

CITY OF BROOK PARK, OHIO

P/C 4-4-23 Planning
CA 4-11-23
1st R 4-18-23
2nd R _____
3rd R _____
B/C _____

ORDINANCE NO: 11324-2023

INTRODUCED BY: MAYOR ORCUTT

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT FOR THE SALE OF PERMANENT PARCEL NOS. 341-36-008,
341-30-004, 341-36-011, AND 341-05-001
AND DECLARING AN EMERGENCY

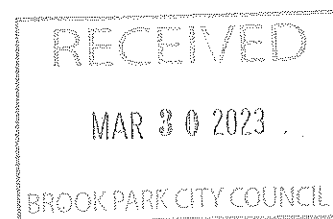
NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into a contract for the sale of Permanent Parcel Nos. 341-36-008, 341-30-004, 341-36-011, and 341-05-001, pursuant to the terms and conditions set forth in the aforesaid agreement attached hereto and incorporated herein as if fully rewritten as Exhibit "A".

SECTION 2: The money needed for the sale of the aforesaid transaction shall be paid from the Economic Development Fund No. 243 and the proceeds from this sale shall be placed in the Economic Development Fund No. 243.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to authorize the Mayor to enter into a contract for the sale of Permanent Parcel Nos. 341-36-008, 341-30-004, 341-36-011, and 341-05-001; therefore provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.



PASSED:

April 18, 2023

Rich Salvo
PRESIDENT OF COUNCIL

ATTEST:

Carol Johnson
CLERK OF COUNCIL

APPROVED:

Chad Smith
MAYOR

4-18-23

DATE

CERTIFICATE

Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance Resolution No. 11324-2023

passed on the 18 day of April 20 23 by said council.

Carol Johnson
Clerk of Council

I, Carol Johnson, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing

4-19-23

Carol Johnson
CAROL JOHNSON
Clerk of Council

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coyne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Polindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS

[Signature]
DIRECTOR OF LAW

REAL ESTATE PURCHASE CONTRACT



THIS REAL ESTATE PURCHASE CONTRACT (the "Contract"), executed as of March 17, 2023 constitutes the agreement of purchase and sale by and between [The City of BROOK PARK], a Municipality ("Seller"), and [BLUE ABYSS], a Delaware Corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of certain real estate identified as Cuyahoga County parcel number 341-36-008, 341-30-004, 341-36-011, 341-05-001, consisting of approximately 12.8 acres, commonly known as City of Brook Park Land, Brook Park, Ohio, and more particularly described on Exhibit A, attached hereto and incorporated herein (the "Land"); and any and all improvements located thereon (collectively, the "Improvements") (the Land and Improvements collectively the "Property"); and

WHEREAS, Buyer desires to purchase the Property from Seller on the terms and conditions set forth in this Contract;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein contained and other good and valuable consideration received to the full satisfaction of each of them, the parties agree as follows:

1. **Agreement to Buy and Sell.** Seller agrees to sell and convey to Buyer and Buyer agrees to buy and take title to, under the terms and conditions set forth below, the Property.
2. **The Purchase Price:** The Purchase Price shall be seven hundred eighty three thousand, seven hundred and fifty dollars (\$783,750.00) payable in immediately available funds as follows: a) An earnest money deposit of One hundred thousand dollars (\$100,000.00) shall be payable on the Effective Date, which is defined as the date on which the Council of the City of Brook Park formally approves by ordinance this Agreement, and such deposit shall be refundable if there is no date of Closing (hereinafter defined). Further the balance of six hundred eighty three thousand seven hundred and fifty dollars (\$683,750.00) shall be paid at closing.
3. **Contingencies:** Buyer's obligation to purchase the Property and Seller's obligation to sell the Property is subject to the satisfaction or waiver of the conditions and contingencies described herein (the "Contingencies") on or before the date that is 6 months following the Effective Date; provided, however, that Buyer may extend such 6 month period by an additional 3 months upon written notice to Seller (the "Contingency Period"). Pursuant to the Charter of the City of Brook Park, City Council shall make provision by Ordinance for the sale of all municipal property. Therefore, this purchase is contingent upon the approval and passage of an ordinance by Brook Park City Council.

