

ORDINANCE NO. 2019-011

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, RATIFYING THE OPTION PURCHASE AGREEMENT SIGNED BY THE CITY MANAGER AND APPROVING THE PURCHASE OF REAL PROPERTY PURSUANT TO THE ATTACHED OPTION PURCHASE AGREEMENT BETWEEN THE CITY OF COCONUT CREEK, AS PURCHASER, AND 4651 W HILLSBORO, LLC, AS SELLER, FOR REAL PROPERTY DESCRIBED AS TRACT A-1 BUFFER TOGETHER WITH TRACT "A," ACCORDING TO THE PLAT OF "JANIS PLAT," AS RECORDED IN PLAT BOOK 174 AT PAGE 18 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, LESS AND EXCEPT THE NORTH 260 FEET OF SAID TRACT "A;" PROVIDING FOR A PUBLIC PURPOSE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the City Commission meeting held on May 9, 2019, the City Commission gave direction to the City Manager, or her designee, to perform fact-finding, obtain necessary appraisals, and negotiate with 4651 W HILLSBORO, LLC, the seller of certain property adjacent to Saw Palmetto Natural Area, located along West Hillsboro Boulevard in Coconut Creek, specifically, property identification number 4842 06 33 0010 (hereinafter "Property"); and

WHEREAS, on May 15, 2019, the City, through City Manager Mary C. Blasi, entered into an option purchase agreement to purchase the Property in the amount of three hundred and ninety-six thousand dollars (\$396,000.00), subject to final City Commission approval; and

WHEREAS, pursuant to Section 310 g. of the City's Charter, an ordinance is required to acquire real property by purchase; and

WHEREAS, the option purchase agreement, attached hereto and made a part hereof as Attachment "1," provides for inspection, including obtaining an environmental assessment and survey within sixty (60) days from the date of execution of the option purchase agreement; and

WHEREAS, the City Commission finds and determines that the purchase by the City of Coconut Creek of the Property, legally described as Tract A-1 buffer together with Tract "A," according to the Plat of "JANIS PLAT," as recorded in Plat Book 174 at Page 18 of the Public Records of Broward County, Florida, less and except the North 260 feet of said Tract "A," said lands situate, lying and being in Broward County, Florida, as more particularly described in the option purchase agreement as Exhibit "A," serves a municipal purpose, enhances the City's goal of increasing recreational opportunities in the City, and furthers the City's revitalization efforts along the western Hillsboro Boulevard Corridor.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

Section 1: Ratification. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance. Attachment "1" is the option purchase agreement that contains a legal description of the land to be purchased as Exhibit "A;" all are attached hereto, incorporated herein, and made a specific part of this ordinance.

Section 2: That the City Commission hereby finds and determines that purchasing the real property described in Exhibit "A" of Attachment "1" is in the best interests of the residents of the City of Coconut Creek; serves the interest of health, safety, and welfare of the residents; and serves a municipal purpose by conveying to the City of Coconut Creek land which may be used to expand recreational opportunities within the City and help revitalize the City's Hillsboro Boulevard Corridor.

Section 3: That the City Commission hereby accepts, ratifies, and approves the option purchase agreement, and hereby exercises its option to purchase the real property identified as property identification number 4842 06 33 0010, legally described as Tract A-1 buffer together with Tract "A," according to the Plat of "JANIS PLAT," as recorded in Plat Book 174 at Page 18 of the Public Records of Broward County, Florida, less and except the North 260 feet of said Tract "A," said lands situate, lying and being in Broward County, Florida.

Section 4: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 5: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 6: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 27TH DAY OF JUNE, 2019.

PASSED SECOND READING THIS 11TH DAY OF JULY, 2019.



Sandra L. Welch
Sandra L. Welch, Mayor

Leslie Wallace May
Leslie Wallace May, City Clerk

	<u>1st</u>	<u>2nd</u>
Welch	<u>Aye</u>	<u>Aye</u>
Sarbone	<u>Aye</u>	<u>Aye</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Belvedere	<u>Aye</u>	<u>Aye</u>
Rydell	<u>Aye</u>	<u>Aye</u>

Attachment 1

OPTION PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made this 15 day of May, 2019, by and between 4651 W HILLSBORO, LLC a Florida limited liability company ("Seller"), whose address is 10000 Mandarin Street, Parkland, FL 33076, and the CITY OF COCONUT CREEK, a municipality within Broward County, Florida ("City"), whose address is 4800 West Copans Road, Coconut Creek, Florida 33063.

