

AGREEMENT FOR PURCHASE AND SALE

This Agreement for Purchase and Sale ("**Agreement**") is entered into as of _____, 2017 ("**Effective Date**"), by and between VILLAGE OF WELLINGTON, a municipal corporation of the State of Florida ("**Seller**") and BIRCH DEVELOPMENT, LTD., a Florida limited partnership ("**Buyer**").

BACKGROUND:

Seller is the owner of the fee simple interest of certain land located in Palm Beach County, Florida, which is more particularly described as "Civic Tract of Wellington Green, a MUPD/PUD, according to the plat thereof, as recorded in Plat Book 87, Page 81, of the Public Records of Palm Beach County, Florida" ("**Land**").

AGREEMENT:

1. **Purchase and Sale.** Subject to all of the terms and conditions of this Agreement, Seller will sell to Buyer and Buyer will purchase from Seller the Land, together with (i) any and all impact fees, impact fee credits or similar charges which service or pertain in any manner to the Land, all permits, governmental approvals, utility rights and utility capacity, development rights and similar rights related to the Property, whether granted by governmental authorities or private persons and all plans, specifications, site plans, engineering plans, architectural drawings, architectural renderings and similar items related to the Land (collectively, the "**Intangible Property**"); (ii) all improvements located on the Land; and (iii) all easements, rights of way, privileges, licenses, appurtenances and any other rights, privileges and benefits belonging to Seller and/or running with title to, or in any way related to, the Land (collectively, with the Land, the "**Property**"). The Purchase Price for the Property shall be equal to \$834,000.00 ("**Purchase Price**"), subject to any adjustments for prorations as set forth in this Agreement.

2. **Interlocal Agreement.** The Property is subject to a certain Interlocal Agreement ("**Interlocal Agreement**") entered into in 2009 between Seller and Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida ("**County**"). Pursuant to the Interlocal Agreement, the County operates a park and ride facility, which was constructed with grant money provided by the State of Florida Department of Transportation ("**FDOT**"). The park and ride facility has approximately 140 parking spaces. The Seller and the County are negotiating an amendment to the Interlocal Agreement ("**Amendment to Interlocal Agreement**") which would, among other things, (i) reduce the number of park and ride parking spaces to approximately 48 spaces; and (ii) cause Seller to reimburse FDOT for a portion of the grant money that FDOT provided for the construction of the park and ride facility ("**FDOT Reimbursement**"). The consummation of the transaction contemplated by this Agreement is conditioned on the Seller and the County approving and entering into the Amendment to Interlocal Agreement, in a form reasonably acceptable to Buyer ("**Interlocal Condition to Close**") and assumption of Buyer of all obligations under the Amendment to the Interlocal Agreement. Seller agrees to use good faith efforts to satisfy the Interlocal Condition to Close as soon as reasonably practicable, and Seller further agrees to provide periodic updates to Buyer concerning the status of the Interlocal Condition to Close.

3. **Deposit and Closing Costs.**

(a) On the third (3rd) business day following the Effective Date, Buyer shall deposit with Broad and Cassel LLP ("**Escrow Agent**"), the sum of \$25,000.00 ("**Deposit**"). Upon Closing, unless otherwise disbursed pursuant to the terms of this Agreement, the Deposit shall be applied toward the Purchase Price.

(b) Buyer shall be responsible for the amount of any documentary stamp taxes to be affixed to the Deed (as hereinafter defined), and any costs associated with the Title Evidence (as hereinafter defined). Seller is solely responsible for the FDOT Reimbursement, which shall be payable at the time of Closing, unless the Amendment to Interlocal Agreement provides for a different payment date. Each party is responsible for its own legal fees. This provision shall survive the Closing.

