

1 Section 3. The Village hereby incorporates the property into the Village of
2 Palmetto Bay parks master plan and capital improvement program.
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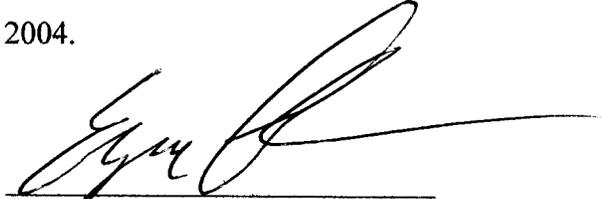
4 Section 4. This resolution shall take effect immediately upon approval.

5 PASSED and ADOPTED this 6th day of December, 2004.

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8 Attest:



9 Meighan Pier
10 Village Clerk



Eugene P. Flinn, Jr.
Mayor

11
12 APPROVED AS TO FORM:

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16 Eve Boutsis,
17 Village Attorney

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22 FINAL VOTE AT ADOPTION:

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24 Council Member Ed Feller Yes
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26 Council Member Paul Neidhart Yes
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28 Council Member John Breder Yes
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30 Vice Mayor Linda Robinson Yes
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32 Mayor Eugene P. Flinn, Jr. Yes
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39 Resolution.doc

LEASE – PURCHASE AGREEMENT

Palmetto Bay Village/Haas Property

This Lease – Purchase Agreement (the “Agreement”) is entered into as of _____, 2004 between The Trust For Public Land, a California charitable corporation qualified to transact business in Florida, (hereinafter referred to as “Lessor” or “Seller”), and the Village of Palmetto Bay, Florida, (hereinafter referred to as the “Lessee,” or “Buyer”).

WHEREAS, the Lessee has identified that certain property in Miami-Dade County, more particularly described in Exhibit “A” attached hereto and by reference incorporated herein, (hereafter, the “Property” or the “Leased Premises”) as property the Lessee desires to obtain for public use such as public parks, open space, and conservation uses to meet the existing needs for parks, open space and conservation in Miami-Dade County, Florida;

WHEREAS, Lessor intends to purchase the fee simple title to the Property for the purpose of entering into a Lease–Purchase Agreement with the Lessee; and

WHEREAS, the Lessee and Lessor mutually desire to enter into a Lease–Purchase Agreement for the Property,

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Lessee and Lessor have entered into this Agreement on the terms and conditions as set forth below.

PART I

1. LEASE TERM AND CANCELLATION RIGHT.

(a) Lessor hereby leases to Lessee the Property for Lessee’s use as a public park, open space and conservation purposes (the “Permitted Uses”) for a term of three (3) years commencing on the day Lessor closes on the Property and takes title from the current owner (the “Commencement Date”), and ending three years thereafter, (the “Lease Term”).

(b) Lessor and Lessee hereby agree that Lessee is granted the right to cancel this Agreement beginning at the end of the second year of the Lease Term on the conditions set forth below if, but only if, the Lessee makes a formal determination at a regularly scheduled meeting of the City Council of the Village of Palmetto Bay that moneys from ad valorem taxes, fees, other taxes or assessments, or from other revenue sources are insufficient to pay the rent or purchase payments required hereunder and monies are not appropriated by Lessee for the continuation of the Lease and the payment of the rents required by this Agreement.

2. BASE RENT AND CREDIT FOR RENT

- (a) Lessee agrees to pay to Lessor annual Base Rent in the following amounts:
- (i) YEAR 1, on the Commencement Date of the Lease: a payment of \$450,000.00, which shall be equivalent to ½ of (the "First Base Rent Payment");
 - (ii) On or before six (6) months from the Commencement Date during YEAR 1 of the Lease, a second payment of \$450,000.00, which shall be equivalent to ½ of the First Base Rent Payment ;
 - (iii) YEAR 2, on or before the first anniversary of the Commencement Date, a payment of \$450,000 plus accrued interest as defined in Paragraph 2(c) below (the " Second Base Rent Payment").
 - (iv) YEAR 3, on or before the second anniversary of the Commencement Date a payment of \$450,000.00 plus accrued interest as defined in Paragraph 2(c) below (the " Third Base Rent Payment").
 - (v) Three Years from the Commencement Date a payment of \$1,800,000 plus accrued interest as defined in Paragraph 2(c) below (the "Final Base Rent Payment").

(b) Base Rent is payable in cash at Lessor's office by cashiers check, wire transfer or other good funds each year on the annual anniversary of the Commencement Date. Base Rent shall be paid to Lessor by a single check issued by the Village of Palmetto Bay, Florida for the total amount due.

(c) Lessee agrees that it shall pay interest to Lessor on the unpaid balance of Base Rent due under this Lease Purchase Agreement at the prime rate as determined by Bank of America or SunTrust Bank of Northwest Florida, beginning on the Commencement Date and as subsequently adjusted on the day of adjustment, commencing on the date Lessor purchases the fee simple title to the Property. Notwithstanding the foregoing, Lessor shall not be required to accept any installment of Base Rent which is more than 30 days past due.

(d) Lessor and Lessee agree that should Lessee fail to pay any Base Rent installment for more than 30 days after becoming due, Lessor may declare the Lessee in default and terminate the Agreement and Lessee's occupancy pursuant to Ch. 83.01 F.S., et. seq.

(e) Credit for Rent:

- (i) All Base Rent payments by Lessee to Lessor under this Agreement shall be credited against the Purchase Price set forth in Paragraph 32 below at the closing of the purchase by Lessee. Interest associated with the Base Rent

Payment shall not be credited against the Purchase Price. In no event shall the payments of Base Rent exceed the Purchase Price plus interest stated herein less other credits set forth herein.

(f) Lessor agrees that Lessee has the right to prepay the Base Rent, in whole or in part, without charge or penalty.

3. RIGHTS OF THE PARTIES UPON CANCELLATION OR TERMINATION

(a) The parties agree that in that event that (i) Lessee elects to not close the purchase of the Property and pay the entire Purchase Price set forth in Paragraph 32, or (ii) Lessee cancels the Agreement in accord with Paragraph 1(b), or the Agreement is terminated due to Lessee's default, Lessee shall have no rights in the Property whatsoever, and Lessor is free to retain or sell and convey the Property as it elects.

