

RESOLUTION NO. 2005- i58

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A PURCHASE AND SALE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND JNM BEACHSIDE DEVELOPMENT, LTD., FOR PROPERTY LOCATED WITHIN THE SEA GROVE TOWN CENTER, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, JNM Beachside Development, Ltd., owner of a certain parcel of property located within the Sea Grove Town Center, has executed and presented to the County a Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference, and made a part hereof; and

WHEREAS, the County intends to locate a library on the above-referenced parcel, so that the needs of County residents, especially those residing near the Sea Grove Town Center, will be served; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the proposed Purchase and Sale Agreement; and

WHEREAS, it is in the interests of the County to acquire the above-referenced property, in order to locate a County library that will serve the interests County residents residing both within the Sea Grove Town Center community, and outside the Sea Grove Town Center community; and

WHEREAS, the County has determined that accepting the terms of the proposed Purchase and Sale Agreement, and entering into said Purchase and Sale Agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Purchase and Sale Agreement between St. Johns County, Florida, and JNM Beachside Development, Ltd., and authorizes the County Administrator to execute the Purchase and Sale Agreement on behalf of St. Johns

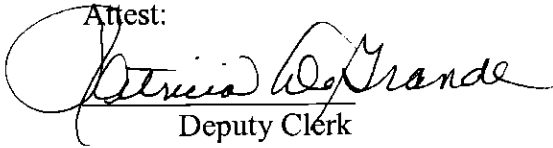
County, and to proceed with any, and all, due diligence requirements, and to close the transaction in accordance with the terms of the Purchase and Sale Agreement.

Section 3. The Clerk is instructed to file the original Purchase and Sale Agreement.

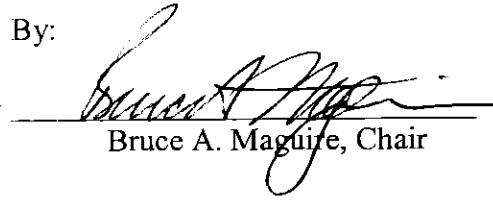
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 14th day of June, 2005.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest:


Deputy Clerk

By:


Bruce A. Maguire, Chair

RENDITION DATE 6-16-05



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made effective as of the latest date of the signature by both Seller and Buyer (the "Effective Date") and is by and between **JNM Beachside Development, Ltd.**, a Florida limited partnership ("Seller") and **St. Johns County, Florida**, a political subdivision of the State of Florida ("Buyer").

1. **Sale of Property.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, upon the terms and conditions hereof, the property located in St. Johns County, Florida consisting of the real property described as Parcel F, Sea Grove St. Augustine Beach Unit Four in accordance with the plat thereof recorded in Map Book 51, pages 68-69 of the St. Johns County, Florida public records and all improvements located thereon (the "Property").

2. **Appurtenant Rights.** Included in the purchase hereunder are (a) the easement rights, assurances, duties and obligations specified in the Declaration of Charter, Easements, Covenants and Restrictions For SeaGrove Town Center (the "Town Center Declaration") recorded in OR Book __, Page __ (see generally Article 18) and (b) the drainage easement rights specified in Sections 2.4m and 6.1 (d) of the Declaration of Charter, Easements, Covenants and Restrictions For The Neighborhood at SeaGrove (the "Neighborhood Declaration") recorded in OR Book 2257, Page 1879, St. Johns County, Florida public records, subject always to the conditions specified therein.

3. **Purchase Price and Deposit.**

(a) The purchase price (the "Purchase Price") is **\$117,640.00 (one hundred seventeen thousand, six hundred forty dollars)**, subject to the adjustments and prorations hereinafter provided.

The Purchase Price shall be paid as follows:

| <u>Payment</u> | <u>Due Date</u> | <u>Amount</u> |
|---|------------------------|----------------------|
| (i) Earnest Money Deposit (the "Deposit") | Effective Date | \$ 1,000.00 |
| (ii) Cash to Close | Closing | <u>\$116,640.00</u> |
| TOTAL PURCHASE PRICE | | \$117,640.00 |

(b) The timely delivery to Richard G. Hathaway, P.A. ("Escrow Agent") of the Deposit within 30 days of the execution of this Agreement is a condition precedent to the performance of Seller's obligations hereunder. The balance of the cash to close shall be paid by wire transfer of good United States funds, in cash or by St. Johns County, Florida check to the Escrow Agent as Closing Agent no later than 10:00am on the Closing Date.

4. **Permitted Use.** For the period commencing at the Closing and continuing for 35 years thereafter, the Buyer, and its successors and assigns, may use the Property only as a County public library, or other type of cultural facility, such as, a museum. Seller reserves authority to make determination whether use of Property falls within the expected and approved use, that is a library, or other type of cultural facility. In spite of Seller's reservation of authority (above-noted), Seller shall not unreasonably withhold approval of a facility not specifically listed. If at anytime during such period, Buyer or its successors or assigns uses the Property for any other purpose and such other use continues for a period of ten (10) days after Seller's notice to Buyer demanding that such other use be discontinued, then Seller may terminate any actual and/or implied easement in the common parking area, which would then require Buyer to secure parking for its employees and patrons at another location. Notwithstanding any other provision in this Agreement, Seller's sole remedy associated with the unapproved use of the Property, shall be: (a) the termination of any actual and/or implied easement in the common area; or (b) seeking a Court-ordered injunction, in order to prevent the Seller from using the Property in unapproved fashion.

5. **Title Evidence and Survey.**

(a) Title to the Property shall be conveyed in fee simple, by special warranty deed, free and clear of (i) any and all monetary liens, mortgages, security interests and leases and (ii) restrictions, easements, options, claims, unrecorded agreements or other encumbrances of any kind which would prohibit Buyer from developing the Property as a County public library (the foregoing matters specified in sub-sections (i) and (ii) are referred to herein as "Prohibited Title Matters").

(b) **Title Commitment.** By the earlier of Closing or thirty (30) days from the Effective Date, Seller, at Buyer's expense, shall deliver to Buyer a title insurance commitment (the "Title Commitment") for an owner's policy of title insurance in favor of Buyer setting forth the state of title to the Property and including copies of all title documents referenced in the Title Commitment as exceptions to coverage. The Title Commitment shall provide for the issuance of a title policy in the standard ALTA owner's title insurance form as used in the State of Florida insuring fee simple title of Buyer to the Property in the amount of the Purchase Price plus the cost of Buyer's intended improvement of the Property and subject only to those conditions, easements, covenants, restrictions and other matters which are not Prohibited Title Matters. **First American Title Insurance Company** shall issue the Title Commitment and Title Policy. Seller's attorney shall be the title agent. Buyer shall pay the cost of the title search, title examination and title premiums (which shall be at promulgated rate).

(c) **Survey.** The Property is platted and such plat is a matter of public record for Buyer to review. If Buyer wishes a survey, then Buyer, at its own expense, must obtain whatever survey of the Property it wishes (the "Survey") **before the Closing.**

(d) Review by Buyer. No later than the earlier of Closing or the **tenth (10th)** day after Buyer's receipt of the Title Commitment, Buyer shall notify Seller in writing of any title or survey matters which constitute Prohibited Title Matters. If Buyer fails to timely notify Seller of Prohibited Title Matters, then all matters shown in the Title Commitment and Survey (or in the event, Buyer elects not to or fails to timely obtain a Survey, then all matters which would have been shown in a Survey) shall be deemed approved by Buyer. If Buyer timely notifies Seller of validly existing, boni-fide Prohibited Title Matters, then Seller shall exert reasonable, good faith efforts to eliminate or cure such Matters at or prior to Closing, but Seller shall not be required to either prosecute legal proceedings or expend more than \$1,000 to cure defects. At Seller's election, the Closing Date shall be extended for the period reasonably necessary for Seller to cure defects, but no longer than one hundred twenty (120) days.

If Seller is unable to eliminate or cure such Prohibited Title Matters which are timely noticed to Seller, Buyer, as its sole recourse, shall have the right either (i) to terminate this Agreement by written notice to Seller and in that event Escrow Agent shall immediately refund the Deposit **within five (5) days** to Buyer or (ii) to elect to waive the title and/or survey defects in which case the parties shall close, without reduction to the Purchase Price.

6. **Closing.** Unless extended by the terms of Section 5, the closing of the sale of the Property ("Closing") shall take place at the offices of Richard G. Hathaway, P.A. at 10:00am on **August 15, 2005.**

7. **Prorations and Maintenance Payments, and Other Payments.**

(a) Real Estate Taxes. At Closing, real property taxes shall be prorated on the basis of the current year's taxes, if known, at the highest allowable discount. If the Closing shall occur before the amount of current taxes shall have determined, such taxes shall be apportioned upon the basis of the taxes for the most recent calendar year available and shall be promptly readjusted when the current taxes (at the highest allowable discount) are finally known, and statement to that effect shall be included on the Closing statement.

(b) Maintenance Payments, and Other Payments. At Closing, Buyer shall be required to pay **12.7% of the following costs associated with common areas owned in fee simple by the Sea Grove Town Center Association, Inc. (the "Town Center Association"):** (i) **actual cost of maintenance and repairs, up to the date of Closing;** (ii) **government taxes and assessments (to the extent not waived or inapplicable), up to the date of Closing;** and (iii) **upgrades and enhancements required by government agencies, up to the date of Closing.** Thereafter, Buyer shall periodically (but in no case, more than once in a calendar year) pay 12.7% of the above-noted costs. Buyer's payment of 12.7% of such above-referenced costs is based on, and reflective of the percentage of the Property that is part of the total Town Center Association parcels. Consequently, under no circumstances shall maintenance payments, or other payments exceed 12.7% of such costs. Should the representative percentage of Buyer's Property ever account for less than 12.7% of all Town Center Association parcels, then Buyer's percentage for maintenance payment, and other payment purposes shall be reduced as well, to properly reflect the lower percentage.

Further, it is noted that should Buyer's actual and/or implied easement in the common area be terminated, then Buyer's 12.7% assessment of parking lot maintenance costs and will be immediately terminated, as well, and Buyer shall have no further responsibility to make such payments to the Town Center Association. **It is expressly noted**, that the referenced common areas shall not be deemed County property except to the extent that the public has a reasonable right to use such access and park for use of the adjoining County library. **It is further expressly noted**, that the Town Center Association shall have the responsibility to maintain all such common areas in a reasonable manner for the safe public access to the adjoining County library, in accordance with this Agreement). Buyer shall also pay 12.7% of any government-imposed assessments that are made to the Town Center Association that are for specific public-owned infrastructure repairs, or improvements that are off-site of the Town Center, but that directly support the public use of the Town Center common areas. **Also**, at Closing, Buyer shall pay \$500.00 which shall represent a cost paid by all tenants of the Town Center (if such amount is not paid by all other tenants of the Town Center, then Buyer shall receive a full refund of Buyer's \$500.00 payment). **It is explicitly noted**, that the Buyer will pay maintenance payments and other payments **only** from those non-ad valorem tax revenue sources of the Buyer that are legally available at the time payment is due. No other expenses or costs of the Town Center Association shall be assessed to the Buyer based on its ownership of the public library adjoining the Town Center, and the Buyer shall not be liable for the proper expenditure or accounting of such monies once they are paid to the Town Center Association. **Furthermore**, the Buyer shall not be liable for the Town Center Association's maintenance and management of said public area, which shall be the sole and independent responsibility/liability of the Town Center Association (of which, the Buyer is not, and shall not be a member).

(c) **Impact Fees and Connection Charges**. Water and sewer hook-ups will be available at the Property boundaries in accordance with Section 13 (c) below. Buyer is responsible for paying all County impact fees and all utility connection fees charged to connect the Property to water, sewer, electric and other utility systems. If for any reason Seller has prepaid any of such charges prior to Closing, Buyer shall reimburse Seller at Closing. If Seller pays any of such charges after Closing, Buyer shall reimburse Seller upon Seller's demand.

8. **Seller's Representations**. Seller represents and warrants to Buyer that Seller is the owner of the Property and has full right and authority to execute this Agreement and consummate the transactions contemplated hereby. Except as specifically set forth in the foregoing sentence, Seller has not made, does not make and will not make any warranties or representations, whether express or implied, with respect to the Property or the value, marketability, legal, title, survey, environmental or other condition thereof. **The Seller acknowledges that the Buyer may rely on the Seller's Environmental Site Assessment.** Buyer acknowledges that Seller is conveying the Property in its present "as is," "where is" and "with all faults" condition, and Buyer acknowledges that it has made all factual, legal and other inquiries and investigations it deems necessary, desirable or appropriate with respect to the Property and the value thereof. Unless the Buyer has timely terminated this Agreement or unless the Seller defaults, the Deposit is non-refundable.

9. **Closing Procedure and Documents.**

(a) At the Closing, simultaneously with the payment of the Purchase Price by Buyer, Seller shall deliver or cause to be delivered to Buyer the following:

(i) a special warranty deed (the "Deed") conveying the fee simple title to the Property to Buyer, subject only to all matters of record and real estate taxes for the year of closing; such deed shall contain the following deed restrictions, all of which shall run with title to the Property:

(aa) specifying the requirement that the Property be used as a County public library, or other type of cultural facility, such as a museum, as specified in Section 4 above;

(bb) requiring the Buyer to pay 12.7% of the **maintenance** assessments, or other assessments, whether as a general, special or other;

(cc) requiring Buyer to comply with (a) all rules and regulations of the Town Center Association insofar as they relate to the Property or the Buyer's use of the Town Center parking, driveway, sidewalk, signs or other common areas; provided that such rules and regulation do not unreasonably discriminate against the Buyer as specified in the Town Center Declaration and (b) all rules and regulations of the Water Management District and the Neighborhood Association regarding use of the Drainage System.; and

(dd) requiring Buyer to commence and complete construction in accordance with Section 15 below.