4. **Title.**

(a) Within ten (10) days after the Effective Date, Buyer shall have a right, but not an obligation, to obtain a title commitment ("**Commitment**"), municipal lien search ("**Tax and Lien Search**") and survey ("**Survey**", and together with the Commitment and Lien Search, the "**Title Evidence**"), in each case, related to the Property, and to examine the Title Evidence and make its written objections ("**Title Objections**") to any matters, requirements and/or exceptions contained in the Title Evidence which are not caused by Buyer and which are unacceptable to Buyer, in its sole discretion, by providing written notice to Seller setting forth the Title Objections ("**Objection Letter**"); except that Buyer shall not be required to object to any Must Cure Items (as hereinafter defined), it being understood and agreed that Seller is required to satisfy such Must Cure Items. If Buyer fails to provide the Objection Letter to Seller within such time period, then, for all purposes of this Agreement, Buyer shall be deemed to have accepted title in the condition described in the Title Evidence. Any matters reflected on the Title Evidence which are not objected to within such time period shall be deemed to be acceptable to Buyer and permitted exceptions for all purposes under this Agreement ("**Permitted Exceptions**").

(b) If Buyer timely notifies Seller of any Title Objections, then within five (5) business days after receipt by Seller of the Objection Letter ("**Response Period**"), Seller shall deliver written notice to Buyer advising Buyer whether or not Seller will attempt to cure all or any of the Title Objections set forth in the Objection Letter ("**Response Notice**"). Seller's failure to deliver the Response Notice to Buyer within the Response Period shall be conclusively deemed to constitute an election by Seller not to attempt to cure the Title Objections. If Seller elects (or is deemed to have elected) not to attempt to cure any Title Objections, then within seven (7) business days after the expiration of the Response Period ("**Election Period**"), Buyer shall deliver written notice to Seller ("**Election Notice**") electing to either (i) terminate this Agreement, in which event the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned to Buyer, or (ii) waive any Title Objections which Seller has elected (or is deemed to have elected) not to attempt to cure, in which event such waived Title Objections shall be deemed to be Permitted Exceptions for all purposes under this Agreement. Buyer's failure to deliver the Election Notice within the Election Period shall be conclusively deemed to constitute Buyer's election to terminate this Agreement pursuant to clause (i) above. If Seller elects pursuant to the Response Notice to attempt to cure any Title Objections, then Seller agrees to cure such Title Objections within ten (10) days after Seller's delivery of the Response Notice ("**Cure Period**"). If Seller is unable to cure the Title Objections on or before the expiration of the Cure Period, then Buyer shall have a seven (7) business day Election Period after the expiration of the Cure Period to deliver an Election Notice with respect to such uncured Title Objections as set forth above. Buyer's failure to deliver the Election Notice within such Election Period shall be conclusively deemed to constitute Buyer's election to terminate this Agreement pursuant to clause (i) above.

(c) Notwithstanding anything to the contrary contained herein, Seller shall, on or before the Closing Date: (i) satisfy all of the Schedule B - Section 1 requirements contained in the Commitment which are Seller's obligation to satisfy; (ii) satisfy, discharge or bond over liens, encumbrances or other monetary items created by Seller which can be satisfied by the payment of an ascertainable sum; (iii) deliver such documentation as may be required by the Title Company to delete the preprinted exceptions with regard to gap, party in possession and mechanics' liens; (iv) deliver evidence

of good standing of Seller, together with such other evidence as the Title Company may reasonably require for Seller to transfer good and marketable title to the Land; and (v) cause to be removed or satisfied, as applicable, any new matter shown on an update to the Title Evidence which was not reflected in the initial Title Evidence obtained by Buyer (collectively, the “**Must Cure Items**”).

5. **Investigation Period.** Buyer has had an opportunity to conduct all of its investigations of the Property and it is satisfied with the results of its investigations. It is expressly acknowledged by Buyer that the Closing of the transactions contemplated by this Agreement is not subject to any financing contingency and that no financing for this transaction shall be provided by Seller. Notwithstanding that Buyer is satisfied with the results of its investigations, during the term of this Agreement, Buyer and Buyer’s contractors, consultants, employees, and other representatives shall have the right to conduct inspections of the Property in order to determine if the Property is acceptable to Buyer, in its sole discretion. Seller hereby grants to Buyer and its agents, servants, employees, contractors and representatives, a right of entry upon every portion of the Property, from time to time at all reasonable times for the purpose of inspecting the Property. Such inspections may include, but not be limited to, surveying, environmental tests, soil boring tests, subsurface soil or groundwater studies, soil borings, wetlands assessments, utilities and site planning studies, and marketing and financial feasibility studies.

