

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 19, 2018	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF


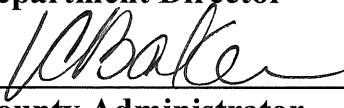
Motion and Title: Staff recommends motion to approve: Amendment No. 1 to the Agreement for Purchase and Sale with Transit Village, LLC. (R2012-1158)

Summary: The February 27th workshop on the Downtown West Palm Beach County Facilities Master Plan update addressed the City's proposed extension of Fern Street across the railroad tracks to Clearwater Drive and the anticipated negative impacts upon Palm Tran operations at the Intermodal Center. As such, Staff recommended that the Board postpone consideration of Transit Village's (TV) extension request until the City and County reach an agreement on the Fern Street crossing. Staff requested a workshop between the Board and the City Council, but the Mayor declined. Instead, Staff will make a presentation to the City Council on June 25th. However, it appears unlikely that the County and City will reach an agreement on the crossing at any time soon, if at all. Staff will continue to raise objections to the extension/crossing with SFRTA and FDOT unless and until the City obtains a traffic report demonstrating that the crossing will not impact Palm Tran operations. The Agreement with TV requires TV close by August 13, 2018, and TV has advised it is unable to meet that deadline. This Amendment No. 1 provides TV with a 2-year extension to August 2020. Staff also recommended that as consideration for the extension, TV convey a .4 acre outparcel at the corner of Tamarind and Datura at no cost to the County, and that TV agree to extend the time frames for Staff review of TV's submittals during the review process. TV will not agree to convey the outparcel, but instead has agreed to construct four (4) additional Workforce Housing units for a total of 42 units and has further agreed to subject all 42 units to the rules, regulations and requirements of the County's Workforce Housing Program. In addition, TV has agreed to involve Staff earlier in the design process and to coordinate review of Schematic Drawings and Design Development which addresses Staff's concerns regarding insufficient time to review. Approval of Amendment No. 1 will allow TV to continue with design and development of this project. (PREM) District 7/Countywide (HJF)

Background and Policy Issues: Continued on Page 3.

Attachments:

1. Location Map
2. Attachment #3 to 2/27 BCC Workshop
3. Amendment #1 to Purchase and Sale Agreement

Recommended By:		5/30/18
	Department Director	Date
Approved By:		6/12/18
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

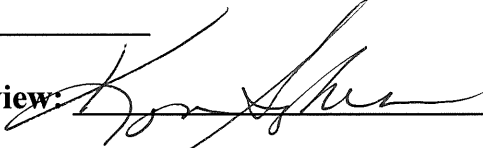
Does this item include the use of federal funds? Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
Program _____

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

No fiscal impact associated with this Amendment No. 1.

Fixed Assets Number _____

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 6/1/18 OFMB 	 6/17/18 Contract Development and Control 6/7/18 
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B. Legal Sufficiency:

 6/11/18
Assistant County Attorney

C. Other Department Review:

Department Director

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

Background and Policy Issues: Attached is a copy of Attachment 3 to the February 27, 2018 Workshop Agenda Item on the Downtown West Palm Beach County Facilities Master Plan. This attachment provides a detailed discussion of the issues associated with the City's proposed extension of Fern Street across the railroad tracks to connect with Clearwater Drive, as well as an analysis of Transit Village's request for a 2-year extension of the deadline for closing.

While Staff would prefer to resolve the crossing issue prior to agreeing to extend the closing with Transit Village, it is unlikely that the City will do anything but continue its efforts to obtain approval of the crossing. Tying an extension of the closing date to the crossing issue will further delay, if not end, Transit Village's project. As the Transit Village project is supported by SFRTA and FDOT, and the SFRTA has provided a letter saying it will not support a crossing at Fern Street for various reasons, the probability of the crossing actually getting permitted seems very low.

Staff also previously recommended that approval of Transit Village's requested extension be conditioned upon Transit Village conveying the .4-acre outparcel at Tamarind and Datura to the County at no cost. Transit Village has indicated that its partners will not agree to convey the outparcel at no cost. Instead, Transit Village has agreed to construct an additional four (4) Workforce Housing units and to make all 42 units comply with the County's Workforce Housing Program rather than the City's program. County Administration supports the substitution of increased Workforce Housing.

