

REAL ESTATE SALES CONTRACT

_____ (“Seller”), and
_____ (“Buyer”) hereby agree that the Seller shall sell, and the Buyer shall buy, the following described real property (the “Property”) upon the terms and conditions hereinafter set forth in this Real Estate Sales Contract (“Contract”) and any Attachments to this Contract.

1. **Legal description** of Property located in Martin County, Florida.

Lot 300, Phase 3 Retreat – PUD (PB 15, PG 53)

Parcel No. 11-39-41-001-000-03000.00000 AKA 8459 S.E. Retreat Drive, Hobe Sound, Florida 33455

2. **Purchase Price and Payment (U.S. Currency):**

A. Bid Price \$ _____

Plus Buyer’s Premium (10% of Bid Price) \$ _____

Total Purchase Price \$ _____

B. Initial Deposit (paid to Settlement Agent with execution of the Contract) \$ 5,000.00

C. Additional Deposit (paid to Settlement Agent with execution of the Contract – calculated as the difference between 10% of the Total Purchase Price and the Initial Deposit) \$ _____

D. Balance of Total Purchase Price (to be paid by wire transfer at Closing) \$ _____

E. The Total Purchase Price will be adjusted and, if applicable, increased, by expenses, costs and prorations at Closing.

F. This Contract is **Not Contingent** upon financing or any other matters of any kind. The Initial Deposit and the Additional Deposit shall not bear interest.

3. **Closing Conditions:**

A. The Closing (“Closing”) will be on or before Friday, February 26, 2010. The Closing will be coordinated through the offices of the Settlement Agent: Richard Dungey, Esq., Fox, Wackeen, Dungey Law Firm, 3473 S.E. Willoughby Boulevard, Stuart, Florida 34991, Telephone: 772.287.4444; Facsimile: 772.220.1489.

B. The Total Purchase Price will be due and payable by Buyer at Closing by Wire Transfer of immediately available funds to Fox, Wackeen, Dungey Law Firm (“Settlement Agent”), pursuant to written instructions from the Settlement Agent. Buyer shall receive credit for the Initial Deposit and the Additional Deposit which shall be released from escrow and applied by the Settlement Agent towards the Total Purchase Price at Closing.

C. Time shall be of the essence as to: (i) Buyer’s obligation to deliver the Initial Deposit and the Additional Deposit and (ii) Buyer’s obligation to close and deliver the balance of the Total Purchase Price on the date of Closing designated by Seller.

4. **Title:**

A. Seller will provide at the cost to Buyer, a Commitment (“Commitment”) to issue an Owner’s Title Insurance Policy for the Property at the promulgated rate as required by and provided in applicable Florida Statutes, Codes, Rules and Regulations (including the Florida Administrative Rules). The Commitment and Owner’s Title Insurance Policy will be issued by the Settlement Agent through Attorney’s Title Fund Insurance Company. A copy of the proposed Commitment will be attached to the Contract.

B. Except as provided for herein, it is understood and agreed that fee simple title to the Property being sold to the Buyer is free and clear of liens.

C. The Seller will convey title by a Personal Representative’s Deed (the “Deed”).

D. Title to the Property will be subject to the exceptions set forth in the proposed Commitment (“Permitted Exceptions”). Buyer agrees to take title to the Property subject to the Permitted Exceptions.

E. Buyer agrees that the Property is subject to all laws, ordinances, codes, rules and regulations of applicable governmental authorities and Homeowner’s Association pertaining to the ownership, use and occupancy of the Property including, but not limited to, zoning, land use, building codes, and agrees to take title subject to such matters, and the following permitted exceptions: (i) all covenants, restrictions, easements and agreements of record now on the Property; (ii) all liens for unpaid municipal charges not yet due and payable and all taxes and assessments for the year of Closing and all subsequent years not yet due and payable, (iii) the state of facts which would be shown by a current survey or inspection of the Property; (iv) any matter created by or through Buyer; (v) any title matters which Buyer has accepted or is deemed to have accepted as set forth in the Contract; and (vi) such other items that will not make the Property unusable or unmarketable for the purposes for which it is currently used.

F. Seller is not providing to Buyer any survey of the Property. In the event Buyer desires to obtain a survey of the Property, Buyer will be solely responsible to obtain, and pay for, such survey without reducing the proceeds of the Total Purchase Price payable to Seller at the Closing.

5. **Expenses:**

- A. All closing costs which are not required by law to be paid by Seller will be the responsibility of, and will be paid by, the Buyer at the Closing. Without limiting the foregoing, at the Closing, Buyer shall pay for (i) all documentary stamp taxes and recording fees payable with respect to the execution, delivery and recordation of the Deed, (ii) the cost of a loan policy of title insurance and related endorsements and all other expenses in connection with Buyer obtaining a loan, (notwithstanding any of the references in this paragraph to Buyer obtaining a loan, nothing contained herein shall be deemed to make the Contract contingent in any manner on Buyer obtaining financing); and (iii) settlement fees charged by Settlement Agent.
- B. Real estate taxes, utilities, and other expenses of the Property shall be prorated as of the date of Closing based on the last ascertainable tax bill with due allowance made for maximum allowable discount.
- C. All prorations, including, without limitation, prorations of any and all taxes, fees, utilities, and any and all other charges against the Property reflected on the settlement statement executed by Seller are final. No adjustments or payments will be made by Seller after Closing.
- D. Compensation for FISHER AUCTION CO., INC. as commission (\$_____), which is 7% of the Bid Price and shall be paid by Seller at Closing from Seller's proceeds received at Closing, if and only if the Closing occurs. Any and all such commissions shall be paid only upon closing and funding of the Total Purchase Price.
- E. Compensation for _____ ("Buyer's Qualifying Licensed Real Estate Broker") as commission (\$_____), which is 3% of the Bid Price and shall be paid by the Seller at closing from Seller's proceeds received at Closing, if and only if the Closing occurs. Any and all such commissions shall be paid only upon Closing and funding of the Total Purchase Price.
- F. The parties each represent and warrant to the other that they have not dealt with any real estate brokers, salesperson, or finders to whom a brokerage commission is due other than as stated in subparagraphs' 5.D and E above (collectively "Broker"). If a claim for commission in connection with this transaction is made by any broker, salesperson or finder claiming to have dealt through or on behalf of one of the parties hereto other than Broker, such party shall indemnify, defend and hold the other party hereunder harmless from and against all liabilities, damages, claims, costs, fees and expenses (including reasonable attorneys' fees and court costs at trial and all appellate levels) with respect to said claim for commission or other payment of any kind whatsoever. The provisions of this paragraph shall survive the Closing or any earlier termination or cancellation of the Contract notwithstanding any provision hereof to the contrary.

6. **Special Clauses:**

- A. When executed by Seller and Buyer, this Contract shall be binding on all parties, their heirs, personal representatives, successors, and assigns.
- B. Fox, Wackeen, Dungey Law Firm as Settlement Agent shall hold deposits in escrow pending the Closing in a non-interest bearing account.
- C. If Buyer fails to perform under this Contract, then, as Seller's sole and exclusive remedy under this Contract, the Settlement Agent is hereby irrevocably directed and instructed that the Initial Deposit and, if delivered by Buyer, the Additional Deposit, shall be forfeited and paid over to Seller as agreed liquidated damages in order to compensate Seller for the damages caused by such breach and not as a penalty. Neither Fisher Auction Co., Inc. nor Buyer's Qualifying Licensed Real Estate Broker shall be entitled to any compensation if Buyer fails to perform and close under this Contract for any reason or for no reason.
- D. The Disclosures which are attached hereto as **Exhibit "A"** are hereby incorporated into this Contract and made a part hereof for all purposes.
- E. The risk of loss or damage of such property by fire shall remain with the Seller up to the time of the Closing and thereafter, on and after the Closing, by the Buyer.
- F. The Settlement Agent receiving deposit funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Settlement Agent's duties or liabilities under the provisions of this Contract, Settlement Agent may, at Settlement Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of the Court (as described in the first page of this Contract) shall determine the rights of the parties, or Settlement Agent may deposit same with the clerk of the Court having jurisdiction of the dispute. Upon notifying all parties concerned of such action, all liability on the part of Settlement Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. Any suit between Buyer and Seller wherein Settlement Agent is made a party because of acting as Settlement Agent hereunder, or in any suit wherein Settlement Agent interpleads the subject matter of the escrow, Settlement Agent shall recover reasonable attorneys' fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. Buyer shall indemnify, defend and hold Settlement Agent harmless from any and all liability arising under this Contract, unless caused by the willful misconduct or gross negligence of the Settlement Agent. The Settlement Agent shall not be liable to any party or person for misdelivery to Buyer or Seller

of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Settlement Agent. The Settlement Agent shall not be liable for any failure of the depository.

- G. The Buyer's Executed General Terms and Conditions of Sale are attached hereto and made a part of this Contract. In the event a conflict exists between this Contract and the General Terms and Conditions of Sale, then, (i) prior to Buyer's execution and delivery of this Contract, the terms of the General Terms and Conditions of Sale shall govern and control and (ii) following Buyer's execution and delivery of this Contract, the terms of this Contract shall govern and control over the General Terms and Conditions of Sale.
- H. The Property is sold in "AS IS WHERE IS" condition and with all faults and defects, with no representations or warranties express or implied. The "AS IS" Rider attached hereto as **Exhibit "B"** is hereby incorporated into this Contract and made a part hereof for all purposes.
- I. This Contract is not assignable by Buyer.
- J. This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Contract. This Contract shall not bind Seller or Buyer as an offer or Contract unless a fully executed counterpart of this Contract is delivered by Buyer and Seller. Signatures to this Contract transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.
- K. The transmittal of an unexecuted draft of this document for purposes of review shall not be considered an offer to enter into this Contract.
- L. In the event of Seller's default under this Contract, Seller's sole liability to Buyer (and Buyer's sole and absolute remedy) will be the return of Buyer's deposit(s), at which time the Contract shall cease and terminate and Seller and Buyer shall have no further obligations, liabilities or responsibilities to one another. Buyer shall not have any claim against Seller (nor shall Seller be liable) for damages (actual, special, punitive or otherwise) and hereby waives any such claims.
- M. This Contract and the rights and obligations of the parties hereunder shall in all respects be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Florida. The parties hereby agree that all actions or proceedings initiated and arising directly or indirectly out of this Contract and any related documents shall be litigated solely in the courts situated in Martin County, Florida. Buyer and Seller waive any claim that the courts situated in Martin County, Florida, are an inconvenient forum or an improper forum based on lack of venue. In any litigation, including breach, enforcement or interpretation arising out of this Contract, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party, reasonable attorney's fees, costs and expenses.
- N. THE PARTIES HEREBY IRREVOCABLY WAIVE THEIR RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATED TO THIS CONTRACT.
- O. If any provision of this Contract is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Contract and the remaining provisions of this Contract shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Contract.

