RESOLUTION NO. 13-10-83


WHEREAS, on October 7, 2013, the Richard C. Webster, Jr. Trust (“Webster Trust”) approved and executed the Purchase and Sale Agreement with Islamorada, Village of Islands (“Village”) for the sale of the property consisting of Lots 1, 2 and 2A Block A, White Marlin Beach, Islamorada, Florida 33036 (“Property”) and located at approximate Mile Marker 74.3, Lower Matecumbe Key, a copy of which Purchase and Sale Agreement is attached hereto as Exhibit “A”; and

WHEREAS, the acquisition of the Property serves a public purpose and is needed in connection with the Village’s wastewater system; and

WHEREAS, the Village intends to use the Property as a wastewater collection and vacuum pump station and facility, and any and all other ancillary and proper municipal purposes; and

WHEREAS, the Village Council finds that the approval of the Purchase and Sale Agreement and acquisition of the Property serves a public purpose and is in the best interests of the Village.
NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

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

Section 2. Approval and Execution of Purchase and Sale Agreement. The Purchase and Sale Agreement for acquisition of the Property between the Village and Webster Trust, a copy of which is attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved. The Village Manager is authorized to execute the Purchase and Sale Agreement, and any amendments or addendums thereto.

Section 3. Authorization of Village Officials; Execution of Documents. The Village Manager and/or his designee and the Village Attorney are authorized to take any action necessary to implement the terms and conditions of the Purchase and Sale Agreement, and to prepare, execute and submit any documents necessary to effectuate the acquisition and closing of the Property.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Purchase and Sale Agreement and acquire and close on the Property.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.
Motion to adopt by Councilman Dave Purdo, second by Vice Mayor Deb Gillis.

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA:

Mayor Ted Blackburn  YES
Vice Mayor Deb Gillis  YES
Councilman Mike Forster  YES
Councilman Ken Philipson  YES
Councilman Dave Purdo  YES

PASSED AND ADOPTED this 23rd day of October, 2013.

TED BLACKBURN, MAYOR

ATTEST:

VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, ONLY:

VILLAGE ATTORNEY
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of the 30th day of October, 2013, by and between THE RICHARD C. WEBSTER, JR. TRUST DATED MAY 21, 1984 (hereinafter referred to as “Seller”) and ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation (hereinafter referred to as “Purchaser”).

WHEREAS, Seller is the owner of vacant land located at approximate Mile Marker 74.3 north of US Highway 1 (Overseas Highway) and west of White Marlin Boulevard in Lower Matecumbe Key, Islamorada, Monroe County, Florida, as legally and specifically described on Exhibit "A" attached hereto and made a part hereof (the “Property”); and

WHEREAS, Purchaser desires to purchase the Property for the purpose of constructing and operating a vacuum pump station on the Property, and for related wastewater facilities and uses, in connection with Purchaser’s centralized wastewater system, and the Seller desires to sell the Property, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

SECTION 1: DEFINITIONS

For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

1.1 **Business Day.** Monday through Friday excluding bank holidays on which national banking associations are authorized to be closed.

1.2 **Closing.** The Closing and consummation of the purchase and sale of the Property as contemplated by this Agreement.

1.3 **Closing Date (or Date of Closing).** The date upon which Closing occurs.

1.4 **Condemnation Proceedings.** Any proceeding or threatened proceeding in condemnation, eminent domain or written request in lieu thereof.

1.5 **Deed.** Trustee’s special warranty deed of conveyance of the Property with special warranties from Seller to Purchaser in a form mutually agreeable to the parties.
1.6 **Earnest Money.** The funds to be paid by Purchaser to Escrow Agent pursuant to Section 3 hereof, plus any interest earned thereon.

1.7 **Effective Date.** The date when the last one of Seller or Purchaser has signed and initialed all changes to this Agreement.

1.8 **Environmental Report.** The Phase I Environmental Site Assessment Report prepared by Arcadis and dated December 27, 2012, together with any updates to such report, and any other environmental assessment audit(s) to be conducted by Purchaser’s environmental engineer, at Purchaser’s expense, with respect to the Property, certified and delivered to Purchaser.

1.9 **Environmental Requirement.** All laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any federal, state or local governmental authority and relating to or addressing the protection of the environment or human health.

1.10 **Escrow Agent.** Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

1.11 **Evidence of Authority.** Evidence of authority for the execution and performance of this Agreement by Seller including, without limitation, necessary resolutions, authorizations, consents, orders or directions.

1.12 **Governmental Authority.** Any federal, state, county, municipal or other entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.

1.13 **Hazardous Substances.** Any material or substance that, whether by its nature or use, is now or hereafter defined as hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product.

1.14 **Improvements.** Any and all structures, fixtures, including, without limitation, all utility systems and drainage facilities, if any, and other improvements and facilities located on the Land.

1.15 **Intangible Property.** Any and all intangible property owned by Seller and used in connection with or relating to the ownership, use, development, operation, management, occupancy or maintenance of the Land including, but not limited to, the Permits and all public and private contract rights and development or usage rights of Seller with respect to the Land.
1.16 **Land.** The unimproved real property consisting of approximately 15,800 square feet as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference and appurtenant easements hereto, together with all of Seller’s right, title and interest in and to all easements, rights of way, strips and gores of land, tenements, hereditaments and appurtenances, reversions, remainders, privileges, licenses and other rights and benefits belonging to, running with or in any way relating thereto; together with all right, title and interest of Seller (if any) in and to any land lying in the bed of any street, road or highway, open or proposed, in front of, abutting or adjoining the Land.

1.17 **Legal Requirement.** All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities and quasi-governmental authorities, officials, agencies, and officers, ordinary or extraordinary, which now may be applicable to the Property or any use, operation or condition thereof.

1.18 **Monetary Lien.** Any mortgage, deed of trust, security deed, lien, monetary judgment, security interest, past due tax or assessment or other similar encumbrance of a monetary nature against the Property or any portion of the Property.

1.19 **Owner’s Title Policy.** An Owner’s marketability policy of title insurance on the most current ALTA Form for the Property in the amount of the Purchase Price, subject only to the Permitted Exceptions, and containing such additional endorsements permitted under Florida title insurance regulations as reasonably requested by Purchaser.

1.20 **Permits.** All consents, notices of completion, environmental and utility permits and approvals authorizations, variances, waivers, licenses, permits, certificates and approvals from any Governmental Authority or quasi-governmental authority issued or granted with respect to the Property now or prior to Closing.

1.21 **Permitted Exceptions.** Those matters identified or referred to in Section 5.3 and such other title exceptions as may hereafter be approved in writing (or deemed to have been approved by Purchaser) subject to and in accordance with the terms and provisions of Section 5 herein.

1.22 **Person.** Any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

1.23 **Property.** The following property:

1.23.1 The Land;
1.23.2 The Improvements; and

1.23.3 The Intangible Property and all interests of Seller therein.


1.26 Seller's Records. All books, records and documents maintained by Seller or compiled by or at the request of Seller and in the possession or control of Seller specifically relating to the ownership, use, development, operation, management, occupancy or maintenance of the Property.

