

**RESOLUTION NO. 2017-142**

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**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE ACQUISITION OF LAND; APPROVING THE CONTRACT BETWEEN THE VILLAGE OF PALMETTO BAY AND SHORES AT PALMETTO BAY LLC. FOR THE PURCHASE OF THE EASTERN 2.0 ACRES OF THE 5.34-ACRE VACANT SITE LOCATED AT SW 97<sup>TH</sup> AVENUE AND SW 178<sup>TH</sup> STREET, COMPRISING ESSENTIALLY OF THE SCHOOL SITE AND OTHER ROAD RIGHT-OF-WAYS FOR \$2,960,000 PLUS OTHER RELATED TRANSACTION COSTS FOR A TOTAL NOT TO EXCEED \$3,000,000; PROVIDING FOR AN EFFECTIVE DATE. (Sponsored by Councilmember David Singer)**

**WHEREAS**, certain land located near Village Hall would be suitable for public uses under Village ownership; and,

**WHEREAS**, the vacant land of approximately 5.34 acres is currently approved for a charter school for up to 1,000 students as provided in resolution 2016-50; and,

**WHEREAS**, the Village is interested in acquiring approximately 2.0 acres of the 5.34-acre site comprising essentially of the proposed school site and other road right-of-ways; and,

**WHEREAS**, the acquisition of such land by the Village would avoid the traffic impacts of the approved charter school; and,

**WHEREAS**, the 2.0 acres would allow the Village to build a community center and parking for public use.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are included herein by reference.

1           **Section 2.** The contract between the Village of Palmetto Bay and  
2 Shores at Palmetto Bay, LLC for the purchase of the eastern 2.0 acres of  
3 the 5.34-acre site located at SW 97<sup>th</sup> Avenue and SW 178<sup>th</sup> Street, in  
4 substantial form and content to the attached Exhibit A, is hereby  
5 approved, with the following clause inserted:

6  
7           “As a condition of this contract, at closing the Seller will execute a  
8 binding covenant running with the remaining contiguous  
9 approximately 3.34 acres also owned by Seller, prohibiting the  
10 development on said approximately 3.34 acres of any school,  
11 including charter school, but not prohibiting day care center not  
12 primarily performing an education function.”

13  
14           **Section 3.** The Village Manager is authorized to proceed with the  
15 acquisition of the 2.0 acres for \$2,960,000, plus other related transaction  
16 costs for a total not to exceed \$3,000,000 for the purpose of establishing  
17 a community center and parking.

18  
19           **Section 4.** This Resolution shall take effect immediately upon  
20 approval.

21  
22           **PASSED and ADOPTED** this 18<sup>th</sup> day of December, 2017.

23  
24  
25           DocuSigned by:  
26           Attest: Missy Arocha  
27           Missy Arocha  
28           Village Clerk

29           DocuSigned by:  
30           Eugene Flinn  
31           Eugene Flinn  
32           Mayor

33  
34           APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
35 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

36           DocuSigned by:  
37           Dexter W. Lehtinen  
38           Dexter W. Lehtinen  
39           Village Attorney

1 FINAL VOTE AT ADOPTION:  
2  
3 Council Member Karyn Cunningham NO  
4  
5 Council Member David Singer YES  
6  
7 Council Member Larissa Siegel Lara YES  
8  
9 Vice-Mayor John DuBois NO  
10  
11 Mayor Eugene Flinn YES

EXHIBIT "A"

12/18/17



Vacant Land Contract

1\* 1. Sale and Purchase: Shores at Palmetto Bay, LLC, a Florida limited liability company ("Seller")  
2\* and Village of Palmetto Bay ("Buyer")  
3 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")  
4 described as:  
5\* Address: see attached exhibit A  
6\* Legal Description: \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11\* SEC \_\_\_/TWP / \_\_\_/ RNG \_\_\_ of \_\_\_\_\_ County, Florida. Real Property ID No.: \_\_\_\_\_  
12\* including all improvements existing on the Property and the following additional property: \_\_\_\_\_  
13 \_\_\_\_\_

14\* 2. Purchase Price: (U.S. currency).....\$ 2,960,000.00  
15 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:  
16\* Escrow Agent's Name: Sonn & Mittelman, P.A.  
17\* Escrow Agent's Contact Person: Terri G. Sonn  
18\* Escrow Agent's Address: 2999 NE 191st Street, suite 409, Aventura, FL 33180  
19\* Escrow Agent's Phone: 305-466-9497  
20\* Escrow Agent's Email: tgs@sonnmittelman.com

