

Meeting Date: April 16, 2013 ☐ Consent ☒ Regular
 ☐ Ordinance ☐ Public Hearing

Motion and Title: Staff recommends motion to approve:

- A) a Purchase and Sale Agreement with AMIkids, Inc., to acquire a 1 acre out parcel within the County's Bert Winters park, in unincorporated Juno Beach for \$1,000,000.00 ;
- B) a Memorandum of Agreement; and
- C) a Budget Transfer of \$1,005,347 within the \$50 Million General Obligation Waterfront Access Bond from reserves to the Bert Winters Park AMIkids, Inc. land acquisition project.

Summary: AMIkids, Inc., recently closed their school for troubled youths formerly known as the Palm Beach Marine Institute, located inside the County's Bert Winters Park and directly on the intra-coastal waterway. The 1 acre site contains a multi-building facility with two classroom wings and two front office sections totaling 6,575 square feet. In June 2012, AMIkids, Inc. obtained an appraisal from Callaway & Price, Inc., which valued the property at \$1,200,000. Staff obtained an additional appraisal from Anderson & Carr, Inc., which valued the property at \$1,215,000. The average of both appraisals is \$1,207,500. AMIkids has been marketing the property for \$1,500,000. Staff has negotiated a price of \$1,000,000. Acquisition of this property will remove a potentially conflicting use, provide additional water frontage on the Intracoastal and provide space within the buildings for rowing clubs and other park programs. Staff will complete the due diligence process, including an environmental audit prior to closing. The County will be responsible for recording fees and title insurance expenses estimated to be a total of \$5,347. A Memorandum of Agreement will be recorded to provide public notice of the County's rights under this Agreement. The Budget Transfer will establish a project expense budget and move \$1,005,347 from the Waterfront Access Bond reserves to purchase the 1 acre AMIkids site. The Agreement for Purchase and Sale must be approved by a supermajority vote (5 Commissioners). **(PREM) District 1 (HJF)**

Background and Policy Issues: Palm Beach County acquired the 17.5 acre Bert Winters Park property in 1975 from Florida Inland Navigation District (FIND), subject to a reverter clause that the site be perpetually used by the public as a recreation and park area. In 1986, the County contemplated developing a portion of Peanut Island as a County park and negotiated with Palm Beach Marine Institute (PBMI), the owner of 3.3 upland acres on Peanut Island, to exchange 1 acre of property at Bert Winter Park

(Continued on Page 3)

Attachments:

1. Location Map
2. Purchase and Sale Agreement
3. Memorandum of Agreement
4. Budget Transfer
5. Disclosure of Beneficial Interest

Date _____

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	\$1,005,347.00	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$1,005,347.00	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No X_____

Budget Account No: Fund 3038 Dept 581 Unit P777 Object 6501
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Budget transfer from Waterfront Access Bond Funds (3038-821-9824-9908) to the Bert Winters Park AMikids Land Acquisition (3038-581-P777-6501).

This budget amendment establishes budget for the purchase of a 1 acre site at Bert Winters Park.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 4/3/2013
OFMB Ak 4/9/13
4/2/13 3/29/13
[Signature] 4/9/13
Contract Development and Control
4-9-13 B. [Signature]

B. Legal Sufficiency:

[Signature] 4/9/13
Assistant County Attorney

C. Other Department Review:

[Signature]
Department Director

This summary is not to be used as a basis for payment.

Background & Policy Issues (cont.): for PBMI's Peanut Island property. The exchange was approved by the Board under Resolution R86-1875 in recognition of PBMI's continued rehabilitation work with delinquent boys and girls, subject to FIND's approval. In 1987 the exchange was completed and the County conveyed 1 interior acre of Bert Winters Park, with approximately 210 ft of frontage on the Intracoastal Waterway, to PBMI.

The subject 1 acre site is currently improved with a total enclosed building area of +/- 6,575 sf and an overall building area (including covered areas) of +/- 10,800 sf. A wooden fixed dock with boat slips is also part of the improvements to this property.

PBMI changed its name to AMIkids, Inc. in September, 2009. AMIkids, Inc. has vacated the property and is no longer occupying the facility as a rehabilitation center for delinquent boys and girls.

AMIkids obtained an appraisal of the property in June 2012 for \$1,200,000. Staff obtained an independent appraisal performed by Anderson & Carr, Inc., which valued the site at \$1,215,000. The average of the two appraisals is \$1,207,500. Staff negotiated a purchase price of \$1,000,000 with AMIkids. Because the property is being purchased for less than the appraised value, review by the PRC is not required.

A Sellers Disclosure of Beneficial Interest has been provided by AMIkids, Inc. showing AMIkids, Inc. as a 501(c)(3) organization with no individuals or entities having any beneficial interests in the organization.

Funding for the property purchase (\$1,000,000) will be from the 2004 \$50 Million Waterfront Access and Preservation Bond.