WITNESSETH:

WHEREAS, Seller is the owner of certain real property located at 4651 W. Hillsboro Boulevard, Coconut Creek, FL 33073 as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, City is desirous of acquiring the Property for the good of the citizens of Coconut Creek, and Seller has agreed to convey the Property to City pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration and of the mutual covenants contained herein, the amount and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **RESTATEMENT.** The foregoing recitals are true and correct and incorporated herein by this reference.
2. **GRANT OF OPTION.** Seller hereby grants to City the exclusive right, option and privilege to acquire the Property, together with all existing improvements, easements and appurtenances thereon, if any, located on the premises as of the Effective Date of this Agreement as defined herein below, upon the terms, provisions, conditions, representations and covenants as set forth herein (the "Option").
3. **TERM OF OPTION.** The term of the Option shall be for a period commencing upon the Effective Date (as hereinafter defined) of this Agreement and ending, unless otherwise extended as provided herein below, at 5 P.M. (Eastern Standard Time), Sixty (60) days thereafter ("Option Term"). If not exercised by City within the Option Term, the Option shall automatically terminate and neither party shall have any further right or obligation hereunder except as otherwise specifically provided herein to survive such termination. The term "Option Term" shall specifically include any extensions of the original Option Term as provided for elsewhere in this Agreement.
4. **OPTION FEE.** Upon execution of this Agreement by all parties and delivery of the Agreement to City, City shall deliver to Patricia A. Rathburn P.A. (the "Escrow Agent") the sum of Ten Thousand Dollars (\$10,000.00) as an option fee (the "Option Fee") to be held in escrow in a non-interest bearing account pursuant to the terms hereof. The Option Fee shall be fully refundable to City in the event it does not exercise the Option prior to the expiration of the Option Term. In the event City exercises its Option as provided in Paragraph 5 below, the Option Fee shall thereafter be applied as a deposit towards the Purchase Price.

5. **EXERCISE OF THE OPTION.** The City may exercise this Option at any time during the Option Term or any permitted extension thereof by delivering to Seller written notice exercising the Option together with written approval in the form of a Resolution and/or Ordinance by the City Commission of the City of Coconut Creek ratifying this Agreement and authorizing the exercise of the Option. Notice of exercise of the Option shall be delivered to Seller by City prior to the expiration of the Option Term or any permitted extension thereof.

6. **PURCHASE PRICE.** Upon timely exercise of the Option by City, Seller agrees to convey at Closing (hereinafter defined) to City, and City agrees to purchase from Seller, the Property, for the sum of Three Hundred Ninety Six Thousand Dollars (\$396,000.00) subject to adjustments and prorations set forth herein (the "Purchase Price").

7. **METHOD OF PAYMENT.**

A. Within ten (10) days after the date City exercises the Option, City shall deliver to Escrow Agent a deposit in the amount of Thirty-Five Thousand Dollars (\$35,000.00) to be held in escrow together with the Option Fee and applied towards the Purchase Price at Closing.

B. At Closing and delivery of the Warranty Deed to the Property, the balance of the Purchase Price shall be paid to Seller by certified check or wired funds.

8. **SELLER'S REPRESENTATIONS AND OBLIGATIONS.** As a material inducement to City entering into this Agreement and to consummate the transaction contemplated herein, Seller covenants, represents and warrants to City as follows:

A.) Seller represents that it is duly authorized to enter into this Agreement and has the requisite authority to execute this Agreement and to perform the various terms and conditions hereof.

B.) Seller shall maintain the Property in its existing condition subsequent to the date of this Agreement, except for the effect of natural elements and ordinary wear and tear.

C.) Seller has not and will not enter into any new leases or extend any existing leases or grant possessory rights while this Agreement is in full force and effect, nor has Seller granted any options or entered into any contracts effecting the Property with any other party, other than City, which are presently binding on Seller or which conflict with the terms hereof.

D.) Seller represents and warrants that there are no parties other than Seller in occupancy or possession of any part of the Property.

E.) Seller represents that as of the date hereof, to the best of Seller's knowledge and belief, no warning notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice has been issued to Seller by any public agency as to any violation or suspected violation by Seller of environmental laws, rules or regulations with reference to the Property.

9. PROPERTY INVESTIGATION PERIOD.

A.) City shall have Sixty (60) days from the Effective Date hereof (the "Property Investigation Period") within which to fully inspect the Property to determine the condition of the Property, and its suitability for City's intended uses.