21 (a) Initial deposit (\$0 if left blank) (Check if applicable)  
22\*  accompanies offer  
23\*  will be delivered to Escrow Agent within 5 days (3 days if left blank)  
24\* after Effective Date .....\$ 1,000,000.00  
25 (b) Additional deposit will be delivered to Escrow Agent (Check if applicable)  
26\*  within \_\_\_\_\_ days (10 days if left blank) after Effective Date  
27\*  within \_\_\_\_\_ days (3 days if left blank) after expiration of Feasibility Study Period .....\$ \_\_\_\_\_  
28\* (c) Total Financing (see Paragraph 5) (express as a dollar amount or percentage).....\$ 1,960,000.00  
29\* (d) Other: deposit to be released to Seller after expiration of the Feasibility Study Period .....\$ \_\_\_\_\_  
30 (e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)  
31\* to be paid at closing by wire transfer or other Collected funds .....\$ \_\_\_\_\_  
32\* (f)  (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The  
33\* unit used to determine the purchase price is  lot  acre  square foot  other (specify): \_\_\_\_\_  
34\* prorating areas of less than a full unit. The purchase price will be \$ \_\_\_\_\_ per unit based on a  
35 calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in  
36 accordance with Paragraph 7(c). The following rights of way and other areas will be excluded from the  
37\* calculation: \_\_\_\_\_

38 3. Time for Acceptance; Effective Date: Unless this offer is signed by Seller and Buyer and an executed copy  
39\* delivered to all parties on or before 12/18/17 at 5:00 p.m., this offer will be withdrawn and Buyer's deposit, if  
40 any, will be returned. The time for acceptance of any counter offer will be 3 days after the date the counter offer is  
41 delivered. The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer  
42 has signed or initialed and delivered this offer or the final counter offer.

43\* 4. Closing Date: This transaction will close on 95 days from expiration of FSP ("Closing Date"), unless specifically  
44 extended by other provisions of this contract. The Closing Date will prevail over all other time periods including,  
45 but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday,  
46 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business  
47 day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property  
48 insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If  
49 this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and  
50 other items.

- 51 **5. Financing: (Check as applicable)**
- 52\* (a)  **Buyer** will pay cash for the Property with no financing contingency.
- 53\* (b)  This contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s)
- 54\* specified below ("Financing") within \_\_\_\_\_ days after Effective Date (Closing Date or 30 days after Effective
- 55\* Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within \_\_\_\_\_
- 56\* days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial,
- 57\* and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the
- 58\* Financing within the Financing Period, either party may terminate this contract and **Buyer's** deposit(s) will be
- 59\* returned.
- 60\* (1)  **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ \_\_\_\_\_
- 61\* or \_\_\_\_\_% of the purchase price at (Check one)  a fixed rate not exceeding \_\_\_\_\_%  an
- 62\* adjustable interest rate not exceeding \_\_\_\_\_% at origination (a fixed rate at the prevailing interest rate
- 63\* based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully
- 64\* informed of the loan application status and progress and authorizes the lender or mortgage broker to
- 65\* disclose all such information to **Seller** and Broker.
- 66\* (2)  **Seller Financing:** **Buyer** will execute a  first  second purchase money note and mortgage to
- 67\* **Seller** in the amount of \$ \_\_\_\_\_, bearing annual interest at \_\_\_\_\_% and payable as
- 68\* follows: \_\_\_\_\_
- 69\* The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow
- 70\* forms generally accepted in the county where the Property is located; will provide for a late payment fee
- 71\* and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without
- 72\* penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on
- 73\* conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to
- 74\* keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller**
- 75\* to obtain credit, employment, and other necessary information to determine creditworthiness for the
- 76\* financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not
- 77\* **Seller** will make the loan.
- 78\* (3)  **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to
- 79\* \_\_\_\_\_
- 80\* LN# \_\_\_\_\_ in the approximate amount of \$ \_\_\_\_\_ currently payable at
- 81\* \$ \_\_\_\_\_ per month, including principal, interest,  taxes and insurance, and having a
- 82\*  fixed  other (describe) \_\_\_\_\_
- 83\* interest rate of \_\_\_\_\_% which  will  will not escalate upon assumption. Any variance in the
- 84\* mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will
- 85\* purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds \_\_\_\_\_% or
- 86\* the assumption/transfer fee exceeds \$ \_\_\_\_\_, either party may elect to pay the excess,
- 87\* failing which this contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves
- 88\* **Buyer**, this contract will terminate; and **Buyer's** deposit(s) will be returned.
- 89\* **6. Assignability: (Check one) Buyer**  may assign and thereby be released from any further liability under this
- 90\* contract,  may assign but not be released from liability under this contract, or  may not assign this contract.
- 91\* **7. Title: Seller** has the legal capacity to and will convey marketable title to the Property by  statutory warranty
- 92\* deed  special warranty deed  other (specify) \_\_\_\_\_, free of liens, easements,
- 93\* and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants,
- 94\* restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any
- 95\* other matters to which title will be subject) \_\_\_\_\_,
- 96\* provided there exists at closing no violation of the foregoing.
- 97\* (a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and
- 98\* pay for the title search, including tax and lien search if performed, and all other fees charged by closing agent.
- 99\* **Seller** will deliver to **Buyer**, at
- 100\* (Check one)  **Seller's**  **Buyer's** expense and
- 101\* (Check one)  within 10 days after Effective Date  at least \_\_\_\_\_ days before Closing Date,
- 102\* (Check one)
- 103\* (1)  a title insurance commitment by a Florida licensed title insurer setting forth those matters to be
- 104\* discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the
- 105\* amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is
- 106\* paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to
- 107\* **Buyer** within 15 days after Effective Date.

