

Regular Workshop – January 23, 2017  
Agenda Item 9

Agenda Item: Consideration of Land Acquisition at 555 Bay Isles Parkway,  
Longboat Key, Florida

Presenter: Town Manager

Summary: The Town Manager will discuss a proposal for land acquisition at 555 Bay Isles Parkway, Longboat Key, including a Purchase and Sales Contract relating to the property's acquisition by the Town. Pursuant to the terms of the Purchase and Sales Contract, the purchase price for the property is being offered for \$2,200,000.00. Two (2) appraisals relating to the property have been obtained pursuant to Town Code Section 38.37. This item is placed on the January 23, 2017 Regular Workshop Meeting for Commission consideration.

Attachments: 1-18-19 Memo, Manager to Commission;  
11-28-16 Letter, James R. Boyd Appraisal Letter  
10-14-16 Letter, Hettema Saba Appraisal Letter  
Aerial Site View;  
Parking Analysis;  
Purchase & Sale Agreement.

Recommended  
Action: Pending discussion, provide direction to Manager.

## M E M O R A N D U M

Date: January 23, 2017

**TO:** Town Commission  
**FROM:** Dave Bullock, Town Manager  
**SUBJECT:** Consideration of Purchase and Sale Contract for Land Acquisition of 2.01 Acres, 555 Bay Isles Parkway, Longboat Key

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A Purchase and Sales Contract ("Contract") for the acquisition of 2.01 acres of real property (land and a building) located at 555 Bay Isles Parkway is being presented for Commission consideration. The Contract has been signed by the Seller and is included in the agenda materials for the January 23, 2017 Regular Workshop Meeting and the January 23, 2017 Special Meeting.

Under the terms of the Contract, the proposed purchase price for the property and existing building is \$2,200,000. The anticipated closing date is on or before March 31, 2017. There will be a due diligence period for site and additional property investigations (including a title examination and survey). An escrow deposit in an amount of \$50,000 is required to be paid to the Escrow Agent within 3 days of approval of the Contract. Funds for the acquisition of the property, if approved, will come from the land acquisition and improvement fund. The current balance in the fund is \$2,762,319.00 million.

The property fronts Bay Isles Parkway and is adjacent to the 2.8 acre property the Town purchased in 2014 for development of an Arts, Cultural and Education Center (ACE Center). The proposed purchase of this 2.01 acres would bring the total land available for the project to almost 5 acres. This would greatly enhance the functionality of the project, with significantly improved access to the site, the ability to ensure ample parking, increased open space, and additional opportunity for outdoor venue areas.

Pursuant to Sec. 38.37 of the Town Code, two (2) appraisals have been obtained. The cover letters from each appraisal are included in the agenda material and the complete appraisal reports are available upon request. Should the Town Commission choose to purchase this property, the authorization to enter the Contract for the purchase will require an affirmative vote of at least five (5) Town Commissioners.

Should you have any questions regarding this summary and/or the Contract, please don't hesitate to contact me.



PO Box 1292  
OSPREY, FL 34229  
PHONE: 941.924.2200  
FAX: 941.924.2612  
WEB: [WWW.VNAFL.COM](http://WWW.VNAFL.COM)

November 28, 2016

Mr. Dave Bullock  
Town Manager  
Town of Longboat Key  
501 Bay Isles Road  
Longboat Key, FL 34228-3196

Re: A Restaurant  
555 Bay Isles Parkway  
Longboat Key, FL 34228  
ValueNet File # V0018758

Dear Mr. Bullock:

Pursuant to your request, I submit my analysis of the above-referenced property. This is an Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2 of the Uniform Standards of Professional Appraisal Practice

Howard Rooks, the owner's representative reported that the property is subject to an internal lease but that it could be extinguished since the ownership and the tenant are the same so the Fee Simple Estate has been valued. The purpose of this report is to estimate the market value of the subject property for loan underwriting and/or credit decisions.

Market Value, as more fully defined herein, is "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus."

It is the intent of this appraisal to be in conformity with the Uniform Standards of Professional Appraisal Practice as an APPRAISAL REPORT as required by the Uniform Standards of Professional Appraisal Practice (USPAP) and as adopted by the Appraisal Institute, and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) as read and interpreted by this office and the OCC appraisal guidelines (12 CFR 34 Subpart C).