(b) Lessee hereby agrees that if it elects to cancel this Agreement prior to the first (1st) anniversary of the Commencement Date, or prior to exercising the option granted herein, it shall pay to Lessor six months Base Rent based on a Base Rent of \$ 900,000.00 for the first year of the Lease, and may occupy the Property for six months to continue and wind up its uses. If Lessee elects at the end of the second year of the Lease Term to terminate the Lease as permitted without exercising its option to purchase, Lessee may, at its option:

- (i) Pay 50% of Base Rent of Year Two of the Term and vacate the Leased Premises within six (6) months; or
- (ii) Vacate the Leased Premises at the close of Year Two of the Lease Term.

4. ADDITIONAL RENT:

(a) In addition to Base Rent, Lessee shall pay to Lessor on demand all ad valorem property taxes, sales taxes, intangible taxes and all other taxes payable on the leasehold and upon the Property, and all interest which may accrue due to Lessee's late payment of Base Rent to Lessor as Additional Rent ("Additional Rent").

(b) The term Additional Rent shall include all payments other than Base Rent due to Lessor under this Agreement.

Hereinafter, Base Rent and Additional Rent are sometimes collectively referred to as "Rents".

5. QUIET ENJOYMENT: Upon payment by Lessee of the Rents herein provided, and upon the observance and performance of all terms, provisions, covenants and conditions on Lessee's part to be observed and performed (subject to any applicable grace period), Lessee shall, subject to all of the terms, provisions, covenants and conditions of this Lease, peaceably and quietly hold and enjoy the Leased Premises for the Lease Term hereby demised.

6. INSURANCE:

(a) The Parties acknowledge that on the effective date hereof there are buildings and other improvements on the Leased Premises. Any improvements contemplated by Lessee shall be made only with the prior written approval of Lessor. The Lessee will include the Property and any improvements under its policy with the Florida League of Cities. Lessee represents that the League of Cities insurance policy includes, general liability, casualty and premises coverage. Lessee represents that the policy limits are sufficient to replace the buildings and any improvements located on the Property. Lessee shall provide TPL with a copy of its insurance policy coverages and limits in the event Lessee constructs or relocates any improvements on the Leased Premises, Lessee shall insure at Lessee's expense all buildings, equipment and other improvements on or relocated to the Property ("Improvements").

(b) Lessee shall, to the extent allowed by law, indemnify, defend, and hold harmless Lessor against any loss, expense, cost, or damages as a result of any pollution or hazardous substance event, escape, or deposit, including losses incurred as a result of the escape of pollutants or hazardous substances from the Property onto the property of others. Such indemnification shall survive the Term of this Agreement.

7. GOVERNMENTAL REQUIREMENTS:

(a) Lessee shall faithfully observe in the use of the Property all municipal and county ordinances and codes and state and federal statutes now in force or which may hereafter be in force.

(b) Lessee acknowledges that it has made all inspections of the Property as it deems necessary, and accepts the Property in "as is" condition. In the event that Lessee shall construct or relocate any Improvements on the Property, Lessee, at its expense, shall construct or relocate such Improvements and make all changes and additions to such Improvements as may be required to comply with all applicable laws, rules, and insurance regulations as modified or amended from time to time during the Lease Term. In the event Lessee defaults and fails to make such changes and additions to the Improvements so as to comply with applicable laws, rules, and insurance regulations, Lessor, at its option may, but shall not be required to, make the required changes and additions. All costs incurred by Lessor to provide such changes or additions are hereby deemed Additional Rent, and are due and payable by Lessee on demand.

(i) Lessor will provide to Lessee at least 14 days prior to Lessee's Base Rent payment on the Commencement Date a Boundary Survey of the Property and which will be certified to Lessee and a copy of Lessor's Title Insurance Commitment (the "Commitment"). Lessee hereby agrees to take possession of the Property on the Commencement Date subject to all matters shown on the survey, other than billboards or billboard leases, including survey defects, encroachments, easements visible on the ground which may be revealed by the survey, and all matters which would be visible upon a physical inspection of the premises, and those matters specified in Schedule B-2 of the

Commitment. Billboards depicted on the survey, if any, shall be removed within ninety (90) days of the Commencement Date of the Lease.

8. SERVICES:

(a) Lessor shall provide no services to Lessee or to the Property during the Lease Term of this Agreement. Lessee agrees that it shall provide all necessary services to the Property, which Lessee's uses shall require, including electricity, potable water, sewage treatment and disposal, garbage removal, and security services as needed, at Lessee's sole expense, and Lessee agrees to provide all such services continuously during the Lease Term.

(b) In the event Lessee defaults in the provision of the above described services, Lessor, at its option, may, but is not required to provide any such services. All costs incurred by Lessor to provide such services are hereby deemed Additional Rent and are due and payable by Lessee upon demand.

9. REPAIR OF LEASED PREMISES/ALTERATION TO IMPROVEMENTS:

(a) Lessee shall, at Lessee's sole expense, maintain the Property and all Improvements on the Leased Premises in good repair and working condition during the Lease Term. During the Lease Term, Lessor shall have no obligation to maintain, repair or replace any components of any Improvements on the Property, but shall retain the right at its sole option, to make any such repairs or additions.

(b) Lessee will make no material alterations or additions in or to the Leased Premises without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, delayed, or denied, and shall, among other considerations, be predicated upon Lessee's use of contractors who are acceptable to Lessor and who provide a full payment, completion and performance bond naming Lessor as an insured or beneficiary party. Lessee shall provide to Lessor notice of such alterations and copies of as built plans on completion. All additions, fixtures, or new building, except only furniture, fixtures, or relocated improvements which shall be readily removable without injury to the Leased Premises, shall be and remain a part of the Leased Premises at the expiration or termination of this Agreement. Lessee's obligation hereunder constitutes a recognition of the necessity to maintain a uniformity of materials and systems throughout the Property and to insure that the Property remains marketable for residential or park uses. Lessee may utilize its own employees for alterations and repairs.

