

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-19**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY WITH WINN-DIXIE PROPERTIES, LLC FOR WASTEWATER TREATMENT PLANT AREA # 4 SITE IN AN AMOUNT NOT TO EXCEED \$185,000; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, staff has been negotiating with Winn Dixie to purchase waste water treatment plant site adjacent to Orion Bank property and an access easement behind the Winn Dixie property in an amount not to exceed \$185,000; and

WHEREAS, these plant sites will service all of Service Area 4 from 33rd Street to 60th Street north and south of U.S. Highway 1; and

WHEREAS, this plant has been permitted by the Florida Department of Environmental Protection and will go out to bid in February 2007;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council authorizes the City Manager to enter into a Contract for Purchase and Sale of Real Properties, in the form attached hereto as Exhibit "A", with Winn-Dixie Properties LLC for the purchase of the real property described in Exhibit A for a price not to exceed \$185,000.

Section 3. The City Council hereby declares that this Property is being acquired and shall be held for public good and use.

Section 4. The City Clerk is directed to forward a copy of this resolution to the Monroe County Property Appraiser and Tax Collector.

Section 5. This resolution shall take effect immediately upon its adoption.


PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 13th day of February, 2007.

THE CITY OF MARATHON, FLORIDA


Christopher M. Bull, Mayor

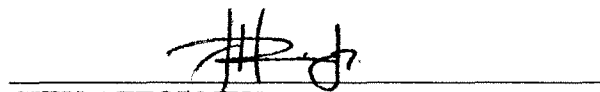
AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Diane Clavier
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**


CITY ATTORNEY

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

[Vaca Key – Marathon, Florida]

This Contract for Purchase and Sale of Real Property (the "Contract") is made and entered into as of the ___ day of January, 2007, by and between **WINN-DIXIE PROPERTIES, LLC**, a Florida limited liability company (the "Seller"), and **The CITY OF MARATHON**, a Florida Municipal Corporation (the "Buyer").

In consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. **Definitions.** The following terms when used in this Contract for Purchase and Sale shall have the following meanings:

1.1 **Acceptance Date.** The Acceptance Date shall be January 20, 30 2007. 

1.2 **Attorneys' Fees.** All reasonable fees and expenses charged by an attorney for its services and the services of any paralegals, legal assistants or law clerks, including (but not limited to) fees and expenses charged for representation at the trial level and in all appeals.

1.3 **Business Day.** Any day that the banks in Monroe County, Florida are open for business, excluding Saturdays and Sundays.

1.4 **Buyer's Address.** The City of Marathon, 10045-55 Overseas Highway, Marathon, Florida 33050; Attn: Susie Thomas, Director of Community Services; Telephone (305) 743-0033; Telecopy (305) 743-3667.

1.5 **Buyer's Attorney.** Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Attention: Robert E. Gallagher, Esq.. Buyer's Attorney's mailing address is 150 West Flagler Street, Suite 2200; Telephone (305) 789-3300; Telecopy (305) 789-3395.

1.6 **Buyer's Costs.** Buyer's documented out-of-pocket costs with respect to the purchase of the Land, including but not limited to charges for surveys, lien searches, title examinations, soil tests, feasibility studies, appraisals environmental audits, engineering and architectural work, and Attorneys' Fees incurred in the negotiation and preparation of this Contract.

1.7 **Cash to Close.** The Purchase Price plus all of Buyer's closing costs specified herein, subject to the adjustments herein set forth, less the Deposit.

1.8 **Closing.** The delivery of the Deed to Buyer concurrently with the delivery of the Purchase Price to Seller.

1.9 Closing Agent. Buyer's Attorney as agent for the Title Company shall be the Closing Agent.

1.10 Closing Date. The date of the Closing, which shall be thirty (30) days after the expiration of the Investigation Period or such other dates as may be provided by this Contract.

1.11 Deed. The Special Warranty Deed which conveys title to the Land from Seller to Buyer.

1.12 Deposit. The sum of Twenty Five Thousand Dollars (\$25,000.00), together with all interest earned on said sum while it is held in escrow by Escrow Agent in accordance with this Contract.

1.13 Effective Date. The date this Contract is executed by the last party (excluding Escrow Agent).

1.14 Escrow Agent. Buyer's Attorney shall be the Escrow Agent.

1.15 Governmental Authority. Any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.

1.16 Governmental Requirement. Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued applicable to the Seller or the Property.

1.17 Hazardous Material. Any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, hazardous wastes or substances or toxic wastes or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials" or "toxic substances" under any applicable Governmental Requirements.

1.18 Improvements. That sewage treatment facility ("STF") located on the Land.

1.19 Investigation Period. The period of time beginning on the Effective Date and ending forty-five (45) calendar days after the Effective Date.

1.20 Land. That certain real property located in Monroe County, Florida consisting of 0.1699 acres, more or less, and more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all property rights, easements,

privileges and appurtenances thereto and all leases, rents, and profits derived therefrom. The Land is vacant, except for the Improvements.

1.21 Property. The Property Records and the Land and the Improvements.

1.22 Property Records. Copies of all the following documents relating to the Property, if in either the possession or control of the Seller: Any and all leases, licenses, permits, authorizations and approvals issued by Governmental Authorities in accordance with Governmental Requirements, development rights, appraisals, paid tax bills for the year 2005, title insurance policies, surveys, site plans, plats, soil tests, reports, engineering reports and similar technical data and information, environmental reports and audits, and material correspondence (which shall mean correspondence, other than attorney/client privileged correspondence, which discloses claims, allegations or adverse information regarding the Property or Seller with respect to the Property or claims, allegations or adverse information that the Property violates any Governmental Requirements, that there is hazardous or toxic waste on or about the Property, or that there are defects, deficiencies or hazardous conditions in or on the Property).

1.23 Purchase Price. The sum of One Hundred Eighty-five Thousand and No/100 Dollars (\$185,000.00);

1.24 Seller's Address. Winn-Dixie Properties, LLC, 5050 Edgewood Court, Jacksonville, Florida 32254 Attention: Vice President, Real Estate; Telephone (904) 783-5000; Telecopy (904) 783-5138.

1.25 Seller's Attorney. General Counsel for the Seller. Seller's General Counsel's mailing address is c/o Winn-Dixie Properties, LLC, 5050 Edgewood Court, Jacksonville, Florida 32254 Telephone (904) 783-5524; Telecopy (904) 783-5138.

1.26 Shopping Center. That Shopping Center generally referred to as the "Winn Dixie Plaza" owned by the Seller adjacent to the Land.

1.27 Synagro. The operator of the Improvements.

1.28 Synagro Operating Agreement. That agreement between Seller and Synagro relating to the operation of the Improvements.

1.29 Title Commitment. An ALTA title insurance commitment (Florida Current Edition) from the Title Company, agreeing to issue the Title Policy to Buyer upon satisfaction of the Buyer's obligations pursuant to this Contract.

1.30 Title Company. Lawyers Title Insurance Corporation or such other nationally recognized title insurance company licensed to write title insurance in the State of Florida approved by Buyer.

1.31 Title Policy. An ALTA Owner's Title Insurance Policy (Florida Current Edition) with Florida modifications in the amount of the Purchase Price, insuring Buyer's title to the Land, subject only to exceptions as agreed to by the Buyer.

2. Purchase and Sale. Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase and acquire the Property from Seller on the terms and conditions hereinafter set forth.

3. Purchase Price. The Purchase Price shall be paid as follows:

3.1 Deposit. Within seven (7) days after the approval of this Contract by Marathon City Council, Buyer will deliver to Escrow Agent the Deposit. The Deposit shall be placed by Escrow Agent in an interest-bearing escrow account with a commercial or savings bank the deposits of which are insured by the FDIC.

3.2 Cash to Close. The Cash to Close and the Deposit shall be paid to Seller in accordance with the closing procedure hereinafter set forth. Buyer shall receive a credit at Closing for the interest earned on the Deposit.

4. Investigation Period.

4.1 Suitability for Use. During the Investigation Period Buyer shall determine, in its sole discretion, whether the Property is suitable for Buyer's use of the Property.

4.2 Seller's Delivery of Property Records. Within three (3) Business Days after the Effective Date, Seller shall deliver to Buyer the Property Records.

4.3 Buyer's Inspection of the Property. During the Investigation Period, and if Buyer elects to go forward with the Closing, from the end of the Investigation Period until the Closing Date, Buyer shall have the right to enter upon the Land and to make all inspections and investigations of the condition of the Land which it may deem necessary, including, but not limited to, soil borings, percolation tests, engineering and topographical studies, and investigations of zoning and the availability of utilities, all of which inspections and investigations shall be undertaken at Buyer's cost and expense. After completing its inspection of the Property, if Buyer elects to terminate this Contract in accordance with this Section, Buyer shall leave the Land in the condition existing on the Effective Date, normal wear and tear and loss due to weather conditions and events excluded.

4.4 Indemnification. Buyer hereby agrees to indemnify Seller and hold Seller harmless against all claims, demands and liability, including Attorneys' Fees, for nonpayment for services rendered to Buyer, for mechanics' liens, or for damage to persons or property arising out of Buyer's investigation of the Property. This indemnification and agreement to hold harmless shall survive the termination of this Contract or the Closing.

4.5 Buyer's Right to Terminate. Buyer may elect to terminate this Contract at any time before the end of the Investigation Period by written notice to Seller and to Escrow Agent. Upon a termination of this Contract, Escrow Agent shall return to Buyer the Deposit and thereafter this Contract shall be terminated and except as otherwise specifically set forth in this Contract, neither Buyer nor Seller shall have any further rights or obligations hereunder.

5. Title.

5.1 Marketable Title to Land. Seller shall convey to Buyer marketable title to the Land, subject only to the exceptions agreed to by the Buyer. Marketable title shall be determined according to the Title Standards adopted by authority of The Florida Bar and in accordance with law.

5.2 Delivery of the Prior Title Policy. Within three (3) Business Days following the Effective Date, Seller shall, at its cost, deliver a prior owner's policy of title insurance (the "Prior Policy") to the Buyer's Attorney. Buyer's Attorney will within two (2) Business Days after receipt of the Prior Policy, order a Title Commitment.

5.3 Buyer to Notify Seller of Additional Exceptions. Buyer shall have seven (7) days from the date of receiving both the Title Commitment and the Survey to examine same. If the Title Commitment reflects that title to the Land is subject to any exception (the "Additional Exceptions") other than the exceptions agreed to by the Buyer, or if at any time after delivery of the Title Commitment and prior to Closing, Buyer receives notice of or otherwise discovers that title to the Land is subject to any Additional Exceptions, Buyer shall notify Seller in writing of the Additional Exceptions to which Buyer objects within ten (10) days after Buyer receives notice of such Additional Exceptions.

5.4 Additional Exceptions. After Buyer has notified Seller of any Additional Exceptions to which Buyer objects, Seller shall have the following options:

5.4.1 Mandatory Additional Exceptions. If the Additional Exceptions are liquidated claims, judgments, taxes (other than taxes which are subject to adjustment pursuant to this Contract), or are otherwise curable by the payment of money, without resort to litigation, then Seller shall be required to remove such Additional Exceptions (the "Mandatory Additional Exceptions") from the Land by taking the actions necessary to have the Mandatory Additional Exceptions deleted by the Title Company, or transferred to bond so that the Mandatory Additional Exceptions are removed from the Title Commitment.

5.4.2 Optional Additional Exceptions. With regard to all Additional Exceptions which are not Mandatory Additional Exceptions (the "Optional Additional Exceptions"), Seller shall have the right, but not the obligation, to take the actions necessary to have the Optional Additional Exceptions deleted by the Title Company, or transferred to bond so that the Optional Additional Exceptions are removed from the Title Commitment. Seller shall provide Buyer with written notice of its election as to whether or not it will cure the Optional Additional Exceptions within five (5) days after

Seller's receipt of Buyer's notice of any Optional Additional Exceptions. If Seller notifies Buyer that it will not attempt to cure the Optional Additional Exceptions, Buyer shall have the option, to be exercised within fifteen (15) days after Buyer's receipt of Seller's notice, to either (a) proceed to Closing and accept title in its existing condition without adjustment to the Purchase Price, or (b) terminate the Contract by sending written notice of termination to Seller and Escrow Agent. Notwithstanding the foregoing, Seller shall be required to cure any Additional Exceptions which are caused by Seller from the earlier of the Effective Date or the date of the Title Commitment through the Closing Date, regardless of the cost to cure such Additional Exceptions.

5.5 Termination of Contract. Upon the termination of this Contract pursuant to a provision set forth in Section 5, Escrow Agent shall return the Deposit to Buyer, and, thereafter, neither Buyer nor Seller shall have any further rights or obligations hereunder except as otherwise provided in this Contract.

6. Survey.

6.1 Delivery of Survey. Within three (3) Business Days after the Effective Date, Seller shall deliver to Buyer a survey (the "Prior Survey") of the Land and all Improvements thereon prepared by a land surveyor or engineer registered and licensed in the State of Florida.

6.2 Survey Defects. Buyer may within ten (10) Business Days from the date of receiving the Prior Survey, order a Current ALTA Survey of the Land (the "Current Survey"). If the Current Survey shows any encroachment on the Land, or that any Improvement located on the Land encroaches on the land of others, or if the Survey shows any other defect which would adversely affects either the marketability of or title to the Property, Buyer shall notify Seller of such defect within ten (10) days after receipt of the Current Survey and such encroachment or defect shall be treated in the same manner as title defects are treated under this Contract.

7. Seller's Representations.

7.1 Representations and Warranties. Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date as follows:

7.1.1 Seller's Existence. Seller is a Florida Corporation duly organized, existing, in good standing and qualified to do business under the laws of Florida, and Seller has full power and authority to own and sell the Property and to comply with the terms of this Contract.

7.1.2 Authority. The execution and delivery of this Contract by Seller and the consummation by Seller of the transaction contemplated by this Contract are within Seller's capacity and all requisite action has been taken to make this Contract valid and binding on Seller in accordance with its terms.

7.1.3 No Legal Bar. The execution by Seller of this Contract and the consummation by Seller of the transaction hereby contemplated does not, and on the Closing Date will not (a) result in a breach of or default under any indenture, agreement, instrument or obligation to which Seller is a party and which affects all or any portion of the Property, (b) result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound, or (c) to Seller's knowledge, constitute a violation of any Governmental Requirement.

7.1.4 No Default. Seller is not in default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Seller is a party and which affects any portion of the Property.

7.1.5 Compliance With Governmental Requirements. To the best of Seller's knowledge, Seller and the Property are in compliance with all Governmental Requirements.

7.1.6 Title. Seller is the owner of marketable title to the Property, free and clear of all liens, encumbrances and restrictions of any kind, except the Permitted Exceptions and encumbrances of record which will be paid and removed at Closing.

7.1.7 Litigation. To the best of Seller's knowledge, there are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened against Seller or the Property affecting any portion of the Property or the Seller's ability to convey marketable and insurable title to the Property.