1.27 Submission Documents. The diligence items to be delivered to Purchaser pursuant to Section 9 hereto.

1.28 Survey. A survey of the Property prepared by CPH Engineers for Purchaser, together with any updates to said Survey, which shall be satisfactory in all respects to Purchaser and prepared by a licensed surveyor in the State of Florida, certified as meeting the minimum standards for survey in the State of Florida. The Survey shall (i) show the square footage and acreage of the Land, (ii) show the location of all the improvements, utility and other lines and easements, either visible or recorded, and the recording references of all the recorded easements shown on the Title Commitment, (iii) show the elevation and flood zone information, and (iv) contain such other items as may be reasonably required by Purchaser.

1.29 Termination Date. The date which is one hundred and eighty (180) days after the Effective Date, by which date Purchaser must notify Seller of its election to terminate this Agreement after its due diligence and inspections of the Property as set forth in Section 9 of this Agreement, or by which date Purchaser shall have obtained all Governmental Approvals as set forth in Section 10 of this Agreement.

1.30 Title Commitment. The commitment for title insurance to be obtained by Purchaser pursuant to Section 5 below.

1.31 Title Company. Chicago Title Insurance Company or such other nationally recognized title insurance company licensed to write title insurance in the State of Florida which is approved by Purchaser.
SECTION 2: PURCHASE AND SALE

Purchaser shall purchase the Property from Seller, and Seller shall sell, convey, transfer and assign the Property to Purchaser, subject to and in accordance with the terms and conditions of this Agreement.

SECTION 3: EARNEST MONEY

Within five (5) Business Days after the Effective Date, Purchaser shall deposit in escrow with the Escrow Agent $5,000.00 as Earnest Money, to be delivered to Seller at Closing and applied as a credit against the Purchase Price (as defined below) at Closing. Escrow Agent shall hold the Earnest Money in a federally insured noninterest-bearing account and disburse the Earnest Money in accordance with the terms of this Agreement. Purchaser and Seller agree to sign all forms and reports reasonably required in connection with the holding and investing by Escrow Agent of the Earnest Money.

SECTION 4: PURCHASE PRICE

The purchase price for the Property shall be One Hundred Thousand and No/100 Dollars ($100,000.00) (herein referred to as the “Purchase Price”). Purchaser shall deliver the entire Purchase Price, less the amount of the Earnest Money and subject to adjustments and prorations as herein provided, due and payable to Seller by certified bank check without intervening endorsements or in immediately available funds, by wire transfer, at Closing.

SECTION 5: TITLE/SURVEY

Title to the Property shall be good and marketable and insurable fee simple title in an amount of the Purchase Price at no more than the Title Company’s ordinary or promulgated rates for the Owner’s Title Policy. Seller shall deliver such affidavits and agreements as may be reasonably required by the Title Company in order to issue the Owner’s Title Policy in accordance with this Agreement.

5.1 Examination of Title. Within five (5) Business Days of the Effective Date, Seller shall deliver to Purchaser’s attorney copies (if any) of Seller's existing title insurance policy covering the Property and all other title documents in Seller's actual possession and/or control. Purchaser may obtain, at Purchaser's expense, an ALTA marketability title insurance commitment (the "Title Commitment") issued by the Title Company covering the Land pursuant to which the Title Company agrees to issue the Owner’s Title Policy to Purchaser. The cost of the Title Commitment and the Owner's Title Policy shall be paid by Purchaser.

5.2 Survey. At Purchaser's option, Purchaser may obtain an update of the existing Survey or order a new survey. The cost of the survey shall be paid by Purchaser.

5.3 Permitted Exceptions. The sale of the Property shall be subject to the following:
5.3.1. The lien of all ad valorem real estate taxes for the fiscal year in which Closing occurs, subject to proration as herein provided;

5.3.2. Any items shown on the Title Commitment and approved by Purchaser in accordance with Section 5.4 below;

5.3.3. All laws, ordinances, and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations; and

5.3.4. All matters shown on the Survey of the Property provided that the foregoing exception shall not be deemed to limit the rights and obligations of the Purchaser and Seller set forth in Sections 5.4 and 5.6 below.

5.3.5. All matters, whether or not of record, that arise out of the actions of Purchaser or its agents, representatives or contractors.

5.3.6. All other matters affecting title to the Property as to which Purchaser has actual knowledge or is deemed to know as of the Termination Date, except for those matters as to which, in accordance with Section 5.4: (i) Purchaser makes a written objection on or before the Termination Date; and (ii) Seller elects to use reasonable efforts to cure.

The above items described in this Section 5.3 are herein collectively referred to as the “Permitted Exceptions”.

5.4 Objections to Title/Survey. Purchaser shall be entitled to object, in its reasonable discretion, to any exceptions to title disclosed in the Title Commitment and/or matters shown on the Survey until the Termination Date, by written notice to Seller of any objections to the Title Commitment and the Survey. In the event that Purchaser shall so object to the Title Commitment and/or the Survey, Seller shall have fifteen (15) Business Days after receipt of such written notice to cure Purchaser’s objections to Purchaser’s reasonable satisfaction. In the event Seller is unwilling or unable to so cure such objections, Purchaser may (i) waive such objections, (ii) give Seller additional time in writing to cure such objections (in which event, the Closing shall be delayed for an equivalent period of time) or (iii) terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be immediately returned to Purchaser and neither Purchaser nor Seller shall have any further obligations hereunder, except obligations that expressly survive the termination of this Agreement. If Purchaser elects (i) herein, any uncured objection to title shall be deemed a Permitted Exception.
5.5 **Cure of Monetary Liens.** Notwithstanding Section 5.4 above, if the Title Commitment reveals the existence of a Monetary Lien, then Seller shall pay any amount due in satisfaction of each such Monetary Lien as to the Property only (or, subject to Purchaser’s reasonable approval, otherwise cause the same to be removed as an exception in the Title Commitment) which amount, at the option of Seller, may be paid from the proceeds of the Purchase Price at Closing. If one or more Monetary Liens have not been satisfied before the Closing Date, then Purchaser and Escrow Agent are hereby authorized to satisfy such Monetary Liens from the proceeds of the Purchase Price at Closing.

5.6 **Purchaser’s Right to Terminate.** If any title matter other than a matter disclosed in the Title Commitment or the Survey arises or becomes known to Purchaser subsequent to the date of the Title Commitment (a “New Title Matter”) and such New Title Matter (a) is a Monetary Lien or (b) was created or consented to by Seller, then Seller shall cure the New Title Matter, at Seller’s expense, on or before Closing. If the New Title Matter is not a Monetary Lien or was not created or consented to by Seller, then Seller shall have until the earlier of (i) five (5) Business Days of Seller’s receipt of written notice thereof or (ii) the Closing Date, within which to cure the same, and if such New Title Matter is not cured within such period, then Purchaser may, at its sole option, exercised by written notice to Seller within five (5) Business Days following the expiration of the five (5) Business Day cure period, either (i) terminate this Agreement and receive a refund of the Earnest Money or (ii) elect to close subject to such New Title Matter. In the event of termination, neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

5.7 **Extension of Closing Date.** The Closing Date shall be automatically extended to allow all time periods specified in this Section 5 to expire.