(c) In the event that the Lessee fails and defaults in its obligations under this Paragraph 9, Lessor may, but shall have no obligation to make any repairs, replacements or alterations to the Property or Improvements which Lessor deems necessary to maintain the Property and Improvements in tenantable and marketable condition, and all costs incurred by Lessor in making such repairs, replacements or alterations shall be deemed Additional Rent which Lessee shall pay to Lessor upon demand.

10. INDEMNIFICATION:

(a) Lessee further agrees that Lessee will pay all claims of contractors, subcontractors, mechanics, laborers, material men, and other items of like character. Lessee shall ensure that all contractors providing services, materials or labor shall post sufficient payment and performance bonds in accord with Chapter 255.05, Florida Statutes, and shall request that Lessor be named as a beneficiary thereof, as its interest may appear. Lessee shall not waive the requirement for contractors' bonds on any construction or repairs on the Leased Premises, or any Improvements thereon.

(b) The Lessee herein shall not have any authority to create any liens for labor or material on the Lessor's interest in the Leased Premises and all persons contracting with the Lessee for the destruction or removal of any facilities or other improvements or for the erection, installation, alteration, or repair of any facilities or other improvements on or about the Leased Premises, and all material-suppliers, contractors, mechanics, and laborers are hereby charged with notice (which notice Lessee shall deliver in writing to each such party prior to the commencement of any service by said party) that they must look only to the Lessee and to the Lessee's interests in the Leased Premises to secure the payment of any bill for work done or material furnished at the request or instruction of Lessee. The provisions of this paragraph may be set forth in any Memorandum of this Lease which is recorded with Lessor's consent pursuant to Paragraph 30 hereof.

11. ESTOPPEL STATEMENT: Lessee agrees that from time to time, upon not less than ten (10) days prior request by Lessor, Lessee will deliver to Lessor a statement in writing certifying (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement as modified is in full force and effect and stating the modifications); (b) the dates to which the rent and other charges have been paid; (c) to the best of Lessee's knowledge, that Lessor is not in default under any provisions of this Agreement, or, if in default, the nature thereof in detail; (d) whether or not Lessee is in occupancy of the Leased Premises, and (e) such other information pertaining to this Agreement and Lessee as Lessor may reasonably request. Failure by Lessee to so reply within said ten (10) days shall be deemed confirmation by the Lessee that all parties are in good standing under this Agreement.

12. ATTORNMENMENT: If the interests of Lessor under this Agreement shall be transferred voluntarily or by reason of foreclosure or other proceedings for enforcement of any mortgage on the Leased Premises, Lessee shall, at the election of such transferee, be bound to such transferee (herein sometimes called the "Purchaser") for the balance of the term hereof remaining, and any extensions or renewals thereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the Lessor under this Agreement, and Lessee does hereby agree upon written request to attorn to the Purchaser, including the mortgagee under any such mortgage if it be the Purchaser, as its Lessor, said attornment to be effective and self-operative without the execution of any further instruments, upon the Purchaser succeeding to the interest of the Lessor under this Agreement. Notwithstanding the foregoing, however, Lessee hereby agrees to execute any instrument(s) which Lessor may deem desirable to evidence said attornment by Lessee. The respective rights and obligations of Lessee and the Purchaser upon such attornment, to the extent of the then remaining balance of the Lease Term and any such extension and renewals, shall be and

are the same as those set forth herein. In the event of such transfer of Lessor's interest, Lessor shall be released and relieved from all liability and responsibility to Lessee under this Lease or otherwise from and after said transfer, but no liabilities and responsibilities accrued prior thereto, and Lessor's successor by acceptance of rent from Lessee hereunder shall become liable and responsible to Lessee in respect to all obligations of the Lessor under this Agreement accruing from and after the date of such transfer.

13. ASSIGNMENT OR SUBLETTING:

(a) Except as set forth herein, without the written consent of Lessor first obtained in each case, Lessee shall not assign, transfer, mortgage, pledge, or otherwise encumber or dispose of this Agreement or the Leased Premises or any part thereof; or permit the Leased Premises to be occupied by other persons other than for park purposes. Lessee agrees that this Agreement and the option to purchase contained herein may not be assigned to any entity or person other than any agency or government or any entity holding tax exemption pursuant to Section 501(c)(3) of the Internal Revenue Code. Lessor shall not have any obligation to consent to any assignment except as provided in this Paragraph 13. The Lessor may, after default by the Lessee, collect or accept Rent from the assignee, or occupant and apply the net amount collected or accepted to the Rent herein reserved, but no such collection or acceptance shall be deemed a waiver of this covenant or the acceptance of the assignee, or occupant as Lessee, nor shall it be construed as, or implied to be, a release of the Lessee from the further observance and performance by the Lessee of the terms, provisions, covenants and conditions herein contained, nor as an imposition upon Lessor of any of the obligations required of Lessee as assignor under said sublease. Lessee shall not be permitted to sublet the Property.

(b) any assignment, subletting, hypothecation, pledging or other disposition of Lessee's interest hereunder, in violation of the terms hereof, shall be deemed null and void, and shall constitute an act of default hereunder.

14. SUCCESSORS AND ASSIGNS: All terms, provisions, covenants and conditions to be observed and performed by Lessee shall be applicable to and binding upon Lessee's respective administrators, successors and assigns, subject, however, to the restrictions as to assignment or subletting by Lessee as provided herein. All express covenants of this Agreement shall be deemed to be covenants running with the land.

15. HOLD HARMLESS OF LESSOR:

(a) In consideration of the Leased Premises being leased to Lessee for the above Rents and the grant of an option to purchase, Lessee agrees, to the extent allowed by law: that Lessee, at all times, will indemnify and hold harmless Lessor from all losses, damages, liabilities and expenses, which may arise or be claimed against Lessor and be in favor of Lessee, any persons, firms, corporations, governmental entities or any other entities, for any injuries or damages to the person or property of Lessee or any persons, firms, corporations or any other entities, consequent upon or arising from the use or occupancy of said Leased Premises by Lessee or consequent upon or arising from any acts, omissions, neglect or fault of Lessee, its agents, servants, employees, licensees, visitors, customers, patrons or invitees or consequent upon or arising from Lessee's failure to comply

with any laws, statutes, ordinances, codes or regulations as herein provided; that Lessor shall not be liable to Lessee for any damages, losses or injuries to the persons or property of Lessee, its invitees, licensees or patrons, which may be caused by the acts, neglect, omissions or faults of any persons, firms, corporations, or other entities, except when such injury, loss or damage results solely from the gross negligence or willful misconduct of Lessor, its agents or employees. All personal property on, placed or moved into or on the Leased Premises shall be at the risk of Lessee or the owner thereof, and the Lessor shall not be liable to Lessee for any damage to said personal property.