Buyer ( ) ( ) and Seller ( ) ( ) acknowledge receipt of a copy of this page, which is 2 of 7 pages.

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108\* (2)  an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an  
109 existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy  
110 acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy  
111 will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy  
112 effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents  
113 recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**,  
114 then (1) above will be the title evidence.

115\* (b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within \_\_\_\_\_ days (10 days if left blank)  
116 but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable  
117 to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and  
118\* **Seller** cures the defects within \_\_\_\_\_ days (30 days if left blank) ("Cure Period") after receipt of the notice. If  
119 the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice  
120 of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured  
121 within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after  
122 receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this contract or accept  
123 title subject to existing defects and close the transaction without reduction in purchase price.

124 (c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to  
125 **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any  
126 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed  
127 restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a  
128 title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 7(b).  
129

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

130 8. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with  
131 conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or  
132 permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

133 (a) **Inspections: (Check (1) or (2))**

134\* (1)  **Feasibility Study:** **Buyer** will, at **Buyer's** expense and within 21 days (30 days if left blank)  
135 ("Feasibility Study Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine  
136 whether the Property is suitable for **Buyer's** intended use. During the Feasibility Study Period, **Buyer**  
137 may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and  
138 investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the  
139 Property's engineering, architectural, and environmental properties; zoning and zoning restrictions;  
140 subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities;  
141 consistency with local, state, and regional growth management plans; availability of permits, government  
142 approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be  
143 rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all  
144 documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives  
145 **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the  
146 Feasibility Study Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its  
147 agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will  
148 indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature,  
149 including attorneys' fees, expenses, and liability incurred in application for rezoning or related  
150 proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any  
151 work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien  
152 being filed against the Property without **Seller's** prior written consent. If this transaction does not close,  
153 **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and  
154 return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller**  
155 all reports and other work generated as a result of the Inspections.

156 Before expiration of the Feasibility Study Period, **Buyer** must deliver written notice to **Seller** of **Buyer's**  
157 determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice  
158 requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is"  
159 condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to  
160 **Seller**, this contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

161\* (2)  **No Feasibility Study:** **Buyer** is satisfied that the Property is suitable for **Buyer's** purposes, including  
162 being satisfied that either public sewerage and water are available to the Property or the Property will be  
163 approved for the installation of a well and/or private sewerage disposal system and that existing zoning

Buyer (\_\_\_\_) (\_\_\_\_) and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is 3 of 7 pages.

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164 and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency,  
 165 growth management, and environmental conditions, are acceptable to **Buyer**. This contract is not  
 166 contingent on **Buyer** conducting any further investigations.

167 (b) **Government Regulations:** Changes in government regulations and levels of service which affect **Buyer's**  
 168 intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has  
 169 expired or if Paragraph 8(a)(2) is selected.