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941.926.2880 f  
[www.hettemasaba.com](http://www.hettemasaba.com) w

October 14, 2016

Roger L. Hettema, MAI, SRA  
State-Certified General Appraiser 45  
Ronald M. Saba, MAI  
State-Certified General Appraiser 2213

David Bullock, Longboat Key Town Manager  
Town Hall  
501 Bay Isles Road  
Longboat Key, FL 34228

Dear Mr. Bullock:

As requested, I have performed an appraisal of is a parcel of land containing 2.0 acres with a 30-year old restaurant building. The restaurant is known as Amore by Andrea and the subject property is identified as Parcel 3, Bay Isles Unit 12, and Parcel C, Bay Isles Unit 9, having an address of 555 Bay Isles Road. The purpose of the appraisal is to provide an opinion of the market value of the fee simple interest in the subject property as of the effective date of appraisal. The report is intended to be used by the client to analyze whether to conclude a purchase this property to add to adjacent land owned by the Town. .

This appraisal report has been performed in accordance with current USPAP Standards. You are urged to consult the Scope of Work, the introduction, and the Extraordinary Assumptions and Limiting Conditions to insure its proper use and context. Some information in the work file is included by reference. All information relied upon is summarized in this report.

Based on the known factors creating and affecting value, it is my opinion that the fee simple market value for the subject property, in its "as is" condition, as of October 10, 2016, was:

ONE MILLION NINE HUNDRED THOUSAND DOLLARS  
(\$1,900,000)

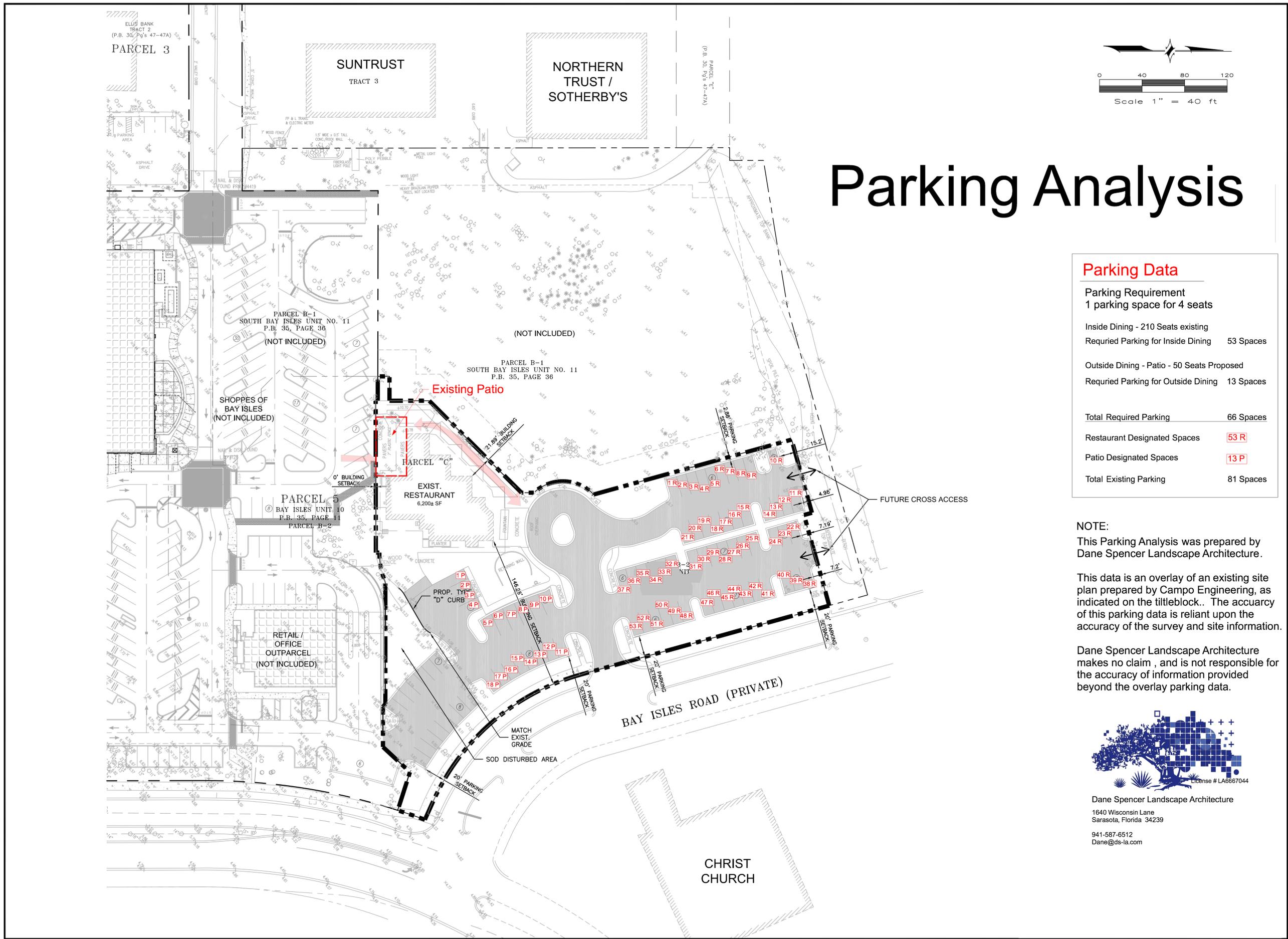
This letter must remain attached to the report, which contains 24 numbered pages, plus related exhibits, in order for the value opinion set forth to be considered valid. It has been my pleasure to serve you in this matter, and I trust that you will contact me if you have any questions concerning this report.