**SECTION 6: SELLER’S REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Purchaser and covenants and agrees with Purchaser, on and as of the date hereof, to be certified to Purchaser on or as of the Closing, as follows:

6.1 **Title.** Seller is the fee simple owner of the Property free and clear of all encumbrances except for the Permitted Exceptions (without modification arising with regard to Purchaser's rejection or disapproval of any of the items pursuant to this Agreement). To Seller’s actual knowledge, there are no parties with a right to ownership, possession or use of the Property, including tenants, lessees, leaseholders, other ownership or beneficial interests, or other occupants of the Property, and prior to Closing any such lease, tenancy or other form of interest or occupancy shall be terminated and the Property shall be free of such as it is free of all other encumbrances except for the Permitted Exceptions.

6.2 **Organization, Power and Authority.** Seller is duly formed, validly existing and in good standing under the laws of the State of Florida. Seller, to the extent required by law, has all necessary power and authority to execute and deliver this Agreement and perform all its
obligations hereunder. To Seller’s actual knowledge, the execution, delivery and performance of this Agreement by Seller (i) has been duly and validly authorized by all necessary action on the part of Seller, and (ii) does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement, trust or other instrument by which Seller or the Property is bound or to which Seller is a party.

6.3 **No Conflict with Laws.** The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations hereunder will not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court or governmental instrumentality.

6.4 **No Bankruptcy.** To Seller’s actual knowledge, Seller is not a party to any voluntary or involuntary proceedings under any applicable laws relating to the insolvency, bankruptcy, moratorium or other laws affecting creditors’ rights to the extent that such laws may be applicable to Seller or the Property.

6.5 **No Litigation.** To Seller’s actual knowledge, Seller is not a party to or affected by any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which would or could have an adverse effect upon the Property or upon the ability of Seller to fulfill its obligations under this Agreement. To Seller’s actual knowledge, there are no lawsuits, administrative actions, governmental investigations or similar proceedings pending or threatened against or adversely affecting the Property or any portion thereof or any interest therein.

6.6 **Permits.** All Permits and approvals required for the lawful operation and current use of the Property as vacant land have been issued and paid for and are in full force and effect.

6.7 **Legal Requirements.** The Property is in compliance with the zoning, subdivision or building codes and all other Legal Requirements.

6.8 **[INTENTIONALLY OMITTED]**

6.9 **No Violations.** To Seller’s actual knowledge, there are no presently outstanding and uncured notices of any violations of any Legal Requirements and no Person capable of issuing such notice of violation has threatened to issue a notice of violations.

6.10 **Tax Parcels.** If the Land consists of more than one parcel assessed as a separate tax lot or tax parcel, to Seller’s actual knowledge, each of the parcels constituting the Land has been validly, finally and unappealably subdivided from all other property for conveyance purposes. To Seller’s actual knowledge, there are no pending contests or appeals with respect to (i) the assessed value of the Property for ad valorem taxation purposes or (ii) the amount of any ad valorem taxes levied against or paid with respect to the Property.
6.11 **Utilities.** Any and all public utilities (including, without limitation, sanitary sewer, storm sewer, electricity, gas, water and telephone) which have been installed in connection with the Property or any part thereof, if any, are installed and operating and have been accepted by such utility company or governmental authority. All installation and connection fees, "tie-in" charges, impact fees, tap-on, permit and other fees with respect to the utilities or facilities now serving the Property, including, but not limited, to water, sewer, electric, telephone and gas, have been fully paid, except for monthly utility service bills which will be paid prior to delinquency. Seller has not received any complaint or claim with respect to storm water flow from any owner of adjacent property or otherwise. All such public utilities either enter the Land through adjoining public streets or, if they pass through adjoining private land, do so in accordance with valid and recorded public easements or private easements which inure to the benefit of Purchaser.

6.12 **Condemnation.** To Seller's actual knowledge, there are no proceedings pending or threatened against or affecting the Property or any portion thereof or interest therein in the nature of or in lieu of condemnation or eminent domain proceeding.

6.13 **Contractors.** All contractors, subcontractors, architects, materialmen, laborers, suppliers and other parties who have performed or furnished work, labor, materials, equipment or supplies or have labored on the Property to make improvements thereon or otherwise to improve the Property are paid in full, and, to Seller's actual knowledge, there are no unpaid claims related to work that has been completed or is in progress.

6.14 **No Hazardous Substances on Property.** Seller has not caused Hazardous Substances to be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape on, in, or under the Property in a manner which violates any Legal Requirements regulating such substances and, to the best of Seller's actual knowledge, no other Person has caused Hazardous Substances to be discharged, disbursed, stored, treated, generated or allowed to escape on, in or under the Property. No asbestos or asbestos containing materials have been installed, used, incorporated into, or disposed of on the Property by Seller, or, to the best of Seller's knowledge, by any other Person. No PCBs have been located on or in the Property, whether in electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or otherwise, by Seller or, to the best of Seller's knowledge, by any other Person. No underground storage tanks are currently located on, at or under the Property. To best of Seller's knowledge, no investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Property. The Property has not previously been used as a landfill, a cemetery, or a dump for garbage or refuse by Seller or any of its Affiliates or, to the best of Seller's knowledge, by any other Person. The representations contained in this subsection 6.16 shall survive the Closing hereunder and any termination of this Agreement.

6.15 **No Rights to Purchase.** Except for this Agreement, Seller has not entered into, and has no actual knowledge of any agreement, commitment, option, right of first refusal or any
other agreement, whether oral or written, with respect to the purchase, assignment or transfer of all or any portion of the Property which is currently in effect.

6.16 **As Is, Where Is.** Purchaser shall purchase the Property on the Closing Date in its “As Is, Where Is AND WITH ALL FAULTS” condition, without any representation or warranty whatsoever, as aforesaid, except as set forth in this Section 6.

6.17 **Parties in Possession.** Other than Seller, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, or occupants. Seller agrees to clean up and remove all abandoned personal property, refuse, garbage, junk, rubbish, trash and debris from the Property to the reasonable satisfaction of the Purchaser prior to the Closing Date.

6.18 ** Entrances and Exits.** To Seller’s actual knowledge, all current curb cuts, entrances and exits to the Property are lawful and permitted.

6.19 **Access.** To Seller’s actual knowledge, there is permanent vehicular and pedestrian egress from and egress to the Land over public roads or private easements that abut the Land.

6.20 **No Commitments to Dedicate Property.** No commitments or agreements have been or will be made to any Governmental Authority, utility company, or any other organization, group or individual, relating to the Land which would impose an obligation upon Purchaser to make any contributions or dedications of money or land to construct, install or maintain any improvements of a public or private nature on or off the Land, or otherwise impose liability on Purchaser.

6.21 **Adverse Conditions.** Seller has no actual knowledge of any material adverse fact relating to the physical condition of the Land which has not been specifically disclosed in writing to Purchaser, including, without limitation, adverse soil conditions.