170 (c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government  
 171 agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply  
 172 to improving the Property and rebuilding in the event of casualty.

173 (d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as  
 174 defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or survey as required  
 175 by law delineating the line's location on the Property, unless **Buyer** waives this requirement in writing. The  
 176 Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that  
 177 govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach  
 178 nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida  
 179 Department of Environmental Protection, including whether there are significant erosion conditions associated  
 180 with the shore line of the Property being purchased.

181\*  **Buyer** waives the right to receive a CCCL affidavit or survey.

182 **9. Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be  
 183 conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title  
 184 binder effective date and recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds  
 185 to **Seller** (in local cashier's check if **Seller** requests in writing at least 5 days before closing) and brokerage fees to  
 186 Broker as per Paragraph 19. In addition to other expenses provided in this contract, **Seller** and **Buyer** will pay the  
 187 costs indicated below.

188 (a) **Seller Costs:**  
 189 Taxes on deed  
 190 Recording fees for documents needed to cure title  
 191 Title evidence (if applicable under Paragraph 7)  
 192\* Other: \_\_\_\_\_

193 (b) **Buyer Costs:**  
 194 Taxes and recording fees on notes and mortgages  
 195 Recording fees on the deed and financing statements  
 196 Loan expenses  
 197 Title evidence (if applicable under Paragraph 7)  
 198 Lender's title policy at the simultaneous issue rate  
 199 Inspections  
 200 Survey  
 201 Insurance  
 202\* Other: \_\_\_\_\_

203 (c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real  
 204 estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases,  
 205 and other Property expenses and revenues. If taxes and assessments for the current year cannot be  
 206 determined, the previous year's rates will be used with adjustment for any exemptions.

207 (d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller**  
 208 will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount  
 209 of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but  
 210 has not resulted in a lien before closing; and **Buyer** will pay all other amounts. If special assessments may be  
 211\* paid in installments,  **Seller**  **Buyer** (**Buyer** if left blank) will pay installments due after closing. If **Seller** is  
 212 checked, **Seller** will pay the assessment in full before or at the time of closing. Public body does not include a  
 213 Homeowners' or Condominium Association.

214 (e) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT**  
 215 **PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO**  
 216 **PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY**  
 217 **IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN**  
 218 **HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT**  
 219 **THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.**

- 220 (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by  
221 FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at  
222 closing.
- 223 (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with  
224 closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will  
225 cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided,  
226 however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing  
227 will not be contingent upon, extended, or delayed by the Exchange.
- 228 **10. Computation of Time:** Calendar days will be used when computing time periods, except time periods of 5 days  
229 or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal  
230 holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday  
231 will extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in**  
232 **this contract.**
- 233 **11. Risk of Loss; Eminent Domain:** If any portion of the Property is materially damaged by casualty before closing  
234 or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain  
235 proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may  
236 terminate this contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification,  
237 and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this contract and  
238 receive all payments made by the governmental authority or insurance company, if any.
- 239 **12. Force Majeure:** **Seller** or **Buyer** will not be required to perform any obligation under this contract or be liable to  
240 each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or  
241 prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes,  
242 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably  
243 within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is  
244 unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for  
245 the period that the act of God or force majeure is in place. However, in the event that such act of God or force  
246 majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to  
247 the other; and **Buyer's** deposit(s) will be returned.
- 248 **13. Notices:** All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or  
249 electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by**  
250 **this contract, regarding any contingency will render that contingency null and void, and this contract will**  
251 **be construed as if the contingency did not exist. Any notice, document, or item delivered to or received**  
252 **by an attorney or licensee (including a transactions broker) representing a party will be as effective as if**  
253 **delivered to or received by that party.**
- 254 **14. Complete Agreement; Persons Bound:** This contract is the entire agreement between **Seller** and **Buyer**.  
255 **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker**  
256 **unless incorporated into this contract.** Modifications of this contract will not be binding unless in writing, signed  
257 or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This  
258 contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications  
259 communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be  
260 binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If  
261 any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be  
262 fully effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this contract.  
263 This contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular  
264 or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if  
265 permitted, of **Seller**, **Buyer**, and Broker.
- 266 **15. Default and Dispute Resolution:** This contract will be construed under Florida law. This Paragraph will survive  
267 closing or termination of this contract.
- 268 (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this contract, **Buyer**  
269 may elect to receive a return of **Buyer's** deposit(s) ~~without~~ thereby waiving any action for damages resulting  
270 from **Seller's** breach and ~~may seek to recover such damages~~ or seek specific performance. **Seller** will also  
271 be liable for the full amount of the brokerage fee.