Respectfully submitted,

ROGER L. HETTEMA, MAI, SRA  
State-Certified General Real Estate Appraiser RZ45

# 555 BAY ISLES PARKWAY





# Parking Analysis

### Parking Data

Parking Requirement 1 parking space for 4 seats	
Inside Dining - 210 Seats existing	
Required Parking for Inside Dining	53 Spaces
Outside Dining - Patio - 50 Seats Proposed	
Required Parking for Outside Dining	13 Spaces
<b>Total Required Parking</b>	<b>66 Spaces</b>
Restaurant Designated Spaces	53 R
Patio Designated Spaces	13 P
<b>Total Existing Parking</b>	<b>81 Spaces</b>

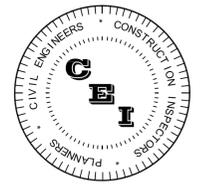
NOTE:  
This Parking Analysis was prepared by Dane Spencer Landscape Architecture.

This data is an overlay of an existing site plan prepared by Campo Engineering, as indicated on the titleblock. The accuracy of this parking data is reliant upon the accuracy of the survey and site information.

Dane Spencer Landscape Architecture makes no claim, and is not responsible for the accuracy of information provided beyond the overlay parking data.



Dane Spencer Landscape Architecture  
1640 Wisconsin Lane  
Sarasota, Florida 34239  
941-587-6512  
Dane@ds-la.com



**CAMPO**  
ENGINEERING, INC.

FBPR CERTIFICATE OF AUTHORIZATION NO.: 26726

1725 EAST 5TH AVENUE  
TAMPA, FL. 33605  
PHONE: (813) 215-7372  
FAX: (813) 902-8782

PROJECT TITLE  
**PARCEL B-2  
W. HOWARD ROOKS  
ODP**  
TOWN OF LONGBOAT KEY  
CLIENT

W. HOWARD ROOK

### REVISIONS

NO.	DESCRIPTION	DATE

ISSUE DATE: 11/2011  
REVIEWED BY: MDC  
DRAWN BY: JJB  
DESIGNED BY: BLM  
PROJECT NUMBER  
11-007

Matthew D. Campo 53988 02/13/2012  
NAME SEAL NO. DATE

SHEET TITLE

**SITE PLAN**

SHEET NUMBER

**3**

Commercial Contract



1\* 1. PARTIES AND PROPERTY: Town of Longboat Key ("Buyer")  
 2\* agrees to buy and W. Howard Rooks and Cavalier Investments I, Inc. ("Seller")  
 3\* agrees to sell the property as: Street Address: 555 Bay Isles Parkway, Longboat Key, Florida 34228  
 4\* \_\_\_\_\_  
 5\* Legal Description: Parcel C, Bay Isles, Unit 9, as per Plat thereof, recorded in Plat Book 30, Page 47, and Lot 3, Bay  
 6\* Isles, Unit 12, as per Plat thereof, recorded in Plat Book 47, Page 50, Sarasota County, Florida.  
 7\* and the following Personal Property: See attached addendum to contract  
 8\* \_\_\_\_\_  
 9 (all collectively referred to as the "Property") on the terms and conditions set forth below.

10\* 2. PURCHASE PRICE: \$ 2,200,000.00  
 11\* (a) Deposit held in escrow by Hankin & Hankin \$ \_\_\_\_\_  
 12 ("Escrow Agent") (checks are subject to actual and final collection)  
 13\* Escrow Agent's address: 100 Wallace Avenue, Suite 100, Sarasota, FL 34237 Phone: (941) 957-0080  
 14\* (b) Additional deposit to be made to Escrow Agent within \_\_\_\_\_ days after Effective Date \$ \_\_\_\_\_  
 15\* (c) Additional deposit to be made to Escrow Agent within \_\_\_\_\_ days after Effective Date \$ \_\_\_\_\_  
 16\* (d) Total financing (see Paragraph 5) \$ \_\_\_\_\_  
 17\* (e) Other Escrow Deposit to be made within three days of Town Commission approval \$ 50,000.00  
 18 (f) All deposits will be credited to the purchase price at closing. Balance to close, subject  
 19\* to adjustments and prorations, to be paid with locally drawn cashier's or official bank \$ 2,150,000.00  
 20 check(s) or wire transfer.

