

ITEM #69

(First Amendment – Purchase and Sales Agreement For Spectrum Investors, LLC)

ADDITIONAL MATERIAL

Regular Meeting

MAY 7, 2019

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY ATTORNEY

Lindor, Vayola

From: Fairclough, Gillian
Sent: Tuesday, April 30, 2019 2:04 PM
To: Rich, Nan; Reinerman, Eric; Rosendorf, Stephanie; Bogen, Mark; Lichtman, Ronald; Orlowski, Susan; Berson, Robin; Udine, Michael; Schulberg, Kyle; Talabisco, Beth; Kowal, Sarah; Fisher, Lamar; Pryde, Mary; Hurtado, Mabel; Geller, Steve; Freeman, Joshua; Kopec, Barbara; Furr, Beam; Miller, Clay; Quintana, Idelma; Leonardi, Frank; Ryan, Tim; Kruszka, Jason; Sarver, Judy; Bertino, John; Sharief, Barbara; Carbonell, Launa; Franklin, Terressa; Holness, Dale; Richards, Heidi; Scarlette, Lahoma; Lynch, Lauraine
Cc: Henry, Bertha; Sewell, Daphne; Melton, Bob; Smith-Allen, Brenda; Meyers, Andrew; Lobeiras, Alicia; Qureshi, Irma; Williams, Matthew; 'County Attorney Memos _ Memos to Board Email'
Subject: Item 69 on the May 7, 2019, County Commission Agenda ** [BC-CAO.FID4805]
Attachments: Additional Material Item #69 05.07.19 Comm. Mtg..pdf

** Good afternoon. Attached is the signed First Amendment to the Purchase and Sale Agreement between Spectrum Investors, LLC, and Broward County. This document was referenced in the agenda report as being distributed once final negotiations had taken place.

Please note that this document will be forwarded to County Administration with a request that it be distributed as additional material for Item 69.

Thank you.

Gillian Fairclough
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**FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT BETWEEN
SPECTRUM INVESTORS, LLC AND BROWARD COUNTY**

This First Amendment to Purchase and Sale Agreement ("Amendment") between Spectrum Investors, LLC, a Florida limited liability company ("Seller"), whose address is 1063 Hillsboro Mile, Unit 909, Hillsboro Beach, Florida 33062, and Broward County, a political subdivision of the State of Florida ("Purchaser"), whose address is 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, is entered into and effective as of the date this Amendment is fully executed by the Parties. Seller and Purchaser are hereinafter referred to collectively as the "Parties," and are individually referred to as a "Party."

RECITALS

A. The Seller and the Purchaser entered into a Purchase and Sale Agreement ("Agreement"), effective on March 7, 2019 ("Effective Date"), whereby the Seller agreed to sell to the Purchaser, and the Purchaser agreed to purchase from the Seller, that certain real property located at 2050 Spectrum Boulevard, Fort Lauderdale, Florida 33309-3008 ("Property").

B. On April 8, 2019, the Purchaser provided the Seller with written notice of its objections to the title commitment and survey obtained for the Property ("Title Objections") pursuant to Section 3.2 of the Agreement ("Title Objections Notice"). One of the Purchaser's Title Objections related to an asphalt parking area ("Parking Area") over and across an eighty-foot (80') canal easement in favor of Broward County ("Easement").

C. In response, on April 10, 2019, the Seller provided the Purchaser with written notice of whether the Seller would cure or remove the objections identified in the Title Objections Notice ("Response Notice"). This Response Notice described the Parking Area encroaching on the Easement ("Encroachment") as not being an issue and suggested that "Broward County can simply terminate this Easement as it is no longer applicable."

D. The Purchaser disagreed with the Seller's interpretation of the Encroachment, and as such, determined that the Seller's Response Notice failed to offer to cure or remove the Purchaser's objection to the Encroachment within the response period described in Section 3.3 of the Agreement.

E. As a result, on April 18, 2019, the Purchaser timely terminated the Agreement pursuant to Section 3.3(a)(ii) of the Agreement.

F. The Purchaser is willing to rescind its termination of the Agreement in exchange for this Amendment, which would provide the Purchaser with additional time to examine its Title Objections and extend the time period for the Seller to cure or remove the Purchaser's Title Objections.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

FIRST AMENDMENT

1. Unless otherwise defined in this Amendment, the capitalized terms in this Amendment have the respective meanings ascribed to them in the Agreement and the definitions of those terms in the Agreement are incorporated by reference into this Amendment. If there is a conflict or inconsistency between any term, statement, requirement, or provision of the Agreement, and any provision of this Amendment, the provisions of this Amendment shall prevail and be given effect

2. The recitals set forth above are true, accurate, and fully incorporated in the Amendment by this reference.

3. Section 3.3 of the Agreement is hereby amended to read as follows (words to be added are underlined, and words to be deleted are stricken through):

3.3 Seller's Response Notice. In the event that the Seller receives a Title Objections Notice during the Examination Period, the Seller shall give the Purchaser, no later than May 14, 2019 ~~within five (5) calendar days after receiving such Title Objections Notice~~ ("Response Period Deadline"), written notice of whether the Seller will cure or remove the Title Objection(s) ("Response Notice").