B.) City agrees to defend, save Seller harmless and to indemnify Seller from any and all liens against the Property and any damages to any person or property resulting from or in connection with the work on the Property conducted by City, or on City's behalf during the term of this Agreement.

C.) In the event City determines the condition of the Property unacceptable for any reason prior to the close of the Property Investigation Period, City may terminate this Agreement and receive the return of the Option Fee by notifying Seller and Escrow Agent, in writing, of the termination. In the event City has exercised the Option prior to the expiration of the Property Investigation Period, City shall be deemed to accept the Property in its "AS IS" condition as of the date of this Agreement, except for the effect of natural elements and ordinary wear and tear.

D.) City may perform such inspections of the Property during the Property Investigation Period as deemed necessary by City, including but not limited to the surveying, inspections and testing as set forth in Paragraphs 10 and 11 herein below. Such inspections shall be performed at the sole cost and expense of the City. City shall use its best efforts not to unreasonably interfere with Seller during such inspections, and City agrees to restore the Property to its original condition upon completion of the inspections.

E.) No later than ten (10) days after the Effective Date, Seller shall deliver to City copies of any surveys, environmental reports and title insurance policies that are in the possession of Seller, without any representations or warranties from Seller whatsoever.

10. ENVIRONMENTAL SITE ASSESSMENT. City may, at its sole cost and expense, have prepared a Phase I Environmental Site Assessment ("Phase I") and/or a Phase II Environmental Site Assessment ("Phase II") (collectively, the "Environmental Assessment") of the Property. City shall use the services of competent, professional consultants with expertise in the environmental site assessing process to determine the existence and extent, if any, of Hazardous Materials (as hereinafter defined) on the Property. The Environmental Assessment shall be certified to the City and the Seller and the date of the certification shall be no later than sixty (60) days after the Effective Date hereof. If the Environmental Assessment reports evidence of recognized adverse environmental conditions then Seller shall be provided a certified copy of the Environmental Assessment and, if deemed necessary by City, a Phase III Environmental Site Assessment ("Phase III") may be performed at City's option to address any recognized adverse environmental conditions raised in the Phase I and/or Phase II and to confirm the presence of contaminants on the Property. In the event a Phase III is recommended by City's consultant due to the findings contained in the Phase I or Phase II, the Option Term and Property Investigation Period may be extended for a period not to exceed 60 days from the original date of termination of such Option Term and Property Investigation Period upon mutual written agreement by the parties hereto executed and delivered prior to the close of the Property Investigation Period. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law. For purposes of this Agreement

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"Environmental Law" shall mean any and all applicable Federal, state, or local laws, statutes, ordinances, rules, regulations or other governmental restrictions regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials. In the event that the Phase I, Phase II or Phase III confirms the presence of Hazardous Materials above government permitted limits on the Property, City, at its sole option, may elect to terminate this Agreement prior to the expiration of the Property Investigation Period or any extension thereof, by providing written notice to Seller and the Escrow Agent and neither City nor Seller shall have any further obligations under this Agreement, and the Escrow Agent shall return the Option Fee to City without further consent or approval of Seller.

11. SURVEY. City may, at its sole cost and expense, have a current survey of the Property prepared by a professional land surveyor licensed by the State of Florida which meets the standards and requirements of City and its title insurer ("Survey"). In the event a Survey is prepared, the Survey shall be certified to the City and the title insurer. If the Survey shows any encroachment on the Property, the City, at its sole option, may elect to terminate this Agreement during the "Title Examination Period" (as hereinafter defined), and neither party shall have any further obligations under this Agreement, except as otherwise specifically provided in this Agreement.