(a) **Title.** Within ninety (90) days of the Effective Date, Buyer shall obtain, at Seller's expense, a commitment for an owner's policy of title insurance issued by a title insurance company selected by Buyer (the "Title Company") with respect to the Property (the "Title Commitment"). The Title Commitment shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (i) those created by Buyer; (ii) those specifically set forth in this Contract; (iii) zoning ordinances; (iv) legal highways; and (v) covenants, restrictions, conditions and easements of record which are acceptable to Buyer. If title is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted by this Contract, Buyer shall have the right to object to such conditions within twenty (20) days of Buyer's receipt of both the Title Commitment and Survey (hereinafter defined). If Buyer so objects, and Seller fails to remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment within the Contingency Period, Buyer shall have the option to terminate this Contract by delivering written notice thereof to Seller and receive a return of its earnest money deposit. At Closing, Seller shall sign an affidavit with respect to off-record title matters as required by the Title Company and Buyer. The issuance of a title insurance policy pursuant to the Title Commitment (the "Title Policy") is a condition precedent to the parties' obligation to proceed to Closing under this Agreement. The Title Policy shall be in a form reasonably acceptable to Buyer and in the amount of the Purchase Price, showing title to the Property vested of record in Buyer in fee simple, subject only to any matters approved or waived by Buyer, any matters shown on the Survey and not objected to by Buyer and any other matters that Buyer has approved in writing.

(b) **Survey.** Within ninety (90) days of the Effective Date, Buyer shall have the right to obtain, at Seller's cost and expense of up to \$6,000, a survey of the Property, together with certification of the surveyor as may reasonably be required by Buyer (the "Survey"). The Survey shall satisfy the most recent "Minimum Standard Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and ACSM, and shall meet the accuracy requirements of a Class A Survey as defined therein. If the Survey reveals any exceptions to title or any matters affecting the Property ("Survey Exceptions"), Buyer may notify Seller of such Survey Exceptions within twenty (20) days after Buyer's receipt of the last of the Title Commitment or Survey (the "Survey Notice"), whereupon Seller shall cure any disapproved Survey Exceptions. If Seller fails to cure any Survey Exceptions referenced in the Survey Notice within the Contingency Period, Buyer shall have the option to terminate this Contract by delivering written notice thereof to Seller and receive a return of its earnest money deposit.

(c) **Environmental Conditions.** The Buyer is aware of the presence of wetlands on these properties. Buyer shall have the right, and Seller shall provide Buyer access to the Property reasonably necessary, to obtain environmental reports regarding the soils, ground water, topography, geology and other conditions of the Property which Buyer considers necessary in Buyer's sole discretion, together with

reliance letters of the preparers of such reports as may be required by Buyer ("Environmental Reports"). If the Environmental Reports reveal any environmental matters adversely affecting the Property (the "Environmental Conditions"), Buyer may notify Seller of such Environmental Conditions (the "Environmental Notice"). Upon receipt of an Environmental Notice, Seller shall have the right, but not the obligation to, cure any disapproved Environmental Conditions. If the Environmental Condition is not cured to Buyer's reasonable satisfaction within the Contingency Period, Buyer shall have the right to terminate this Contract and receive a return of its earnest money deposit.

(d) **Inspection.** Seller shall cooperate in making the Property reasonably available for inspection by Buyer. If Buyer is not satisfied with the condition of the Property as disclosed by any inspection thereof, Buyer may deliver to Seller a written request that the Seller remedy any unsatisfactory conditions. In the event that Buyer and Seller do not reach agreement regarding remedying the unsatisfactory conditions prior to the expiration of the Contingency Period, then Buyer shall have the right to terminate this Contract and receive a return of its earnest money deposit.

(e) **Easements; Access Rights.** Buyer and Seller shall cooperate to secure any and all easements, rights of way, consents, amendments, variances, permits and or approvals from third parties as are necessary in order to permit Buyer to have ingress and egress to and full use and enjoyment of the Property in the manner and for the purposes contemplated by Buyer.

(f) **Intended Use.** Buyer shall have received all permits, approvals, consents and other authorizations from all governmental and other parties deemed necessary or desirable by Buyer to permit it to construct and operate its intended aerospace and marine research training facility and hotel (together, the "Facility") in a manner acceptable to Buyer in its sole discretion (the "Approvals"). In the event that Buyer does not obtain all such Approvals during the Contingency Period, then Buyer shall have the right to terminate this Contract and receive a return of its earnest money deposit.

(g) **Financing.** Buyer's obligations under this Contract shall be conditioned on Buyer's receipt of financing sufficient for Buyer to construct and operate the Facility upon terms acceptable to Buyer in its sole discretion. In the event that Buyer does not obtain all such financing during the Contingency Period, then Buyer shall have the right to terminate this Contract and receive a return of its earnest money deposit.

