

CITY OF DELRAY BEACH



1993
2001

CITY CLERK

100 N.W. 1st AVENUE

• DELRAY BEACH, FLORIDA 33444

• 561/243-7000



CERTIFICATION

I, CHEVELLE D. NUBIN, MMC, City Clerk of the City of Delray Beach, do hereby certify that the attached document is a true and correct copy of **Resolution No. 09-12**, as the same was passed and adopted by the Delray Beach City Commission in regular session on the 6th day of March 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the City of Delray Beach, Florida, on this the 12th day of March 2012.

Chevelle D. Nubin, MMC
City Clerk
City of Delray Beach, Florida



RESOLUTION NO. 09-12

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE CITY TO ACQUIRE CERTAIN REAL PROPERTY IN PALM BEACH COUNTY, FLORIDA, AS DESCRIBED HEREIN, HEREBY INCORPORATING AND ACCEPTING THE CONTRACT STATING THE TERMS AND CONDITIONS FOR THE SALE AND PURCHASE FROM THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, SELLER, TO THE CITY OF DELRAY BEACH, FLORIDA.

WHEREAS, the City of Delray Beach, Florida, wishes to acquire certain property located at 421 S.W. 5th Avenue, Delray Beach, Florida; and

WHEREAS, it is in the best interest of the City of Delray Beach, Florida, to purchase said property for the municipal purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:


Section 1. That the City Commission of the City of Delray Beach, Florida, as Buyer, hereby agrees to purchase the property described herein from the Seller, for the purchase price of Ten Dollars (\$10.00), said property being described as follows:

Lot 11, Sundy & Tenbrook Addition to Delray, Florida according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 12, Page 32, said lands situate, lying and being in Palm Beach County.

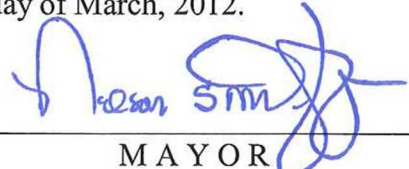
Section 2. That the terms and conditions contained in the Contract for Sale and Purchase and addenda thereto between the City of Delray Beach, Florida, and the Seller as hereinabove named are incorporated herein as Exhibit "A".

PASSED AND ADOPTED in regular session on the 6th day of March, 2012.

ATTEST:



City Clerk



MAYOR

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT is made and entered into as of this 12th day of January, 2012 ("Agreement") by and between the **Delray Beach Community Redevelopment Agency, a Florida public body corporate and politic created pursuant to Section 163.356 F.S.**, whose post office address is 20 North Swinton Avenue, Delray Beach, Florida 33444 (hereinafter referred to as "SELLER") and the **City of Delray Beach, a Florida municipal corporation**, whose post office address is 100 NW 1st Avenue, Delray Beach, Florida 33444-1533 (hereinafter collectively referred to as "PURCHASER").

WITNESSETH

In consideration of the mutual agreements and upon and subject to the terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS.

The following terms when used in this Agreement for Purchase and Sale shall have the following meanings:

1.1 Property. That certain real property consisting of the residential property located at 421 SW 5th Avenue, Delray Beach, Florida, together with all improvements thereon and attached personal property (collectively the "Property") which Property is more particularly described with the legal description in **Exhibit "A,"** attached hereto and made a part hereof.

1.2 Closing. The delivery of a Special Warranty Deed to PURCHASER concurrently with the delivery of the purchase price and other cash consideration to SELLER.

1.3 Closing Date. The Closing Date shall occur no later than forty-five (45) days from the Effective Date hereinafter defined.

1.4 Deed. A Special Warranty Deed, in its statutory form, which shall convey the Property from SELLER to PURCHASER.

1.5 Effective Date. The Effective Date of this Agreement shall be the date upon its execution by all parties to this Agreement: SELLER, PURCHASER and the Escrow Agent.

1.6 SELLER'S Address. Seller's mailing address is **20 N. Swinton Avenue, Delray Beach, Florida 33444**, with copy to Goren, Cherof, Doody & Ezrol, P.A., Attn: David N. Tolces, Esquire, at 3099 East Commercial Boulevard, Suite 200, Fort Lauderdale, Florida 33308.

1.7 PURCHASER'S Address. Purchaser's mailing address is **100 N.W. 1st**

Avenue, Delray Beach, Florida 33444, with copy to R. Brian Shutt, City Attorney, 200 N.W. 1st Avenue, Delray Beach, FL 33444.

1.8 Other Definitions. The terms defined in any part of this Agreement shall have the defined meaning wherever capitalized herein. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. As used in this Agreement, the terms "herein", "hereof" and the like refer to this Agreement in its entirety and not to any specific section or subsection.

