALL PERSONAL PROPERTY LOCATED ON THE PREMISES AS OF THE CLOSING DATE *together with all improvements located thereon*, including, without limitation, the gasoline canopies and structures, built-in refrigeration equipment and walk-in coolers.

EXHIBIT C  
FORM OF DEED AND ACCESS AGREEMENT

SPECIAL WARRANTY DEED

Return to:

EXHIBIT ONLY

This Special Warranty Deed ("Deed"), dated to be effective as of the       day of       , 2011 ("Effective Date"), is by and between Circle K Stores Inc., a Texas corporation with offices located at 12911 N Telecom Parkway, Tampa, FL 33637 ("Grantor") and       , a       , with offices located at       ("Grantee").

WITNESSETH:

For and in consideration of the sum of \$10.00 and the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, CONFIRM and RELEASE unto Grantee, its successor and assigns forever, the Premises more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises"), together with any buildings, fixtures and improvements owned by Grantor and located thereon.

Together with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Premises to the center lines thereof, plus all the estate rights of Grantor in and to any easements, rights, privileges, appurtenances and other hereditaments appurtenant to the Premises;

This conveyance is made by Grantor and accepted by Grantee SUBJECT TO all reservations, exceptions, restrictions, easements, encumbrances, rights of way and other matters of record affecting the same and set forth on "Exhibit B", to the extent that the same are currently valid and enforceable against the Premises and applicable zoning regulations.

TO HAVE AND TO HOLD the Premises unto Grantee, its successors and assigns in fee simple forever, but:

IN ADDITION TO THE FOREGOING, Grantor grants the Premises to Grantee subject to the following covenants and restrictions:

1. (a) From and after the Effective Date until November 30, 2021 ("Termination Date"), if gasoline or branded diesel is stored, advertised or sold at or from the Premises, the gasoline or branded diesel stored,

advised or sold shall be sold under the "Shell" brand or other "Shell" brands under which motor fuel products are sold ("Brand Covenant"). All as more fully set forth in that certain Branding and Product Purchase Commitment Agreement dated as of December 1, 2006, by and between Grantor and Motiva Enterprises LLC ("Shell") ("Branding Agreement"). The Brand Covenant shall expire automatically on the Termination Date without need for filing a release, or other action of Shell, Grantor or Grantee. The Premises and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and conveyed subject to the Brand Covenant. The Brand Covenant shall run with the land, and pass with each and every portion of the Premises, and shall apply to and bind the respective successors, assigns and transferees and subsequent owners in interest thereof. The Brand Covenant is imposed upon the entire Premises.

(b) Grantee agrees to include the Brand Covenant in any conveyance or assignment of the Premises prior to the Termination Date to a successor grantee and assumes, and as a condition of any conveyance of the Premises, agrees to require successor grantees to enter into an agreement assuming all obligations of Grantor under Article 2 and Article 4 of the Branding Agreement.

2. Grantee has granted a right of access to Grantor pursuant to the terms of an Access Agreement, dated as of the Effective Date, which is being recorded on the same day as this instrument.

3. Grantee covenants and agrees that it shall not install any well or other tank, pump or related equipment for the storage of potable water at the Premises. Grantee further covenants and agrees that it shall not improve or use the Premises for residential purposes. Each of these covenants shall run with the Premises, and pass with each and every portion of the Premises, and shall apply to and bind the respective successors in interest thereof. Grantee agrees to include these restrictions in any conveyance or assignment of the Premises to a successor grantee.

4. Until the Termination Date, Grantor and Shell retain a right of first refusal to purchase the Premises ("Right of First Refusal"). The Right of First Refusal shall expire automatically on the Termination Date, without need for filing a release, or other action of either Shell, Grantor or Grantee. The terms of the Right of First Refusal are set forth on "Exhibit C".