3. **Closing:** The closing of the purchase and sale of the Property (the "Closing") shall be the date that is fifteen (15) days after completion or waiver of the Contingencies. In addition to the satisfaction or waiver of the Contingencies, Buyer's obligations under this Contract are subject to and contingent upon the occurrence of the following on or before the date of Closing: (a) all of Seller's representations and warranties hereunder shall remain true and correct; (b) no moratorium, statute, order, regulation, ordinance or judgment of any court or governmental agency shall have been enacted, adopted, issued or initiated that

would materially and adversely affect the Property, the Facility or Buyer's use thereof as contemplated herein; and (c) the passage of an ordinance by Brook Park City Council, (d) the parties shall have delivered all other documents and other deliveries listed in paragraph 5 hereof.

4. **Deliveries:**

(a) **Seller's Deliveries at Closing.** At Closing, Seller shall deliver into escrow with the Title Company the following documents and materials, all of which shall be in form and substance reasonably acceptable to the parties: (i) a duly executed and acknowledged general warranty deed (the "Deed"); (ii) a certificate duly executed by Seller that as of the date of Closing all representations and warranties by Seller set forth in this Contract remain true and correct; (iii) a certification duly executed by Seller, certifying that Seller is not a "foreign person", pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended ("Section 1445"); (iv) a general instrument of transfer, pursuant to which Seller shall convey and assign to Buyer all of Seller's right, title and interest in and to all personal property and other rights of Seller relating to the Property ("General Instrument of Transfer"); (v) such affidavits and indemnities as the Title Company may reasonably require in order to omit from the Title Policy all exceptions for (1) parties in possession, (2) mechanic's liens, (3) unrecorded assessments and other matters an accurate survey of the Property would disclose, and (4) nondelinquent real estate taxes, water and sewer and other charges of municipal and governmental authorities and utility companies; and (vi) a closing statement showing documents, closing costs and prorations, calculated in accordance with paragraph 6 hereof, in form and substance satisfactory to Buyer and Seller (the "Closing Statement").

(b) **Buyer's Deliveries at Closing.** On the date of Closing, Buyer shall through escrow with the Title Company: (i) deliver at the Closing the Purchase Price for the Property (plus any additional funds necessary to pay Buyers' share of closing costs and prorations, minus any credits granted to Buyer as set forth herein) in immediately available funds; and (ii) sign the Closing Statement.

(c) **Broker's Fee** Further Seller shall pay from the Purchase Price the sum of Sixty Seven Thousand Five Hundred dollars (\$67,500.00) as and for payment of Seller's broker commission fees.

5. **Closing Costs and Prorations:** At the Closing, closing costs shall be paid and prorations made as follows:

(a) **Closing Costs.** Except as otherwise expressly provided herein, Seller shall pay at the Closing: the costs of releasing any mortgage, financing statement, or other debt security, or any attachments, assessments, delinquent real estate taxes or mechanic's or materialmen's liens outstanding against the Property, all transfer taxes and conveyance fees and the costs of curing, remedying or removing any Contingencies that Seller cures, remedies or removes. The costs of the Title Policy shall be paid by

Seller. Seller shall pay the costs of recording the Deed and any mortgage or financing instrument and any special endorsements to the Title Policy not required to cure a title objection or Survey Exception.

(b) **Taxes.** All real property taxes and assessments ("Taxes") (including penalties thereon) which are delinquent shall be paid at Closing out of funds due Seller. Any non-delinquent Taxes shall be prorated on an accrual basis based on, if not yet fully determined as of the Closing, the most recently available tax bill giving effect to applicable exemptions, recently voted millage, change in valuation and other factors affected the Taxes.

6. **Damage or destruction of property:** Risk of loss to the real estate and appurtenances shall be borne by Seller until Closing provided that if certain Property covered by this Contract shall be substantially damaged or destroyed before this transaction is closed, Buyer may (a) proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the Property, or (b) rescind the Contract and thereby release all parties from liability hereunder, by giving written notice to Seller within ten (10) days after Buyer has written notice of such damage or destruction. Failure by Buyer to so notify Seller shall constitute an election to proceed with the transaction.

7. **Income-producing agreements:** Seller shall convey any and all interest in leases or income producing agreements relative to the Property that may be in effect as of the date of Closing, and will execute such assignments or other instruments as necessary to effectuate such conveyances.

8. **Seller's Representations and Warranties:** As a material inducement to the execution and delivery of this Contract by Buyer and the performance by Buyer of its duties and obligations hereunder, Seller does hereby warrant and represent to Buyer as of the Effective Date and as of the date of Closing:

(a) **Information.** Seller has no knowledge of any information affecting the Property that has or would have a material adverse impact on Buyer's ability to use, lease and operate the Property as contemplated by Buyer.