6.22 **Unrecorded Agreements Restricting Use of the Property.** Seller has not, nor to Seller's actual knowledge has any predecessor in title, executed or caused to be executed any document with or for the benefit of any Governmental Authority restricting the development, use or occupancy of the Property that is not recorded in the land records of the county in which the Land is located or has not been specifically disclosed in writing to Purchaser.

6.23 **Disclosure.** No statement, warranty or representations by the Seller contains an untrue statement of material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which such statements are made not misleading.

6.24 **Survival.** The foregoing representations, warranties, covenants and agreements of Seller in this Section 6 shall survive the Closing or termination of this Agreement.
6.25 **Actual Knowledge.** As used in this Agreement or in any Exhibit attached hereto, any reference to actual knowledge with respect to Seller shall mean the actual knowledge after reasonable due inquiry and investigation of Gordon M. Stevenson, Jr. and Cleo L. Webster.

**SECTION 7: PURCHASER’S REPRESENTATIONS AND WARRANTIES**

Purchaser represents and warrants to Seller that the following facts and conditions exist and are true as of the date hereof and shall exist and be true as of the date of the Closing.

7.1 Purchaser is validly formed municipal corporation in good standing organized and existing under the laws of the State of Florida and has all requisite power and authority to purchase the Property and to enter into and perform its obligations hereunder.

7.2 This Agreement has been duly authorized, executed and delivered by Purchaser and all consents required under Purchaser’s organizational documents or by law have been obtained. All documents that are to be executed by Purchaser on the Closing Date have been, or on the Closing Date will be, duly executed, authorized and delivered by Purchaser. This Agreement and all such documents are, and on the Closing Date will be, legal, valid and binding obligations of Purchaser, enforceable in accordance with their terms and do not, and, at the time of the Closing Date will not, violate any provisions of any agreement or judicial or administrative order to which Purchaser is a party or is subject.

7.3 There are no actions, suits or proceedings (including arbitration proceedings) pending or, to Purchaser’s actual knowledge, threatened against Purchaser which could have a material adverse effect on Purchaser’s ability to perform its obligations hereunder.

**SECTION 8: SELLER’S COVENANTS**

From and after the date hereof, through and including the Closing Date, Seller agrees as follows (each of which covenants is a condition to Purchaser’s obligations to close under this Agreement and must be satisfied by Seller or waived by Purchaser in writing prior to Closing):

8.1 **Inspection of Property.** Subject to Section 9.2 hereof, Seller will allow Purchaser and its agents and contractors to enter upon the Property for any purpose reasonably related to Purchaser’s proposed purchase, use and operation of the Property.

8.2 **Management and Operation Prior to Closing.** Between the date of this Agreement and the Closing Date, Seller shall maintain the Property, committing or permitting no waste thereto, such that at the time of the Closing, the Property shall be in substantially the same physical condition as on the date of Seller’s execution of this Agreement.

8.3 **Notices.** Seller shall, promptly upon Seller’s obtaining knowledge thereof, provide Purchaser with a written notice of any event which has a material adverse effect on the physical condition of the Property.
8.4 **Notices of Violation.** Promptly after Seller obtains actual knowledge or upon receipt of written notice thereof, Seller has provided or shall provide Purchaser with written notice of any violation of any Legal Requirements affecting the Property, any service of process relating to the Property or which affects Seller's ability to perform its obligations under this Agreement or any other correspondence or notice received by Seller which has or has the potential to have an adverse effect on the Property.

8.5 **Notification of Change of Circumstances.** Seller shall provide Purchaser with written notice of any transaction or occurrence prior to Closing which could make any of the warranties, representations, covenants and agreements of Seller under this Agreement not true with the same force and effect, as if made on or as of the date hereof.

8.6 **Seller's Cooperation.** If requested by Purchaser, Seller will promptly execute all petitions, land use and zoning applications, easements, plats, site plans, waivers of plats, road vacation or abandonment applications, and other documents which Purchaser may reasonably request and otherwise reasonably cooperate with Purchaser in connection with Purchaser obtaining any development or land use and zoning approval, permit, plat, waiver of plat, site plan approval, easement, right-of-way dedication or abandonment, right-of-way deed, variance or other administrative authorization required for Purchaser's proposed development of the Property for a wastewater vacuum pump station and related wastewater facilities and uses.

8.7 **Survival.** Any claim for breach of the covenants contained in this Agreement including, without limitation, in this Section 8 shall survive the Closing for a period of six (6) months.

SECTION 9: PURCHASER'S DUE DILIGENCE AND INSPECTION OF PROPERTY

9.1 **Documents to be Delivered by Seller.** Commencing five (5) days after the Effective Date, Seller shall provide to Purchaser copies of any and all documents, records, reports, studies, data and information relating to the Property in Seller's control or possession, including, without limitation, any existing tests, surveys, title policies, leases, occupancy agreements, licenses, permits, engineering and/or environmental analyses, soil test borings, Seller's Records, Permits and tax bills (the "Submission Documents").

9.2 **Inspection of Property.** Purchaser or its appointed agents or independent contractors shall have, at all reasonable times prior to the Closing, the privilege of going upon the Land, at Purchaser's sole cost and expense, to inspect, examine, test, investigate, appraise and survey the Property, including, without limitation, soil, groundwater, environmental tests and inspections, and habitat and vegetation analysis. In exercising the privileges granted pursuant to this subsection 9.2, Purchaser shall substantially restore the Property to the condition existing prior to such activities on the Property. In consideration of Purchaser's right to inspect the Property as described in this subsection 9.2, subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Purchaser agrees to indemnify, defend and hold Seller harmless from any actions, suits, liens, claims, damages, expenses, losses and liability for damage to personal property or personal injury arising from or attributable to any acts performed by
Purchaser or its appointed agents or independent contractors in exercising Purchaser’s rights under this subsection 9.2 (including, without limitation, any rights or claims of materialmen or mechanics to liens on the Property, but excluding any matter to the extent arising out of the negligence or misconduct of Seller).

9.3 **Conditions Precedent/Termination Right.** In addition to any other termination right or other remedy specified herein and notwithstanding any provision of this Agreement which may be interpreted to the contrary, if Purchaser is dissatisfied, for any reason and in Purchaser’s exclusive judgment, with the results of Purchaser’s investigation and study of the Property, or the condition of the Property is not acceptable to Purchaser for any reason whatsoever, then Purchaser may terminate this Agreement by notifying Seller or Seller’s Attorney of such termination on or before the 5:00 p.m. on the Termination Date, whereupon the Earnest Money shall be refunded to Purchaser by the Escrow Agent and thereafter neither party hereto shall have any further rights, obligations, or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

**SECTION 10: PURCHASER'S ADDITIONAL CLOSING CONTINGENCY**

Purchaser's obligation to close the transaction contemplated by this Agreement and purchase the Property is expressly subject and contingent upon Purchaser obtaining on or before the Termination Date all final, non-appealable governmental approvals and exercises of authority of Governmental Authorities, including, without limitation, approval by the Council of Islamorada, Village of Islands, to purchase the Property and approval of this Agreement, and attainment of all approvals needed from Governmental Authorities to develop the Property for its intended use as a wastewater vacuum pump station and related uses and facilities as required by the Village’s Land Development Code and Regulations, including Minor Conditional Use Approval (collectively the "Governmental Approvals").

