

Diamond Williams

From: Trina Collins [TCollins@RSBattorneys.com]
Sent: Monday, June 14, 2010 1:28 PM
To: Filings@psc.state.fl.us
Cc: Martin Friedman; Trina Collins
Subject: Filing in Docket No. 090385-WU; Application for Authority to Transfer the Assets of Colina Bay Water Company, LLC and Certificate 632-W to Colina Recovery, Inc. in Lake County, Florida
Importance: High
Attachments: PSC Clerk 07 (filing Agreement for the Purchase and Sale of Colina Recovery, Inc.).ltr.06-14-2010.pdf

- a. Martin S. Friedman, Esq.
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Sanlando Center
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- b. Docket No. 090385-WU; Application for Authority to Transfer the Assets of Colina Bay Water Company, LLC and Certificate 632-W to Colina Recovery, Inc. in Lake County, Florida - Filing Letter and Agreement for the Purchase and Sale of Colina Recovery, Inc. in response to Staff's request for additional information in order to finalize its recommendation in this docket.
- c. Colina Recovery, Inc.
- d. 16 Pages.
- e. Letter to Commission Clerk - 2 pages; and Agreement for the Purchase and Sale of Colina Recovery, Inc. - 14 pages.

6/14/2010

DOCUMENT NUMBER - DATE
04939 JUN 14 2010
PSC-COMMISSION CLERK

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REPLY TO CENTRAL FLORIDA OFFICE

June 14, 2010

E-FILING

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Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RE: Docket No. 090385-WU; Application for Authority to Transfer the Assets of Colina Bay Water Company, LLC and Certificate 632-W to Colina Recovery, Inc. in Lake County, Florida
Our File No.: 44019.01

Dear Ms. Cole:

This docket was opened in July 2009, when Colina Recovery, Inc. purchased the assets of the development and Colina Bay Water Company through foreclosure. Colina Recovery, Inc. was formed by Mercantile Bank which was the lender who filed the foreclosure action. As the assets were purchased at a foreclosure sale, there was no contract within which to include the contingency language in Section 367.071(1), Florida Statutes. Mercantile Bank subsequently entered into an Agreement to sell Colina Recovery, Inc., which consisted of the utility and non-utility assets, to Turtle Creek Lots, LLP. A copy of that Agreement of purchase and sale is attached hereto. The closing occurred on September 30, 2009 and the following day the non-utility assets were transferred to another entity and Colina Recovery, Inc., structured their ownership as set forth in prior documents filed in this docket.

I believe this completes the information the Staff has requested in order to finalize its recommendation in this docket.

FILED NUMBER-DATE

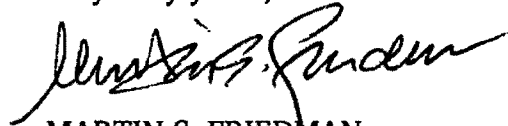
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Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
June 14, 2010
Page 2

Should you or the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

MSF/tlc
Enclosures

cc: Mr. Ralph Singleton (w/enclosures) (via e-mail)
Ms. Stephanie Clapp (w/enclosures) (via e-mail)
Ms. Patricia Daniel (w/enclosures) (via e-mail)

M:\1 ALTAMONTE\COLINA RECOVERY, INC. (44019)\PSC Clerk 07 (filing Agreement for the Purchase and Sale of Colina Recovery, Inc.).ltr.docx

Original Contract

9.9.09
R.S.

**AGREEMENT FOR THE PURCHASE
AND SALE OF COLINA RECOVERY, INC.**

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE (this "Agreement") is made and executed by and between Mercantile Bank, a division of Carolina First Bank, a South Carolina Bank ("Seller"), and Turtle Creek Lots, LLP. ("Purchaser").