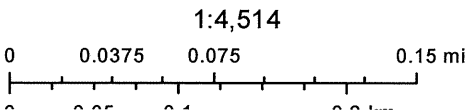
The Agreement with Transit Village requires Transit Village to submit, not less than 120 days prior to closing, plans for construction of the improvements and maintaining continuity of Palm Tran's operations to County for County's review and approval. The Agreement also requires a kick off meeting to discuss the level of involvement of the County's Project Manager in reviewing building plans and to prepare a County Project Manager Work Plan.

To date, Transit Village has not set up a kick-off meeting, and Transit Village is only in the preliminary stage of designing its improvements. Design of a project of this complexity can easily take 12 – 18 months. With an extension only to August 2020, Staff is concerned that design review requests will be submitted late and there will be intense pressure to complete reviews quickly. Changing economic and financial conditions could compound this pressure. Staff attempted to negotiate additional time in which to conduct reviews. Transit Village wanted any additional time used by Staff to extend the closing date. As a result, Staff changed its approach and required Transit Village to schedule a kick-off meeting as soon as reasonably practicable, deliver the County Project Manager a Work Plan within 60 days of the kick-off meeting, and to require that Transit Village provide 60 days notice of when it will deliver Schematic Drawings and a Design Development Package for County's review and approval. Staff believes that this will help ensure that County Staff has adequate notice and can schedule workloads to meet review timeframes required under the Agreement. This approach will also allow Staff to provide comments during the design process increasing the ability of TV to address those comments as the design proceeds and reducing the probability of a major design disputes (or at a minimum eliminating the ability of TV to claim it is too late to address) just prior to closing.



May 30, 2018

Location Map
Attachment 1
1pg



ATTACHMENT 2

Attachment #3 to 2/27 BCC Workshop

Pages 1 to 5

ATTACHMENT 3

Wedge Property and the Proposed Fern Street Crossing

Background: The County's Intermodal Transit Center (ITC) operates from the Wedge Property and was strategically situated on a local road and adjacent to the passenger rail line to facilitate a multimodal transit option for the downtown and region. The facility is largely the result of a 1992 Interlocal Agreement between the City and County, whereby the County bought the majority share of the property from CSX for \$3.6M and the City committed to: 1) a one-time five percent (5%) capital cost contribution, 2) 50% funding support for ongoing facility operations, and 3) convey a piece of City-owned property to the County toward assembling the site for development of the ITC.

In 2009, the County held a grand opening for the ITC. The ITC has remained in continuous operation ever since. In 2010, at the request of the City and contrary to County Staff's several recommendations against same, the Board directed County Staff to issue a RFP to Lease or Purchase the Wedge Property for development of a Transit Oriented Development in support of transit ridership. Transit Village, LLC (TV) was subsequently the sole RFP respondent. TV's project will include development of an office building(s), residential units, a Hotel and supporting retail space. This development will be built over the top of the existing ITC.

The forecasted traffic volumes on Australian Avenue, Banyan Boulevard, Clearwater Drive and Clearwater Place was thoroughly evaluated during the RFP award process to ensure that Palm Tran's operations would not be unduly impacted by TV's development. Clearwater is the sole means of access to the Intermodal Transit Center (ITC), which is a critical hub for Countywide Palm Tran operations. The introduction of additional vehicular traffic onto Clearwater has significant potential to adversely impact Palm Tran's arrival to and departure from the ITC and hence destinations remote from the ITC.

In 2012, the Agreement for Purchase and Sale of the Wedge Property with TV was approved by the Board of County Commissioners, including an exhibit devoted to traffic limitations and operational assurances. That exhibit and the study related thereto, both of which have been provided to City Staff on multiple occasions, did not contemplate a Fern Street crossing of the SFRTA/FDOT rail corridor connecting to Clearwater Drive.

Subsequent Planning Actions:

October 2016 - TV receives conceptual approval from the City of West Palm Beach for between \$80M-\$120M in tax increment financing assistance.² This approval of TIF was the latest of three actions by the City that demonstrate the City's changing planning policies, unpredictable and/or inconsistent treatment of the County relative to the Downtown.³

² It is the understanding of County Staff that the current amount of tax increment financing being discussed is \$25M-\$35M.

