

**Special Town
Commission**

January 24, 2023
5:00 PM Jarvis Hall
4505 N. Ocean Drive

1. **CALL TO ORDER, MAYOR CHRIS VINCENT**
 2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
 3. **INVOCATION**
 4. **ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS**
 5. **PRESENTATIONS**
 6. **PUBLIC COMMENTS**
 7. **PUBLIC SAFETY DISCUSSION**
 8. **TOWN MANAGER REPORT**
 9. **TOWN ATTORNEY REPORT**
 10. **APPROVAL OF MINUTES**
 11. **CONSENT AGENDA**
 12. **OLD BUSINESS**
 13. **NEW BUSINESS**
 14. **COMMISSIONER COMMENTS**
 15. **ORDINANCES 1st Reading**
 16. **ORDINANCES 2nd Reading**
 17. **RESOLUTIONS –PUBLIC COMMENTS**
 - 17.a. Resolution 2023-06 Purchase Agreement for 4512 Bougainvilla Drive
 18. **QUASI JUDICIAL PUBLIC HEARINGS**
 19. **ADJOURNMENT**
-



Agenda Item No: 13.a

Town Commission Agenda Item Report

Meeting Date: January 25, 2023

Submitted By: Linda Connors, Town Manager

Submitting Department: Administration

Item Type: Discussion Item

Agenda Section: Old Business

Subject Title: RESOLUTION 2023-06: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A PURCHASE AGREEMENT FOR THE REAL PROPERTY LOCATED AT 4512 BOUGAINVILLE DRIVE; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PURCHASE AGREEMENT.



Explanation: The property located at 4512 Bougainville Drive is a nine-unit multi-family property. It is located directly north of the current Fire Station as well as directly west of the public safety complex. Staff is interested in purchasing this property for future Public Safety needs.

At the January 11, 2022 meeting, the Commission accepted a Comprehensive Organizational Evaluation and Operations Audit of the Volunteer Fire Department (VFD). The Audit revealed significant deficiencies regarding the operational space for the VFD stating that current area dedicated for our VFD did not meet current requirements and more space was necessary for equipment storage, bunkrooms, and other facilities.

BSO, AMR, and the VFD Administrative offices have been housed in a former hotel that was purchased in 2008, with no significant improvements to the building being made since that time. It, like the VFD building, also does not meet the current professional standards, nor does it provide sufficient space for the daily operations of our emergency services personnel.

Over the last several years, the Commission has delayed significant improvements to both the Fire Station and Public Safety Administrative offices while they contemplated how they wanted to move forward with necessary improvements. In the FY23, the Commission took the first steps in authorizing significant improvements to these inadequate spaces by approving an increase in the fire assessment to be allocated toward undetermined facility improvements.

Also included in the FY23 Budget were funds, in the amount of \$25,000, for a grant professional to seek out and secure potential grant funds that could be used for the Town to consider improvements to these facilities. Staff is looking to secure a consultant to assist the Town in applying for and processing grant applications.

Purchase of the apartment building would provide additional land in the ideal location necessary to make improvements to the existing public safety complex or building a new public safety facility. If for some reason the property was deemed no longer beneficial to the Town's future plans, the property could be resold or repurposed for another municipal use.

The current owner has expressed interest in selling the property, which makes urgent action necessary.

Town staff ordered two appraisals required by the Town's Purchasing Policy when investigating a property purchase. The appraisals indicated the property was valued at \$2.4 million and \$3.375 million. The property is currently rented with a monthly income of \$12,400.

At the November 9, 2022, meeting, the Commission authorized staff to enter into negotiations for the acquisition of the Property. The negotiated price the Seller agreed to is \$3.6 million payable in one lump sum.

Because the Purchase Agreement requires the Seller to provide acceptable evidence of marketable title prior to closing, staff recommends that the Commission waive the requirement that Seller provide the Town with evidence of marketable title prior to approving the Purchase Agreement.

If purchased, the Town would continue to operate the property as an apartment building until such time as the future use of the property is determined. During the time that the rental units are being utilized, staff recommends that the Town hire a property management company to manage the property.

While funds are currently available in the Parking and General Funds to complete the transaction, staff is enlisting the assistance of financial professionals to provide the best options for securing funding for the property. Staff will present these options along with our recommendation on how to move forward prior to closing for Commission consideration.

Recommendation: Staff recommends that the Commission approve the attached Resolution, waiving the Purchasing Manual requirement for the Seller to provide evidence of title prior to this hearing, approving the Commercial Contract attached hereto as Exhibit 1 for the purchase of the Property, and authorizing the Town Manager to execute the same on behalf of the Town and to take any and all actions necessary for the purchase of the Property in accordance with the Commercial Contract. Because the purchase price exceeds the average of the appraisal values, this item requires supermajority approval by four out of five of the Town Commissioners.