RECITALS

- A. Seller is owner of all the issued out standing shares of Colina Recovery, Inc., a Florida corporation ("Colina").
- B. Colina is the owner of real property including a potable water treatment plant as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and
- C. Purchaser wishes to acquire all of the shares the Colina pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the terms of this Agreement and other good and valuable consideration paid by Purchaser to Seller, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

- 1. Agreement to Buy and Sell. Pursuant to the terms and conditions contained herein, Seller hereby agrees to sell and Purchaser agrees to buy all of the Colina.
- 2. Purchase Price. The total purchase price for the Property shall be \$2,700,000 (the "Purchase Price").
- 3. Earnest Money.
 - (a) Within three (3) days after the full and final execution of this Agreement, Purchaser shall deliver the sum of \$50,000 to White & Luzak ("Escrow Agent") to be held by Escrow Agent, as the "Earnest Money" (herein so called) pursuant to the terms of this Agreement.
 - (b) The Earnest Money shall be held in escrow by Escrow Agent pursuant to the terms of this Agreement. The Earnest Money will be non-refundable to Purchaser after the expiration of the Investigation Period (as defined herein), unless other provisions of this Agreement require that the Earnest Money be returned to Purchaser. The full amount of the Earnest Money will be applied to the Purchase Price of the Property due at the Closing.
 - (c) If Purchaser fails to timely deposit any of the Earnest Money, Seller may terminate this Agreement by written notice to Purchaser at any time prior to the deposit of the full amount of the Earnest Money. If this Agreement is so terminated, this Agreement shall be deemed to have terminated as of the date that Earnest Money was originally to have been deposited by Purchaser, and there shall be no remedy hereunder to either Seller or Purchaser other than the termination of this Agreement.

4. Title Insurance. Within 5 days after the date of this Agreement, Purchaser shall, at Purchaser's sole expense, procure: (i) a title commitment ("**Title Commitment**") covering the Property, binding the issuer of the Title Commitment (such underwriter shall be referred to herein as the "**Title Company**"; the underwriter shall be a nationally recognized title insurance issuer selected by Purchaser) to issue an owner's policy of title insurance in the full amount of the Purchase Price; and (ii) true, correct and legible copies of any and all instruments referred to in the Title Commitment as constituting exceptions or restrictions upon the title of Seller. Purchaser shall have 3 days after the receipt of Title Commitment, or any updates or endorsements thereto as permitted herein, to deliver a copy of same to Seller together with such written objections as Purchaser may have to anything contained therein. Any such item to which Purchaser does not object, or which Purchaser waives as permitted by this Agreement, shall be deemed a "**Permitted Exception**". If there are objections by Purchaser, Seller shall in good faith attempt to satisfy them prior to Closing and to cause the Title Company to revise the Title Commitment to reflect such satisfaction. Seller shall not be obligated to expend in excess of \$25,000.00 in order to cure title objections (the "**Cure Amount**"). If Seller delivers written notice to Purchaser on or before the Closing date that Seller is unable to satisfy such objections without exceeding the Cure Amount, Purchaser may (i) waive such objections and accept such title as Seller is able to convey; or (ii) terminate this Agreement by written notice to Seller. Should Purchaser elect to terminate this Agreement, upon such termination and upon receipt by Escrow Agent of notice of such termination, Escrow Agent shall return the Earnest Money to Purchaser and the parties hereto shall have no further rights or obligations hereunder except as otherwise provided in this Agreement. Permitted Exceptions shall be deemed to include (i) rights or claims of parties in possession not shown by the public records (ii) easements or claims of easement not shown by the public records, (iii) any lien, or right to a lien for services, labor material heretofore or hereafter furnished, imposed by law and not shown by the public records (iv) restrictive covenants of record as to the use and improvement property, (v) taxes (including liens for current taxes) and (vi) special assessments which are not shown as existing liens by the public records.

Notwithstanding anything in the foregoing to the contrary, Seller hereby agrees to execute at Closing an affidavit acceptable to the Title Company stating that Seller has sole and exclusive possession of the Property and stating that either (a) there have been no improvements, additions, alterations, repairs or any changes of any kind made to the Property during the 90 day period immediately preceding Closing or (b) if there have been any such improvements, etc., all lienors or potential lienors in connection with such improvements, etc. have been paid in full ("**Seller's Affidavit**").

Seller covenants and agrees that no later than the date of the applicable closing, it will discharge all liens against the Property or Shares, or any claim filed by any contractors, suppliers or workers for work performed or material supplied by such claimants. Additionally, Seller covenants and agrees that from and after the date of this Agreement it will not grant, or agree to the granting of, any interests in, or covenants, restrictions or other encumbrances upon, the Property or Shares.

5. Survey. Purchaser may, prior to the end of the Investigation Period, obtain at its sole expense a boundary survey of the Property prepared by a Registered Land Surveyor, provided that an exception to title in the Title Commitment that may be cured by a current survey shall be deemed a Permitted Exception. If Purchaser obtains a survey, prior to the end of the Investigation Period, Purchaser shall furnish a copy of said survey to Seller.