³ First, the City funding assistance for the development of the Wedge when the City has previously indicated that no funding assistance was available to support such a development when such assistance would have resulted in additional revenues to the County. Second, the City required the County to "pay" for the Ballpark land despite it

November 2016 - The Board grants TV a one year time extension to August 14, 2018 for fulfillment of TV's contractual obligation to secure Building Permits and close. In that Board item, County Staff indicates that the City had been unwilling to provide the County any financial support for this and other projects within the Government Hill/TOD areas. At that same meeting, the County Staff advised the Board that the City was evaluating the possibility of adding another railroad crossing at Fern Street despite being well aware of the County's concerns regarding traffic capacity on Clearwater and the County's requirements for uninterrupted travel of the Palm Tran busses along Clearwater to and from the ITC. The City subsequently communicated that it had not been decided to pursue a crossing at Fern Street.

March 2017 - City commences a multifaceted Mobility Study aimed at alleviating vehicular congestion and encouraging modes of transportation other than passenger vehicles in the downtown. That study has identified an additional gateway to and from the downtown as a potential means to relieve existing traffic. An additional vehicular connection would immediately result in the redistribution of existing vehicular traffic; thereby reducing vehicular volume on the links and key intersections of the existing Okeechobee Boulevard and Banyan Boulevard gateways to the downtown.

April 2017 – FDO Staff becomes aware that the City is pursuing the possibility of an extension of Fern Street between Australian Avenue to the west and Tamarind Avenue to the east as the additional road connection to the downtown. The extension of Fern Street would include crossing the SRFTA/FDOT rail corridor and connecting to Clearwater Drive and Clearwater Place to ultimately reach Australian Avenue. The County Engineer and Director FDO immediately notified a representative of City Administration that FDO is to serve as the County's representative on the subject and should be invited to all meetings, copied on all correspondence relative to same and/or participate no different than any other property owner and/or stakeholder.

June 2017 – Although the focus of the Charrette was Okeechobee Boulevard, graphic and verbal representations of the proposed Fern Street Crossing were made throughout same. FDO voiced its concerns with the proposal to both City Staff and City consultants that were in attendance.

August 2017 – During a public meeting of the City's Downtown Action Committee (DAC) for the Okeechobee Business District, City Staff stated that an application for the proposed Fern Street Crossing had been submitted to FDOT's Central Office following the Okeechobee Boulevard Charrette. City Staff later informed FDO staff of: 1) that having been a misstatement, 2) having received direction to make application "since it received an overwhelming amount of support from the public," 3) intentions to meet with stakeholders following submission of the City's application, and 4) intention to meet with FDO and Palm Tran Staff in September to obtain feedback on City ideas for potential transit improvements.

December 2017 – County Staff obtains a copy of the City's application to the State of Florida Department of Transportation (FDOT) for the proposed Fern Crossing from FDOT after prior requests for same to City Staff were not fulfilled. Upon review, County Staff discovers that: 1) the

achieving mutual redevelopment objectives. Third, the City permitted the 4th DCA at a suburban format with insufficient parking after requiring the County to fund the re-design of the Health Department to an urban intensity.

City estimates traffic volumes of 13,410 average daily vehicle crossings; 2) non-motorized traffic improvements would generate additional crossing volume (thereby heightening direct interactions with Palm Tran vehicles in route to/from the ITC), 3) the City's Fern Street Extension Final Feasibility Study was completed on May 26, 2016 and memo of findings from an evaluation of rail crossing traffic completed on March 31, 2017 without any prior coordination with or even mention of to County Staff, and 4) there is no mention of or findings relative to the County's traffic study that was prepared in collaboration with City Staff to evaluate the implications of the Transit Village project on the Wedge Property for ITC/Palm Tran operations. It should also be noted that County Staff understands that FDOT would require the closure of 2 existing rail crossings elsewhere in the City as a pre-condition of allowing the proposed Fern Crossing. Although no crossings are identified in the City's application, the City does have crossings it could close and hence the initiative remains technically viable. Jack Stephens, executive director of SFRTA, indicated in his January 26 letter that SFRTA was not aware of any application for approval of an additional crossing, that SFRTA must be included in the approval process and that SFRTA does not support an additional at grade crossing at Fern Street. While Mr. Stephens' position is helpful in shedding light on how difficult it will likely be to obtain approval of this proposed crossing, we have all seen how many times the impossible becomes reality. The only action which would provide some level of certainty, would be for the City to formally abandon their efforts. In his February 1st letter, Mr. Green has indicated that the City is unwilling to do so. Recently, both the County Engineer and Palm Tran have reviewed the potential impacts of the crossing upon traffic using Clearwater Drive and believe those impacts are likely to be material. Letters from the Traffic Division and Palm Tran are attached (Attachments 4 & 5).