(b) In case Lessor shall be made a party to any litigation commenced against, by or through Lessee, then to the extent allowed by law Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses and reasonable attorneys fees incurred or paid by Lessor in connection with such litigation and any appeal thereof.

(c) To the extent allowed by law the indemnity to and hold harmless of Lessor set forth above shall extend to and include any loss incurred by Lessor as a result of the deposition, escape or discovery of any pollutant or hazardous substance without regard to the time at which the deposition, discovery or escape may occur, or whether such conditions existed prior to the effective date of this Agreement. The terms of this indemnity shall survive the closing of any sale of the Property and the expiration of this Agreement.

(d) Nothing in this section should constitute a waiver by Lessee of the defense of sovereign immunity.

16. ATTORNEYS' FEES AND ARBITRATION:

The Parties agree that this Agreement shall be governed in all respects by the law of the State of Florida, without resort to its conflict of laws principles.

In the event that any dispute whatsoever arises with respect to this Agreement, the same shall be submitted to private and confidential binding arbitration in Miami-Dade, Florida. The parties may elect to arbitrate without invoking the jurisdiction of the American Arbitration Association ("AAA"). However, if the parties cannot agree within ten (10) days of an arbitration demand, to arbitrate without involving the AAA, the AAA jurisdiction automatically shall be invoked. Regardless of the forum, the Commercial Arbitration Rules then published by the AAA shall apply, with the following exceptions:

(a) For a dispute in which the amount in controversy is in excess of \$100,000 there shall be three arbitrators. Each party shall choose one arbitrator who neither is a competitor of nor has any current or past affiliation with either party. The two so selected arbitrators shall select a third arbitrator, who shall chair the panel. For a dispute in which the amount in controversy is not in excess of \$99,999, there shall be one arbitrator.

(b) Each party shall file and serve its detailed demand (or counter demand) setting forth each claim for relief and/or a response setting forth each affirmative defense to the other party's demand. Each party shall: (1) disclose at the time it initially files, the identity, position, and address

of each person most knowledgeable about the facts at issue; (2) designate each document or other exhibit relevant to the facts at issue and provide a copy to the other party; and (3) state the law that applies to the facts at issue. Each party may issue up to 25 interrogatories to be answered completely by the other party, and may demand that all other relevant documents be produced within 30 days. Each party may conduct up to four depositions (each to be taken in the location where the person or party to be deposed has its/his/her office). All discovery shall conclude within six months from the date the arbitrator(s) permit(s) discovery to commence.

(c.) The cost of the arbitration shall be assessed in accordance with the AAA Commercial Arbitration Rules. The arbitration award shall be supported by written findings of fact and conclusions of law. The prevailing party shall be entitled to recover all reasonable fees and expenses incurred including fees and all expenses in enforcing the arbitral award by courts of competent jurisdiction.

(d.) The power conferred by this arbitration provision is without prejudice to the right of either party under applicable law to request interim relief directly from any court of competent jurisdiction, without prior authorization from the arbitrator(s).

17. EMINENT DOMAIN: If during the term of this Agreement any material part of the Leased Premises is taken by condemnation or eminent domain, which taking materially interferes with the maintenance, operation or use of the Leased Premises as a public park or for residential or other purposes, Lessor may elect to terminate this Agreement or to continue same in effect provided, that if said taking materially interferes with Lessee's use and enjoyment of the Leased Premises, Lessee may elect to terminate the Agreement. If neither Lessor nor Lessee elects to terminate the Agreement, and if said taking reduces the area of the Leased Premises as a public park the Base Rent shall be reduced in proportion to the area of the Leased Premises so taken. If any part of the Leased Premises is taken by condemnation or eminent domain which renders the Leased Premises unsuitable for its intended use for a public park or for residential purposes, or other purposes, the Lessee may elect to terminate this Agreement. If any part of the Leased Premises is taken which does not render the Leased Premises unsuitable for its intended use, and the Lessor does not otherwise elect to terminate this Agreement, this Agreement shall continue in effect and the Base Rent shall be reduced in proportion to the area of the Leased Premises so taken and Lessor shall repair any damage to the remaining Leased Premises resulting from such taking as soon as is practicable. If all of the Leased Premises are taken by condemnation or eminent domain, this Agreement shall terminate on the date of taking. If this Agreement should be terminated under any provision of this paragraph, Rents shall be payable up to the date that possession is taken by the taking authority, and Lessor will refund to Lessee any prepaid unaccrued Rents, if any, pertaining to any subsequent period, less any sum or amount then owing by Lessee to Lessor. In addition, the option payment may be refunded in the same amount as if the Lessee terminated the Agreement as provided in Paragraph 34.

18. INSOLVENCY AND DEFAULT: All rights and remedies of Lessor herein enumerated shall be cumulative, and none shall exclude another or any other right or remedy provided by law.

(a) If, after the applicable grace period, the Lessee defaults in the payment of Rent or any other payment due hereunder, or in the prompt and full performance of any other provisions of this

Agreement, which default remains uncured for a period of ten (10) days after written notice to Lessee from Lessor of the same (provided that if said non-performance cannot be cured within said ten (10) day period, Lessee shall have a reasonable period of time to cure said default as long as Lessee diligently and continuously pursues said cure), or if the leasehold interest of the Lessee or fixtures of Lessee are levied upon under execution or attached by process of law, and said levy or attachment is not removed within thirty (30) days, or if Lessee makes an assignment for the benefit of creditors, or if a receiver is appointed for any property of the Lessee, or if the Lessee abandons the Leased Premises, then and in any such event, the Lessor may, if the Lessor so elects, but not otherwise, and after ten (10) days' written notice thereof to Lessee forthwith terminate this Agreement and/or the Lessee's right to possession hereunder.

