

## MEMORANDUM OF AGREEMENT

The Parties to this Memorandum of Agreement (“AGREEMENT”) are the **SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS**, whose address is 7375 Powell Road, Wildwood, Florida, 34785 (“COUNTY”), and **674 PROPERTY, LLC**, whose address is 115 CR 532 W, Bushnell, Florida, 33513 (“OWNERS”), .

**WHEREAS**, OWNERS are the fee simple owners of certain real property located in Sumter County, Florida, more particularly described in Exhibit “A” to that certain Memorandum of Agreement entered into on or about February 11, 2009, and recorded in the Official Records of Sumter County at O.R. Book: 2035, Pages: 727 through 723; and,

**WHEREAS**, OWNERS submitted rezoning application # R2009-0023 to COUNTY, which was approved by COUNTY after a properly noticed quasi-judicial hearing, through the passage of Resolution Number 2009-98; the Memorandum of Agreement of February 11, 2009 and Resolution Number 2009-98 are attached hereto and incorporated herein, as Exhibits “1” and “2”, respectively, *in haec verba*; and,

**WHEREAS**, the Resolution approving OWNER’S rezoning application was subject to several conditions, including a condition that OWNERS “*shall design and construct an eastbound left-turn lane from C-673 to the project driveway and a westbound right-turn taper from C-673 to the project driveway as required by Sumter County Public Works.*”; and,

**WHEREAS**, COUNTY has received bid proposals for the improvement of CR 673 in Sumter County, Florida, pursuant to ITB # 021-0-2011/AT, Sumter County CR 673 Widening & Resurfacing (“PROJECT”), and intends to enter into a contract with the most responsive bidder, C.W. Contracting, Inc. (hereinafter referred to as “CONTRACTOR”); and,

**WHEREAS**, CONTRACTOR’S bid contains an “Alternate Bid” for the construction of the left-turn lane and right-turn taper contemplated by the condition of Resolution Number 2009-98 cited above, said Alternate Bid being attached hereto and incorporated herein as Exhibit “3”, *in haec verba*; and,

**WHEREAS**, in an effort to satisfy the condition of Resolution Number 2009-98 cited above, OWNER has agreed to pay the sums reflected in the Alternate Bid for the completion of the work referenced therein, which at this time, totals \$72,700.00; and,

**WHEREAS**, this after consideration, discussion, debate and vote of approval of this AGREEMENT at a properly noticed meeting of the Sumter County Board of County Commissioners, the Parties desire to enter into this Memorandum of Agreement and record the same within the Public Records of Sumter County, Florida, for purposes of setting forth certain terms and conditions to be enforced against OWNERS and their successors and assigns, all as is more particularly set forth hereinafter.

**NOW THEREFORE**, in consideration of the foregoing recitals and adopting them as true and as if fully stated herein, and with the intention they be legally bound to the requirements stated herein, the Parties agree as follows:

1. Recitals. The above recitals are agreed by the Parties to be true and correct and incorporated herein by reference, *in haec verba*.

2. Memorandum of Agreement. The terms set forth in this AGREEMENT memorializes the intent of the Parties as to the construction of the left-turn lane and right-turn taper contemplated by the condition of Resolution Number 2009-98.

3. Payment: OWNER agrees that it will provide COUNTY with certified funds in the amount of \$72,700.00 within seven (7) days of the execution of this AGREEMENT. COUNTY shall hold said funds in escrow until the construction of the left-turn lane and right-turn taper contemplated by the Alternate Bid have been certified as complete by AMEC-BCI, the Project Engineer.

4. Extras. The cost of any extras or change orders required for the completion of the construction of the left-turn lane and right-turn taper contemplated by the Alternate Bid shall be borne exclusively by OWNERS. Specifically, OWNERS shall be required to provide COUNTY with certified funds for any extras or change orders deemed necessary by OWNERS or CONTRACTOR to complete that portion of the project identified in the Alternate Bid, within five (5) days of OWNERS being notified that such extras or change orders are necessary. It is understood that any and all extras or change orders necessary for the completion of the left-turn lane and right-turn taper contemplated by the condition of Resolution Number 2009-98 cited above, which are over and above the amounts reflected in the Alternate Bid, deemed necessary by the CONTRACTOR, must be in writing and signed by the CONTRACTOR and the Project Engineer. Change Orders negotiated between the CONTRACTOR and OWNERS must be in writing and signed by the CONTRACTOR and OWNERS.

5. Conflict. In the case of conflict between this Memorandum of Agreement and the any other AGREEMENT between the Parties, this Memorandum of Agreement shall control. Matters not specifically addressed in this AGREEMENT shall be controlled by the previous Memorandum of Agreement, Resolution Number 2009-98 or the County's Land Development Code.

6. Binding Effect. The terms and conditions as set forth in this Memorandum of Agreement shall inure to the benefit of, and shall constitute a covenant running with the land and under the terms, conditions and provisions hereof, and shall be legally binding upon any heirs, assigns and successors in title or interest, and shall be subject to each and every condition herein set out.

7. Enforcement. Enforcement of this Memorandum of Agreement shall be through the Sumter County Board of County Commission. Specifically, the COUNTY reserves the right to enforce the terms and conditions of this AGREEMENT against OWNERS for any legal claim

it may have. Failure to immediately take action against OWNER for any breach of this AGREEMENT shall not be considered to be a waiver of any of COUNTY'S rights under this AGREEMENT. The Parties agree that venue for any action brought to enforce the terms of this AGREEMENT shall lie exclusively in Sumter County, Florida. Furthermore, the Parties agree that the prevailing party in any action brought to enforce the terms of this AGREEMENT shall be entitled to recover their reasonable attorney's fees and costs, including reasonable costs and attorney's fees incurred for any appellate action.

8. Entire Agreement. This AGREEMENT constitutes the entire understanding of the Parties. Any change or amendment to the terms or conditions of this AGREEMENT must be in writing, and executed by each party.

**IN WITNESS WHEREOF**, the hands and seals of the parties on the date set forth above.

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
SUMTER COUNTY, FLORIDA**

By: \_\_\_\_\_  
Gloria R. Hayward, Clerk

By: \_\_\_\_\_  
DON BURGESS, Chairman

Approved as to form and content by  
Sumter County Attorney

\_\_\_\_\_  
George G. Angeliadis, Esquire

WITNESSES:

674 Property, LLC

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

\_\_\_\_\_  
PHILLIP T. MOFFITT, Manager

STATE OF FLORIDA  
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, Chairman and Gloria Hayward, Clerk, of and on behalf of the Board of County Commissioners, Sumter County, Florida, for the purposes expressed herein.

SEAL

\_\_\_\_\_  
Notary Public

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

\_\_\_\_\_  
Serial/Commission No.

\_\_\_\_\_  
Commission Expires:

STATE OF FLORIDA  
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Phillip T. Moffitt, Manager, 674 Property, LLC, who is personally known to me or produced \_\_\_\_\_ as identification, for the purposes expressed herein.

SEAL

\_\_\_\_\_  
Notary Public

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

\_\_\_\_\_  
Serial/Commission No.

\_\_\_\_\_  
Commission Expires: