

RESOLUTION No. 2007-95-602

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AGREEING TO PURCHASE THAT CERTAIN PROPERTY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO FROM WACHOVIA BANK, FOR THE SUM OF \$4,200,000.00; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE, A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF MIAMI GARDENS AND WACHOVIA BANK IN SUBSTANTIAL FORM AS THAT AGREEMENT ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Manager has negotiated with Wachovia Bank to purchase a piece of property located at 18601 NW 27th Avenue, in the City of Miami Gardens, and

WHEREAS, the proposed property will be used for the future City Hall site, and

WHEREAS, funding for the purchase will be taken from public facility bonds previously issued by the City Council in 2005 and 2007, and

WHEREAS, it is expected, that the transaction will not close until early 2008 in light of the fact that the Bank is still operating and will be in the process of closing down,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the purchase of that certain property described in Exhibit "A" attached hereto from Wachovia Bank, in the amount of \$4,200,000.00, and authorizes the City Attorney and City Manager to negotiate and execute that certain Purchase and

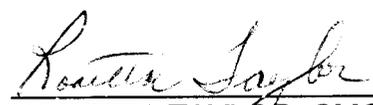
Sale Agreement in substantial form as that Agreement attached hereto as Exhibit A, and to take whatever steps are necessary and appropriate to close on the transaction.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JUNE 13, 2007.

ATTEST:


SHIRLEY GIBSON, MAYOR


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Braynon
SECONDED BY: Councilwoman Watson

VOTE: 6-1

Mayor Shirley Gibson	___(Yes)	___(No)
Vice Mayor Oscar Braynon, II	___(Yes)	___(No)
Councilman Melvin L. Bratton	___(Yes)	___(No)
Councilman Aaron Campbell	___(Yes)	___(No)
Councilman André Williams	___(Yes)	___(No)
Councilwoman Sharon Pritchett	___(Yes)	___(No)
Councilwoman Barbara Watson	___(Yes)	___(No)

City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Oscar Braynon II
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson
Councilman André Williams

Agenda Cover Page

Date: 06/06/07

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source: **Bonds**

Contract/P.O. Requirement: Yes No

Sponsor Name/Department:

Dr. Danny Crew, City Manager

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # _____

Quasi-Judicial

Resolution

2nd Reading

Yes No

Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE, A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF MIAMI GARDENS AND WACHOVIA BANK IN SUBSTANTIAL FORM AS THAT AGREEMENT ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

For the past several years, I have been working on a long-term project to identify and bring to City Council for consideration, a physical site for a future City Hall building. We currently rent our present location, and it has been discussed often that we eventually need to find a central location for City Hall.

I am pleased to bring you what I believe is a great site for a future City Hall that meets all of the parameters that we have discussed. It is centrally located in the town center area and has sufficient land to meet our current and future City Hall needs. It also will act as a key anchor for the eventual town center redevelopment. This site is the current location of the Wachovia Bank on NW 27th Avenue. Wachovia is planning to move their operations further north on 27th Avenue, still in the City.

The property contains 4+ acres and an appraisal I had commissioned pegged the value at \$4.2 million, the asking price. The environmental reviews I commissioner also found the property to be uncontaminated. Funds for this purchase were included in the public improvement bonds of 2005 and 2007. A copy of the appraisal and Environmental report is available at Hillary's desk.

RECOMMENDATION: That City Council approve the purchase of the Wachovia property utilizing funds available in the 2005 and 2007 public facilities bonds.