At roughly the same time in December that FDO Staff learned that the City was continuing to pursue the proposed Fern Street Crossing, FDO Staff discovered that City Staff expressed to Palm Tran and the MPO/TPA the City's interest in relocating Palm Tran routes from the ITC to another location in the downtown. Just last week Staff was informed that the City has issued a RFQ for developers to submit their concepts for redevelopment of the City's Tent Site, including relocation of the ITC to the Tent Site. While Staff was not consulted prior to issuance of the RFQ and has not been provided with details on what or how many routes the City proposes to relocate, if the City desires to relocate a significant number of routes, such relocations could call into question the continued viability of the ITC in its current location, as well as TV's project. Palm Tran has indicated that it will not support relocating the ITC, but is in the process of evaluating measures to improve efficiencies of existing routes and transfers, which could result in 1 or 2 buses no longer routing through the ITC.

January 2018 – County Staff receives a written request from TV for an additional 1 year extension of the deadline for closing (from August 13, 2018 until August 13, 2019). TV is claiming that it is entitled to the requested extension as a result of governmental delay. Staff does not agree, as at the time of the last extension the only milestone/deadline remaining was to obtain building permits and close. To Staff's knowledge TV has not yet completed its project design, and has therefore not submitted an application for building permits. TV has been pursuing tax increment financing assistance from the City, which has been a lengthy process. However, such financing is not a milestone to which governmental delay is applicable under the County's agreement with TV. Even when construed in a light most favorable to TV, the agreement with TV only allows for 1 year of cumulative extensions for governmental delay and TV has already received a 1 year extension.

Summary

It is unfortunate for all parties that it has taken so long for TV to get to this point. However, County Staff warned at the outset that this project would require 5-7 years to obtain all required approvals and permits. TV and Mr. Massanoff have invested more than a decade and significant financial resources to move this project forward. Staff agrees that TV will not be in a position to close by the current deadline. The City and SFRTA have both indicated their continuing support for TV's proposed development and TV's extension request. Staff's concerns regarding an extension are the result of actions taken by the City which call into question the routes, operations and functionality of the ITC. Specifically, those actions are the discussion of relocating the ITC in whole or in part, and the proposed Fern Street crossing. Until such time that the City formally changes its position on the proposed crossing and the location of the ITC, Staff is hesitant to recommend that the Board extend TV's contract. However, without the extension the project will be placed on hold at best. If the Board desires to grant a further extension, Staff would recommend that such extension be conditioned upon the following:

1. The City and County enter into a formal agreement documenting the City's agreement to not construct the Fern Street crossing until such time that the ITC has been relocated at the City's expense, or the City obtains a traffic study acceptable to the County demonstrating that the proposed crossing will not adversely impact Palm Tran operations. The most effective and quickest way to resolve this is to have a workshop between the County and City Commissions.
2. In consideration for receiving a further 1 year extension, TV convey TV's .4 acre parcel at the corner of Tamarind and Datura to the County at no cost to the County.
3. TV agreeing to extended time frames for County Staff review of TV submittals during the Review Process.

The Agreement between the City and County would allow the City to continue exploring the viability of the proposed crossing and potential for relocating the ITC, while providing the County assurances that the ITC will not be impacted by traffic or need to be relocated at County expense.