(ii) a FIRPTA affidavit; and

(iii) an affidavit in the form required by the Title Company to delete the standard printed exception relating to the "gap" and to remove the standard printed exceptions for mechanics' liens and parties in possession. **For purposes of this Agreement, "gap" shall mean the period of time between (1) the time the title commitment, as update as close to closing to as possible and (2) the time the deed from a seller to buyer is actually recorded.**

(b) At the Closing, Buyer shall deliver the cash to close to Seller in accordance with Section 3 and Escrow Agent shall deliver the Deposit to Seller.

(c) At Closing, each party shall execute and deliver to the other such consents and authorizations as may reasonably be required to evidence each's good standing and authority to close as herein contemplated.

(d) At the Closing, Seller and Buyer shall mutually execute and deliver to each other a closing statement in customary form and such further documents as are necessary or appropriate to close this Agreement.

10. **Closing Expenses.** Buyer shall pay state documentary stamps for the deed, the cost of the owner's title policy issued pursuant to the Commitment, the title search charge, the cost of any new survey obtained by it, the cost of recording the deed, and all other Closing expenses except Seller's attorney's fees which shall be paid by Seller.

11. **Broker.** Buyer and Seller represent and warrant to each other that neither has dealt with any real estate broker, firm or person in connection with the Agreement, and each party agrees to indemnify and save the other harmless from and against any and all claims, suits, demands or liabilities of any kind or nature whatsoever (including, but not limited to, all attorneys' and paralegals' fees and expenses and all court costs, through all trial and appellate levels and including those incurred during negotiations or agency or administrative proceedings) arising out of or in connection with the claim (whether meritorious or not) of any other person for real estate commissions or finder's fees as a result hereof.

12. **Risk of Loss.** If, prior to the Closing, the Property or any portion thereof shall be taken pursuant to an exercise of the power of eminent domain or condemnation or shall be damaged by fire or other casualty, Buyer may either (i) terminate this Agreement by written notice to Seller, in which case Escrow Agent shall immediately refund the Deposit to Buyer and Buyer shall immediately deliver all Inspection Studies to Seller or (ii) elect to proceed with the Closing and receive an assignment of Seller's rights to any condemnation or insurance proceeds. If Buyer elects to proceed with the Closing, there shall be no abatement of the Purchase Price but all proceeds of condemnation or insurance shall be paid or assigned to Buyer at Closing.

13. **SeaGrove Development Plan.**

(a) **Master Plan.** The Property is within a project that Seller intends to develop as a mixed-use community to be known as SeaGrove. The master plan and other conceptual drawings and sales materials represent Seller's current intention for the development of SeaGrove, but are subject to change. While Seller presently intends to continue with the development of SeaGrove, the decision whether to proceed, and the extent and characteristics of any such development, are to be determined by Seller in its sole discretion. Seller may revise the master plan for SeaGrove in its discretion, and has the right to modify the SeaGrove Town Center Design Code for all or any part of the Property. Seller may, in Seller's sole discretion, change the prices or terms upon which Seller sells remaining properties within SeaGrove. None of the foregoing shall relieve the Buyer from its obligation to close and otherwise perform as herein provided.

(b) **Drainage.** SeaGrove includes a system of ponds and wetlands designed to provide drainage and surface stormwater management for all of SeaGrove. These facilities are contained within the residential portion of SeaGrove (the "Neighborhood") and are maintained by the homeowners association (the "Neighborhood Association"). The St. Johns River Water Management District, a governmental entity, regulates the drainage system and imposes certain requirements on the Association. The Property has an easement to use the Drainage System

pursuant to Sections 2.4 and 6.1(d) of the Neighborhood Declaration, subject to the conditions therein stated.