Purchaser shall have up to and including the Termination Date to obtain any and all Governmental Approvals. If Purchaser does not obtain the Governmental Approvals on or before the Termination Date, then Purchaser shall have the right to (i) terminate this Agreement by notifying Seller or Seller's Attorney of such termination on or before the Termination Date or (ii) waive this contingency. If this Agreement is terminated by Purchaser, the Earnest Money shall be refunded to Purchaser by the Escrow Agent and thereafter neither party hereto shall have any further rights, obligations, or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

The parties acknowledge and agree that Purchaser's right to terminate under this Section 10 may be exercised upon the denial or any non-approval of any one of the various Governmental Approvals necessary to purchase the Property and develop the Property for its intended use as a wastewater pump station and related uses and facilities. By way of example, if the Council of Islamorada, Village of Islands fails to approve the purchase of the Property and this Agreement, Purchaser may exercise its right to terminate hereunder without having to wait until the Termination Date to do so.
Seller consents to Purchaser processing the necessary Governmental Approvals and agrees at Purchaser's request to execute any reasonable documentation necessary or appropriate in connection with Purchaser obtaining the Governmental Approvals. Notwithstanding the foregoing, any changes or approvals applied for and sought by the Purchaser on the Property or the uses thereon, including but not limited to site plans, development approvals, permits and zoning requests, shall not bind or obligate the Seller or the Property should the Purchaser terminate this Agreement and elect not to close on the Property.

SECTION 11: CLOSING

Subject to the satisfaction of all conditions on or before Closing, the Closing Date shall take place within thirty (30) days of the Governmental Approvals, unless the Closing Date is otherwise extended pursuant to the provisions of this Agreement or by written agreement of the parties, or unless the Purchaser, in its discretion, elects an earlier Closing Date by providing written notice of its election to close early to Seller. The Closing shall be held at the offices of Purchaser’s Attorney, at a time mutually acceptable to both parties. If no such selection is timely made, the Closing shall be held at 10:30 a.m. local time on the Closing Date or at such other time or such other place as may be mutually agreed in writing by the parties hereto.

11.1 Delivery: Possession. At Closing, Seller shall deliver to Purchaser the items required of Seller under this Agreement, and Purchaser shall deliver to Seller the balance of the Purchase Price (after crediting the Earnest Money and making other adjustments and prorations as provided herein) and the other items required of Purchaser under this Agreement. Seller shall deliver possession of the Property to Purchaser, subject only to the Permitted Exceptions at the time of Closing. Risk of loss shall remain with Seller until Closing.

11.2 Closing Costs.

11.2.1 Seller’s Costs. Seller shall pay (i) property transfer, conveyance, sales and other taxes due on the transfer of the Property, (ii) the fees and expenses of Seller’s attorneys, (iii) the documentary stamps and surtaxes due on the Deed, and (iv) the cost of recording any corrective instruments.

11.2.2 Purchaser’s Costs. Purchaser shall pay (i) any costs incurred by Purchaser in preparing and performing its due diligence investigations, (ii) the cost of the Title Commitment, (iii) the premium for the Owner's Title Policy, (iv) the cost of recording the Deed, (v) the cost of the Survey, and (vi) the fees and expenses of Purchaser’s Attorney.

11.2.3 Other Costs. Any other costs not specifically provided for in subsection 11.2.1, subsection 11.2.2 or otherwise pursuant to the terms of this Agreement shall be paid by the party who incurred
those costs, or if neither party is charged with incurring any such costs, then by the party customarily assessed for such costs in the place where the Property is located. Any escrow fees, document preparation charges of the Title Company and other escrow related charges of the Escrow Agent in its capacity as escrow agent only shall be paid equally by Seller and Purchaser.

11.2.4 **Survival.** The provisions of this subsection 11.2 shall survive the Closing and the delivery of the Deed.

11.3 **Purchaser’s Conditions to Closing.** Purchaser’s obligation to purchase the Property or otherwise to perform any obligation provided in this Agreement is expressly conditioned upon the fulfillment or satisfaction of each of the following conditions precedent on or before the Closing Date (any of which may be waived only in writing by Purchaser in its discretion):

11.3.1 **[INTENTIONALLY OMITTED; SEE § 11]**

11.3.2 Seller shall have fully performed each undertaking and covenant and agreement to be performed by Seller under this Agreement including, but not limited to, delivery of all items and documents required under Section 13 below;

11.3.3 Each representation and warranty made in this Agreement by Seller shall be complete, true and accurate;

11.3.4 The Owner’s Title Policy shall be issued, or in lieu of issuance of the foregoing at Closing, the Title Company shall have delivered a “marked up” Title Commitment, subject only to the Permitted Exceptions, with gap coverage, deleting all requirements;

11.3.5 Without additional cost or charge to Purchaser, the Intangible Property shall be assigned to Purchaser;

11.3.6 Except as cured by Seller or otherwise approved or waived in writing by Purchaser, no event shall have occurred which may have a material adverse effect on the physical condition of the Property;

11.3.7 Unless enacted or otherwise given effect by Purchaser, its officials, agents, or officers, no amendments, restatement, adoption or repeal of any laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental
authorities, officials, agencies and officers, ordinary or extraordinary, shall have occurred which is applicable to the Property and has or could have a material adverse effect upon the value, use, operation, zoning, development or condition thereof.

11.3.8 The Property shall have been subdivided from all other property in accordance with all applicable governmental requirements and shall be assessed as a separate tax lot or tax parcel, independent of all other parcels of land not being conveyed hereunder.

If any of the foregoing conditions are not satisfied at or before Closing, then in addition to any remedy available to Purchaser under this Agreement, Purchaser may terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser and the parties shall be released from all obligations and liabilities under this Agreement except those that expressly survive termination of this Agreement.

SECTION 12: PRORATIONS AND CREDITS AT CLOSING

All prorations provided to be made “as of the Closing Date” shall each be made as of 11:59 p.m. local time on the date immediately preceding the Closing Date. In each proration set forth below, the portion thereof allocable to periods beginning with the Closing Date shall be credited to Purchaser, or charged to Purchaser, as applicable, at Closing or, in the case of allocations made after Closing, upon receipt of such payments or invoice as of the Closing Date. Except as may otherwise be specified herein, the following items shall, as applicable, be prorated between Purchaser and Seller or credited to Purchaser or Seller:

12.1 Property Taxes and Assessments.

12.1.1 Taxes. Seller acknowledges and agrees that the Property is being purchased by an exempt governmental entity and that the Seller must comply with Section 196.295, Florida Statutes, regarding real estate taxes. All real property taxes attributable to the calendar year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing. If the tax bills for the calendar year during which the Closing Date occurs are not finally determined, then such taxes and other charges shall be prorated on the basis of the most currently available tax bills and, thereafter, promptly re-prorated upon the availability of actual bills for the applicable period.