2. PURCHASE PRICE.

Subject to the provisions of this Agreement, the SELLER hereby agrees to sell to PURCHASER, and PURCHASER hereby agrees to purchase from SELLER, the Property previously identified on **Exhibit "A"** for the total Purchase Price of **Ten and 00/100 (\$10.00) Dollars**, other good and valuable consideration, and upon and subject to the terms and conditions hereinafter set forth. PURCHASER shall pay the Purchase Price to SELLER at Closing pursuant to the terms of this Agreement by check or wire transfer of readily negotiable funds to an account identified in writing by SELLER.

2.1 The Purchase includes:

- (a) All buildings and improvements located on the Property;
- (b) All right-of-ways, alleys, waters, privileges, easements and appurtenances which are on or benefit all the Property;
- (c) All right, title and interest, if any, of SELLER in any Land lying in the bed of any public or private street or highway, opened or proposed, in front any of the adjoining Property to the center line thereof. The sale also includes any right of SELLER to any unpaid award to which SELLER may be entitled: (1) due to taking by condemnation of any right, title or interest of SELLER and (2) for any damage to the Property due to change of grade of any street or highway. SELLER will deliver to PURCHASER at closing, or thereafter on demand, proper instruments for the conveyance of title and the assignment and collection of award and damages;
- (d) To the extent transferable, all licenses, permits, contracts and leases, if applicable, with respect to the property.

3. INSPECTIONS.

PURCHASER shall have thirty (30) days commencing on the Effective Date to perform inspections of the Property as the PURCHASER deems necessary ("Inspection Period"). During the Inspection Period, PURCHASER shall, at its sole cost and expense, determine that utility services including, water, waste water, electric, telephone and all other utilities are available in the proper size and capacity to serve the existing facilities and installed to the property lines. At all times during the Inspection Period, PURCHASER and its agents shall be provided with reasonable access during normal business hours to the Property for purposes of on-site inspection, upon reasonable prior Notice to SELLER. The scope of the inspection contemplated herein shall be determined by the PURCHASER as deemed appropriate under the circumstances. This Agreement is contingent upon PURCHASER, at its sole cost and expense, obtaining and accepting a satisfactory Phase I Environmental Audit, and if deemed necessary at its discretion, a Phase II Environmental Audit for which it will be granted an additional thirty (30) days for inspections. In the event that any inspections and any review of documents conducted by the PURCHASER relative to the Property during this Inspection period prove unsatisfactory in any fashion, the PURCHASER, at its sole discretion, shall be entitled to terminate this Agreement prior to the end of the thirty (30) day Inspection Period. PURCHASER will provide written notice by mail or facsimile to SELLER and/or SELLER'S counsel in the event the PURCHASER determines that the Property is unsuitable during the Inspection Period or proceed to Closing as set forth herein.

4. SELLER'S REPRESENTATIONS.

To induce PURCHASER to enter into this Agreement, SELLER makes the following representations, all of which, to the best of SELLER'S knowledge, in all material respects and except as otherwise provided in this Agreement (i) are now true, and (ii) shall be true as of the date of the Closing unless SELLER receives information to the contrary, and (iii) shall survive the Closing. In that event, PURCHASER shall be provided immediate notice as to the change to the following representations:

4.1 At all times from the Effective Date until prior to Closing, SELLER shall keep the Property (whether before or after the date of Closing) free and clear of any mechanic's or materialmen's liens for work or materials furnished to or contracted for, by or on behalf of SELLER prior to the Closing, and SELLER shall indemnify, defend and hold PURCHASER harmless from and against all expense and liability in connection therewith (including, without limitation, court

costs and reasonable attorney's fees).

4.2 SELLER has no actual knowledge nor has SELLER received any notice of any litigation, claim, action or proceeding, actual or threatened, against SELLER or the Property by any organization, person, individual or governmental agency which would affect (as to any threatened litigation, claim, action or proceeding, in a materially adverse fashion) the use, occupancy or value of the Property or any part thereof or which would otherwise relate to the Land.

4.3 SELLER has full power and authority to enter into this Agreement and to assume and perform his obligations hereunder in this Agreement. SELLER does not and will not conflict with or result in the breach of any condition or provision, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the Property or assets of the SELLER by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which the SELLER is a party of which is or purports to be binding upon the SELLER or which affects the SELLER; no action by any federal, state or municipal or other governmental department, CRA, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon the SELLER in accordance with its terms.

4.4 SELLER represents that SELLER will not, between the date of this Agreement and the Closing, without PURCHASER'S prior written consent, which consent shall not be unreasonably withheld or delayed, except in the ordinary course of business, create by their consent any encumbrances on the Property. For purposes of this provision the term "encumbrances" shall mean any liens, claims, options, or other encumbrances, encroachments, rights-of-way, leases, easements, covenants, conditions or restrictions.