**K-1) RESOLUTION
WACHOVIA BANK**

LAW OFFICES
ARNSTEIN & LEHR LLP

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BOCA RATON, FLORIDA
MIAMI, FLORIDA
TAMPA, FLORIDA
WEST PALM BEACH, FLORIDA
HOFFMAN ESTATES, ILLINOIS
MILWAUKEE, WISCONSIN
MEMBER OF INTERNATIONAL
LAWYERS NETWORK

August 17, 2007

Danny O. Crew, City Manager
City of Miami Gardens
1515 Northwest 167th Street
Building 5, Suite 200
Miami Gardens, Florida 33169

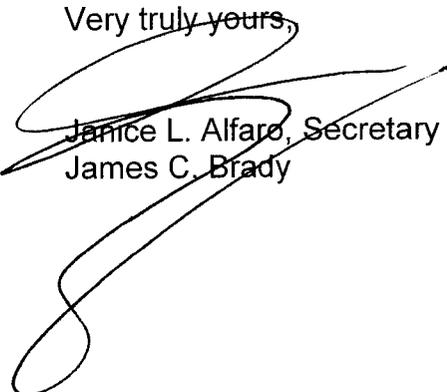
Re: City of Miami Gardens Purchase From Wachovia Bank

Dear Dr. Crew:

Attached please find an original fully executed Agreement of Sale with reference to the above purchase.

If you have any questions, please feel free to contact our office.

Very truly yours,


Janice L. Alfaro, Secretary to
James C. Brady

JCB:jl
Encl.
264751_1.DOC

Pursuant to Internal Revenue Service guidance, be advised that any federal tax advice contained in this written or electronic communication, including any attachments or enclosures, is not intended or written to be used and it cannot be used by any person or entity for the purpose of (i) avoiding any tax penalties that may be imposed by the Internal Revenue Service or any other U.S. Federal taxing authority or agency or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

AGREEMENT OF SALE
Stadium Dade
(PID # 081246)
KEY PROVISIONS SUMMARY

Effective Date:	The date this Agreement is executed by the last to sign of Buyer and Seller as shown on Page 12.	
Seller:	Wachovia Bank, National Association, a national banking association	
Buyer:	City of Miami Gardens	
Property:	That certain real property located at 18601 NW 27 th Avenue, Miami Gardens, Florida, containing approximately 4.83 acres and the improvements thereon located as more particularly described by a legal description attached hereto as <u>Exhibit A</u> , together with all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, and together with any improvements and fixtures located thereon, as applicable.	
Escrow Agent:	ARNSTEIN & LEHR LLP	
Earnest Money:	\$20,000 (<u>Section 3</u>)	
Purchase Price:	\$4,200,000 (<u>Section 4</u>)	
Operations Closing Date	December 6, 2007 (<u>Section 7</u>)	
Inspection Period	Thirty (30) days after the Operations Closing Date (<u>Section 8</u>)	
Closing Date	On or before the date that is fifteen (15) days after the expiration of the Inspection Period (<u>Section 11</u>).	
Brokers:	None (<u>Section 18</u>)	
Acceptance Date:	August 17, 2007 (<u>Section 20.1</u>)	
Notices: (<u>Section 17</u>)	<u>Seller:</u>	<u>Buyer:</u>
	Wachovia Corporation Corporate Real Estate 225 Water Street, Suite 850, Jacksonville, Florida 32202 Attn: Eric Heinton (PID #081246) Phone: 904.489.3503 Fax: 904.489.3544	City of Miami Gardens Attn: Danny O. Crew 1515 NW 167 th Street, S-200 Miami Gardens, FL 33169
	<u>With a copy to:</u> SMITH HULSEY & BUSEY 225 Water Street, Suite 1800 Jacksonville, Florida 32202 Attn: Lauren Parsons Langham, Esq. Phone: 904.359.7724 Fax: 904.359.7708	<u>With a copy to:</u> ARNSTEIN & LEHR LLP 200 East Las Olas Boulevard Suite 1700 Fort Lauderdale, Florida 33301-2299 Attention: James C. Brady, Esq. Phone: 954.713.7619 Fax: 954.713.7700

	<p>Wachovia Bank, Legal Division 301 S. College St., 30th Floor, NC-0630 Charlotte, NC 28288-0630 Attn: Rebecca Olliff (PID #081246)</p> <p>Wachovia Bank, Legal Division 123 S Broad St., PA4840 Philadelphia, PA 19109 Attn: Amy E Slater (PID #081246)</p>	
Exhibits:	Exhibit A – Legal Description of Property	

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "**Agreement**") is made as of the Effective Date (as set forth in the Key Provisions Summary) by and between Seller and Buyer.