(b) If the Lessee abandons the Leased Premises or otherwise entitles the Lessor so to elect, and the Lessor does elect to terminate the Lessee's right to possession only, without terminating the Agreement, the Lessor may, at the Lessor's option, enter into the Leased Premises, remove the Lessee's signs and other evidence of tenancy, and take and hold possession thereof without such entry and possession terminating the Agreement or releasing the Lessee in whole or in part from the Lessee's obligation to pay the Rents hereunder for the full Lease Term, and in any such case the Lessee shall pay forthwith to the Lessor, a sum equal to the amount of the Base Rent reserved under this Agreement for the residue of the stated Lease Term. Upon and after entry into possession of the Leased Premises without termination of the Agreement, the Lessor may, but need not, relet the Leased Premises or any part thereof with or without any Personal Property that may be therein, as the agent of the Lessee, to any person, firm or corporation other than the Lessee for such Rent, for such time and upon such terms as the Lessor in the Lessor's sole discretion shall determine; and the Lessor shall not be required to accept any lessee offered by the Lessee or to observe any instructions given by the Lessee about such reletting. In any case, the Lessor may make repairs, alterations and additions in or to the Leased Premises to the extent deemed by the Lessor necessary or desirable, and the Lessee shall, upon demand, pay the cost thereof, together with the Lessor's expenses of the reletting. If the consideration collected by the Lessor upon any such reletting for the Lessee's account is not sufficient to pay monthly, the full amount of the Rent reserved in the Agreement, together with the costs of repairs, alterations, additions and the Lessor's expenses, the Lessee shall pay to the Lessor the amount of each monthly deficiency upon demand; and if the consideration so collected from any such reletting is more than sufficient to pay the full amount of the Rents reserved herein, together with the costs and expenses of the Lessor, the Lessor, at the end of the stated Lease Term of the Agreement, shall account for the surplus to the Lessee. Lessor shall use reasonable efforts to mitigate damages occasioned by Lessee's default provided that to the extent substitute Lessees are available to relet the Leased Premises, Lessor shall not be required to accept the same unless said prospective substitute lessee is a governmental agency or a corporation holding tax exempt status pursuant to Section 501(c)(3) of the I.R.C.

19. NON-WAIVER OF DEFAULT: Failure of Lessor to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Lessor shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity. No waiver by Lessor of a default by Lessee shall be implied, and no express waiver by Lessor shall affect any default other than the default specified in such waiver and that only for the time and extension therein stated.

No waiver of any term, provision, condition or covenant of this Agreement by Lessor shall be deemed to imply or constitute a further waiver by Lessor of any other term, provision, condition or covenant of this Agreement. In addition to any rights and remedies specifically granted Lessor herein, Lessor shall be entitled to all rights and remedies available at law and in equity in the event that Lessee shall fail to perform any of the terms, provisions, covenants or conditions of this Agreement on Lessee's part to be performed or fails to pay Base Rent, Additional Rent or any other sums due Lessor hereunder when due. All rights and remedies specifically granted to Lessor herein, by law and in equity shall be cumulative and not mutually exclusive.

20. RIGHT OF ENTRY: Except when the Lessor perceives an emergency in which event the Lessor may enter the Leased Premises at its reasonable discretion, Lessor, or any of its agents, shall have the right, upon the giving of one (1) day's notice, to enter the Leased Premises during all reasonable hours to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof, or of the improvements, or to exhibit said Leased Premises at any time within one hundred eighty (180) days before the expiration of the Leased Term. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Lease.

21. MAINTENANCE OF PROPERTY VALUE: Lessee acknowledges that it is the governing body of the Village of Palmetto Bay and has the legal authority to regulate land use, zoning, and planning in the Village of Palmetto Bay. Lessee acknowledges that Lessor is acquiring the Leased Premises solely for the purpose of conveying the Leased Premises to Lessee under this Agreement; that Lessee has requested and induced Lessor to acquire the Leased Premises and to enter into this Agreement. Lessee represents that at the date of execution of this Agreement, Lessee does not intend or contemplate any rezoning or reclassification of land use of the Leased Premises, or to initiate any study or review of the existing zoning and land use classification; and that Lessor is acting in reliance upon the above representations of Lessee; and that Lessor will be financially damaged by any rezoning or land use reclassification which would reduce the fair market value of the Leased Premises. Lessor does not grant Lessee the permission to initiate or allow any efforts to change the current zoning of the Property. Nothing in this paragraph 21 shall be construed as contract zoning by the Lessee. On the date of the execution of this Agreement, Lessee shall obtain any temporary zoning or land use changes or exceptions which may be required to permit Lessee's intended uses of the Leased Premises during the Lease Term. Lessee shall not seek or make any such zoning or land use changes to accommodate the Lessee's uses during the Lease Term without the prior written consent of Lessor. The parties agree that Lessor may withhold such consent if Lessor determines that any such change extends beyond the end of the Lease Term or adversely affects the market value of the Leased Premises.

22. CONDITION OF PREMISES ON TERMINATION OF LEASE AND HOLDING OVER:

(a) In the event Lessee does not elect to purchase the Property, Lessee agrees to surrender to Lessor, at the end of the term of this Agreement or as provided in Paragraph 3(b) and/or upon any cancellation of this Agreement, said Leased Premises in as good condition as said Leased Premises were at the Commencement Date, ordinary wear and tear not caused by Lessee's negligence, an

insured casualty, an uninsured casualty not caused by Lessee and alterations approved by Lessor, excepted. Lessee agrees that if Lessee does not surrender said Leased Premises to Lessor at the end of the Lease Term of this Agreement or as provided in Paragraph 3(b) then Lessee will pay to Lessor, to the extent permitted by law, double the amount of the Base Rent paid by Lessee for the last month of the Lease Term for each month or portion thereof that Lessee holds over plus all damages that Lessor may suffer on account of Lessee's failure to so surrender to Lessor possession of said Leased Premises, and will indemnify and save Lessor harmless from and against all claims made by any succeeding Lessee of said Leased Premises against Lessor on account of delay of Lessor in delivering possession of said Leased Premises to said succeeding Lessee so far as such delay is occasioned by failure of Lessee to so surrender said Leased Premises in accordance herewith or otherwise.