4.5 SELLER represents that there are no parties other than SELLER in possession of the Property or any portion of the Property as a lessee.

4.6 SELLER shall not list or offer the Property for sale or solicit or negotiate offers to purchase the Property while this Agreement is in effect. SELLER shall use their best efforts to maintain the Property in its present condition so as to ensure that it shall remain substantially in the same condition from the conclusion of the thirty (30) day Inspection Period to the Closing Date.

4.7 REAL PROPERTY SOLD AS IS, WHERE IS: SELLER makes and shall make no warranty regarding the title to the Property except as to any warranties which will be contained in the instruments to be delivered by SELLER at Closing in accordance with this Agreement, and SELLER makes and shall make no representation or warranty either expressed or implied (except as specifically set forth in the Agreement) regarding condition, operability, safety,

fitness for intended purpose, use, governmental requirements, development potential, utility availability, legal access, economic feasibility or any other matters whatsoever with respect to the Property. The PURCHASER specifically acknowledges and agrees that SELLER shall sell and PURCHASER shall purchase the Property on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis and that, except for the SELLER'S representations and warranties specifically set forth in this Agreement, PURCHASER is not relying on any representations or warranties of any kind whatsoever, express or implied, from SELLER its agents, officers, or employees, as to any matters concerning the Property including, without limitation, any matters relating to (1) the quality, nature, adequacy, or physical condition of the Property, (2) the quality nature, adequacy or physical condition of soils, fill, geology, or any groundwater, (3) the existence, quality, nature, adequacy or physical condition of utilities serving the Property, (4) the development potential, income potential, expenses of the Property, (5) the Property's value, use, habitability, or merchantability, (6) the fitness, suitability, or adequacy of the Property for any particular use or purpose, (7) the zoning or other legal status of the Property, (8) the compliance of the Property or its operation with any applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, or restrictions of any governmental or quasi-governmental entity or of any other person or entity, including, without limitation, environmental person or entity, including without limitation, environmental laws, (9) the freedom of the Property from latent or apparent vices or defects, (10) peaceable possession of the Property, (11) environmental matters of any kind or nature whatsoever relating to the Property, (12) any development order or agreement, or (13) any other matter or matters of any nature or kind whatsoever relating to the Property.

5. EVIDENCE OF TITLE.

5.1 Title to the Property. SELLER shall convey to PURCHASER at Closing, by delivery of a Special Warranty Deed, title to the subject Property. PURCHASER shall, within fifteen (15) days of the commencement of the Inspection Period, secure a title insurance commitment issued by a title insurance underwriter approved and selected by PURCHASER for the Property insuring PURCHASER'S title to the Property subject only to those exceptions set forth in the commitment. The costs and expenses relative to the issuance of a title commitment and an owner's title policy shall be borne by the PURCHASER.

PURCHASER shall have five (5) days from the date of receiving said commitment to examine the title commitment. If PURCHASER objects to any exception to title as shown in the

title commitment, PURCHASER within ten (10) days of expiration of the Inspection Period shall notify SELLER in writing specifying the specific exception(s) to which it objects. Any objection(s) of which PURCHASER has so notified SELLER, and which SELLER chooses to cure, shall be cured by SELLER so as to enable the removal of said objection(s) from the title commitment within ten (10) days after PURCHASER has provided notice to SELLER. Within five (5) days after the expiration of SELLER'S time to cure any objection, SELLER shall send to PURCHASER a notice in writing (a "cure notice") stating either (1) that the objection has been cured and in such case enclosing evidence of such cure, or (ii) that SELLER is either unable to cure or has chosen not to cure such objection. If SELLER shall be unable or unwilling to cure all objections within the time period set forth in the preceding sentence, then PURCHASER may (a) terminate this Agreement by written notice to the SELLER within five (5) days after receipt of a cure notice specifying an uncured objection, in which event all instruments and monies held by the Escrow Agent shall be immediately returned to PURCHASER; or (b) subject to the provisions set forth below, proceed to close the transaction contemplated herein despite the uncured objection.

5.2. Survey and Legal Description. Within five (5) days of the commencement of the Inspection Period, PURCHASER may, at its own expense, order: (i) a survey prepared by a registered land surveyor or engineer licensed in the State of Florida showing the boundaries of the Property, and the location of any easements thereon and certifying the number of acres (to the nearest one thousandth acre) of land contained in the Property, all buildings, improvements and encroachments; and (ii) a correct legal description of the Property which, upon approval thereof by PURCHASER and SELLER (not to be unreasonably withheld), shall be the legal description used in the deed of conveyance. The survey and legal description shall be prepared and certified by a surveyor licensed and registered in the State of Florida and shall comply with the requirements of the survey map established in connection with the issuance of an owner's title insurance policy on the Property. The survey shall be certified to PURCHASER and the title insurance company issuing the title insurance.