6. Investigation Period.

(a) Purchaser shall have a period of 20 days from the full and final execution of this Agreement (the "**Investigation Period**") within which Purchaser may, at its sole expense, conduct a

feasibility study of the Property (including, without limitation, architectural, geotechnical, environmental, marketing, engineering and financial feasibility studies) to determine whether or not the Property is suitable to Purchaser ("**Feasibility Study**"). If prior to the end of the Inspection Period Purchaser determines to purchase the Property, Purchaser shall immediately deposit \$220,000 with the Escrow Agent as additional Earnest Money and the total amount of Earnest Money then on deposit with the Escrow Agent shall not be refundable to the Purchaser, except as provided in this Agreement. If Purchaser fails to deposit additional Earnest Money by the end of the Inspection Period, then Purchaser shall be deemed to have determined that the Property is not suitable to Purchaser and Escrow Agent shall return the Earnest Money to Purchaser and the parties hereto shall have no further rights or obligations hereunder except as otherwise provided in this Agreement.

(b) Seller hereby grants to Purchaser and Purchaser's employees, consultants, and agents (each a "**Purchaser Party**") the right and permission from and after the date hereof to enter upon the Property or any part thereof, at all reasonable times and from time to time, for the purpose of completing its Feasibility Study of the Property. Purchaser shall indemnify, defend and hold Seller harmless from and against any and all costs, losses, expenses, liabilities, fines, punitive damages, penalties and damages (including reasonable attorneys' fees, disbursements and costs of defense) incurred by Seller in connection with or arising out of (i) any act or omission to act of any Purchaser Party while on or about the Property notwithstanding Seller's consent to enter upon the Property; and (ii) any personal injury suffered by any Purchaser Party while on or about the Property. The indemnity provided in this Paragraph shall survive the Closing or any earlier termination of this Agreement

7. Information. Seller shall provide all the corporate books and records (or copies thereof) of Colina, including without limitation its articles, by laws, minutes, share certificates, and all accounts, and a copy of any surveys, maps, drawings, subdivision, infrastructure, engineering and construction plans, plats, permits and development orders or approvals and any environmental surveys pertaining to the Property (together, the "**Books and Records**"), to Purchaser for review during the Investigation Period.

8. Closing. Purchaser shall close on the Property in a single closing (the "**Closing**"), which shall be held at the offices of the Escrow Agent or at another mutually agreeable location on or before 5 days from the expiration of the Investigation Period, provided that, notwithstanding any other provision herein Closing Date shall be on or before September 30, 2009 (the "**Closing Date**").

9. Obligations at Closing. At the Closing, the following shall occur:

(a) Purchaser shall: (i) pay to Seller the Purchase Price plus all Purchaser Closing Costs (defined below) and any other sums due Seller pursuant to the terms of this Agreement; and (ii) execute and/or deliver to Seller any other documents or matters required by this Agreement, including a closing or settlement statement.

(b) Seller shall: (i) endorse, assign and deliver all of the outstanding share representing 100% of the ownership of Colinas and; (ii) execute and deliver to Purchaser an owner's non-foreign certificate and the Seller's Affidavit (iii) deliver possession of the Books and Records; (iv) deliver possession of the Property owned by Colinas and . execute and deliver any other documents or matters required by this Agreement, including a closing or settlement statement

(c) Closing Costs. At the Closing, Purchaser shall pay all documentary stamp and other taxes levied by the State of Florida or other jurisdictions and any other governmental agency in connection with the Closing including but limited to those in connection with the recording of the deed to

the Property or transfer of shares of Colina, all costs of Purchaser's Feasibility Study, including, without limitation, any appraisals, environmental site assessments or other investigations, and the cost of any survey, and any other sum due in connection with the Closing which Seller has not expressly and specifically agreed to pay in this Agreement and Purchaser's attorneys' fees and costs ("Purchaser Closing Costs"). Seller will pay the cost to clear any title defects that it agrees to cure as described in Section 4 above, unpaid real estate taxes for prior years and will pay its own attorney's fees.