IN ACCEPTANCE OF THESE ABOVE TERMS AND CONDITIONS, SELLER AND BUYER HERETO AFFIX THEIR SIGNATURES. FACSIMILE SIGNATURES SHALL BE TREATED AS ORIGINALS.

Dated _____
Seller:

Witness

Address **City** **State & Zip** **Telephone** **Facsimile**

Dated _____
Buyer:

Witness _____
Buyer:

Address **City** **State & Zip** **Telephone** **Email**

Deposits under Paragraph 2 received if other than cash are subject to clearance by Fox, Wackeen, Dungey Law Firm (Settlement Agent)

EXHIBIT "A"

DISCLOSURES

Under the laws of the State of Florida, each prospective Buyer is hereby advised as follows:

(a) Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to person who is 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 you county public health department. The foregoing notice is provided in order to comply with state law and is for informational purposes only. Seller does not conduct radon inspection with respect to the Property, and specifically disclaims any and all representations or warranties (express or implied) as to the absence of radon in connection with the Property.

(b) Mold, Mildew and Other Biological Toxins Disclosure. Under the laws of the State of Florida, Buyer is hereby advised that **Mold, mildew and other biological toxins are found both indoors and outdoors. The presence of mold, mildew and other biological toxins may cause property damage or health problems. Additional information regarding mold, mildew and other biological toxins and inspections related thereto may be obtained from your county public health unit or a professional trained in that field.** The foregoing notice is provided in order to comply with state law and is for informational purposes only. Seller does not conduct mold, mildew or other biological toxins inspections with respect to the Property, and specifically disclaims any and all representations or warranties (express or implied) as to the presence or absence of mold, mildew or other biological toxins in connection with the Property.

(c) Property Taxes. BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

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EXHIBIT "B"

AS-IS RIDER

Buyer represents and warrants to Seller that Buyer has examined and investigated to Buyer's full satisfaction the Property, and that except as otherwise expressly set forth in this Contract, Seller has not made any warranties or representations (express or implied) concerning the Property or any portion thereof. Buyer acknowledges and agrees that except as otherwise expressly set forth in this Contract the Property is being transferred in its "AS IS" "WHERE IS" with all faults and defects condition and Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, including, but not limited to, compliance with any special use permits or developments of regional impact, (e) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, (f) the manner or quality of the construction or materials incorporated into the Property, (g) the manner, quality, state of repair, or lack of repair of the Property, (h) the existence of hazardous materials, mold, mildew, other biological toxins or governmental requirements at the Property, (i) the existence, quality, nature, adequacy, or physical condition of any utilities serving the Property, (j) the development potential of all or any part of the Property, (k) any leases or occupancy agreements affecting the Property or (l) any other matter with respect to the Property, and specifically, that, except as otherwise expressly set forth in this Contract, Seller has not made, does not make and specifically disclaims any representations regarding concurrency, or compliance with any special use permits, developments of regional impact, environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Property of hazardous materials.

Any special assessments, municipal assessments or liens that are due or incurred after Closing will be the responsibility of the Buyer. Seller shall not be required to comply with or bring the Property into compliance with any regulations of any governmental authority, close out any open permits or cure any code enforcement violations and Buyer expressly assumes all responsibility for same.

Except as otherwise expressly set forth in this Contract, Buyer further acknowledges and agrees that having been given the opportunity to inspect the Property, Buyer is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller and, at the Closing, Buyer shall accept the Property and waive all objections or claims against Seller or Seller's members, officers, directors, shareholders, employees, members, managers, partners, attorneys, and agents (including, but not limited to, any right or claim of contribution) arising from or related to the Property or to any hazardous materials or biological toxins in, on or under the Property and any claim it has, might have had, or may have against Seller with respect to the condition of the Property, either patent or latent. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and, except as otherwise expressly set forth in this Contract, makes no representations as to the accuracy or completeness of such information. Except as otherwise expressly set forth in this Contract, Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person. Buyer further acknowledges and agrees that, except as otherwise expressly set forth in this Contract, to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" "WHERE IS" condition and basis with all faults and defects.

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