12.1.2 Special Assessments. Certified, confirmed, adopted, approved or ratified special assessments as of the Date of Closing, including the Wastewater Assessments (as defined herein), which may be amortized or payable over a number of years as a non-ad valorem
assessment appearing on the annual real estate tax bill issued by the Monroe County Tax Collector will be prorated as of the Closing Date, with Seller responsible only for the period ending on the day prior to the Closing Date. If payment for any special assessment or Wastewater Assessment may not be amortized or payable over a number of years but instead is due in full on or before the Closing Date, Seller shall make such payment or Purchaser shall receive a credit therefor, which credit shall be prorated as of the Closing Date, whether or not the improvements for which the special assessment was levied have been completed. Seller and Purchaser acknowledge and agree that Islamorada, Village of Islands, has adopted Phase I and Phase II Remaining Service Area Wastewater Assessments (the “Wastewater Assessments”) as of the date of this Agreement.

12.2 Other Matters. Seller and Purchaser shall make such other adjustments and apportionments as are expressly set forth in this Agreement.

12.3 Survival. The provisions of this Section 12 shall survive the Closing and the delivery of the Deed. In the event final figures have not been reached on any of the adjustments, prorations or costs which are to be adjusted at or prior to Closing pursuant to this Section 12, the parties shall close using adjustments and prorations reasonably estimated by Seller and Purchaser, subject to later readjustment when such final figures have been obtained. The parties hereto agree that they shall seek to determine the amounts of all prorations and adjustments required hereunder on or before the Closing Date, if possible, and to the extent not then obtainable within six (6) months of Closing.

SECTION 13: CONVEYANCES AND DELIVERIES AT CLOSING

13.1 Special Warranty Deed. At Closing, Seller shall convey the Land to Purchaser by a duly executed and recordable Trustee’s deed of conveyance with special warranties in a form mutually agreeable to the parties (herein referred to as “Deed”) and substantially in the form attached hereto as Exhibit “B”, subject only to the Permitted Exceptions.

13.2 Section 1445 Certificate. At Closing, Seller shall execute and deliver to Purchaser and the Title Company a certificate substantially in the form as Exhibit "C" attached hereto stating that Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code and the regulations thereunder.

13.3 Affidavit of Title. At Closing, Seller shall execute and deliver to Purchaser and to the Title Company a no-lien, possession and gap title affidavit in the form required by the Title Company, together with such resolutions, affidavits, documents and certificates as the Title Company may reasonably require to issue the Owner’s Title Policy in accordance with the terms of this Agreement.
13.4 **Closing Statement.** At Closing, Seller and Purchaser shall execute and deliver a Closing Statement which shall, among other items, set forth the Purchase Price, all credits against the Purchase Price, the amounts of all prorations and other adjustments to the Purchase Price and all disbursements made at Closing on behalf of Purchaser and Seller in accordance with the terms of this Agreement.

13.5 **Evidence of Authority.** At Closing, Seller shall update Evidence of Authority dated not more that five days before the Closing Date.

13.6 **Disclosure Affidavit.** At least ten (10) days prior to Closing, Seller shall execute and deliver to Purchaser an affidavit in recordable form as required by the provisions of Section 286.23, Florida Statutes.

13.7 **Physical Possession.** At Closing, Seller shall deliver to Purchaser possession of the Property free of any tenants, lessees, occupants, or other possessory interests in the Property.

13.8 **Other Documents.** At Closing, Seller and Purchaser shall deliver to each other any other documents expressly required to be delivered or furnished pursuant to any other provisions of this Agreement or reasonably required to carry out the purpose and intent of this Agreement.

**SECTION 14: NOTICES**

All notices, consent, approvals and other communications which may be or are required to be given by either Seller or Purchaser under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, (b) electronic facsimile or other transfer device with telephone or other confirmation of receipt, provided that a hard copy of such notice is mailed by US first class mail, postage prepaid, on or before the next Business Day following such telecopy delivery or (c) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air or DHL Express), with all delivery charges paid by the sender and addressed to the Purchaser or Seller, as applicable, as follows, or at such other address as each may request in writing. Such notices shall be deemed received, (1) if delivered by hand or overnight delivery service on the date of delivery and (2) if sent by electronic transfer on the date transmission is confirmed by telephone or return electronic transfer from the receiving party, provided that a hard copy of such notice is mailed by US first class mail, postage prepaid, on or before the next Business Day following such telecopy delivery. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

**IF TO SELLER:**

*The Richard C. Webster, Jr. Trust Dated May 21, 1984*

Attention: Cleo Webster, Trustee

16 Prescott Street
SECTION 15: CASUALTY AND CONDEMNATION

15.1 Casualty. Prior to the Closing Date, and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by fire or other casualty shall be borne and assumed by Seller, except as otherwise provided in this subsection 16. Until the Closing has occurred, Seller shall keep all insurance policies, if any, in effect with respect to the Property. If, prior to the Closing Date, any part of the Property is damaged or destroyed by fire or other casualty, Seller shall immediately notify Purchaser of such fact. If such damage or destruction is material (as defined below), Purchaser shall have the option to terminate this Agreement upon written notice to Seller given not later than thirty (30) days after receipt of Seller’s notice. For purposes hereof “material” shall be deemed to be any uninsured damage or destruction to the Property (except that a casualty shall not be deemed uninsured solely because all, or a portion of, the cost of the casualty is subject to a deductible) or any insured damage or destruction (i) where the cost of repair or replacement is estimated, in Purchaser’s good faith judgment, to be Thirty-Five Thousand and No/100 Dollars ($35,000.00) or more for the Improvements, or (ii) where the
repair or replacement is estimated, in Purchaser’s good faith judgment, to require more than one hundred twenty (120) days to repair. If Purchaser does not exercise this option to terminate this Agreement, or if the casualty is not material, neither party shall have the right to terminate this Agreement, and the parties shall proceed to the Closing pursuant to the terms hereof without modification of the terms of this Agreement and without any reduction in the Purchase Price but, Seller, at Closing, shall assign to Purchaser, and Purchaser shall be entitled to receive and keep, all insurance proceeds payable with respect to such casualty, plus Seller shall pay over to Purchaser the sum of (a) all insurance proceeds previously paid to Seller with respect to such casualty (other than amounts expended by Seller for emergency repairs or for repairs which are approved in writing by Purchaser) and (b) an amount equal to the deductible amount with respect to the insurance. In such event, Seller shall not be obligated to repair or restore the Property. If Purchaser does not elect to terminate this Agreement by reason of any casualty, Purchaser shall have the right to participate in any adjustment of the insurance claim and, in such event, Purchaser and Seller shall cooperate each with the other in good faith.