12. EVIDENCE OF TITLE. Seller shall, at its own cost and expense, within ten (10) business days of the Effective Date of this Agreement, provide City with a copy of the owner's title insurance policy it obtained when it acquired the Property if any, and City shall perform or cause to be performed an update with a computer print-out of such title at Seller's expense. City shall pay for any title premium for a new owner's title insurance policy. City shall have twenty (20) days from receipt of evidence of title to examine title (the "Title Examination Period"). In the event Seller does not have a prior owner's title policy, Seller shall notify City in writing within ten (10) days of the Effective Date of this Agreement that it does not possess such evidence of title and Seller thereafter shall be responsible for the cost of preparing title evidence sufficient for City's Closing agent to issue an Owners Title Insurance policy to City, and in that event, the Title Examination Period shall commence on the date of City's receipt of such title evidence. In the event that City's examination of title reveals restrictions, reservations, easements, leases, tenancies, liens or other encumbrances, claims of any kind, or other matters which are not reasonably acceptable to City (hereinafter collectively referred to as "Objections,") notwithstanding any marketable issue relating thereto, City shall notify Seller of said Objections no later than the close of the Title Examination Period. Thereafter, Seller shall have sixty (60) days within which to diligently attempt to remove, cure or satisfy said Objections; however Seller shall not be required to bring any law suits in this regard nor shall Seller be required to remove, cure or satisfy said Objections. If Seller is unsuccessful in removing said Objections within said time, or if Seller elects not to remove, cure or satisfy said Objections by giving written notice of such election within thirty (30) days of City's notice to Seller of such Objections, then, City shall have the option to either: (a) accept the title to the Property in its "AS IS" condition, in which event all such Objections shall be deemed acceptable to City, or (b) terminate this Agreement by notifying Seller and Escrow Agent in writing of such termination and obtain a refund of the Option Fee, thereupon releasing City and Seller from all further obligations under this Agreement, except as otherwise specifically provided in this Agreement.

13. CONVEYANCE AND POSSESSION. Seller shall convey at Closing fee simple absolute title to the Property to City by statutory warranty deed ("Warranty Deed") in the form satisfactory to City, subject to any taxes and assessments not yet delinquent, easements, covenants and restrictions of record. Seller shall deliver possession of the Property to City at Closing free and clear of Tenant or rights of Tenant or any party claiming by, through or under Tenant. Except as

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otherwise specifically set forth in this Agreement, City acknowledges and agrees that Seller has not made any representations, warranties (other than the warranty of title as set out in the Warranty Deed), promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, as to or with respect to (i) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology; (ii) the income to be derived from the Property; (iii) the suitability of the Property for any and all activities and uses which City may conduct thereon; (iv) the compliance of or by the Property of its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (v) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (vi) the manner, quality, state of repair or lack of repair of the Property; or (vii) any other matter with respect to the Property, except as otherwise specifically set forth in this Agreement.

14. DOCUMENTS FOR CLOSING. The following documents shall be prepared for Closing and delivered as set forth herein:

A.) Seller shall prepare and at Closing, unless an earlier date is specified herein, deliver to City:

1. Upon the execution of this Agreement, Seller shall submit to City a properly completed and executed beneficial interest affidavit and disclosure statement as required by Sections 286.23 and 380.08(2) Florida Statutes in the form attached hereto.

2. Deliver to City at Closing an affidavit certifying that (i) no work or services have been performed upon the Property the cost of which remains unpaid; (ii) no third party other than Seller is in possession or has any right of possession of the Property; (iii) Seller is not a foreign person, partnership, trust or corporation within the meaning of the Foreign Investment Real Property Tax Act ("FIRPTA"); (iv) reasonable assurances as may be required by City's counsel to represent that no matters have occurred during the period between the last update of Seller's title and the date of Closing (the "GAP").

3. Execute and deliver such proof of Seller's authority and authorization to enter into this transaction and to convey the Property, including any corporate resolutions or notifications as may reasonably be required by City.

4. At least ten days prior to Closing, deliver estoppel letters from the holder of any mortgage encumbering the Property.

5. Deliver a contemporaneously dated affidavit in accordance with Section 627.7841 Florida Statutes (the "GAP Affidavit").

6. The Warranty Deed.

B.) City shall prepare:

1. The Closing statement (the "Closing Statement").

2. Proof of City's authority and authorization to enter into this transaction as may reasonably be required by Seller.

C.) All of the above documentation, excluding the Closing Statement, shall be delivered by the responsible party to the other party, unless otherwise specified, at least five (5) days prior to the "Closing Date" (as hereinafter defined), and all such documents shall be subject to City's review and approval as to form, scope and substance. The Closing Statement shall be delivered at least three (3) days prior to the scheduled Closing Date, and shall be subject to Seller's and City's review and approval as to form, scope and substance.

15. EXPENSES. City will pay the documentary stamp tax on the deed; municipal lien search, the evidence of title and the cost of recording the deed. Seller will pay recording and other fees needed to cure title associated with the conveyance and any taxes due through the date of Closing. Each party hereto shall pay their own attorneys' fees and costs.