Exhibits:

Ex.1 – Resolution 2023-06

Ex.2 – ExA to Ex1 – Purchase Agreement

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30 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION
31 OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:
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33 SECTION 1. Recitals. The foregoing "Whereas" clauses are hereby ratified and
34 confirmed by the Town Commission, and incorporated herein.

35 SECTION 2. Purchase Agreement Approved. The Purchase Agreement,
36 attached hereto as Exhibit "A," is hereby approved.

37 SECTION 3. Authorization to Execute the Agreement. The Town Manager is
38 hereby authorized to execute the Purchase Agreement, in substantially the same form as
39 attached Exhibit "A," together with such non-substantial changes as are deemed necessary
40 by the Town Manager and approved as to form and legal sufficiency by the Town
41 Attorney.

42 SECTION 4. Implementation. The Town Manager and Town Attorney are
43 authorized to take all actions necessary to implement the Agreement.

44 SECTION 5. Effective Date. This Resolution shall become effective upon
45 passage and adoption.

46 PASSED AND ADOPTED on this 24th day of January, 2023.
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MAYOR CHRIS VINCENT

Attest:

Katrina Adler, Town Clerk

51 APPROVED AS TO FORM:
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Susan L. Trevarthen, Town Attorney
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Commercial Contract

1 **1. PARTIES AND PROPERTY:** Town of Lauderdale by the Sea ("Buyer")
2 agrees to buy and Ben Knowles ("Seller")
3 agrees to sell the property at:
4 Street Address: 4512 Bougainville Drive
5 Lauderdale by the Sea, FL 33308
6 Legal Description: Lots 2 and 3, Block 24, LAUDERDALE BY THE SEA, according to the Plat thereof, recorded
7 in Plat Book 6, Page 2, of Dade County, Florida, said land situated, lying, and being in Broward Florida
8 and the following Personal Property: NONE
9
10 (all collectively referred to as the "Property") on the terms and conditions set forth below.

11 **2. PURCHASE PRICE:** \$ 3,600,000.00

12 (a) Deposit held in escrow by: Weiss Serota Helfman Cole & Bierman \$
13 ("Escrow Agent") (checks are subject to actual and final collection)

14 Escrow Agent's address: 2800 Ponce de Leon Blvd, #1200 Phone: (305)854-0800

15 (b) Additional deposit to be made to Escrow Agent
16 ☐ within _____ days (3 days, if left blank) after completion of Due Diligence Period or
17 ☒ within 5 days after Effective Date \$ 5,000.00

18 (c) Additional deposit to be made to Escrow Agent
19 ☐ within _____ days (3 days, if left blank) after completion of Due Diligence Period or
20 ☐ within _____ days after Effective Date \$ _____

21 (d) Total financing (see Paragraph 5) \$ _____

22 (e) Other \$ _____

23 (f) All deposits will be credited to the purchase price at closing.
24 Balance to close, subject to adjustments and prorations, to be paid
25 via wire transfer. \$ 3,595,000.00

26 For the purposes of this paragraph, "completion" means the end of the Due Diligence Period or upon delivery of
27 Buyer's written notice of acceptability.

28 **3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME:** Unless this offer is signed by Seller
29 and Buyer and an executed copy delivered to all parties on or before January 20, 2023, this offer
30 will be withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be
31 3 days from the date the counter offer is delivered. **The "Effective Date" of this Contract is the date on which the**
32 **last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer or**
33 **approved by Buyer's Town Commission**. Calendar days will be used when computing time periods, except time periods of 5
34 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal
35 holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next
36 business day. **Time is of the essence in this Contract.**

37 **4. CLOSING DATE AND LOCATION:**
38 (a) **Closing Date:** This transaction will be closed on 30 days from Due Diligence Period (Closing Date), unless
39 specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods
40 including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended

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

CC-5 Rev. 9/17

Weiss Serota Helfman et al - Corporate, 2800 Ponce DeLeon Blvd Ste 1200 Coral Gables, FL 33134
Maria Currais

Phone: 305-854-0800

Fax: 305-854-2323

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on Closing Date and **Buyer** is unable to obtain property insurance, **Buyer** may postpone closing up to 5 days after the insurance underwriting suspension is lifted.