21 3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME: Unless this offer is signed by Seller  
 22\* and Buyer and an executed copy delivered to all parties on or before January 13, 2017, this offer will be  
 23 withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be 3  
 24 days from the date the counter offer is delivered. The "Effective Date" of this Contract is the date on which the  
 25 last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer.  
 26 Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5  
 27 days or less will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending  
 28 on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next business day. Time is of the  
 29 essence in this Contract.

30 4. CLOSING DATE AND LOCATION:  
 31\* (a) Closing Date: This transaction will be closed on or before March 31, 2017 (Closing Date), unless specifically  
 32 extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including, but  
 33 not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended on Closing  
 34 Date and Buyer is unable to obtain property insurance, Buyer may postpone closing up to 5 days after the  
 35 insurance underwriting suspension is lifted.

36\* Buyer ( ) ( ) and Seller WHR acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

37\* (b) Location: Closing will take place in Sarasota County, Florida. (If left blank, closing  
38 will take place in the county where the property is located.) Closing may be conducted by mail or electronic means.

39 **5. THIRD PARTY FINANCING:**

40\* ~~BUYER'S OBLIGATION: Within \_\_\_\_\_ days (3 days if not blank) after the Effective Date, Buyer shall obtain financing in an amount not to exceed \_\_\_\_\_% of the purchase price or \$ \_\_\_\_\_, with a fixed interest rate not to exceed \_\_\_\_\_% per year with an initial variable interest rate not to exceed \_\_\_\_\_%, with points or commitment or loan fees not to exceed \_\_\_\_\_% of the principal amount, for a term of \_\_\_\_\_ years, and amortized over \_\_\_\_\_ years, with additional terms as follows:~~

45\* ~~Buyer will timely provide any and all credit, employment, financial and other information reasonably required by any lender. Buyer will use good faith and reasonable diligence to (i) obtain Loan Approval within \_\_\_\_\_ days (45 days if left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close the loan. Buyer will keep Seller and Broker fully informed about loan application status and authorizes the mortgage broker and lender to disclose all such information to Seller and Broker. Buyer will notify Seller immediately upon obtaining financing or being rejected by a lender. CANCELLATION: If Buyer, after using good faith and reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, Buyer may within \_\_\_\_\_ days (3 days if left blank) deliver written notice to Seller stating Buyer either waives the financing contingency or cancels this Contract. If Buyer does neither, then Seller may cancel this Contract by delivering written notice to Buyer at any time thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of those conditions of Loan Approval related to the Property. DEPOSIT(S) (for purposes of Paragraph 5 only): If Buyer has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or before the Closing Date without fault on Buyer's part, the Deposit(s) shall be returned to Buyer, whereupon both parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract as set forth above or Buyer fails to use good faith or reasonable diligence as set forth above, Seller will be entitled to retain the deposit(s) if the transaction does not close.~~

64\* **6. TITLE:** Seller has the legal capacity to and will convey marketable title to the Property by  statutory warranty deed  other \_\_\_\_\_, free of liens, easements and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants, restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) \_\_\_\_\_

69\* provided there exists at closing no violation of the foregoing and none of them prevents Buyer's intended use of the Property as \_\_\_\_\_

72 (a) Evidence of Title: The party who pays the premium for the title insurance policy will select the closing agent and pay for the title search and closing services. <sup>Buyer</sup> \_\_\_\_\_ will, at (check one)  Seller's  Buyer's expense and within 15 days  after Effective Date  or at least \_\_\_\_\_ days before Closing Date deliver to Buyer (check one)  (i.) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by Seller at or before Closing and, upon Buyer recording the deed, an owner's policy in the amount of the purchase price for fee simple title subject only to exceptions stated above. If Buyer is paying for the evidence of title and Seller has an owner's policy, Seller will deliver a copy to Buyer within 15 days after Effective Date.

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

87 (b) Title Examination: Buyer will, within 15 days from receipt of the evidence of title deliver written notice to Seller of title defects. Title will be deemed acceptable to Buyer if (1) Buyer fails to deliver proper notice of defects or

89\* Buyer (\_\_\_\_) (\_\_\_\_) and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

90\* (2) Buyer delivers proper written notice and Seller cures the defects within 30 days from receipt of the notice  
91 ("Curative Period"). If the defects are cured within the Curative Period, closing will occur within 10 days from receipt  
92 by Buyer of notice of such curing. Seller may elect not to cure defects if Seller reasonably believes any defect  
93 cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, Buyer will have  
94 10 days from receipt of notice of Seller's inability to cure the defects to elect whether to terminate this Contract or  
95 accept title subject to existing defects and close the transaction without reduction in purchase price.

96 (c) Survey: (check applicable provisions below)

97\*  (i.) Seller will, within 7 days from Effective Date, deliver to Buyer copies of prior surveys, plans,  
98 specifications, and engineering documents, if any, and the following documents relevant to this transaction:  
99\* all information relating to the property in the Seller's possession.