(b) No receipt of money by Lessor from Lessee after termination of this Agreement or the service of any notice of commencement of any suit, arbitration, or final judgment for possession shall reinstate, continue or extend the term of this Agreement or affect any such notice, demand, suite or judgment for possession, or otherwise limit or affect any other remedies available to Lessor hereunder unless the same shall be a compulsory counterclaim.

(c) No act or thing done by Lessor or its agents during the Term of this Agreement shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid unless it be made in writing by a duly authorized officer or agent of Lessor.

(d) In the event that this Lease-Purchase Agreement is terminated or expires as permitted herein and Lessee does not close its purchase of the Property for any reason other than Lessor's material default hereunder, and it is determined by a licensed professional engineer or geologist, that during the period of Lessee's occupancy of the Property pollutants or hazardous materials have been discharged or released on the Property in concentrations or amounts which exceed applicable legal standards as set by Department of Environmental Resources Management (DERM) or the Florida Department of Environmental Protection (FDEP), Lessee shall be required to remediate the Property in accordance with the standards established by FDEP, DERM or other regulatory agency exercising jurisdiction over the cleanup. In the event that the existing contamination precludes Lessor's reasonable use of the Property then the Lessee shall continue to be bound to pay Base Rent to Lessor until the pollutants or hazardous materials have been remediated to the extent that Lessor may make reasonable use of the Property. Nothing herein shall be construed to release Lessee from the obligation to remediate the Property to the standards set by FDEP, DERM or other regulatory agency exercising jurisdiction over the clean-up.

23. SIGNS: Lessor shall have the right to install signs on the Property reflecting Lessor's ownership, in accordance with applicable codes and ordinances.

24. INVALIDITY OF PROVISION: If any term, provision, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, provision, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, provision, covenant or condition of this

Lease shall be valid and be enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Florida.

25. TIME OF ESSENCE: It is understood and agreed between the parties hereto that time is of the essence of all the terms, provision, covenants and conditions of this Agreement.

26. MISCELLANEOUS: The terms Lessor and Lessee, Seller and Buyer, as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, successors, administrators and/or assigns wherever the context so requires or admits. The terms, provision, covenants and conditions of this Agreement are expressed in the total language of this Agreement and the paragraph headings are solely for the convenience of the reader and are not intended to be all inclusive and shall not be deemed to limit or expand any of the provisions of this Agreement. Any formally executed addendum or rider to or modification of this Agreement shall be expressly deemed incorporated by reference herein unless a contrary intention is clearly stated therein. Anything herein to the contrary notwithstanding, Lessor shall not be or be deemed to be in default hereunder unless it has failed to cure its default within a reasonable time following its receipt of notice thereof. Notwithstanding any other provision contained herein to the contrary, Lessor's liability hereunder or any other documents executed in connection herewith, in the event of any uncured default by Lessor, shall be limited to Lessor's interest in the Leased Premises, it being understood that none of Lessor's other assets shall be subject to any judgment against Lessor hereunder.

27. EFFECTIVE DATE: Submission of this instrument for examination does not constitute an offer, right of first refusal, reservation of or option for the Leased Premises. This instrument becomes effective as an agreement upon execution and delivery by both Lessor and Lessee, and the payment by Lessee of all sums payable at execution of this Agreement.

28. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties hereto and supersedes all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by Lessor and Lessee. No surrender of the Leased Premises, or of the remainder of the Lease Term, shall be valid unless accepted in writing by a duly authorized officer or agent of Lessor. Lessee acknowledges and agrees that Lessee has not relied upon any statement, representation, prior written or prior to contemporaneous oral promises, agreements or warranties except such as are expressed herein.

29. MEMORANDUM OF LEASE: At Lessor's request at any time during the Lease Term of this Agreement, Lessee agrees to immediately join in a Memorandum of Lease in form and content satisfactory to Lessor, which Memorandum shall be recorded in the Public Records of Miami-Dade County, Florida.

30. BROKERAGE: Lessor and Lessee represent and warrant that neither party has dealt with any real estate broker in connection with this Agreement.

31. FORCE MAJEURE: Lessor and Lessee shall not be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, labor disputes (whether lawful or not), material or labor shortages,

restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of Lessor (or Lessee, as the case may be) and which by the exercise of due diligence Lessor is unable, wholly or in part, to prevent or overcome.

PART II

32. LESSEE'S OPTION AND RIGHT TO PURCHASE: Provided that Lessee is not then in default of any of the terms, provisions, covenants and conditions in this Agreement, the Lessee is granted the exclusive and irrevocable right and option to purchase the fee simple title to the Property on or at any time before three (3) years from the Commencement Date, by giving notice of exercise of the Option to Lessor no later than 60 days prior to each annual anniversary of the term thereafter. The option to purchase granted herein shall expire sixty (60) days prior to the third (3rd) annual anniversary of the Commencement Date, unless otherwise extended by agreement among the Parties. The option granted herein is coupled with an interest. The purchase price (the "Purchase Price") for the Property on the Commencement Date shall be THREE MILLION SIX HUNDRED THOUSAND and 00/100 Dollars (\$3,600,000.00) and shall be as follows:

Lessee agrees to pay Base Rent Payments in year one of the Lease totaling \$900,000.00, of which \$450,000.00 will be paid on the Commencement Date and \$450,000.00 will be paid six (6) months from the Commencement Date. The Second Base Rent Payment totaling \$450,000.00 shall be paid in full on the first anniversary of the Commencement Date. The Third Base Rent Payment totaling \$450,000.00 shall be paid on the second anniversary of the Commencement Date. The Final Base Rent Payment totaling \$1,800,000.00 shall be paid in full three (3) years from the Commencement Date. All Base Rent payments paid by Lessee to Lessor under this Agreement shall be credited against the Purchase Price at the closing of the purchase by Lessee.

