

RESOLUTION NO. 2020-49

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**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE FOURTH AMENDMENT TO COMMERCIAL CONTRACT BETWEEN THE TOWN OF HILLSBORO BEACH AND WINTER SUN INVESTMENTS, LLC; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Commission deems it to be in the best interests of the Town to approve and authorize the appropriate Town officials to execute the Fourth Amendment to Commercial Contract between the Town of Hillsboro Beach and Winter Sun Investments, LLC.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA THAT:**

**SECTION 1.** The foregoing "WHEREAS" clause is true and correct and hereby ratified and confirmed by the Town Commission. All exhibits attached hereto are hereby incorporated herein.

**SECTION 2.** The Town Commission of the Town of Hillsboro Beach, Florida, hereby approves and authorizes the appropriate Town officials to execute the Fourth Amendment to Commercial Contract between the Town of Hillsboro Beach and Winter Sun Investments, LLC. A copy of the Fourth Amendment is attached hereto as Exhibit "A".

**SECTION 3.** The appropriate Town officials are authorized and directed to execute the necessary documents to comply with this Resolution.

**SECTION 4.** All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

**SECTION 5.** If any clause, section or other part of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered eliminated and will in no way affect the validity of the other provisions of this Resolution.

**SECTION 6.** This Resolution shall become effective immediately upon its passage and adoption.

1 **ADOPTED** by the Town Commission of the Town of Hillsboro Beach, Florida this 13  
2 day of AUGUST 2020.  
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6 **TOWN OF HILLSBORO BEACH, FLORIDA**

7  
8 *Deborah L. Tarrant*  
9

10 Deborah L. Tarrant, Mayor

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12 ATTEST:

13 *Sherry D. Henderson*  
14

15 Sherry D. Henderson, CMC  
16 Town Clerk

## FOURTH AMENDMENT TO COMMERCIAL CONTRACT

This Fourth Amendment to Commercial Contract (the "Fourth Amendment") is entered into by the **Town of Hillsboro Beach, Florida**, a Florida municipal corporation (the "Buyer") and **Winter Sun Investments, LLC**, a Florida limited liability company (the "Seller" and, together with Buyer, the "Parties" and each a "Party") this 10<sup>th</sup> day of August 2020 (the "Effective Date") at Hillsboro Beach, Florida.

### RECITALS

Seller is the owner of the real property legally described as Parcels A and B of Ocean Reef Condominium, according to the Plat thereof recorded in Plat Book 124 at Page 19 of the Public Records of Broward County, Florida (the "Property").

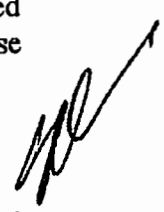
On December 3, 2019, the Parties entered into a Commercial Contract for the sale of the Property by Seller to Buyer (the "Initial Contract"). The Initial Contract provided for a due diligence period ending on April 1, 2020 and a Closing Date no later than September 30, 2020. The Contract subsequently was modified by: (i) "Amendment to Commercial Contract" dated January 2, 2020; (ii) by "Second Amendment to Commercial Contract" dated March 24, 2020, extending the due diligence period to May 27, 2020; and (iii) "Third Amendment to Commercial Contract" dated May 5, 2020, extending the due diligence period to August 17, 2020; (the Initial Contract together with the foregoing three Amendments collectively are referred to as the "Contract").

Buyer originally intended to finance its purchase of the Property through the passage of a special assessment bond issuance. Buyer brought a Complaint for Validation against the State of Florida and other defendants in case styled *Town of Hillsboro Beach, Florida v. State of Florida*, Case No. CACE-20003959 filed in the Circuit Court of the Thirteenth Judicial Circuit, in and for Broward County, Florida, seeking to have its bond issuance validated (the "Litigation"). The Court denied Buyer's complaint on June 23, 2020 and issued a Final Judgment on June 26, 2020 (the "Judgment"). Buyer has advised Seller that Buyer intends to appeal the Judgment.

Buyer now has requested that the Due Diligence Period be extended for an additional one hundred twenty (120) calendar days to allow Buyer the opportunity to appeal the Judgment (the "Appellate Contingency") and to obtain financing of its purchase of the Property (the "Financing Contingency") and Seller is willing to do so on the terms and conditions set forth in this Fourth Amendment.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) paid by each Party to the other Party, and the mutual promises and undertakings contained herein, the Parties hereby agree as follows:

1. Recitals Incorporated; Defined Terms. The foregoing Recitals are true, correct and complete and are incorporated herein by reference. All capitalized defined terms contained in the Contract shall have the same meanings in this Fourth Amendment unless otherwise specifically stated.