100 prepared for Seller or in Seller's possession, which show all currently existing structures. In the event this  
101 transaction does not close, all documents provided by Seller will be returned to Seller within 10 days from the  
102 date this Contract is terminated.

103\*  Buyer will, at  Seller's  Buyer's expense and within the time period allowed to deliver and examine title  
104 evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals  
105\* encroachments on the Property or that the improvements encroach on the lands of another,  Buyer will  
106\* accept the Property with existing encroachments  such encroachments will constitute a title defect to be  
107 cured within the Curative Period.

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

109 7. PROPERTY CONDITION: Seller will deliver the Property to Buyer at the time agreed in its present "as is"  
110 condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition.  
111 Seller makes no warranties other than marketability of title. In the event that the condition of the Property has  
112 materially changed since the expiration of the Due Diligence Period, Buyer may elect to terminate the Contract and  
113 receive a refund of any and all deposits paid, plus interest, if applicable. By accepting the Property "as is", Buyer  
114 waives all claims against Seller for any defects in the Property. (Check (a) or (b))

115\*  (a) As Is: Buyer has inspected the Property or waives any right to inspect and accepts the Property in its "as is"  
116 condition.

117\*  (b) Due Diligence Period: Buyer will, at Buyer's expense and within 45 days from Effective Date ("Due  
118 Diligence Period"), determine whether the Property is suitable, in Buyer's sole and absolute discretion, for Buyer's  
119 intended use and development of the Property as specified in Paragraph 6. During the Due Diligence Period,  
120 Buyer may conduct any tests, analyses, surveys and investigations ("Inspections") which Buyer deems necessary  
121 to determine to Buyer's satisfaction the Property's engineering, architectural, environmental properties; zoning and  
122 zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of  
123 access to public roads, water, and other utilities; consistency with local, state and regional growth management and  
124 comprehensive land use plans; availability of permits, government approvals and licenses; compliance with  
125 American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections  
126 that Buyer deems appropriate to determine the suitability of the Property for Buyer's intended use and  
127 development. Buyer will deliver written notice to Seller prior to the expiration of the Due Diligence Period of  
128 Buyer's determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice  
129 requirement will constitute acceptance of the Property in its present "as is" condition. Seller grants to Buyer, its  
130 agents, contractors and assigns, the right to enter the Property at any time during the Due Diligence Period for the  
131 purpose of conducting Inspections; provided, however, that Buyer, its agents, contractors and assigns enter the  
132 Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller harmless from losses,  
133 damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any  
134 person, arising from the conduct of any and all inspections or any work authorized by Buyer. Buyer will not engage  
135 in any activity that could result in a mechanic's lien being filed against the Property without Seller's prior written  
136 consent. In the event this transaction does not close, (1) Buyer will repair all damages to the Property resulting  
137 from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and  
138 (2) Buyer will, at Buyer's expense release to Seller all reports and other work generated as a result of the  
139 Inspections. Should Buyer deliver timely notice that the Property is not acceptable, Seller agrees that Buyer's  
140 deposit will be immediately returned to Buyer and the Contract terminated.

141 (c) Walk-through Inspection: Buyer may, on the day prior to closing or any other time mutually agreeable to the

142\* Buyer ( ) ( ) and Seller MAN ( ) acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

143 parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and  
144 to ensure that all Property is on the premises.

145 **8. OPERATION OF PROPERTY DURING CONTRACT PERIOD:** Seller will continue to operate the Property and any  
146 business conducted on the Property in the manner operated prior to Contract and will take no action that would  
147 adversely impact the Property, tenants, lenders or business, if any. Any changes, such as renting vacant space, that  
148 materially affect the Property or Buyer's intended use of the Property will be permitted  only with Buyer's consent  
149  without Buyer's consent.

150 **9. CLOSING PROCEDURE:** Unless otherwise agreed or stated herein, closing procedure shall be in accordance with  
151 the norms where the Property is located.

152 **(a) Possession and Occupancy:** Seller will deliver possession and occupancy of the Property to Buyer at  
153 closing. Seller will provide keys, remote controls, and any security/access codes necessary to operate all locks,  
154 mailboxes, and security systems.

155 **(b) Costs:** Buyer will pay Buyer's attorneys' fees, taxes and recording fees on notes, mortgages and financing  
156 statements and recording fees for the deed. Seller will pay Seller's attorneys' fees, taxes on the deed and  
157 recording fees for documents needed to cure title defects. If Seller is obligated to discharge any encumbrance at or  
158 prior to closing and fails to do so, Buyer may use purchase proceeds to satisfy the encumbrances.

