

RESOLUTION 24-05-42

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE PURCHASE AND SALE AGREEMENT BETWEEN ISLAMORADA, VILLAGE OF ISLANDS AND ISLAND COMMUNITY CHURCH, INC.; AUTHORIZING VILLAGE OFFICIALS TO EXECUTE, DELIVER AND IMPLEMENT THE TERMS AND CONDITIONS OF THE PURCHASE AND SALE AGREEMENT; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Islamorada, Village of Islands ("Village") previously expressed an interest in potentially acquiring certain real property located at 83250 Overseas Highway, Islamorada, Florida ("Property"); and

WHEREAS, on or about April 19, 2024, the Village Manager proposed a letter of intent ("LOI") to Island Community Church, Inc. ("Church") related to the purchase of the Property; and

WHEREAS, on or about April 25, 2024, the Church accepted the terms of the LOI with one modification, which was accepted by the Village Manager; and

WHEREAS, the parties have prepared a purchase and sale agreement ("Agreement") consistent with the terms set forth in the LOI, subject to consideration by the Village Council of the Village (the "Village Council"); and

WHEREAS, the Village Council finds that the Agreement, this Resolution, and approval of a budget amendment are in the best interest and welfare of the residents of the Village.

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Agreement. The Village Council hereby approves the terms and conditions of the Agreement attached hereto as Exhibit "A" together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. Execution of Agreement. The Village Manager is authorized to execute the Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement, subject to the approval as to form and legality by the Village Attorney.

Section 4. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 5. Authorization of Fund Expenditures. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village purchasing code, the Village Manager is authorized to expend budgeted funds to implement the purchase of the Property.

Section 6. Approval of Budget Amendment. The Village Council approves the use of \$1.5M from General Fund Unrestricted Fund Balance and \$2.495M from Capital Projects Fund for the purchase of the Property, and the Village Council approves a corresponding budget amendment up Three Million, Nine Hundred and Ninety-Five Thousand And No/100 Dollars (\$3,995,000.00) to the FY budget 2023-2024.

Section 7. Applicability of Village Land Acquisition Procedures. The Village's Land Acquisition Procedures as set forth in Resolutions 03-06-29 and 09-02-10, as may be amended from time to time, do not apply to the acquisition of the Property because, *inter alia*,

the acquisition was a directive of the Council. Regardless, to the extent that the Land Acquisition Procedures could arguably be applicable to this transaction, they are hereby waived.

Section 8. **Effective Date.** This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9th day of May, 2024.

Motion to adopt by Mark Gregg. Seconded by Sharon Mahoney.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Joseph B. Pinder III	Yes
Vice Mayor Sharon Mahoney	Yes
Councilman Mark Gregg	Yes
Councilwoman Elizabeth Jolin	Abstain
Councilman Henry Rosenthal	No

DocuSigned by:


F8EB3A68BD794EF...
JOSEPH B. PINDER III, MAYOR

ATTEST:

DocuSigned by:

008BA9A9B2704D6...
MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS:

DocuSigned by:

302BFAA7FDBD417...
JOHN J. QUICK, VILLAGE ATTORNEY





Islamorada, Village of Islands

April 19, 2024

Via Email

brian.schmitt@cbschmitt.com

Mr. Brian Schmitt
Coldwell Banker
Schmitt Real Estate Co.
11100 Overseas Highway
Marathon, Florida 33050

**Re: 83250 Overseas Highway, Upper Matecumbe Key
Islamorada, Florida 33036**

Dear Mr. Schmitt:

Islamorada, Village of Islands, a Florida municipal corporation ("**Village**") is submitting this letter of intent ("**LOI**") to the Island Community Church, Inc. ("**Seller**") to enter into an agreement for the purchase by the Village of the improved property located at 83250 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida 33036 ("**Property**").

The following are the proposed terms for the Village's acquisition of the Property.

1. **Property.** The Village will purchase the Property as legally described on Exhibit "A" attached hereto, Parcel ID No. 00402900-000000, which consists of improved property containing approximately 34,815 square feet, and improved with a building consisting of approximately 15,972 square feet.
2. **Purchase Price.** The Purchase Price for the Property shall not exceed \$3,995,000 ("**Purchase Price**"), to be paid in cash to the Seller at the time of closing. There will be no financing contingency for the purchase of the Property. The Purchase Price is contingent upon the Village performing an appraisal of the Property during the 60-day Inspection/Due Diligence Period, where the value of the Property is determined to be at a minimum, within 10% of the Purchase Price ("**Appraisal**"). In such event, that the Appraisal is not within 10% of the Purchase Price, the Village shall notify Seller to that effect no later than the Expiration Date of the Inspection/Due Diligence Period and shall have the right to terminate the Contract.
3. **Deposit.** Upon execution of the Contract by Village and Seller, the Village will place a deposit in the amount of \$100,000 in escrow with the Village Attorney ("**Escrow Agent**").