Recitals

- A. Seller is the owner in fee simple of the Property (as defined in the Key Provisions Summary).
- B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Property upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, payment of the Earnest Money, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties mutually covenant and agree as follows:

1. Key Provisions Summary; Enumeration of Exhibits.

1.1 **Significance of Key Provisions Summary.** References in the body of this Agreement to a portion of the Key Provisions Summary (e.g., the defined terms in the left-hand column of the Key Provisions Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the Key Provisions Summary. References in the Key Provisions Summary to a portion of the body of this Agreement (e.g., Section references in the right-hand column of the Key Provisions Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of the Agreement. Notwithstanding anything set forth above, if there is any inconsistency between the Key Provisions Summary and another portion of this Agreement, the terms of the Key Provisions Summary shall control.

1.2 **Enumeration of Exhibits.** The Exhibits enumerated in the Key Provisions Summary and attached to this Agreement are incorporated in this Agreement by reference and are to be construed as a part of this Agreement. Each party agrees to perform any obligations on its part as set forth in any and all such Exhibits.

2. Agreement of Sale and Purchase.

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement, the Property.

3. Earnest Money.

On or before 5:00 p.m. EST on the fifth (5th) day following the Effective Date, Buyer shall deposit with the Escrow Agent (as set forth in the Key Provisions Summary) the Earnest Money (as set forth in the Key Provisions Summary). All sums paid by Buyer to Escrow Agent hereunder are included as part of the Earnest Money. Escrow Agent will deposit the Earnest Money in a non-interest bearing escrow account; and shall hold, refund, disburse and/or distribute, as the case may be, the Earnest Money in accordance with the terms hereof. Upon request from Escrow Agent, Seller and Buyer will enter into such escrow agreement, as Escrow Agent may reasonably request, and will jointly and severally agree to hold Escrow Agent harmless with respect to the performance of its duties as Escrow Agent, except to the extent caused by the gross negligence or willful misconduct of Escrow Agent.

4. **Purchase Price.**

4.1 **Payment.** The Purchase Price (as set forth in the Key Provisions Summary) for the Property shall be payable as follows: (i) the Earnest Money, which shall be delivered to Seller at Closing (as defined below in Section 11); and (ii) the balance of the Purchase Price, which shall be payable by Buyer to Seller at Closing in United States cash, by bank or certified check or by wired funds available for immediate credit.

4.2 **Acreage.** The parties hereto acknowledge and agree that Seller is selling and Buyer is purchasing an entire parcel of land and building, and that the Purchase Price will not be adjusted in the event the number of acres contained in the boundaries of the Property (as set forth in the Key Provisions Summary) is later shown to be more or less than the number of acres now thought by the parties to be contained in the boundaries of the Property.

4.3 **Method of Payment.** Buyer shall pay the Purchase Price, as adjusted pursuant to the terms of this Agreement and by applicable costs and prorations, at Closing in cash, by bank or certified check or by wired funds available for immediate credit. The Earnest Money shall be paid over to Seller by Escrow Agent at Closing and shall be applied against the Purchase Price.

5. **Costs and Prorations at Closing.**

5.1 **Transfer Taxes, Recording Fees and Other Fees.** Seller shall pay the cost to prepare the deed from Seller, the cost of recording all documents necessary to correct or remove defects in or encumbrances upon Seller's title to the Property (if applicable), the cost of any transfer taxes, title examination fees, and the cost of the title insurance premium for an owner's policy. Buyer shall pay the cost of a current survey of the Property, the cost of preparing and/or recording all documents to be recorded other than those referred to in the preceding sentence, all financing costs, if any, and any other costs related to the Closing. Each party shall pay its own attorney's fees.

5.2 **Taxes.** Ad valorem taxes ("Taxes") assessed against the Property for the year in which Closing occurs shall be prorated on a calendar year basis as of the day of Closing, and shall be based on the actual Taxes for the current calendar year. If the actual Taxes for the current calendar year are unavailable, then such proration shall be based on the actual Taxes for the prior calendar year. All prorations shall be final. If the Property is in the tax records as a separate parcel on the date of Closing, the Taxes shall be prorated on the basis of time and applied in adjustment of the Purchase Price due at Closing. If the Property is part of a larger parcel during the calendar year or tax year of the Closing, the Taxes shall be prorated on the basis of acreage (and improvements on such acreage, if any) as well as time, and Buyer shall pay to Seller Buyer's resulting share of the Taxes at Closing and Seller shall pay the Taxes due and payable for the year of Closing on the entire larger parcel of which the Property is a part when the same become due, and Buyer shall, as soon as is practicable, cause the Property to be reflected as a separate parcel in the tax records.

5.3 **Utilities.** If any utility services are presently being provided to the Property, Seller will pay for such services through the day of Closing, but thereafter any such services in the name of Seller shall be terminated.

6. **Conveyance of Title.**

6.1 **Legal Description.** The Property shall be described in Exhibit A in accordance with the historic description of the Property. If requested by Buyer and at Buyer's sole cost and expense, a legal description taken from a current and accurate survey of the Property to be obtained by Buyer at Buyer's expense from a registered land surveyor may be attached to a quit claim deed of the Property from Seller.

7. **Operations Closing Date**

7.1 The date upon which the banking operations will cease at this location is the "Operations Closing Date". Seller may elect, in its sole discretion, to reschedule the Operations Closing Date. If the Operations Closing Date is rescheduled to a date that is more than 30 days after the Operations Closing Date indicated in the Key Provisions Summary, Buyer may terminate this agreement by giving written notice to Seller, whereupon the Earnest Money will be refunded to Buyer, all Property Information shall be promptly returned to Seller, and, except for the indemnity and confidentiality provisions, this Agreement shall be null and void and of no further force and effect whatsoever, and no party shall have any further rights, duties, or obligations hereunder.

8. **Inspection Period.**

8.1 **Time Period.** Buyer shall have the right for a period of thirty (30) days from and after the Operations Closing Date (the "**Inspection Period**") within which to make all necessary inspections. During the Inspection Period and thereafter unless and until this Agreement is terminated pursuant to an express provision of this Agreement, Buyer, its agents and independent contractors, shall have reasonable access to the Property for the purposes of making inspections, surveys, soil and drainage tests, and generally collecting the information deemed necessary by Buyer to make its determination as to the suitability of the Property for the Buyer's intended development and/or use, all at Buyer's sole cost and expense. Buyer agrees to provide Seller with prior notice of any soil investigations and copies of all written reports related thereto, and to notify Seller of any defects in or encumbrances upon Seller's title to the Property.

8.2 **Property Information.** Within five (5) Business Days after the Effective Date, Seller shall deliver to Buyer all site plans, surveys, soil reports, title insurance commitments or policies and agreements that are in possession of Seller and relate to the Property.

8.3 **Title.** Seller shall, at Seller's expense and within (15) days from the Operations Closing Date, deliver to Buyer a title insurance commitment by a Florida licensed title insurer (the "Commitment"). Buyer shall notify Seller of (i) any defects in or encumbrances upon Seller's title to the Property unacceptable to Buyer and (ii) Buyer's objections to matters shown by the Survey (collectively, "**Buyer's Title Objections**") within fifteen (15) days after Buyer's receipt of the Commitment. Seller shall have the right, but not the obligation, to remove, correct and/or satisfy such defects and encumbrances upon Seller's title to the Property prior to Closing, and Seller shall notify Buyer within fifteen (15) days after the receipt of notice of title objections from Buyer as to whether Seller will seek to remove, correct and/or satisfy such defects and encumbrances, and shall keep Buyer reasonably apprised of Seller's progress toward removing, correcting and/or satisfying the same. In the event there remains at Closing any defects in or encumbrances upon Seller's title to the Property for which Buyer shall have given notice as herein provided, or if any defects in or encumbrances upon Seller's title to the Property that are unacceptable to Buyer arise from and after the effective date of the Commitment, then Buyer may elect:

(a) To consummate the transaction contemplated hereby without regard to such defects and encumbrances, without an adjustment in Purchase Price or;

(b) To terminate this Agreement, whereupon the Earnest Money will be refunded to Buyer and, except for the indemnity and confidentiality provisions, this Agreement shall be null and void and of no further force and effect whatsoever, and no party shall have any further rights, duties, or obligations hereunder.