159 **(c) Documents:** Seller will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable  
160 service and maintenance contracts that will be assumed by Buyer after the Closing Date and letters to each  
161 service contractor from Seller advising each of them of the sale of the Property and, if applicable, the transfer of its  
162 contract, and any assignable warranties or guarantees received or held by Seller from any manufacturer,  
163 contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium  
164 documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters; tenant  
165 subordination, non-disturbance and attornment agreements (SNDAs) required by the Buyer or Buyer's lender;  
166 assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in  
167 ownership/rental agent. If any tenant refuses to execute an estoppels letter, Seller will certify that information  
168 regarding the tenant's lease is correct. If Seller is an entity, Seller will deliver a resolution of its Board of Directors  
169 authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and  
170 setting forth facts showing the conveyance conforms to the requirements of local law. Seller will transfer security  
171 deposits to Buyer. Buyer will provide the closing statement, mortgages and notes, security agreements, and  
172 financing statements.

173 **(d) Taxes and Prorations:** Real estate taxes, personal property taxes on any tangible personal property, bond  
174 payments assumed by Buyer, interest, rents (based on actual collected rents), association dues, insurance  
175 premiums acceptable to Buyer, and operating expenses will be prorated through the day before closing. If the  
176 amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due  
177 allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request  
178 of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

179 **(e) Special Assessment Liens:** Certified, confirmed, and ratified special assessment liens as of the Closing Date  
180 will be paid by Seller. If a certified, confirmed, and ratified special assessment is payable in installments, Seller will  
181 pay all installments due and payable on or before the Closing Date, with any installment for any period extending  
182 beyond the Closing Date prorated, and Buyer will assume all installments that become due and payable after the  
183 Closing Date. Buyer will be responsible for all assessments of any kind which become due and owing after Closing  
184 Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially  
185 completed as of the Closing Date but has not resulted in a lien before closing, Seller will pay the amount of the last  
186 estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and  
187 does not apply to condominium association special assessments.

188 **(f) Foreign Investment in Real Property Tax Act (FIRPTA):** If Seller is a "foreign person" as defined by FIRPTA,  
189 Seller and Buyer agree to comply with Section 1445 of the Internal Revenue Code. Seller and Buyer will  
190 complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply  
191 with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or

192\* Buyer ( ) ( ) and Seller *AP* ( ) acknowledge receipt of a copy of this page, which is Page 4 of 8 Pages.

193 Social Security Numbers to the closing agent. If Buyer does not pay sufficient cash at closing to meet the  
194 withholding requirement, Seller will deliver to Buyer at closing the additional cash necessary to satisfy the  
195 requirement.

196 **10. ESCROW AGENT:** Seller and Buyer authorize Escrow Agent or Closing Agent (collectively "Agent") to  
197 receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance  
198 with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of  
199 escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this Contract or gross  
200 negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option,  
201 (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent  
202 jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of  
203 the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the parties of such action,  
204 Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If  
205 Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent  
206 interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover  
207 reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and  
208 charged and awarded as court costs in favor of the prevailing party.

209 **11. CURE PERIOD:** Prior to any claim for default being made, a party will have an opportunity to cure any alleged  
210 default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-  
211 complying party specifying the non-compliance. The non-complying party will have 5 days (5 days if left blank) after  
212 delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

213 **12. RETURN OF DEPOSIT:** Unless otherwise specified in the Contract, in the event any condition of this Contract is  
214 not met and Buyer has timely given any required notice regarding the condition having not been met, Buyer's deposit  
215 will be returned in accordance with applicable Florida Laws and regulations.

216 **13. DEFAULT:**

217 (a) In the event the sale is not closed due to any default or failure on the part of Seller other than failure to make  
218 the title marketable after diligent effort, Buyer may either (1) receive a refund of Buyer's deposit(s) or (2) seek  
219 specific performance. If Buyer elects a deposit refund, Seller will be liable to Broker for the full amount of the  
220 brokerage fee.

221 (b) In the event the sale is not closed due to any default or failure on the part of Buyer, Seller may <sup>as its sole remedy</sup> retain  
222 all deposit(s) paid or agreed to be paid by Buyer as agreed upon liquidated damages, consideration for the  
223 execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate ~~and~~  
224 ~~specific performance. If Seller retains the deposit, Seller will pay the Broker named in Paragraph 20.5(f), per~~  
225 ~~centage fee on the deposit retained by Seller (to be split equally among the Brokers) plus the full amount of the~~  
226 ~~brokerage fee. If Buyer fails to timely place a deposit as required by this Contract, Seller may either (1) terminate~~  
227 ~~this Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving~~  
228 ~~any remedy for Buyer's default.~~

229 **14. ATTORNEY'S FEES AND COSTS:** In any claim or controversy arising out of or relating to this Contract, the  
230 prevailing party, which for purposes of this provision will include Buyer, Seller and Broker, will be awarded reasonable  
231 attorneys' fees, costs, and expenses.