15.2 Condemnation. At Closing, Seller shall assign to Purchaser all of Seller’s right, title and interest in and to the beds of streets, roads, alleys, avenues and highways abutting the Property and all of Seller’s right, title and interest in and to all awards in condemnation, or damages or any kind, to which Seller is entitled at the time of Closing, by reason of any exercise of power of eminent domain with respect thereto or for the taking of the Property or any part thereof or by reason of any other event affecting the Property which gives rise to a damage claim against a third Party after the date hereof. Prior to the Closing Date, if all or any portion of the Property is taken, or if access thereto is reduced or restricted by eminent domain or otherwise (or if such taking, reduction or restriction is pending, threatened or contemplated) (hereinafter a “Condemnation Proceeding”), Seller shall immediately notify Purchaser of such fact. In the event that such notice related to the taking of all or any portion of the Property, Purchaser shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than thirty (30) days after receipt of Seller’s notice; whereupon the Earnest Money shall be refunded to Purchaser and thereafter neither Party shall have any rights, obligations or liabilities hereunder except with respect to those rights, obligations or liabilities which expressly survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement as herein provided, Seller shall pay to Purchaser any award received by Seller prior to Closing and Purchaser shall have the right to participate with Seller in any Condemnation Proceeding affecting the Property; provided, that in doing so Purchaser shall cooperate with Seller in good faith.

SECTION 16: BROKERS

Each party represents to the other that such party has not incurred any obligation to any broker, finder or real estate agent with respect to the purchase or sale of the Property, except for Exit Realty (Morgan Hill) which Seller may be have retained as agent. Each of Seller and Purchaser warrants and represents to the other that such party has not employed (expressly or impliedly) any broker, agent or other such Person except Exit Realty (Morgan Hill) retained by Seller as to which a commission or other such fee is or would become due or owing as a result of the purchase and sale contemplated hereby and has made no agreement (express or implied) to
pay any broker’s commission or other such fees in connection with the purchase and sale contemplated by this Agreement. Seller shall be solely responsible for the payment of any broker, finder or real estate agent fee(s) and/or commission(s) due in connection with the purchase and sale of the Property, including any commission or fees due Exit Realty (Morgan Hill) pursuant to an outside agreement. Each of Seller and Purchaser agrees to indemnify and defend the other against, and to hold the other harmless of and from all claims, demands and liabilities (including reasonable attorney’s fees and expenses incurred in defense thereof) for any commission or fees payable to, or claimed by, any broker, agent or other such Person arising out of the employment or engagement of such Person employed (expressly or impliedly) by Seller of Purchaser, as applicable, or with whom Seller or Purchaser, as applicable, has or is claimed to have, made an agreement (express or implied) to pay a commission or other such fee; provided, however, Purchaser’s indemnification obligations under this Section 16 are subject to the provisions and monetary limitations of Section 768.28, Florida Statutes. The representation, warranties, undertakings and indemnities of this Section 16 shall survive the Closing hereunder and any termination of this Agreement.

SECTION 17: INDEMNITIES

17.1 Seller’s Indemnity. Seller hereby agrees to indemnify, protect, defend (through attorneys reasonably acceptable to Purchaser) and hold harmless Purchaser and its council members, administrative officials, agents, employees, successors and assigns from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees actually incurred) which may at any time following the Closing Date be asserted against or suffered by Purchaser arising out of or resulting from the following (whether asserted or accruing before or after Closing):

17.1.1 any personal injury or property damage occurring prior to the Closing Date unless caused by the negligence of Purchaser or its agents or contractors;

17.1.2 [INTENTIONALLY OMITTED.]

17.1.3 Seller’s failure to comply with the provisions of this Agreement which require performance or payment on the part of Seller after Closing.

17.2 Survival. The provisions of Section 17 shall survive the Closing hereunder and the delivery of the Deed.

SECTION 18: DEFAULT/REMEDIES

18.1 Seller’s Default/Purchaser’s Remedies. Notwithstanding any other remedy provided for herein, if Seller defaults in the observance or performance of its covenants and obligations hereunder, Purchaser may, at its option, terminate this Agreement and receive a
refund of the Earnest Money or seek specific performance of this Agreement. The aforementioned rights shall be the Purchaser’s sole and exclusive remedies at law or in equity.

18.2 **Purchaser’s Default/Seller’s Remedies.** If Purchaser defaults in the observance or performance of its covenants and obligations hereunder, then Seller, as its sole and exclusive remedy, shall (as an election of remedies) receive the Earnest Money from Escrow Agent as liquidated damages. Purchaser and Seller acknowledge the difficulty of ascertaining the actual damages in the event of such default, that it is impossible to more precisely estimate the damages to be suffered by Seller upon such default, that the retention of the Earnest Money by Seller is intended not as a penalty but as full liquidated damages and that such amount constitutes a good faith estimate of the potential damages arising therefrom. Seller’s right to so terminate this Agreement and to receive liquidated damages as aforesaid is Seller’s sole and exclusive remedy. Seller hereby waives, relinquishes and releases any and all other rights and remedies, including but not limited to: (1) any right to sue Purchaser for damages or to prove that Seller’s actual damages exceed the amount which is hereby provided Seller as fully liquidated damages or (2) any other right or remedy which Seller may otherwise have against Purchaser, either at law, or equity or otherwise.

**SECTION 19: ESCROW AGENT**

19.1 **Performance of Duties.** Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent shall not be deemed to have any implied duties or obligations under or related to this Agreement.

19.2 **Reliance.** Escrow Agent may (i) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (ii) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (iii) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or corrections as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; Escrow Agent’s duties under this Agreement are and shall be limited to those duties specifically provided in this Agreement.

19.3 **Right to Interplead.** If the parties (including Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or about the propriety of any action contemplated by Escrow Agent, Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, Escrow Agent shall be released from all obligations under this Agreement.

19.4 **Attorney’s Fees and Costs.** In any suit between Purchaser and Seller wherein Escrow Agent is made a party because of acting as Escrow Agent hereunder, or in any suit wherein Escrow Agent interpleads the subject matter of the Escrow, Escrow Agent shall recover reasonable attorney’s fees and costs incurred with the fees and costs to be paid from and out of
the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The parties hereby agree that Escrow Agent shall not be liable to any party or person for misdelivery to Purchaser or Seller of items subject to this escrow, unless such misdelivery is due to willful breach of this Agreement or gross negligence of Escrow Agent.

19.5 **Escrow Agent as Counsel for Purchaser.** It is acknowledged that Escrow Agent is counsel for Purchaser. It is agreed that Escrow Agent shall not be disabled or disqualified from representing Purchaser, its council members, parents, officers, directors or agents in connection with any dispute or litigation which may arise out of or in connection with this transaction or this Agreement as a result of Escrow Agent acting as the escrow agent under this Agreement and the Seller, waives any claim or right to assert a conflict arising out of or in connection with the foregoing.

**SECTION 20: GENERAL PROVISIONS**

20.1 **Entire Agreement.** This Agreement, and all the Exhibits referenced herein and annexed hereto, contain the final, complete and entire agreement of the parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. Except as may be otherwise expressly provided herein, the agreements embodied herein may not be amended except by an agreement in writing signed by the parties hereto.

20.2 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

20.3 **Further Assurances.** Seller and Purchaser each agrees to execute and deliver to the other such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants and conditions of this Agreement. This covenant shall survive the Closing.