TWP 41

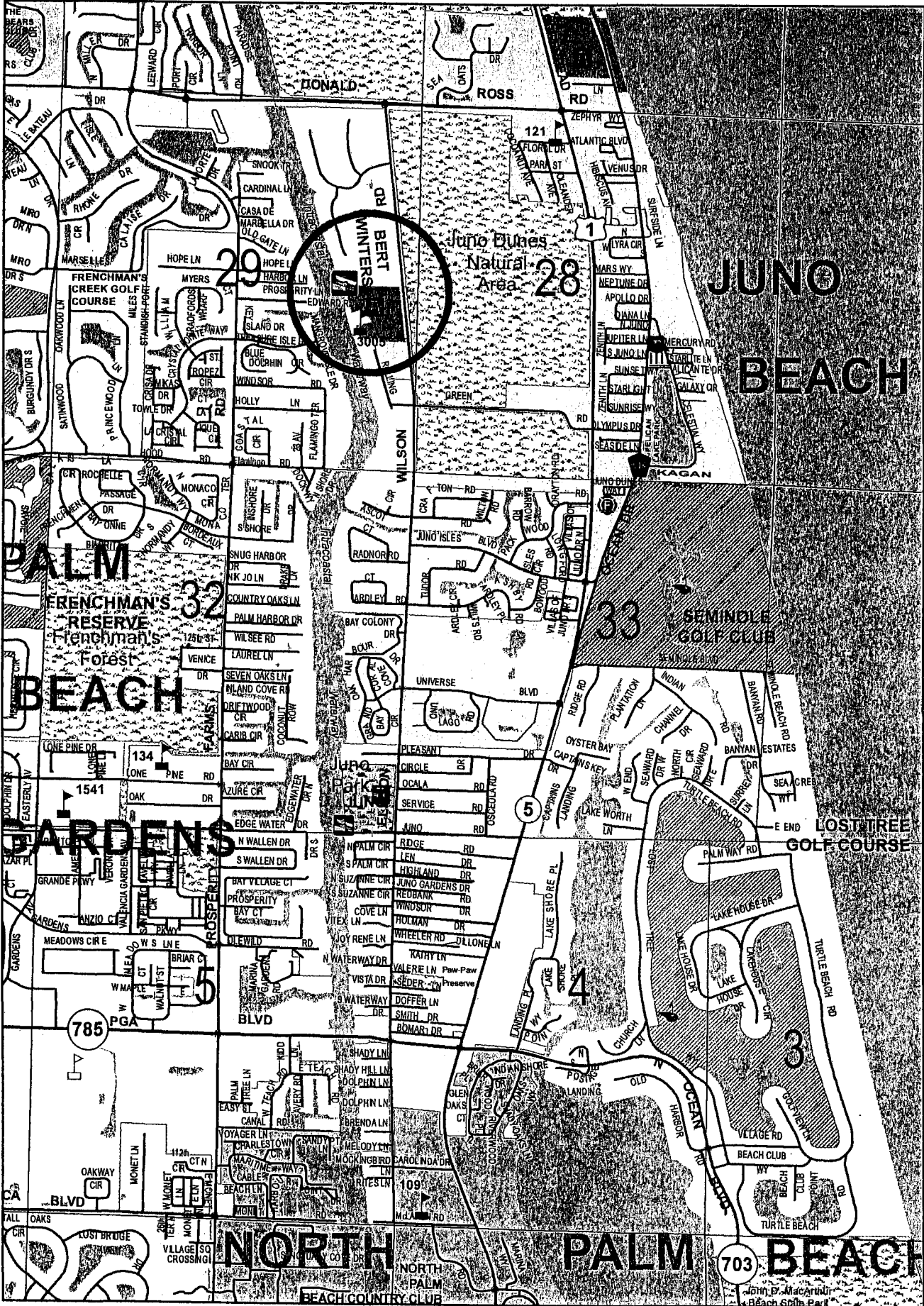
TWP 41

TWP 42

7

8

9



RNG 43

See pg 35

RNG 43

AGREEMENT FOR PURCHASE AND SALE

between

**PALM BEACH COUNTY,
a political subdivision
of the State of Florida, as Purchaser**

and

**AMIkids, Inc.,
a Florida corporation not for profit**

as Seller

AGREEMENT FOR PURCHASE AND SALE

This Agreement for Purchase and Sale is made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "County") and AMikids, Inc., a Florida corporation not for profit (hereinafter referred to as the "Seller").

WITNESSETH:

1. **DEFINITIONS.** The following terms as used herein shall have the following meanings:

1.1 **"Agreement"** - this instrument, together with all exhibits, addenda, and proper amendments hereto.

1.2 **"Closing and Closing Date"** - the consummation of the transaction contemplated hereby which shall be held upon the date reflected in Section 10.2 of this Agreement, unless extended by the terms of this Agreement, or by mutual consent of the parties.

1.3 **"Current Funds"** - Palm Beach County wire transfer drawn against a public banking institution located in Palm Beach County, Florida.

1.4 **"Effective Date"** - the Effective Date of this Agreement shall be the date upon which the Palm Beach County Board of County Commissioners approves this Agreement at a formal meeting of the Board.

1.5 **"Inspection Period"** - that certain period of time commencing on the Effective Date and terminating on May 1, 2013.

1.6 **"Permitted Exceptions"** - those exceptions to the title of the Property as set forth in Exhibit "B" attached hereto, together with any other title matters that may be accepted in writing by the County.