Notwithstanding the foregoing, Buyer shall have no right to terminate this Agreement for title defects or encumbrances caused or created by Buyer or Buyer's attorneys, agents, consultants or representatives.

8.4 **Failure to Elect.** If Buyer fails to elect either of the options set forth above within five (5) days of the expiration of the Inspection Period, then Buyer shall be deemed to have elected the option set forth in Section 8.3(a) above, time being of the essence.

8.5 **Required Notice.** If Buyer furnishes written notice to Seller prior to the expiration of the Inspection Period that the Property is not suitable for Buyer's intended development and/or use thereof, then the Earnest Money shall be returned promptly to Buyer and, except for the indemnity and confidentiality provisions, this Agreement shall be void and of no further force or effect, and the parties hereto shall have no further duties or obligations to one another hereunder. If, during the Inspection Period, Buyer does not furnish the aforesaid written notice to Seller that the Property is not suitable for Buyer's intended development and/or use, or if Buyer notifies Seller during the Inspection Period that the Property is suitable for Buyer's intended development and/or use, then this Agreement shall continue to be effective and binding upon the parties and the conditions set forth in this Section 8 shall be deemed to have been satisfied except for new title matters reflected in any title update. Upon the expiration of the Inspection Period, if Buyer has not provided written notice to Seller that the Property is not suitable for its development and/or use, the Earnest Money shall then be non-refundable to Buyer, except in the event of Seller's default hereunder, but such Earnest Money shall be applied against the Purchase Price.

8.6 **Indemnity.** Buyer covenants and agrees to indemnify and hold harmless Seller against any and all loss, liability, costs, claims, demands, damages, actions, causes of action, and suits arising out, resulting from or relating to Buyer's exercise of any right under this Agreement to enter upon the Property, including, without limitation, for the purpose of making inspections, surveys, borings, and tests thereon, and Buyer shall be responsible to repair or pay for the repair of any damage to the Property or other damages or injuries occasioned thereby or resulting therefrom. The indemnification obligations of Buyer shall survive the expiration or earlier termination of this Agreement.

9. **Risk of Condemnation Pending Closing.**

If, prior to Closing, condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, or any part thereof, Seller shall give Buyer written notice thereof. Within five (5) days of Buyer's notice of the commencement of such proceedings, Buyer shall notify Seller in writing of Buyer's election of either: (i) accepting the Property subject to the proceedings, whereupon any awards shall be paid or assigned to Buyer; or (ii) terminating this Agreement, whereupon, except for the indemnity and confidentiality provisions, this Agreement shall be void and of no further force or effect and the parties shall have no further duties or obligations to one another hereunder. If Buyer does not make such election within such five (5) day period, then Buyer shall be deemed to have elected the option (i) set forth above, time being of the essence.

10. **Condition of Property.**

Buyer acknowledges that Buyer has the right and shall have ample opportunity to fully inspect the Property and, except for any representations and warranties made by Seller in the deed to be given at closing, Buyer shall be purchasing the Property wholly in "AS IS", "WHERE IS" condition, without warranty or representation by Seller whatsoever, express or implied, pertaining to the Property, including, without limitation, the condition thereof or the suitability or fitness thereof for any particular use or purpose, the merchantability thereof or of any improvement thereon, the value or dimensions thereof, or any other matter with respect to the Property or the improvements thereon.

11. Closing.

11.1 **Closing Date.** The Closing (the "Closing") of the acquisition shall occur at the offices of Buyer's attorney or at another place designated by Seller and Buyer or the closing may be conducted by electronic means or by overnight delivery. The date of the Closing shall be a date mutually selected by Seller and Buyer on or before the date that is fifteen (15) days after the expiration of the Inspection Period

11.2 **Possession.** Unless otherwise agreed, Seller shall deliver exclusive possession of the Property at Closing.