For example, if the Lessee elects to purchase the Property after the Commencement Date after the First Base Rent Payment totaling \$900,000.00 paid in two installments has been made, Lessee shall receive a credit of \$900,000.00 against the Purchase Price at closing.

Notwithstanding anything herein to the contrary, in the event the Lessee procures grant funds from the Florida Communities Trust ("FCT") at any time during the term of this Lease-Purchase Agreement, the entire sum necessary for the Lessee to acquire fee simple title to the Property shall become due and payable and the parties shall proceed to close this transaction within thirty (30) days of receipt of such grant funds from F.C.T.

33. OPTION TO PURCHASE CONSIDERATION:

(a) Simultaneous with the execution of this Agreement, Lessee shall pay to Lessor the sum of \$100.00 in cash as non-refundable consideration for the exclusive right and option to purchase the Property (hereafter, the "Option Money").

(b) All of the Option Money paid shall be credited by Lessor against the Purchase Price if Lessee elects to close the purchase of the Property under this Agreement.

34. CASH TO CLOSE: At closing, Lessee shall pay the difference between the Purchase Price and the sum of credits against the Purchase Price as set forth in accordance with the provisions of paragraph 32 of this Agreement, and other credits set forth in this Agreement paid by Lessee to Lessor hereunder. Furthermore, Lessee shall pay to Lessor at closing, the accrued interest on the remaining principal balance from the day of the immediately preceding Base Rent Payment until the day of closing.

35. TITLE:

(a) Within 30 days following the exercise of the Option granted under this Agreement, Seller shall deliver to Buyer a commitment, and, after closing, an owner's title policy, for owner's title insurance, with a qualified title insurance company reasonably acceptable to Buyer, in the amount of the Purchase Price, reflecting good and marketable fee simple title to the Property in Seller, subject only to such easements and restrictions of record, visible easements not of record disclosed in writing by Seller or Buyer, or by the survey, and applicable planning and zoning ordinances, all appearing in Lessor's Title Policy at the time Lessor acquires the Property. Buyer hereby agrees that the matters shown on Exhibit "B", constituting the Schedule B-2 exceptions in Seller's title insurance policy, shall each be permitted title exceptions (the "Permitted Title Exceptions") to which Buyer may not object.

(b) Buyer agrees that it may not treat as an objection any matter shown on the commitment resulting from any act or failure to act by Buyer, including but not limited to claims of lien resulting from work performed on the Property or materials ordered by Lessee to be incorporated into the Property, and any ordinance, law or regulation affecting the Property which takes effect at or following the date of Commencement of the Lease Term. Seller shall diligently attempt to satisfy Buyer's stated title objections and shall have until the date of closing to do so.

Buyer acknowledges and agrees the Seller is taking title to the Property subject to existing easements, covenants, and restrictions of record and has had an opportunity to review Seller's Title Commitment at the time of Seller's acquisition of the Property and agrees to take title to the Property on the same terms and conditions, and subject to the same title policy exceptions as they may appear in Seller's title policy, and subject to the Permitted Title Exceptions.

36. CLOSING: The purchase and sale transaction contemplated by this Agreement shall be closed in accordance with the provisions of Paragraph 32 at a time and place mutually agreeable to the parties at the offices of the title insurance agent issuing title insurance to the Buyer, recording documents and disbursing funds. Seller shall deliver to Buyer at closing the following documents, prepared by Seller's counsel:

- (i) a general warranty deed to the Property meeting the requirements as to title of Paragraph 35 above;

- (ii) an owner's affidavit attesting to the absence of mechanic's or materialmen's liens arising from work or materials contracted for by Seller, proceedings involving Seller which might affect title to the Property, or parties in possession other than Buyer.
- (iii) Foreign Investment and Real Property Tax Act (FIRPTA) and such other instruments and documents as Buyer's counsel may reasonably request for the purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Property to Buyer in accordance with the Agreement.

37. CLOSING EXPENSES AND PRORATIONS: Buyer shall reimburse Seller for Seller's expenses incurred during Seller's acquisition and disposition of the property, including the cost of obtaining title insurance, the environmental site assessment, the boundary survey and the market value appraisal. Such reimbursement shall be made on the Commencement Date. Transfer taxes on the deed of conveyance, if any, shall be borne by Buyer. The cost of recording the deed shall be borne by Seller. All other expenses shall be paid by the party incurring the same.

38. SELLER'S REPRESENTATIONS AND WARRANTIES: Seller represents and warrants to Buyer, that:

- (a) Seller has good and marketable fee simple title to the Property as hereinabove described;
- (b) Seller has the right, power and authority to enter into this Agreement and to consummate it in accordance with its terms;
- (c) There are no leases, licenses, contracts or agreements of any kind whatever affecting the Property or any part thereof except this Lease-Purchase Agreement and those set forth in Exhibit "C" attached hereto and by reference incorporated herein, all of which are cancelable without cause upon no more than thirty (30) days' written notice;
- (d) Seller will not extend or modify any of the agreements listed in Exhibit "C" as attached and acknowledged by Seller, or enter into any other contracts or agreements of any kind affecting the property or any part thereof after the date of this Agreement without the advance written consent of Buyer;
- (e) Seller knows of no pending or threatened proceedings which might affect the Property or any part thereof or Seller's title thereto;
- (f) There exists no uncured notices served upon or delivered to Seller by any private or governmental party which might result in any lien upon or claim against the Property or any part thereof or which specify any violation of law, rule, regulation, or ordinance with respect to the Property or any part thereof.

Seller will take all such actions as will cause all of the foregoing representations and warranties to be true and correct as of closing.

39. MEMORANDUM OF LEASE AND OPTION: Concurrently with the signing of this Agreement, the parties have signed a Memorandum of Lease and Option in the form attached hereto as Exhibit "D" and by reference incorporated herein. Seller and Buyer shall have the right to record the Memorandum of Lease and Option among the public records of the county in which the Property is located. In the event Buyer does not exercise the option, or terminates the Agreement, Buyer shall, upon Seller's written request, deliver to Seller for recording at Seller's expense a quitclaim deed to the Property. The Memorandum may also be canceled by execution and release signed by The Trust for Public Land.