1.7 **"Personal Property"** - none

_____ together with all additional items of personal property located upon the Real Property at Closing. Any items of personal property remaining upon the property at Closing shall, at the option of County, become the property of County and may be retained by or disposed of by County at its sole discretion.

1.8 **"Property"** - the Real Property and Personal Property.

1.9 **"Purchase Price"** - the price set forth in or determined in accordance with Section 3.1 of this Agreement

1.10 **"Real Property"** - the Real Property legally described in Exhibit "A" attached hereto and made a part hereof, together with all improvements situate thereon.

2. **SALE AND PURCHASE.** In consideration of the mutual covenants herein contained, and various other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to sell and convey to County and County agrees to purchase from Seller, on the terms, covenants, and conditions hereinafter set forth, the Property, together with all improvements located thereon, if any, and all right, title, interest, privileges, estates, tenements, hereditaments, and

appurtenances appertaining to the Real Property, including, without limitation, any and all streets, roads, highways, easements, submerged land leases, accesses, and rights of way appurtenant thereto.

3. **PURCHASE PRICE AND METHOD OF PAYMENT.**

3.1 **Purchase Price.** The purchase price of the Property shall be One Million Dollars and 00/100 cents (\$ 1,000,000.00).

3.2 **Payment of Purchase Price.** On the Closing Date, County shall pay the total amount of the Purchase Price of the Property in Current Funds, subject to any adjustments, credits, prorations, and fees as herein provided.

4. **ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** As a material inducement to County to enter into this Agreement, Seller hereby acknowledges, represents, and warrants to County as follows:

4.1 Seller is indefeasibly seized of marketable, fee simple title to the Property, and is the sole owner of and has good right, title, and authority to convey and transfer the Property free and clear of all liens and encumbrances, excepting only the Permitted Exceptions.

4.2 There is no litigation, investigation, or proceeding pending, or to the knowledge of Seller threatened, which relates to or adversely affects Seller's ability to perform its obligations under this Agreement.

4.3 There are no judicial or administrative actions, suits, or judgments affecting the Property pending, or to the knowledge of Seller threatened, which relate to or adversely affect Seller's ability to perform its obligations under this Agreement, including, without limitation, those relating to any laws, ordinances, rules, or regulations of any governmental authority having jurisdiction of the Property.

4.4 There are no existing or pending general or special assessments affecting the Property, which are or may be assessed by any governmental authority, water or sewer authority, school district, drainage district, or any other special taxing district.

4.5 Seller represents that simultaneously with Seller's execution of this Agreement, Seller has executed and delivered to County, the Seller's Disclosure of Beneficial Interests attached hereto as Exhibit "D" (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Property as required by Section 286.23 of the Florida Statutes. Seller warrants that in the event there are any changes prior to Closing to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Property after the date of execution of the Disclosure, Seller shall immediately, and in every instance, provide written notification of such change to the County in the manner required by Section 15 of this Agreement. Seller warrants that at Closing, Seller shall provide County with a Disclosure that accurately discloses the beneficial interests in the ownership of the Property at the time of Closing regardless of whether or not the information contained therein has changed from the date of execution of the original Disclosure.

4.6 There are no condemnation, environmental, zoning, or other land-use regulation proceedings, either instituted or planned to be instituted, with regard to the Property.

4.7 On the Closing Date there will be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged all mechanics' or construction liens arising from any labor or materials furnished to the Property prior to the time of Closing.

4.8 All documents executed or to be executed by Seller which are to be delivered to County at Closing will be legal, valid, and binding obligations of Seller.

4.9 There are no service contracts affecting the Property which will survive Closing.

4.10 That all ad valorem and non-ad valorem taxes for the Property have been fully paid or will be paid at or prior to Closing in accordance with Section 12 hereof, for the year of Closing and all prior years.

4.11 Seller has entered into no other contracts for the sale of any portion of the Property which remain in force.

4.12 There are no facts known to Seller affecting the value of the Property which have not been disclosed in writing to County.

4.13 Seller has complied and shall comply from the date hereof until Closing with all applicable Federal, State, County and municipal regulations, rules, ordinances, statutes and other requirements and regulations pertaining to the Property.

4.14 Seller has not used, is not currently using and will not in the future (for so long as Seller owns the same) use the Property for the handling, storage, transportation or disposal of hazardous materials and, to the best of Seller's knowledge, the Property has not in the past been so used.

4.15 At Closing, there will be no unrecorded leases, licenses, contracts or other claim of rights, written or unwritten that affect occupancy, possession or use of the Property by anyone other than Seller.

In the event that any of Seller's acknowledgments, representations and warranties shall prove to be materially untrue, the same shall be considered a default for which the County shall have the rights and remedies identified in Section 17.1 hereof.

5. **INSPECTION OF PROPERTY.** During the Inspection Period, County and its engineers, surveyors, agents and representatives shall have unrestricted access to the Property for purposes of survey, testing and inspection thereof. All surveys, testing and inspections shall be conducted by County at its expense, and shall be performed by licensed persons or firms dealing in the respective areas or matters tested. All testing shall be done in the least intrusive manner reasonably practical. In the event County elects not to close upon its purchase of the Property, County shall restore the Property to the condition in which it existed prior to such inspections, using materials of like kind and quality. Nothing contained herein shall be construed to prohibit County from disclosing the results of said inspections as may be required by applicable law. In the event that such inspections shall reveal a deficiency in the Property, as determined by County in its sole and absolute discretion, County shall have the right to terminate this Agreement at any time during the Inspection Period by giving written notice thereof to Seller, whereupon the parties shall be relieved of all further obligations hereunder.

6. **EVIDENCE OF TITLE.**

6.1 Within fifteen (15) days after the Effective Date of this Agreement, the County shall obtain an owner's title insurance commitment, together with legible copies of all exceptions to coverage reflected therein, issued by Southeast Guaranty and Title, Inc., agreeing to issue to the County upon the recording of the Warranty Deed to the Real Property, an owner's title insurance policy in the amount of the Purchase Price, insuring the marketability of the fee title of the County to the Real Property, subject only to the Permitted Exceptions. The cost of said title insurance commitment and title insurance policy and any premium therefor shall be borne by County.

The County shall have until the end of the Inspection Period in which to review same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County shall notify Seller of County's objection thereto, and Seller shall act with reasonable effort, including bringing suit, to remove such exception(s), which exceptions shall be deemed to constitute title defects. The Seller shall be entitled to ninety (90) days from the date of notification by County (with adjournment of the Closing Date, if necessary) within which to cure such defects or to make arrangements with the title insurer for deletion of any such title defects from the title insurance commitment without the inclusion of any additional exceptions to coverage. Notwithstanding the foregoing, Seller shall have the option of discharging any such matters at closing with the closing proceeds. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the said ninety (90) day period, County shall have the option of: (a) accepting title to the Property as it then exists; or (b) terminating this Agreement, by giving written notice thereof to Seller, provided, however, County shall not thereby waive any rights or remedies available to County due to such default by Seller, including an action for damages.

6.2 County may request, prior to the Closing, an endorsement of the title insurance commitment making it effective to within fifteen (15) days of the Closing Date. At Closing, Seller shall cause the title insurance commitment to be endorsed to remove, without the inclusion of any additional exceptions to coverage, any and all requirements or preconditions to the issuance of an owner's title insurance policy, and to delete any exceptions for: (a) any rights or claims of parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the Property (provided County obtains a survey in accordance with Section 7 hereof); (c) easements or claims of easement not shown by the public records (provided County obtains a survey in accordance with Section 7 hereof); (d) any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records; (e) taxes for the year of Closing and all prior years, and taxes or special assessments which are not shown as existing liens by the public records; (f) matters arising or attaching subsequent to the effective date of the title insurance commitment but before the acquisition of record of title to the Property by the County; and (g) any general or specific title exceptions other than the Permitted Exceptions.

6.3 From and after the Effective Date of this Agreement, Seller shall take no action which would impair or otherwise affect title to any portion of the Property, and shall record no documents in the Public Records which would affect title to the Real Property, without the prior written consent of the County.

7. **SURVEY.** County shall have the right, within the time period provided in Section 6 for delivery and examination of title, to obtain a current survey of the Real Property and all improvements thereon. If the survey reveals any encroachments, overlaps, boundary disputes, or other defects, or any matters other than the Permitted

Exceptions, the same shall be treated as title defects as described in Section 6 of this Agreement, and County shall have the same rights and remedies as set forth therein.

8. **MAINTENANCE.** Between the Effective Date and Closing, Seller shall maintain the Property in the condition in which it existed as of the Effective Date. Notwithstanding the foregoing, Seller shall deliver the Property at Closing free of any trash, refuse or other debris, and in full compliance with all governmental regulations. Seller shall bear the risk of any loss, damage or casualty to the Property prior to Closing. County shall have access to the Property at any reasonable time prior to Closing to verify Seller's compliance herewith.

9. **CONDITION PRECEDENT TO CLOSING.** The following are conditions precedent to County's obligation to close upon its purchase of the Property: (1) Seller shall have performed all of the covenants and obligations under this Agreement that it is obligated to perform at or prior to Closing, on or prior to the dates such performance is required hereby; (2) Seller's representations and warranties identified in this Agreement shall be true and correct; (3) there shall have been no change in the condition of the Property or the status of title to the Property, other than as specifically permitted by this Agreement. The foregoing conditions precedent are for the exclusive benefit of County and may be unilaterally waived by the County.

10. **CLOSING.** The parties agree that the Closing upon the Property shall be consummated as follows:

10.1 **Place of Closing.** The Closing shall be held at the Property and Real Estate Management Division office, 2633 Vista Parkway, West Palm Beach, Florida.

10.2 **Closing Date.** The Closing shall take place on or before May 1, 2013, or at such earlier date as is mutually agreed upon by the parties.

10.3 **Closing Documents.** Seller shall be responsible for preparation of all Closing documents. Seller shall submit copies of same to County no less than ten (10) days before Closing. At Closing, Seller shall deliver, or cause to be delivered to County, the following documents, each fully executed and acknowledged as required.

10.3.1 **Statutory Warranty Deed.** A Statutory Warranty Deed conveying good and marketable fee simple title to the property, subject only to the Permitted Exceptions.