(b) **Legal Compliance.** Seller has no knowledge of any past or continuing violation or alleged violation of any legal requirement affecting the Property; including, without limitation, any past or continuing violation or alleged violation of any local, state or federal environmental, zoning, subdivision, fire or other law, ordinance, code, regulation, rule or order. In addition to the foregoing, the Property complies with all applicable building and zoning codes and all laws, statutes, codes ordinances, rules and regulations relating to the environment.

(c) **Litigation.** Seller has no knowledge of any pending or threatened claims, actions, suits, litigation or governmental proceeding affecting the Property.

(d) **Other Agreements.** Seller has no knowledge, there are no agreements or understandings, oral or written, with any person, entity or governmental authority affecting the Property which could give rise to claims affecting the Property.

(e) **Governmental Actions.** Seller has no knowledge of any threatened or pending condemnation or eminent domain proceeding, special assessment, rezoning or moratorium affecting the Property.

(f) **Due Authorization.** Seller has full power to execute, deliver and carry out the terms and provisions of this Contract and has taken all necessary action to authorize the execution, delivery and performance of this Contract. The individual executing this Contract on behalf of Seller has the authority to bind Seller to the terms and conditions of this Contract after the approval and passage of applicable ordinances by Brook Park City Council.

(g) **Environmental Matters.** Both Seller and Buyer acknowledge that this property contains Wetlands which are subject to Environmental Law. To the best of Seller's knowledge, the Property is not in violation of any Environmental Law (as defined below) and Seller has no knowledge of (i) the presence on or about the Property of any Hazardous Materials (as defined below); (ii) any release or threatened release of any Hazardous Materials on or affecting the Property; or (iii) the existence of any underground storage tanks on or about the Property. Seller has received no notice of any investigation or proceeding by any governmental agency concerning the presence or alleged presence, release or threatened release of Hazardous Materials on the Property. The term "Environmental Law" includes any federal, state or local law, ordinance or regulation pertaining to health, industrial hygiene, waste disposal, or the environment, including, without limitation: the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Superfund Amendments and Reauthorization Act of 1986, the federal Resource Conservation and Recovery Act of 1976, the federal Clean Air Act, the federal Water Pollution Control Act and federal Clean Air Act of 1977, the federal Insecticide, Fungicide and Rodenticide Act, the federal Pesticide Act of 1977, the federal Toxic Substances Control Act, the federal Safe Drinking Water Act, the federal Hazardous Materials Transportation Act, and any amendments thereto, regulations adopted, and publications promulgated pursuant thereto. The term "Hazardous Materials" includes oil and petroleum products, asbestos, polychlorinated biphenyl, radon and urea formaldehyde, and any other materials classified as hazardous or toxic or as pollutants or contaminants under any Environmental Law. If Seller has received or at any time does receive notice, knowledge or information as to the presence, alleged presence, release or threatened release of Hazardous Materials on or about the Property other than as previously disclosed by Seller to Buyer, Seller agrees to provide to Buyer all information and data as to such Hazardous Materials immediately upon receipt of same.

9. **Miscellaneous:**

(a) This Contract shall be binding upon the parties hereto, and their respective successors and assignees. All agreements, representations and warranties by the respective parties contained herein are intended to and shall remain true and correct as of the Closing, shall be deemed to be material,

and shall survive the delivery of the Deed and transfer of title. Any covenants and conditions herein that must be operative after delivery of the Deed to be effective shall be so operative and shall not be deemed to have been merged in the Deed.

(b) This Contract contains all of the covenants, conditions and agreements between the parties with respect to the subject matter hereof and shall supersede all prior correspondence, agreements and understandings, both oral and written to the extent related to the subject matter hereof. The parties intend that this Contract constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced in any proceeding involving this Contract. This Contract may not be changed or amended orally, but only by an agreement in writing. No waiver shall be effective hereunder unless given in writing, and waiver shall not be inferred from any conduct of either party.

(c) All notices required or permitted to be given pursuant to the terms hereof shall be in writing and shall be delivered either by hand delivery, by overnight delivery service, or by deposit in the United States mail, registered or certified mail, postage prepaid. All such notices shall be addressed to the applicable party at its address set forth on the signature page hereof. The foregoing addresses may be changed by written notice to the other party as provided herein. Notices shall be deemed received upon delivery if delivered by hand or by overnight delivery service or by facsimile transmission, or three (3) days after being sent by registered or certified mail (unless a signed receipt evidences earlier delivery).