40. REMEDIES UPON DEFAULT: In the event Seller defaults in the performance of any of Seller's obligations under this Option to Purchase, Buyer shall have as its only remedies the refund of the Option Money paid to Seller and the right to sue for specific performance. In the event Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have the right to retain or to sell the Property to a third party, and to sue for damages for all losses resulting from Buyer's breach.

41. NOTICES: All notices, demands, requests or other communications permitted or required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered by the date called for under this Agreement, or mailed, first class, postage prepaid, certified, mail, return receipt requested, addressed as follows:

IF TO LESSOR – SELLER:

THE TRUST FOR PUBLIC LAND
Attn: Peter Fodor, Florida Counsel
306 North Monroe Street
Tallahassee, Florida 32301
PHONE: (850) 222-7911 ext. 29
FAX: (850) 222-8909
Email: pete.fodor@tpl.org

With a copy to:

THE TRUST FOR PUBLIC LAND
Attn: Amy Paige Condon, Project Manager
7900 Red Road, Suite 25
South Miami, Florida 33143
PHONE: (305) 667-0409 ext. 4
FAX: (305) 667-0427
Email: amy.condon@tpl.org

IF TO LESSEE – BUYER:

VILLAGE OF PALMETTO BAY, FLORIDA
8950 SW 152nd Street
Palmetto Bay, FL 33157
Attention: Charles Scurr
PHONE: (305) 259-1234

FAX: (305) 259-1290
Email: ccurr@palmettobay-fl.gov
cc: City Attorney

Nagin Gallop Figueredo
3225 Aviation Ave
Suite 301
Miami, Fl 33133

42. APPLICABLE LAW: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

43. HEADINGS: The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof.

44. CONDITIONS PRECEDENT TO LESSOR'S DUTIES TO PERFORM UNDER THIS AGREEMENT: Lessor shall have no duty to perform under this Agreement unless and until each of the following conditions precedent has been fulfilled:

(a) Lessor has acquired fee simple title to the Property; and

(b) Lessee has delivered to Lessor a certified copy of a resolution of Lessee authorizing execution of the Agreement, together with the opinion of Lessee's counsel stating that the Agreement has been authorized according to law, and when executed by both of the parties, shall constitute an enforceable obligation of Lessee according to its terms.

(c) Lessee has agreed to accept the Survey and legal description provided by Lessor as determinative of the boundary and acreage of the Property, and has agreed that it shall accept title to the Property subject to the Survey, including any encroachments, easements, boundary claims, or defects shown on the survey or visible on the ground upon reasonable inspection. The Survey, when available shall be appended to this Agreement as Exhibit "E."

45. PRECONDITION TO LESSEE'S DUTY TO PERFORM: Lessee shall have no duty to commence to perform any obligation hereunder until and unless Lessor shall have provided to Lessee the report of a Phase One transactional environmental assessment, as that term is commonly understood in Florida real estate field, carried out by a licensed professional engineer or geologist, stating that further investigations are not recommended.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

Signed, sealed and delivered
In the presence of:

LESSOR: THE TRUST FOR PUBLIC LAND
a nonprofit California corporation

Gregory J A Chelius, Florida State Director
Date: _____

Counterpart signature page for Lease-Purchase Agreement

Signed, sealed and delivered
in the presence of:

LESSEE:
VILLAGE OF PALMETTO BAY, FLORIDA

Grantee _____

BY: _____
Name: _____
Title: _____
Date: _____

(Corporate Seal)

City of _____, _____

BY: _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
TITLE EXCEPTIONS

EXHIBIT "C"
LEASES, LICENES, CONTRACTS OR AGREEMENTS

If there are no leases, licenses, contracts or agreements, Seller shall so state and sign and date below.
If there are any leases, etc., the parties should be listed here and a copy of each lease delivered to Buyer for review prior to execution.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "D"
MEMORANDUM OF LEASE AND OPTION

For and in consideration of the sum of \$10.00 and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by the parties hereto, THE TRUST FOR PUBLIC LAND, a nonprofit California corporation, whose address is 306 North Monroe Street, Tallahassee, Florida, 32301 (hereinafter referred to as the "Lessor" or "Seller"), hereby grants to the City of Village of Palmetto Bay, Florida ("City"), (hereinafter referred to as the "Lessee" or "Buyer") the sole, exclusive and irrevocable option to purchase that certain real property and appurtenances thereto, comprising a total of _____ +/- acres in Miami-Dade County, Florida, described more fully in EXHIBIT "A" attached hereto and by this reference made a part hereof. The option herein granted extends from the date hereof through 12:00 midnight 60 days prior to the end of the Lease Term (the "Option Term"). The full text of the option granted may be found in a certain Lease-Purchase Agreement between Lessor and Lessee of even date herein. If the option is not exercised on or before the end of the Lease Term, said exclusive option shall automatically expire and be of no further force and effect without the necessity to record any other instrument. A true and complete copy of the Lease Purchase Agreement is on file with the City Clerk of the Village of Palmetto Bay, Florida, _____, Village of Palmetto Bay, Florida _____.

IN WITNESS WHEREOF, each of the parties hereto has caused this Memorandum of Option to be executed and sealed by its duly authorized signatory(ies) on the ___ day of 2004.

Signed, sealed and delivered
in the presence of:

LESSOR: THE TRUST FOR PUBLIC LAND
a nonprofit California corporation

Witness

By: _____

Print Name

W. Dale Allen
Senior Vice President

Witness

Date: _____

Print Name

Corporate Seal

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledge before me this ___ day of 2004, by W. Dale Allen, as Vice President of The Trust for Public Land, a California non-profit corporation, who is personally known to me.

(NOTARY PUBLIC SEAL)

Notary Public

(Printed, Typed or Stamped Name of Notary Public)

Commission No: _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

LESSEE:
VILLAGE OF PALMETTO BAY, FLORIDA

Grantee _____

BY: _____

Name
Title

Date: _____

(Corporate Seal)

THIS DOCUMENT PREPARED BY:

Peter Fodor
Florida Counsel
The Trust for Public Land
306 North Monroe Street
Tallahassee, Florida 32301