

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into as of the Effective Date (as herein defined) by and between Florida Public Utilities Co. (“**Seller**”), and the City of Lauderdale (“**Purchaser**”).

W I T N E S S E T H:

WHEREAS, Seller is the owner of a certain parcel of real property located in Broward County, Florida, as more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof ("**Seller's Parcel**");

WHEREAS, Purchaser is the owner of a certain parcel of real property located in Broward County, Florida, that is adjacent to Seller's Parcel, as more particularly described on Exhibit "B", attached hereto and by this reference made a part hereof ("**Purchaser's Parcel**");

WHEREAS, Purchaser installed certain improvements on a portion of Seller's Parcel, located communication, water and electrical lines on the Seller's Parcel outside of an easement, and has been utilizing a portion of Seller's Parcel for parking; and

WHEREAS, as part of an overall agreement with Purchaser whereby Purchaser has agreed to remove Purchaser's improvements from Seller's Parcel, cease parking on Seller's Parcel, regrade of the Seller's Parcel, relocate utilities, and install new fencing around Seller's Parcel, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, a portion of Seller's Parcel, as such portion is described on Exhibit "C", attached hereto and by this reference made a part hereof ("**Property**"), upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties hereto do hereby covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Effective Date. The “**Effective Date**” of this Agreement shall mean the date when the last of Seller and Purchaser have signed this Agreement, as evidenced by the date inserted beneath each party's signature on the signature page below.

3. Agreement to Sell and Purchase. Subject to the terms and conditions contained herein, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property, subject to all applicable building and zoning ordinances, laws, regulations and restrictions by governmental authorities, and all title and survey matters. The Seller and Purchaser shall enter into the Easement (as defined herein) providing for Seller's continued use of the Property for ingress and egress.

4. Due Diligence. Purchaser shall have ten (10) days after the Effective Date (“**Due Diligence Period**”) to, at Purchaser’s sole cost and expense, and at Purchaser’s sole discretion, (i) review and inspect the title for the Property, including, without limitation, obtaining a title commitment, (ii) obtain a current survey of the Property, and/or (iii) perform such other inspections of the Property as Purchaser may require (items (i), (ii), and (iii), collectively, “**Due Diligence**”). In the event Purchaser notifies Seller in writing at any time within the Due Diligence Period that Purchaser does not intend to proceed with the purchase of the Property and elects to terminate this Agreement, then this Agreement shall be deemed of no further force and effect, except with respect to liabilities or obligations which expressly survive the Closing or termination hereof. If Purchaser fails to timely notify Seller of its election to terminate this Agreement on or before the end of the Due Diligence Period, then Purchaser shall be conclusively deemed to have elected to proceed with the transaction contemplated herein, Purchaser shall be obligated to complete Purchaser’s Work, and the Purchaser shall be obligated to close this transaction subject to all other terms and conditions of this Agreement. Seller shall have no obligation to cure any title or survey defects, address any issues or deficiencies with the Property or otherwise take any action or incur any liability with respect to Purchaser’s Due Diligence or the discovery of any matter relative to the Property.

5. Purchaser’s Agreement to Perform Certain Work. In lieu of paying a monetary sum to Seller, and in consideration for the sale of the Property, Purchaser has agreed to perform the work and items more particularly described or defined on the bids, sketches and/or proposals set forth in composite Exhibit “D” attached hereto and made a part hereof (collectively, “**Purchaser’s Work**”), all at Purchaser’s sole cost and expense. Purchaser’s Work shall be completed before Closing and such completion shall be a condition to Seller’s obligation to proceed to Closing.

All Purchaser’s Work shall be performed under good construction practices, in compliance with all laws, codes, statutes, ordinances, rules, regulations and orders, in a good and workmanlike and lien-free manner, and in accordance with sound professional standards and the terms of this Agreement. Purchaser shall pay all fees, costs and expenses in connection with Purchaser’s Work. Upon request, Purchaser shall provide updates to Seller with regard to the status of Purchaser’s Work. Purchaser shall send written notice to Seller that the Purchaser’s Work is complete, together with a certification from Purchaser’s general contractor that the Purchaser’s Work has been completed in accordance with the specifications and requirements set forth in this Agreement (“Completion Notice”). Seller shall have a period of ten (10) following the receipt of the Completion Notice (the “Work Inspection Period”) to inspect and confirm the Purchaser’s Work. If Seller reasonably determines that Purchaser’s Work (or any portion thereof) was not completed as required herein, Seller shall deliver written notice of any claimed defects to Purchaser prior to the expiration of the Work Inspection Period. In the event Seller delivers notice of such defects, Purchaser shall have twenty (20) days after the date of such notice to correct any claimed deficiencies with the Purchaser’s Work. The “**Purchaser’s Work Completion Date**” shall be the later of (i) date the Purchaser’s Work has been fully completed (with the issuance of the certification from Purchaser’s general contractor) in accordance with the terms herein, and the Purchaser’s