(d) In construing this Contract, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Contract. Whenever required by the context, the singular shall include the plural and the masculine shall include the feminine and vice versa. All exhibits attached hereto are incorporated in this Contract by reference thereto.

(e) Time is of the essence of every provision herein contained. Whenever the date or deadline for any action to be taken is not a business day, the relevant date or deadline shall be the next business day.

(f) This Contract shall be governed by the laws of the State of Ohio.

(g) Each party represents to the other that no broker or finder other than CRESCO Real Estate Ltd. and Jason Laver who represent the Seller and shall be paid a fee equal to 9% of the gross sales price by the Buyer, in addition to the Purchase Price to be paid at the Closing. No other broker or finder has been engaged who may claim a fee or commission in connection with the transaction. Each party shall indemnify, defend and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any other broker or finder in connection with the Property or this Contract as a result of the acts or omissions of such party.

(h) If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable; this Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Contract; and the remaining provisions of this Contract shall remain in full force and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, or enforceable.

(i) The Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

(j) Between the Effective Date and the date of Closing, Seller shall maintain, repair and keep the Property in substantially its present condition, ordinary wear and tear and damage due to casualty or condemnation excepted.

IN WITNESS WHEREOF, the parties hereto have caused this Real Estate Purchase Contract to be executed by their respective duly authorized representatives as of the Effective Date.

SELLER:

[BROOK PARK]

By: 

Its: MAYOR

BUYER:

[BLUE ABYSS]

By: 

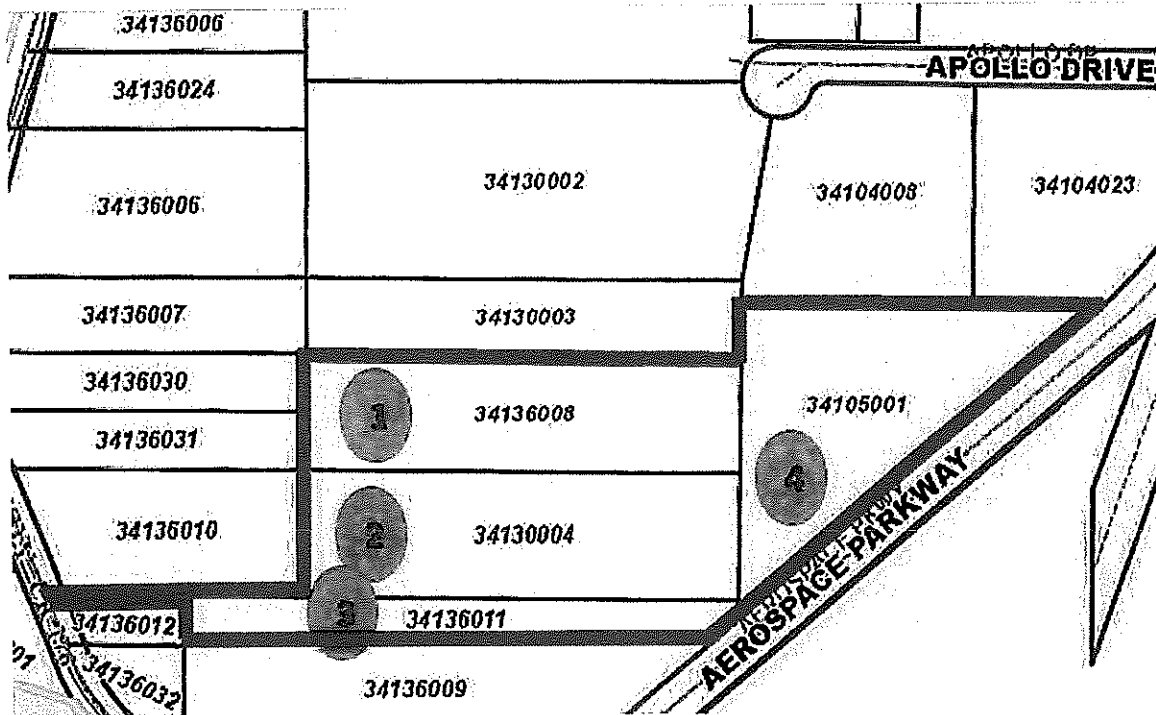
Its: CEO

Exhibit A
Legal Description of Property

(to be attached)

127530.000001 4894-2380-7828.2 Real Estate Purchase Agreement (Brookpark) 4894-2380-7828 v.2.docx

AEROSPACE PARKWAY



#	Parcel Number	Acreage
1	341-36-008	3.4000
2	341-30-004	3.6500
3	341-36-011	1.7960
4	341-05-001	3.9500
Total		12.7960