5. This conveyance is made subject to and Grantee shall comply with the requirements of Section 9.7 (Future Conveyances/Leases) of the Asset Purchase and Sale Agreement between Grantor and Shell, dated as of October 4, 2006, pursuant to which Grantor acquired title to the Premises. Any subsequent conveyance, lease or sublease of the Premises shall be subject to the provisions of such Section 9.7. This Section 5 shall expire on November 30, 2009 unless Shell is conducting Remediation on or otherwise indemnifying Grantor concerning the Premises, in which case this section shall expire on the earlier of November 30, 2016 or the completion of such remediation or indemnification.

6. Notice is hereby given to Grantee by Grantor pursuant to § 404.056, Fla. Stats. (1999): Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who were exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit.

SUBJECT to the foregoing, Grantor covenants with Grantee that Grantor will warrant and defend title to the Premises against the lawful claims of all persons claiming by, through, or under Grantor, but not otherwise.

[Signatures Appear on Following Page]

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IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be duly executed on the day and year first above written.

Circle K Stores Inc.

EXHIBIT ONLY

By: \_\_\_\_\_

Name: Darrell Davis \_\_\_\_\_

Title: Vice President \_\_\_\_\_

Signed, Sealed and Delivered in Our Presence:

WITNESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

WITNESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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## ACCEPTANCE

\_\_\_\_\_, a(n) \_\_\_\_\_ ("Grantee") under the foregoing Special Warranty Deed, hereby evidences its acceptance of and agreement to the limitations, waivers, covenants and agreements on or of Grantee contained in such deed.

IN WITNESS WHEREOF, Grantee has executed this Acceptance this \_\_\_\_ day of \_\_\_\_\_, 2011.

WITNESS:

Signature \_\_\_\_\_

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

This instrument prepared by:

David Falk  
as Agent for Circle K Stores Inc.  
12911 N Telecom Parkway  
Tampa, FL 33617

CC# \_\_\_\_\_

Parcel Identification No.: \_\_\_\_\_

Error! Unknown document property name.

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Received Time Dec. 5. 8:30AM

State of FLORIDA

)

) ss.

County of HILLSBOROUGH

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for said State, duly commissioned and sworn, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed in the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

EXHIBIT ONLY  
 Notary Public  
 My Comm. Expires \_\_\_\_\_

State of FLORIDA

)

) ss.

County of HILLSBOROUGH

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for said State, duly commissioned and sworn, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

EXHIBIT ONLY  
 Notary Public  
 My Comm. Expires \_\_\_\_\_

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EXHIBIT A  
LEGAL DESCRIPTION OF PREMISES

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## EXHIBIT B

## PERMITTED ENCUMBRANCES

C#

1. The lien for real property taxes for the year 2011, and any liens for special assessments which as of the date hereof, are not due and payable. Ad Valorem Taxes for calendar year 2008, have been paid and prorated as of the date hereof.

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9

Received Time Dec. 5. 8:30AM

## EXHIBIT C

## RIGHT OF FIRST REFUSAL

Until November 30, 2021, if at any time Grantee (i) receives an acceptable bona fide offer to purchase or lease from a ready, willing, and able purchaser or lessee which Grantee desires to accept, or (ii) makes a bona fide offer to sell, lease or otherwise transfer to such a purchaser or lessee, all of Grantee's right, title and interest in and to the Premises ("Offer"), Grantee shall provide written notice to Grantor and Motiva Enterprises, LLC ("Shell"), specifying the name and address of the proposed grantee or lessee and the price and complete terms of the Offer, accompanied by Grantee's affidavit that the proposed sale or lease transaction described in the Offer is in good faith. Grantor and Shell will then each have the prior option to purchase or lease the Premises at the price and on the terms of the Offer, but subject to the terms provided below ("Right of First Refusal").