10.3.2 **Seller's Disclosure of Beneficial Interests.** A Seller's Disclosure of Beneficial Interests as required by Section 286.23, Florida Statutes, which accurately discloses the name and address of any person or entity having a 5% or greater beneficial interest in the ownership of the Property as of the date of Closing. The foregoing shall be in addition to any Disclosure or notice of change thereto previously provided to County, and in the same form as previously provided to County.

10.3.3 **Affidavit of Seller.** A Seller's Affidavit stating that the Property is free and clear of all encumbrances, mortgages, liens, leases, licenses, contracts or claim of rights in a form sufficient to permit the title insurer to delete the "Gap" and "Standard Exceptions" from the title insurance policy and insure County's title to the Property in accordance with Section 6 of this Agreement, subject only to the Permitted Exceptions.

10.3.4 **Non-Foreign Affidavit.** Seller represents and warrants to County that Seller is not a "foreign person" as defined by the Federal Foreign Investment in Real Property Tax Act (the "Act"). At Closing, the Seller shall execute and deliver to County a "Non-Foreign Affidavit," as required by the Act. Seller acknowledges that in the event Seller fails to deliver the Non-Foreign Affidavit, County shall be authorized to withhold from the closing proceeds an amount equal to ten percent (10%) of the gross amount of the purchase price, and to remit same to the Internal Revenue Service, as required by the Act.

10.3.5 **Closing Statement.** A Closing Statement prepared in accordance with the terms hereof.

10.3.6 **Additional Documents.** Seller shall also deliver and/or execute such other instruments as are necessary or reasonably required to consummate the transactions herein contemplated including, without limitation, if applicable, such documents as County or the title company may require evidencing Seller's existence, good standing, power and authority to enter into and consummate the transaction herein contemplated, and a Receipt of Real Estate Brokerage Commission and Release ("Broker's Release") in the form attached hereto as Exhibit "E" and made a part hereof.

10.4 **Possession.** At Closing, Seller shall deliver full, complete, and exclusive possession of the Property to the County.

10.5 **County's Obligations.** At Closing, County shall deliver, or cause to be delivered, to Seller the following:

10.5.1 **Cash due at Closing.** The required payment due in Current Funds as provided elsewhere herein.

11. **EXPENSES.**

11.1 County shall pay the following expenses at Closing.

11.1.1 The cost of recording the deed of conveyance.

11.1.2 All costs and premiums for the owner's title insurance commitment and policy.

11.2 Seller shall pay the following expenses at Closing:

11.2.1 All costs necessary to cure title defect(s) or encumbrances, other than the Permitted Exceptions, and to satisfy or release of record all existing mortgages and liens upon the Property.

11.2.2 Documentary Stamps required to be affixed to the deed of conveyance.

11.3 The Seller and County shall each pay their own attorney's fees.

12. **PRORATIONS.**

12.1 **Taxes.** On or before the Closing Date, Seller shall establish an escrow fund with the County Tax Collector pursuant to Florida Statutes Section 196.295, and shall pay into said escrow Seller's prorata portion of ad valorem and non-ad valorem real property taxes and assessments for the year of Closing and any prior years as

determined by the Tax Collector. Seller's prorata share of all taxes and assessments shall include the day of Closing.

12.2 **Assessments.** If as of the Closing Date, assessments or charges have been imposed against the Property or any part thereof which are, or which may become payable in annual installments, the first installment of which is then a charge or lien, or has been paid, then for the purposes of this Agreement, all of the unpaid installments of any such assessments, including those which become due and payable after the Closing Date, shall be deemed to be due and payable and to be a lien upon the premises affected thereby, and shall be paid and discharged by the Seller on or before the Closing Date. Any other assessments not deemed to be due and payable as aforesaid which burden County owned property shall be deemed to be payable on a calendar year basis in arrears and prorated accordingly.

13. **CONDEMNATION.** In the event that all or any part of the Property shall be acquired or condemned for any public or quasi-public use or purpose, or if any acquisition or condemnation proceedings shall be threatened or begun prior to the closing of this transaction, County shall have the option to either terminate this Agreement, and the obligations of all parties hereunder shall cease, or to proceed, subject to all other terms, covenants, conditions, representations, and warranties of this Agreement, to Closing, receiving, however, any and all damages, awards, or other compensation arising from or attributable to such acquisition or condemnation proceedings. County shall have the right to participate in any such proceedings.

14. **REAL ESTATE BROKER.** Seller represents and warrants to County that it has not dealt with any broker, salesman, agent, or finder in connection with this transaction other than Steve Hollander, Hollander Real Estate ("Broker") and agrees to indemnify, defend, save, and hold County harmless from the claims and demands of any real estate broker, salesman, agent or finder claiming to have dealt with Seller. Seller shall provide County with a completed Broker's Release, fully executed by Broker, at Closing. Seller agrees to indemnify, defend, save, and hold County harmless from the claims and demands of Broker. All indemnities provided for in this Section shall include, without limitation, the payment of all costs, expenses, and attorney's fees incurred or expended in defense of such claims or demands. The terms of this Section shall survive the closing or termination of this Agreement.

15. **NOTICES.** All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

15.1 County:

Palm Beach County
Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway

West Palm Beach, Florida 33411-5605
Fax: (561) 233-0210

With a copy to:

County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax: (561) 355-4398

15.2 Seller:

AMikids, Inc.
Attention: O.B. Stander, President
5915 Benjamin Center Drive
Tampa, FL 33634
Fax: (813) 899-8092

With a copy to:

AMikids, Inc.
Attention: Judy L. Estren, Vice- President
5915 Benjamin Center Drive
Tampa, FL 33634
Fax: (813) 899-8092

Any party may from time to time change the address at which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

16. **ASSIGNMENT.** Neither County nor Seller may assign this Agreement or any interest herein without the prior written consent of the other party, which may be granted or withheld at such other party's sole and absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Agreement. This provision shall be construed to include a prohibition against any assignment, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

17. **DEFAULT.**

17.1 **Defaults by Seller.** In the event Seller fails, neglects or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in this Agreement, County shall have the right to (1) terminate this Agreement by written notice to Seller, in which event the parties shall be released from all obligations hereunder other than those which specifically survive termination of this Agreement; (2) grant Seller a reasonable period of time within which to cure such default during which time Seller shall utilize Seller's best efforts, including bringing suit, to remedy such default; or (3) seek specific performance of the terms of this Agreement. In the event County elects option number two (2) set forth hereinabove and Seller fails or is unable to cure such default within the applicable time period, County shall have the rights identified in option numbers one (1) and three (3) set forth hereinabove. In the event County elects option number three (3) and County is unable to obtain specific performance of this Agreement for any reason, County shall have the right to terminate this Agreement and pursue damages.

17.2 **Defaults by County.** In the event County fails or refuses to perform any term, covenant, or condition of this Agreement for which a specific remedy is not set forth in this Agreement, Seller shall have the right to (1) terminate this Agreement at any time prior to Closing by written notice to County, in which event the parties shall be released from all obligations hereunder other than those which specifically survive termination of this Agreement; (2) grant County a reasonable period of time within which to cure such default during which time County shall utilize County's best efforts, including bringing suit, to remedy such default; or (3) seek specific performance of the terms hereof. In the event Seller elects option number two (2) set forth hereinabove and County fails or is unable to cure such default within the applicable time period, Seller shall have the rights identified in option numbers one (1) and three (3) set forth hereinabove. In the event Seller elects option number three (3) and Seller is unable to obtain specific performance of this Agreement for any reason, Seller shall have the right to terminate this Agreement and pursue damages.

18. **GOVERNING LAW & VENUE.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

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

20. **MEMORANDUM OF AGREEMENT.** County shall be entitled to record the Memorandum of Agreement attached hereto as Exhibit "C" in the Public Records of Palm Beach County, Florida. In the event County exercises its right to terminate this Agreement, County shall deliver a termination of such Memorandum of Agreement to Seller within sixty (60) days of such termination.

21. **TIME OF ESSENCE.** Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

22. **INTEGRATION.** This Agreement constitutes the entire understanding and Agreement between the parties with respect to the subject matter hereof, and may not be modified or amended, except in a writing signed by all of the parties hereto.

23. **EFFECTIVE DATE OF AGREEMENT.** This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

24. **HEADINGS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

25. **NON-DISCRIMINATION.** The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, or gender identity or expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

26. **CONSTRUCTION.** No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and

drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

27. **NO THIRD PARTY BENEFICIARY.** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of County or employees of County or Seller.

28. **ENTIRE UNDERSTANDING.** This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Agreement.

29. **SURVIVAL.** The parties' warranties, agreements, covenants and representations set forth in this Agreement shall not be merged and shall survive consummation of the transaction contemplated by this Agreement.

30. **WAIVER.** No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

31. **AMENDMENT.** This Agreement may be modified and amended only by written instrument executed by the parties hereto.

32. **INCORPORATION BY REFERENCE.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

33. **TIME COMPUTATION.** Any references in this Agreement to time periods of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, and federal or state legal holidays; any time period provided for in this Agreement that shall end on a Saturday, Sunday, or federal or state legal holiday shall extend to 5:00 p.m. (EST) of the next day that is not a Saturday, Sunday, or federal or state legal holiday.

34. **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 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 testing may be obtained from your County public health unit.

35. **OFFICE OF THE INSPECTOR GENERAL.** Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names on the dates set forth below.

Signed, sealed, and delivered
in the presence of:

As to Seller:

Date of Execution by Seller:

March 22, 2013

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

AMIkids, Inc., a Florida corporation not
for profit

By:

Signature

Judy L. Estren

Type Signatory's Name

Its: Vice-President of Support Services
and Secretary

(SEAL)

OR

(SEAL) (corporation not for profit)

Date of Execution by County:

_____, 20____

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: Raymond W. Wray
Department Director