16. TAXES AND ASSESSMENTS. The following shall be prorated as of the day prior to the Closing Date: real estate taxes, association fees, insurance, rents and other expenses of the property. Cash due at Closing shall be increased or decreased as may be required by prorations to be made through the day prior to Closing. Advance rents and security deposits, if any, will be credited to City. The parties shall prorate real estate taxes and assessments on the basis of a 365 day year, as follows: (i) all real estate taxes and assessments which are or which may become a lien against the Property prior to the Closing shall be the responsibility of Seller and such prorated property taxes shall be paid by Seller at Closing; and (ii) all real estate taxes and assessments which are or which may become a lien against the Property on or after the date of the Closing shall be the responsibility of the City. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current years millage is not fixed but current years assessment is available, taxes will be prorated based upon such assessment and prior years millage. The parties acknowledge that City property may be exempt from taxes and that in that event, taxes for the period during which Seller owned the Property will be due in full at Closing with such amount due being determined by the county property appraiser and/or county tax collector. The parties agree that no part of the Purchase Price paid hereunder has been paid by City for any personal property.

17. CONDITIONS PRECEDENT TO CLOSING. It shall be a condition precedent to City's obligation to close on this transaction that the City obtain City Commission approval to purchase the Property in accordance with the terms hereof. In the event the City has not obtained the approval of the City Commission to purchase the Property as of the termination date of the Option Period, City may terminate this Agreement by notifying Seller and Escrow Agent in writing and the Option Fee shall be returned to City and this Agreement shall be of no further force or effect, except as otherwise specifically provided hereunder.

18. CLOSING PLACE AND DATE. The Closing shall be on or before 30 days after City has exercised the Option, provided that the Property Investigation Period or any extension thereof has expired and this Agreement has not sooner been terminated during the Property Investigation Period or any extension thereof. The date, time and place of Closing shall be set by City.

19. CLOSING PROCEDURES. The following procedures shall govern Closing and delivery of the Closing documents:

A.) The proceeds of the sale shall be disbursed to Seller at Closing and the Warranty Deed shall be recorded.

B.) In the event that an update of title to the Property, performed at City's expense, shows a defect in title first arising during the GAP period prior to Closing or subsequent to Closing but prior to recording of the Warranty Deed to City, Seller shall be solely responsible for curing such defects at its sole cost and expense and Seller shall be required to bring suit to cure such defects if required by City or take such other action as may be necessary to deliver the Property to City free and clear of any defects in title other than those existing and accepted by City as of the date of Closing. All time periods for City's obligations contained herein shall be extended for the length of time required by Seller to cure such defects, provided, however, such extensions shall not be more than ninety (90) days.

C.) On the day prior to Closing, or on the Closing Date prior to the time of Closing, as specified by City, City may perform a walk-through (and follow-up walk through, if necessary) inspection of the Property solely to verify that Seller has maintained the Property as required by Sellers maintenance requirements hereunder and has met all other contractual obligations of this Agreement and that the Property is free from occupancy by Seller or any party claiming under Seller.

20. ESCROW AGENT. The Escrow Agent is authorized and agrees by acceptance of the Option Fee and any subsequent deposits made hereunder ("Escrowed Funds") to deposit the Escrowed Funds promptly, in a non-interest bearing escrow account, hold same in escrow and, subject to clearance, disburse the Escrowed Funds in accordance with this Agreement and in accordance with written instructions from the parties hereto. Escrow Agent shall have the right to commingle the Escrowed Funds with other escrow funds. Escrow Agent shall provide both parties with complete information regarding and relating to the disbursement of the Escrowed Funds. The parties acknowledge that Escrow Agent shall not be liable for any failure of the depository, nor for actions taken or omitted by Escrow Agent in good faith or for any mistake of fact or law, but only for Escrow Agent's gross negligence or willful misconduct. In the event of doubt as to its duties or liabilities under the provisions of this Agreement, the Escrow Agent, in its sole discretion, may continue to hold the Escrowed Funds until the parties mutually agree to the disbursement thereof, or until judgment of a court of competent jurisdiction shall determine the rights of the parties hereto, or Escrow Agent may deposit the subject matter of the escrow with the Clerk of the Circuit Court having jurisdiction of the dispute, and upon notifying all parties concerned of such action, all liability on the part of Escrow Agent shall terminate except to the extent of accounting for any monies delivered out of escrow. In the event of any controversy hereunder, wherein Escrow Agent is joined as a party, the parties agree jointly to defend (by attorneys selected by Escrow Agent), indemnify and hold harmless Escrow Agent against and from any claim, judgment, loss, liability, cost or expense resulting from any dispute or litigation arising out of or concerning Escrow Agent's duties or services hereunder. This indemnity includes, without limitation, disbursements and reasonable attorneys' fees either paid to retain attorneys or representing the fair value of legal services rendered by Escrow Agent to itself. All such fees and expenses shall be payable by the parties hereto, as incurred, both in advance of and after the final disposition of any such action or claim. The obligations of the parties under this Paragraph shall survive any termination of this Agreement and the resignation or removal of Escrow Agent. No representation, warranty, covenant, agreement, obligation or duty of Escrow Agent shall be implied with respect to this Agreement or Escrow Agent's services hereunder. Seller acknowledges that Escrow Agent is legal counsel to City and may continue to represent City in any matter arising from this Agreement, including, but not limited to, representing City in any litigation with respect to disputes over the terms of this Agreement or