Charging TV for the extension is what a private property owner would typically require from a developer. What should be recognized here is that the purchase price TV agreed to pay the County was based upon TV being faced with extraordinary development costs, almost all of which TV has found a way to be relieved of. As things have worked out, TV in essence already received a substantial subsidy from the County. Now Mr. Masanoff is looking to recover his investment in the .4 acre parcel; which was never a part of the TOD/TV transaction, Mr. Masanoff's argument against having to pay for the extension is that the Wedge property was acquired with 80% Federal, 10% FDOT, 5% City and 5% County funding, such that the County has only a minimal investment in the property. TV's proposed project is a transit oriented development of the type encouraged by FTA, and FTA approved both the structure of the transaction and the purchase price. Requiring TV to pay for the extension is in essence a repayment to the County of grant funding assistance provided by others and contrary to efforts of FTA, SFRTA and the City to provide TV's project as much funding assistance as possible. This will be an extremely expensive project to develop; and TV asserts that all of the governmental financial assistance is essential for the project to be

economically viable. Staff believes the issue of whether to charge for the extension is a policy decision for the Board.

In any event, Staff does not recommend buying the .4 acre parcel from TV. While acquisition of this property would round out the County's holdings in the Evernia/Datura block, purchasing this property would require a roughly \$1.5-\$2M transfer from General Fund Contingency. Setting off the value of the property as a credit against the purchase price for the Wedge property as Mr. Masanoff proposes, would both require FTA approval and would likely require encumbering the .4 acre parcel with Federal restrictions which would limit the County's ability to use the property. In addition, this would result in an indirect transfer of funds from Palm Tran to the General Fund.

ATTACHMENT 3

Amendment No. 1 to Purchase and Sale Agreement

Pages 1 to 4

AMENDMENT NO. 1 TO

AGREEMENT FOR PURCHASE AND SALE

This Amendment No. 1 made and entered into on _____, 2018 (“the Amendment”) by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (“County”) and TRANSIT VILLAGE, LLC, a Florida limited liability company (“Purchaser” or “Transit Village”).

RECITALS

WHEREAS, on August 14, 2012 the County and Purchaser entered into an Agreement for Purchase and Sale (R-2012-1158) for Purchasers purchase of certain interests in the County owned real property commonly referred to as the Wedge (the “Agreement”);

WHEREAS, the Agreement contains a milestone requiring Purchaser to obtain building permits and close upon the acquisition of the property not later than August 13, 2017, which milestone was extended for 1 year until August 13, 2018;

WHEREAS, in the event that Purchaser does not meet the milestone deadlines, such failure constitutes a default under the agreement entitling County, among other measures, to terminate the Agreement;

WHEREAS, prior to and as a condition to the Closing, Purchaser is required to submit for the County’s approval certain items enumerated in the Agreement, including, but not limited to, the Envelope Construction Plan, the COOP, the Engineer’s Constructability Report, the Commercial Construction Plan and the Building Permits (collectively “Pre-Closing Plans”);

WHEREAS, Purchaser and the County agree that all Governmental Approvals have been timely obtained.

WHEREAS, additional time is required to prepare these Pre-Closing Plans and provide same to County for its review and approval;

WHEREAS, in exchange for the additional considerations provided herein, the parties hereto are willing to further extend the milestone for the Closing to occur on or prior to August 13, 2020 in order to permit the orderly review and approval of the Pre-Closing Plans that are a precondition to the Closing.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

AGREEMENT

1. Capitalized Terms. Capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.
2. Failure to Meet Milestones. Section 7.3.1.4 shall be amended to read as follows:

7.3.1.4 Notwithstanding anything contained in the Agreement or this Amendment No. 1, the Purchaser shall obtain the County's approval of the Pre-Closing Plans, obtain Building Permits and complete the Closing not later than August 13, 2020.

3. Extension Payment. In exchange for the County's agreement to extend the Closing Date, the Purchaser shall:

Provide four (4) additional workforce housing units (without receipt of any bonus/incentive from the County) by increasing the total number of workforce housing units from 38 to 42, which may be either rental or for sale housing units, all of which workforce housing units shall comply with the current rules and regulations of the work force housing program administered by the County in effect as of the date of execution of this Amendment (unless otherwise agreed by the County and Purchaser), provided, however, nothing herein shall preclude the Purchaser from applying for Workforce Housing Assistance Incentives from the City of West Palm Beach Housing and Community Development Department. A restrictive covenant shall be recorded in accordance with the County workforce housing program upon the master condominium unit affected thereby. There shall be no housing payment option for any of the 42 units.