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

5. THIRD PARTY FINANCING:

~~**BUYER'S OBLIGATION:** On or before _____ days (5 days if left blank) after Effective Date, **Buyer** will apply for third-party financing in an amount not to exceed _____ % of the purchase price or \$ _____, with a fixed interest rate not to exceed _____ % per year with an initial variable interest rate not to exceed _____ %, with points or commitment or loan fees not to exceed _____ % of the principal amount, for a term of _____ years, and amortized over _____ years, with additional terms as follows:~~

~~**Buyer** will timely provide any and all credit, employment, financial and other information reasonably required by any lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within _____ days (45 days if left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close the loan. **Buyer** will keep **Seller** and **Broker** fully informed about loan application status and authorizes the mortgage broker and lender to disclose all such information to **Seller** and **Broker**. **Buyer** will notify **Seller** immediately upon obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within _____ days (3 days if left blank) deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract. If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of these conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If **Buyer** has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be returned to **Buyer**, whereupon both parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract as set forth above or **Buyer** fails to use good faith or reasonable diligence as set forth above, **Seller** will be entitled to retain the Deposit(s) if the transaction does not close. For purposes of this Contract, "Loan Approval" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular buyer. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Approval for purposes of this Contract.~~

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

provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the Property as as a multifamily residential building or for Buyer's intended municipal use

(a) Evidence of Title: The party who pays the premium for the title insurance policy will select the closing agent and pay for the title search and closing services. **Seller** will, at (check one) ☒ **Seller's** ☐ **Buyer's** expense and within 15 days after Effective Date or at least _____ days before Closing Date deliver to **Buyer** (check one) ☒ (i) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the evidence of title and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date. ☐ (ii.) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or

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

Buyer's closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller** then (i.) above will be the evidence of title.

(b) Title Examination: **Buyer** will, within 15 days from receipt of the evidence of title deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (1) **Buyer** fails to deliver proper notice of defects or (2) **Buyer** delivers proper written notice and **Seller** cures the defects within 30 days from receipt of the notice ("Curative Period"). **Seller** shall use good faith efforts to cure the defects. If the defects are cured within the Curative Period, closing will occur on the latter of 10 days after receipt by **Buyer** of notice of such curing or the scheduled Closing Date. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, **Buyer** will have 10 days from receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) Survey: (check applicable provisions below)

(i.) ☐ **Seller** will, within _____ days from Effective Date, deliver to **Buyer** copies of prior surveys, plans, specifications, and engineering documents, if any, and the following documents relevant to this transaction:

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

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

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

7. PROPERTY CONDITION: **Seller** will deliver the Property to **Buyer** at the time agreed in its present "as is" condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. **Seller** makes no warranties other than marketability of title. In the event that the condition of the Property has materially changed since the expiration of the Due Diligence Period, **Buyer** may elect to terminate the Contract and receive a refund of any and all deposits paid, plus interest, if applicable, or require **Seller** to return the Property to the required condition existing as of the end of Due Diligence period, the cost of which is not to exceed \$ 1.00 (1.5% of the purchase price, if left blank). By accepting the Property "as is", **Buyer** waives all claims against **Seller** for any defects in the Property. (Check (a) or (b))

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

☒ **(b) Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 30 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in **Buyer's** sole and absolute discretion. During the term of this Contract, **Buyer** may conduct any tests, analyses, surveys and investigations ("Inspections") which **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that **Buyer** deems appropriate. **Buyer** will deliver written notice to **Seller** prior to the expiration of the Due Diligence Period of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property in its present "as is" condition. **Seller** grants to **Buyer**, its agents, contractors and assigns, the right to enter the Property at any time during the term of this Contract for the purpose of conducting Inspections, upon reasonable notice, at a mutually agreed upon time; provided, however, that **Buyer**, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a mechanic's lien being filed against the Property without **Seller's** prior written consent. In the event this transaction does not close, (1) **Buyer** will repair all damages to the

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

Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a result of the Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that **Buyer's** deposit will be immediately returned to **Buyer** and the Contract terminated.

(c) **Walk-through Inspection:** **Buyer** may, on the day prior to closing or any other time mutually agreeable to the parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all Property is on the premises.

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

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

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

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

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

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

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

(f) **Foreign Investment in Real Property Tax Act (FIRPTA):** If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** agree to comply with Section 1445 of the Internal Revenue Code. **Seller** and **Buyer** will complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply

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

with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the requirement.

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

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

12. FORCE MAJEURE: **Buyer** or **Seller** shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to **Buyer**, thereby releasing **Buyer** and **Seller** from all further obligations under this Contract.

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

14. DEFAULT:

(a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make the title marketable after diligent effort, **Buyer** may elect to receive return of Buyer's deposit without thereby waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek specific performance. If Buyer elects a deposit refund, Seller may be liable to Broker for the full amount of the brokerage fee.

(b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1) retain all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1) terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving any remedy for **Buyer's** default.

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

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

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

251 **17. DISCLOSURES:**

252 (a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales
253 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of
254 commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the
255 owner's net proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not
256 attach to any interest in real property. This lien right cannot be waived before the commission is earned.