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with respect to the Option Fee.

21. **RISK OF LOSS AND CONDITION OF REAL PROPERTY.** Seller assumes all risk of loss or damage to the Property prior to the date of Closing and warrants that the Property shall be transferred and conveyed to the City in substantially the same condition as of the date of Seller's execution of this Agreement, ordinary wear and tear accepted. However, in the event there is a material adverse alteration in the condition of the Property caused by an act of God or other natural force beyond the control of Seller, City may elect, at its sole option, to terminate this Agreement and neither party shall have any further obligations under this Agreement, except as otherwise specifically provided in this Agreement and the Option Fee shall be returned to City. Notwithstanding the foregoing, Seller shall not be obligated under any circumstances to restore the Property to its pre-existing condition. In the event all or a portion of the Property is condemned or taken by eminent domain prior to the Closing, either party may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement, except as otherwise specifically provided in this Agreement, and if so terminated, the Option Fee shall be returned to City.

22. **RIGHT TO ENTER PROPERTY.** Seller agrees that from the date this Agreement is executed by Seller, City and its agents, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with this Agreement.

23. **DEFAULT.**

A.) If Seller defaults under this Agreement, City may waive the default and proceed to Closing; terminate the Agreement and accept the return of the Option Fee and any Deposits paid or seek specific performance. In the event of a Seller default hereunder, Seller shall be provided written notice of such default and a reasonable opportunity to cure such default.

B.) If City fails or refuses to consummate the purchase of the Property pursuant to this Agreement for any reason other than Seller's failure to tender performance of its obligations hereunder, Seller, as its sole remedy, may terminate this Agreement by notifying City thereof, in which event neither party hereto shall have any further rights, duties, or obligations hereunder, except as otherwise specifically provided herein, and Seller, as liquidated damages, will retain the Option Fee and Deposits. The parties acknowledge that this provision for liquidated damages is a fair and reasonable measure of the damages to be suffered by Seller in the event of City's default because the exact amount of damages is incapable of ascertainment. Notwithstanding any provision of this Agreement to the contrary, other than City's failure to close at the Closing, City shall not be in default hereunder unless Seller shall have provided written notice of the alleged default and City shall have failed within a period of thirty (30) days after delivery of such notice to cure such default.

24. **BROKERS.** Seller represents and warrants that no persons, firms, corporations or other entities are entitled to a real estate commission or other fees as a result of this Agreement or subsequent Closing, other than as may accurately be disclosed on the disclosure statement required in Paragraph 14. In the event Seller discloses that a real estate commission is due to any broker(s) City shall pay one half of the commission due to said real estate broker(s) up to a total maximum of Three percent (3%) of the purchase price. In no event shall City's obligation hereunder, notwithstanding in the number of brokers or commission amounts claimed, total more than three percent (3%) of the purchase price. Seller shall be solely responsible for any

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brokerage commission that may be due to any real estate agent or broker entitled to a commission based on any agreement with Seller other than as specifically provided in this paragraph Seller shall indemnify and hold City harmless from any and all such claims whether disclosed or undisclosed, pursuant to this Paragraph. In addition, City represents and warrants that no persons, firms, corporations or other entities are entitled to a real estate commission or other fees from City based on any agreement with City as a result of this Agreement or subsequent Closing, City shall indemnify, defend and hold Seller harmless from any and all such claims whether disclosed or undisclosed, pursuant to this Paragraph. The representations and warranties in this Paragraph 24 shall survive the Closing and delivery of the Warranty Deed and the termination of this Agreement.