232 **15. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or  
233 electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice,  
234 document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker)  
235 representing a party will be as effective as if given by or delivered to that party.

236 **16. DISCLOSURES:**

237 (a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales  
238 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of commercial  
239 real estate for any commission earned by the broker under a brokerage agreement. The lien upon the owner's net

240 Buyer ( ) ( ) and Seller WJL ( ) acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

241 proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not attach to any  
242 interest in real property. This lien right cannot be waived before the commission is earned.

243 **(b) Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special  
244 assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such  
245 liens, if any, shall be paid as set forth in Paragraph 9(e).

246 **(c) Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in  
247 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that  
248 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon  
249 and radon testing may be obtained from your county public health unit.

250 **(d) Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by  
251 Section 553.996, Florida Statutes.

252 **17. RISK OF LOSS:**

253 **(a)** If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, Seller will bear  
254 the risk of loss and Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer.  
255 Alternatively, Buyer will have the option of purchasing the Property at the agreed upon purchase price and Seller  
256 will credit the deductible, if any and transfer to Buyer at closing any insurance proceeds, or Seller's claim to any  
257 insurance proceeds payable for the damage. Seller will cooperate with and assist Buyer in collecting any such  
258 proceeds. Seller shall not settle any insurance claim for damage caused by casualty without the consent of the  
259 Buyer.

260 **(b)** If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the  
261 right of eminent domain, or proceedings for such taking will be pending or threatened, Buyer may cancel this  
262 Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of  
263 purchasing what is left of the Property at the agreed upon purchase price and Seller will transfer to the Buyer at  
264 closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate with  
265 and assist Buyer in collecting any such award.

266 **18. ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise  is  
267 not assignable  is assignable. If this Contract may be assigned, Buyer shall deliver a copy of the assignment  
268 agreement to the Seller at least 5 days prior to Closing. The terms "Buyer," "Seller" and "Broker" may be singular or  
269 plural. This Contract is binding upon Buyer, Seller and their heirs, personal representatives, successors and assigns  
270 (if assignment is permitted).

271 **19. MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between Buyer and Seller.  
272 Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound.  
273 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated  
274 electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or  
275 typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract  
276 is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be  
277 construed under Florida law and will not be recorded in any public records.

278 **20. BROKERS:** Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to,  
279 a licensed real estate Broker other than:

280\* **(a) Seller's Broker:** NONE  
281 (Company Name) (Licensee)  
282\* \_\_\_\_\_  
283 (Address, Telephone, Fax, E-mail)

284\* who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated  
285\* by  Seller  Buyer  both parties pursuant to  a listing agreement  other (specify) \_\_\_\_\_

286\* \_\_\_\_\_

287\* Buyer ( ) ( ) and Seller Walt acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

288\* (b) Buyer's Broker: NONE  
289\* (Company Name) (Licensee)

290\* \_\_\_\_\_  
291\* (Address, Telephone, Fax, E-mail)

292\* who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated  
293\* by  Seller's Broker  Seller  Buyer  both parties pursuant to  an MLS offer of compensation  other (specify)  
294\* \_\_\_\_\_

295 (collectively referred to as "Broker"): in connection with any act relating to the Property, including but not limited to  
296 inquiries, introductions, consultations, and negotiations resulting in this transaction. Seller and Buyer agree to  
297 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including  
298 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is  
299 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to  
300 Paragraph 10, (3) any duty accepted by Broker at the request of Seller or Buyer, which is beyond the scope of  
301 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and  
302 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of Seller or Buyer.

303 21. OPTIONAL CLAUSES: (Check if any of the following clauses are applicable and are attached as an addendum to  
304 this Contract):

- |  |  |   |
|--|--|---|
| 305* <input type="checkbox"/> Arbitration                    | <input type="checkbox"/> Seller Warranty                   | <input type="checkbox"/> Existing Mortgage                |
| 306* <input type="checkbox"/> Section 1031 Exchange          | <input type="checkbox"/> Coastal Construction Control Line | <input type="checkbox"/> Buyer's Attorney Approval        |
| 307* <input type="checkbox"/> Property Inspection and Repair | <input type="checkbox"/> Flood Area Hazard Zone            | <input type="checkbox"/> Seller's Attorney Approval       |
| 308* <input type="checkbox"/> Seller Representations         | <input type="checkbox"/> Seller Financing                  | <input checked="" type="checkbox"/> Other <u>Addendum</u> |

309 22. ADDITIONAL TERMS:

310\* \_\_\_\_\_  
311\* \_\_\_\_\_  
312\* \_\_\_\_\_  
313\* \_\_\_\_\_  
314\* \_\_\_\_\_  
315\* \_\_\_\_\_  
316\* \_\_\_\_\_  
317\* \_\_\_\_\_  
318\* \_\_\_\_\_  
319\* \_\_\_\_\_  
320\* \_\_\_\_\_

321 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE  
322 ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL  
323 FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE  
324 PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE  
325 EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR  
326 REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER  
327 ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL  
328 REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER  
329 REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF  
330 THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS  
331 AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE  
332 AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

333\* Buyer (\_\_\_\_) (\_\_\_\_) and Seller [Signature] (\_\_\_\_) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

334 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other  
335 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its  
336 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized  
337 to do so.

