MEMORANDUM

Agenda Item No. 8(H)(1)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	May 19, 2015
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving Settlement Agreement and Mutual Release between Miami-Dade County and the Haven Center, Inc. for a payment to the County of $150,000.00; authorizing the County Mayor to execute such agreement and exercise all rights contained therein

The accompanying resolution was prepared by Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: May 19, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Settlement Agreement and Mutual Release between Miami-Dade County and The Haven Center, Inc. for Haven's Payment of $150,000.00 to the County and County's Assumption of Responsibility for all Site Conditions, Including the Completion of any Required Remediation of Environmental Contamination

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the Settlement Agreement and Mutual Release (Agreement) between Miami-Dade County (County) and The Haven Center, Inc. (Haven) in exchange for a payment from Haven to the County in the amount of $150,000.00. Upon approval of the Agreement, the County assumes all responsibility for existing site conditions, including the remediation of any existing environmental contamination on the site.

Scope

The property in question, which the County purchased from Haven on August 15, 2014, is located at 11175 SW 80th Street, adjacent to Kendall Indian Hammocks Park, which is located at 11395 SW 79th Street in County Commission District 10, Senator Javier D. Souto.

Fiscal Impact/Funding Source

The total fiscal impact from this Agreement is a $150,000.00 payment from Haven to the County.

Track Record/Monitor

The Agreement (Attachment A) will be monitored by Randy Koper, Parks, Recreation and Open Spaces Department's (PROS) Property Manager.

Background

This Agreement concerns the property that the County purchased from Haven, as authorized by the Board in Resolution R-640-14 (Attachment B). As set forth in Resolution R-640-14, in 1951 and 1976, the County deeded the property to Haven for a nominal amount for the purpose of using the property for the care and training of persons with mental or physical disabilities. On July 8, 1987, Haven executed a Declaration of Restrictions in the County's favor under which Haven granted the County a right-of-first-refusal to re-purchase the property on the same terms and conditions as any bona fide offer presented to Haven for the purchase of the property.

On April 3, 2014, Kendall Health Care Properties (Palace) notified the County that it had signed an Agreement of Sale and Purchase with Haven to purchase the property for $7.45 million. Under the terms of the right-of-first-refusal, the County had 30 days in which to exercise its right by matching Palace's offer. The County, however, negotiated an extension of time with Haven and Palace, allowing the County until July 11, 2014, to exercise its right-of-first-refusal. The Board approved this

extension in Resolution R-460-14, and PROS continued negotiations with Palace on a division of the property that would allow PROS to expand the adjacent Kendall Indian Hammocks Park while also allowing Palace to expand its adjacent elder care facility.

When Palace notified the County of its Agreement of Sale and Purchase on April 3, 2014, Palace, through professional consultants, had completed extensive pre-purchase due diligence, including title work and studies of site conditions, including environmental conditions. The County, through PROS, requested copies of Palace's due diligence. Before seeking the Board's approval for the purchase of the property, and as required by Administrative Order 8-1, the County reviewed the due diligence completed by Palace's professional consultants. The due diligence documents indicated no matters of concern.

For additional assurance that the property was free of environmental contamination, on July 24, 2014 PROS requested that the Department of Regulatory and Economic Resources-Division of Environmental Resources Management (DERM) conduct an independent investigation as to site conditions. DERM inspected and obtained soil samples at the property on July 25, 2014. DERM's soil samples revealed concentrations of polycyclic aromatic hydrocarbons that exceeded the acceptable ranges established in Chapter 24 of the Code of Miami-Dade County. As a result, on July 31, 2014, DERM notified Haven that action on Haven's part would be required to address the newly discovered contamination.

DERM completed additional assessment between August 8 and August 12, 2014 with expedited laboratory analysis to provide the fastest turn around possible within the limitation of the analytical methodology. Notwithstanding, by the time DERM's preliminary results arrived on August 15, 2014, however, the negotiations with Palace had collapsed and the Board, through Resolution R-640-14, approved on July 1, 2014, had exercised the County's right-of-first-refusal. The purchase documents established a closing deadline of August 8, 2015, and the County's failure to meet that deadline would mean its forfeiture of the $200,000.00 deposit and the loss of the opportunity to expand Kendall Indian Hammocks Park.

The County, without avail, sought from Haven an extension of the closing deadline. As a result, the County filed a lawsuit—*Miami-Dade County v. The Haven Center, Inc.* (Case No.: 14-20289-CA-30) (Litigation)—to delay the closing and protect the County's interest in the property (i.e., prevent Haven from selling the property to a third party). During the hearing, Haven disputed DERM's findings, challenging the adequacy of the scientific methods employed. After the hearing, and after the Court ordered the parties to mediate their dispute, the Court ordered the parties to close in escrow by depositing the purchase money and closing documents with the escrow agent. The Court further ordered that the purchase money should remain in escrow until the property was remediated of environmental contamination, with remediation costs to be deducted from the purchase money.

DERM continued its analysis of the property with the aim of more narrowly defining the degree/extent of contamination and identifying the possible cause of the contamination. DERM's analysis indicated that the contamination was localized, did not extend offsite and was reasonably uncomplicated to remediate. As a result, on August 15, 2014, upon receiving a commitment from

Haven that it would address the environmental conditions on the property, as required under the purchase agreement, the parties completed the transaction, exchanging funds and closing documents.

On September 2, 2014, DERM issued the final results of expanded site assessment conducted at the site. The final results confirmed earlier indications that the contaminated areas were relatively localized. Based on the contaminants documented, DERM concluded that the contamination was likely attributable to the construction and demolition debris (roofing shingles and material, tiles, etc.) documented at the site. PROS staff, using estimates from prior remediation efforts, concluded that the contamination could be fully addressed for approximately $150,000.

Under this Agreement, Haven would pay the County $150,000, and the County would assume all responsibility for existing site conditions, including the completion of the required environmental remediation. This agreement would resolve (1) the Litigation and (2) Haven's obligation to remediate the environmental conditions identified in the July 31 and September 2 DERM Notices. By completing the required remediation itself, the County can more readily ensure that the remediation is completed properly and promptly, without delays caused by litigation or additional investigations. A prompt and proper remediation would enhance public safety and PROS' ability to develop the property into a park.

Michael Spring, Senior Advisor
Office of the Mayor

Attachments

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 19, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(H)(1)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
✓	
_____	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(H)(1)
5-19-15

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN MIAMI-DADE COUNTY AND THE HAVEN CENTER, INC. FOR A PAYMENT TO THE COUNTY OF $150,000.00; AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE SUCH AGREEMENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement and Mutual Release (the "Agreement") between Miami-Dade County and the Haven Center, Inc. for a payment to the County of $150,000.00, in substantially the form attached hereto as Attachment A and made a part hereof. This Board further authorizes the County Mayor or designee to execute the Agreement for and on behalf of Miami-Dade County and to exercise all rights contained in the Agreement.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of May, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MAG

Miguel A. Gonzalez

ATTACHMENT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into this ___ day of February, 2015 between Miami-Dade County (the "County"), a political subdivision of the State of Florida, and The Haven Center, Inc. ("Haven"), a non-profit corporation organized under the laws of Florida.

RECITALS

WHEREAS, at its July 1, 2014 meeting, the Board of County Commissioners, through Resolution R-640-14, authorized the County Mayor to exercise a right of first refusal to purchase a certain parcel of land (the "Property") from Haven, which parcel of land is described in Exhibit A to the Agreement of Sale and Purchase (the "Purchase Agreement") attached to Resolution R-640-14; and

WHEREAS, after the County's purchase of the Property under the terms set forth in the Purchase Agreement, certain disputes have arisen between the County and Haven as to their respective obligations and liabilities under the Purchase Agreement, which disputes relate to alleged environmental conditions on the Property as those conditions are described in notices from the Department of Regulatory and Economic Resources—Division of Environmental Resources Management ("DERM") dated July 31 and September 2, 2014 (the "July 31 DERM Notice" and "September 2 DERM Notice," respectively) and which alleged conditions resulted in the County's filing of a lawsuit styled *Miami-Dade County v. The Haven Center, Inc.* (Case No.: 14-20289-CA-30) (the "Lawsuit"); and

WHEREAS, Haven desires to pay the County a lump-sum payment of One Hundred Fifty Thousand Dollars ($150,000.00) (the "Settlement Payment"), as set forth in this Agreement, in exchange for the County's agreement to complete any required environmental remediation to DERM's satisfaction and assume responsibility for all other site conditions on the Property,

NOW, THEREFORE, in consideration of the foregoing recitals and following agreements, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the County and Haven agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement.

2. **Effective Date.** The Effective Date of this Agreement shall be the date of the expiration of the County Mayor's veto period subsequent to the approval of this Agreement by the Board of County Commissioners (the "BCC"). Notwithstanding the foregoing, Haven's covenant not to withdraw its approval of this Agreement, as set forth in § 3 of this Agreement, shall be effective upon its execution of this Agreement.

3. **BCC Approval.** Haven acknowledges that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County

must obtain the approval of the Board of County Commissioners and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the Board of County Commissioners ("BCC Approval").

a. **BCC Approval Window.** Haven acknowledges that BCC Resolution 130-06 requires that all non-County parties must execute the Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, Haven agrees to execute this Agreement before the County ("Haven Execution") and as a precondition of the presentation of this Agreement to the County Mayor or County Mayor's Designee or to the BCC. From the date of Haven Execution, the County shall have 180 days in which to obtain BCC Approval (the "BCC Approval Window"). During the BCC Approval Window, Haven agrees that it shall not withdraw or modify the terms of its settlement with the County, as presented in this Agreement.

b. **County's Obligations Before BCC Approval.** The County shall not be required to file any document compromising any claims it may have against Haven and shall not have released Haven until obtaining BCC Approval.

c. **Consequence Upon Failure to Obtain BCC Approval.** To the extent the BCC does not approve of this Agreement, and after all opportunities for BCC reconsideration have passed, the parties shall return to the status quo existing before the parties' preparation of this Agreement, and the fact that the County and Haven sought to negotiate a resolution to their dispute concerning the Property shall be inadmissible for all reasons and shall not prejudice any of the County's pre-existing rights and remedies with respect to Haven or any other person or entity.

4. **Agreement to Settle; No Admission of Liability.** Subject to the terms and conditions of this Agreement, including Haven's payment of the Settlement Payment, Haven and the County hereby agree to compromise and settle (1) the claims raised by the County in the Litigation and (2) Haven's obligation to remediate the environmental conditions identified in the July 31 and September 2 DERM Notices (for the purpose of this Agreement, both (1) and (2) are the "County's Claim"). It is understood that the terms of this Agreement, the payment of any moneys, or any other action taken pursuant to this Agreement in no way constitutes an admission of liability or acknowledgement of the validity of any allegation, finding, or conclusion by Haven or the County, but rather are made as a contractual settlement and not a mere recital by way of compromise to avoid the expense and uncertainty of further litigation.

5. **Updated Representations and Warranties; Modification of Purchase Agreement.** Haven hereby represents and warrants that as of the Haven Execution date, and with the exception of the matters raised in the July 31 and September 2 DERM Notices, Haven has no knowledge of adverse changes to the County with respect to the representations and warranties set forth in § 16 of the Purchase Agreement. Upon the Effective Date of this Agreement, and subject to Haven's representation in the preceding sentence, the Purchase Agreement shall be construed as an "as is" conveyance of the Property to the County, with the County accepting responsibility to remediate the site conditions identified in the July 31 and September 2 DERM Notices. Under the terms of this Agreement, as it modifies the Purchase Agreement, the County shall have a right to redress from Haven for a breach of the representations and warranties set forth in § 16 of the Purchase Agreement only if Haven (or its agents) knows or has reason to

know that any of the representations and warranties made as of the Haven Execution date are untrue or must be qualified in any material respect.

6. **Filing of Joint Stipulations of Dismissal.** Within thirty (30) days of obtaining BCC Approval, the parties shall file a Joint Stipulation of Dismissal with Prejudice, dismissing all claims in the Lawsuit with prejudice. The Joint Stipulation of Dismissal shall provide that the Court retains jurisdiction to enforce the terms of the Agreement and that each party shall bear its own attorneys' fees and costs.

7. **Payment Terms.** As a material inducement to and in consideration for the parties' entry into this Agreement, and subject to the terms and conditions of this Agreement, Haven agrees to the payment of the Settlement Payment to the County. The Settlement Payment shall be due within ten (10) days of the Effective Date of this Agreement. In the absence of written instructions from the County to the contrary, Haven shall make its payment to the County through any commercially reasonable means (e.g., wire transfer or cashier's check), and its payment shall name Miami-Dade County as the payee and be delivered to the attention of George Navarrete, Deputy Director of the Miami-Dade Parks, Recreation and Open Spaces Department, 275 Northwest 2nd Street, Miami, Florida 33128.

8. **Haven's Release of the County.** For the consideration and promises made herein, Haven releases and forever discharges the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the County's Claim or related to the Property or Purchase Agreement that Haven has or claims to have in the past, present, or future against the County, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by Haven in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through Haven. Haven agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the County's Claim, with the exception of any action to enforce this Agreement, and that to any such action (other than an action to enforce this Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

9. **County's Release of Haven.** For the consideration and promises made herein, the County releases and forever discharges Haven from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the County's Claim or related to the Property or Purchase Agreement (except as set forth in § 5 of this Purchase Agreement) that the County has or claims to have in the past, present, or future against Haven, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by the County in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through the County. The County agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the County's Claim, with the exception of any action to enforce this Agreement, and that to any such action (other than an action to enforce this

Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

10. **Sovereign Rights.** It is expressly understood that notwithstanding any provisions of this Agreement and the County's status as a party to this Agreement,

(a) the County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under Florida law and shall in no way be estopped from or be liable for withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature, which laws or regulations are or might be applicable to the planning, design, construction, development, or operation of any project on the Property;

(b) the County shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development, or operation of any project on the Property; and

(c) notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the County's Planning and Zoning Department, DERM, or their successor entities, or any other County, Federal or State department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

11. **Each Party to Bear its Own Costs and Fees.** Each party shall bear their own attorneys' fees and costs in any action, including through all stages of appellate review, relating to or arising out of the County's Claim or the enforcement of the terms of this Agreement.

12. **Florida Law Applies.** This Agreement shall be construed under the laws of the State of Florida.

13. **Entire Agreement; Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the parties to this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless it is executed in writing by the parties.

14. **Rule of Construction; Opportunity to Review.** The parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction. The parties declare that they have completely read the terms of this Agreement, that they have discussed the terms of the Agreement with legal counsel of their choice, and that they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

15. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives,

agents, attorneys, employees, officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the agreement.

16. **Authority to Execute.** By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to its terms. Further, the parties represent that they have not assigned their rights or claims subject of this Agreement to any third party.

17. **Severability.** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state, or county law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN ACCEPTANCE WHEREOF, Miami-Dade County and The Haven Center Inc. have set their respective hands as of the date and year appearing by their respective signatures.

[SIGNATURE PAGE FOLLOWS]

The Haven Center, Inc.	**Miami-Dade County, Florida**
By: Geraldine Tucker	By: _____
Print: Geraldine Tucker	Print: _____
Title: PRESIDENT	Title: _____
Dated: 1/28/15, 2015.	Dated: _____, 2015.

By: _____
Assistant County Attorney
As to Form and Legal Sufficiency

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

ATTACHMENT B

MEMORANDUM

Amended
Agenda Item No. 11(A)(19)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	July 1, 2014
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution exercising the right of first refusal to purchase approximately 20 acres of property located at 11175 SW 80 Street, Miami, FL, from the Haven Center, Inc. in the amount of $7,450,000 to be funded from impact fees and Building Better Communities General Obligation Bond funds for the purpose of expanding Kendall Indian Hammocks Park and creation of a local park Resolution No. R-640-14

The sponsoring Commissioner has requested that this resolution become effective upon the earlier of: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and filing of this approval with the Clerk of the Board.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 1, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

Amended
SUBJECT: Agenda Item No. 11(A)(19)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

__V__ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 11(A)(19)
7-1-14

RESOLUTION NO. R-640-14

RESOLUTION EXERCISING THE RIGHT OF FIRST REFUSAL TO PURCHASE APPROXIMATELY 20 ACRES OF LAND PURSUANT TO DECLARATION OF RESTRICTIONS DATED JULY 8, 1987 AND RECORDED IN COUNTY'S OFFICIAL RECORD BOOK 13359 PAGES 1986-1989 ("DECLARATION") AND PURSUANT TO THAT RIGHT OF FIRST REFUSAL AGREEMENT DATED MAY, 2014; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE ALL NECESSARY DOCUMENTS AND TAKE ALL NECESSARY ACTION, ON BEHALF OF THE COUNTY, TO COMPLETE THE ACQUISITION OF THE PROPERTY LOCATED AT 11175 SW 80 STREET, MIAMI, FL, FROM THE HAVEN CENTER, INC. IN THE AMOUNT OF $7,450,000 TO BE FUNDED FROM IMPACT FEES AND BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND FUNDS FOR THE PURPOSE OF EXPANDING KENDALL INDIAN HAMMOCKS PARK AND CREATION OF A LOCAL PARK; AND APPROVING THE REMOVAL OF THE DECLARATION ON THE PROPERTY AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME

WHEREAS, Miami-Dade County, in 1951 and again in 1976, deeded for a nominal amount, property owned by the County at approximately 80th Terrace and SW 112th Avenue to The Haven School, Inc., a non-for-profit corporation, ("Haven") for the purposes of using the property for the care and training of persons who are mentally or physically handicapped; and

WHEREAS, on July 8, 1987, Haven executed a Declaration of Restrictions dated July 8, 1987 and recorded in the public records of Miami-Dade County in Book 13359 and Pages 1986-1989 ("Declaration") attached hereto as Exhibit A in order to assure the Board of County Commissioners that representations made to the Board by Haven in order to obtain a revision of existing restrictive covenants on the property would be abided by; and

WHEREAS, Paragraph Two of the Declaration grants to the County the right of first refusal, to be exercised within thirty (30) days, to buy the property subject to the same terms and conditions of any bona fide written offer presented to Haven to purchase the property; and

WHEREAS, on April 3, 2014, Kendall Health Care Properties (the Palace) notified the County that the Palace and Haven had entered into an Agreement of Sale and Purchase, attached as Exhibit B, which triggered the County's right of first refusal to purchase the entire property; and

WHEREAS, on May 6, 2014, the Board approved Resolution R-460-14, approving a Right of First Refusal Extension Agreement to extend the right of first refusal until July 11, 2014; and

WHEREAS, the Board now desires to exercise the right of first refusal to purchase that approximately 20-acres of property, depicted in Exhibit C, from Haven for $7,450,000 in order to develop same as parks; and

WHEREAS, this 20-acre parcel is situated immediately adjacent to Kendall Indian Hammocks Park, a heavily used regional park; and

WHEREAS, should the County not exercise the right of first refusal, it will lose its opportunity to expand this park and to create a local park in Kendall, both of which are very much needed; and

WHEREAS, this property was appraised by two State-certified appraisers hired by the County valued the property at $8,260,000.00 and $10,550,000.00 on January 13, 2014 and January 12, 2014, respectively; and

WHEREAS, in addition, this Board seeks to lift the Declaration so as to allow the property to be developed as parks; and

WHEREAS, this resolution is consistent with Resolution No. R-953-12 that requires the Mayor to consider and analyze the acquisition of any parcel of land that becomes available adjacent to a county park as well as Resolution No. R-719-12 which has similar requirements specific to Kendall Indian Hammocks Park,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board hereby exercises the right of first refusal to purchase approximately 20 acres of property located at approximately 11175 SW 80th Street, Miami, Florida adjacent to Kendall Indian Hammocks Park, such right being exercised pursuant to the Declaration and that tri-party Right of First Refusal Agreement approved by this Board on May 6, 2014.

Section 2. This Board further authorizes the County Mayor or Mayor's designee to execute all documents and take all actions necessary to purchase the property located at 11175 SW 80 Street, Miami, FL from Haven in the amount of $7,450,000 to be funded from Building Better Communities General Obligation Bond Program Project No. 39 – "Kendall Indian Hammocks Park" in the amount of $4,450,000 and from impact fees in the amount of $3,000,000 pursuant to the terms and conditions set forth in the Agreement for Sale and Purchase dated April 1, 2014 attached hereto as Exhibit B.

Section 3. This Board hereby approves the removal and extinguishment of the Declaration and directs the County Mayor or the County Mayor's designee to take all actions necessary to effectuate such removal, including executing and recording any necessary documents in the public records of Miami-Dade County after review by the County Attorney's Office.

Section 4. Pursuant to Resolution No. R-974-09, the Board directs the County Mayor or Mayor's designee to record or cause to be recorded any instrument of conveyance in the Public Records of Miami-Dade County, Florida and to provide a recorded copy of such instrument to the Clerk of the Board within thirty (30) days of the execution of said instrument; and directs the Clerk of the Board to attach and permanently store a recorded copy together with this Resolution.

The Prime Sponsor of the foregoing resolution is Senator Javier D. Souto. It was offered by Commissioner **Sen Javier D. Souto**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman	**aye**		
Lynda Bell, Vice Chair	**aye**		
Bruno A. Barreiro	**aye**	Esteban L. Bovo, Jr.	**absent**
Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of July, 2014. This resolution shall become effective upon the earlier of: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board; or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

EXHIBIT A

1997 JUL 26 PM 11:07 87R289278
OR 13359 PG 1986

County Restrictions

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS that the undersigned (the "Owner") being the owner, or having some right, title or interest in the following described property (the "Property"), lying, being and situated in Dade County, Florida, to-wit:

All that part of Section 31, Township 54 South, Range 40 East described as follows:

The West half of the N.E. 1/4 of the S.W. 1/4 less the North 35 feet, the East 25 feet and the South 25 feet thereof, and less the West 25 feet of the South half thereof; and the East half of the N.E. 1/4 of the N.W. 1/4 of the S.W. 1/4 less the North 35 feet thereof. - 1st pt. Deed 1 - 2nd pt Deed 1

As well as the East 1/2 of the N.E. 1/4 of the S.W. 1/4 of Section 31, Township 54 South, Range 40 East, Dade County, Florida, less the North 35 feet and the East 35 feet and the South 25 feet and the West 25 feet thereof; - In 3

in order to assure the County Commission of Dade County, Florida, that representations made to the Commission by the Owner during review of the Owner's request for a revision of restrictive covenants as set forth below will be abided by, voluntarily makes the following Declaration of Restrictions (the "Declaration") covering and running with the Property, and declares that the Property and every part thereof will be used only in accordance with the Restrictions set out in this Declaration, as follows:

1. The Property and every part of it may be used for the following institutional purposes only: schools, public or private; home for the aged and/or mentally or physically disabled; sanitarium; convalescent home; day care center; adult congregate living facility; other compatible caretaking institutional use. Neither the Property, nor any part thereof, shall be used for business, commercial, retail, manufacturing or non-institutional residential or other purposes not specifically listed above.

2. Dade County shall have the right of first refusal, at the same price and on the same terms and conditions as a

PREPARED BY: Stanley B. Price, Esq.
One CenTrust Financial Center
100 S.E. Second Street
Miami, Florida 33131

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bona fide offer pursuant to a contract contingent on the County's right of first refusal for the sale or transfer of the Property or any portion thereof by Owner as well as Owner's successors, assigns or transferees, prior to the sale of the Property or portion thereof for the purposes enumerated in Paragraph 1. In the event that the County refuses to exercise its right of first refusal within 30 days of written notification of such bona fide offer by the Owner, the Owner may sell the Property or portion thereof for the express purposes delineated in Paragraph 1, and Dade County shall receive five (5) percent of the gross proceeds of the land value of the sale; provided, however, that if Owner should sell or transfer any particular portion of the Property of less than 11 acres within one (1) year of executing this Declaration, Dade County shall receive $55,000.00 for the express purpose of improving County-owned parks within one (1) mile of the Property and such transfer or sale and any future transfers or sales of such particular portion of the Property shall not be subject to the right of first refusal provided for herein. In no event shall Dade County be entitled to multiple payments of five (5) percent on real property for which it has previously received payment including the less-than-eleven-acre portion of the Property which may be transferred within one (1) year of the execution of this Declaration.

4. In the event payments are not made as promised, or uses are not restricted as promised, in addition to any other remedies available, the Dade County Departments, including Building and Zoning Department, are hereby authorized to withhold any further permits, and refuse any inspections or grant any approvals, until such time as this Declaration is complied with.

4. In the event of any transfer or sale pursuant to Paragraph 3 herein, the then Owner of the property shall inform in writing, each lessee, resident, renter, or user of the property of all uses within 750 feet of the property.....

5. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of

remedies, nor shall it preclude the party exercising the same from exercising any other additional rights, remedies or privileges.

An further part of this Declaration, it is hereby understood that any official inspector of the Dade County Building and Zoning Department, or its agents duly authorized, has the privilege at any time during normal working hours of entering and investigating the use of the Property to determine whether or not the requirements of the building and zoning regulations and the conditions herein-agreed to are being complied with.

These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the Property and for the public welfare.

This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded in the public records of Dade County, Florida.

These covenants contained in this Declaration are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument has been recorded agreeing to change the Declaration in whole, or in part.

This Declaration may be modified, amended or released as to the Property, or any portion thereof, by a written instrument executed by the then owner of the fee simple title or such lands petitioning such modification, amendment or release, provided that the same is also approved by the Board of County Commissioners of Metropolitan Dade County, Florida, after public hearing.

Should this Declaration be so modified, amended or released, the Director of the Dade County Building and Zoning Department, or the executive officer of the successor of such Department, or in the absence of such director or executive officer, by his assistant in charge of the Department in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

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RE 13359PG 1989

Enforcement shall be by action at law or in equity against any parties or persons violating, or attempting to violate, any covenants, either to restrain violation or to recover damages. The prevailing party in this action, or suit, shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available under law.

Invalidation of any one of these covenants, by judgment or court, in no way shall affect any of the other provisions which shall remain in full force and effect.

Signed, sealed, executed and acknowledged this 8th day of July, 1987.

WITNESSES:

THE HAVEN CENTER, INC.

By: John J. Montgomery
Its: President

Attest: [illegible]
Its: Secretary

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

I HEREBY certify that on this day before me, a Notary Public duly authorized in the state and county named above to take acknowledgements, personally appeared John Montgomery and DAVID CAILEY ESQ, to me known to be the persons described as President and Secretary of The Haven Center, Inc., a Florida who executed the foregoing instrument, and acknowledged before me that such persons executed the said instrument in the name of and for that corporation, affixing the corporate seal of that corporation thereto, that as such corporate officers such persons are duly authorized by that corporation to do so, and that the foregoing instrument is the act of that corporation.

WITNESS my hand and official seal in the county and state named above this 8th day of July, A.D. 1987.

* not-for-profit corporation,

Notary Public in and for the
State of Florida At Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAY 5, 1990

EXHIBIT B

Kendall Health Care Properties
c/o The Palace Group
10850 S.W. 113th Place
Miami, Florida 33176

April 3, 2014

Mayor Carlos A. Gimenez
c/o Lisa M. Martinez, Senior Advisor (via Hand-Delivery and email: *lisamm@miamidade.gov*)
Office of the Mayor
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128

and

Jack Kardys, Director (via email: *Kardys@miamidade.gov*)
Miami-Dade Parks, Recreation and Open Spaces
275 N.W. 2nd Street, 5th Floor
Miami, Florida 33128

and

Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida, 33128
Attn: Miguel A. Gonzalez, Assistant County Attorney (via email: *GMiguel@miamidade.gov*)

RE: **Declaration of Restrictions** made by **The Haven Center, Inc.** dated July 8, 1987 and recorded July 28, 1987 in Official Records Book 13359, Page 1986 of the Public Records of Miami-Dade County, Florida (the "**Declaration**"), which grants unto Miami-Dade County (the "**County**") a right of first refusal to purchase the Property described therein (the "**County ROFR**").
All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration.

NOTICE TO COUNTY OF BONA FIDE OFFER TO PURCHASE PROPERTY

Dear Mr. Mayor, Director Kardys and Assistant County Attorney Gonzalez:

This letter shall constitute **Notice to the County** that Kendall Health Care Properties, a Florida general partnership, as "**Purchaser**", and The Haven Center, Inc., as "**Seller**", have entered into that certain Agreement of Sale and Purchase dated April 1, 2014, respecting the sale of the Property described in the Declaration for the purchase price of $7,450,000.00 (the "**Purchase Agreement**"). A true, correct and complete copy of the Purchase Agreement is attached to this Notice and made a part hereof. This Notice to the County is being issued on behalf of the Seller, as the Owner of the Property, who in Section 14(D) of the Purchase Agreement has authorized the Purchaser to submit this Notice to the County on behalf of the Seller. This Notice to County has been addressed to you in accordance with the notice instruction letter dated April 10, 2013 issued by Director Kardys to Seller.

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Paragraph 2 of the Declaration grants the County ROFR and provides that "*In the event that the County refuses to exercise its right of first refusal within 30 days of written notification of such bona fide offer by the Owner, the Owner may sell the Property or portion thereof for the express purposes delineated in Paragraph 1, and Dade County shall receive five (5) percent of the gross proceeds of the land value of the sale...*".

It is therefore respectfully requested that the County advise us in writing within such 30 day period as to whether the County has elected to exercise the County ROFR. In the event the County does not elect to exercise the County ROFR within such 30 day period, it is respectfully requested that the County also execute a Waiver and Release of the ROFR in recordable form ("**ROFR Waiver**") and advise the Seller and Purchaser that the County will deliver the ROFR Waiver to the Purchaser (or its assignee pursuant to Section 19 of the Purchase Agreement) upon receipt by County of the payment of five (5) percent of the gross proceeds of the land value of the sale to Purchaser under the Purchase Agreement (which based on the Purchase Price of $7,450,000.00, would be in the amount of $372,500.00).

Thank you very much for your cooperation and assistance. If you should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Kendall Health Care Properties,
a Florida general partnership
By: Helen Homes of Kendall Corporation,
as general partner

By: _____
Jacob Shaham, President

Ccs: The Haven Center, Inc.
9040 Sunset Drive
Miami, Florida 33173
Attention: Leslie Leech, Jr. CEO

Steven M. Weinger, Esq.
2650 S.W. 27th Avenue
Miami, Florida 33133

Oscar Roiz, The Palace Group-CFO
Marc L. Faust, Esq.