25. **RECORDING.** Neither this Agreement nor any memorandum thereof shall be recorded amongst the Public Records of Broward County, Florida.

26. **ASSIGNMENT.** City may not assign this Agreement without prior written consent of the Seller, which consent shall not be unreasonably withheld.

27. **TIME.** Time is of essence with regard to all dates or times set forth in this Agreement.

28. **SEVERABILITY.** In the event any of the provisions of this Agreement are deemed to be unenforceable, the enforceability of the remaining provisions of this Agreement shall not be affected.

29. **SUCCESSORS IN INTEREST.** Upon Seller's execution of this Agreement, this Agreement shall inure to the benefit of and be binding upon Seller and Seller's legal representatives, successors and permitted assigns. Upon City's execution of this Agreement, this Agreement shall inure to the benefit of and be binding upon City and City's successors and permitted assigns. Whenever used, the singular shall include the plural and one gender shall include all genders.

30. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties.

31. **WAIVER.** Failure of City or Seller to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect.

32. **AGREEMENT EFFECTIVE.** This Agreement or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until it has been executed by all of the parties hereto and both parties are in possession of a fully executed copy of this Agreement.

33. **ADDENDUM.** Any addendum attached hereto that is signed by all of the parties hereto shall be deemed a part of this Agreement.

34. **NOTICE.** All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile, by nationally recognized reputable private overnight
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courier, or by United States mail. Notices shall be deemed given or delivered: (i) if given by hand, when delivered personally to the recipient; (ii) if sent by nationally recognized reputable overnight courier service, one (1) business day after being sent (charges prepaid); (iii) if sent by facsimile, one (1) business day after being sent provided that the sender receives written confirmation of receipt; and (iv) three (3) business days after being deposited in the United States mail, postage prepaid, registered or certified mail. Failure to accept notice does not invalidate notice. For purposes of notice, the addresses of the parties shall be as follows:

CITY:

Mary Blasl, City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063

With a copy to:

Terrill C. Pyburn, City Attorney
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063

SELLER:

4651 W HILLSBORO, LLC
10000 Mandarin Street
Parkland, FL 33076

ESCROW AGENT:

Patricia A. Rathburn P.A.
500 SE 17 Street #312
Fort Lauderdale, FL 33316
954-764-6166
954-369-1954 fax
Patricia@rathburnpa.com

or such other address as is designated in writing by a party to this Agreement.

35. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date that the last of the parties shall have executed same (the "Effective Date"). In the event this Agreement is not signed by the Seller and an executed copy delivered to City on or before 5 PM on May 2, 15th 2019, this offer shall be deemed withdrawn.

36. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute and be one and the same document. A facsimile copy or electronically delivered copy shall constitute an original.

37. **HEADINGS.** The headings contained herein are for convenience only and are not part of this Agreement and should not be used in its interpretation.

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38. **NO SURVIVAL.** No representation, warranty or covenant contained herein shall survive Closing, except as expressly provided for herein.

39. **GOVERNING LAW.** This Agreement shall be governed by the law of the State of Florida. An action or proceeding arising out of this Agreement shall be brought in the Circuit Court of Broward County and the parties hereby consent to said venue.

40. **COOPERATION OF PARTIES.** *The parties shall cooperate with each other and obtain, execute and deliver such documents as are reasonably necessary to close.*

41. **ATTORNEYS' FEES.** In the event that there is any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, through all trial and appellate levels and post-judgment proceedings.

42. **RADON GAS.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the local county public health unit.

43. **PERMITS DISCLOSURE.** Except as may have been disclosed by Seller to City in a written disclosure, Seller does not know of any improvements made to the Property which were made *without required permits or made pursuant to permits which have not been properly closed.* If Seller identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to City all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

44. **MOLD.** Mold is naturally occurring and may cause health risks or damage to property. Seller makes no representation with respect to mold, and in the event City is concerned or desires additional information regarding mold, City should address same during the Property Investigation period.

45. **TIME.** Calendar days shall be used in computing time. Any time periods provided for or dates specified in this Agreement which shall and or occur on a Saturday, Sunday or a national legal holiday, shall extend to 5:00 PM of the next business day.