4. **Approval of Letter of Intent.** Seller acknowledges that this LOI has been signed by the Village Manager on behalf of the Village Council, and that the Purchase of the Property and Contract are subject to the final approval of the Village Council.
5. **Contract for Purchase and Sale.** Upon approval and execution of this LOI by Village and Seller ("LOI Approval Date"), the parties shall use good faith efforts to enter into a Contract for Purchase and Sale ("**Contract**") within 30 days or sooner of the LOI Approval Date incorporating the terms of this LOI, standard provisions and other customary representations, warranties, covenants, closing conditions, and agreements acceptable to Village and Seller. The Contract will be prepared by the Village Attorney and submitted to the Seller for approval and execution. The Contract shall be subject to the final approval and ratification by the Village Council at a publicly held Council meeting. If the parties have not entered into a Contract within 30 days after the LOI Approval Date, either party may terminate this LOI by sending written notice to the other, and thereafter, neither Village nor Seller will have any further rights or obligations under this LOI.
6. **Inspection/Due Diligence.** Within five (5) business days of the LOI Approval Date, Seller will deliver to the Village copies of all pertinent information and documents on the Property, third-party inspections, reports, studies, surveys, title policies, and assessments pertaining to the Property (including any environmental assessments) obtained by or in the possession of Seller (excluding, however, any internally prepared reports or evaluations which are proprietary or confidential documents). Village will have a 60-day Inspection/Due Diligence Period from the effective date of the Contract, during which time the Village will have the right to enter upon the Property (and all improvements and buildings thereon) to perform any inspections, investigations, studies, surveys and assessments desired by Village, as long as Village leaves the Property in the condition existing prior to the Village's entry. If the inspections and investigations are unsatisfactory to the Village for any reason whatsoever, prior to the expiration of the Inspection/Due Diligence Period, Village may terminate the Contract by giving written notice to the Seller.
7. **Village's Contingencies.** In addition to any contingencies set forth herein, Village's obligation to purchase the Property and consummate the transaction set forth herein shall be subject to Village's approval and/or waiver of customary contingencies prior to the expiration of the Inspection/Due Diligence Period and/or the Closing Date, including:
 - (a). Village's review and approval of a Title Insurance Commitment for the Property, issued by a title company selected by the Village Attorney ("Title Company"), as title agent, at Village's sole cost and expense, showing Seller to be vested with good, marketable and insurable fee simple title to the Property, together with all permitted exceptions and encumbrances as specified in the Contract. Further, the Village Attorney, at Village's sole cost and expense, shall subsequently obtain from the Title Company an ALTA Owner's Title Insurance Policy for the Property with Florida modifications, effective as of Closing, without any exceptions or encumbrances (other than those specified in the Contract);

- (b). Village's review and approval of an ALTA/ACSM "Class A" Land Title Survey of the Property, certified to Village, and the title company, dated subsequent to the Effective Date of the Contract ("Survey"), obtained by Village, at Village's sole cost and expense;
 - (c). Village's review and approval of a Phase I Environmental Site Assessment for the Property, obtained at Village's sole cost and expense and conducted by an Environmental Engineering/Consulting Firm selected by Village, at Village's sole and absolute discretion, certified to Village and dated subsequent to the Effective Date of the Contract, and/or any other such reports and/or studies which Village may reasonably require in order to confirm that the surface and subsurface conditions, soils and groundwater at the Property are in full compliance with all applicable environmental and hazardous materials rules and regulations;
 - (d). Village's review and approval of any and all existing agreements affecting the Property (limited to those in effect as of the Effective Date of the Contract), including, but not limited to, restrictions, covenants, easements, contracts; leases; licenses; service agreements; brokerage agreements; development agreements; authorizations and/or governmental approvals.
 - (e). Village attainment of an appraisal of the Property establishing the value of the Property based on (i) the current zoning of Public/Semi-Public Services, and the proposed zoning of Highway Commercial;
 - (f). Withdrawal by Seller of all pending Land Use Applications, including FLUM Amendment from Public/Semi-Public Services to Mixed Use, and Amendment to Zoning Map from Public/Semi-Public Services to Highway Commercial; and
 - (g). Approval and ratification of the Contract by the Village Council, and all final non-appealable governmental approvals by the Village Council to purchase the Property.
8. **Closing Date.** The Contract will provide for a closing date within 30 days of the expiration of the Inspection/Due Diligence Period, or as otherwise provided in the contract ("**Closing Date**"), subject to the satisfaction of all contingencies or conditions precedent to closing set forth in the Contract.
9. **Closing Costs.** Seller shall pay documentary stamp taxes, if any, and costs of recording the warranty deed. Real estate taxes and other property costs will be prorated as of the date of Closing. Village shall pay the cost of the title premium for the new title insurance policy to be issued to Village. Seller and Village shall each bear their own attorneys' and consultants' fees and their own costs and expenses incurred in connection with the inspections permitted hereunder.