11.3 **Closing Documents.** Seller shall execute and deliver at Closing, a special warranty deed, an owner's affidavit with respect to the Property sufficient to enable Buyer to obtain title insurance on the Property with the standard exceptions for constructions liens and parties in possession removed, an affidavit evidencing Seller's nonforeign status for federal tax purposes, a closing statement, any documents reasonably requested by the title company to satisfy any of the Seller's title requirements contained in schedule B-1 of the Commitment (other than defects or matters that Seller has not elected to cure). At or prior to Closing, each party shall deliver to the other party documents reasonably required by the other party to establish the authority of such party to enter into and close the transactions contemplated hereby and to complete and evidence the acquisition of the Property contemplated hereby, including, without limitation, a closing statement and a W-9 form and such other documents as are reasonably necessary or appropriate to satisfy applicable federal requirements for the reporting of real estate transactions.

12. Breach, Termination, and Expiration.

12.1 **Breach by Buyer.** Notwithstanding anything to the contrary contained herein and notwithstanding that this Agreement may have been terminated pursuant to the terms hereof, in the event Buyer fails to close the purchase and sale of the Property when required to do so, the Earnest Money shall be promptly paid over to Seller as Seller's sole and exclusive remedy and as full liquidated damages for Buyer's failure or refusal to close in accordance with the terms of this Agreement. The parties acknowledge the difficulty of ascertaining Seller's damages in such a circumstance and agree that the amount of the Earnest Money represents a reasonable and mutual attempt by Buyer and Seller to anticipate the consequence to Seller of Buyer's breach. Upon the implementation of this Section 12.1, this Agreement, except for the indemnity and confidentiality provisions, shall be void and of no further force and effect and no party shall have any rights hereunder to specific performance hereof or to damages for the breach hereof.

12.2 **Breach by Seller.** Notwithstanding anything to the contrary contained herein, in the event Seller fails to close the purchase and sale of the Property when required to do so, Buyer being ready, willing, and able to perform all obligations imposed upon Buyer hereby, (a) Buyer shall be entitled to terminate this Agreement and obtain an immediate refund of the Earnest Money paid hereunder, or may pursue an action for specific performance of this Agreement and (b) Buyer hereby expressly waives any right which it may have to sue Seller for damages of any kind, unless specific performance is unavailable in which case Buyer shall be entitled to recover its reasonable documented third party out-of-pocket expenses incurred (but in no event to exceed \$15,000 in the aggregate) in negotiating this Agreement and conducting its review and inspections of the Property. Upon the implementation of this Section 12.2, this Agreement, except for the indemnity and confidentiality provisions hereof, shall be void and of no further force and effect and no party shall have any rights hereunder damages for the breach hereof. Seller has no other liability in connection with this Agreement

13. Cancellation of Record of Buyer's Rights.

If this Agreement expires or is terminated without closing (except for an expiration arising from Seller's failure to close when required to do so), Buyer's rights and interests in and to the Property shall automatically be rendered void, without action, by Seller or Buyer. The foregoing notwithstanding, Buyer hereby covenants and agrees unto Seller that, in the event this Agreement expires or is terminated without closing, Buyer shall, upon request of Seller, execute and deliver to Seller a Release and Termination of Agreement of Sale releasing the Property from any right or interest of Buyer and terminating this Agreement, in form and substance acceptable to Seller. Neither this Agreement, nor any memorandum or summary hereof, nor any affidavit making reference to this Agreement, or any portion hereof, or any of the terms, conditions or provisions hereof may be recorded in the public records of any county of this state by Buyer. In the event Buyer does record or attempt to record this Agreement, or any such memorandum, affidavit or other document in violation of this provision, such shall be conclusively deemed to be a material breach hereof by Buyer entitling Seller to terminate this Agreement. In the event that Seller elects to terminate this Agreement on account of such breach, Buyer hereby covenants and agrees to execute and deliver to Seller, immediately upon request by Seller, any documents deemed necessary or appropriate by Seller to evidence such termination and to cancel and expunge any document recorded by Buyer in the public records.