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AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (the "Agreement") is made and entered into as of the 1st day of April, 2014 (the "Effective Date"), by and between **THE HAVEN CENTER, INC., a Florida not-for-profit corporation** (the "Seller"), having its address at 9040 Sunset Drive, Miami, Florida 33173 (Attn: Leslie Leech, Jr.), and **KENDALL HEALTH CARE PROPERTIES, a Florida general partnership** (the "Purchaser" or "Buyer"), having its address at 11355 S.W. 84th Street, Miami, Florida 33173 (Attn: Jacob Shaham) .

RECITALS:

A. Seller warrants to Purchaser that it is the owner of the real property and interests situated, lying and being in Miami-Dade County, Florida, having the legal description set forth in **Exhibit "A"** attached hereto and made a part hereof and consisting of approximately twenty (20) acres fronting on S.W. 80th Terrace along its northerly boundary as more particularly outlined in yellow and shown on the sketch attached hereto and made a part hereof as **Exhibit "B"** (the "Property"),; and

B. Seller has agreed to sell the Property to the Purchaser, together with all easements,. privileges, and appurtenances (including, without limitation, severable use and transferrable development rights) appertaining to the Property; all rights, if any, which Seller has in any adjoining streets, roadways, and avenues, opened, vacated or proposed and any and all permits, licenses, analyses, designs, plans, surveys, reports, studies, test results and other information and documentation related to the Property (all of the foregoing property, together with any and all improvements, fixtures, equipment and appliances thereon, and any other personalty owned by Seller (if any) and used in connection with the ownership and operation of the Property, are all deemed to be included within the defined term "Property"); and

C. The Purchaser has agreed to purchase the Property from the Seller, all for the price and pursuant to the representations of the Seller and the terms, conditions and provisions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the parties hereto, each intending to be legally bound, do hereby represent, warrant, covenant and agree, as follows:

1. **RECITALS**: The foregoing recitals are represented by Seller to be true and correct and are incorporated herein by this reference and made a part hereof.

2. **SALE AND PURCHASE OF PROPERTY**: Upon the terms and provisions and subject to the conditions hereof and upon the representations and warranties herein made, Seller shall validly transfer, sell, assign and convey to Purchaser, on the "Closing Date" (as hereinafter defined) fee simple title to the Property and Purchaser shall accept such conveyance subject to the conditions hereof and upon the representations and warranties made herein.

3. **PURCHASE PRICE**: The purchase price shall be SEVEN MILLION FOUR HUNDRED FIFTY THOUSAND and No/100 (**$7,450,000.00**) DOLLARS. The purchase price shall be payable as follows:

A. Deposit: Upon the execution of this Agreement by the Seller and the Purchaser (the "Effective Date"), Purchaser shall deposit with KATZ, BARRON, SQUITERO, FAUST, as the escrow agent (the "Escrow Agent") the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS, securing the obligations of the Purchaser hereunder (the "Deposit"), which shall be held in escrow by the Escrow Agent in accordance with the terms and conditions of this Agreement. The Deposit, together with all interest earned thereon shall sometimes be referred to herein as a "Deposit" or as "Deposits"). Any deposits in a liquid form received hereunder by the Escrow Agent, upon the written instruction of the Purchaser, may be placed by Escrow Agent in an interest bearing escrow account which interest shall accrue for the benefit of the Purchaser. The Purchaser represents to the Escrow Agent that its U.S. taxpayer identification number is **65-0071731**.

B. Closing Payment: At Closing (as hereafter defined), the balance of the Purchase Price, increased or decreased by credits, prorations and adjustments, shall be paid by Purchaser to Seller by the Deposits plus cash, cashier's check or confirmed wire transfer.

4. **RIGHTS OF INSPECTION, AUDIT, TESTING AND REVIEW**:

A. Intentionally omitted.

B. Purchaser, it counsel, accountants, agents and other representatives shall have full and continuing access to the Property and all parts thereof. Purchaser shall also have the right to enter upon the Property at any time after the Effective Date for any purpose whatsoever, including surveying, engineering, environmental tests and studies, test boring and such other work as the Purchaser shall consider appropriate and shall have the further right to make such inquiries of governmental agencies, utility companies, tenants and other like parties and to make such feasibility studies and analyses as it considers appropriate. Purchaser agrees to indemnify and hold Seller harmless from and against all damages or injuries suffered by Seller or third parties as a direct result of Purchaser's (or its agents or employees or contractors, or persons claiming by, through or under any of them) entry and activity on the Property for purposes of its due diligence investigation of the Property as herein permitted above.

C. Purchaser shall pay or cause to be removed any liens filed against the Property as a result of any actions taken above by Purchaser and Purchaser shall indemnify Seller for all damages or losses incurred to the Property or anyone on the Property as a proximate result of the actions taken above by the Purchaser. Such rights of inspection, review and audit, or the exercise or non-exercise of such right, shall not constitute a waiver of any of Purchaser's rights under this Agreement.

5. **PERMITTED EXCEPTIONS**: This sale is being made and the Purchaser shall take title subject only to the following (the "Permitted Exceptions"):

A. Covenants and restrictions of record as of the Effective Date set forth on the "Schedule of Title Exceptions" attached hereto and made a part hereof (the "Existing Title Exceptions"), which Existing Title Exceptions are set forth in Schedule B-II of that certain title insurance commitment no. 16231004 issued by Fidelity National Title Insurance Company and having an effective date of January 15, 2014 (the "Title Commitment"), a copy of which Title Commitment has been delivered by Purchaser to Seller.

B. Taxes for the year of Closing and subsequent years (subject, however, to adjustment as provided herein). Seller is a tax-exempt organization and is not liable for real estate taxes. Notwithstanding anything to the contrary in this agreement, Seller shall have no responsibility for real estate taxes (and no responsibility for any proration or adjustment for real estate taxes) unless it is

asserted by the applicable taxing authority that Seller is for any reason not entitled to its exemption from real estate taxes.

C. All matters which appear in that certain Survey obtained by Purchaser and performed by Schwebke Shiskin under Job No. AJ-5155A dated 2-25-14 (the "Survey").

6. **TITLE**: Subject to (i) obtaining the County Waiver; (ii) the Seller's obligation to satisfy the requirements set forth as Items 2, 4 and 5 of Schedule B-I of the Title Commitment; (iii) the Seller's obligations to deliver the Seller's Closing Documents, and (iv) the Purchaser's rights in connection with the "down date" of the title as hereafter provided, , the Purchaser acknowledges that it is satisfied with the Existing Title Exceptions and has satisfied itself as to the nature and extent and condition of the Property and the quality of title and is taking and accepts the Property and title as-is. Seller agrees and warrants solely that nothing shall be done or permitted to occur between the Effective Date and the Closing Date that will have a material negative impact on the Property or quality of title and shall not permit any new encroachments on the Property from the Effective Date through the Closing Date. The Parties acknowledge that a material negative impact shall be deemed to exist with respect to a matter which may prohibit, impede or restrict the development, construction, operation, use, sale or leasing of senior living facilities (the "Project") in conjunction with the operation of the senior living facilities presently located upon the lands situated immediately adjacent to the Property along the Property's southerly boundary and which senior living facilities are commonly referred to as "*The Palace at Kendall*" and consist of a nursing home, assisted living facilities, and independent living facilities (such existing senior living facilities and the lands upon which they are situated being collectively referred to herein as "The Palace Campus"). . If between the Effective Date and the Closing Date any item newly appears in a title or lien search update that did not exist in the Title Commitment or the Survey and will render title unmarketable or have a material negative impact or if any encroachments are created, then Buyer shall deliver written notice to Seller within three (3) business days from receipt of the update with Buyer's written election to terminate this Agreement otherwise the new conditions of the Property or title shall then be deemed to have been waived. In no event shall the Closing Date be extended absent an express written agreement between the parties. Neither party shall have any obligation to agree to an extension. Notwithstanding the foregoing, Seller agrees that on or before the Closing Date, the following liens and encumbrances shall either be removed or the funds required to satisfy these items shall be held by the Escrow Agent and applied to the liens and encumbrances:

That certain Mortgage given by Seller and Regional Properties, Inc. to Bank of America, N.A. recorded September 26, 2003 in Official Records Book 13359, Page 1828, as described in Item 4 of Schedule B-I of the Title Commitment.

The Title Commitment shall be "down dated" to an effective date at least three (3) days prior to Closing and as "down dated" shall confirm that no material new matters have appeared of record that were not of record on the Effective Date..

7. **SURVEY**: The Purchaser has obtained the Survey and is acknowledges that it is satisfied with the conditions of the Property as shown by the Survey. If between the Effective Date and the Closing Date any item or encroachment arises that is not shown upon the Survey, and which will render title unmarketable or which may prohibit, impede or restrict the development, construction, operation, use, sale or leasing of the Project in conjunction with the operation of the senior living facilities presently located upon the Palace Campus, then Buyer shall deliver written notice to Seller within three (3) business days from receipt of the written information disclosing such new matter with Buyer's written election to terminate this Agreement, otherwise the new conditions of the Property or title shall then be deemed to have been waived. In no event shall the Closing Date be extended absent an express written agreement between the parties. Neither party shall have any obligation to agree to an extension.

8. **CLOSING**: If all the conditions hereof are met, the delivery of the deeds, documents, money and other acts necessary to accomplish the transactions provided for in this Agreement (the "Closing"), shall take place on the date which is thirty (30) days from the date of the delivery by the County of the fully executed "County Waiver" (as such term is described in Paragraph 15(D) below), or as otherwise changed by written agreement executed by the Seller and Purchaser (the "Closing Date"); beginning at 10:00 o'clock, A.M., on said date and continuing until finally closed. The Closing shall take place at the offices of the Purchaser's attorney located in Miami-Dade County, Florida. If all conditions to Closing are not met as of the Closing Date, this Agreement shall terminate, unless the Purchaser elects to waive such unsatisfied condition(s).