In the event the survey shows any material encroachments, strips, gores, or any portion of the land non-contiguous to any other portion of the Property or any other matter materially affecting the intended use of the Property or marketability of title to the Property (any such matter is herein called a "survey objection" and treated as a title defect), PURCHASER shall have a period of thirty (30) days after receipt of the survey by PURCHASER within which to approve or disapprove any survey

objection and to give notice to SELLER of any disapproval thereof indicating in reasonable detail the nature and reasons for PURCHASER'S objection. PURCHASER agrees that it will not arbitrarily or unreasonably withhold its approval of any such survey objection and that PURCHASER will attempt to approve any such survey objection which does not affect the marketability of title or materially interfere with PURCHASER'S use of the Property. In the event PURCHASER provides a notice of disapproval of a survey objection to SELLER, the rights and obligations of the parties respecting such survey objections shall be governed by Section 5.1 hereof such that the parties shall have the same rights and objections as though such survey objection objected to was a new exception to title which was discovered and objected to within the contemplation of Section 5.1.

6. PURCHASER'S REPRESENTATIONS.

PURCHASER hereby represents and warrants to the best of its knowledge that all of the following are true and correct:

- (a) PURCHASER has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder.
- (b) The execution and delivery of this Agreement and the consummation of the transaction contemplated hereunder on the part of the PURCHASER do not and will not violate the corporate or organizational documents of PURCHASER and will not conflict with or result in the breach of any condition or provision, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which the PURCHASER is a party.
- (c) No action by any federal, state, municipal or other governmental department, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon PURCHASER in accordance with its terms and conditions.

All of the representations, warranties and covenants of PURCHASER contained in this Agreement or in any other document, delivered to SELLER in connection with the transaction contemplated herein shall be true and correct in all material respects and not in default at the time of Closing, just as though they were made at such time.

7. CONDITIONS PRECEDENT TO CLOSING.

Each of the following events or occurrences (“Conditions Precedents”) shall be a condition precedent to PURCHASER'S obligation to close this transaction:

- (a) That the PURCHASER has not timely notified SELLER that it is not satisfied with the Inspection Period investigation conducted on the Property during the Inspection Period.
- (b) SELLER has performed all covenants, agreements and obligations, and complied with all conditions required by this Agreement to convey clear and marketable title of the Property to PURCHASER, prior to closing.
- (c) Approval of this Agreement by the Delray Beach Community Redevelopment Agency.
- (d) Approval of this Agreement by the Delray Beach City Commission.

8. RISK OF LOSS.

Risk of loss or damage from fire, other casualty, or both, is assumed by SELLER until the deed described in Paragraph 5.1 hereof is delivered by SELLER to PURCHASER. In the event any portion of the Property is destroyed, rendered unleaseable or dysfunctional by fire or other casualty then the following shall apply:

- (a) If the damage, as determined by the insurance adjuster, is not more than \$25,000 dollars, (i) PURCHASER shall complete settlement and all insurance proceeds relating to the improvements damaged by such casualty loss shall be paid to the PURCHASER, and (ii) SELLER shall assign to PURCHASER on the date of Closing the full amount of any proceeds payable under SELLER'S fire and extended coverage insurance policy applicable to said damage;
- (b) If the damage, as determined by the insurance adjuster, is more than \$25,000 dollars, PURCHASER shall have the option to (i) complete the settlement hereunder and collect all available insurance proceeds relating to the improvements damaged by such casualty loss, in which case SELLER shall pay to PURCHASER on the date of Closing the full amount of any deductible under SELLER'S fire and extended coverage insurance policy, or (ii) terminate this Agreement and receive a refund of entire deposit and

interest. SELLER warrants that they shall maintain until the date of the Closing adequate "All Risk" property insurance; and:

- (c) In the event the Property, or any portion thereof, is condemned by any governmental authority under its power of eminent domain or becomes the subject of a notice of condemnation, prior to Closing, PURCHASER may elect to terminate this Agreement, in which event the entire deposit and interest shall be returned to PURCHASER and neither party shall have any further claim against the other, or PURCHASER may elect to complete settlement hereunder, in which event SELLER shall assign to PURCHASER all of SELLER'S right, title and interest in and to any condemnation awards, whether pending or already paid applicable to the loss of the real property and the improvements located thereon, and there shall be no adjustment to the Purchase Price.