7.1.8 No Condemnation Pending or Threatened. To the best of Seller's knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.

7.1.9 No Hazardous Material. The Property has not in the past been used and is not presently being used for the handling, storage, transportation or disposal of Hazardous Material.

7.1.10 No Special Assessments or Impact Fees. No portion of the Property is or will be affected by any special assessments or impact fees imposed by any Governmental Authority.

7.1.11 Parties in Possession. There are no parties other than Seller in possession of any portion of the Land, except for Synagro, under the Synagro Operating Agreement.

7.1.12 Commitments to Governmental Authorities. Seller has made no commitments relating to the Property have been made to any Governmental Authority, utility company, school board, church or other religious body or any homeowner

or homeowners association or any other organization, group or individual which would impose an obligation upon Buyer or its successors or assigns to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Land; and no Governmental Authority has imposed any requirement that any developer of the Land pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with the development of the Land.

7.1.13 Adverse Information. Seller has no information or knowledge of (a) any Governmental Requirement, (b) any change contemplated in any Governmental Requirement, (c) any judicial or administrative action, (d) any action by adjacent landowners, (e) any natural or artificial conditions upon the Land, or (f) any other fact or condition of any kind or character whatsoever which would prevent, limit, impede, render more costly or adversely affect Buyer's Intended Use of the Property.

7.2 Survival of Representations. All of the representations of the Seller set forth in this Contract shall be true upon the execution of this Contract, shall be deemed to be repeated at and as of the Closing Date, and shall be true as of the Closing Date. All of the representations, warranties and agreements of the Seller set forth in this Contract shall survive the Closing.

8. Seller's Affirmative Covenants.

8.1 Acts Affecting Property. From and after the Effective Date, Seller will not (a) perform any grading, excavation, construction, or removal of any Improvements, or making any other change or improvement upon or about the Property; (b) create or incur, or suffer to exist, any mortgage, lien, pledge, or other encumbrances in any way affecting the Property other than the Permitted Exceptions; and (c) commit any waste or nuisance upon the Property.

8.2 Maintenance of Property. From the Effective Date until the Closing, the Property will be kept in good order and Seller will make all repairs and replacements, structural and nonstructural, ordinary and extraordinary, required with respect to any portion of the Property. Seller will observe all Governmental Requirements affecting the Property and its use, until the Closing Date.

8.3 Notice of Changes in Laws. Seller will advise Buyer promptly of any change in any applicable Governmental Requirement which might affect the value or use of the Property to Buyer of which Seller obtains knowledge.

8.4 Application(s) for Permits and Other Applications and Documents Relating Thereto. From and after the Effective Date, upon the request of the Buyer, the Seller shall no later than three (3) Business Days after receiving a request from the Buyer, accompanied by a completed application, execute such application(s) for permits and other applications and documents relating thereto for the Buyer to obtain such permits as may be required by any Governmental Authority for the Buyer to construct a

sewage treatment facility and any ancillary facilities related thereto on the Land. Buyer shall pay any and all applicable fees relating to said applications.

8.5 Further Assurances. In addition to the obligations required to be performed hereunder by Seller at the Closing, Seller agrees to perform such other acts, and to execute, acknowledge, and deliver subsequent to the Closing such other instruments, documents, and other materials as Buyer may reasonably request in order to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Buyer.

9. Buyer's Representations. Buyer hereby represents and warrants to the Seller as of the Effective Date and as of the Closing Date as follows:

9.1 Buyer's Existence and Authority. Buyer is a Florida Municipal Corporation and subject to and conditioned upon Buyer obtaining approval from its City Council to enter into this Contract, which Consent shall only be evidenced by a resolution duly adopted by the City Council, Buyer will have full power and authority to purchase the Property and to comply with the terms of this Contract.

10. Conditions to Buyer's Obligation to Close.

10.1 Buyer shall not be obligated to close under this Contract unless and until each of the following conditions are either fulfilled or waived, in writing, by Buyer:

10.1.1 Approval by Buyer's City Council: Buyer shall obtain a duly authorized resolution adopted by the City Council of the Buyer approving this Contract and Buyer's performance hereunder.

10.1.2 The Access. Buyer has obtained a perpetual non-exclusive easement for vehicular, pedestrian and utility access to the land, in recordable and insurable form, a copy of which is attached hereto as EXHIBIT "B" and made a part hereof.

10.1.3 Assignment of Synagro Operating Agreement. The assignment of the Synagro Operating Agreement from the Seller to the Buyer. Synagro shall have delivered on or before the Closing Date, an estoppel letter, confirming that neither Seller nor Synagro are in default under the Synagro Operating Agreement and confirming that all fees due Synagro under the Synagro Operating Agreement had been paid through the Closing Date.

10.1.4 Compliance with Covenants. Seller shall have performed all covenants, agreements and obligations and complied with all conditions required by this Contract to be performed or complied with by Seller prior to the Closing Date.

10.1.5 Delivery of Documents. Seller shall be prepared to deliver to Buyer all instruments and documents to be delivered to Buyer at the Closing pursuant to this Contract.

10.1.6 No Prior Termination. This Contract shall not have been previously terminated pursuant to any other provision hereof.

10.1.7 Satisfaction of Other Conditions. All conditions to Closing otherwise contained in this Contract shall have been satisfied.

10.1.8 Application(s) for Permits. Seller shall have promptly executed the application(s) as set forth in Section 8.4 of this Contract.

10.1.9 Representations and Warranties and Seller's Affirmative Covenants. All of Seller's representations and warranties shall be true and correct and Seller shall have strictly complied with all of Seller's Affirmative Covenants.

10.1.10 Status of Title. The status of title to the Land shall be as required by this Contract.

10.2 Failure to Satisfy Conditions. Should the conditions to Buyer's obligation to close under the Contract be not satisfied or waived at or before the Closing Date, in addition to such other rights that the Buyer may have pursuant to this Contract, the Buyer shall have the right to terminate this Contract upon written notice to the Seller and upon such termination, receive a return of the Deposit from the Escrow Agent and thereafter neither Buyer nor Seller shall have any further obligations under this Contract.

11. Closing. Subject to all of the provisions of this Contract, Buyer and Seller shall close this transaction on the Closing Date commencing at 10:00 a.m. The Closing shall take place at the office of Buyer's Attorney.

12. Seller's Closing Documents.

12.1 Documents. At Closing, Seller shall deliver the following documents ("Seller's Closing Documents") to Buyer:

12.1.1 Deed. The Deed which shall be duly executed and acknowledged by Seller so as to convey to Buyer good and marketable fee simple title to the Land free and clear of all liens, encumbrances and other conditions of title other than the Permitted Exceptions.

12.1.2 Seller's No Lien, Gap and FIRPTA Affidavit. An affidavit from Seller attesting that (a) no individual, entity or Governmental Authority has any claim against the Property under the applicable contractor's lien law, (b) except for Seller, no individual, entity or Governmental Authority is either in possession of the Property or has a possessory interest or claim in the Property, and (c) no improvements to the Property have been made for which payment has not been made. The Seller's affidavit

shall include language sufficient to enable the Title Company to insure the "gap", i.e., delete as an exception to the Title Commitment any matters appearing between the effective date of the Title Commitment and the effective date of the Title Policy. The affidavit shall also include the certification of non-foreign status required under Section 1445 of the Internal Revenue Code to avoid the withholding of income tax by the Buyer.

12.1.3 Bill of Sale. An absolute bill of sale with full warranty of title conveying the Personal Property to Buyer free and clear of all liens, encumbrances and security interests.