4. Submission of Plans. Section 2.8.1 of the Agreement currently requires that "At least one hundred twenty (120) days prior to the scheduled Closing Date, Purchaser shall submit to the County its Envelope Construction Plan and its Commercial Construction Plan including the COOP and the Engineer's Constructability Report, under the Review and Resubmit Process, with an initial Review Period of up to sixty (60) days." However, there is no requirement for the Purchaser to make any submittals prior to that date. This is potentially problematic for the County in terms of performing a timely and thorough review of submittals and creates potential financial and schedule risk to the Purchaser. As such, the Parties agree to delete Sections 2.2 and 2.9.3 in their entirety and replace those Sections with the following.

"2.2 Kick-Off Meetings with County Project Manager.

Purchaser shall schedule as soon as reasonably practicable kick-off meeting(s) with the County Agreement Manager; the County Project Manager; Purchaser's Engineer, Architect and Contractor to discuss the overall approach to the project; contemplated changes to the Site Plan; the status of design of the project; the Envelope Construction Plan; the Engineer's Constructability Report; the COOP; the flow and timeframes for providing deliverables required hereunder; and a rough outline of the project schedule. The kick-off Meeting shall also address the contemplated level of involvement of the County Project Manager as provided in Section 2.4, and Section 5 of this Agreement and which will be requested by the Purchaser from time to time ("County Project Manager Work Plan") a draft of which shall be submitted by Purchaser to County within 30 days of the kick-off meeting. The County Project Manager Work Plan shall include, at a minimum, two (2) phases of review of deliverables.

Phase 1 Review shall include delivery of Schematic Drawings for the Envelope and ITC Modifications. In addition, the Purchaser shall include, when available, drafts of the Envelope Construction Plan, Engineer's Constructability Report and COOP. .

Phase 2 Review shall include delivery of the Design Development package for the Envelope and ITC Modifications, the most recent drafts of the Engineer's Constructability Report and the COOP. In addition, Purchaser shall provide the Commercial Construction Plan.

No less than 60 calendar days prior to the delivery of the documents for the Phase 1 and Phase 2 Review, the Purchaser shall notify the County of the expected delivery date. The Purchaser shall update the delivery date 30 calendar days prior to the delivery date and then confirm same 14 calendar days out. After the 14 day confirmation, any deviation from the confirmed date will add one (1) calendar week to the County's review time. All deliverables required hereunder shall be subject to the Review and Resubmittal process. As provided elsewhere in this Agreement, County's review of the foregoing documentation shall be focused upon and limited to the Envelope and ITC Modifications, circulation and connectivity between the ITC and other elements of the project and continuity of Palm Tran Operations.

"2.9.3 Design Development. The Purchaser is solely responsible for the design of the Purchaser's Improvements. Without changing, broadening or contracting the provisions of any other provision of this Agreement, specifically Sections 1.17, 1.52, 1.53 or 2.2, the Purchaser may, but is not required to, request that the County Project Manager participate in the design process above that provided for in the County Project Manager Work Plan. The minimum level of on-going participation by the County Project Manager in the design process shall be discussed at the Kick-off Meeting and then again at the Kick-Off Meeting provided for in Section 2.2 and documented in the County Project Manager Work Plan required by Section 2.2.


6. All Other Terms Remain in Effect. The provisions of this Amendment are made a part of the Agreement and shall supersede, govern and control all contract provisions in conflict therewith. All other terms of the Agreement remain in full force and effect.
7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
8. Conflicts. In the event of any conflicts between the terms of the Agreement and this Amendment, the terms of this Amendment shall govern.