46. **FORCE MAJEURE.** *City or Seller shall not be required to perform any obligation under this agreement or to be liable to each other for damages so long as performance or nonperformance of the obligation, or the availability of services, insurance required approvals subject to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the nonperforming party is unable in whole or in part to prevent or overcome. All time periods, including the Closing Date, will be extended a reasonable time up to seven days after the Force Majeure no longer prevents performance under this Agreement, provided, however if such Force Majeure continues to prevent performance under this Agreement for more than 30 days beyond the Closing Date, then either party may terminate this Agreement by delivering written notice to the other and the Option Fee shall be refunded to the City, thereby releasing City and Seller from all further obligations under this Agreement.*

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47. **FinCEN GTO NOTICE.** If Closing Agent is required to comply with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN") Geographic Targeting Orders ("GTO's") then City shall provide Closing Agent with the information related to City and the transaction contemplated by this Agreement that is required to complete IRS form 8300, and City consents to Closing Agent's collection and report of said information to the IRS.

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

5-13-19
Date signed by Seller

SELLER:

4651 W HILLSBORO, LLC

By: 

Print Name: Carl Gobson

Title: President Manager

May 15, 2019
Date signed by City

CITY:
CITY OF COCONUT CREEK

By: 

Name: MARY C. BLASI

^{MB}
Title: CITY MANAGER

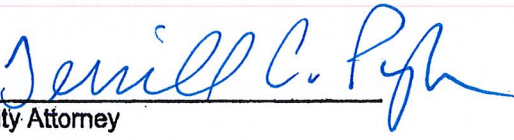
Attest: 
(City Clerk)

(OFFICIAL SEAL)

Approved as to Form:

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Approved as to Form:


City Attorney

BENEFICIAL INTEREST AND DISCLOSURE AFFIDAVIT

STATE OF FL
 COUNTY OF Broward

Before me, the undersigned authority, personally appeared Carl Johnson, this 13 day of May, 2019, who, first being duly sworn, deposes and says:

1.) That 4651 W HILLSBORO, LLC, a Florida limited liability company, whose address is 6601 Lyann Rd E-10 Coconut Creek FL 33073 is the record owner of the Property which is the subject of the Purchase Agreement attached hereto and made a part of as "Exhibit "A"" between 4651 W HILLSBORO, LLC and the City of Coconut Creek dated . The following is a list of every "person" (as defined in Section 1.01(3), Florida Statutes) holding five percent (5%) or more of the beneficial interest in the Property:

(if more space is needed, attach separate sheet)

Name	Address	Interest
Carl Johnson	12000 Mandarin St	Partial FL 33076
Summer Johnson	10000 Mandarin St	Partial FL 33076

2.) That to the best of the affiant's knowledge, all persons who have a financial interest in this real estate transaction or who have received or will receive real estate commissions, attorney's or consultant's fees or any other fees or other benefits incident to the sale of the Property are:

Name	Address	Reason for Payment	Amount
Mayan Schwartz	Realtor	Commission 3%	\$11,850
Rubin Group Management LLC	102 NE 2nd St, #242, Boca Raton 33431		

3.) That, to the best of the affiant's knowledge, the following is a true history of all financial transactions (including any existing option or purchase agreement in favor of affiant) concerning the Property which have taken place during the five (5) years prior to the date hereof.

Name and Address of Parties Involved	Date	Type of Transaction	Amount of Transaction
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This affidavit is given in compliance with the provisions of Sections 286.23 and 380.08(2), Florida Statutes.

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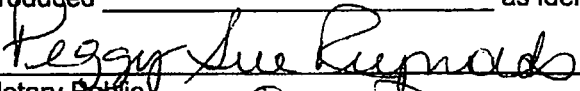
FURTHER AFFIANT SAYETH NOT.

AFFIANT:

4651 W HILLSBORO, LLC

By: 
Name: Carl Johnson
Its: Manager
Date: 5-13-19

SWORN TO and subscribed before me this 12 day of MAY,
2019, by Carl Johnson, who is personally known to me or who has
produced _____ as identification and who did take an oath.


Notary Public
Peggy Sue Reynolds
(Printed, Typed or Stamped Name of Notary)

My Commission Expires: 3/13/2022

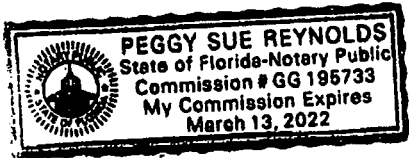


EXHIBIT "A"

LEGAL DESCRIPTION

Tract A-1 buffer together with Tract "A" according to the Plat of "JANIS PLAT" as recorded in Plat Book 174 at Page 18 of the Public Records of Broward County, Florida less and except the North 260 feet of said Tract "A".