2. Extension of Due Diligence Period. Seller hereby extends the expiration date of the Due Diligence Period from August 17, 2020 to December 15, 2020 at 5:00 p.m. The purpose of this extension solely is to allow Buyer time to fulfill the Appellate Contingency and the Financing Contingency. If Buyer elects to proceed with the appeal of the Judgment (which decision shall be in Buyer's sole discretion), upon Buyer's filing of the appeal of the Judgment, Buyer shall provide Seller with a copy of the appellate brief filing. Buyer shall have the right to cease to pursue such appeal at any time. Section 4 of the original addendum to the Initial Contract hereby is deleted.
3. Closing Date. The Closing Date hereby is extended until a date which is the earlier of: (i) thirty (30) calendar days following the end of the Due Diligence Period; or (ii) thirty (30) calendar days following Buyer's notice given to Seller that Buyer is ready to close the Transaction.
4. Closing Prorations. Section 9(d) of the Initial Contract and Section 8 of the addendum to the Initial Contract are amended to provide that Closing prorations of *ad valorem* real property taxes and all other governmental impositions including special assessments concerning the Property (collectively "Taxes") shall be calculated as of September 30, 2020 (the original Closing Date).
5. Reimbursement for Taxes During Extension. In the event this Transaction shall not close due to Buyer's termination of the Contract or Buyer's failure to close for any reason except Seller's default, an amount equal to the Taxes for the period beginning October 1, 2020 to and through the earlier of: (i) January 15, 2021 (the re-scheduled outside Closing Date); or (ii) the date upon which the Contract shall be terminated by Buyer; shall be deducted from the Deposit and paid to Seller to compensate Seller for Taxes imposed between the original Closing Date and the date of such termination or failure to close prior to return of the Deposit to Buyer. *For example*, if Taxes for the year 2020 totaled \$147,681.12 (which was the actual 2019 Tax amount), the *per diem* amount would be \$403.50. If the Buyer terminates the Contract on December 15, 2020, the sum of \$30,262.50 would be deducted from the Deposit (October 1, 2020 to December 15, 2020 = 75 days x \$403.50 = \$30,262.50).
6. Code Fines Waiver. For the avoidance of all doubt, the Code fines waiver contained in the Initial Contract shall continue until the latest of: (i) the Closing Date; or (ii) April 28, 2021 (ninety (90) calendar days after the outside Closing Date).
7. Waiver of all Other Conditions Precedent. Except as to the Appellate Contingency and the Financing Contingency, and except as to Seller's obligation to deliver good, marketable and insurable title at Closing, Buyer hereby waives all contingencies and conditions to Closing contained in the Contract and shall accept the Property in "AS IS" condition as of the Effective Date of this Fourth Amendment.
8. Otherwise Unchanged. Except as amended by this Fourth Amendment, the Contract remains unchanged and in full force and effect.

(Signatures of the Parties appear on page 3)

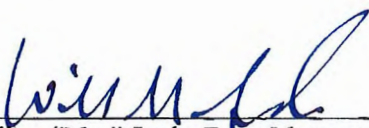


IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment the date and year first written above at Hillsboro Beach, Florida.

BUYER

ATTEST:

TOWN OF HILLSBORO BEACH, FLORIDA:

By:   
William "Mac" Serda, Town Manager

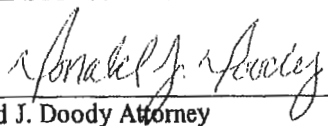
Date: 8.13.20

By:   
Deborah L. Tarrant, Mayor

Date: 8.13.20

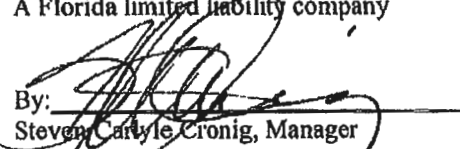
(CITY SEAL):

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

  
Donald J. Doody Attorney

SELLER

WINTER SUN INVESTMENTS, LLC.  
A Florida limited liability company

By:   
Steven Carlyle Cronig, Manager

Date: 8-10-2020