(d) At Closing Seller shall pay any the title insurance premium incurred by the Purchaser and all costs associated with title search and examination, all recording costs for the deed and other documents recorded in connection with this transaction, and shall pay to the Escrow Agent its Pro-rata Share of the total amount of such tax determined by reference to the assessed amount for the current year or, if the current assessed amount is not available, the assessed amount for the previous tax year, and Buyer shall pay to the Escrow Agent an amount equal to one eighth (1/8) of its Pro-rata Share as Purchaser's estimated portion of the fee projected to be due the Tax Appeals Agent (defined below) at the conclusion of the appeals process. The Escrow Agent shall hold such funds in an interest bearing account and pay the funds to the taxing authority and Tax Appeals Agent at such time and as directed by written instructions signed jointly by Seller and Purchaser. Fees of the Tax Appeals Agent shall be apportioned between Seller and Purchaser in accordance with their Pro-rata Share. Any over or under payment of fees by the Purchaser shall corrected by such instruction. Any funds remaining after such payments shall be paid forthwith by the Escrow Agent to the Seller and Purchaser according to their Pro-rata Share, provided however, the earned interest shall be apportioned between the Seller and Purchaser based upon the amount of interest earned on such persons Pro-rata Share while held by the Escrow Agent. Without regard to the payment of funds by the Escrow Agent, Seller and Purchaser shall be liable to each other for any overpayment to the other by them of real estate taxes and assessments for the current year or of the contingency fees due the Tax Appeal Agent, whether such over payment results from a refund of taxes received by the Purchaser or for other reasons. Seller hereby agrees, however, that Escrow Agent shall be permitted to release the monies held in escrow for payment of such taxes as and when necessary to receive the November discount.

Seller has engaged Property Tax Professionals, Inc. ("Tax Appeals Agent") to appeal the assessment and lower the valuation of the Property used by the tax assessor to determine the amount of tax assessed against the Property for the current year. Seller and Purchaser acknowledge that the appeals process is unpredictable with regard to the time required to conclude the appeals process and with regard to the result of the appeal and agree to jointly manage the tax appeals process to lower the assessed amount for the current year and to issue joint payment instructions to the Escrow Agent. If the appeals process does not result in any reduction of the assessed amount for the current year, the seller will be responsible for the payment of expenses for the Tax Appeals process.

11. As Is Where Is. Purchaser acknowledges that Purchaser will have the opportunity to independently and personally inspect the Property and to cause to be conducted (at Purchaser's sole cost and expense) such appraisals, environmental site assessments, tests, analysis and other investigations as Purchaser deems necessary or appropriate, during the Investigation Period and that Purchaser has entered into this Agreement based upon its ability to make such examination and inspection. The Property shall be accepted by Purchaser at Closing in its then-present condition, **"AS IS, WITH ALL FAULTS AND DEFECTS, LATENT OR APPARENT, AND, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED"**. Purchaser acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) the value, nature, quality or physical condition of the Property, including, without limitation, the water, soil and geology, (ii) the income to be derived from the Property, (iii) the compliance of or by the Property or its operation with

any laws, rules, ordinances or regulations of any applicable governmental authority or body, (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (v) the manner or quality of the construction or materials, if any, incorporated into the Property, (vi) the manner, quality, state of repair or lack of repair of the Property, or (vii) the correctness or accuracy of the Information or of the ability of Purchaser to rely upon or use the Information. Seller has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land uses laws, rules, regulations, orders or requirements, including the existence in or on the Property of hazardous substances. Purchaser further acknowledges and agrees that having been given the opportunity to inspect the Property and to cause such testing and analysis as Purchaser deems necessary or appropriate, Purchaser is relying solely on its own investigation of the Property and not on any information or Information provided or to be provided by Seller, and at the Closing agrees to accept the Property and waive all objections or claims against Seller (including, but not limited to, any right or claim of contribution) arising from or related to the matters set forth above in items (i) through (vii) of this Section or as to any hazardous substances on the Property. Purchaser expressly acknowledges that Purchaser has not relied on any warranties, promises, understandings or representations, express or implied, oral or written, of Seller and/or any Seller Party, relating to the Property which are not contained in this Agreement. Purchaser further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller is not liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person, except as otherwise provided herein. THE PROVISIONS OF THIS SECTION ARE A MATERIAL PART OF THE CONSIDERATION FOR SELLER'S ENTERING INTO THIS AGREEMENT, AND SHALL SURVIVE CLOSING.