Buyer ( ) ( ) and Seller ( ) ( ) acknowledge receipt of a copy of this page, which is 5 of 7 pages.

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**(b) Buyer Default:** If Buyer fails, neglects, or refuses to perform Buyer's obligations under this contract, including payment of deposit(s), within the time(s) specified, Seller may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of Seller as agreed upon liquidated damages, consideration for execution of this contract, and in full settlement of any claims, whereupon Seller and Buyer will be relieved from all further obligations under this contract; ~~or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this contract.~~

**16. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 16 shall survive Closing or termination of this Contract.

**17. Escrow Agent; Closing Agent:** Seller and Buyer authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

~~**18. Professional Advice; Broker Liability:** Broker advises Seller and Buyer to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. Buyer acknowledges that Broker does not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on Seller representations or public records. Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value. Seller and Buyer respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at Seller's or Buyer's request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract. This Paragraph will survive closing.~~

**19. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

~~**20. Brokers:** The brokers named below are collectively referred to as "Broker." ~~Instruction to closing agent:~~ Seller and Buyer direct closing agent to disburse at closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by Seller or Seller's Broker to Buyer's Broker.~~

- ~~(a) none (Seller's Broker)  
will be compensated by  Seller  Buyer  both parties pursuant to  a listing agreement  other (specify): \_\_\_\_\_~~
- ~~(b) none (Buyer's Broker)  
will be compensated by  Seller  Buyer  both parties  Seller's Broker pursuant to  a MLS offer of compensation  other (specify): \_\_\_\_\_~~

327\* **21. Additional Terms:** \_\_\_\_\_  
 328 This Contract is contingent on Buyer receiving Council approval to the terms and conditions of this Contract. Closing  
 329 shall take place on or before the 95th day following the expiration of the Feasibility Period.  
 330 Seller owns 5 contiguous acres. This Property is only a portion of the 5 acres. Buyer desires a right of first offer with  
 331 respect to the adjacent property. Seller agrees to give Buyer notice of its intent to market the adjacent Property. Sixty  
 332 (60) days following receipt of the offer, if Buyer does not issue a letter of intent to the Seller to purchase the adjacent  
 333 Property, Buyer's first right of offer to acquire the Property shall terminate and Seller shall be free to sell the Property to  
 334 anyone on any terms and conditions it chooses.  
 335 Buyer agrees that Seller's counsel may issue the Owner's Policy of Title Insurance for the Village as agent for First  
 336 American Title Insurance Company.  
 337 Buyer may "stage" building materials on the adjacent property post closing. Buyer and Seller shall enter into a  
 338 construction easement agreement at closing requiring Buyer to (a) obtain liability insurance for Seller in amounts of  
 339 not less than \$1,000,000 per occurrence; (b) agree to not block Seller from using the Property or marketing it after the  
 340 right of first offer expires (c) shall expire no more than 1 year from the Closing Date; and shall indemnify Seller for any  
 341 hazardous wastes spilled on the adjacent property as a result of the machinery.  
 342 \_\_\_\_\_

343 **COUNTER-OFFER/REJECTION**

- 344\*  Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and  
 345 deliver a copy of the acceptance to Seller).  
 346\*  Seller rejects Buyer's offer

347 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**  
 348 **signing.** *Village of Palmetto Bay*

349\* **Buyer:** \_\_\_\_\_ Date: \_\_\_\_\_

350\* Print name: \_\_\_\_\_

351\* **Buyer:** \_\_\_\_\_ Date: \_\_\_\_\_

352\* Print name: \_\_\_\_\_

353 **Buyer's address for purpose of notice:**

354\* Address: \_\_\_\_\_

355\* Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

*Shores at Palmetto Bay, LLC, a Florida limited liability company*

356\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_

357\* Print name: *Wayne Rosen, manager*

358\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_

359\* Print name: \_\_\_\_\_

360 **Seller's address for purpose of notice:**

361\* Address: \_\_\_\_\_

362\* Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

363\* **Effective Date:** \_\_\_\_\_ (The date on which the last party signed or initialed and delivered the  
 364 **final offer or counter offer.**)

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