6. **Closing.** Subject to the terms of this Agreement, the purchase and sale contemplated by this Agreement (“**Closing**”) shall be closed on or before the fifth (5th) business day after Seller demonstrates to Buyer’s reasonable satisfaction that the Interlocal Condition to Close has been satisfied (“**Closing Date**”). If Seller is unable to demonstrate to Buyer’s reasonable satisfaction that the Interlocal Condition to Close has been satisfied by December 31, 2018, then either party may terminate this Agreement, whereupon the Deposit shall be returned to Buyer and the parties shall be released from any further liability or obligation hereunder, except for those rights and obligations which specifically survive termination hereunder. The Closing will be held at the offices of the Escrow Agent, or at such other place as the parties may mutually agree, through an escrow closing arrangement, or effected via a “mail away” closing (i.e. in which funds are sent via wire transfer and closing documents are delivered via overnight delivery or courier delivery service to Escrow Agent).

7. **Closing Conditions.** The obligations of Buyer to pay the Purchase Price and to perform Buyer’s other obligations at the Closing under this Agreement are and shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date: (i) the title company shall be able to deliver at Closing an ALTA Owner’s Title Insurance Policy (“**Title Policy**”) insuring Buyer’s right, title and interest in the Property in the amount of the Purchase Price, excepting no matters other than the Permitted Exceptions; (ii) all of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same effect as if made on and as of such date; and (iii) at Closing, there shall be no material adverse change in the physical condition of the Property that has arisen or occurred after the Effective Date (an “**Adverse Change**”). If any of the foregoing conditions have not been satisfied as of the Closing Date, and Seller is not otherwise in default hereunder (in which event the provisions of Section 15(b) shall control), then Buyer may, in Buyer’s sole discretion: (A) terminate this Agreement by delivering written notice to Seller, whereupon the Deposit shall be returned to Buyer and the parties shall be released from any further liability or obligation hereunder, except for those rights and obligations which specifically survive termination hereunder; or (B) Buyer may waive such condition and elect to close, notwithstanding the non-satisfaction of such condition(s).

8. **Closing Deliveries.** At Closing, Seller shall deliver to Buyer the following documents: (i) a special warranty deed (“**Deed**”) in a form reasonably acceptable to the Buyer; (ii) a general assignment of the Intangible Property; (iii) a closing statement in a form reasonably approved by Seller and Buyer (“**Closing Statement**”); and (iv) such additional documents or instruments as may be

reasonably required to effectuate the terms, conditions and provisions hereof and to carry out the intent of the parties hereto, or as may be reasonably required by the title company, including, without limitation, executed and acknowledged notices regarding the Property that must be given in accordance with local laws or customs in the state and county where the Property is situated.

9. **Prorations.** All real and personal property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent, and taking into consideration the maximum allowable discount). If the tax statements for the fiscal year during which the Closing Date occurs are not finally determined, then the assessed value for the year of closing and the millage rate for the immediately prior fiscal year will be used for the purposes of prorating taxes on the Closing Date, with a further adjustment to be made after the Closing Date as soon as such tax figures are finalized. All special assessments which may be amortized over a number of years will be prorated as of the Closing Date, with Seller responsible only for the period ending on the day prior to the Closing Date. The provisions of this Section shall survive the Closing.

10. **Seller's Warranties.** Seller hereby represents and warrants to Buyer as follows:

(a) Seller has good and marketable fee simple title to the Property. Seller has not entered into any agreement to lease, sell, or otherwise dispose of its interest in the Property or any part thereof. No person, firm, corporation or other entity has any right or option to acquire the Property, or any part thereof, from Seller, other than Buyer as herein provided.

(b) Seller has full power and authority to execute and deliver this Agreement and all documents now or hereafter to be delivered by it pursuant to this Agreement, to perform all obligations arising under this Agreement, and to complete the transfer of the Property contemplated by this Agreement. This Agreement has been approved by the Wellington Village Council and has been duly executed and delivered by the Mayor on behalf of Seller and constitutes a valid, binding and enforceable obligation of Seller, subject to bankruptcy and other debtor relief laws and principals of equity. The compliance with or fulfillment of the terms and conditions hereof will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any contract to which Seller is a party or by which Seller is otherwise bound, which conflict, breach or default would have a material adverse effect on Seller's ability to consummate the transaction contemplated by this Agreement or on the Property. Seller is not a debtor in any bankruptcy proceeding nor has it been in the last six (6) months a debtor in any bankruptcy proceeding.