12.1.4 General Assignment. A General Assignment, assigning to Buyer all of Seller's rights to the Land, including but not limited to, rights to water and sewer allocations, rights to storm water drainage, rights to impact fee credits, development rights and rights, assignment of all of Seller's rights in and to any application(s) and for permits to allocate to the Property, development units.

12.1.5 Assignment of Synagro Operating Agreement from the Seller to the Buyer assigning all of Seller's rights under the Agreement and the obligations which accrue after the Closing Date.

12.1.6 Closing Statement. A closing statement setting forth the Purchase Price, Deposit and all credits, adjustments and prorations between Buyer and Seller, and the net Cash to Close due Seller.

12.1.7 Form 1099-B. Such federal income tax reports respecting the sale of the Property as are required by the Internal Revenue Code of 1986.

12.1.8 Authorizing Resolutions. Certificates of such resolutions in form and content as Buyer may reasonably request evidencing Seller's existence, power, and authority to enter into and execute this Contract and to consummate the transaction herein contemplated.

12.2 Pre-Closing Delivery. Copies of Seller's Closing Documents shall be delivered to Buyer's Attorney for review not less than five (5) days prior to the Closing Date.

13. Closing Procedure. The Closing shall proceed in the following manner:

13.1 Transfer of Funds. Buyer shall pay the Cash to Close and Escrow Agent shall deliver the Deposit to the Closing Agent by wire transfer to a depository designated by Closing Agent.

13.2 Delivery of Documents. Buyer shall deliver Buyer's Closing Documents, to Closing Agent.

13.3 Disbursement of Funds and Documents. Once the Title Company has "insured the gap," i.e., endorsed the Title Commitment to delete the exception for matters appearing between the effective date of the Title Commitment and the effective date of the Title Policy, then Closing Agent shall disburse the Deposit, Cash to Close, and Buyer's Closing Documents to Seller, provided, however, that Closing Agent shall record the Deed in the Public Records of Monroe County, Florida.

14. Prorations and Closing Costs.

14.1 Prorations. The following items shall be prorated and adjusted between Seller and Buyer as of the midnight preceding the Closing, except as otherwise specified:

14.1.1 Taxes. Real estate and personal property taxes shall be prorated on the following basis:

14.1.1.1 If a tax bill for the year of Closing is available, then proration shall be based upon the current bill.

14.1.1.2 If the assessment for the year is available, but not the actual tax bill, then proration shall be based upon the prior years real estate taxes.

14.1.1.3 In all events proration shall be include the maximum discount for early payment of taxes.

14.1.2 Pending and Certified Liens. Certified municipal liens and pending municipal liens for which work has been substantially completed shall be paid by the Seller and other pending liens shall be assumed by the Buyer.

14.1.3 Utilities. Water, sewer, electricity, gas and other utility charges, if any, shall be prorated on the basis of the fiscal period for which assessed, except that if there are utility meters for the Property, apportionment at the Closing shall be based on the last available reading.

14.2 Reproration of Taxes. At the Closing, the above-referenced items shall be prorated and adjusted as indicated. If subsequent to the Closing taxes for the year of Closing are determined to be higher or lower than as prorated, a reproration and adjustment will be made at the request of Buyer or Seller upon presentation of actual tax bills, and any payment required as a result of the reproration shall be made within ten (10) days following demand therefor. All other prorations and adjustments shall be final. This provision shall survive the Closing.

14.3 Seller's Closing Costs. Seller shall pay for the following items prior to or at the time of Closing:

Documentary stamps on Deed
Certified and pending municipal special

assessment liens for which the work has
been substantially completed
Title Commitment
Prior Survey

14.4 Buyer's Closing Costs. Buyer shall pay for the following items prior to or at the time of Closing:

Recording of Deed
Pending special assessment liens for which the work has not
been substantially completed Abstract
Title Policy
Current Survey

15. Possession. Buyer shall be granted full possession of the Property at Closing.

16. Post Closing Agreement. The Buyer and Seller hereby agree, which agreement shall survive the Closing contemplated by this Contract, to the following:

16.1 Prior to the STF being deactivated, the Buyer will pay the cost to install sewer lines required to service the Shopping Center, owned by the Seller, presently being serviced by the STF to a facility which is owned by Eastwinds but operated by Synagro, under a separate contract between Eastwinds and Synagro; and

16.2 The Buyer will cause to be installed, a "flow meter" on the sewer line to the Eastwinds facility from the Shopping Center to measure the effluent flowing from the Shopping Center for treatment at the East Winds facility. The (monthly/quarterly) cost for the Seller to use of the Eastwinds facility shall be the lesser of the Seller's (monthly/quarterly) cost to operate the existing STF or the fee charged by Eastwinds; and

16.3 The Buyer will at its cost, deactivate the existing STF; and

16.4 When the new sewer system is completed and activated, the Seller will then tie in to the new facility and pay the scheduled "hook up" fees to tie in to the new facility, at which time, the lines from the Shopping Center to the Eastwinds facility shall be deactivated.

17. Condemnation and Damage by Casualty.

17.1 Condemnation. In the event of the institution of any proceedings by any Governmental Authority which shall relate to the proposed taking of any portion of the Property by eminent domain prior to Closing, or in the event of the taking of any portion of the Property by eminent domain prior to Closing, Seller shall promptly notify Buyer and Buyer shall thereafter have the right and option to terminate this Contract by giving Seller written notice of Buyer's election to terminate within fifteen (15) days after receipt by Buyer of the notice from Seller. Seller hereby agrees to furnish Buyer with

written notice of a proposed condemnation within two (2) Business Days after Seller's receipt of such notification. Should Buyer terminate this Contract, the Deposit shall immediately be returned to Buyer and thereafter the parties hereto shall be released from their respective obligations and liabilities hereunder. Should Buyer elect not to terminate, the parties hereto shall proceed to Closing and Seller shall assign all of its right, title and interest in all awards in connection with such taking to Buyer.

17.2 Damage by Casualty. It is the intention of the parties that on the Closing Date, Seller shall transfer to Buyer the Property in its present state and condition, subject only to reasonable wear and tear. Therefore, risk of loss to the Property from fire, windstorm or other casualty shall be borne by Seller until the Closing Date.

18. Misrepresentations; Non-Satisfaction of Conditions; Default.

18.1 Buyer's Pre-Closing Remedies for Seller's Misrepresentations. In the event that Buyer becomes aware prior to Closing that any of Seller's warranties or representations set forth in this Contract are not true on the Effective Date or at anytime thereafter but prior to Closing, and in the event that Seller is unable to render any such representation or warranty true and correct as of the Closing Date, Buyer may either: (a) terminate this Contract by written notice thereof to Seller and Escrow Agent, in which event the Deposit shall be returned to Buyer, Seller shall reimburse Buyer for Buyer's Costs and the parties will be relieved of all further obligations hereunder, or (b) elect to close under this Contract notwithstanding the failure of such representation, in which event the Closing shall not be deemed a waiver by Buyer of the failure of such representation and warranty and the Buyer may recover from the Seller any damages sustained by the Buyer.

18.2 Buyer's Post-Closing Remedies for Seller's Misrepresentations. From and after the Closing, Seller agrees to indemnify Buyer and hold Buyer harmless and defend Buyer from and against any and all loss, cost, claims, liabilities, damages and expenses, including, without limitation, Attorneys' Fees, arising as the result of a breach of any of the representations or warranties of Seller.

18.3 Buyer's Remedies for Seller's Failure to Satisfy Conditions to Closing. In addition to any other remedy that Buyer may have for Seller's breach of this Contract, if the conditions to Buyer's obligations have not been satisfied on or before the Closing Date, Buyer shall have the option of continuing the Closing Date for a period not to exceed six (6) months until such time as the conditions have been satisfied. This option is a continuing option and not an election of remedies; therefore, at any time after the originally scheduled Closing Date if the conditions to Buyer's obligations to close have not been satisfied, Buyer can elect to terminate this extension of the Closing Date and pursue its remedies against Seller as elsewhere provided in this Contract.

18.4 Buyer's Remedies for Seller's Default. In the event that this transaction fails to close due to a refusal to close or default on the part of Seller, Buyer as its sole remedy shall have the right to elect any one of the following options:

18.4.1 Buyer may terminate the Contract, receive a return of the Deposit from Escrow Agent and the payment from Seller of Buyer's Costs, and thereafter neither Buyer nor Seller shall have any further obligations under this Contract.

18.4.2 Buyer may receive a return of the Deposit from the Escrow Agent and seek specific performance of the Contract.

18.5 Seller's Remedies for Buyer's Default. In the event that this transaction fails to close due to a refusal or default on the part of Buyer, of the Deposit shall be paid by the Escrow Agent shall be paid to the Seller as agreed-upon liquidated damages and thereafter, except as otherwise specifically set forth in this Contract, neither Buyer nor Seller shall have any further obligation under this Contract. Buyer and Seller acknowledge that if Buyer defaults, Seller will suffer damages in an amount which cannot be ascertained with reasonable certainty on the Effective Date and that the portion of the Deposit to be paid to Seller most closely approximates the amount necessary to compensate Seller in the event of such default. Buyer and Seller agree that this is a bona fide liquidated damage provision and not a penalty or forfeiture provision.

18.6 Notice and Opportunity to Cure Defaults. Prior to either Buyer or Seller declaring a default under this Contract, the non-defaulting party shall send written notice of the default to the defaulting party and to the Escrow Agent. The defaulting party shall have a period of ten (10) days after receipt of the notice of default to cure such default. Neither Buyer nor Seller shall be entitled to any of the remedies set forth in this section prior to the sending of a notice of default to the defaulting party and the allowance of an opportunity to cure such default within ten (10) days after the receipt of the notice by the defaulting party.

19. Brokers.

19.1 Indemnification. Each party represents to the other that no broker other than the Broker has been involved in this transaction. It is agreed that if any claims for brokerage commissions or fees are ever made against Seller or Buyer in connection with this transaction, all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim. It is further agreed that each party agrees to indemnify and hold harmless the other from and against any and all such claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm, or corporation in connection with this Contract or the transactions contemplated hereby.

20. Notices. Any notice, request, demand, instruction or other communication to be given to either party hereunder, except where required to be delivered at the Closing, shall be in writing and shall either be (a) hand-delivered, (b) sent by Federal Express or a comparable overnight mail service, or (c) sent by telephone facsimile transmission provided that an original copy of the transmission shall be mailed by regular mail, to Buyer, Seller, Buyer's Attorney, Seller's Attorney, and Escrow Agent, at their respective addresses set forth in Section 1 of this Contract. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and

addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

21. Escrow Agent. The escrow of the Deposit shall be subject to the following provisions:

21.1 Duties and Authorization. The payment of the Deposit to the Escrow Agent is for the accommodation of the parties. The duties of the Escrow Agent shall be determined solely by the express provisions of this Contract. The parties authorize the Escrow Agent, without creating any obligation on the part of the Escrow Agent, in the event this Contract or the Deposit becomes involved in litigation, to deposit the Deposit with the clerk of the court in which the litigation is pending and thereupon the Escrow Agent shall be fully relieved and discharged of any further responsibility under this Contract. The undersigned also authorize the Escrow Agent, if it is threatened with litigation, to interplead all interested parties in any court of competent jurisdiction and to deposit the Deposit with the clerk of the court and thereupon the Escrow Agent shall be fully relieved and discharged of any further responsibility hereunder.

21.2 Liability. The Escrow Agent shall not be liable for any mistake of fact or error of judgment or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. The Escrow Agent shall be entitled to rely on any instrument or signature believed by it to be genuine and may assume that any person purporting to give any writing, notice or instruction in connection with this Contract is duly authorized to do so by the party on whose behalf such writing, notice, or instruction is given.

21.3 Indemnification. The parties will, and hereby agree to, jointly and severally, indemnify the Escrow Agent for and hold it harmless against any loss, liability, or expense incurred without gross negligence or willful misconduct on the part of the Escrow Agent arising out of or in connection with the acceptance of, or the performance of its duties under, this Contract, as well as the costs and expenses of defending against any claim or liability arising under this Contract. This provision shall survive the Closing or termination of this Contract.

21.4 Buyer's Attorney. Seller acknowledges that the Escrow Agent is also Buyer's Attorney in this transaction, and that Seller hereby consents to the Escrow Agent's representation of Buyer in any litigation which may arise out of this Contract.

22. Assignment. This Contract may not be assigned by Buyer without Seller's consent.

23. Miscellaneous.

23.1 Counterparts and Execution via Electronic Transmission. This Contract may be executed in any number of counterparts, any one and all of which shall constitute the contract of the parties and each of which shall be deemed an original. The

execution of this Contract and delivery via electronic transmission shall be sufficient for all purposes and shall be binding on the party who so executes.

23.2 Section and Paragraph Headings. The section and paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Contract.

23.3 Amendment. No modification or amendment of this Contract shall be of any force or effect unless in writing executed by both Seller and Buyer.

23.4 Attorneys' Fees. If any party obtains a judgment against any other party by reason of breach of this Contract, Attorneys' Fees and costs shall be included in such judgment.

23.5 Governing Law. This Contract shall be interpreted in accordance with the internal laws of the State of Florida, both substantive and remedial.

23.6 Entire Contract. This Contract sets forth the entire agreement between Seller and Buyer relating to the Property and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

23.7 Time of the Essence. Time is of the essence in the performance of all obligations by Buyer and Seller under this Contract.

23.8 Computation of Time. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays in the computation thereof. Any time period provided for in this Contract which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full Business Day.

23.9 Successors and Assigns. This Contract shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto.

23.10 Survival. All representations and warranties of Seller set forth in this Contract shall survive the Closing.

23.11 Acceptance Date. This Contract shall be null and void and of no further force and effect unless a copy of same executed by Seller is delivered to Buyer by the close of business on the Acceptance Date.

23.12 Construction of Contract. All of the parties to this Contract have participated freely in the negotiation and preparation hereof; accordingly, this Contract shall not be more strictly construed against any one of the parties hereto.

23.13 Gender. As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular as the context may require.

23.14 Notice Regarding 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 and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates indicated below.

SELLER:

WINN-DIXIE PROPERTIES, LLC
a Florida limited liability company

By: *Philip S. Cantale*
President

Date: January 30, 2007

LEGAL APPROVED
ATTY: 13E
DATE: 1/30/07

BUYER:

The CITY OF MARATHON,
a Florida Municipal Corporation

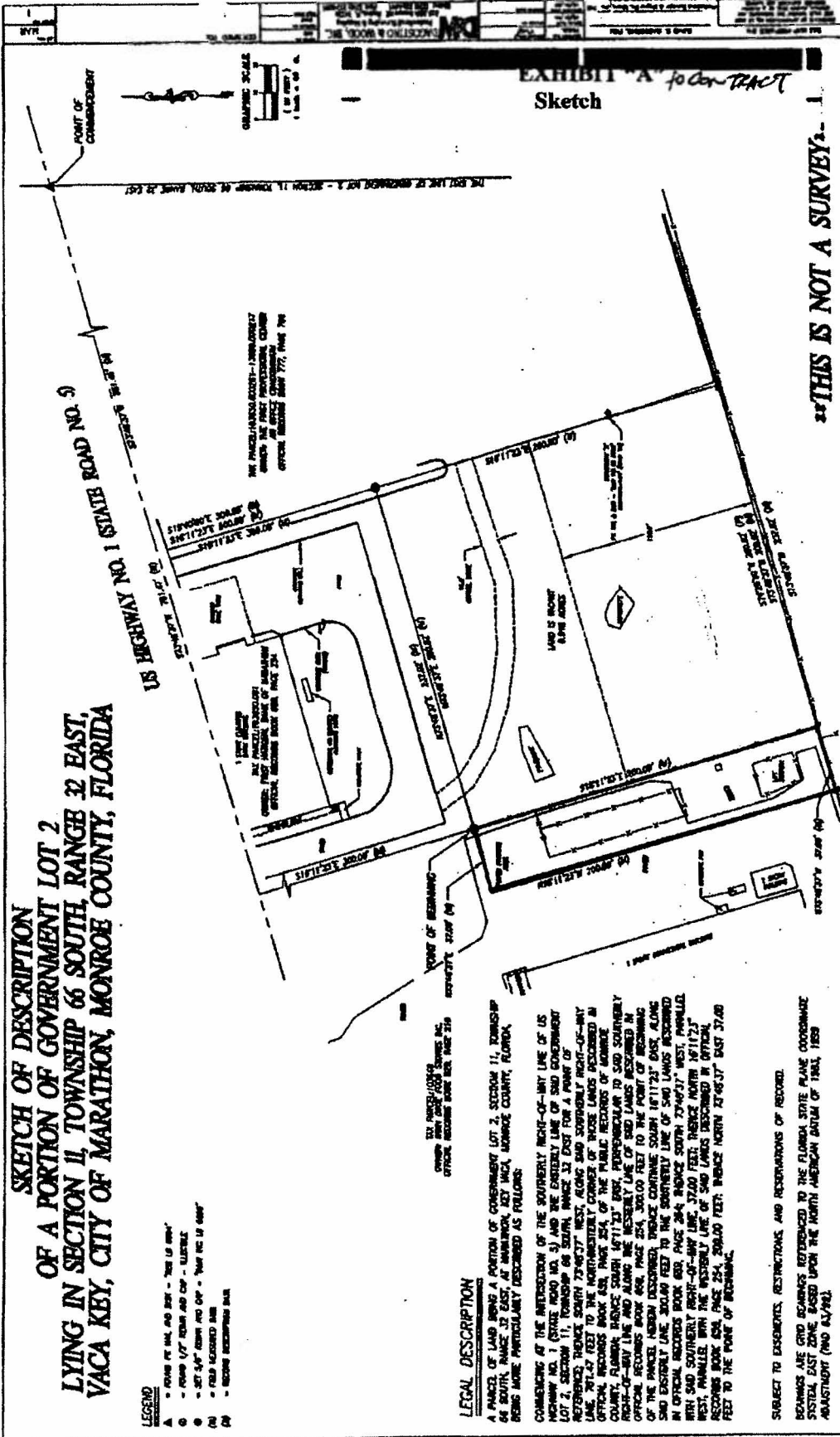
By: *Michael Puto*
Mike Puto
Its City Manager

Date: Jan 19, 2007

ESCROW AGENT: (as to only those Sections of the Contract pertaining to the Escrow Agent's rights and responsibilities): Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

By: _____
Robert E. Gallagher, Jr.

Date: _____, 2006



**SKETCH OF DESCRIPTION
OF A PORTION OF GOVERNMENT LOT 2
LYING IN SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST,
VACA KEY, CITY OF MARATHON, MONROE COUNTY, FLORIDA**

- LEGEND**
- ▲ - POINT OF COM. AND COR. - THIS IS ONLY
 - - POINT 1/2" FROM END OF - SURVEY
 - - SET 3/4" FROM END OF - SURVEY
 - - FIELD RECORDED LINE
 - - RECORD RECORDED LINE

LEGAL DESCRIPTION

A PORTION OF LAND BEING A PORTION OF GOVERNMENT LOT 2, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST, AT MARATHON, VACA KEY, MONROE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY NO. 1 (STATE ROAD NO. 9) AND THE EXTENDED LINE OF SAID GOVERNMENT LOT 2, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST, ON THE POINT OF BEGINNING; THENCE SOUTH 73°46'37" WEST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 212.47 FEET TO THE NORTHEASTERLY CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 638, PAGE 254, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; THENCE SOUTH 16°11'23" EAST, PROPOSEDLY TO SAID SOUTHERLY RIGHT-OF-WAY LINE AND ALONG THE WESTERN LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 638, PAGE 254, 300.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUE SOUTH 16°11'23" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 37.00 FEET; THENCE SOUTH 73°46'37" WEST, PARALLEL WITH SAID SOUTHERLY RIGHT-OF-WAY LINE, 37.00 FEET; THENCE NORTH 16°11'23" WEST, PARALLEL WITH THE WESTERN LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 638, PAGE 254, 204.00 FEET; THENCE NORTH 27°46'37" EAST 37.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD. DIMENSIONS ARE GRID DIMENSIONS REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1983 ADJUSTMENT (NAD 83).

THIS IS NOT A SURVEY.

**EXHIBIT 'A' to CONTRACT
SKETCH**

This Instrument Was Prepared By, Record
and Return to:

Robert E. Gallagher, Jr., Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler St., Suite 2200
Miami, Florida 33130

DECLARATION OF NON-EXCLUSIVE IRREVOCABLE EASEMENT

[WINN-DIXIE PLAZA]

THE PARTIES

This Declaration of a Non-Exclusive Irrevocable Easement (the "Declaration") is made and entered into as of _____, 2007 by and between Winn-Dixie Properties, LLC, a Florida limited liability company, its successors and assigns (the "Grantor"), having an address of 5050 Edgewood Court Jacksonville, Florida 33254, and the City of Marathon, a Florida municipal corporation, its successors and assigns, having an address of 10045-55 Overseas Highway Marathon, Florida 33050 (the "Grantee"). Wachovia Bank, National Association, as Administrative Agent and Collateral Agent, has joined in the execution of this Declaration for the sole purpose of subordinating the lien of the mortgage, as hereinafter described, to Grantor's grant of this Easement.

RECITALS

A. The Grantor is the owner in fee simple of that certain parcel of real property more particularly described in Exhibit "A" attached hereto and made a material part hereof (the "Easement Parcel").

B. Grantee requires access to that certain real property which the Grantee, as buyer is acquiring from the Grantor, as seller more particularly described in Exhibit "B" attached hereto and made a material part hereof (the "Benefited Parcel")

C. The Easement Parcel connects the Benefited Parcel to Sombrero Beach Road ("SBR").

D. Grantor recognizes the necessity for Grantee to have access to and from the Benefited Parcel to SBR and all the rights granted hereunder.

CONSIDERATION

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

TERMS, AGREEMENTS, COVENANTS AND CONDITIONS

1. Grant of Easement. Grantor hereby grants and conveys to Grantee and its successors and assigns and unto the owners and occupants of all or part of the Benefited Parcel, their heirs, legal representatives, successors and assigns, and unto their servants, agents, employees, guests, licensees, and invitees, a perpetual non-exclusive easement over, across and under the Easement Parcel. The easement herein granted is an easement appurtenant and is for the purposes of (i) ingress and egress for persons, motor vehicles, trucks, bikes, motorcycles, material, equipment and trailers, and (ii) installing, constructing, maintaining, repairing, removing and replacing, as necessary, any and all utility services, including but not limited to, mains, lines, pipes, conduits, poles, wires, lift stations and junction boxes for sewer, water, electric, telephone, gas and cable or any other communication service (the "Utility Services") to service the Benefited Parcel. The Grantee shall have the right, from time to time, to install, maintain and replace on, over and under the Easement Parcel, the Utility Services. Installation and maintenance of the Utility Services shall be undertaken so as not to unreasonably disturb the Easement Parcel, recognizing the scope of the work required for the installation and maintenance of the Utility Services. Following the installation, repair or maintenance of the Utility Services, Grantee shall restore the Easement Parcel to the condition which existed prior to such work, including, without limitation, the restoration of all roadways, curbs and drainage.

2. Grantor's Responsibilities. Other than Grantee's obligations to repair and restore the Easement Parcel, as set forth and as limited in Section 1 above, the Grantor is solely responsible for all expenses arising from or related to the planning, design, engineering, development, construction and maintenance of the Easement Parcel.

3. No Public Dedication. Nothing contained in this grant of easement shall, in any way, be deemed or constitute a gift of or dedication of any portion of the Easement Parcel to the general public or for the benefit of the general public whatsoever, it being the intention of the parties hereto that this grant of easement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

4. Indemnity. Grantee hereby indemnifies and holds harmless the Grantor from any and all actions, causes of action, claims, liabilities, demands and losses of any kind whatsoever which may be filed or made against Grantor by reason of the Grantee's use of the Easement Parcel and the rights granted hereunder. Grantor hereby indemnifies and holds Grantee harmless from any and all other actions, causes of action, claims, liabilities, demands and losses of any kind whatsoever which may be filed or made against Grantee. Grantor and Grantee shall each obtain and keep in full force and effect the types of insurance listed below, placed with a company licensed to transact business in the state where the Shopping Center is located and rated at least "A-" or A in the most recent edition of Best's Insurance Report. Certificates of insurance shall be issued that shall show Grantor and Grantee as insured parties,

shall contain waivers of subrogation, and shall provide thirty (30) days notice to Grantor and Grantee prior to cancellation, material reduction in policy limits, or any other change adverse to Grantor and Grantee interests.

Grantee shall carry, at its sole expense, commercial general liability insurance coverage on the Easement Parcel, stipulating limits of liability of not less than \$1,000,000.00 and deductibles of not more than \$250,000.00. Grantee hereby expressly waives any and all claims against Grantor for loss or damage covered by such insurance, or which would have been covered if such insurance had been obtained and maintained as required by this Easement, regardless of the cause of such damage, including, without limitation, damage resulting from the negligence of Grantor, its agents, servants or employees.

Grantor shall carry, at its sole expense, commercial general liability insurance coverage on the Easement Parcel, stipulating limits of liability of not less than \$1,000,000.00 and deductibles of not more than \$250,000.00. Grantor hereby expressly waives any and all claims against Grantee for loss or damage covered by such insurance, or which would have been covered if such insurance had been obtained and maintained as required by this Easement, regardless of the cause of such damage, including, without limitation, damage resulting from the negligence of Grantee, its agents, servants or employees. Notwithstanding the foregoing, so long as Grantor maintains a net worth in excess of \$100 Million, Grantor may self-insure and shall not be required to provide any insurance certificates to Grantee. If Grantor has "self insured" and a claim is made or a loss incurred which would have been covered by the insurance described in subparagraphs (b)(1) or (2) above, then Grantor shall be liable to, and shall indemnify and hold harmless Grantee against any such claim or loss, and Grantor shall pay any settlement or judgment resulting therefrom up to the aforementioned policy limits. As to property losses, Grantor shall pay the replacement cost thereof.

5. Enforcement. The terms and conditions of this Declaration shall run with the Easement Parcel and shall inure to the benefit of and be enforceable by the Grantee and the Grantor, their respective legal representatives, successors and assigns, and the Grantee and the Grantor, each shall have a right of action to enforce by proceedings at law or in equity all conditions and covenants imposed by the provisions of this Declaration, or any amendment thereto, including the right to prevent the violation of such conditions and covenants and the right to recover actual damages for such violation (but not consequential or punitive damages).

6. Liens. Grantee shall not permit any mechanics lien or similar lien arising by reason of Grantee's work relating to the Easement Parcel to remain an encumbrance against the Easement Parcel. Grantee may bond over and contest the validity of any such mechanics lien in lieu of payment thereof.

7. No Waiver. Failure by either party to enforce any covenant, condition or restriction contained in this Declaration in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other covenant, condition or restriction.

8. Severability. Invalidation of any one or a portion of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

9. Attorney's Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the prevailing party in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

10. Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly delivered when directed to the addressee as follows:

If to Grantee: City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Attention: City Manager
Phone: 1-305-289-4103
Fax: 1-305-289-4123

With a copy to
Grantee's Attorney: Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Ste. 2200
Miami, Florida 33130
Attention: John Herin, Esq.
Phone: 305-789-3427
Fax: 305-789-3395

If to Grantor: Winn-Dixie Properties, LLC
5050 Edgewood Court
Jacksonville, Florida 32254
Attention: Vice President, Real Estate
Phone: 904-783-5000
Fax: 904-783-5138

With a copy to
Grantor's Attorney: General Counsel
for the Grantor
5050 Edgewood Court
Jacksonville, Florida 32254
Phone: 904-783-5000
Fax: 904-783-5138

Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand delivered, (ii) sent by Federal Express or a comparable overnight mail service, or (iii) sent by telephone facsimile transmission provided an original copy of the transmission shall be mailed by regular mail, all at or to the

respective addresses set forth above. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

11. Captions. Captions used in this Declaration are for information purposes only and do not alter, modify or add to the terms of this Declaration.

12. Governing Law. This Declaration will be governed and interpreted pursuant to the laws of the State of Florida. Grantor and Grantee, their successors and assigns, shall perform all of their respective obligations under this Declaration in compliance with all applicable laws.

13. Modification/Entire Agreement. This Declaration may be modified only in a writing executed by the parties to this Declaration or their respective successors or assigns. This Declaration constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Waiver of Jury Trial. Grantor and Grantee hereby knowingly, voluntarily and intentionally, waive trial by jury in any action brought by one against the other in connection with any matter arising out of or in any way connected with this easement agreement. This waiver shall apply to any original claim, counterclaim, cross claim, or other claim of any kind asserted by either party in any such action. Neither party nor any representative of either party, including counsel, has represented to the other that it would not seek to enforce this waiver of right to jury trial in any such action. The parties acknowledge that the provisions of this section are a material inducement to their entering into this easement agreement.

As to the Grantor:

Winn-Dixie Properties, LLC, a Florida limited liability company

PRINT NAME

By: _____

Name: _____

Its: _____

PRINT NAME

STATE OF FLORIDA)

COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007 by _____, as the ____ President of Winn-Dixie Properties, LLC, a Florida limited liability company, on behalf of the corporation, who is either personally known to me or produced a _____ as identification.

Notary Public
State of Florida at Large
My Commission Expires:

As to the Grantee:

City of Marathon, a Florida municipal corporation

PRINT NAME

By: _____
Mike Puto, its City Manager

PRINT NAME

STATE OF FLORIDA)
)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006 by Mike Puto as a City Manager of the City of Marathon, a Florida municipal corporation, on behalf of the City, who is personally known to me or produced a _____ as identification.