Grantor or Shell shall provide written notice to Grantee of Grantor's or Shell's election to exercise its Right of First Refusal within 30 days after Grantor and Shell receive Grantee's written notice of the Offer. If neither Grantor nor Shell timely exercise its Right of First Refusal with respect to the Premises, Grantee shall be free to sell, lease or otherwise transfer the Premises in accordance with the transaction described in Grantee's notice. If such transaction is not consummated as described in the Grantee's notice, the Right of First Refusal shall thereafter apply to the Premises.

Within 20 days after the date of the notice provided to Grantee of Grantor's or Shell's election to exercise its Right of First Refusal, Grantor or Shell shall designate a title company and provide written notice to Grantee of the same. Grantee shall deposit with the title company a recordable special warranty deed comparable to the special warranty deed to which this Exhibit relates or a lease containing terms consistent with the Offer described in Grantee's notice and acceptable to Grantor or Shell. Grantor or Shell shall deposit with the title company any earnest money required by the Offer. Promptly thereafter, Grantee shall (or Grantor or Shell may), at Grantor's or Shell's expense, order from the title company a report on title to (or leasehold interest in) the Premises and a commitment for an owner's or lessee's (as applicable) policy of title insurance. Upon written notice from Grantor or Shell to Grantee and the title company that title is acceptable, the title company shall deliver to Grantor or Shell the deed or lease executed by Grantee, together with the owner's or lessee's (as applicable) policy of title insurance, against payment by Grantor or Shell of the purchase price (which shall include payment of any costs, fees, expenses, documentary, transfer and like taxes required to be paid by Grantor or Shell), as such allocation of costs, fees and expenses may be set forth in the Offer, less any earnest money. Thereafter, the title company shall deliver to Grantee the purchase price required by the Offer less the amount of any liens accepted by Grantor or Shell and less the amount of any and all costs, fees, expenses, documentary, transfer and like taxes required to be paid by Grantee as set forth in the Offer. Taxes and rent will be prorated as of the date of delivery of the deed (or the assignment of lease, as applicable) from the title company to the Grantor or Shell. Upon receipt from Grantor or Shell of written notice that the title is not acceptable, Grantee shall use commercially reasonable efforts to cure such title objections by the closing, including, without limitation, insuring against or providing a bond or suitable escrow for, any lien or other encumbrance that represents a liquidated amount or sum of money. No objection shall be made to any encumbrance that was set forth as a permitted encumbrance for the Premises in the deed from Shell to Grantor. In no case shall Grantee be required to convey any interest in the Premises greater than the interest it is vested in. If Grantee is unable to cure the title to Grantor's or Shell's satisfaction, Grantor may elect not to purchase the Premises, in which case the title company shall return the deed (or assignment of lease) to Grantee.

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and the earnest money to Grantor or Shell. If Grantor or Shell elects to not exercise its Right of First Refusal for any reason, Grantor may sell the Premises under the terms described in the notice of the Offer provided to Grantor and Shell. Any proposed sale of the Premises under different terms than those described in such notice of the Offer is subject to the Right of First Refusal provisions described herein.

All notices and other communications pursuant to this Right of First Refusal shall be in writing and shall be deemed to have been received only if and when (i) personally delivered or (ii) on the third day after mailing, by United States mail, first class, postage prepaid, by certified mail return receipt requested, (iii) given by facsimile transmission to the number set forth below, or (iv) one day after deposit with a reputable overnight courier, addressed in each case as follows (or to such other address as may be specified by like notice):

*If to Shell, addressed to it at:*

Motiva Enterprises LLC  
700 Milam  
Houston, Texas 77002  
Attention: Real Estate Administration

Fax Number: 281-775-5075

*With a copy to:*

Shell Oil Company  
One Shell Plaza, 910 Louisiana Street  
Houston, Texas 77002  
Attention: Managing Counsel-Retail,  
Marketing & Distribution  
Fax Number: 281-775-5055

*If to Grantor, addressed to it at:*

Circle K Stores Inc  
12911 N. Telecom Parkway  
Tampa, Florida 33637  
Fax Number: 813-910-6912

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## ACCESS AGREEMENT

This Access Agreement ("Agreement"), dated as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, is by and between Circle K Stores Inc., a Texas corporation ("Seller"), with a place of business at 12911 N. Telecom Parkway, Tampa, Florida 33637, and \_\_\_\_\_, a \_\_\_\_\_ ("Buyer"), with a place of business at \_\_\_\_\_.