14. Confidentiality.

All documents, records, and materials provided to or made available to Buyer hereunder (collectively, the "**Due Diligence Documents**") are confidential and shall not be distributed or disclosed by Buyer to any person or entity. Notwithstanding the foregoing Buyer may disclose Due Diligence Documents (i) to Buyer's members, investors, lenders, attorneys, accountants or any other person or entity assisting Buyer in Buyer's inspections of the Property, provided however that anyone to whom the Due Diligence Documents are shared agrees to keep the same confidential and not distribute or disclose any part thereof to others and (ii) as required by the Public Records Law, Chapter 119 Florida Statutes, but only to the extent so required. If the transaction evidenced hereby fails to close for any reason whatsoever, Buyer shall return to Seller all copies of the Due Diligence Documents which Seller or its agents may have delivered to Buyer in accordance with this Agreement. THE FURNISHING OF ANY MATERIALS, DOCUMENTS, REPORTS, OR AGREEMENTS DESCRIBED ABOVE SHALL NOT BE INTERPRETED IN ANY MANNER AS A REPRESENTATION OR WARRANTY OF ANY TYPE OR KIND BY SELLER, ANY SHAREHOLDER OR PARTNER OF SELLER OR AGENT OF SELLER, OR ANY OFFICER, DIRECTOR, OR EMPLOYEE OF SELLER, OR ITS AGENTS, OR ANY OTHER PARTY RELATED IN ANY WAY TO ANY OF THE FOREGOING.

15. 1031 Exchange.

Seller shall have the right to cause the Closing to occur as part of a "like-kind" exchange pursuant to the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. Buyers agree to cooperate with Seller in effecting a qualifying like-kind exchange and to execute such documents as are necessary to effect such like-kind exchange, provided that Buyer shall not incur any cost or expense in connection with any 1031 exchange nor shall the closing be delayed as a result of an exchange.

16. Assignability.

Buyer may not assign Buyer's rights under this Agreement without Seller's prior written consent, except that Buyer shall have the right to assign this Agreement to any entity controlled by Buyer or the current members of Buyer.

17. **Notices.**

17.1 **Written Notice; Delivery Methods.** Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a "**Notice**" (but sometimes "**notice**")) pursuant to this Agreement shall: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized officer of the sending party; and (iii) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: (a) personal delivery; (b) Registered or Certified Mail, in each case, return receipt requested and postage prepaid; (c) nationally recognized overnight courier, with all fees prepaid; or (d) facsimile (but only if a party's fax number is included in its notice address in the Key Provisions Summary).

17.2 **Addresses.** Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the addresses listed in the Notice Addresses section of the Key Provisions Summary or to another Addressee or at another address as designated by a party in a Notice pursuant to this **Section 17.**

17.3 **Effectiveness of a Notice.** Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with **Sections 17.1 and 17.2 above** and if the Addressee has received the Notice. A Notice is deemed to have been received as follows: (i) if a Notice is delivered in person, or sent by Registered or Certified Mail, or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; (ii) if a Notice is sent by facsimile, upon receipt by the party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number; and (iii) if the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver the Notice. In addition, if a Notice is sent by facsimile, the party sending the Notice shall also send a confirmation copy of the Notice by one of the methods set forth in **Section 17.3(i) above.**

17.4 **Delivery Time of Notice.** Notwithstanding the foregoing, if any Notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located. Each party's attorney is authorized to give any Notice pursuant to this Agreement on behalf of such attorney's client.

18. **Brokers.**

The parties represent to each other that they have not dealt with any real estate broker or agent in connection with this transaction other than Brokers, whose commissions shall be paid at closing of title by Seller, if and only if the transaction closes but not otherwise. Each party shall indemnify and hold the other harmless from any other claim or demand made by a broker or agent with respect to this transaction because of acts or omissions of such party.

19. **Additional Terms.**

19.1 **Applicable Law.** The laws of the state, commonwealth, or jurisdiction where the Property is located (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.

19.2 **Waiver.** The parties may waive any provision of this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exer-

cising any right or remedy or in requiring the satisfaction of any condition under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.