9. **CLOSING COSTS AND ADJUSTMENTS**: At Closing, the following items shall be borne, adjusted, prorated or assumed by or between Seller and Purchaser, as follows:

A. Adjustments and Prorations:

(i) Real Estate Taxes: Real estate and personal property taxes (if any) shall be prorated between Seller and Purchaser as of the Closing Date on the basis of the taxes paid for the most recent tax year that has been assessed. If the Closing Date shall occur before the tax is fixed for the then current year, the apportionment shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax is fixed for the year in which the Closing occurs, Seller and Purchaser agree to reprorate and adjust the proration of taxes and, if the reproration results in an adjustment of more than One Hundred and No/100 ($100.00) Dollars, to refund or pay (as the case may be) such sums as shall be necessary to effect such adjustment within fifteen (15) days of written demand therefor provided, however, that so long as Seller remains a tax-exempt organization and is recognized by the applicable taxing authority to be entitled to an exemption from real estate taxes, it shall have no liability for real estate taxes by way of proration with Purchaser or otherwise. This provision shall survive the Closing.

(ii) Certified/Pending Liens: Certified, confirmed and ratified governmental liens as of the Closing Date shall be paid by the Seller. Pending liens as of the Closing Date shall be assumed by the Purchaser, provided, however, that where the improvement has been substantially completed as of the Closing Date, such pending lien shall be considered as certified, confirmed or ratified, and Seller shall, at Closing, be charged an amount equal to the last estimate by the public body, of the assessment for the improvement.

(iii) Other Taxes, Expenses, Insurance, Interest, Etc.: Taxes (other than real and personal property), insurance (if assumed), assessments, water and sewer charges, waste fee and fire protection charges, shall be prorated as of 11:59 P.M. on the Closing Date. The present insurance coverage on the Property shall be terminated as of the Closing Date and there shall be no proration of insurance premiums.

B. Closing Costs:

(i) Seller shall pay the following costs and expenses in connection with the Closing: State documentary stamps which are required to be affixed to the instrument of conveyance; local option surtaxes, if any; the cost of recording any corrective instruments and the County Waiver.

(ii) Purchaser shall pay the following costs and expenses in connection with the Closing: the cost of the title insurance commitment and policy and all related title searches; the cost of the Survey; and the cost of recording the Deed.

(iii) Each party shall bear the fees and charges of its respective attorneys, consultants, accountants, engineers, architects and other professionals and/or representatives.

C. County Waiver Payment: Purchaser shall pay the "County Waiver Payment" described in Paragraph 14(D) below, provided that under no circumstances shall Purchaser be obligated to pay an amount greater than $372,500.00. If the amount of the County Waiver Payment is greater than $372,500.00, then Seller shall have the option of paying the additional amount in its sole discretion or may, in its sole discretion, refuse to pay any additional amount in which case the Purchaser shall have the option of paying the additional amount or terminating this Agreement and receiving as its sole remedy the return of the Deposits.

10. **CLOSING DOCUMENTS**:

A. Seller's Documents at Closing: At Closing, Seller shall execute and/or deliver to Purchaser the following:

(i) Special Warranty Deed;

(ii) An Affidavit of No Liens and of Exclusive Possession;

(iii) Counterpart of Closing Statement;

(iv) Bill of Sale and Assignment as to any personalty on the Property, the Property Data and all other rights affecting or related to the Property, including those described in Recital B;

(v) Non-foreign Affidavit evidencing that Purchaser shall not be liable for transferee liability under Section 1445 of the Internal Revenue Code, as amended;

(vi) Seller's corporate resolutions and incumbency certificates authorizing Seller and those officers acting on its behalf to consummate the obligations of Seller hereunder as required under Paragraph 15(E) hereof;

(vii) "Gap" Affidavit;

(viii) Such Corrective Instruments as may be required to deliver good, marketable and insurable title to the extent required under the terms of this Agreement, subject to the provisions of Paragraph 6 hereof;

(ix) Intentionally omitted; and

(x) Any other documents reasonably necessary or advisable to consummate the transaction contemplated hereby.

B. Purchaser's Documents at Closing: At Closing, the Purchaser shall execute and/or deliver to Seller the following:

(i) Counterpart of Closing Statement;

(ii) Any other documents necessary or advisable to consummate the transaction contemplated hereby; and

(iii) The Closing Payment.

11. **PROCEEDS OF SALE AND CLOSING PROCEDURE**: The Deed shall be recorded upon clearance of funds and evidence of title continued at Seller's expense, to show fee simple title in Purchaser, without any change which would render Seller's fee simple title other than good and marketable, from the date of the last evidence and in accordance with the terms of Sections 6 and 7 above.

12. **DEFAULT**: If the Seller shall default under any of the terms and conditions of this Agreement or shall breach or violate any of the representations or warranties contained herein, Purchaser shall be entitled to the immediate return of the Deposits or in the alternative, Purchaser may elect to leave the Deposits with the Escrow Agent and to pursue all remedies available to Purchaser under Florida law, including without limitation, actions for specific performance and/or damages and/or such other relief as may be appropriate and in that case the appropriate Court with jurisdiction over this matter shall determine the disposition of the Deposits. If the Purchaser shall default hereunder, the Seller's sole remedy

shall be to retain the Deposits, such sum being agreed upon as liquidated damages, provided, however, and notwithstanding anything contained herein to the contrary, in the event that Purchaser alleges a breach or default hereunder by Seller and in connection therewith initiates legal proceedings against Seller, and if Seller is then the prevailing party in such proceeding, Seller shall be entitled to pursue its claim for compensatory damages available under Florida law, which Seller may assert are directly attributable to or caused by the filing of legal proceedings. Upon the termination of this Agreement, all Property Data delivered by the Seller to the Purchaser shall be returned by the Purchaser to the Seller. As used in this Agreement, the word "default" is to mean that a party hereto has breached a term, covenant or condition contained herein; and, except for the failure to timely close, such party has failed to cure same within thirty (30) days from receipt of written notice from the other party specifying the nature of the alleged default provided that written notice of the default must be delivered to the other party within twenty (20) days of the date that a party is made aware of such breach, failing which such breach shall then be deemed waived. A default by the Purchaser due to the failure to tender the purchase price to Seller on the Closing Date, shall then be deemed a default as of the Closing Date and not subject to the thirty (30) day notice and opportunity to cure. No default shall become actionable until the expiration of the aforesaid cure period with the default unremedied except as otherwise provided herein,.. No delay or omission in the exercise of any right or remedy accruing to one party upon any breach by the other party under this Agreement shall impair such right or remedy to be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by one party of any condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition contained herein. All rights, powers, options or remedies afforded to either party either hereunder or by law shall be cumulative and not alternative and the exercise of one right, power, option or remedy allowed herein or by law shall not preclude the exercise of another or subsequent exercise of such right, power, option or remedy. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this Agreement.

13. **ATTORNEY'S FEES**: Should either party employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement (if permitted hereunder), the party prevailing shall be entitled to payment by the other party of all reasonable costs, charges and expenses, including

attorneys' fees through all levels of proceedings, expended or incurred in connection therewith by the prevailing party provided that in the event Purchaser institutes such an action, the Deposits shall not be released by the Escrow Agent until the conclusion of such proceeding so as to ensure that the funds are available to Seller in the event the Seller is the prevailing party and entitled to payment of its reasonable costs, charges, and expenses, including but not limited to reasonable attorney's fees.

14. **CONDITIONS TO PURCHASER'S OBLIGATIONS**: In addition to other matters set forth in this Agreement, the obligations of Purchaser hereunder to consummate the transactions contemplated hereby are subject to the satisfaction, as of the Closing Date, of each of the following conditions:

A. Correctness of Representations and Warranties: All representations and warranties of Seller set forth in this Agreement shall be true on and as of the Closing Date with the same force and effect as if such representation and warranties had been made on and as of the Closing Date.

B. Compliance by Seller: Seller shall have performed, observed and complied with all of the covenants, agreements and conditions required by this Agreement to be performed, observed, and complied with by it prior to or as of the Closing Date.

C. Physical Condition of the Property: As of the Closing Date, the Property shall be kept and maintained in the same physical condition as it was in at the time of the execution hereof, ordinary wear and tear excepted. Except as otherwise expressly provided in this Agreement, Purchaser will purchase the Property in "AS IS" condition and repair and without any other representations or warranties from Seller respecting the physical condition of the Property.

D. Waiver and Release of Rights of First Refusal: Seller authorizes Purchaser to immediately initiate procedures on behalf of Seller to obtain a waiver and release of any and all rights of first refusal or opportunity, if any, in favor of Miami-Dade County or any other governmental or quasi-governmental authority (an "Authority"), to acquire the Property (including without limitation, that certain right of first refusal set forth in that certain "**Declaration of Restrictions**" dated July 8, 1987 and recorded July 28, 1987 in Official Records Book **13359**, Page **1986** (the "ROFR") and which waiver and release shall be duly authorized and executed by and on behalf of the Authority and in recordable form (the "County Waiver"). Within ten (10) business days of the

Effective Date, Purchaser shall, ,on behalf Seller, deliver notice in proper form to start the running of the thirty (30) day ROFR and shall expeditiously pursue the issuance of the County Waiver. The Purchaser shall not request or require any additional actions or agreements of the Authority to the extent such requests would materially delay or otherwise interfere with the timely exercise or non-exercise of the ROFR and prompt issuance of the County Waiver. It is understood that pursuant to the terms and conditions of the ROFR, the County may be entitled to receive a payment in connection with the issuance of the County Waiver (the "County Waiver Payment"), which County Waiver Payment is not expected to exceed $372,500.00. At Closing, Purchaser shall pay the "County Waiver Payment", provided that under no circumstances shall Purchaser be obligated to pay an amount greater than $372,500.00. If the amount of the County Waiver Payment is greater than $372,500.00, then any amount in excess of $372,500.00 may be paid by Seller in Seller's sole discretion and in the event Seller elects to not pay such excess then Purchaser shall have the option to pay the excess amount or terminate this Agreement and receive the return of its Deposits. Purchaser shall deliver notification of this Agreement and of the County's right of first refusal to the County and shall provide Seller with a copy of all documentation submitted to the County in connection with the notice requirements of the County's ROFR and a copy of the County's notice of exercise or non-exercise, as the case may be, upon receipt of same from the County. In the event the County exercises its right of first refusal, the Agreement shall become null and void and Purchaser shall be entitled to the return of its Deposit and the parties will be thereupon, be relieved of any further obligations hereunder, except for the provisions herein contained to survive. If after four (4) months from the Effective Date, the County is or remains unwilling or unable to issue the County Waiver, then (x) Purchaser may terminate this Agreement by giving written notice of termination to Seller, whereupon Purchaser shall be entitled to the return of its Deposit and the parties will thereupon, be relieved of any further obligations hereunder, except for the provisions herein contained intended to survive, including the right to pursue remedies available under this Agreement for any default accruing prior to the date of such termination; and (y) if the Purchaser does not so elect to terminate this Agreement and is not then willing to waive the condition to obtain the County Waiver, then Seller may terminate this Agreement by giving written notice of termination to Purchaser, whereupon Purchaser shall be entitled to the return of its Deposit and the parties will thereupon, be relieved of any further obligations hereunder, except for the provisions herein contained intended to survive, including the right to pursue remedies available under this Agreement for any default accruing prior to the date of such termination.