Notary Public
State of Florida at Large
My Commission Expires:

Wachovia Bank, National Association, as Administrative Agent and Collateral Agent, as Mortgagee has joined in this execution of this Declaration for the sole and limited purpose to confirm the subordination of the lien of that Fee and Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of February 23, 2005 from Winn-Dixie Stores, Inc., as mortgagor, for the benefit of Wachovia Bank, National Association, as Administrative Agent and Collateral Agent, as mortgagee, recorded July 5, 2005, in Official Records Book 2129, Page 1464, as modified by Modification No. 1, Bifurcation, Assignment and Assumption of Fee and Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of _____, 2006 by and between Winn-Dixie Properties, LLC, as mortgagor, and Wachovia Bank, National Association, as Administrative Agent and Collateral Agent, as mortgagee, recorded _____, 2006, in Official Records Book _____, Page _____ of the Public Records of Monroe County, Florida.

WACHOVIA BANK, National Association,
as Administrative Agent and Collateral Agent

PRINT NAME

By: _____
Name: _____
Its: _____

PRINT NAME

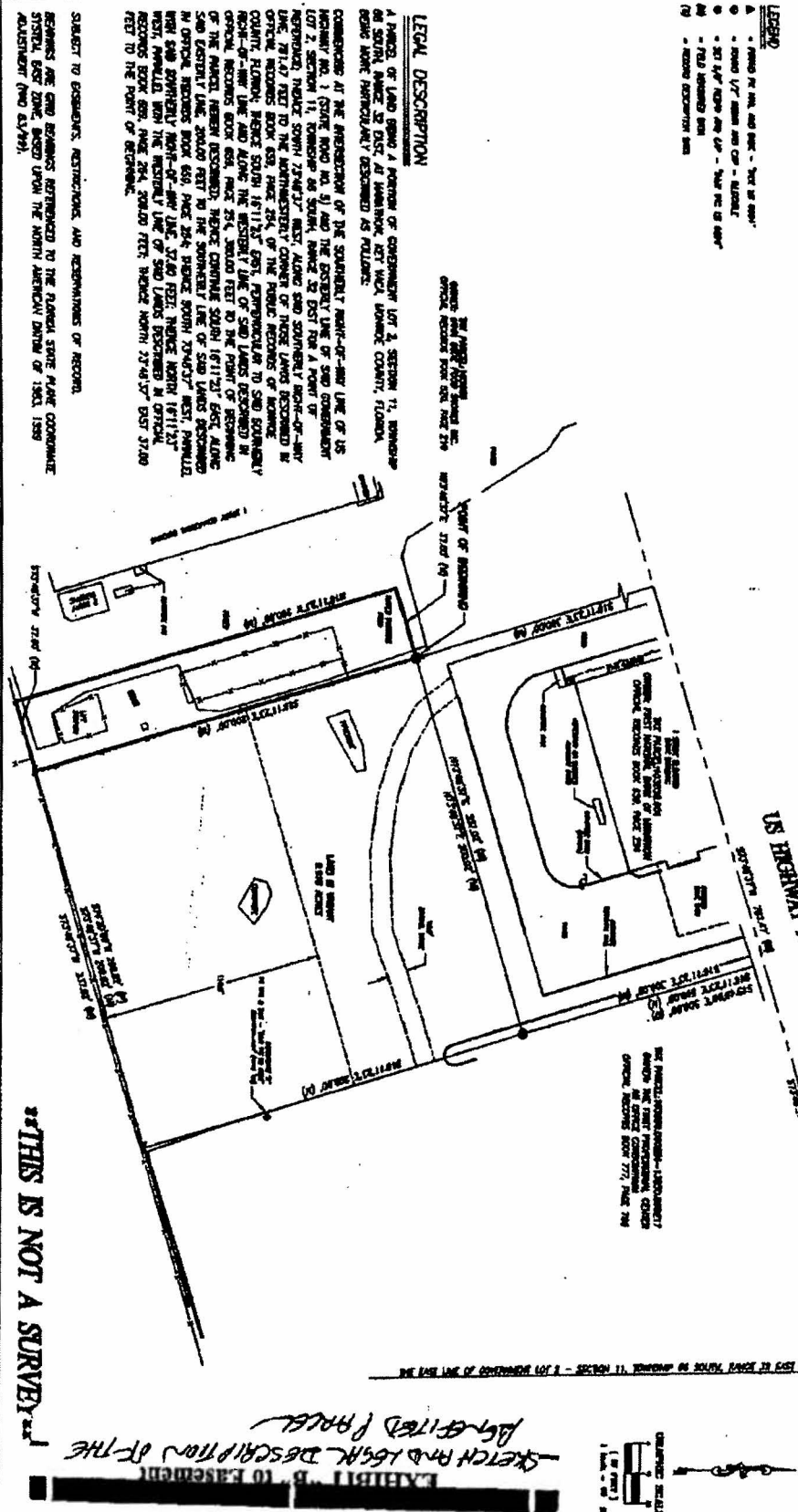
STATE OF FLORIDA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006 by _____ as a _____ of Wachovia Bank, National Association, as Administrative Agent and Collateral Agent, who is personally known to me or produced a _____ as identification.

Notary Public
State of Florida at Large
My Commission Expires:

**SKETCH OF DESCRIPTION
OF A PORTION OF GOVERNMENT LOT 2
LYING IN SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST,
VACA KEY, CITY OF MARATHON, MONROE COUNTY, FLORIDA**

- LEGEND**
- A - ROAD 1/2" WIDE AND HIGH - NOT TO SCALE
 - B - ROAD 1/2" WIDE AND HIGH - ALLEYS
 - C - 5 FT 4" HIGH AND 4" - NOT TO SCALE
 - D - FULL BARRIER
 - E - ROAD EXISTENCE LINE



LEGAL DESCRIPTION

A PORTION OF LAND BEING A PORTION OF GOVERNMENT LOT 2, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MONROE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SPANISH MAIN-OF-NEW LINE OF US HIGHWAY NO. 1 STATE ROAD NO. 9 AND THE EXISTING LINE OF SAID GOVERNMENT LOT 2, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST FOR A POINT OF BEGINNING; THENCE SOUTH 27°42' WEST ALONG SAID SPANISH MAIN-OF-NEW LINE 711.67 FEET TO THE ADJACENTLY CORNER OF THESE LANDS RECORDED IN OFFICIAL RECORDS BOOK 658, PAGE 254, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; THENCE SOUTH 16°11'23" WEST, PERPENDICULAR TO SAID SPANISH MAIN-OF-NEW LINE AND ALONG THE WESTERN LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 658, PAGE 254, 200.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREBY DESCRIBED; THENCE CORNER SOUTH 16°11'23" WEST, ALONG SAID WESTERN LINE, 200.00 FEET TO THE SOUTHERN LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 658, PAGE 254; THENCE SOUTH 27°42' WEST, PERPENDICULAR TO SAID WESTERN LINE, 274.00 FEET; THENCE NORTH 16°11'23" WEST, PARALLEL WITH THE WESTERN LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 658, PAGE 254, 200.00 FEET; THENCE NORTH 27°42' WEST 274.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO GOVERNMENT RESTRICTIONS AND RESERVATIONS OF RECORD.
RECORDS ARE ON HAND RETURNED TO THE FLORIDA STATE PLANT COMMERCIAL SYSTEMS UNIT, BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1989 ADJUSTMENT (NAD 83/89).

*EXHIBIT "B" TO EASEMENT OF THE BENEFITED PARCEL
SKETCH AND LEGAL DESCRIPTION*

THIS IS NOT A SURVEY

*EXHIBIT "B" TO EASEMENT
SKETCH AND LEGAL DESCRIPTION OF THE
BENEFITED PARCEL*