19.3 **Amendment.** The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

19.4 **Attorneys' Fees.** In the event of any action, suit or other proceeding to enforce this Agreement or arising out of the breach of any of its covenants, conditions, agreements or provisions, the prevailing party shall be entitled to have and recover from the other party all of the prevailing party's costs and expenses of such dispute or suit, including reasonable attorneys' fees and court costs, incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

19.5 **Business Days.** "**Business Day**" (or "**business day**") means, as to any party, any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close in the state, commonwealth, or jurisdiction where the Property is located. If the last day of any time period hereunder, or the last day for performance of any obligation, or for giving any notice, or for taking any other action hereunder falls on a day that is not a Business Day, then the last day of such time period shall be extended to the first day thereafter that is a Business Day.

19.6 **Merger/Prior Agreements.** **THIS AGREEMENT CONSTITUTES THE INITIAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES' AGREEMENT ON THE MATTERS CONTAINED IN THIS AGREEMENT. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS AGREEMENT ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS AGREEMENT. THE PROVISIONS OF THIS AGREEMENT MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS AGREEMENT, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS AGREEMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.**

19.7 **Headings/Captions.** The descriptive headings/captions of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

19.8 **Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Agreement remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

19.9 **"Herein" and "Hereof".** The words "herein" and "hereof" when used in this Agreement refer to this Agreement in its entirety and not solely to any specific sentence, paragraph, or section.

19.10 **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged. Any party delivering an executed counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to do so does not affect the validity, enforceability, or binding effect of this Agreement.

19.11 **Successors or Assigns.** The terms, conditions, covenants, and agreements of this Agreement extend to and are binding upon Seller, Buyer, and their respective heirs, administrators, executors, legal representatives and permitted successors, subtenants, and assigns, if any, and upon any person or entity coming into ownership or possession of any interest in the Property by operation of law or otherwise.

19.12 **Third-Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person or legal entity other than the signatories.

19.13 **Consent.** Except where otherwise expressly provided for in this Agreement, any consent or approval required under this Agreement shall not be unreasonably withheld, delayed, conditioned, denied, or otherwise refused in any manner.

19.14 **Radon Notice.** The following notice is incorporated into this Agreement pursuant to the requirements of Florida Statutes: "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 Public Health Unit."

20. **Offer and Acceptance; Binding Effect.**

20.1 **Acceptance.** This Agreement, as executed by the first party to execute this Agreement (the "**Offeror**") shall constitute an offer to the other party to execute this Agreement (the "**Offeree**"). The Offeree shall accept the offer, if at all, by delivering to the Offeror one (1) fully executed original of this Agreement on or before 5:00 p.m. on the Acceptance Date. The notice provisions of this Agreement notwithstanding, acceptance of this offer shall be effective only upon the actual receipt by the Offeror of the aforesaid executed original. This offer, if not timely accepted as aforesaid, shall expire and be of no further force and effect at this time and date set forth in this Section 20.

20.2 **Binding Effect.** This Agreement shall not be binding upon any party signatory hereto until Buyer and Seller have each executed at least one (1) original of this Agreement and have initialed any changes hereto.

21. **Waiver of Jury Trial.**

EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN AGREEMENT, TORT, OR OTHER-

WISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Seller

WACHOVIA BANK, NATIONAL ASSOCIATION
a national banking association

By: F. Eric Heinton

Print Name: F. Eric Heinton

Title: Vice President

Date: 8/14/07

Buyer

By: Danny O. Crew

Print Name: Danny O. Crew

Title: City Manager

Date: 8/14/07

The Escrow Agent joins this Agreement for the limited purpose of affirming that it will abide by the terms and conditions of this Agreement with respect to the Earnest Money to be held by the Escrow Agent.

By: James C. Brady

Print Name: James C. Brady

8/15/07

EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 6, inclusive, and the North 270 feet of Tract A, "H&W Investments Subdivision", as recorded in Plat Book 66, page 110 of the Public Records of Miami-Dade County (formerly known as Dade County), Florida