IT 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 Purchaser

Date of Execution by Purchaser:

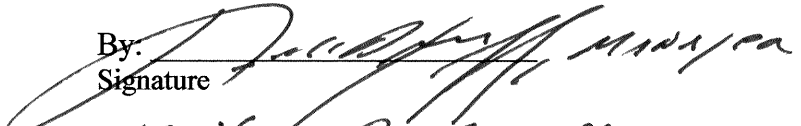


Witness Signature

June 4, 2018
TRANSIT VILLAGE, LLC
"PURCHASER"

Michael Kasub

Print Witness Name

By: 

Signature
Michael D. McInally, Mayor

Print Signatory's Name

Date of Execution by County:
_____, 2018

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER


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

By: _____
Deputy Clerk

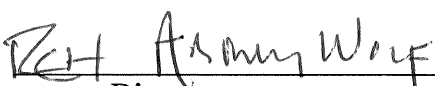
By: _____
Melissa McKinlay, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 

County Attorney

By: 

Department Director

AMENDMENT NO. 1 TO

AGREEMENT FOR PURCHASE AND SALE

This Amendment No. 1 made and entered into on _____, 2018 (“the Amendment”) by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (“County”) and TRANSIT VILLAGE, LLC, a Florida limited liability company (“Purchaser” or “Transit Village”).

RECITALS

WHEREAS, on August 14, 2012 the County and Purchaser entered into an Agreement for Purchase and Sale (R-2012-1158) for Purchasers purchase of certain interests in the County owned real property commonly referred to as the Wedge (the “Agreement”);

WHEREAS, the Agreement contains a milestone requiring Purchaser to obtain building permits and close upon the acquisition of the property not later than August 13, 2017, which milestone was extended for 1 year until August 13, 2018;

WHEREAS, in the event that Purchaser does not meet the milestone deadlines, such failure constitutes a default under the agreement entitling County, among other measures, to terminate the Agreement;

WHEREAS, prior to and as a condition to the Closing, Purchaser is required to submit for the County’s approval certain items enumerated in the Agreement, including, but not limited to, the Envelope Construction Plan, the COOP, the Engineer’s Constructability Report, the Commercial Construction Plan and the Building Permits (collectively “Pre-Closing Plans”);

WHEREAS, Purchaser and the County agree that all Governmental Approvals have been timely obtained.

WHEREAS, additional time is required to prepare these Pre-Closing Plans and provide same to County for its review and approval;

WHEREAS, in exchange for the additional considerations provided herein, the parties hereto are willing to further extend the milestone for the Closing to occur on or prior to August 13, 2020 in order to permit the orderly review and approval of the Pre-Closing Plans that are a precondition to the Closing.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

AGREEMENT

1. **Capitalized Terms.** Capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.
2. **Failure to Meet Milestones.** Section 7.3.1.4 shall be amended to read as follows:

7.3.1.4 Notwithstanding anything contained in the Agreement or this Amendment No. 1, the Purchaser shall obtain the County's approval of the Pre-Closing Plans, obtain Building Permits and complete the Closing not later than August 13, 2020.

3. Extension Payment. In exchange for the County's agreement to extend the Closing Date, the Purchaser shall:

Provide four (4) additional workforce housing units (without receipt of any bonus/incentive from the County) by increasing the total number of workforce housing units from 38 to 42, which may be either rental or for sale housing units, all of which workforce housing units shall comply with the current rules and regulations of the work force housing program administered by the County in effect as of the date of execution of this Amendment (unless otherwise agreed by the County and Purchaser), provided, however, nothing herein shall preclude the Purchaser from applying for Workforce Housing Assistance Incentives from the City of West Palm Beach Housing and Community Development Department. A restrictive covenant shall be recorded in accordance with the County workforce housing program upon the master condominium unit affected thereby. There shall be no housing payment option for any of the 42 units.

4. Submission of Plans. Section 2.8.1 of the Agreement currently requires that "At least one hundred twenty (120) days prior to the scheduled Closing Date, Purchaser shall submit to the County its Envelope Construction Plan and its Commercial Construction Plan including the COOP and the Engineer's Constructability Report, under the Review and Resubmit Process, with an initial Review Period of up to sixty (60) days." However, there is no requirement for the Purchaser to make any submittals prior to that date. This is potentially problematic for the County in terms of performing a timely and thorough review of submittals and creates potential financial and schedule risk to the Purchaser. As such, the Parties agree to delete Sections 2.2 and 2.9.3 in their entirety and replace those Sections with the following.