## RECITALS

WHEREAS, Seller is conveying to Buyer the premises described on Exhibit A hereto (the "Premises"); and

WHEREAS, in accordance with its Asset Purchase and Sale Agreement with Motiva Enterprises LLC, a Delaware limited liability company ("Shell"), dated as of October 4, 2006 (the "Purchase Agreement"), Seller granted Shell access to the Premises in connection with certain post-closing activities contemplated or required by the terms of the Purchase Agreement and agreed to obtain from any subsequent purchaser of the Premises the same right of access.

NOW, THEREFORE, in exchange for the mutual promises and considerations stated herein and in the Real Estate Contract between Seller and Buyer, dated \_\_\_\_\_, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1.  
GRANT OF LICENSE

1.1 Grant of License. (a) Buyer hereby grants a nonexclusive irrevocable license from the date of this Agreement to Shell, Seller and their employees, authorized agents and contractors, to enter the Premises to perform any and all post-closing activities contemplated by Section 9.7 (*Future Conveyances/ Leases*), Article 12 (*Environmental Indemnification*), Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) and Section 9.9 (*Post Closing Arrangements Relating to Contract Operator Premises*) of the Purchase Agreement, which activities include, but are not limited to, (i) tank removal or closure activities, (ii) remediation activities, and (iii) engineering or environmental studies, tests, surveys, appraisals, inspections or assessments relating thereto.

(b) This Agreement shall be construed as a temporary license to enter the Premises for the purposes set forth in the Purchase Agreement and is not intended to be a grant of an easement or any other interest in the Premises.

## ARTICLE 2. COVENANTS

2.1 Assignment, Successor and Assigns. In the event Buyer's interest in the Premises is conveyed, transferred, leased or in any way assigned in whole or in part to any other person or entity, whether by contract, operation of law or otherwise prior to the termination hereof, Buyer shall (a) obtain in writing and record a right to access for Seller, and its employees, authorized agents and contractors over such Premises, with such right of access to be (i) in the same form as this Agreement, (ii) binding on any transferee and its successors or assigns, and (iii) recorded with, or the contents thereof contained in, the deed transferring the Premises; and (b) make all future conveyance of the Premises expressly subject to all of the terms and conditions of Section 9.7 (*Futuro Conveyance/Leases*) of the Purchase Agreement.

## ARTICLE 3. TERMINATION

3.1 Termination. This Agreement shall automatically terminate, without any further action of either Seller or Buyer, upon the termination of Shell's obligation, if any, to indemnify Seller or perform Remediation pursuant to Article 12 (*Environmental Indemnification*) and/or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) of the Purchase Agreement. Notwithstanding this Section 3.1, this Agreement shall immediately terminate in the event Buyer sells, transfers or conveys the Premises to any third-party.

## ARTICLE 4. MISCELLANEOUS

4.1 Dispute Resolution. All disputes between Seller, Buyer and/or Shell arising out of, relating to, or in connection with this Agreement, including, without limitation, any Claim or question relating to this Agreement's negotiation, performance, non-performance, interpretation or termination or the relationship between Seller and Buyer contemplated or established by this Agreement, shall be referred to and finally resolved pursuant to the dispute resolution provisions of Schedule B of the Purchase Agreement. This Section 4.1 shall survive indefinitely.

4.2 Notice. Any notice, consent, request, report, demand, other document required to be given to one Party by the other shall be in writing and be delivered to or mailed, certified mail postage prepaid, to the receiving Party at its address herein.