12. Purchaser's Release of Seller.

(a) Seller Released from Liability. Purchaser for itself and its respective directors, officers, shareholders, partners, affiliates, employees, agents, attorneys, representatives, heirs, successors and assigns ("**Purchaser Party**" or "**Purchaser Parties**"), hereby waives, releases and discharges Seller and all affiliates of Seller and their respective directors, officers, shareholders, employees, agents, attorneys, representatives, heirs, successors and assigns ("**Seller Party**" or "**Seller Parties**") from all actions, claims, causes of action, suits, proceedings, demands, damages, costs, expenses, liabilities and affirmative defenses of any kind or nature whatsoever, whether known or unknown, against any or all of the Seller Parties arising from, relating or with respect to or involving in any way, directly or indirectly, any act, statement, omission or conduct, regarding the condition (including the presence in the soil, air, structures and surface and subsurface waters, of materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, rules, regulations or guidelines, including, without limitation, naturally occurring gases, fungi, mycotoxins and pathogens such as carbon dioxide, radon and mold, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. Without limitation, Purchaser, for itself and all other Purchaser Parties, specifically releases Seller from any claims it, any other Seller Party or their respective successors and assigns may have against Seller now or in the future under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended; and any other analogous state or federal statute; and common law arising from the environmental conditions of the

Property or the presence of hazardous substances, solid wastes or any other pollutants or contamination the Property. The provisions of this paragraph shall survive Closing.

(b) Indemnification. Purchaser hereby agrees to indemnify, defend and hold Seller and any Seller Party harmless from any and all costs, losses, expenses, liabilities, fines, punitive damages, penalties and damages (including reasonable attorneys' fees, disbursements and costs of defense) incurred by Seller or any Seller Party in connection with or arising out of or in connection with acts or omissions of the Purchaser or any Purchaser Party in connection with (i) the operation of the Property or (ii) the condition of the Property from and after the Closing. The indemnities described herein specifically include but are not limited to claims or causes of action from which Seller has been released by Purchaser as more particularly provided hereinabove. The provisions of this paragraph shall survive Closing.

13. Default. If Purchaser fails to perform its obligation to purchase Property as provided herein within the time period enumerated, the Earnest Money shall be paid over to Seller and forfeited to Seller as liquidated damages. Both parties agree that such sum is a fair and reasonable figure and that actual damages would be too difficult to ascertain. Upon the forfeiture of said sum, all rights and obligations of the parties shall cease and be of no further force and effect, except with respect to Purchaser's obligations pursuant to Section 6B, which the parties specifically agree will survive such termination.

If Seller fails to perform its obligation to sell the Property, Seller shall pay to Purchaser in addition to refund of the Earnest Money, as Purchaser's sole and exclusive remedy \$50,000, as liquidated damages. Both parties agree that such sum is a fair and reasonable figure and that actual damages would be too difficult to ascertain. Upon the forfeiture of said sum, all rights and obligations of the parties shall cease and be of no further force and effect, except with respect to Purchaser's obligations pursuant to Section 6B, which the parties specifically agree will survive such termination.

Under no circumstances may a party pursue a claim for consequential damages as a result of a post closing default.

Notwithstanding the terms and conditions of this Section, no party may pursue any remedy based on the other party's default unless and until the non-defaulting party gives the defaulting party written notice of the default and the defaulting party fails to cure the default within five (5) days of receipt of the notice of default.

14. Purchaser's Representation and Warranties. Purchaser hereby represents, warrants and covenants to Seller that Purchaser has the capacity and authority to execute and perform this Agreement and that all necessary consents and approvals that may be required of Purchaser have been obtained.

15. Seller's Representation and Warranties.

(a) Seller hereby represents, warrants and covenants to Purchaser that Seller is a Division of Carolina First Bank, a duly organized and validly existing South Carolina banking corporation, qualified to do business in the state of Florida, and in good standing; that Seller has the power as a corporation to execute and perform this Agreement; all necessary consents and approvals from Seller have been obtained; and that the persons executing this Agreement on behalf of Seller are duly empowered to bind Seller to perform its obligations hereunder.

(b) Seller is not a "foreign person", as defined in the Internal Revenue Code.

(c) Seller shall provide an Sellers Affidavit on a form acceptable to Seller and Purchaser with respect payments for labor and inaterials provided for improvement to the Property prior to Closing.

(d) The corporate books and records, including without limitation its articles, by laws, minutes, share certificates, and all accounts delivered to Purchaser by Seller pursuant to Section 9(b) are the true, accurate and complete records of Colina.

(e) Colina is a duly formed Florida business corporation in good standing.

(f) To the best of Colina's knowledge no law suits filed against it and none have been threatened.

(g) Colina has not received any notice of, and to the best of its knowledge it is not in, violation of laws, codes, or regulation.

(h) Seller in the owner of all of the issued out standing shares of Colinas and such shares are not subject to any lien or pledge or any restriction that is not noted on the share certificate or share holder agreement of any kind.

16. Attorney's Fees and Costs and Jury Waiver. In the event any legal action is instituted in connection herewith, the prevailing party shall be intitled to recovery from the opposing party, and the opposing party shall pay, all of its costs and expenses incurred in connection therewith, including attorney's fees, prior to trial, at trial and on appeal of the prevailing party. **EACH PARTY HERETO WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF PURCHASER AND SELLER HEREUNDER OR THE PROPERTY.**

17. Miscellaneous Provisions.

(a) Effective Date. The term "date of this Agreement" or "date hereof" or "effective date of this Agreement" or "Effective Date" as used herein shall mean the later of the following dates: (i) the date of Seller's signature or (ii) the date of Purchaser's signature.

(b) Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. The parties have equal bargaining power, and intend the plain meaning of the provisions herein. In the event of an ambiguity in, or dispute regarding, the interpretation of same, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman.

(c) Integration. This Agreement contains all of the agreements, representations and warranties of the parties hereto and supersedes all other discussions, understandings or agreements in respect to the subject matter hereof. All prior discussions, understandings and agreements are merged into this Agreement, which alone fully and completely expresses the agreements and understandings of the parties hereto. The parties agree that there are no oral agreements, understandings, representations, or warranties which are not expressly set forth herein.

(d) Risk of Loss/Condemnation. In the event that the Property or any material portion thereof is taken by eminent domain prior to Closing then Purchaser shall have the option of either: (i) canceling this Agreement and receiving a refund of the Earnest Money and all interest earned thereon, whereupon both parties shall be released from all further obligations under this Agreement, except those obligations which expressly survive termination, or (ii) proceeding with Closing in which case Purchaser shall be entitled, to the same extent that Seller would have been so entitled, to proceeds of condemnation when paid. In the event that the Property or a material portion thereof is damaged or destroyed by fire or other casualty prior to Closing, then Purchaser shall have the option of either: (i) canceling this Agreement and receiving a refund of the Earnest Money and all interest earned thereon, whereupon both parties shall be released from all further obligations under this Agreement, except those obligations which expressly survive termination, or (ii) proceeding with Closing in which case Purchaser shall be entitled to all insurance proceeds, if any, to the same extent that Seller would have been so entitled.

(e) Time of the Essence. Time is of the essence of this Agreement.

(f) Non-waiver. No delay or failure by either party to exercise any right hereunder and no partial or single exercise of such right will constitute a waiver of that or any other right, except by written agreement executed by the parties or unless expressly provided otherwise herein.

(g) Commissions. Seller and Purchaser each hereby warrant and represent to the other that no brokers', agents', finders' fees, commissions or other similar fees are due or arising in connection with the entering into of this Agreement, the sale and purchase of the Property, or the consummation of transactions contemplated herein, and Seller and Purchaser each hereby agree to indemnify and hold the other harmless from and against all liability, loss, cost, damage or expense (including, but not limited to, attorneys' fees and costs of litigation) which the other party shall suffer or incur because of any claim by a broker, agent or finder claiming by, through or under such indemnifying party, whether or not such claim is meritorious, for any compensation with respect to the entering into of this Agreement, the sale and purchase of the Property, or the consummation of the transactions contemplated herein.

(h) No Assignment. This Agreement shall not be assignable by Purchaser without the prior written consent of Seller, which may be withheld in Seller's sole and absolute discretion, except that consent to assignment to an entity that is owned or controlled by Purchaser shall not be unreasonably withheld.

(i) Binding Effect. This Agreement shall be binding upon the parties, their successors and assigns.

(j) Commercial Transaction. Purchaser and Seller agree that this transaction is a commercial bulk sale of residential properties and is therefore not subject to RESPA. Purchaser and Seller further agree that the transaction contemplated by this Contract is exempt from the Interstate Land Sales Act (the "Act") pursuant to Exemptions (a)(2) and (7) of the Act (15 U.S.C. § 1702).

(k) Duties of Escrow Agent. Escrow Agent is authorized and agrees by acceptance of the Deposit to hold and deliver the same or the proceeds thereof in accordance with the terms hereof. In the event of doubt as to its liabilities or duties, Escrow Agent may, in its sole discretion and any other provision of this Agreement to the contrary notwithstanding, (a) continue to hold the Deposit or the proceeds thereof until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or (b) deliver the Deposit or proceeds thereof to the Clerk of the Circuit Court for Orange County, Florida, and, upon notifying all parties concerned of such action, any liability on the part of Escrow Agent shall fully terminate except to

the extent of accounting for any monies or documents previously delivered out of escrow. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as escrow agent, or in the event of any suit initiated by or against Escrow Agent wherein Escrow Agent interpleads the Deposit, Escrow Agent shall be entitled to recover a reasonable attorneys' fee and costs incurred in negotiation, at trial and upon appeal, said fees and costs to be charged and assessed as court costs in favor of Escrow Agent and immediately paid by the non-prevailing party. The parties agree that Escrow Agent shall not be liable to anyone for misdelivery to Purchaser or Seller of monies or any document held in escrow unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of Escrow Agent. Purchaser and Seller each agrees to hold Escrow Agent harmless from any and all loss, cost or expense, including reasonable attorneys' fees, resulting from Escrow Agent's compliance with its obligations hereunder. Escrow Agent shall be liable to provide an accounting upon request by either party. Notwithstanding its role as Escrow Agent, the parties agree that Escrow Agent may act as Purchaser's counsel in all matters pertaining to the negotiation, preparation and enforcement of this Agreement.

(l) Business Day. If any time period under this Agreement ends on a day other than a Business Day (as hereinafter defined) then the time period shall be extended until the next Business Day. The term "Business Day" shall mean Monday through Friday excluding legal holidays recognized by the United States government when the U.S. Post Office in Orange County, Florida is closed.

(m) Further Assurances. Seller and Purchaser each hereby covenant and agree to execute and deliver all such documents and instruments, and to take such further actions as may be reasonably necessary or appropriate, from time to time, to carry out the intent and purpose of this Agreement and to consummate the transactions contemplated hereby; provided, however, that all such documents and instruments executed, and actions taken, by Seller shall be without recourse, representation or warranty of any kind or nature whatsoever, except as specifically and expressly provided in this Agreement;

(n) Applicable Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida, with venue for any legal action in the court of jurisdiction in Orange County Florida.

18. Change of Terms. Seller reserves the right to withdraw the Property from the market and/or change any of the prices and terms at any time prior to the execution of this Agreement by all parties.

19. Survival. It is agreed to by the parties that all covenants and agreements that are to be performed after the Closing or representations made herein shall survive such Closing.

20. Entire Agreement. The parties agree that the provisions of this Agreement represent the entire Agreement between the parties. Any amendments hereto shall be in writing and signed by both parties.

21. Execution. The execution of this Agreement by the first party to do so constitutes an offer to purchase or sell the Property. If this Agreement is not accepted in writing by the second party within 5 days from the date of execution by the first party, then the first party to execute this Agreement may, at its election, terminate this Agreement at any time prior to actually receiving an executed counterpart of this Agreement by the other party hereto.

22. Notices. All notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, or within five (5) days after depositing same with the United States Postal Service, postage prepaid by registered or certified

mail, return receipt requested, or within one (1) business day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, at the addresses indicated herein-below, or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

If to Seller:

Russel L. Mouton, II
Special Assets Officer
Senior Vice President
Mercantile Bank
1560 N. Orange Ave. Suite 300
Winter Park, FL 32789
Phone (407) 622-3526
Fax (407) 622-8485
rustv.mouton@bankmercantile.com

If to Purchaser:

Ralph	Singleton
529VersaillesDr.Suite	200
Maitland, FL	32751
Cell:	407-247-2355
Office:	407-644-9811
Fax:	407-644-9621
E-Mail: CMC529V@aol.com	

With Copy to:

Robert B. White Jr. Esq.
White & Luczak, P.A.
558 West New England Avenue, Suite 240
Winter Park, Florida 32789
Phone: 407-647-9300
Fax: 407-647-9336
Email: rbwhite@whiteuczak.com

Counsel for the parties set forth herein may deliver or receive notice on behalf of the parties. When any period of time prescribed herein is less than six (6) days, intermediate non-Business Days shall be excluded in the computation.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Signed, sealed and delivered
in the presence of:

Purchaser:
Ralph Singleton

Witnesses:

Marcia Blackburn
Print Name: Marcia Blackburn

Maybäck Detwiler
Print Name: Maybäck Detwiler

Ralph Singleton

Date of execution: September 9, 2009

Tyler Kura
Print Name: Tyler Kura

Natalie Taylor
Print Name: Natalie Taylor

Seller:
Mercantile Bank

Russell L. Mouton, II
By: Russell L. Mouton, II
Name: RUSSELL L. MOUTON, II
Its: Senior Vice President

Date of execution: September 9, 2009

EXHIBIT "A"

Real Property

All of the lots and tracts comprising COLINA BAY, according to the plat thereof as recorded in Plat Book 60, Pages 34 through 38, Public Records of Lake County, Florida, **less and except** the following lots and tracts:

Tracts A, B, C, D, E and G and Lots 16, 24, 52, 53, 62, 63, 64, 65, 66, 68, 69, 71 and 72. (Hereinafter the "Excluded Lots")

together with all improvements, hereditaments and tenements appertaining thereto. (hereinafter "Real Property")

Personal Property

(Hereinafter "Personal Property")

Any and all of the right, title and interest of Colina Bay, Colina Bay Water Holdings and Colina Bay Water existing in and/or relating to the Real Property and necessary for Mercantile and/or successor owner(s) to carry forward with the ongoing operation and development of the Real Property; which are not part and parcel of the Excluded Lots:

- a. all buildings and improvements now owned by Colina Bay, Colina Bay Water Holdings and Colina Bay Water erected on the Real Property;
- b. all fixtures, machinery, equipment and other articles of real, personal or mixed property now owned by Colina Bay, Colina Bay Water Holdings or Colina Bay Water attached to, situated or installed in or upon, or used in the operating or maintenance of, the Real Property or any buildings or improvements situated thereon owned by Colina Bay, Colina Bay Water Holdings or Colina Bay Water, whether or not such real, personal or mixed property is or shall be affixed to the Real Property;
- c. all building materials, building machinery and building equipment currently present on site at the Real Property received during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be

situated thereon owned by Colina Bay, Colina Bay Water Holdings or Colina Bay Water;

- d. all licenses relating to and/or necessary for successor owner(s) to continue with the ongoing operation and development of all or any part of the Real Property and all extensions, renewals, and modifications thereof;
 - e. all contract rights, relating to the ongoing operation and development of the Real Property or the use, occupancy, maintenance, construction, repair or operation thereof; including all management agreements, franchise agreements, utility agreements and deposits; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals;
 - f. all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting and running with the Real Property; all means of access to and from the Real Property, whether public or private; and all water and mineral rights; and
 - g. the right to use the name Colina Bay in connection with the ongoing operation and development of the Real Property.
-

Amendment of Purchase Price

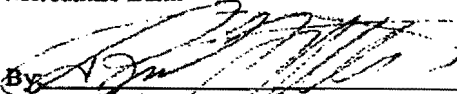
This Amendment of Purchase Price is entered into between Mercantile Bank, a division of Carolina First Bank (the "Seller"), and Turtle Creek Lots, LLP/Ralph Singleton (the "Buyer") with reference to a certain Loan Sale Agreement dated as of September 9, 2009 between Seller and Buyer (the "Loan Sale Agreement").

Seller and Buyer hereby amend Section 2 of the Loan Sale Agreement to reduce the Purchase Price from \$2,700,000 to **\$2,400,000**.


There are no other changes to the Loan Sale Agreement and Buyer and Seller confirm that the Closing Date shall remain on or before September 30, 2009.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of September 25, 2009.

SELLER:
Mercantile Bank

By 
Russel L. Mouton, II, Senior Vice President

BUYER: Turtle Creek Lots, LLP

By  9.25.09
Ralph Singleton, managing member