(a) If the Response Notice states that the Seller declines to cure or remove any Title Objection(s), or if the Seller fails to give a Response Notice by during the Response Period Deadline, then the Seller shall have no obligation to cure or remove any Title Objections, except for the Monetary Liens that shall be released in accordance with Section 3.4. In such event, the Purchaser shall deliver to the Seller, no later than five (5) business days after the Response Period expires May 28, 2019, written notice either:

(i) waiving the Title Objections without any adjustment in the Purchase Price or other terms of this Agreement; or

(ii) terminating this Agreement, whereupon the Escrow Agent shall return the Deposit to the Purchaser (if such Deposit has already been delivered by the Purchaser, as provided in Section 2.2(a)), and the Parties shall be released of all further obligations under this Agreement, except for those obligations that expressly survive the termination of this Agreement.

(b) If the Response Notice states that the Seller will cure or remove the Title Objection(s), then the Seller shall have up to 5:00 P.M. (Eastern Time) on May 20, 2019 ~~a period of thirty (30) calendar days after sending the Response Notice~~ (“Title Cure Deadline Period”) to cure or remove the Title Objections. In such event, the Seller shall use diligent efforts to cure or remove the Title Objections, and all of the other deadlines and time periods of this Agreement shall be extended on a day-for-day basis with the time that it takes the Seller to effect such cure or removal. Thereafter, if the Seller is unable to cure or remove the Title Objections by during the Title Cure Deadline Period, the Seller shall give the Purchaser written notice regarding its inability to cure or remove the Title Objections (“Failure to Cure Notice”) within one (1) calendar day after the expiration of the Title Cure Deadline Period. No later than five (5) business days after receiving the Failure to Cure Notice, the Purchaser, acting through its Broward County Administrator, shall deliver written notice to the Seller either:

- (i) waiving the Title Objections without any adjustment in the Purchase Price or other terms of this Agreement; or
- (ii) terminating this Agreement, whereupon the Escrow Agent shall return the Deposit to the Purchaser (if such Deposit has already been delivered by the Purchaser, as provided in Section 2.2(a)), and the Parties shall be released of all further obligations under this Agreement, except for those obligations that expressly survive the termination of this Agreement.

4. The first sentence of Section 7.1 of the Agreement is hereby amended to read as follows (words to be added are underlined, and words to be deleted are stricken through):

7.1 For a period ~~of ninety (90) calendar days after~~ commencing on the Effective Date and expiring at 5:00 P.M. (Eastern Time) on July 1, 2019 (the “Inspection Period”), the Purchaser may enter the Property, in accordance with this Section 7, to determine (in its sole discretion) if it will proceed with the acquisition of the Property or if it will exercise its termination right under Section 7.5.

5. The first sentence of Section 7.5 of the Agreement is hereby amended to read as follows (words to be added are underlined, and words to be deleted are stricken through):

7.5 If for any reason, or no reason, the Purchaser, in its sole discretion,

decides it does not wish to acquire the Property, then the Purchaser may, acting through its Broward County Administrator, terminate this Agreement upon delivering a written notice of termination to the Seller by no later than 5:00 P.M. (Eastern Time) on July 1, 2019 ~~the ninetieth (90th) day of the Inspection Period~~, unless extended pursuant to the provisions of this Agreement (the "Inspection Termination Date").

6. This Amendment is hereby incorporated into the Agreement, and all of the terms and conditions contained in the Amendment shall be binding on the Parties.

7. Except as expressly modified in this Amendment, all terms and conditions contained in the Agreement shall remain unchanged and in full force and effect.

8. The Agreement, as modified by this Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as modified hereby. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

9. Multiple originals of this Amendment may be executed by the Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

10. This Amendment has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

11. Each individual executing this Amendment represents and warrants that he or she is, on the date of execution, duly authorized by all necessary and appropriate action to execute this Amendment on behalf of such Party and does so with full legal authority.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties have made and executed this First Amendment: SPECTRUM INVESTORS, LLC, signing by and through its duly authorized representative, and BROWARD COUNTY, signing by and through its County Administrator, authorized to execute same by Board action on May 7, 2019 (Agenda Item No. ____).

SELLER

SPECTRUM INVESTORS, LLC, a Florida limited liability company

WITNESSES:

Carol Gilbert

Signature of Witness 1

CAROL GILBERT

Print Name of Witness 1

W. Scott MacMaster

Signature of Witness 2

W. Scott MacMaster

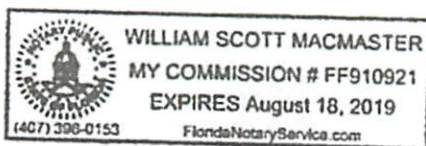
Print Name of Witness 2

By: [Signature]

Print Name: STEELE GROSS

Title: COO/MANAGER

25th day of APRIL, 2019



FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT BETWEEN SPECTRUM INVESTORS, LLC AND BROWARD COUNTY.

PURCHASER

WITNESSES:

BROWARD COUNTY, by and through its County Administrator

Signature of Witness 1

By: _____
Bertha Henry


_____ day of _____, 20____


Print Name of Witness 1

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Signature of Witness 2

Print Name of Witness 2

By:  4/30/19
Irma Qureshi (Date)
Assistant County Attorney

By:  4/30/19
Maite Azcoitia (Date)
Deputy County Attorney