9. CLOSING DOCUMENTS.

At closing, SELLER shall deliver to PURCHASER a Special Warranty Deed, Bill of Sale, if applicable, No Lien/Gap Affidavit, Non-Foreign Certification in accordance with Section 1445 of the Internal Revenue Code, 1099 Form and any other documents as listed as title requirements in Schedule B-I of the Title Commitment to assure the conveyance of good and marketable fee simple title of the Property to the PURCHASER.

10. CLOSING COSTS, TAXES AND PRORATIONS.

10.1 Seller's Closing Costs. SELLER shall pay for the following items prior to or at the time of closing:

- a) Cost and expenses related to updating the title and providing marketable title as provided herein, and
- b) Documentary Stamps, if any, on the deed as provided under Chapter 201, Florida Statutes.

10.2 Purchaser's Closing Costs. PURCHASER shall pay for the following items prior to or at the time of Closing:

- a) Costs associated to appraisals, survey, environmental reports (phase I and phase II);

b) Recording fees of the Warranty Deed, Mortgage, if any, and any other instrument as required to be recorded in the Public Records;

c) Owner's title insurance policy (normally a Seller's charge in Palm Beach County).

11. CLOSING DATE AND PLACE.

The Closing shall take place no later than forty-five (45) days from the Effective Date, and at the law offices of Goren, Cherof, Doody & Ezrol, P.A located at 76 NE 5th Avenue, Delray Beach, Florida 33483.

12. DEFAULT.

In the event of a default by SELLER, PURCHASER shall have the election of the following remedies, which shall include the return of the earnest money, as liquidated damages or equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or injunctive relief.

If the PURCHASER shall fail or refuse to consummate the transaction in accordance with the terms and provisions of this Agreement, all monies on deposit shall be immediately forfeited to SELLER as agreed upon liquidated damages and PURCHASER shall have no other responsibility or liability of any kind to SELLER by virtue of such default. SELLER'S sole and entire remedy shall be restricted to retention of the deposit.

13. CONTINGENCIES. PURCHASER'S obligations under the Agreement are contingent upon the following:

(a) That the PURCHASER is fully satisfied with its due diligence investigation conducted during the Inspection Period.

(b) The conveyance of clear and marketable title to the Property.

(c) The Board of Commissioners of the Delray Beach Community Redevelopment Agency authorizes the transaction in accordance with the terms and provisions set forth in this Agreement.

(d) The City Commission of the City of Delray Beach authorizes the transaction in accordance with the terms and provisions set forth in this Agreement.

14. SPECIAL CLAUSES. The conveyance of the Property is subject to the following special clause:

(a) The City shall develop the Property as part of the City's drainage improvements, to the extent of the funding provided.

(b) In the event the City desires to discontinue the public use of the property, it shall provide the CRA with thirty (30) days written notice of its intent to allow the CRA to comment on such change. This notice provision shall survive the closing.

15. BROKER:

The parties each represent to the other that they have not dealt with any real estate broker, real estate salesman or finder in conjunction with this transaction who is entitled to a fee or brokerage commission in accordance with Florida law.

16. ENFORCEABILITY.

If any provision in this Agreement shall be held to be excessively broad, it shall be construed, by limiting and reducing it, to be enforceable to the extent compatible with applicable law. If any provision in this Agreement shall, notwithstanding the preceding sentence, be held illegal or unenforceable, such illegality or unenforceability shall not affect any other provision of this Agreement.

17. NOTICE.

All written notices shall be deemed effective if sent to the following places:

SELLER: Delray Beach Community Redevelopment Agency
20 North Swinton Avenue
Delray Beach, Florida 33444
Attn: Diane Colonna, Executive Director

With Copy to: David N. Tolces, Esquire
GOREN, CHEROF, DOODY & EZROL, P.A.
3099 East Commercial Boulevard, #200
Fort Lauderdale, Florida 33308
Tel: (954) 771-4500
Fax: (954) 771-4923

PURCHASER: City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444-1533
Attn: David T. Harden, City Manager
Tel: (561) 243-7010
Fax: (561) 243

With a Copy to: R. Brian Shutt, City Attorney
200 N.W. 1st Avenue
Delray Beach, Florida 33444
Tel: (561) 243-7091
Fax: (561) 278-4755

18. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Florida. Venue shall be in the Federal or State Courts in Palm Beach County, Florida.

19. ENTIRE AGREEMENT.

All prior understandings and agreements between SELLER and PURCHASER are merged in this Agreement. This Agreement completely expresses their full agreement.

20. AMENDMENT.

No modification or amendment of this Agreement shall be of any force or effect unless in writing and executed by both SELLER and PURCHASER.

21. SUCCESSORS.

This Agreement shall apply to and bind the executors, administrators, successors and assigns of SELLER and PURCHASER.