(c) Infrastructure. The term “Infrastructure” means the Town Center “Parking Lot Improvements” including (i) parking lot and driveway construction and paving, (ii) sewer, water, electric and telephone facilities to the boundaries of the Property, (iii) drainage facilities to transmit storm water from the Property into the SeaGrove drainage system, (iv) parking lot lighting, (v) common area landscaping and (vi) Town Center signage, all of sub-sections (i) – (vi) as specifically designed in the plans relating thereto prepared by England, Thims & Miller, Inc. and Seller’s other consultants, as such plans and specifications are hereafter amended from time to time, by Seller in its sole discretion. The Seller, at its sole cost, shall construct the Infrastructure that shall be **100% complete** no later than the date on which the Buyer opens its County public library at the Property. **If 100% completion does not occur within the timeframe noted, then Buyer’s periodic 12.7% maintenance Payment is waived by Seller, until there is 100% completion of the above-noted Infrastructure.**

(d) Reserved Utilities. Seller has reserved the exclusive right to designate the propane gas, **and** natural gas **providers** for SeaGrove, including the Property, which right may be assigned in the future to the Neighborhood Association or Town Center Association.

(e) Traffic Signal. **The Purchase Price of \$117,640.00 includes any costs that would be assessed to Buyer, and that would be associated with the installation of any traffic signal, at any entrance to Sea Grove.**

14. Construction Requirements.

(a) Architectural Review; Construction Requirements. SeaGrove is intended to be a community of exceptional character and beauty. To protect the character of SeaGrove, the following provisions apply:

(i) Plans and Specifications. Buyer specifically recognizes and accepts that it is Buyer's responsibility to provide Seller with plans and specifications for the construction of all improvements on the Property.

(ii) Review Process. Plans and specifications must be approved by the Seller for compliance with the plan for SeaGrove and for aesthetic value (but such review and approval does not assure compliance with state and city codes nor does it assure structural integrity). All improvements must be constructed in accordance with the approved plans and specifications. **NO CHANGES IN PLANS OR SPECIFICATIONS MAY BE MADE WITHOUT PRIOR REVIEW AND SELLER’S WRITTEN APPROVAL.** Both Buyer and Seller agree that the design criteria for the Property is as attached in Exhibit “A”, and neither party may alter, change or modify such design criteria without the prior written consent of the other. **Notwithstanding any term, condition, provision, requirement contained in the Design Code, Seller should provide written approval for improvements that are consistent with the objectives of the Design Code.**

(iii) Inspections; Limitation. Seller shall have access to the Property at all times during preparation and construction. Through this observation, Seller may notify Buyer of any noncompliance with approved plans it notes in the contractor's work but Seller shall not be responsible for construction means, methods, techniques, sequences or procedures, safety

precautions, compliance with applicable building codes or the contractor's failure to perform the work in accordance with the contract documents.

(iv) Architect and Contractor Approval. Seller has the right to approve Buyer's architect and contractor. Contractors must agree to dispose of construction debris properly. Contractors must post a deposit for compliance and damages. Failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in SeaGrove. **Seller's Town Architect will assist Buyer's Architect in developing the design of the Library's exterior and site location, in order to match the Library design with the County Library budget. Buyer design will be subject only to reasonable Architectural Review by Seller, as opposed to any other party who has an interest in this Property, and in no case shall the required architectural design be such that it costs more than the funds currently appropriated by the County. Prior to construction, Buyer shall submit to Seller, any, and all, design drawings. With thirty (30) days of submission, Seller shall approve or reject (in writing), such design drawings. If Seller rejects such design drawings, then Buyer shall, within sixty (60) days of the rejection, submit revised design drawings for review by the Seller. Within fifteen (15) days after re-submission, Seller shall approve or reject (in writing) such revised design drawings. If Seller rejects revised design drawings, then Buyer and Seller shall immediately confer, in order to resolve any open issues/concerns within thirty (30) days after such second rejection.**

(v) Modifications. Any subsequent modifications to the Property shall be subject to Seller's review.

(vi) Assignment of Rights. Seller may assign its right under this Section 3.1 at any time to the association for Town Center or the Neighborhood Association.

(b) Signage.

(i) Temporary. To establish the beginnings of the community, following execution of this Agreement, Buyer or Seller may place a sign on the Property indicating the sale and future development of the Property and identification of the Buyer. Any sign erected by Buyer must be approved by Seller. **However, it is specifically noted that subject to such pre-approval, the Buyer may use and erect "banners", in order to notify persons of "Book Sale Days", and other events taking place.**

(ii) Permanent. Any signage on the Property must be approved through the architectural review process. Seller has agreed to reserve space for Buyer on a common sign for SeaGrove Town Center, if such a sign is permitted by law. No other signage will be permitted on the common area.

(iii) Plaque. A 2' by 2' plaque will be placed on either the outside or directly inside the building constructed. The 2' by 2' plaque will recognize the contribution of the the McGarvey Family. It is expressly understood however, that the building constructed will not be named after any one individual.