Work has been reasonably accepted by Seller as being complete (including any work needed to resolve any issues identified during the Work Inspection Period), or (ii) the first business day immediately following the expiration of the Work Inspection Period. If the Purchaser's Work Completion Date has not occurred by the date that is one hundred (100) days after the Effective Date, either party may terminate this Agreement upon written notice to the other party, whereupon this Agreement shall terminate and be deemed of no further force and effect, except with respect to liabilities or obligations which expressly survive the Closing or termination hereof. Upon any termination of this Agreement, Purchaser shall immediately remove all property from the Seller's Parcel, remove all lines, pipes, equipment, facilities and all other items from Seller's Parcel, and cease all use of Seller's Parcel.

During the term of this Agreement, Purchaser and its authorized agents, representatives and contractors shall have the right, upon at least twenty-four (24) hours prior written notice to Seller, to enter upon the Property to perform the Purchaser's Work. In the performance of the Purchaser's Work, the business and Seller's use of business operations on the Seller's Parcel shall not be disturbed or impacted. Further, in the event the Seller's Parcel is disturbed or damaged as a result of the Purchaser's Work, Purchaser shall restore the Seller's Parcel as nearly as possible to the condition that existed immediately prior to the Purchaser's Work. Purchaser hereby agrees to indemnify, defend and hold harmless Seller from and against all losses, claims, damages and liabilities (including, without limitation, reasonable attorney's fees) resulting from the Purchaser's Work or entry onto the Property, or Seller's Parcel by Purchaser or its employees, contractors, agents or others acting at the direction of Purchaser. This paragraph shall survive the termination or expiration of this Agreement and Closing.

6. Time and Place of Closing. The closing of the purchase of the Property ("**Closing**") shall take place by mail on the date which is fifteen (15) days after the Purchaser's Work Completion Date ("**Closing Date**"), unless the parties otherwise mutually agree in writing to a different Closing Date.

7. Closing Deliveries. The following items shall be delivered by the applicable party at Closing:

(a) Special Warranty Deed. Seller shall deliver to Purchaser a duly executed and acknowledged special warranty deed in substantially the form of **Exhibit E** hereto ("**Deed**").

(b) Easement. At closing Purchaser and Seller shall enter into the Easement substantially the form of **Exhibit F** hereto ("**Easement**"), providing for Seller's continued use of the Property.

(c) Other Documents. Seller and Purchaser shall execute and deliver such other documents as may be reasonably required to consummate the transaction as contemplated hereby.

8. Closing Costs. Purchaser shall pay all costs, fees and expenses incurred in connection with the Due Diligence, Closing, and Purchaser's Work. Without limiting the generality of the foregoing, Purchaser shall pay the cost of recording the Deed, any title costs, premiums or charges, all taxes assessed for the conveyance of the Property (including, without limitation, real property transfer taxes, documentary stamp taxes, recording taxes and deed taxes). The Purchaser and the Seller shall each pay their own attorneys' fees.

9. Default.

(a) Purchaser Default. If Purchaser fails to complete the purchase of the Property for any reason other than (i) termination of this Agreement as set forth herein; or (ii) Seller's default within the time required by this Agreement, Purchaser fails to complete Purchaser's Work as herein required, or Purchaser defaults in any other obligation of Purchaser before Closing and fails to cure within the time period provided below, then Seller shall have the right to terminate this Agreement and/or pursue any available remedies at law or in equity.

(b) Default by Seller. If Seller defaults in its obligations to close this transaction as provided in this Agreement for any reason other than Purchaser's default or Seller defaults in any other material obligation of Seller before Closing and fails to cure within the time period provided below, Purchaser shall be entitled to enforce specific performance of this Agreement, as Purchaser's sole and exclusive remedy.

(c) Cure Period. If Purchaser or Seller shall be in default of its obligations under this Agreement, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have fifteen (15) days in which to cure such default before an official default under this Agreement shall exist.

(d) Defaults After Closing. Notwithstanding the foregoing terms of Sections (a) and (b) above, if either party shall fail to perform any of its obligations under this Agreement which are to be performed after Closing, then the other party shall have all remedies available at law or in equity.

(e) No Limitation on Indemnity. The foregoing remedies set forth above shall in no way limit either parties obligations with respect to any indemnity requirements set forth in this Agreement.