10. **No Existing Tenancies.** Seller will warrant and represent in the Contract that other than Seller, there are no tenants or parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, to Seller's actual knowledge.
11. **Title.** Seller will convey good, marketable and insurable fee simple title to the Property at closing by statutory warranty deed, free and clear of all liens and encumbrances (except title encumbrances approved by Village), as provided under the Contract.
12. **License Back by Village.** Simultaneously with the Closing, Village (as licensor) will enter into a license agreement ("License Agreement") whereby Village will license back the Property to Seller (as licensee) on the conditions set forth herein and in the License Agreement. The License Agreement will have a maximum term of nine ~~(9)~~ months with *12 MONTHS* no fees payable. Seller shall not be permitted to sublease or assign any portion of the space being licensed by Seller without the prior consent of Village. During the term of the License Agreement, the Village shall not be responsible for maintenance and repair of the Property in order to support the Seller's intended temporary use. Should the structure(s) or Property become unsafe or otherwise unsuitable for occupation/use, the License Agreement shall terminate upon such notice without penalty or obligation. Seller shall be solely responsible at all times for all costs and expenses of its own use, including routine maintenance, all utilities and service providers, yard/landscaping, janitorial and security services. *THU*
13. **Brokers.** Seller shall pay all brokerage commissions at Closing. The only broker involved in this transaction is Coldwell Banker Schmitt Real Estate Co. ("Schmitt") retained by Seller. Village is aware that Schmitt is acting as a Seller's Broker in this transaction, and shall be acting in a transactional brokerage capacity with the Village.
14. **Exclusivity.** Upon full execution of this LOI, Seller agrees not to market or otherwise solicit, negotiate, disseminate information or entertain offers for the purchase of the Property until such time as the terms and conditions set forth herein are no longer in full force and effect.
15. **Non-Binding.** Village and Seller acknowledge that this LOI does not constitute a binding contractual agreement between the parties, except for the Seller's exclusivity obligations pursuant to Section 14 hereof, which shall be binding on the parties. This LOI does set forth an understanding in principle and the present intention of the parties to enter into a Contract, upon terms and conditions mutually acceptable to the parties and their respective counsel. Notwithstanding the foregoing, this LOI should in no way be construed as a commitment to purchase or to sell the Property.
16. **Counterparts.** This LOI may be executed in separate counterparts by each of Village and Seller, which counterparts may be delivered by email, facsimile transmission or otherwise, each of which shall be an original and all of which taken together shall constitute one and the same LOI.
17. **Acceptance.** The Seller may accept the terms contained herein by executing a signed copy of this LOI and delivering the same to Village on or before 5:00 p.m. on April 26,

Mr. Brian Schmitt
Coldwell Banker Schmitt Real Estate Co.
April 19, 2024
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2024. It is understood and agreed that if Seller has not executed and delivered this LOI by such date and time, then this LOI shall expire and be no further force and effect.

[SIGNATURE PAGE TO FOLLOW]

This LOI is signed by the respective parties on the dates set forth below their signatures.

VILLAGE:


ISLAMORADA, VILLAGE OF ISLANDS, a
Florida municipal corporation

By: 
Robert Cole, Village Manager

Date signed: April 19, 2024

SELLER:

ISLAND COMMUNITY CHURCH, INC., a
Florida non-profit corporation

By: 
Name: TREVOR MANN

Title: PRESIDENT

Date signed. APRIL 25, 2024

cc: John Quick, Village Attorney
Mayor and Councilmembers

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

CORAL VIEW PB3-105 UPPER MATECUMBE KEY LOTS 1 2 3 & 4 OR576-56 RE: 40291 & 40292 COMBINED
IMPROVEMENTS SIT ON ALL LOTS 8-3-89