20.4 **Interpretation.** The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto. If any party to this Agreement is made up of more than one Person, then all such Persons shall be included jointly and severally, even though the defined term for such party is used in the singular in this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words of phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

20.5 **Counterparts.** This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one
counterpart even though no one counterpart contains the signatures of all of the parties of this Agreement. Facsimile or electronic copies shall be deemed acceptable for purposes of execution.

20.6 Non-waiver. No waiver by Seller or Purchaser of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to Seller or Purchaser upon any breach under this Agreement shall impair such right to remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller or Purchaser of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

20.7 Severability. This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, 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.

20.8 Exhibits. The Exhibits referred in and attached to this Agreement are incorporated herein in full by this reference.

20.9 Attorneys’ Fees. In the event of any controversy, claim or dispute between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys’ fees including, but not limited to, court costs and other expenses through all appellate levels.

20.10 Business Days. If any date provided for in this Agreement shall fall on a day which is not a Business Day, the date provided for shall be deemed to refer to the next Business Day.

20.11 Time is of the Essence. Time is of the essence in this Agreement.

20.12 No Personal Liability of Council Members, Administrative Officials or Representatives of Purchaser. Seller acknowledges that this Agreement is entered into by a municipal corporation as Purchaser and Seller agrees no individual council member, administrative official or representative of Purchaser shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.
20.13 **Effective Date.** For purposes of calculation of all time periods within which Seller or Purchaser must act or respond as herein described, all phrases such as "the date of this Agreement", "the date of execution of this Agreement" or any other like phrase referring to the date of the Agreement, shall mean and refer to the "Effective Date" of this Agreement.

20.14 **Radon Disclosure.** 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 public health unit. Pursuant to §404.056(8), Florida Statutes.

20.15 **Waiver of Trial by Jury.** SELLER AND PURCHASER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION THEREWITH.

20.16 **No Contract With Other Persons.** Seller agrees not to enter into a contract for the sale, lease, use or occupancy of the Property with any person or entity other than Purchaser for so long as this Agreement is in effect.

20.17 **Assignment.** Purchaser may assign its rights under this Agreement.

20.18 **Police/Regulatory Powers.** Purchaser cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Property, any improvements thereon, or any operations at the Property. Nothing in this Agreement shall be deemed to create an affirmative duty of Purchaser to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by Agreement.

20.19 **Negotiated Agreement.** The parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

20.20 **No Recordation.** Neither this Agreement nor any notice or memorandum of this Agreement shall be recorded in any public records.
20.21 **Merger.** Unless expressly set forth herein, the terms and provisions of this Agreement shall not survive the closing and such terms and provisions shall be deemed merged into the Deed and extinguished at Closing.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF,** Seller and Purchaser have caused this Agreement to be executed, as of the day and year set forth below their signatures.

**PURCHASER:**

ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation

ATTEST:

[Signature]
Village Clerk

Edward Koconis, Village Manager

Date Executed: **October 30**, 2013

Approved as to legal form and sufficiency:

[Signature]
Village Attorney

NINA BONCICIL
SELLER:

THE RICHARD C. WEBSTER, JR.
TRUST DATED MAY 21, 1984

[Signatures of sellers and their print names]

Name: Cleo L. Webster
Title: Co-Trustee
Date Executed: October 2, 2013

Name: Gordon M. Stevenson, Jr., Esq.
Title: Co-Trustee
Date Executed: October 7, 2013
ESCROW AGENT:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.

By: ____________________________
Name: NINA BONISKE
Title: VILLAGE ATTORNEY

Date: OCTOBER 24, 2013
Lot 1, 2 and 2A, Block A, White Marlin Beach, Section 1, according to the Plat thereof, as recorded in Plat Book 3, Page 184, of the Public Records of Monroe County, Florida.

Parcel ID: 00392150-000000
00392160-000000
EXHIBIT “B”

FORM OF DEED

This instrument prepared by:
Record and return to:

Lillian M. Arango, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

Property Identification Number: ________________________________

TRUSTEE’S SPECIAL WARRANTY DEED

THIS TRUSTEE’S SPECIAL WARRANTY DEED is made and executed this _____ day of __________, 2013, by ________________________________ (the “Grantor”), whose mailing address is ________________________________ to the ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation (the “Grantee”), whose mailing address is 86800 Overseas Highway, Third Floor, Islamorada, Florida 33036.

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee the real property (the “Property”) located in Monroe County, Florida, and more particularly described as:

SEE EXHIBIT “A” ATTACHED HERETO.

SUBJECT TO:

1. The lien of all ad valorem real estate taxes and assessments subsequent to the date hereof and subsequent years

2. All laws, ordinances, and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations; and

TOGETHER with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to the Property.

TO HAVE AND TO HOLD the same in fee simple forever.

AND GRANTOR hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the
Property; and that Grantor does hereby specially warrant the title to the Property and will defend
the same against the lawful claims of all persons whomsoever claiming by, through or under
Grantor but against none other.

IN WITNESS WHEREOF, Grantor has caused this Trustee’s Special Warranty Deed to be executed as of the day and year first written above.

Witnesses;

Print Name:__________________________

Print Name:__________________________

SELLER:

By:___________________________________
Name:_________________________________
Title:__________________________________

STATE OF FLORIDA
COUNTY OF MONROE

) SS:

The foregoing instrument was acknowledged before me this ___ day of _____ 2013 by
______________________________________, as ___________________________________, of _________________________________,
who (check one) [ ] is personally known to me or [ ] has produced a __________________ drivers license as identification.

My Commission Expires:

___________________________________
Notary Public
Print Name:__________________________
EXHIBIT “C”

FORM OF SECTION 1445 CERTIFICATE

STATE OF FLORIDA          )
                          )
COUNTY OF MONROE        )

BEFORE ME, the undersigned authority, personally appeared _________________
(“Affiant”) who being first duly sworn upon oath, deposes and says:

1. That the Affiant is _______________ of _________________________________
(the “Seller”).

2. That the Seller is the owner of fee simple title to the real property located in
Monroe County, Florida, more particularly described on Exhibit “A” attached hereto and by this
reference made a part hereof (“Property”).

3. Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a
U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To
inform Islamorada, Village of Islands, a Florida municipal corporation, that withholding of tax is
not required upon the disposition of a U.S. real property interest by the Seller, Affiant hereby
certifies the following:

3.1 The Seller is not a foreign person, foreign corporation, foreign company,
foreign trust, or foreign estate for the purposes of U.S. income taxation (as those terms are
defined in the Internal Revenue Code and Income Tax Regulations).

3.2 The Seller’s taxpayer identification number is ____________.

3.3 The Seller’s address is ________________________________.
3.4 Affiant understands that this certification may be disclosed to the Internal Revenue Service by the transeree and that any false statement contained herein could be punished by fine, imprisonment, or both.

FURTHER AFFIANT SAYETH NAUGHT.

______________________________

Sworn to and subscribed before me this ___ day of ___, 2013 by ________________________, who (check one) [ ] is personally known to me or [ ] has produced _______________________ a drivers license as identification.

My Commission Expires:

______________________________

Notary Public
Print Name: _______________________