22. COUNTERPARTS:

This Agreement may be executed in two or more counterparts, each of which shall be taken to be an original and all collectively deemed one instrument. The parties hereto agree that a facsimile copy hereof and any signatures hereon shall be considered for all purposes as originals.

23. LITIGATION COSTS:

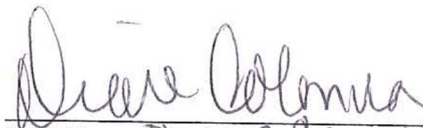
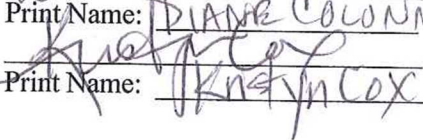
In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses incurred, including its reasonable attorney's fees at all trial and appellate levels and post judgment proceedings.

24. **RADON GAS:**


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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated above:

Witnesses:



Print Name: DIANE COLONNA

Print Name: Kristyn Cox

SELLER:
Delray Beach Community Redevelopment Agency


By: Howard Lewis, Chair

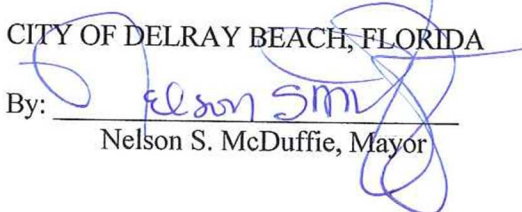
Signed on: 1/12/13

ATTEST:



City Clerk

PURCHASER:

CITY OF DELRAY BEACH, FLORIDA


By: Nelson S. McDuffie, Mayor

Approved as to Form:

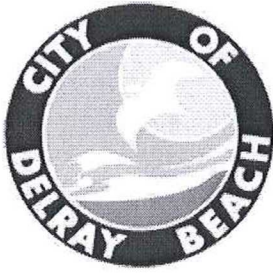

City Attorney

H:\2011\110504\Purch and Sale Agmt (421 SW 5th Ave)(01-02-12).doc

EXHIBIT "A"
PROPERTY CONTROL NUMBER, LOCATION AND LEGAL DESCRIPTION
(subject to verification by a survey to be obtained by Purchaser)

421 SW 5th Avenue, Delray Beach

Lot 11, SUNDY & TENBROOK ADDITION TO DELRAY, FLORIDA, according to the Plat thereof, as recorded in Plat Book 12, at Page 32, of the Public Records of Palm Beach County, Florida.



MEMORANDUM

TO: Mayor and City Commissioners

FROM: R. Brian Shutt, City Attorney

DATE: February 28, 2012

SUBJECT: **AGENDA ITEM 10.A. - REGULAR COMMISSION MEETING OF MARCH 6, 2012**
RESOLUTION NO. 09-12/CONTRACT FOR SALE AND PURCHASE/421 S.W. 5TH AVENUE

ITEM BEFORE COMMISSION

Staff requests approval of Resolution No. 09-12 and the Purchase and Sale Agreement for 421 SW 5th Avenue.

BACKGROUND

In 2001 the staff had the City-Wide Storm Water Master plan updated. One of the issues identified in the Master Plan was to address the drainage at the intersection of SW 4th Av and SW 4th St. This intersection collects water and there is no positive drainage provided. Staff reviewed options for addressing this drainage issue and decided on a plan that would require a retention area somewhere in the block on the southwest corner of SW 4th Ave and 4th St. One parcel became available shortly after the Master Plan was completed and the City purchased that parcel. It is identified on the attached map. Several attempts to purchase additional parcels were unsuccessful. While the parcel being considered under this item (421 SW 5th Ave.) is on the west side of the alley, a design can be developed to obtain the required retention volume with a pond on both sides of the alley when sufficient land is purchased.

Resolution No. 09-12 adopts and includes the Contract for Sale and Purchase between the City and the CRA for the property located at 421 SW 5th Avenue. The cost of the purchase is ten dollars (\$10.00). The property is conveyed in "As Is" condition and the City agrees to restrict the use of the property to public uses, including but not limited to drainage retention, for the benefit of the general public. The restriction on use is outlined in the interlocal agreement with the CRA that is a sub-item to this agenda item. This transaction has been advertised and is ready for approval by the City Commission.

RECOMMENDATION

Staff recommends approval of Resolution No. 09-12.

RESOLUTION NO. 09-12

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AUTHORIZING THE CITY TO ACQUIRE CERTAIN REAL PROPERTY IN PALM BEACH COUNTY, FLORIDA, AS DESCRIBED HEREIN, HEREBY INCORPORATING AND ACCEPTING THE CONTRACT STATING THE TERMS AND CONDITIONS FOR THE SALE AND PURCHASE FROM THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, SELLER, TO THE CITY OF DELRAY BEACH, FLORIDA.

