

LAKE WO
COMMUNITY REDEVELOPMENT AGENCY
 29 SOUTH J STREET, SUITE 1
 LAKE WORTH, FLORIDA 33460-3787
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MEMORANDUM

TO: Chair, Vice-Chair and Members of the Board

FROM: Joan C. Oliva, Executive Director

DATE: January 8, 2013

SUBJECT: Purchase and Sale and Development Agreement for 124 N. H Street

EXPLANATION:

Under the approved Action Plan in the NSP-2 application, the Lake Worth Consortium is responsible for the acquisition, rehabilitation and construction of 100 housing units. To date, the CRA and its partners exceeded the original goal and delivered 165 units. Many more are in the planning or development stage. During the program CRA was responsible for the purchase of all foreclosed and/or abandoned properties that fit the guidelines within the target area. Along with the responsibility of acquisition comes the need for Tier II environmental, State Housing and Preservation Office letters of inquiry, lead and asbestos testing, the clearing of title and any code fines, ordering surveys and appraisals, creating files and the reporting of all activities in the federal on-line system. In addition to foreclosed and abandoned properties, the CRA was able to accept donated properties from the City and from financial institutions. In March 2014, Wells Fargo offered to donate 124 N H to the CRA (Exhibit "A"). The CRA accepted the donation and paid closing costs totaling \$4200 from the NSP fund.

The site was raw land, surrounded by many other parcels, also undeveloped and owned by a myriad of title owners. The CRA closed on the land on March 21, 2014. Staff completed the necessary reviews and followed the required acquisition rules. The parcel was advertised, as required for disposition, on October 29, 2014 and proposals were accepted by the CRA for a thirty (30) day period. On November 26, 2014, the CRA received a letter and proposal from Stateside Capital (Exhibit "B"). Current zoning information is provided as Exhibit "C."

In October 2013, the Department of Housing and Urban Development changed some of the eligible activities for NSP grantees. The Notice states that "Grantees may now use economic development activities to fulfill a LMMI (low-to-moderate median income) objective by creating or retaining jobs (Federal Register/Vol.77, No228)." This change allows NSP grant recipients to use properties that were purchased with NSP funds to be used not only for affordable housing but to also benefit low and moderate income areas. Specifically when NSP funds are used to purchase a property, the eventual development of the property must either create or retain jobs.

The proposal from Stateside Partners LLC. includes a large parcel, 127 North Dixie, that was purchased by Stateside in July 2014. It also includes parcels that were later acquired by Stateside, including 120 North "H" and 128 North "H." Over time the CRA lot has become an integral piece of this property assemblage. The properties now owned by Stateside give the CRA an incredible opportunity to contribute both towards a much-needed development on Dixie Highway but also a NSP National Objective.

The goal of the NSP program was to alleviate the City of foreclosed and abandoned properties and provide much needed decent, affordable safe housing. The change in the disposition rules gives the CRA an opportunity to not only redevelop a vacant, underutilized site in our downtown area but also provide jobs, goods and services to the local community. Development of this site addresses many of the goals and objectives in the CRA's Redevelopment Plan including:

- Elimination of slum and blighted conditions
- Consolidation of small parcels into parcels of adequate size to encourage stable growth
- Increase the tax base to generate additional revenue for municipal services
- Elimination of conditions that decrease property values
- Facilitation of new investment in the redevelopment district
- Encouragement of housing opportunities
- Establishment of a safe, functional and aesthetically pleasing community environment

Several meetings have taken place between the proposer and both CRA and City Staff to refine the site plan and discuss considered uses. Although market realities, available financing and the property owner will determine the ultimate use of the property, the CRA can help encourage compatible, sustainable development.

To that end, CRA Staff and our Attorney, David Tolces, working with Stateside, drafted a purchase and sale and a development agreement (to be signed at closing) for Board review (Exhibit "D"). The agreement gives the proposer time to refine plans, determine the best use for the property and to secure financing. The highlights of the agreement include:

- Seller has the right to approve the design of the project
- Purchaser has two years to obtain a Certificate of Occupancy after the closing date
- In the case of non-performance by Stateside, the property will revert back to the CRA or Stateside will pay the CRA appraised value for the parcel

Both the proposer and the Staff, both at the City and CRA, recognize the importance and potential this redevelopment site offers and will work together with the architect to ensure good design and aesthetics.

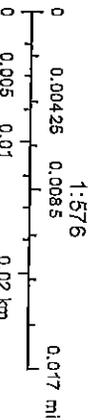
REQUEST:

Staff requests the Board approve both the purchase and sale and the development agreement between Stateside Capital LLC. and the CRA. As the project moves forward Staff will update the Board on progress and milestones reached.



created by: FBC Property Appraiser

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April 9, 2015

Stateside Partners LLC

2700 North Military Trail, Suite 225
Boca Raton, FL 33431
Tele (561) 278-9292 • Fax (561) 288-9069
nsw@statesidecapitalcorp.com

November 26, 2014

Ms. Joan Oliva
Executive Director
Lake Worth Community Redevelopment Agency
29 S. "J" Street
Lake Worth, FL 33460
joliva@lakeworth.org

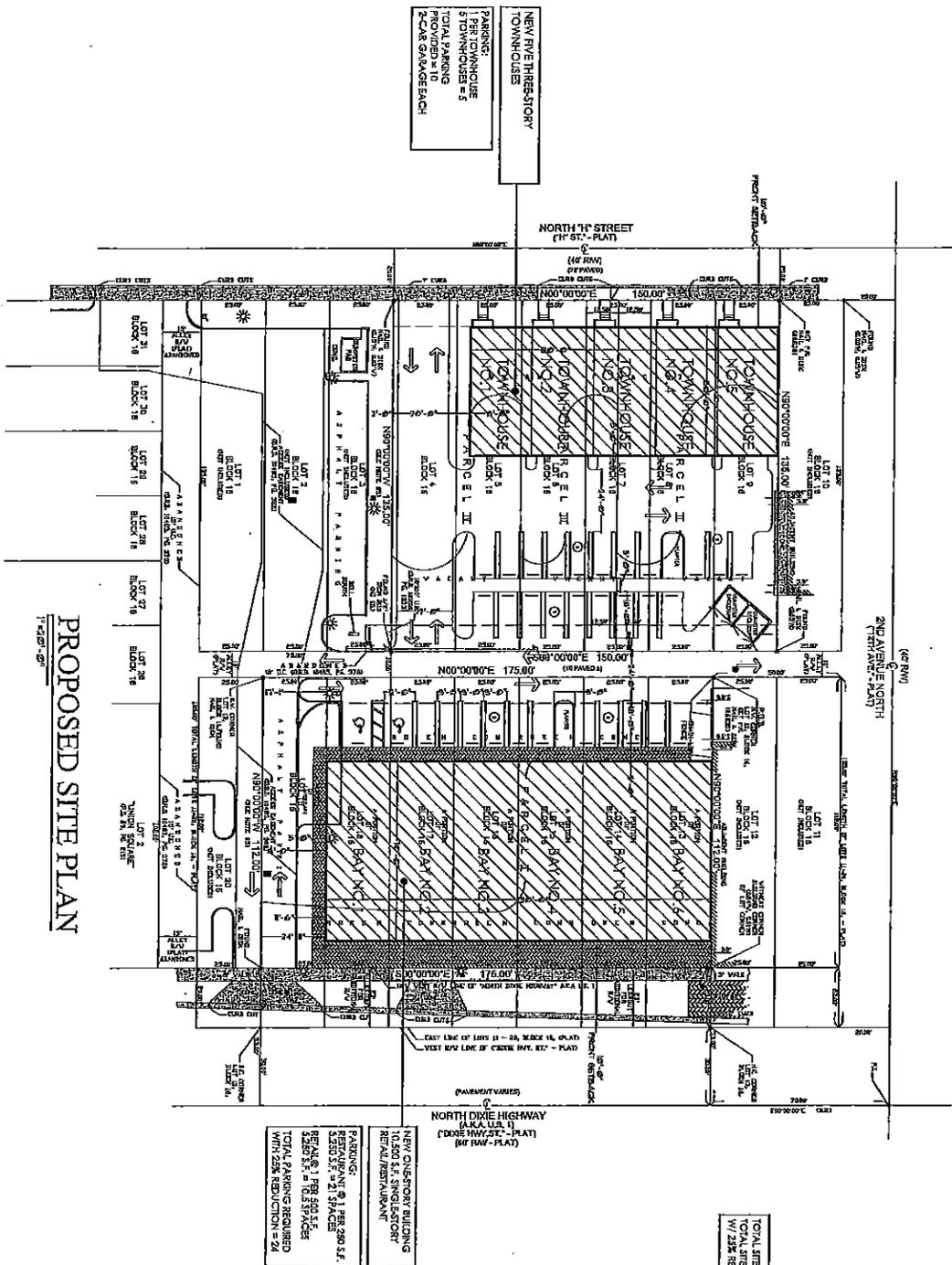
Dear Joan,

I am pleased that you were able to meet to discuss the proposed Dixie Highway Mixed Use Project. George Brewer, a Delray based architect, will design a mixed use complex for 127 N. Dixie Highway and several adjacent lots on H Street. I purchased the Dixie Highway property this past July. Lot Nos. 4 & 5 on H Street are under contract and Lot Nos. 6 & part of 7, will be included, subject to conveyance by the CRA. I have contacted the owner of Lot Nos. 8 & 9. The complex will consist of two buildings, a single story six thousand (6,000) square foot retail building along Dixie Highway and a four story building fronting H Street, with office and live/work loft style uses. George and I welcomed your comments regarding an architectural design which will capture the spirit of Lake Worth. We will have preliminary elevations within a short time. I have attached the site plan prepared by George for your review, which will be revised to reflect our success in assembling additional lots on H Street.

I look forward to continued cooperation with you and the City of Lake Worth, in assisting in the development of the downtown core with a project that will be well received by the community.

Best regards,


Norman S. Weinstein



PROPOSED SITE PLAN

NEW FIVE-STORY TOWNHOUSES

PARKING:
1 PER TOWNHOUSE
TOTAL PARKING = 5
SCALE: 3/8" = 1'-0"

NEW RESTAURANT BUILDING
10,500 S.F. SINGLE-STORY
RETAIL/RESTAURANT

PARKING:
RESTAURANT @ 1 PER 200 S.F.
3500 S.F. - 17 SPACES
RETAIL @ 1 PER 500 S.F.
5000 S.F. - 10 SPACES
TOTAL PARKING REQUIRED
WITH 25% REDUCTION = 24

TOTAL SITE PARKING PROVIDED = 22
TOTAL SITE PARKING REQUIRED = 27
W/ 25% REDUCTION

		DATE: 09-15-2015 REVISION:	APPROVED:	STATESIDE DEVELOPMENT NEW COMMERCIAL MIXED-USE BLOCK 16 LAKE WORTH, FLORIDA	GEORGE BREWER LLC ARCHITECTURE 35 SE 4TH AVENUE SUITE 404, FT. LAUDERDALE, FL 33404 PHONE: 561.227.7347 EMAIL: INFO@GEORGEBREWER.COM
		175.00'	175.00'		

Exhibit "C"

Section 23.3-4. Inclusionary as to Permitted Use.

The intent of this chapter is that it be "inclusionary." That is, principal uses, accessory uses, and conditional uses specifically stated for each zoning district shall be the only uses permitted. Any use proposed within any given zoning district which is not a stated use or use type within said district is expressly prohibited. Questions of whether a use is of a type listed shall be interpreted by either the Planning and Zoning Board or the Historic Resources Preservation Board, but no use variance shall be approved.

Section 23.3-14. Downtown (DT).

a) *Intent.* The "Downtown (DT) District" is designed for the commercial core of Lake Worth, primarily along Lake and Lucerne Avenues from Golfview to the Florida East Coast Railroad right-of-way. The DT district is intended to provide the establishment and expansion of a broad range of office and commercial uses, including higher density residential use. Certain commercial uses are not permitted in the district because they will be detrimental to the shopping or office functions of the area. The establishment of certain uses is subject to conditional use review to ensure they will not have a negative impact on nearby residential uses or on the commercial viability of their neighbors. The district implements in part the downtown mixed use land use category of the Lake Worth Comprehensive Plan.

b) *Use restrictions and development regulations for multiple-family residential uses in the DT district.* Multiple-family residential uses may be established and expanded in the DT district subject to the provisions of section 23.3-12.

c) *Use restrictions for nonresidential uses in the DT district.* Refer to Permitted Use Table at Section 23.3-6 for a complete list of uses.

1. Principal nonresidential uses permitted by right.

- A. Commercial – Low Intensity
- B. Office – Low Intensity
- C. Retail – Low Intensity
- D. Personal Services – Low Intensity
- E. Cultural and Artisanal Arts – Low Intensity
- F. Institutional – Low Intensity
- G. Open air retail sales only on private property and not on any sidewalk along Lake Avenue or Lucerne Avenue (see definition).
- H. Essential services.

2. Principal uses permitted as either administrative or conditional uses.

- A. Commercial – Medium to High Intensity
- B. Office – Medium to High Intensity
- C. Retail – Medium to High Intensity
- D. Personal Services – Medium to High Intensity
- E. Cultural and Artisanal Arts – Medium to High Intensity
- F. Institutional – Medium to High Intensity
- G. Parking facilities including temporary.
- H. Places of worship.

3. Accessory uses permitted by right.

- A. Home occupations.
 - B. Any use accessory to and customarily incidental to a principal use permitted by right
4. Accessory uses permitted as either administrative or conditional uses.
- A. Day care centers and nursery school uses accessory to places of worship.
 - B. Residential apartments as related uses in structures with office or retail uses as primary use on the ground floor located in the "Core Area" as defined in section 23.1-5. Minimum living area shall be as follows:
 - (1) Efficiency units: four hundred (400) square feet.
 - (2) One-bedroom units: six hundred (600) square feet.
 - (3) Two-bedroom units: seven hundred fifty (750) square feet.
 - (4) Three-bedroom units: nine hundred (900) square feet.
 - (5) Four-bedroom units: one thousand three hundred fifty (1,350) square feet.
 - C. Any use accessory to and customarily incidental to a principal use permitted as either an administrative or conditional use.

d) *Development regulations for uses permitted by right.*

Lot Area	6,500 sq. ft. with max density 1 d.u. per each 1,085 sq. ft. net lot area	
	Max density 40 dwelling units per gross acre of 43,560 sq. ft., minimum of 1,085 sq. ft. per unit.	
Lot Width	25 ft. on Lake Avenue and Lucerne Avenue	
	50 ft. on Dixie Highway and Federal Highway	
	50 ft. in general	
Height	Primary	30 ft. (not to exceed 2 stories) *Additional 15 ft of height under Sustainable Bonus Incentive Program (not to exceed 4 stories). *Additional 35 ft of height under Sustainable Bonus Incentive Program (not to exceed 6 stories) east of Federal Highway with the provision of a hotel or mixed use hotel project of at least 50 rooms, requires conditional land use.
	Accessory	24 ft. (not to exceed 2 stories)
Setback	Front	10 ft. minimum not to exceed 22 ft.
	Rear	15 ft. or 10% of lot depth when next to residential zoning

		district. 10 ft. in general. 5 ft. for accessory structure
	Side	10 ft. on street and 0 ft. on interior lot. Roof overhangs shall not exceed more than 2 feet.
	Bonus Height and Stories	For all stories above the second story, both the front façade and rear façade must be set back an additional distance beyond the minimum. A. Front Façade for third story and above must have front setback of eight (8) to twelve (12) feet in addition to minimum. B. Rear façade for third floor and above must have rear setback of eight (8) to twelve (12) feet in addition to minimum. C. Facades facing major thoroughfares must have setbacks of eight (8) to twelve (12) feet in addition to minimum for third story and above.
Living Area	Single-Family	800 sq. ft. first dwelling
		400 sq. ft. second dwelling
	Multiple-family	400 sq. ft. Eff.
		600 sq. ft. 1BR
		750 sq. ft. 2BR
		900 sq. ft. 3BR
	1,350 sq. ft. 4BR	
Accessory Structure Limitations	The total area for accessory structures is limited to 40% of the principal structure area or 1,000 sq. ft., whichever is less.	
Impermeable Surface Total	A. Small lot - 90% B. Medium lot - 85% C. Large Lot - 80%	
Maximum Lot Coverage for all Buildings	A. Lots up to 4,999 sq. ft. (small lot) - 70% B. Lots 5,000 sq. ft. to 7,499 sq. ft. (medium lot) - 65% C. Lots over 7,500 sq. ft. (large lot) -	