(c) Seller is not required to obtain any consent, approval or authorization from, or to make any filing with, any person in connection with, or as a condition to, the execution and delivery of this Agreement, the performance by Seller of its obligations under this Agreement or the conveyance of the Property as contemplated by this Agreement, except for the affirmative vote of a majority of the Village Council at a publicly noticed meeting.

(d) The Property is not subject to any leases, occupancy or use agreements, the Property is free and clear of all tenants, and there are no parties in possession of the Property.

(e) Seller is not in default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Seller is a party and which affects any portion of the Property.

(f) There are no condemnation or eminent domain proceedings pending or to the best of Seller's knowledge contemplated against the Property or any part thereof, and Seller has received no notice of the desire of any public authority to take or use the Property or any part thereof.

(g) There are no pending actions, suits or proceedings, or to the best of Seller's knowledge threatened, against or affecting Seller or any part of the Property.

(h) Seller has received no notice of and to its knowledge there is no violation of any law, regulation, ordinance, order or judgment affecting the Property.

(i) To Seller's knowledge, there are no unrecorded easements, restrictions or encumbrances affecting all or any part of the Property.

11. **Covenants of Seller.** Seller hereby covenants with Buyer as follows:

(a) Seller will not, without Buyer's prior written consent, create or permit to create by its consent any encumbrances on the Property. For purposes of this provision the term "encumbrances" shall mean any liens, claims, options, mortgages or other encumbrances, encroachments, rights-of-way, easements, covenants, conditions or restrictions.

(b) Prior to Closing, Seller shall provide Buyer with copies of any written notices from any government authority that Seller receives with respect to the Property, including, without limitation, any notices related to (i) any special assessments or proposed increases in the valuation of the Property, (ii) any condemnation or eminent domain proceedings affecting the Property, or (iii) any violation of any zoning, health, fire, safety or other law, regulation or code applicable to and affecting the Property.

(c) Seller will not file any application for any change of the present zoning classification of the Property (unless requested by Buyer).

(d) Seller shall not (i) enter into any lease or contract with respect to the Property; (ii) sell the Property or create any lien thereon or market the Property for sale (which shall include entering into a back-up contract with respect to the Property); or (iii) intentionally take any action that would have the effect of violating any of the representations and warranties of Seller contained in this Agreement in a material manner.

(e) Seller will advise Buyer promptly, upon Seller's discovery of the same, of any casualty that concerns or affects the Property in any manner after the Effective Date.

(f) Seller shall maintain the Property in substantially its current condition and shall not take any action, or omit to take any action, which could or will adversely affect the value of the Property or harm the physical condition of the Property.

12. **Real Estate Commissions.** Buyer and Seller each represent and warrant to the other that no real estate broker was used by Buyer and/or Seller in connection with the purchase of the Property. Buyer and Seller agree to indemnify and hold each other harmless from any and all claims for any brokerage fees or similar commissions asserted by brokers or finders claiming by, through or under the indemnifying party. The provisions of this Section shall survive the Closing.

13. **Condemnation.** In the event of the institution against the record owner of the Property of any proceedings, judicial, administrative or otherwise, relating to the taking, or to a proposed taking of any portion of the Property by eminent domain, condemnation or otherwise or if Seller shall receive any notice or knowledge that any agency or entity having the power of eminent domain is contemplating or is seeking the taking or condemnation of the Property, or any part thereof, or any interest therein (which in Buyer's sole opinion materially impairs the proposed development of the Property), prior to Closing, or in the event of the taking of any portion of the Property by eminent domain, condemnation or otherwise,

prior to Closing, then Seller shall notify Buyer promptly and Buyer shall have the option, in its sole and absolute discretion of either (i) terminating this Agreement, whereupon the Deposit shall be returned to Buyer and the parties shall be relieved from all further liabilities and obligations hereunder; or (ii) closing in accordance with the terms of this Agreement, but at Closing Seller shall assign to Buyer all of its right, title and interest in and to any net awards that have been or may be made with respect to such eminent domain proceeding or condemnation. Such election must be made by Buyer within thirty (30) days of the notice furnished by Seller. If Buyer fails to make an election in writing, it shall be deemed to have elected alternative (a).