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

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

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

266 **18. RISK OF LOSS:**

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

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

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

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

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

294 (a) **Seller's Broker:** NONE
295 (Company Name) (Licensee)

(Address, Telephone, Fax, E-mail)

296 who ☐ is a single agent ☐ is a transaction broker ☐ has no brokerage relationship and who will be compensated by
297 ☐ Seller ☐ Buyer ☐ both parties pursuant to ☐ a listing agreement ☐ other (specify) _____
298 _____
299 _____

300 (b) **Buyer's Broker:** NONE
301 (Company Name) (Licensee)

(Address, Telephone, Fax, E-mail)

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

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

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

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

- | | | |
|---|--|--|
| ☐ Arbitration | ☐ Seller Warranty | ☐ Existing Mortgage |
| ☐ Section 1031 Exchange | ☐ Coastal Construction Control Line | ☐ Buyer's Attorney Approval |
| ☐ Property Inspection and Repair | ☐ Flood Area Hazard Zone | ☐ Seller's Attorney Approval |
| ☐ Seller Representations | ☐ Seller Financing | ☒ Other <u>See Addedndum</u> |

23. ADDITIONAL TERMS:

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER

Buyer (_____) (_____) and Seller (_____) (_____) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

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

(Signature of Buyer) Date: _____

Town of Lauderdale by the Sea Tax ID No.: _____
(Typed or Printed Name of Buyer)

Title: _____ Telephone: _____

(Signature of Buyer) Date: _____

(Typed or Printed Name of Buyer) Tax ID No.: _____

Title: _____ Telephone: _____

Buyer's Address for purpose of notice _____

Facsimile: _____ E-mail: _____

(Signature of Seller) Date: _____

Ben Knowles Tax ID No.: _____
(Typed or Printed Name of Seller)

Title: _____ Telephone: _____

(Signature of Seller) Date: _____

(Typed or Printed Name of Seller) Tax ID No.: _____

Title: _____ Telephone: _____

Seller's Address for purpose of notice _____

Facsimile: _____ E-mail: _____

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Addendum to Contract

Addendum No. 1 to the Contract with the Effective Date of _____ between

Ben Knowles (Seller)

and Town of Lauderdale by the Sea (Buyer)

concerning the property described as: 4512 Bougainville Drive, Lauderdale by the Sea, FL 33308

(the "Contract"). Seller and Buyer make the following terms and conditions part of the Contract:

1. Real Estate Taxes. Seller acknowledges that Buyer is a tax-exempt governmental entity. Seller will be responsible for complying with Section 196.295 of the Florida Statutes prior to Closing. The requirements for compliance with Section 196.295 provided by the Broward County Property Appraiser will be as follows:

a. Once the Closing Date has been determined, Closing Agent will submit a written formal request to the Broward County Property Appraiser's Office via e-mail or regular mail for a proration letter. A proration letter will be provided by Property Appraiser displaying the prorated amount of taxes due to date of closing.

b. Taxes will be prorated on the Closing Statement based on the amount set forth in the Property Appraiser's letter plus an additional 25% of the tax proration (the additional 25% is the "Tax Escrow") to cover any additional taxes required to be paid upon issuance of the current year's tax bill for the Property.

c. After the Closing, Closing Agent will submit to the Tax Collector the Property Appraiser's escrow letter and the prorated tax amount of taxes stated to be due in the Property Appraiser's letter, and obtain a receipt for the deposit of the estimated taxes. Closing Agent will provide a copy of the Tax Collector receipt to Buyer.

d. After issuance of the actual tax bill for the Property, and upon request by Seller, Closing Agent will refund to Seller any excess funds remaining in the Tax Escrow.

2. Closing Documents. At Closing, Seller shall deliver to the closing Agent the documents and items listed below.

- a. Statutory Warranty Deed conveying title to the Property;
- b. A No Lien, Gap and FIRPTA Affidavit;
- c. A Closing Statement to be signed by Seller and Buyer; and
- d. Any documents required to cure or remove any Title Defects.

3. Section 286.23 Disclosure. Seller shall comply with the provisions of Section 286.23, Florida Statutes, regarding disclosure of beneficial interests at least 10 days prior to the Closing Date.

4. Commission Approval. Seller acknowledges that this Contract is contingent on approval by the Town of Lauderdale by the Sea Town Commission (the "Commission"). If the Commission does not approve the Contract (or if the Commission has not approved this Contract by February 28, 2023), the Contract shall be terminated and all obligations herein shall be null and void.

Buyer: _____ Date: _____
Town of Lauderdale by the Sea

Buyer: _____ Date: _____

Seller: _____ Date: _____
Ben Knowles

Seller: _____ Date: _____