	60%
Maximum Wall Heights at Side Setback	30'-0" wall height at setback. 45'-0" wall height with sustainable incentive 65'-0" for additional stories with sustainable incentive for hotel.
Floor Area Ratio (F.A.R.) Limitation	Maximum F.A.R. is 1.7. Maximum F.A.R. is 2.2 east of Federal Highway with provision of hotel or mixed use hotel project, conditional land use required. The F.A.R. shall be 1.20 for lots up to 4,999 sq. ft.; 1.15 for lots between 5,000 sq. ft. and 7,499 sq. ft.; and 1.10 for lots 7,500 sq. ft. and greater. An additional 0.50 of F.A.R. shall be granted under the Sustainable Bonus Incentive Program and an additional 0.50 of F.A.R. for hotel or mixed use hotel project east of Federal Highway, conditional land use required.

1. Minimum lot dimension.
 - A. Minimum lot area: six thousand five hundred (6,500) square feet.
 - B. Minimum lot width: fifty (50) feet; twenty five (25) feet on Lake Avenue and Lucerne Avenue.
2. Maximum height of buildings.
 - A. Principal building: thirty (30) feet in height and not to exceed two (2) stories.
 - B. Additional fifteen (15) feet in height shall be granted under the Sustainable Bonus Incentive Program (not to exceed four (4) stories).
 - C. Additional thirty five (35) feet in height shall be granted under the Sustainable Bonus Incentive Program (not to exceed six (6) stories) east of Federal Highway with the provision of a hotel with fifty (50) or more rooms or a mixed use hotel project inclusive of fifty (50) or more rooms and requires a conditional land use.
 - D. Garages and other accessory buildings: twenty four (24) feet.
 - E. Garages are not allowed at the street level facing Lake Avenue and Lucerne Avenue.
3. Minimum height of buildings. Throughout the DT district the minimum height of buildings shall be twenty four (24) feet.
4. Minimum setbacks for buildings.
 - A. Front setback shall be:
 - (1) From Dixie Highway (SR 805) right-of-way lines: ten (10) feet.
 - (2) From Lake Avenue and Lucerne Avenue east of the Florida East Coast right-of-way: five (5) feet.
 - (3) From all other thoroughfare right-of-way lines: ten (10) feet.

- (4) Required front setback can be increased by eight (8), ten (10) or twelve (12) feet if the building provides an open arcade or public plaza.
- B. Minimum side setback:
 - (1) From street side lot line: shall be ten (10) feet.
 - (2) From interior side lot line: none.
 - (3) Street side setback can be increased by eight (8), ten (10) or twelve (12) feet if the building provides an open arcade or public plaza.
- C. Minimum rear setback:
 - (1) For lots platted on Blocks G through L of the Townsite Subdivision: ten (10) feet.
 - (2) For all other lots: five (5) feet.
 - (3) For lots next to residential zoning districts: fifteen (15) feet or ten percent (10%) of lot depth, whichever is greater.
 - (4) For accessory structures: five (5) feet.
- D. Additional height and stories setback: buildings in excess of thirty (30) feet in height shall provide an additional front and rear setback of between eight (8) and twelve (12) feet to the minimum required front and rear setbacks.
- E. Additional height and stories setback along Major Thoroughfares: buildings in excess of thirty (30) feet in height shall provide an additional setback of between eight (8) and twelve (12) feet for facades facing a Major Thoroughfare.
- F. Awnings shall be exempt from the front and side street setback regulations. Awnings may project over public property to a point of not more than two (2) feet back from the face of the curb. Second story awning(s) installations shall project no more than three (3) feet from the building. If awnings overhang Federal Highway, Dixie Highway, Lake Avenue or Lucerne Avenue rights-of-way, the owner will need to acquire a State of Florida Department of Transportation approval.
5. Build-to line. All buildings fronting on Lake or Lucerne Avenues shall be situated between five (5) feet from the property line to afford a consistent building line along the avenues. If public arcade or public open space is provided the build-to-line may be adjusted in increments of eight (8), ten (10) and twelve (12) feet.
6. Ground floor regulations. Ground floor uses must be habitable. Retail stores in excess of 10,000 sq. ft. are prohibited on the ground floor. Only retail, service, or office uses are permitted on the ground floor fronting Lake or Lucerne Avenues. Downtown ground floor entrances must use transparent elements. The transparent elements on the ground floor shall be maximized to include a minimum of 75% of the ground floor being windows, doors and other openings. Ground floor building frontage must have an architectural break every twenty five (25) feet.
7. Maximum impermeable surface. The maximum impermeable surface shall be:
 - A. Ninety percent (90%) of the lots up to 4,999 sq. ft.;
 - B. Eighty five percent (85%) for lots between 5,000 sq. ft. and 7,499 sq. ft.; and
 - C. Eighty percent (80%) for lots 7,500 sq. ft. and greater.
8. Maximum impermeable surface for all structures: The maximum impermeable surface shall be:

- A. Seventy percent (70%) for lots up to 4,999 sq. ft.;
 - B. Sixty five percent (65%) for lots between 5,000 sq. ft. and 7,499 sq. ft.; and
 - C. Sixty percent (60%) for lots 7,500 sq. ft. and greater.
9. Floor Area Ratio (F.A.R.) limitations: Maximum F.A.R. is 1.70. Maximum F.A.R. is 2.2 east of Federal Highway and inclusive of hotel requirement. The F.A.R. shall be:
- A. 1.20 for lots up to 4,999 sq. ft.;
 - B. 1.15 for lots between 5,000 sq. ft. and 7,499 sq. ft.; and
 - C. 1.00 for lots 7,500 sq. ft. and greater.
 - D. An additional 0.50 of F.A.R. shall be granted under the Sustainable Bonus Incentive Program
 - E. An additional 0.50 of F.A.R. shall be granted under a conditional land use for a hotel project of fifty (50) rooms or more or a mixed use hotel project of fifty (50) rooms or more.
10. Accessory structures. All accessory structures shall not exceed forty percent (40%) of the gross floor area of the principal structure, excluding approved prefabricated metal storage buildings totaling no more than 144 square feet.
11. Location of accessory buildings, pools, etc.: Accessory buildings, pools and similar structures shall be allowed within the rear or side yards of a double front or corner lot between the main structure and a public street, provided that minimum setbacks are maintained.
12. Required garbage storage rooms. Buildings shall have garbage storage rooms which are integral to the building, but are directly accessible through outside doors to municipal garbage and trash collection crews.
13. Required street trees. Street trees shall be installed at a maximum of every twenty-five (25) feet of frontage. Approved native species shall be used.
14. Major thoroughfare design guidelines. Additional developmental regulations are applicable to certain locations in this district pursuant to the major thoroughfare guidelines adopted by Ord. No. 2001-27. The design guidelines for major thoroughfares are contained in pages 33 through 58 inclusive of the booklet "Design Guidelines for Old Town Historic District and Major Thoroughfares" prepared by Abell Garcia Architects, dated May, 2001, as amended. See also section 23.2-31.

e) *Locational and development regulations for uses permitted as either administrative or conditional uses.* Uses permitted as conditional uses shall be regulated pursuant to the requirements of sections 23.2-28 and 23.2-29 Article 4, Development Standards.

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made on this ____ day of _____, 2015 by and between the **Lake Worth Community Redevelopment Agency**, a Florida public body corporate and politic created pursuant to Section 163.356 F.S. (hereinafter referred to as "SELLER") and STATESIDE PARTNERS, LLC, a Florida limited liability company, (hereinafter referred to as "PURCHASER").

WITNESSETH

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

1. DEFINITIONS.

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

1.1 Property. That certain property located at 124 North H Street, in the City of Lake Worth, County of Palm Beach, State of Florida (the "Property"), more particularly described in **Exhibit "A"** attached hereto.

1.2 Closing Date. The Closing Date is the date on which the closing ("Closing") shall occur and shall be no later than thirty (30) calendar days from the approval of the Site Plan for the Property, and any extension thereof as mutually approved by the parties.

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

1.4 Effective Date. The Effective Date of this Agreement shall be the date when the last one of the Seller and Purchaser has signed the Agreement.

1.5 SELLER'S Address. Seller's mailing address is 29 South J Street, Lake Worth, Florida 33460, with copy to Goren, Cherof, Doody & Ezrol, P.A., Attn: David N. Tolces, Esq., at 3099 East Commercial Boulevard, Suite 200, Ft. Lauderdale, Florida 33308.