14. **Default.**

(a) In the event of any material default by Buyer that continues for ten (10) days after written notice from Seller (except that Buyer shall not be entitled to any notice and/or cure rights for a failure to close on the Closing Date), then, as Seller's sole and exclusive remedy, the Deposit placed under this Agreement, along with all interest accrued thereon, shall be delivered by Escrow Agent to Seller as liquidated and agreed upon damages and thereafter, Buyer shall be relieved from all further obligations under this Agreement and Seller shall have no further claim against Buyer for specific performance or for damages by reason of the failure of Buyer to close this transaction. The amount of such liquidated damages has been established by the parties as the amount of the monetary damages Seller will suffer based solely upon a failure by Buyer to purchase the Property and Seller shall be entitled to recover no other damages from Buyer based solely upon a failure by Buyer to purchase the Property. By signing this Agreement, the parties expressly understand and agree to the foregoing provisions relating to liquidated damages.

(b) In the event of any (i) material default by Seller that continues for ten (10) days after written notice from Buyer (except that Seller shall not be entitled to any notice and/or cure rights for a failure to close on the Closing Date); or (ii) any representation or warranty of Seller is inaccurate, untrue or incorrect as of the Effective Date, or inaccurate, untrue or incorrect as of the Closing Date through an intentional or deliberate act of Seller, then in either such case, Seller shall be in default hereunder, and at the option of Buyer (i) the Deposit shall be immediately returned by Escrow Agent to Buyer and Seller shall reimburse Buyer (but without limiting Buyer's right to receive a refund of the Deposit) for its direct and actual out-of-pocket expenses and costs (documented by paid invoices to third parties) in connection with this transaction; or (ii) Buyer shall be entitled to seek to enforce specific performance of Seller's obligations hereunder; provided, however, if the remedy of specific performance is not available as a result of Seller having sold or otherwise transferred, all or a portion of the Property to someone other than Buyer, then Buyer shall be entitled to pursue all remedies available at law or in equity, including without limitation recovery of damages from Seller.

15. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties with respect to the transaction contemplated herein, and it supersedes all prior understandings or agreements between the parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. The failure by Buyer or Seller to insist upon or enforce any of their rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of Buyer's and Seller's right to insist upon strict compliance with the terms of this Agreement. Either party may waive the benefit of any provision or condition for its benefit which is contained in this Agreement. No oral modification of this Agreement shall be binding upon the parties and any modification must be in writing and signed by the parties. The paragraph headings as set forth in this Agreement are for convenience or reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any paragraph herein. Time is of the essence with respect to each provision of this Agreement. Provided however, if the date for performance is on a Saturday, Sunday or federal holiday, the date for performance shall be extended to the next business day. This

Agreement is an agreement between Seller and Buyer only and no third parties shall be entitled to assert any rights as third party beneficiaries hereunder. This Agreement may be executed in two or more counterparts, all of which together shall constitute but one and the same Agreement. To facilitate the execution and delivery hereof, the parties may exchange executed counterparts hereof, or of any amendment hereto, by facsimile or other similar electronic transmission, which transmission shall be deemed delivery of an original executed counterpart by such party. At the election of Buyer, and at Buyer's sole cost, this Agreement or any memorandum, summary, or other evidence hereof may be recorded in any public records prior to the consummation of the Closing.

16. **Notices.** Any notice, request, demand, instruction or other communication to be given to either party, except where required by the terms of this Agreement to be delivered at the Closing, shall be in writing and shall be sent as follows:

If to Buyer:

Birch Development, Ltd.
7900 Glades Road, Suite 320
Boca Raton, Florida 33434
Attention: Gary Koolik
Email: koolikg@breffrank.com

with a copy to:

Broad and Cassel LLP
7777 Glades Road, Suite 300
Boca Raton, Florida 33434
Attention: Christopher Staller, Esq.
Email: cstaller@broadandcassel.com

If to Seller:

Village of Wellington
12300 Forest Hill Blvd
Florida, 33414
Attention: Paul Schofield, Manager
Email: pauls@wellingtonfl.gov

with a copy to:

Laurie Cohen, Village Attorney
Village of Wellington
12300 Forest Hill Blvd
Wellington, FL 33414
Email: lcohen@wellingtonfl.gov

Any such notice shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered on the date such notice is received by the addressee, (b) sent by facsimile, in which case notice shall be deemed delivered upon confirmed transmission of such notice by facsimile, (c) sent by electronic mail, in which case notice shall be deemed delivered upon confirmed transmission of such notice by electronic mail; or (d) sent by personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery of such notice. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actually received by the recipient thereof. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. The attorney for a party has the authority to send and receive notices on behalf of such party.

17. **Escrow Agent.** The Deposit shall be held by Escrow Agent in trust and shall be deposited in a non-interest bearing account (the "**Depository**"). Seller and Buyer agree that Escrow

Agent shall have no liability in the event of failure, insolvency or inability of the Depository to pay such funds, or accrued interest upon demand or withdrawal. Buyer and Seller acknowledge that the account may not be protected by the insurance afforded by the FDIC.

If at any time Escrow Agent receives written notice from Buyer demanding return of the Deposit (“**Buyer’s Notice**”), then Escrow Agent shall promptly deliver a copy thereof to Seller. If on or before 5:00 p.m. on the date which is five business days following delivery of such Buyer’s Notice to Seller, Seller shall object to the return of the Deposit to Buyer by notice received by Escrow Agent (“**Seller’s Objection Notice**”), then Escrow Agent shall not disburse the Deposit to Buyer until the dispute is resolved. However, if Seller does not deliver a Seller’s Objection Notice to Escrow Agent on or before 5:00 p.m. on the date which is five business days following Seller’s receipt of such Buyer’s Notice from Escrow Agent, then Escrow Agent may disburse the Deposit to Buyer.

If at any time Escrow Agent receives written notice from Seller demanding return of the Deposit (“**Seller’s Notice**”), then Escrow Agent shall promptly deliver a copy thereof to Buyer. If on or before 5:00 p.m. on the date which is five business days following delivery of such Seller’s Notice to Buyer, Buyer shall object to the return of the Deposit to Seller by notice received by Escrow Agent (“**Buyer’s Objection Notice**”), then Escrow Agent shall not disburse the Deposit to Seller until the dispute is resolved. However, if Buyer does not deliver a Buyer’s Objection Notice to Escrow Agent on or before 5:00 p.m. on the date which is five business days following Buyer’s receipt of such Seller’s Notice from Escrow Agent, then Escrow Agent may disburse the Deposit to Seller.

Subject to the foregoing, in the event of any dispute regarding any action taken, or proposed to be taken, by Escrow Agent with respect to the Deposit, Escrow Agent, in its sole discretion, may:

(a) Refuse to comply with any demands on it and continue to hold the Deposit until it receives either: (i) written notice signed by Buyer and Seller, directing the disbursement of the Deposit; or (ii) an order of a court, having competent jurisdiction thereover, directing the disbursement of the Deposit;

(b) On notice to Seller and Buyer, take such affirmative action as it may deem appropriate to determine its duties as escrow agent including, but not limited to, the placing of the Deposit with a court of competent jurisdiction and the commencement of an action for interpleader; or

(c) If Buyer or Seller shall have commenced litigation with respect to the Deposit, place the Deposit with the Clerk of the Court in which said litigation is pending.

Upon disbursing or depositing the Deposit under the provision of clause (a), (b) or (c) above, Escrow Agent shall have no further obligation with respect to the Deposit.

Buyer, Seller and Escrow Agent acknowledge that Escrow Agent is acting hereunder as a depository only to the parties except as described herein, and Buyer and Seller, jointly and severally, do hereby agree to indemnify and hold harmless Escrow Agent up to the limits of the Deposit of and from any and all liabilities, costs, expenses and claims, of any nature whatsoever, by reason of or arising out of any act or failure to act as Escrow Agent hereunder, except in the case of Escrow Agent’s gross negligence or willful misconduct.