4.3 Environmental Investigation and Remediation. Seller and Buyer agree that no provision of this Agreement shall expand Seller's or Shell's obligations to respond to Environmental Conditions not specifically identified in the Purchase Agreement and shall not be construed to be an admission of liability, wrongdoing or violation of any Law by Seller, Shell or Buyer or their predecessors, successors or permitted assigns.

Error! Unknown document property name.

4.4 Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of Florida, excluding any conflict of law principles that would direct application of the laws of another jurisdiction.

4.5 Waiver. No waiver by any party of any breach of the covenants and/or agreements set forth herein, or any rights or remedies provided hereunder and no course of dealing shall be deemed a continuing waiver of the same or any other breach, right or remedy, unless such waiver is in writing and is signed by the party sought to be bound. The failure of a party to exercise any right or remedy shall not be deemed a waiver of such right or remedy in the future.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

CIRCLE K STORES INC., a Texas

corp.

EXHIBIT ONLY

By:

Darrell Davis, Vice President

Witnesses:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

State of Florida §

County of \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by Darrell Davis, who is the Vice President of Circle K Stores Inc., a Texas corporation, on behalf of the corporation.

Witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name:

Notary Public in and for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_



Witnessed by: \_\_\_\_\_

EXHIBIT ONLY

State of \_\_\_\_\_ §

County of \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
201 \_\_\_\_\_ by \_\_\_\_\_ who is the \_\_\_\_\_ of  
\_\_\_\_\_ on behalf of the \_\_\_\_\_

Witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

This instrument was prepared by: \_\_\_\_\_

EXHIBIT D

APA Article 9

APA Article 11

APA Article 12

APA Article 13

APA Article 14

APA Article 15

APA Schedule A

APA Schedule B

Branding Agreement Article 2

Branding Agreement Article 4

Sic No. 2783801  
301 Eighth Avenue W, Palmetto, FL

**ADDENDUM TO REAL ESTATE SALES CONTRACT**  
(Use Restriction Addendum)

THIS ADDENDUM TO REAL ESTATE SALES CONTRACT ("Addendum") is entered into by and between Circle K Stores Inc. ("Seller"), and Bob Graham ("Buyer") to amend or add to provisions of that certain Real Estate Sales Contract (the "Contract") of even date herewith between the parties for the Real Property.

UR-1. Buyer acknowledges that for a period of twenty (20) years after the Closing date, neither Buyer, its successors, assigns, legal representatives, lessees, nor sublessees shall use the Real Property for or allow the Real Property to be used for:

The storage or sale of motor vehicle fuels.

UR-2. Buyer's agreement to place these restrictions on the Real Property is a material inducement to Seller to enter into this Contract. In the event these restrictions are violated, Seller, its successors or assigns shall have the right to pursue any remedy available in law or equity against Buyer or its successors or assigns, specifically including the right to enjoin the offending use of the Real Property.

UR-3. These restrictions shall survive the Closing, shall be placed on the document of conveyance and recorded with same and shall run with the land.

Except as provided herein, all other terms and conditions of the Contract shall remain the same. In the event of a conflict between this Addendum and the Contract, provisions of this Addendum shall govern.

SELLERS INITIALS:

DGP

BUYERS INITIALS:

BG

Site No. 2783801

**EXHIBIT UST-3 TO REAL ESTATE SALES CONTRACT**

**THIS EXHIBIT TO REAL ESTATE SALES CONTRACT** ("Exhibit") is entered into by and between Circle K Stores Inc. ("Seller"), and Bob Graham ("Buyer") to amend or add to provisions of that certain Real Estate Sales Contract (the "Contract") of even date herewith between the parties for the Real Property.

UST-3.1 In addition to the warranties and representations contained in Section 5.3 of the Contract, Seller warrants and represents to Buyer that to the best of its knowledge, but without further inquiry, that underground petroleum storage tanks were located at the Real Property at one time, but that such USTs have been removed or closed in place.