(c) Land Clearing. Until plans have been approved in accordance with Section 14 (a) and construction begins on the building, the Property is to be left with natural vegetation and shall not be cleared or trees removed without Seller's consent, which may be arbitrarily withheld. Once the land has been cleared, construction must proceed expeditiously to completion.

(d) Site Management. As the Property is limited to essentially the footprint of the building, Buyer will need to plan construction accordingly. Seller shall provide limited space within SeaGrove for storage of construction materials. Buyer shall keep a clean work site, shall remove all debris from the building site and shall not deposit debris any place within SeaGrove except as specifically permitted by Seller. Buyer shall not block common area or interfere with any other construction or business. Seller may impose additional construction regulations.

(e) Damage During Construction. Buyer shall be responsible for the repair and related cost of any damage to any other property within the master plan of SeaGrove, including but not limited to parking lots, streets, curbs, landscaping and utilities, incurred during construction of improvements on the Property, whether caused by Buyer, its agents, employees, contractors or suppliers and whether the damage is to the common areas, public rights-of-way or properties. Buyer agrees to promptly repair any damage and to remove any debris, mud or dirt carried by construction vehicles from Buyer's Property to the street or other areas. Seller may, but shall not be obligated to, repair any damage, and Buyer shall promptly reimburse Seller for all expenses incurred. In addition, Seller may determine in its reasonable discretion the total cost of repairing non-major damage to the various improvements described above that cannot be attributed to any particular Buyer, and may divide the cost of such repair among all Properties on a pro-rata basis, based on square footage. If Buyer, within thirty (30) days from receipt of written notice from Seller, has not repaired and paid for any damages or reimbursed Seller for repairs performed, Seller shall be entitled to institute legal proceedings for damages or specific performance to enforce the provisions of this paragraph, and additionally shall be entitled to record a lien against the Property in the amount of the damages sustained. Buyer agrees to pay all costs of any such enforcement action including reasonable attorneys' fees.

(f) Sidewalks; Street Trees. Sidewalks and street trees are an important part of the SeaGrove plan. The following shall apply to those properties located on SeaGrove Main Street:

(i) Sidewalks. Buyer shall be responsible for construction of sidewalks and walkways on all sides of the building on its Property in accordance with the Town Center Design Code, even if those sidewalks are in the right-of-way or on land owned by the Town Center Association or Seller. Sidewalks must be installed upon the first to occur of the following: (i) during construction of the County library, (ii) December 31, 2005, or (iii) when required by the City of St. Augustine Beach. After installation, the Town Center Association shall be responsible for maintaining the sidewalks within Town Center.

(ii) Street Trees. Buyer shall pay for street trees adjacent to the Property in accordance with the Town Center Design Code. Seller shall select, provide and install the trees, but at Buyer's cost. **The purchase price of \$117,640.00 includes any costs that would be assessed to Buyer, and that would be associated with the selection, provision, and installation of any street trees within, or along the Town Center, including Sea Grove Main Street.**

15. **Time Limit for Construction**

(a) Acknowledgments. Buyer acknowledges and agrees to the following:

(i) The Property is to be used for the use described in Section 4 above.

(ii) Development of Town Center and South Business District depends, in part, upon the Buyer expeditiously constructing a County public library upon the Property.

(iii) To help to establish the Town Center and South Business District as a viable commercial district, Buyer must begin construction of an approved building within a certain time limit and diligently pursue construction, as further described below. **Seller acknowledges that in order for Buyer to diligently pursue construction, the Seller must ensure that the necessary infrastructure is in place.**

(iv) The purchase price is based in part upon Buyer's willingness to construct a building in accordance with Seller's requirements. The restrictions contained in this Agreement are part of the consideration for the Property and are intended to allow for establishment of the Town Center and South Business District and discourage speculative land purchases.

(b) Time Limit for Construction. BUYER AFFIRMATIVELY COVENANTS AND AGREES TO BEGIN CONSTRUCTION OF AN APPROVED COUNTY PUBLIC LIBRARY BY **SEPTEMBER 1, 2006** AND TO DILIGENTLY PURSUE CONSTRUCTION TO COMPLETION. Buyer should submit plans and begin the architectural review process in sufficient time to begin construction on time. This requirement runs with the land and is not released or extended by reconveyance of the Property.