WHEREAS, the City of Delray Beach, Florida, wishes to acquire certain property located at 421 S.W. 5th Avenue, Delray Beach, Florida; and

WHEREAS, it is in the best interest of the City of Delray Beach, Florida, to purchase said property for the municipal purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the City Commission of the City of Delray Beach, Florida, as Buyer, hereby agrees to purchase the property described herein from the Seller, for the purchase price of Ten Dollars (\$10.00), said property being described as follows:

Lot 11, Sundy & Tenbrook Addition to Delray, Florida according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 12, Page 32, said lands situate, lying and being in Palm Beach County.

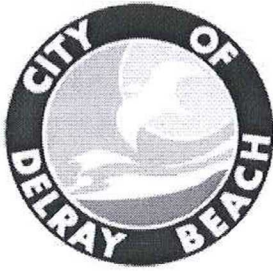
Section 2. That the terms and conditions contained in the Contract for Sale and Purchase and addenda thereto between the City of Delray Beach, Florida, and the Seller as hereinabove named are incorporated herein as Exhibit "A".

PASSED AND ADOPTED in regular session on the ____ day of _____, 2012.

ATTEST:

MAYOR

City Clerk



MEMORANDUM

TO: Mayor and City Commissioners

FROM: R. Brian Shutt, City Attorney

DATE: February 28, 2012

SUBJECT: AGENDA ITEM 10.A1 - REGULAR COMMISSION MEETING OF MARCH 6, 2012
INTERLOCAL AGREEMENT/421 S.W. 5TH AVENUE

ITEM BEFORE COMMISSION

Staff requests approval of the Interlocal Agreement between the City and CRA regarding the property located at 421 SW 5th Avenue.

BACKGROUND

The Interlocal Agreement provides that the City will accept the property is in "As Is" condition and agrees to restrict use of the property to public uses, including but not limited to drainage retention, for the benefit of the general public. This transaction has been advertised and is ready for approval by the City Commission.

RECOMMENDATION

Staff recommends approval of the Interlocal Agreement.

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF DELRAY BEACH AND THE
DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**

THIS INTERLOCAL AGREEMENT is made this ____ day of _____, 2012 by and between the **CITY OF DELRAY BEACH**, a Florida municipal corporation ("**City**") and the **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY** ("**CRA**"), a body corporate and politic, as authorized pursuant to Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, the **CRA** owns the property described in **Exhibit "A"**, which is located at 421 SW 5th Avenue, Delray Beach, Florida (the "**Property**"); and

WHEREAS, at this time, the **CRA** agrees to convey the **Property** to the **City**, and the **City** agrees to accept the **Property** from the **CRA**; and

WHEREAS, pursuant to this Agreement, the **CRA** and the **City** agree that the **CRA** shall transfer ownership of the **Property** to the **City**, and the **City** has agreed to accept the transfer of the **Property** in "As Is" condition and will maintain the **Property** in perpetuity.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. **Recitations**. The recitations set forth above are hereby incorporated by reference as if fully set forth herein.
2. **Conveyance of Property**. The **CRA** shall convey the property located at 421 SW 5th Avenue, Delray Beach, Florida, as more fully described in **Exhibit "A"**, which is attached hereto and incorporated herein by reference, (the

"Property") to the **City**, in consideration of the payment of **Ten and 00/100 Dollars** (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged.

3. The **CRA** shall convey the Property to the **City** by special warranty deed. The closing shall occur no later than forty-five (45) days from the execution of this Agreement by the **City**. The **City** shall be responsible for the payment of any and all recording fees associated with the recording of the special warranty deed in the public records of Palm Beach County, Florida.

4. **Real Property Sold As Is, Where Is:** In consideration of the mutual promises and consideration set forth herein, the CRA conveys and the City accepts all property covered by this agreement, "AS IS". The City understands that no warranty of any type, express or implied, including warranty of merchantability, exists other than warranty of marketability, of title as set forth in the special warranty deed to be delivered to the City. The City shall not make any claim against CRA or CRA'S agents, employees or Director, for any defects, known or unknown to the City, which may exist or be discovered by the City or of which the City is aware as of the date of this contract. The City has fully inspected the Property or had the opportunity to inspect the Property to the City's satisfaction prior to signing this agreement, and has not relied upon any statement of CRA involved in this transaction.

5. **City** shall not make any claim against **CRA** or **CRA's** agents, for any defects, known or unknown to **City**, termite or other damages, which may exist or be discovered by **City** or of which **City** is aware as of the date of this contract. **City** has fully inspected the Property, both real and personal, to **City's** satisfaction

prior to signing this Agreement, and has not relied upon any statement of **CRA** or its officers, employees or agent.