UST-3.2 Buyer acknowledges that Seller's environmental records may contain information about past use of the Real Property and that Buyer has the obligation to review such records pursuant to Section 3.1.3 of the Contract and to investigate historic uses of the Real Property pursuant to Section 3.1.4 of the Contract. As such, Seller shall have no liability for subsequent discovery of any underground storage tanks at the Real Property, except as may be expressly set forth to the contrary in Section 7 of the Contract.

Except as provided herein, all other terms and conditions of the Contract shall remain the same. In the event of a conflict between this Exhibit and the Contract, provisions of this Exhibit shall govern.

SELLERS INITIALS: \_\_\_\_\_

BUYERS INITIALS: \_\_\_\_\_

EXUST3





FIRST AMENDMENT TO REAL ESTATE SALES CONTRACT ("Amendment")

SELLER: Circle K Stores, Inc., a Texas Corporation

BUYER: Bob Graham and/or Assigns

PROPERTY: 301 8<sup>th</sup> Ave., Palmetto, Manatee County, Florida

PURCHASE PRICE: \$400,000.00

CONTRACT DATE: November 21, 2011

For good and valuable consideration including the mutual covenants and obligations contained herein, the parties do hereby amend the Real Estate Sales Contract ("Contract") as further set forth herein. In the event of any conflict between the terms and conditions of this Amendment and the Contract, the terms and conditions hereof shall prevail:

1. Preface: The Buyer proposes to assign his entire interest in the Contract to, the CRA of Palmetto, a Florida municipal corporation ("CRA"), however, certain provisions of the Contract prevent it from being assigned to or performed by the CRA. Specifically: Sections 10.3 (prohibiting assignment to unrelated parties); 10.12 (prohibiting public disclosure of the proposed transaction); and 9.2 (requiring Buyer's indemnification contrary to the CRA's rights of sovereign immunity), all either prohibit the assignment of the Contract or place requirement upon the CRA which cannot be performed, by a public/municipal entity. In order to authorize and facilitate the assignment to CRA, the parties do further agree as provided herein.
2. Contract Amendment: Contract is hereby specifically amended as follows:
  - a. Notwithstanding Section 10.3, the Buyer is authorized to assign the Contract to the CRA, and be released for all liability under the Contract.
  - b. Notwithstanding Section 10.12, the Buyer and the CRA may make such public disclosures of the existence and content of the Contract as may be reasonably necessary for the CRA to review and approve the assignment of the Contract in accordance with Florida Law.
  - c. Notwithstanding Section 9.2, the CRA shall have no obligation whatsoever to indemnify the Seller from and after the Closing Date.
  - d. Notwithstanding A (15) of the Contract, the Investigation Period shall expire January 31, 2012.h
  - e. Notwithstanding the foregoing, Seller shall provide to Buyer and CRA the disclosure affidavit required by Section 286.23(1), Florida Statutes before the Closing.

The foregoing applies solely to the proposed assignment to the CRA and shall not be deemed approval of any other assignment, or the transfer or modification of any rights under the Contract with regard to any other person or entity. If CRA and Buyer fail to enter into an Agreement for the assignment of the Contract by 5p.m. December 23, 2011, this Amendment shall terminate and become null and void.

3. COUNTERPARTS AND ELECTRONIC SIGNATURES: This Amendment may be executed by the parties in counterpart and the counterparts evidencing execution by all parties shall be taken as a single enforceable agreement, provided that all parties are promptly provided counterpart copies following full execution by all parties. Evidence of execution in the form of electronically transmitted signatures shall be binding upon all parties and collective counterparts with electronically transmitted signatures shall be deemed an original and enforceable agreement for all purposes.

The remaining terms and conditions of the Contract not expressly modified herein shall remain in full force and effect.

SELLER:

Circle K Stores Inc., a Texas corporation

By: \_\_\_\_\_

Name:

Its:

BUYER



Bob Graham

Date: December \_\_\_\_, 2011

Date: December \_\_\_\_, 2011

Date: December \_\_\_\_\_, 2011