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SCHEDULE OF EXHIBITS

EXHIBIT "A" - LEGAL DESCRIPTION

EXHIBIT "B" - PERMITTED EXCEPTIONS

EXHIBIT "C" - MEMORANDUM OF AGREEMENT

EXHIBIT "D" - DISCLOSURE OF BENEFICIAL INTERESTS

EXHIBIT "E" - RECEIPT OF REAL ESTATE BROKERAGE
COMMISSION AND RELEASE

EXHIBIT "A"
LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SECTION 29, TOWNSHIP 41 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF THE NORTH 800.00 FEET OF THE SAID EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SECTION 29 WITH THE EASTERLY BOUNDARY OF THE 500.00 FOOT RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY AS RECORDED IN PLAT BOOK 17, PAGE 7, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 16°14'11" WEST ALONG THE SAID EASTERLY BOUNDARY OF THE 500.00 FOOT RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY, A DISTANCE OF 221.72 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 16°14'11" WEST ALONG THE SAID EASTERLY BOUNDARY OF THE 500.00 FOOT RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY, A DISTANCE OF 211.62 FEET, THENCE NORTH 77°12'45" EAST, A DISTANCE OF 171.89 FEET; THENCE SOUTH 33°51'15" EAST, A DISTANCE OF 226.37 FEET; THENCE SOUTH 77°12'45" WEST, A DISTANCE OF 240.53 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH INGRESS AND EGRESS EASEMENT:

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TOGETHER WITH 20.00 FOOT ACCESS EASEMENT

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EXHIBIT "B"

PERMITTED EXCEPTIONS

NONE

EXHIBIT "C"

MEMORANDUM OF AGREEMENT

Prepared By/Return To:
Peter Banting, Real Estate Specialist
Palm Beach County
Property & Real Estate
Management Division
2633 Vista Parkway
West Palm Beach, FL 33411-5605

MEMORANDUM OF AGREEMENT

This is a MEMORANDUM OF AGREEMENT regarding that certain Agreement for Purchase and Sale, dated _____ (Resolution No. _____) (the "Agreement"), by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, with an address of 301 North Olive Avenue, Administration, 11th Floor, West Palm Beach, Florida 33401, ("County"), and AMikids, Inc., a Florida corporation not for profit, with an address of 5915 Benjamin Center Drive, Tampa, FL 33634, ("Seller").

WITNESSETH:

WHEREAS, County and Seller have entered into the Agreement pursuant to which Seller has agreed to sell to County and County has agreed to purchase from Seller the Real Property located in Palm Beach County legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Seller has executed this Memorandum of Agreement for the purpose of giving public notice of the existence of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby acknowledges, and gives notice of, the existence of the Agreement.

This Memorandum of Agreement is not a complete summary of the Agreement. Provisions of this Memorandum shall not be used to interpret the provisions of the Agreement, and, in the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.

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IN WITNESS WHEREOF, Seller has caused this Memorandum of Agreement to be executed on the date set forth below.

Signed and delivered in the presence of two witnesses for Seller:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

AMIkids, Inc., a Florida corporation not for profit
"SELLER"

By: _____
Signature

Print Signatory's Name

Its: Vice-President of Support Services and Secretary _____

(SEAL)

Date of Execution by Seller:

_____, 20__

(SEAL) OR
(SEAL) (corporation not for profit)

STATE OF _____]

COUNTY OF _____]

SS:

The foregoing Memorandum of Agreement was acknowledged before me this ____ day of _____, 20__, by _____ the _____ of _____ a _____, who is personally known to me OR who produced _____ as identification and who did _____ take an oath.

Notary Public

Print Notary Name

NOTARY PUBLIC

State of _____ at Large

My Commission Expires: _____

EXHIBIT "A"
(to the Memorandum of Agreement)
LEGAL DESCRIPTION OF REAL PROPERTY

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EXHIBIT "D"

**SELLER'S DISCLOSURE OF BENEFICIAL INTERESTS
(REQUIRED BY FLORIDA STATUTES 286.23)**

**TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY
DESIGNATED REPRESENTATIVE**

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

BEFORE ME, the undersigned authority, this day personally appeared, _____, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the _____ (position - i.e. president, partner, trustee) of AMIkids, Inc., a Florida corporation not for profit, (the "Owner") which entity is the owner of the real property legally described on the attached Exhibit "A" (the "Property").
2. Affiant's address is: 5915 Benjamin Center Drive, Tampa, FL 33634

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Owner and the percentage interest of each such person or entity.
4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its purchase of the Property.
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.
6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

_____, Affiant

Print Affiant Name: _____

The foregoing instrument was sworn to, subscribed and acknowledged before me this _____ day of _____, 20____, by _____ [] who is personally known to me or [] who has produced _____ as identification and who did take an oath.

Notary Public

(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SECTION 29, TOWNSHIP 41 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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EXHIBIT "B"

SCHEDULE TO BENEFICIAL
INTERESTS IN PROPERTY

AMIkids, Inc. is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. *AMIkids, Inc.* must identify individual owners. If, by way of example, *Seller* is wholly or partially owned by another entity, such as a corporation, *AMIkids, Inc.* must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

NAME	ADDRESS	PERCENTAGE OF INTEREST
<u>None. AMIkids, Inc., is a 501(c)(3) organization. There are no individuals or</u>		
<u>entities that have a beneficial interest in its assets.</u>		
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EXHIBIT "E"

Receipt of Real Estate Brokerage Commission and Release

The undersigned, Steven Hollander ("Broker"), the Broker of Hollander Real Estate, Inc. ("Company") ("Broker" and "Company" are herein collectively referred to as "Realtor"), does hereby acknowledge that no payment of the real estate brokerage commission due to Realtor in connection with the transaction between AMIkids, Inc., as Seller and Palm Beach County ("County" or "Buyer"), and the subsequent transfer, pursuant to the terms of the Agreement between such parties of the property described in Schedule "A" attached hereto and made a part hereof. Realtor hereby releases County from any and all claims relating to real estate commissions, services fees, finders fees, costs and expenses (if any) payable unto or claimable by Broker, Company, its agents, affiliates, officers or employees relating to the transaction.