1.6 PURCHASER'S Address. Purchaser's mailing address is 2700 North Military Trail, Suite 225, Boca Raton, FL 33431.

1.7 NSP-2. The Neighborhood Stabilization Program-2 is the Program established by the United States Department of Housing and Urban Development ("HUD") and implemented pursuant to guidelines ("Guidelines") established by HUD.

1.8 Other Definitions. The terms defined in any part of this Agreement shall have the defined meaning wherever capitalized herein. Wherever appropriate in this Agreement, the

singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. As used in this Agreement, the terms "herein", "hereof" and the like refer to this Agreement in its entirety and not to any specific section or subsection.

2. PURCHASE PRICE.

Subject to the provisions of this Agreement, the SELLER hereby agrees to sell to PURCHASER, and PURCHASER hereby agrees to purchase from SELLER, the Property for the total Purchase Price of TEN AND 00/100 DOLLARS (\$10.00) and upon and subject to the terms and conditions hereinafter set forth.

3. INSPECTIONS.

3.1 PURCHASER shall have twenty (20) days from the Effective Date to perform inspections of the Property as the PURCHASER deems necessary ("Inspection Period"). Within five (5) business days following the Effective Date of the Agreement, Seller shall provide Buyer with access to the following: (1) Documentation in Seller's possession relating to title and survey of the Property and (2) Copies of any environmental reports and topography, geotechnical and other studies that were previously performed for or upon the Property in Seller's possession.

3.2 During the Inspection Period, PURCHASER shall, at its sole cost and expense, determine that utility services including, water, waste water, electric, telephone and all other utilities are available in the proper size and capacity to serve the existing facilities and installed to the property lines. At all times during the Inspection Period, PURCHASER and its agents shall be provided with reasonable access during normal business hours to the Property for purposes of on-site inspection, upon reasonable prior notice to SELLER. The scope of the inspection contemplated herein shall be determined by the PURCHASER as deemed appropriate under the circumstances provided however, no invasive environmental tests, surveys, audits or inspections may be performed by PURCHASER unless SELLER has provided its written consent thereto, which consent will not be unreasonably withheld, delayed or conditioned. PURCHASER shall promptly repair and restore any damage to the Property caused by, and will not allow any lien or claim of lien to be recorded as a result of PURCHASER'S inspections. To the extent permitted by law, and subject to the limitations of Section 768.28, Florida Statutes, PURCHASER also agrees to indemnify and hold SELLER harmless from any losses, claims, costs, and expenses, including reasonable attorney's fees, which may result from or be connected with any acts or omissions of PURCHASER and/or its contractors and consultants during inspections that are done pursuant hereto which obligation shall survive termination of, or Closing under this Agreement. Any contractors or consultants engaged by PURCHASER to perform

such inspections shall be licensed by the State of Florida and, prior to entering the Property, shall provide SELLER with evidence of insurance coverage in an amount and with a company reasonably satisfactory to SELLER.

3.3 During the Inspection Period, the PURCHASER, at its sole discretion, shall be entitled to terminate this Agreement for any reason. PURCHASER will provide written notice by mail or facsimile to SELLER and/or SELLER'S counsel, which notice must be received prior to the expiration of the Inspection Period, and receive an immediate refund of the Earnest Money Deposit plus interest paid hereto in the event the PURCHASER terminates this Agreement.

3.4 If during the Inspection Period PURCHASER delivers written notice to SELLER of PURCHASER'S determination that the Property is satisfactory and is approved by PURCHASER or if PURCHASER fails to timely deliver to SELLER any written notice exercising the termination right granted to PURCHASER, then this Agreement shall remain in full force and effect, and the parties shall proceed to closing.

3.5 PURCHASER has determined that the subject site meets with PURCHASER'S needs subject to development of the Property in a manner consistent with the Development Agreement, which is attached hereto as Exhibit "B". The Development Agreement shall survive the closing.