(c) Default. IF BUYER FAILS TO **COMMENCE CONSTRUCTION OF THE BUILDING BY SEPTEMBER 1, 2006**, THEN SELLER SHALL HAVE THE RIGHT TO REPURCHASE THE LOT. The repurchase price shall be equal to the original purchase price of the Property or the current fair market value of the Lot, whichever is less, plus the cost or fair market value, whichever is less, of any improvements made in accordance with plans approved by the Architectural Review Board.

(d) Right of First Refusal. If Buyer has not constructed a County public library in accordance with approved plans and specifications prior to reselling the Property, Seller shall have a right of first refusal to repurchase the Property on the same terms and conditions Buyer intends to accept. Seller shall have five (5) business days from receipt of Buyer's written notice to notify Buyer whether Seller will exercise its right. If Seller does not exercise its right, then Buyer may sell the Property to another purchaser, but only for the same price and terms offered to Seller. If Buyer does not consummate that sale, Seller's right of first refusal applies to all subsequent offers. Seller's right of first refusal shall automatically terminate when Seller no longer has any residential or commercial lots for sale in SeaGrove, **or 5 years, whichever comes first.**

16. **Default.**

(a) If Buyer defaults hereunder and fails to cure such default within ten (10) days of receipt of written notice thereof, Seller shall be entitled to all of its rights and remedies under law or equity. Additionally, if Buyer violates the use provisions of Section 4 above, **then Buyer will lose any actual and/or implied easement in the common parking area. In such case, Buyer would be required to secure parking for its employees, and patrons at another site/location.**

(b) If Seller defaults hereunder and fails to cure such default within thirty (30) days of receipt of written notice thereof, Buyer, as its sole remedy may terminate this Agreement, whereupon Buyer shall be refunded the Deposit by Seller and this Agreement shall terminate. In no event shall Buyer be entitled to damages, specific performance or any other remedy except as provided above from Seller.

17. **Miscellaneous.**

(a) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

(b) Modification Must Be In Writing. No modification of this Agreement shall be valid unless executed in writing and signed by both Seller and Buyer.

(c) No Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

(d) Effective Date; Captions and Section Headings. The Effective Date hereof means the date on which the last of the parties completes its execution hereof. Captions and section headings are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement.

(e) Assignment; Binding Effect. This Agreement may be freely assigned by Buyer to any person or entity owned or controlled by Buyer, but except therefor this Agreement is not assignable by Buyer without Seller's prior written consent, which consent shall not be unreasonably delayed or withheld. In the case of a permitted assignment by Buyer, this Agreement shall inure to the benefit of and shall be binding upon Buyer's assignee but Buyer shall remain obligated for all Buyer responsibilities hereunder. **It is clearly understood that if Seller assigns its interest, the Assignee would still have an obligation to go forward with the terms, conditions, provisions, and requirements of this Agreement. Moreover, if the Seller assigns its interest, the Buyer would still have the authority to purchase the property that is the subject of this Agreement.**

(f) Attorneys' Fees. In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable attorney and paralegal fees and expenses incurred in connection therewith, including those incurred during negotiations, at trial, upon appeal or in connection with any agency, administrative or bankruptcy proceedings, or in determining entitlement to or amount of attorney's fees.

(g) Notices. All notices, offers, acceptances, rejections, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given (i) when delivered in person, or (ii) when sent by facsimile transmittal (with receipt confirmed), or (iii) when sent by first class certified or registered mail, postage prepaid, return receipt requested, or (iv) on receipt after being sent by express mail or a reputable delivery service guaranteeing overnight delivery; provided that in the case of notice given by the methods described in (i) or (ii) above, a copy is immediately mailed by first class registered or certified mail, postage prepaid, return receipt requested. Until advised otherwise, the parties' addresses are:

Buyer: County of St. Johns,
Attn: Michael D. Hunt, Esq.
4020 Lewis Speedway
St. Augustine, FL 32084
Fax 904-823-2575
mhunt@co.st-johns.fl.us

Seller: JNM Beachside Development, Ltd.
432 Osceola Drive
Jacksonville Beach, FL 32082
Fax 904-247-9063
dherring@mcgarveycommunities.com

with copy to: Richard G. Hathaway, Esq.
115 Professional - Suite 101
Ponte Vedra Beach, FL 32082
Fax 904-280-5510
rhathaway@pvttitle.com

Simultaneously with the giving of notice as specified above, the party giving notice shall send to the other party a copy of such notice by email, but such email shall not substitute for the proper sending of notices, which is specified above.