Dated this _____ day of _____ 200__.

Signed, sealed and delivered
in the presence of:

Hollander Real Estate, Inc.

Witness

By: _____
Signature

Print Name of Witness

Print Name

Witness

Its: Broker

Print Name of Witness

MEMORANDUM OF AGREEMENT

Prepared By/Return To:
Peter Banting, Real Estate Specialist
Palm Beach County
Property & Real Estate
Management Division
2633 Vista Parkway
West Palm Beach, FL 33411-5605

MEMORANDUM OF AGREEMENT

This is a MEMORANDUM OF AGREEMENT regarding that certain Agreement for Purchase and Sale, dated _____ (Resolution No. _____) (the "Agreement"), by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, with an address of 301 North Olive Avenue, Administration, 11th Floor, West Palm Beach, Florida 33401, ("County"), and AMIkids, Inc., a Florida corporation not for profit, with an address of 5915 Benjamin Center Drive, Tampa, FL 33634, ("Seller").

WITNESSETH:

WHEREAS, County and Seller have entered into the Agreement pursuant to which Seller has agreed to sell to County and County has agreed to purchase from Seller the Real Property located in Palm Beach County legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Seller has executed this Memorandum of Agreement for the purpose of giving public notice of the existence of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby acknowledges, and gives notice of, the existence of the Agreement.

This Memorandum of Agreement is not a complete summary of the Agreement. Provisions of this Memorandum shall not be used to interpret the provisions of the Agreement, and, in the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Seller has caused this Memorandum of Agreement to be executed on the date set forth below.

Signed and delivered in the presence of two witnesses for Seller:

[Signature]
Witness Signature

MATT FRIE
Print Witness Name

[Signature]
Witness Signature

Brittany Powell
Print Witness Name

AMikids, Inc., a Florida corporation not for profit
"SELLER"

By: [Signature]
Signature

Judy L. Estren
Print Signatory's Name

Its: Vice-President of Support Services and Secretary

(SEAL)

Date of Execution by Seller:

March 22, 2013

(SEAL) OR
(SEAL) (corporation not for profit)

STATE OF Florida]

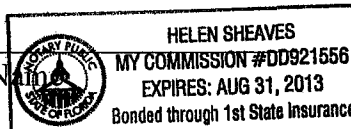
COUNTY OF Hillsborough]

SS:

The foregoing Memorandum of Agreement was acknowledged before me this 22 day of March, 2013, by Judy L. Estren the VP of Support Services and Secretary of AMikids, Inc. a Florida non-profit, who is personally known to me OR who produced _____ as identification and who did _____ take an oath.

Helen Sheaves
Notary Public

Print Notary Name



NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 8-31-2013

EXHIBIT "A"
(to the Memorandum of Agreement)
LEGAL DESCRIPTION OF REAL PROPERTY

A PARCEL OF LAND LYING IN THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SECTION 29, TOWNSHIP 41 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

Page 1 of 1

BGEX 581 032513*1320

FUND 3038 - \$50M GO 06, Waterfront Access

ACCT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED 3/25/2013	REMAINING BALANCE
<u>Reserves</u>								
3038-821-9824-9908	Reserves - New Projects	1,085,437	1,279,616		1,005,347	274,269	0	274,269
<u>Bert Winters Park PBMI Land Acquisition</u>								
3038-581-P777-6501	Land - C.I.P.	0	0	1,005,347		1,005,347	0	1,005,347
TOTAL				1,005,347	1,005,347			

Signatures

Date

Parks and Recreation Department
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Chris Carr 3-25-13

By Board of County Commissioners
At Meeting of
April 16, 2013
Deputy Clerk to the Court

**SELLER'S DISCLOSURE OF BENEFICIAL INTERESTS
(REQUIRED BY FLORIDA STATUTES 286.23)**

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, Judy Z. Estren, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the Vice President, Support Services (position - i.e. president, partner, trustee) of AMIkids, Inc., a Florida corporation not for profit, (the "Owner") which entity is the owner of the real property legally described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: 5915 Benjamin Center Drive, Tampa, FL 33634

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Owner and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its purchase of the Property.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.


FURTHER AFFIANT SAYETH NAUGHT.

[Signature], Affiant

Print Affiant Name: Judy L Estren

The foregoing instrument was sworn to, subscribed and acknowledged before me this 22nd day of March, 2013, by Judy L Estren [] who is personally known to me or [] who has produced _____ as identification and who did take an oath.

[Signature]
Notary Public

(Print Notary Name)  **HELEN SHEAVES**
MY COMMISSION #DD921556
EXPIRES: AUG 31, 2013
Bonded through 1st State Insurance

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 8-31-2013

EXHIBIT "A"
LEGAL DESCRIPTION

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