6. **Restriction on Use.** In consideration of the conveyance of the Property by the **CRA** to the **City**, the **City** agrees to restrict the use of the Property to public uses, including, but not limited to drainage retention for the benefit of the general public. In the event the **City** determines that the Property should no longer be used as a drainage retention area or for other public use, the **City** shall provide the **CRA** with written notice of its intent to discontinue the public use, and provide the **CRA** with thirty (30) days to comment on the proposed change in use, and make any suggestions regarding the **City's** intended change in use. The provisions of this Paragraph shall survive the conveyance of the Special Warranty Deed to the **City**.

7. **Interlocal Agreement.** This Interlocal Agreement shall be filed pursuant to the requirements pursuant to Section 163.01(11), Florida Statutes.

8. **Final Agreement; Modification.** No prior or present agreements or representations with regard to any subject matter contained within this agreement shall be binding on any party unless included expressly in this agreement. Any modification of this agreement shall be in writing and executed by the parties.

9. **Severability.** The invalidity of any portion, article, paragraph, provision, clause, or any portion thereof contained within this Agreement shall have no force or effect upon the validity of any other portion hereof.

10. **Laws; Venue.** This Agreement shall be governed by and in accordance with the Laws of Florida. Venue for any action arising from this agreement shall be in Palm Beach County, Florida.

11. **Signatures Required.** This Agreement shall not be valid until signed by the Mayor and City Clerk.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Nelson S. McDuffie, Mayor

Approved as to Form:

City Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Nelson S. McDuffie as Mayor of City of Delray Beach, Florida, on behalf of the City. He/She is personally known to me or has produced _____ (type of identification) as identification.

Signature of Notary Public

Witnesses:

Diane Colonna
Print Name: DIANE COLONNA
Kristyn Cox
Print Name: Kristyn Cox

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: Howard Lewis
Print Name: Howard Lewis
Title: Chair

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12 day of January, 2012 by Howard Lewis as Chair of Delray Beach Community Redevelopment Agency, on behalf of the Agency. He is personally known to me or has produced _____ (type of identification) as identification.

NOTARY PUBLIC-STATE OF FLORIDA
Elizabeth Goldberg
Commission #DD867552
Expires: APR. 26, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

Elizabeth Goldberg
Signature of Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

LOT 11, SUNDY & TENBROOK ADDITION TO DELRAY, FLORIDA, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 12, Page 32, said lands situate, lying and being in Palm Beach County, Florida.

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

RESOLUTION 2012-01

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF DELRAY BEACH AND THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY REGARDING THE TRANSFER OF LOT 11, SUNDY & TENBROOK ADDITION TO DELRAY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of Commissioners of the Delray Beach Community Redevelopment Agency deems it in the best interest of the citizens and residents to approve and authorize the proper officials to execute the Interlocal Agreement between the City of Delray Beach and the Delray Beach Community Redevelopment Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby incorporated herein.

Section 2. The Board of Commissioners of Delray Beach Community Redevelopment Agency hereby approves and authorizes the proper officials to execute the Interlocal Agreement between the City of Delray Beach and the Delray Beach Community Redevelopment Agency.

Section 3. All resolutions inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.


Section 4. If any section, sentence, clause, or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 5. This resolution shall become effective upon its passage and adoption by the City of Delray Beach Community Redevelopment Agency Board of Commissioners.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF
THE CITY OF DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY
ON THE 12TH DAY OF JANUARY, 2012.**

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

BY: _____


HOWARD LEWIS, CHAIR

ATTEST:



DIANE COLONNA, EXECUTIVE DIRECTOR

(561) 820-4343 | Tuesday, February 21, 2012

NO. 6532266
NOTICE OF INTENT TO
PURCHASE REAL PROPERTY
NOTICE IS HEREBY GIVEN that the City of Delray Beach, Florida, announces its intention to purchase the following real property:
Lot 11, Sundy & Tenbrook Addition to Delray, Florida according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 12, Page 32; said lands situate, lying and being in Palm Beach County. Subject to easements, restrictions, limitations, and other matters of record for the purchase price of US \$10.00, and other good and valuable consideration.
A Resolution of the City Commission of the City of Delray Beach, Florida authorizing the purchase of property and on the terms and conditions set forth above, will be considered for adoption by the City Commission at a public meeting to be held at 7:00 p.m. on Tuesday, March 6, 2012.
Further information, as available, may be obtained from the City Manager's Office.
CITY OF DELRAY BEACH, FLORIDA
Chevelle D. Nubin, MMC, City Clerk
PUB: The Palm Beach Post
February, 21, & 28, 2012