(h) Waiver of Strict Construction against Drafting Party. Should any provision of this Agreement be subject to judicial interpretation, it is agreed that the court interpreting or considering such provision not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which prepared the same, as all parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel and the negotiation of changes in language, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

(i) Interpretation. In case any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions shall be in no way affected, prejudiced or disturbed thereby. The use of any gender shall include all other genders. The singular shall include the plural and vice versa. Use of the words "herein," "hereof," "hereunder" and any other words of similar import refer to this Agreement as a whole and not to any particular article, section or sub-section of this Agreement unless specifically noted otherwise.

(j) Governing Law and Jurisdiction. This Agreement shall be deemed to be governed by, construed and enforced in accordance with the laws of the State of Florida.

(k) Third Parties. This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

(l) Calculation of Time Periods. Whenever this Agreement calls for or contemplates a period of time for the performance of any term, provision or condition of this Agreement, all of the days in such period of time shall be calculated consecutively without regard to whether any of the days falling in such period shall be a Saturday, Sunday or other non-business day; provided, however, if the last day of any such time period shall fall on a Saturday, Sunday or other non-business day, the last day shall be extended to the next succeeding business day immediately thereafter occurring.

(m) Radon Gas Notification. In accordance with the requirements of Section 404.056(8), Florida Statutes the following notice is hereby given:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it is 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 the local County Public Health Center.

(n) Obligation of Escrow Agent. If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or as to whom the Deposit is to be delivered Escrow Agent shall not be obligated to make any delivery of the Deposit, but, in such event, may hold same until receipt of a written authorization from all of the interested parties directing the disposition of same, or, in the absence of such authorization, Escrow Agent may hold the Deposit until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, Escrow Agent may, but is not required to, bring an interpleader action for such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same constitute gross negligence or willful misconduct and, upon making delivery of the Deposit in accordance with the terms of this Agreement, Escrow Agent shall have absolutely no further liability hereunder. If Escrow Agent places the Deposit in the registry of the circuit court in the county where the Property is located and files an interpleader action, then Escrow Agent shall be released from any further obligation hereunder or in connection herewith. Seller and Buyer shall and do hereby, jointly and severally, agree to indemnify and hold Escrow Agent harmless from any and all damages, losses, liabilities, claims, costs and expenses arising hereunder or in connection herewith, including but not limited to, all costs and expenses incurred by Escrow Agent in connection with the filing of an interpleader action, reasonable attorney and paralegal fees and expenses for Escrow Agent's attorneys through all trial and appellate levels and for any negotiations. **IT IS ACKNOWLEDGED THAT ESCROW AGENT MAY ACT AS THE COUNSEL FOR SELLER. IT IS AGREED THAT ESCROW AGENT SHALL NOT BE DISABLED OR DISQUALIFIED FROM REPRESENTING SELLER IN CONNECTION WITH ANY LITIGATION WHICH MIGHT ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT BY VIRTUE OF THE FACT THAT ESCROW AGENT HAS AGREED TO ACT AS ESCROW AGENT HEREUNDER AND BUYER DOES HEREBY WAIVE ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE FOREGOING.**

(o) Buyer's Federal ID #. Simultaneously with delivering the Deposit to Escrow Agent, Buyer shall advise Escrow Agent and Seller of Buyer's federal tax identification number.

(p) Survivability of Certain Provisions Beyond Closing. In order to alleviate the possibility of merger, it is explicitly noted that the following provisions of this Agreement shall survive Closing, and therefore, shall be both applicable and enforceable beyond Closing: Section 4, Section 7(b), Section 9(a)(i)(bb); entirety of Section 13; entirety of Section 14; entirety of Section 15; Section 16(a); Section 17(b); Section 17(c); Section 17(g); Section 17(h); Section 17(i); Section 17(j); Section 17(k); Section 17(l); and Section 17(p).

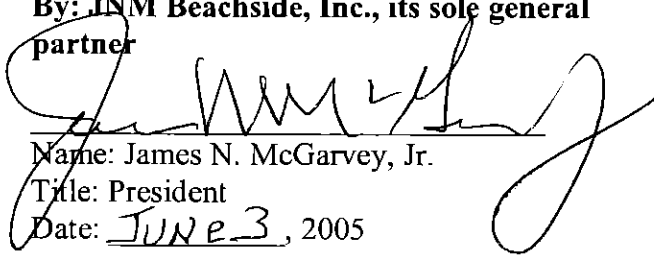
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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the dates shown below.

“SELLER”

JNM Beachside Development, Ltd.

By: JNM Beachside, Inc., its sole general partner


Name: James N. McGarvey, Jr.

Title: President

Date: JUNE 3, 2005

“BUYER

St. Johns County, Florida

Name: _____

Title: _____

Date: _____, 2005