E. Seller's Authority: At Closing, Seller shall deliver to Purchaser (i) an original Certificate of Good Standing and Incumbency from the Secretary of State, State of Florida (the "Corporate Certificate"), evidencing Seller's good standing under the laws of the State of Florida and the current officers and directors of Seller; and (ii) an original certified corporate resolution (the "Corporate Resolution") executed by the requisite number of directors and shareholders, authorizing and confirming the transactions contemplated herein, and further, authorizing and directing an authorized officer of Seller to execute and deliver to and in favor of Purchaser any and all documentation in furtherance of the Closing, including, without limitation, the Deed, and to take any and all action necessary or appropriate in said officer's sole discretion to close and consummate the transaction herein contemplated.

15. **AFFIRMATIVE COVENANTS OF SELLER**:

A. Acts Affecting Property: From and after the date hereof, Seller will refrain from (i) performing any construction or removal of any improvements upon or about the Property; (ii) creating, incurring or suffering to exist, any mortgage, lien, pledge or other encumbrance in any way affecting the Property other than the Permitted Exceptions; and (iii) Seller will observe all laws, ordinances, regulations, and restrictions affecting the Property and its use until the Closing.

B. Notice of Changes in Law: Seller will advise Purchaser promptly of any change in any applicable law, regulation, restriction, ruling or order of which Seller receives notice, which might affect the value or use of the Property.

C. Payment of Special Assessments: Seller shall pay in full all special assessments certified against the Property prior to the Closing Date, whether any or all installments of such assessments are matured or un matured.

16. **REPRESENTATIONS AND WARRANTIES WITH RESPECT TO PROPERTY**: Seller hereby represents and warrants that, as of the date hereof:

A. Marketable Title: Seller is the fee simple owner of the Property and except as to matters disclosed in the Title Commitment, to the best of Seller's knowledge, Seller has good, marketable and insurable fee simple title to the

Property, free and clear of all mortgages, liens, encumbrances, security interests, covenants, conditions, restrictions, rights-of-way easements, judgments and other matters affecting title except for the Permitted Exceptions.

B. No Condemnation, Pending or Threatened: To the best of Seller's knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof.

C. Seller's Authority: Seller has full right, power and authority to perform this Agreement and doing so will not result in breach of, or constitute any default under, or result in the imposition of, any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property may be bound. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code.

D. Litigation. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Property which does or will involve or affect the Property or title thereto. Seller will defend, indemnify and otherwise hold Purchaser harmless from any and all claims of any person due to, arising out of or relating to the Property, including any and all costs, expenses, and attorneys' fees which Purchaser may incur as a result of Seller's breach of the representations hereunder. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Purchaser written notice thereof.

E. No Violations. To the best of Seller's knowledge, there are no violations of state or federal law, municipal or county ordinances, or other legal requirements with respect to the Property, or any legal requirements with respect to the Property. Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations affecting the Property prior to the closing, Seller shall promptly notify Purchaser thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.

F. No Prior Contracts or Options. There have been no prior contracts, options or rights of first refusal granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which continue to be effective as of the Effective Date.

G. Property Rights Agreements: Except for the ROFR, there are no leases, occupancy agreements, other executory contracts, contracts for work, licenses or other agreements affecting the Property, and Seller covenants and agrees that it shall not grant or enter into any leases, occupancy agreements, other executory contracts, contracts for work, licenses, or other agreements affecting the Property or the title thereto without first obtaining the prior written consent of Purchaser, which consent Purchaser shall not be obligated to give and may arbitrarily and unreasonably withhold.

H. Environmental Representations and Warranties.

(i) Seller has no knowledge of any contamination of the Property by Hazardous Materials, or of any violation of Environmental Laws (as defined below) affecting the Property. To the best of Seller's knowledge and belief, there is no evidence of Release of Hazardous Materials at the Property.

(ii) Seller has no knowledge of any generation, treatment or storage of any Hazardous Materials at the Property or any activity at the Property which could have produced Hazardous Materials.

(iii) Seller has no knowledge of any surface impoundments, lagoons, waste piles, landfills, injection wells, underground storage areas, tanks, storage vessels, drums, containers or other man-made facilities at the Property which may have accommodated Hazardous Materials at the Property.

(iv) Seller has no knowledge of any treatment, storage or Release of any Hazardous Materials on land adjacent or near to the Property which may constitute a risk of contamination of the Property or surface water or ground water flowing to the Property.

(v) To Seller's knowledge, no inspection, audit, inquiry or other investigation has been or is being conducted by any Governmental Authority (as hereafter defined) or other third person with respect to the presence or discharge of Hazardous Materials at the Property or the quality of the air, or surface or subsurface conditions at the Land, except for the Environmental Data delivered to Buyer pursuant to Section 14 (a) above. Neither Seller, nor to Seller's knowledge any previous owner of the Property or the Seller corporation prior to Phineas Corporation becoming the sole member, have received any warning, notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice or request for information alleging that Hazardous

Materials have been stored or Released at the Property or that conditions at the Property are in violation of any Environmental Laws or requesting information regarding the use, storage, release or potential Release of Hazardous Materials at the Property.

(vi) Definitions. For purposes of this Section 14 in this Agreement:

"Environmental Laws" shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986(codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

"Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under

any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

"Hazardous Substances" as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste;

"Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

Materials as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

"Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Governmental Authorities" means the United States, the State of Florida and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment..

17. **BROKERAGE**: Purchaser and Seller each represent and warrant to the other that neither has had any dealings with any person, firm, broker or finder, in connection with the negotiations of this Agreement and/or the consummation of the purchase and sale contemplated hereby and no other broker or other person, firm or entity is entitled to any commission or finder's fee in connection with this

transaction. Purchaser and Seller do each hereby indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party by reason of any actions of the indemnifying party.

18. **POSSESSION AND RISK OF LOSS**: Sole and exclusive possession of the Property shall be delivered to Purchaser as of the Closing Date. Risk of loss to the Property between the Effective Date and the Closing Date shall be upon the Seller, and the doctrine known as the "Doctrine of Equitable Conversion" shall not be applicable to this transaction. Seller shall maintain adequate liability insurance until Closing and shall be obligated to replace, repair and fully restore any losses occurring prior to Closing. In the event of any loss or damage to the Property prior to Closing, the Purchaser shall have the option to proceed to close in which case the Purchase Price shall be credited with a sum equal to the greater of (i) one hundred (100%) percent of the value of the loss as of the date of the casualty; or (ii) the insurance proceeds payable in respect to such loss.

19. **ASSIGNMENT**: This Agreement and the rights, duties, interests, and obligations of Purchaser hereunder may not be assigned by Purchaser, without Seller's prior written consent which shall not be unreasonably, conditioned, withheld or delayed, except as follows: This Agreement shall be freely assignable to an "affiliate" of Purchaser or Jacob Shaham or Helen Shaham. For purposes hereof, an "affiliate" shall be mean Jacob Shaham or Helen Shaham or both of them, or any parent, subsidiary or sister-subsidiary of Purchaser, or any person who is a shareholder, member, partner, officer or director of Purchaser or a member of the immediate family of Jacob Shaham or Helen Shaham (collectively "Related Persons"); or any entity in which a Related Person is a controlling shareholder, member, partner, officer, director, trustee or beneficiary. If such assignment is made, then the sale of the Property contemplated by this Agreement will be consummated in the name of any such assignee.

20. **CONDEMNATION OR EMINENT DOMAIN**: In the event of any condemnation or eminent domain proceedings for any public or quasi-public purposes at any time prior to Closing, resulting in a taking of any part or all of the Property, Purchaser shall have the option (i) to cancel this Agreement, in which event the Deposits made hereunder shall be promptly returned and refunded to Purchaser, and upon such repayment, this Agreement shall be of no further force and effect; or (ii) to close the transactions contemplated by this Agreement, in which event the Purchase Price shall not be abated, provided, however, that Seller shall

assign any condemnation or eminent domain award to Purchaser. Seller agrees not to enter into any settlement of any condemnation proceedings or eminent domain award without the prior written consent of Purchaser.

21. **NOTICES**: All notices, requests, demands or other communications hereunder shall be in writing and deemed to have been given only if and when hand-delivered or sent by nationally recognized overnight courier service (e.g., Federal Express, UPS) or certified or registered mail, return receipt requested, through the United States Postal Service with sufficient postage prepaid, to the parties hereto at their respective addresses set forth at the outset of this Agreement or such other address as either party shall designate by notice pursuant to this Paragraph. Copies of all notices, requests, demands or other communications hereunder to the Purchaser shall also be sent to Purchaser's counsel, Katz, Barron, Squitero, Faust,, 2699 S. Bayshore Drive, Seventh Floor, Miami, Florida 33133 (Attn: Marc L. Faust, Esq.), and copies of all notices, requests, demands or other communications hereunder to the Seller shall also be sent to Seller's Counsel, Steven M. Weinger, Esq., 2650 S.W. 27th Avenue, Miami, Florida 33133. Notwithstanding the foregoing, in the event of any mail disruption by virtue of any stoppage in mail service performed by the United States Postal Service due to strike or labor difficulty, notices, requests, demands or other communications referred to in this Agreement shall be hand-delivered, delivered by a nationally recognized express delivery company or telegraphically given, but shall only be deemed to have been given when received.