"2.2 Kick-Off Meetings with County Project Manager.

Purchaser shall schedule as soon as reasonably practicable kick-off meeting(s) with the County Agreement Manager; the County Project Manager; Purchaser's Engineer, Architect and Contractor to discuss the overall approach to the project; contemplated changes to the Site Plan; the status of design of the project; the Envelope Construction Plan; the Engineer's Constructability Report; the COOP; the flow and timeframes for providing deliverables required hereunder; and a rough outline of the project schedule. The kick-off Meeting shall also address the contemplated level of involvement of the County Project Manager as provided in Section 2.4, and Section 5 of this Agreement and which will be requested by the Purchaser from time to time ("County Project Manager Work Plan") a draft of which shall be submitted by Purchaser to County within 30 days of the kick-off meeting. The County Project Manager Work Plan shall include, at a minimum, two (2) phases of review of deliverables.

Phase 1 Review shall include delivery of Schematic Drawings for the Envelope and ITC Modifications. In addition, the Purchaser shall include, when available, drafts of the Envelope Construction Plan, Engineer's Constructability Report and COOP. .

Phase 2 Review shall include delivery of the Design Development package for the Envelope and ITC Modifications, the most recent drafts of the Engineer's Constructability Report and the COOP. In addition, Purchaser shall provide the Commercial Construction Plan.

No less than 60 calendar days prior to the delivery of the documents for the Phase 1 and Phase 2 Review, the Purchaser shall notify the County of the expected delivery date. The Purchaser shall update the delivery date 30 calendar days prior to the delivery date and then confirm same 14 calendar days out. After the 14 day confirmation, any deviation from the confirmed date will add one (1) calendar week to the County's review time. All deliverables required hereunder shall be subject to the Review and Resubmittal process. As provided elsewhere in this Agreement, County's review of the foregoing documentation shall be focused upon and limited to the Envelope and ITC Modifications, circulation and connectivity between the ITC and other elements of the project and continuity of Palm Tran Operations.

"2.9.3 Design Development. The Purchaser is solely responsible for the design of the Purchaser's Improvements. Without changing, broadening or contracting the provisions of any other provision of this Agreement, specifically Sections 1.17, 1.52, 1.53 or 2.2, the Purchaser may, but is not required to, request that the County Project Manager participate in the design process above that provided for in the County Project Manager Work Plan. The minimum level of on-going participation by the County Project Manager in the design process shall be discussed at the Kick-off Meeting and then again at the Kick-Off Meeting provided for in Section 2.2 and documented in the County Project Manager Work Plan required by Section 2.2.

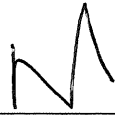
6. All Other Terms Remain in Effect. The provisions of this Amendment are made a part of the Agreement and shall supersede, govern and control all contract provisions in conflict therewith. All other terms of the Agreement remain in full force and effect.
7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
8. Conflicts. In the event of any conflicts between the terms of the Agreement and this Amendment, the terms of this Amendment shall govern.

IT 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 Purchaser

Date of Execution by Purchaser:

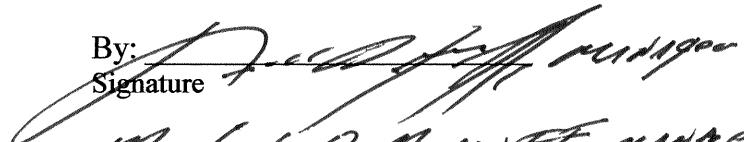


Witness Signature

June 4, 2018
TRANSIT VILLAGE, LLC
"PURCHASER"

Michael Kersch

Print Witness Name

By: 
Signature
Michael D. Mason

Print Signatory's Name

Date of Execution by County:
_____, 2018

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

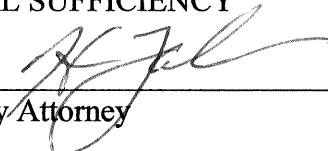
PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

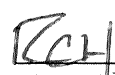
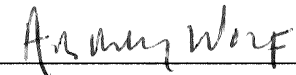
By: _____
Melissa McKinlay, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 

County Attorney

By:  

Department Director