338\* \_\_\_\_\_  
339

Date: \_\_\_\_\_

340\* \_\_\_\_\_  
341 (Typed or Printed Name of Buyer)

Tax ID No: \_\_\_\_\_

342\* Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

343\* \_\_\_\_\_  
344

Date: \_\_\_\_\_

345\* \_\_\_\_\_  
346 (Typed or Printed Name of Buyer)

Tax ID No: \_\_\_\_\_

347\* Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

348\* Buyer's Address for purpose of notice: \_\_\_\_\_

349\* Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

350\* \_\_\_\_\_  
351

Date: \_\_\_\_\_

352\* \_\_\_\_\_  
353 (Typed or Printed Name of Seller)

Tax ID No: \_\_\_\_\_

354\* Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

355\* \_\_\_\_\_  
356

Date: \_\_\_\_\_

357\* \_\_\_\_\_  
358 (Typed or Printed Name of Seller)

Tax ID No: \_\_\_\_\_

359\* Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

360\* Seller's Address for purpose of notice: \_\_\_\_\_

361\* Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

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362\* Buyer ( ) ( ) and Seller ( *h/m* ) acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

ADDENDUM TO COMMERCIAL CONTRACT BETWEEN THE TOWN OF  
LONGBOAT KEY AND W. HOWARD ROOKS AND CAVALIER INVESTMENTS I, INC.

THIS ADDENDUM TO COMMERCIAL CONTRACT FOR SALE AND PURCHASE is made and entered this \_\_\_ day of January, 2017 by and between THE TOWN OF LONGBOAT KEY (hereinafter "Buyer") and W. HOWARD ROOKS AND CAVALIER INVESTMENTS I, INC. (hereinafter collectively "Seller").

WITNESSETH:

WHEREAS, on this date the Buyer and Seller have entered into a COMMERCIAL CONTRACT (hereinafter "Contract") for the purchase and sale of that certain real property commonly described as 555 Bay Isles Parkway, Longboat Key, Florida 34228 (hereinafter the "Property"); and

WHEREAS, Buyer and Seller wish to amend certain terms of the Contract.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration exchanged between the parties, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. The Buyer's obligations under this Contract are contingent upon Buyer having received the necessary approval required under the Town Code of its governing board on terms satisfactory to Buyer, in its sole discretion, on or before January 23, 2017. In the event that Buyer has not received said approval on or before January 23, 2017, this contract shall automatically terminate and neither party shall have any further obligation or remedy under the terms of this Contract.
2. If Seller wishes to enter into a like-kind exchange under Section 1031 of the Internal Revenue Code ("Exchange"), the Buyer will cooperate with all reasonable respects to effectuate the Exchange, provided however that Buyer will incur no liability or cost related to the Exchange and that the Closing will not be contingent upon, extended, or delayed by the Exchange.
3. The Seller may continue to occupy the property after closing until May 31, 2017, at which time exclusive possession shall be given to the Buyer. Seller shall maintain comprehensive casualty and liability coverage during its possession and shall name Buyer as an additional insured under its policies of insurance. Buyer and Seller may agree to extend Seller's post-closing occupancy by their mutual written agreement, which agreement may be withheld in either's sole discretion.
4. Seller shall remove all items of personal property from the property on or before May 31, 2017. All fixtures shall remain.

Buyer Initials ( ) ( )

Seller Initials (WR) ( )

SIGNATURE PAGE TO COMMERCIAL CONTRACT BETWEEN THE TOWN OF  
LONGBOAT KEY AND W. HOWARD ROOKS AND CAVALIER INVESTMENTS I, INC.

"BUYER"

ATTEST:

TOWN OF LONGBOAT KEY

BY: \_\_\_\_\_  
TRISH GRANGER, Town Clerk

BY: \_\_\_\_\_  
TERRY A. GANS, Mayor

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
MAGGIE MOONEY-PORTALE, Town Attorney

"SELLER"

  
\_\_\_\_\_  
W. HOWARD ROOKS

CAVALIER INVESTMENTS I, INC.

BY:   
\_\_\_\_\_  
W. HOWARD ROOKS, President



**End of Agenda Item**