22. **FURTHER ASSURANCES**: In addition to the foregoing, the parties hereto, at the time and from time to time at or after Closing, upon request of Purchaser or of Seller, as the case may be, agree to do, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, applications, authorizations, petitions, filings, consents, powers of attorney and assurances, as may be required for: (a) the better assigning, transferring, granting, conveying, assuring and confirming unto the Purchaser all of Seller's right, title and interest in and to the Property being conveyed hereunder; (b) securing the Governmental Approvals; and (c) the more effective consummation of the other transactions referred to in this Agreement.

23. **ESCROW**: Any escrow agent receiving funds or documents is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse same subject to clearance thereof in accordance with the terms and conditions of this Agreement. Failure of the clearance of funds shall not excuse performance by the depositor. In the event of doubt as to its duties or

liabilities under the provisions of this Agreement, the Escrow Agent may, in its sole discretion, continue to hold the monies which are the subject of this escrow until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all of the monies then held pursuant to this Agreement with the Clerk of the Circuit Court of the County having jurisdiction of the dispute, and upon notifying all parties concerned of such action, all liability on the part of the Escrow Agent shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. In the event of any suit wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the subject matter of this escrow, the Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs incurred through all levels of proceedings, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that the Escrow Agent shall not be liable to any party or person whomsoever from misdelivery to Purchaser or Seller of monies subject to this escrow, unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of Escrow Agent. The Seller acknowledges that the Escrow Agent is also serving as attorneys to Purchaser, and the Seller has no objection thereto, and in the event of any dispute arising between Seller and Purchaser, the Seller will not object to the continuing representation of the Purchaser by the Escrow Agent in any legal proceedings related thereto. The provisions of this Section shall survive the closing or earlier termination of this Agreement.

24. **CAPTIONS AND HEADINGS**: Captions and Paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement nor the intent of any provision hereof.

25. **NO WAIVER**: No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it related and shall not be deemed to be a continuing or future waiver.

26. **COUNTERPARTS**: This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

27. **BINDING EFFECT**: This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

28. **GOVERNING LAW**: This Agreement shall be construed and interpreted according to the laws of the State in which the Property is located.

29. **SEVERABILITY**. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

30. **RELATIONSHIP OF THE PARTIES**. Nothing contained herein shall be construed or interpreted as creating a partnership or joint venture between the parties. It is understood that the relationship is an arms' length one that shall at all times be and remain that of Purchaser and Seller.

31. **SURVIVAL**. The warranties and representations made by the parties shall survive the closing of this Agreement and the Closing Date and shall continue in full force and effect without termination for a period of **eighteen (18) months** from the Closing Date. Also, wherever in this Agreement Seller or Purchaser shall have agreed or promised to perform certain acts or grant certain easements or other rights where the context of the Agreement would require such performance or grants to occur after the closing, then those Agreements and covenants expressed herein shall survive closing and continue to bind Seller and Purchaser.

32. **EXCLUSIVE NEGOTIATIONS**: During the pendency of this Agreement and up and until Closing or the termination of this Agreement, Seller agrees that it will not negotiate the leasing or sale of the Property with any other prospective tenant or purchaser, or any agent or representative thereof, and Seller agrees that if it is contacted by any prospective tenant or purchaser, or agent or representative thereof, Seller shall immediately advise such person that Seller and Purchaser are party and subject to this exclusive negotiation agreement, which prohibits any further discussion about the sale or availability for lease or sale of the Property; and thereafter, for so long as this Agreement is in force and effect, Seller agrees to do the same, abiding by the foregoing covenant, with respect to the

Property.

33. **RADON**. The following language is provided pursuant to Fla. Stat. §404.056:

> RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities within a building, 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 department.

34. **GENDER**: All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

35. **INTERPRETATION**: This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the preparation of this Agreement. Wherever used in this Agreement, "any" means "any and all"; "include" and "including" each are without limitation; "indemnify" means that the indemnitor will defend, indemnify and hold the indemnitee harmless against any claims, demands, losses or liabilities asserted against or incurred by the indemnitee to any third party because of the subject matter of the indemnity; "may not" and other negative forms of the verb "may" each are prohibitory; and "will", "must" and "should" each are mandatory. Unless this Agreement expressly or necessarily requires otherwise (i) any time period measured in "days" means consecutive calendar days, except that the expiration of any time period measured in days that expires on a Saturday, Sunday or legal holiday automatically will be extended to the next day so that it is not a Saturday, Sunday or legal holiday; (ii) any action is at the sole expense of the party required to take it; (iii) the scope of any indemnity includes any costs and expenses, including reasonable attorneys' fees through all levels of proceedings incurred in defending any indemnified claim, or in enforcing the indemnity, or both.

36. **ENTIRE AGREEMENT**: This Agreement and the Exhibits attached hereto contain the entire agreement between the parties. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or

written, express or implied, between the parties other than as herein set forth. No amendment or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement or any other agreement referred to herein shall be valid unless in writing and signed by the party against whom enforcement is sought.

37. **NO RECORDING**: This Agreement may not be recorded among the Public Records of the County in which the Property is located by either party, without the written consent of the other party.

38. **TIME OF THE ESSENCE**: Time is of the essence in respect to this Agreement.

[CONTINUES ON FOLLOWING PAGES]

39. **WAIVER OF TRIAL BY JURY.** THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR THE RELATIONSHIP OF PURCHASER AND SELLER CREATED HEREBY.

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

Signed, sealed and delivered in the presence of:

Florida

THE HAVEN CENTER, INC., a

not-for-profit corporation

By: Geraldine Tucker

Name: Gera ldine Tucker

Title: President Haven Center

Print name: LESLIE. W. LEECH JR

Print name: Mimi A. Freyre

PROPERTIES, a

KENDALL HEALTH CARE

Florida general partnership

By: Helen Homes of Kendall

Florida

Corporation, a

corporation, as General Partner

By: _____

JACOB SHAHAM, Pres.

Witness: Marc L. Faust

Patricia Artiles

Print name: _____

Name:

Title:

Print name: _____

JOINDER

The undersigned, as Escrow Agent, hereby joins in the execution of this Agreement solely for the purpose of acknowledging and agreeing to its responsibilities as Escrow Agent hereunder, subject to the provisions of Paragraph 23 hereof.

KATZ, BARRON, SQUITERO, FAUST,
FRIEDBERG, ENGLISH & ALLEN, P.A.

By: _____

Marc L. Faust, Esq.

LIST OF EXHIBITS

EXHIBIT "A" - LEGAL DESCRIPTION

EXHIBIT "B" - SKETCH OF THE PROPERTY

SCHEDULE OF TITLE EXCEPTIONS

EXHIBIT "A"
LEGAL DESCRIPTION

All that part of Section 31, Township 54 South, Range 40 East, described as follows:

The West half of the NE 1/4 of the SW 1/4, less the North 35 feet, the East 25 feet and the South 25 feet thereof, and less the West 25 feet of the South half thereof, and the East half of the NE 1/4 of the NW 1/4 of the SW 1/4 less the North 35 feet thereof, as well as the East 1/2 of the NE 1/4 of the SW 1/4 of Section 31, Township 54 South, Range 40 East, Miami-Dade County, Florida, less the North 35 feet and the East 35 feet and the South 25 feet and the West 25 feet thereof.

AND

Together with that certain property conveyed to The Haven Center, Inc., f/k/a The Haven School Incorporated, a Florida not-for-profit corporation by Quit Claim Deed recorded in Official Records Book 13377, Page 325, described as follows:

The West 25 feet of the East 1/2 of the NE 1/4 of the SW 1/4 and the East 25 feet of the West 1/2 of the NE 1/4 of the SW 1/4 of Section 31, Township 54 South, Range 40 East, Dade County, Florida. LESS that portion thereof lying within the North 1/2 of the North 1/2 of the NE 1/4 of the SW 1/4 of said Section 31; and LESS the South 25.00 feet thereof.

Less North 1/2 of NE 1/4 of NE 1/4 of SW 1/4 and North 1/2 of NW 1/4 of NE 1/4 of SW 1/4, of Section 31, Township 54 South, Range 40 East.

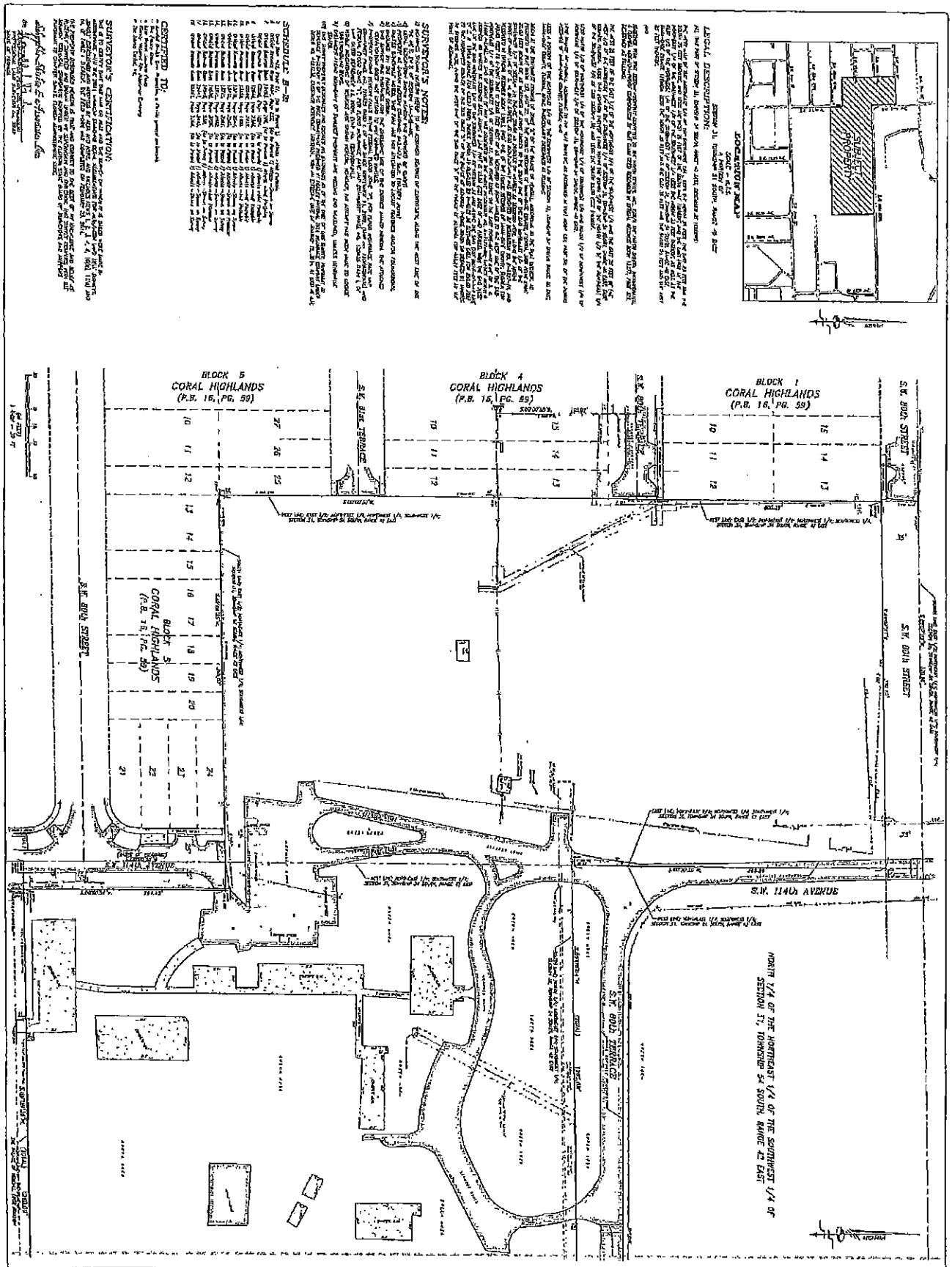
Less PALACE OF KENDALL, according to the Plat thereof, as recorded in Plat Book 137, Page 22, of the Public Records of Miami-Dade County, Florida; and