4. SELLER'S REPRESENTATIONS.

To induce PURCHASER to enter into this Agreement, SELLER makes the following representations, all of which, to the best of SELLER'S knowledge, in all material respects and except as otherwise provided in this Agreement (i) are now true, and (ii) shall be true as of the date of the Closing unless SELLER receives information to the contrary, in which case SELLER shall immediately provide PURCHASER notice of such contrary information and upon receipt PURCHASER may, in its sole discretion, deem such contrary information material and terminate this Agreement, and (iii) shall survive the Closing:

4.1 At all times from the Effective Date until the Closing on the Property, SELLER shall keep the Property free and clear of all liens, encumbrances and/or clouds upon title, including without limitation, liens related to service, labor and/or materials furnished to, or for the benefit of, the Property, lis pendens, tax liens, permit violations, code violations, ordinance violations, and SELLER shall indemnify, defend and hold PURCHASER harmless from and against all expense and liability in connection therewith (including, without limitation, court costs and reasonable attorney's fees).

4.2 SELLER has no actual knowledge nor has SELLER received any notice of any litigation, claim, action or proceeding, actual or threatened, against SELLER or the Property by

any organization, person, individual or governmental agency which would affect (as to any threatened litigation, claim, action or proceeding, in a materially adverse fashion) the use, occupancy or value of the Property or any part thereof or which would otherwise relate to the Land.

4.3 SELLER has full power and authority to enter into this Agreement and to assume and perform its obligations hereunder in this Agreement. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon the SELLER in accordance with its terms. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereunder on the part of the SELLER do not and will not violate any public or corporate obligations of the SELLER and will not conflict with or result in the breach of any condition or provision, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which the SELLER is a party nor will create a lien or encumbrance upon the Property or assets of the SELLER.

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

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

4.6 SELLER shall not list or offer the Property for sale or solicit or negotiate offers to purchase the Property while this Agreement is in effect. SELLER shall use its best efforts to maintain the Property in its present condition so as to ensure that it shall remain substantially in the same condition from the Effective Date to the Closing Date.

4.7 REAL PROPERTY SOLD AS IS, WHERE IS, RELEASE: SELLER makes and shall make no warranty regarding the title to the Property except as to any warranties which will be contained in the instruments to be delivered by SELLER at Closing in accordance with this Agreement. SELLER makes and shall make no representation or warranty either expressed or implied (except as specifically set forth in the Agreement) regarding condition, operability, safety, fitness for intended purpose, use, governmental requirements, development potential, utility availability, legal access, economic feasibility or any other matters whatsoever with respect to the Property. The

PURCHASER specifically acknowledges and agrees that SELLER shall sell and PURCHASER shall purchase the Property on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis and that, except for the SELLER'S representations and warranties specifically set forth in this Agreement and those obligations described in the Development Agreement, PURCHASER is not relying on any representations or warranties of any kind whatsoever, except as specifically set forth in this Agreement, express or implied, from SELLER its agents, officers, or employees, as to any matters concerning the Property including, without limitation, any matters relating to (1) the quality, nature, adequacy, or physical condition of the Property, (2) the quality nature, adequacy or physical condition of soils, fill, geology, or any groundwater, (3) the existence, quality, nature, adequacy or physical condition of utilities serving the Property, (4) the development potential, income potential, expenses of the Property, (5) the Property's value, use, habitability, or merchantability, (6) the fitness, suitability, or adequacy of the Property for any particular use or purpose, (7) the zoning or other legal status of the Property, (8) the compliance of the Property or its operation with any applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, or restrictions of any governmental or quasi-governmental entity or of any other person or entity, including, without limitation, environmental person or entity, including without limitation, environmental laws, (9) the presence of Hazardous Materials (as defined herein) or any other hazardous or toxic matter on, under, or about the Property or adjoining or neighboring property, (10) the freedom of the Property from latent or apparent vices or defects, (11) peaceable possession of the Property, (12) environmental matters of any kind or nature whatsoever relating to the Property, (13) any development order or agreement, or (14) any other matter or matters of any nature or kind whatsoever relating to the Property.

As used herein, the term "Hazardous Materials" means (i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §960 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S. C. §1801 et seq., or the Clean Water Act, 33 U.S.C. §1321 et seq., as amended, and in the regulations promulgated pursuant thereto; (ii) those substances listed in the United States Department of Transportation Table (49 CFR §172.101) or by the Environmental Protection Agency as "hazardous substances", "hazardous materials", "toxic substances" or "solid waste", (iii) such other substances, materials and wastes which are regulated, or classified as hazardous or toxic, under applicable local, state or federal laws, ordinances or regulations;