10. Disclaimer of Representations and Warranties. PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY SHALL BE TRANSFERRED TO PURCHASER "AS IS, WHERE IS, WITH ALL FAULTS" AND THAT PURCHASER HAS RELIED SOLELY UPON ITS OWN INVESTIGATIONS AND INSPECTIONS OF THE PROPERTY. SELLER HAS NOT MADE, DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO: (A)

THE QUALITY OR CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON; (C) COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY; (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, AND (E) THE PRESENCE OR ABSENCE ON, IN OR UNDER THE PROPERTY OF "HAZARDOUS SUBSTANCES," "HAZARDOUS MATERIALS," OR "HAZARDOUS WASTE," AS SUCH TERMS ARE DEFINED FROM TIME TO TIME BY THE LAWS OF THE STATE OF FLORIDA AND ANY REGULATIONS ADOPTED PURSUANT THERETO, OR THE LAWS OF THE UNITED STATES OF AMERICA AND ANY REGULATIONS ADOPTED PURSUANT THERETO. Purchaser further represents and warrants: (i) that it is experienced in the acquisition of real estate and the conduct of due diligence related to such acquisition, (ii) that it has conducted or will conduct due diligence and inspections of the Property which are sufficient to make an informed decision regarding acquisition, (iii) except as expressly set forth in this Agreement, neither Seller nor any representative, employee or agent of Seller has made any representation, warranty or covenant whatsoever regarding the Property. The terms, provisions and obligations contained in this Section shall survive the Closing or earlier termination hereof.

11. Waiver. The failure or delay by either party to exercise or enforce any of the rights, remedies and obligations provided for in this Agreement shall not be deemed or construed to be a waiver of any such right, remedy, obligation or default or to affect the right of a party to thereafter exercise or enforce each and every right, remedy and obligation.

12. Governing Law. Notwithstanding the place where the parties execute this Agreement, the internal laws of the State where the Property is located shall govern the construction of the terms and the application of the provisions of this Agreement.

13. Entire Agreement; Headings. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph.

14. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and permitted assigns.

15. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or

circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

16. Amendments. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by all of the parties.

17. Time. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or recognized holiday, such time for performance shall be extended to the next business day. Time shall be computed based on calendar days, unless specifically provided otherwise.

18. Notice. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, or three (3) business days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) business day after depositing with Federal Express or other overnight delivery service, and addressed as follows:

Seller:

Purchaser:

Each party may change the party's address by giving written notice to the other party.

19. Further Assurances. Each of the parties hereto shall cooperate with any other party, and shall execute and deliver to such other party such instruments and documents, and take such other and further action, as may be reasonably requested from time to time, by any party hereto, as necessary or desirable to carry out, evidence, and confirm the transactions being consummated pursuant to this Agreement, and to otherwise fulfill the intended purposes of this Agreement.

20. Attorneys' Fees. Should either Purchaser or Seller employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to protect any right, title, or interest created or evidenced hereby, the non-prevailing party in any action pursued in courts of competent jurisdiction shall pay to the prevailing party all costs, damages, and expenses, including reasonable attorneys' and legal fees, expended or incurred by the prevailing party. The terms, provisions and obligations contained in this Section shall survive the Closing or earlier termination hereof.

21. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. It shall not be necessary when making proof of this Agreement to produce counterparts with original signatures, it being agreed that photocopies of signatures or signatures received by facsimile transmission shall have the same effect as original signatures.

22. Recording. Purchaser shall not have the right to record this Agreement or any memorandum of this Agreement in the public records.

23. Force Majeure. “Force Majeure” shall mean acts of God, earthquakes, blizzards, tornados, hurricanes and tropical storms, inclement weather in excess of historical weather patterns for the period in question, fire, flood, malicious mischief, insurrection, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, terrorist attacks, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction or inability to obtain materials or supplies after the exercise of reasonable efforts, delay in granting any required consent by the party entitled to so grant within the time frame required herein, delays by governmental authorities, and any other matter beyond the reasonable control of the party obligated to perform. Unavailability of funds shall not be considered Force Majeure.

24. Radon. 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 your county health department.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement which shall be effective as of the date signed by the last party hereto.

Purchaser:

By: _____

Print Name: _____

Title: _____

Date: _____

Seller:

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

Seller's Parcel

EXHIBIT B

Purchaser's Parcel

EXHIBIT C

Property

EXHIBIT D

Purchaser's Work

*Proposals/Bids to be attached
Below for purposes of discussion*

- Remove all vehicles, equipment and personal property from the Seller's Parcel (excepting the gazebo which may remain)
- Utility Work & Relocation - fiber optic line, irrigation lines, electrical lines, making sure all connections for utilities/irrigation are properly done, water service restoration/work
- Fence Work - install new fencing and gate (east, west and south boundary)
- Regrading/Asphalt - regrade the transition between the east and west portion of Seller's Parcel to provide for a smooth transition sufficient for large trucks and vehicles, install asphalt on west side of Seller's Parcel to provide for turning radius and use of west portion
- Tree Work – removal of identified trees
- Other Miscellaneous Work

EXHIBIT E

Deed

Exhibit F

Easement