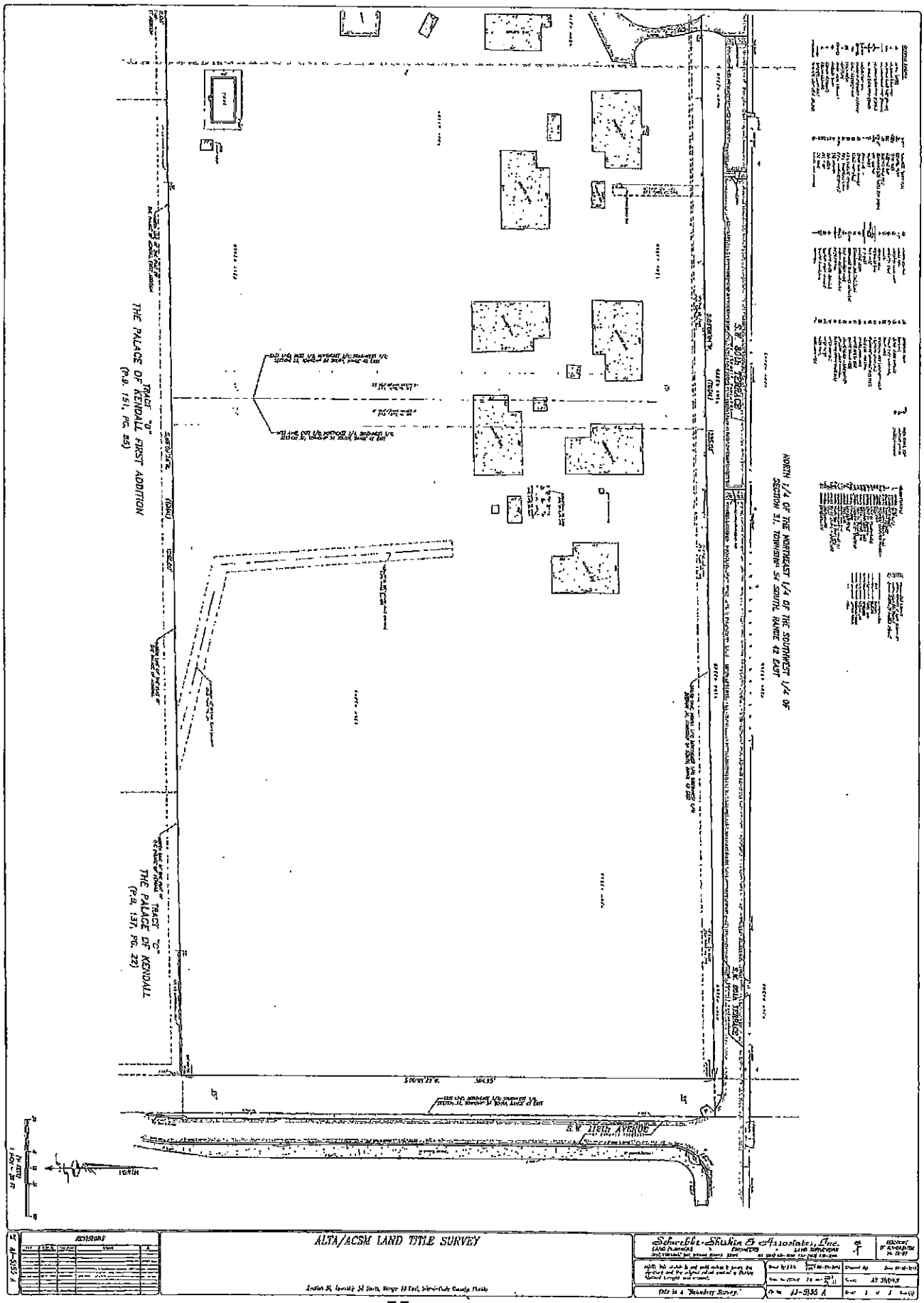
Less a portion of the NE 1/4 of the SW 1/4 of Section 31, Township 54 South, Range 40 East, Miami-Dade County, Florida, being particularly described as follows:

Begin at the Southwest corner of Tract "A" of the PALACE OF KENDALL, according to the Plat thereof, as recorded in Plat Book 137, page 22, of the Public Records of Miami-Dade County, Florida, said point lying 25.00 feet North of, as measured at right angles to the South line of the said NE 1/4 of the SW 1/4 of Section 31; thence S 89° 09' 36 " W, along the North right-of-way line of SW 84th Street, as said right-of-way was dedicated by Resolution No. R-1127-88, and recorded in Official Records Book 13863, page 446, of the Public Records of Miami-Dade County, Florida for 249 93 feet to a point that is 25.00 feet West of as measured at right angles to the West line of the said NE 1/4 of the SW 1/4 of Section 31, said point lying on the East right-of-way line of SW 114th Avenue, as said of right of way was dedicated by the above Resolution No. R-1127-88; thence N. 0° 00' 58" E, along a line that is 25.00 feet East of and parallel with the said West line of the said NE 1/4 of the SW 1/4 of Section 31 and along the said East right-of-way line of SW 114th Avenue for 431.27 feet; thence N. 89° 09' 36" E, for 250.00 feet to the Northwest corner of the said Tract "A" of the PALACE OF KENDALL; thence S. 00° 01' 29" W, along the West line of the said Tract "A" of The PALACE OF KENDALL for 431.27 feet to the Point of Beginning.

EXHIBIT "B"

SKETCH OF THE PROPERTY


BLOCK 5
CORAL HIGHLANDS
(P.B. 16, PG. 59)
BLOCK 4
CORAL HIGHLANDS
(P.B. 16, PG. 59)
BLOCK 1
CORAL HIGHLANDS
(P.B. 16, PG. 59)
S.W. 81st TERRACE
S.W. 80th STREET
S.W. 114th AVENUE
NORTH 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 54 SOUTH, RANGE 42 EAST
ALTA/ACSM LAND TITLE SURVEY



ALTA/ACSM LAND TITLE SURVEY

Schwebke-Shiskin & Associates, Inc.

SCHEDULE OF TITLE EXCEPTIONS

1. Reservations as to canal rights and easement for canal in favor of the Trustees of the Internal Improvement Fund of the State of Florida contained Deed No. 1066 recorded August 16, 1924 in Deed Book 439, Page 81.

2. Easement in favor of Florida Power & Light Company recorded October 29, 1976 in Official Records Book 9484, Page 817.

3. Ordinance creating and establishing a special taxing district known and described as "Coral Highlands Street Lighting Improvement Special Taxing District" recorded July 8, 1982 in Official Records Book 11493, Page 226, together with Resolution adopting preliminary assessment roll providing for annual assessments recorded October 5, 1984 in Official Records Book 12288, Page 1024.

4. Terms and provisions of that certain Covenant Running with the Land in favor of Metropolitan Dade County recorded July 9, 1986 in Official Records Book 12946, Page 2396.

5. Terms and provisions of that certain Covenant Running with the Land in favor of Metropolitan Dade County recorded July 9, 1986 in Official Records Book 12946, Page 2415.

6. Terms, covenants, conditions and restrictions, which include provisions which provide for a right of first refusal, as contained in the Declaration of Restrictions recorded July 28, 1987 in Official Records Book 13359, Page 1986.

   NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.

7. Easement in favor of Florida Power & Light Company recorded June 15, 1988 in Official Records Book 13715, Page 2564.

8. Easement in favor of Florida Power & Light Company recorded June 15, 1988 in Official Records Book 13715, Page 2565.

9. Easement in favor of Florida Power & Light Company recorded June 15, 1988 in Official Records Book 13715, Page 2566.

10. Easement in favor of Florida Power & Light Company recorded June 15, 1988 in Official Records Book 13715, Page 2567.

11. Terms and provisions of that certain Unity of Title recorded June 15, 1990 in Official Records Book 14588, Page 3735.

12. Easement granted to Metropolitan Dade County, Florida recorded March 19, 1991 in Official Records Book 14946, Page 550.

13. Easement in favor of Florida Power & Light Company recorded March 24, 1992 in Official Records Book 15441, Page 2445.

14. Easement in favor of Florida Power & Light Company recorded June 7, 1993 in Official Records Book 15941, Page 1298.

All documents listed above were recorded in the Public Records of Miami-Dade County, Florida.

EXHIBIT C
Kendall Indian Hammocks Park
Haven School
21.06 acres
SW 80TH TER
SW 114TH AVE
SW 80TH ST
SW 114TH AVE