All parties agree that Escrow Agent shall not be liable to any party or person whomsoever for: (i) the sufficiency, correctness, genuineness or validity of any instrument deposited with it or any notice or demand given to it or for the form of execution of such instrument, notice or demand, or for the identification, authority or rights of any person executing, depositing or giving the same or for the terms and conditions of any instrument, pursuant to which the parties may act; (ii) acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine and Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so; or (iii) otherwise acting or failing to act under this Section except in the case of Escrow Agent's gross negligence or willful misconduct. Buyer acknowledges that the Escrow Agent is also Seller's counsel in this transaction, and Buyer hereby consents to the Escrow Agent's representation of Seller in any litigation which may arise out of this Agreement.

Escrow Agent shall be entitled to rely on any instrument Escrow Agent in good faith believes to be genuine. Escrow Agent shall not be liable for any loss or damage unless occasioned by its gross negligence or willful misconduct. Escrow Agent shall in no event be liable for any loss resulting from the following: (i) the financial status or insolvency of any other party, or any misrepresentation made by any other party; (ii) any penalties, or loss of principal, or interest or any delays in the withdrawal of the Deposit which may be imposed by the depository bank as a result of the making or redeeming of the investment of the Deposit; (iii) any legal effect, insufficiency or undesirability of any instrument deposited with or delivered by or to Escrow Agent or exchanged by the parties, whether or not Escrow Agent prepared such instrument; (iv) the default, error, action or omission of any other party to this Agreement; (v) any loss or impairment of the Deposit while in the course of collection or while on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution, or due to the invalidity of any draft, check, document or other negotiable instrument delivered to Escrow Agent; (vi) the expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit; or (vii) Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

18. **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other party, which may be withheld in such party's sole discretion, except that Buyer may assign this Agreement to an entity affiliated with Buyer or any of its principals, or to any financial institution which may become a "partner" (which shall include an affiliation through any form of business organization) of Buyer or any of its principals, or to any entity in which Buyer, its principals or said affiliates, have a controlling equity interest or operational control; provided, however, copy of the assignment and assumption agreement shall be delivered to Seller prior to Closing.

19. **Merger Provision.** Except as otherwise expressly provided herein, any and all provisions contained herein shall merge with the Deed and other instruments executed at Closing, shall terminate at Closing and shall not survive Closing. Notwithstanding the foregoing, the representations, warranties and covenants of Seller set forth in this Agreement will survive Closing for a period of twelve (12) months. No claim for a breach of any representation, warranty or covenant of Seller will be actionable or payable (a) if the breach in question results from or is based on a condition, state of facts or other matter which was known to Buyer prior to Closing, and (b) unless written notice containing a description of the specific nature of such breach will have been given by Buyer to Seller prior to the expiration of said twelve (12) month period.

20. **Radon Gas.** In compliance with §404.056, Florida Statutes, Purchaser is hereby made aware of the following:

RADON GAS IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

21. **Applicable Law.**

(a) This Agreement is being executed and delivered, and is intended to be performed, in the State of Florida, and the laws of the State of Florida govern the validity, construction, enforcement and interpretation of this Agreement, without regard to, or effect of, any choice or conflict of law principles or rules, unless otherwise specified herein.

(b) By executing this Agreement, the parties consent to the exclusive venue and jurisdiction of any federal or state court sitting in the County of Palm Beach and State of Florida in any action arising out of or in any way related to this Agreement. The parties irrevocably and unconditionally submit to the jurisdiction (both subject matter and personal) of any such court and irrevocably and unconditionally waive: (i) any objection any party might now or hereafter have to the venue in any such court; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THEIR RESPECTIVE RIGHTS OF TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT OR ANY ACTION OF EITHER PARTY HEREUNDER.**

[SIGNATURES APPEAR ON FOLLOWING PAGE]

[SIGNATURE PAGE TO AGREEMENT FOR PURCHASE AND SALE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

BIRCH DEVELOPMENT, LTD.,
A Florida limited partnership

By: Birch Development Corp.,
A Florida corporation, its General Partner

By: _____
Name: _____
Title: _____

SELLER:

VILLAGE OF WELLINGTON,
a municipal corporation of the State of Florida

By: _____
Anne Gerwig, Mayor

ATTEST

Chevelle Nubin, Village Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Laurie Cohen, Village Attorney