

RESOLUTION NO. 22-04

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THAT CERTAIN PURCHASE AND SALE AGREEMENT BETWEEN GORDON ZENG AND THE TOWN ATTACHED AS EXHIBIT "A" FOR THE PURCHASE OF VACANT LAND ADJACENT TO TOWN HALL MORE PARTICULARLY DESCRIBED IN EXHIBIT "A", IN THE AMOUNT OF \$1,000,000.00; ALLOCATING AND APPROPRIATING FUNDS FOR THE PURCHASE; AUTHORIZING THE MAYOR, TOWN MANAGER AND TOWN ATTORNEY TO TAKE ALL NECESSARY STEPS TO CLOSE THE PURCHASE OF THE PROPERTY AND OTHERWISE IMPLEMENT THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town has an opportunity to purchase land directly adjacent to Town Hall that would provide the Town to expand its service capabilities; and

WHEREAS, the Town will appropriate and commit funds (up to \$1,000,000) to complete the purchase from funding available in the 2022 Fiscal Year Budget, surplus revenues and/or under budget expenditures; and

WHEREAS, the Town desires to purchase the land for future upland facilities for the Town's Mooring Field and/or other appropriate uses as determined by Town Council; and

WHEREAS, the Town has identified State and Federal grant opportunities for the construction funding of the Mooring Field upland facilities and authorizes Town Staff to apply for such grant funding opportunities utilizing the acquisition expenditure as a grant match whenever feasible; and

WHEREAS, to apply for some grant funding it is necessary for the Town to designating a "Project Manager", and authorizing the Project Manger to apply for and administer the grant funding on behalf of the Town; and

WHEREAS, the Town desires to designate the Town Manager or designee as the Project Manager and authorize the Mayor, Town Attorney, and Town Manager or designee, to take all necessary steps to implement this Resolution.

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NOW, THEREFORE, BE IT HEREBY RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council.

Section 2. The purchase and sale agreement attached as Exhibit "A" is approved and the Town Council authorizes the allocation, appropriation, and expenditure of \$1 million dollars to purchase the property legally described in Exhibit "A" ("Property").

Section 3. The Mayor, Town Attorney, and Town Manager or designee are authorized to take all necessary steps to implement this Resolution. Furthermore, the Town Manager or designee is selected as Project Manager and authorized to seek and apply for grant funding and administer the grant on behalf of the Town for improvements to the Property.

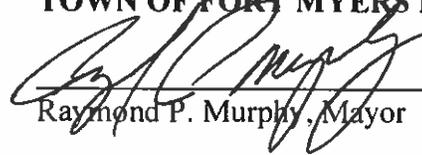
Section 4. This Resolution shall take effect immediately upon its adoption.

THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by vice Mayor Hosafros and seconded by Mayor Murphy, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 24th day of January 2022.

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:


Victor Sanabria, Acting Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 24 day of January 2022.

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129820829.1

Vacant Land Contract

- 1* **1. Sale and Purchase ("Contract"):** GORDON ZENG DONGHE ZHU
 2* ("Seller") and Town Of Fort Myers Beach
 3 ("Buyer") (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")
 4 described as:
 5* Address: 166 CHAPEL ST FORT MYERS BEACH FL 33931 + 99 TROPICAL SHORES WAY FORT MYERS BEACH FL 33931
 6* Legal Description: _____
 7 SEAGRAPE SUBD BLK B PB 4 PG 17 LOT 9 + HILLS T P SUB PB 3 PG 84 POR LOT 31
 8 _____
 9 HILLS T.P.SUBD. OR 355 P 98 PB 3 PG 84
 10 _____
 11* SEC ___/TWP /___/ RNG ___ of LEE County, Florida. Real Property ID No.: _____
 12* including all improvements existing on the Property and the following additional property: _____
 13 _____
- 14* **2. Purchase Price:** (U.S. currency) \$ 1,000,000
 15 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:
 16* Escrow Agent's Name: JD Title & Escrow Services, LLC
 17* Escrow Agent's Contact Person: Jackie Hooker
 18* Escrow Agent's Address: 1505 SE 40th Street, Ste. A Cape Coral, Florida 33904
 19* Escrow Agent's Phone: 239-984-5028
 20* Escrow Agent's Email: Jackie@JDTitles.com
- 21 (a) Initial deposit (\$0 if left blank) (Check if applicable)
 22* accompanies offer
 23* will be delivered to Escrow Agent within _____ days (3 days if left blank)
 24* after Effective Date \$ 100,000
- 25 (b) Additional deposit will be delivered to Escrow Agent (Check if applicable)
 26* within _____ days (10 days if left blank) after Effective Date
 27* within _____ days (3 days if left blank) after expiration of Due Diligence Period \$ _____
- 28* (c) Total Financing (see Paragraph 6) (express as a dollar amount or percentage) \$ _____
 29* (d) Other: \$ _____
 30 (e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)
 31* to be paid at closing by wire transfer or other Collected funds \$ 900,000
- 32* (f) (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The
 33* unit used to determine the purchase price is lot acre square foot other (specify): _____
 34* prorating areas of less than a full unit. The purchase price will be \$ _____ per unit based on a
 35 calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in
 36 accordance with Paragraph 8(c). The following rights of way and other areas will be excluded from the
 37* calculation: _____
- 38 **3. Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy
 39* delivered to all parties on or before Jan 21, 2022, this offer will be withdrawn and Buyer's deposit, if
 40 any, will be returned. The time for acceptance of any counter-offer will be 3 days after the date the counter-offer is
 41 delivered. The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer
 42 has signed or initialed and delivered this offer or the final counter-offer.
- 43* **4. Closing Date:** This transaction will close on Feb 28, 2022 ("Closing Date"), unless specifically
 44 extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including,
 45 but not limited to, Financing and Due Diligence periods. However, if the Closing Date occurs on a Saturday,
 46 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business
 47 day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property
 48 insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If
 49 this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and
 50 other items.
- 51 **5. Extension of Closing Date:** If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not
 52 available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements

Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is 1 of 8 pages.

53 ("CFPB Requirements), if applicable, then Closing Date shall be extended for such period necessary to satisfy
 54 CFPB Requirements, provided such period shall not exceed 10 days.

55 **6. Financing: (Check as applicable)**

56 • (a) **Buyer** will pay cash for the Property with no financing contingency.
 57 • (b) This Contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s)
 58 • specified below ("Financing") within _____ days after Effective Date (Closing Date or 30 days after Effective
 59 • Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within _____
 60 • days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial,
 61 • and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the
 62 • Financing within the Financing Period, either party may terminate this Contract and **Buyer's** deposit(s) will be
 63 • returned.

64 • (1) **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ _____
 65 • or _____% of the purchase price at (Check one) a fixed rate not exceeding _____% an
 66 • adjustable interest rate not exceeding _____% at origination (a fixed rate at the prevailing interest rate
 67 • based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully
 68 • informed of the loan application status and progress and authorizes the lender or mortgage broker to
 69 • disclose all such information to **Seller** and Broker.

70 • (2) **Seller Financing:** **Buyer** will execute a first second purchase money note and mortgage to
 71 • **Seller** in the amount of \$ _____, bearing annual interest at _____% and payable as follows:
 72 • _____

73 The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow
 74 forms generally accepted in the county where the Property is located; will provide for a late payment fee
 75 and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without
 76 penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on
 77 conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to
 78 keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller**
 79 to obtain credit, employment, and other necessary information to determine creditworthiness for the
 80 financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not **Seller**
 81 will make the loan.

82 • (3) **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to
 83 • _____

84 • LN# _____ in the approximate amount of \$ _____ currently payable at
 85 • \$ _____ per month, including principal, interest, taxes and insurance, and having a
 86 • fixed other (describe) _____
 87 • interest rate of _____% which will will not escalate upon assumption. Any variance in the mortgage
 88 • will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will purchase
 89 • **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds _____% or the
 90 • assumption/transfer fee exceeds \$ _____, either party may elect to pay the excess, failing
 91 • which this Contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves
 92 • **Buyer**, this Contract will terminate; and **Buyer's** deposit(s) will be returned.

93 • 7. **Assignability: (Check one)** **Buyer** may assign and thereby be released from any further liability under this
 94 • Contract, may assign but not be released from liability under this Contract, or may not assign this Contract.

95 • 8. **Title:** **Seller** has the legal capacity to and will convey marketable title to the Property by statutory warranty
 96 • deed special warranty deed other (specify) _____, free of liens, easements,
 97 • and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants,
 98 • restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any
 99 • other matters to which title will be subject) _____,
 100 • provided there exists at closing no violation of the foregoing.

101 • (a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay
 102 • for the title search, including tax and lien search (including municipal lien search) if performed, and all other
 103 • fees charged by closing agent. **Seller** will deliver to **Buyer**, at

104 • (Check one) **Seller's** **Buyer's** expense and
 105 • (Check one) within _____ days after Effective Date at least _____ days before Closing Date,
 106 • (Check one)

107 • (1) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be
 108 • discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the

amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

- (2) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within _____ days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within _____ days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 8(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

9. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections: (Check (1) or (2))**

(1) **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 20 days (30 days if left blank) ("Due Diligence Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Due Diligence Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Due Diligence Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Due Diligence Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this Contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

165 • (2) **No Due Diligence Period:** Buyer is satisfied that the Property is suitable for Buyer's purposes,
 166 including being satisfied that either public sewerage and water are available to the Property or the
 167 Property will be approved for the installation of a well and/or private sewerage disposal system and that
 168 existing zoning and other pertinent regulations and restrictions, such as subdivision or deed restrictions,
 169 concurrency, growth management, and environmental conditions, are acceptable to Buyer. This Contract
 170 is not contingent on Buyer conducting any further investigations.

171 (b) **Government Regulations:** Changes in government regulations and levels of service which affect Buyer's
 172 intended use of the Property will not be grounds for terminating this Contract if the Due Diligence Period has
 173 expired or if Paragraph 9(a)(2) is selected.

174 (c) **Flood Zone:** Buyer is advised to verify by survey, with the lender, and with appropriate government agencies
 175 which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to
 176 improving the Property and rebuilding in the event of casualty.

177 (d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as
 178 defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required
 179 by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The
 180 Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that
 181 govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach
 182 nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
 183 Department of Environmental Protection, including whether there are significant erosion conditions associated
 184 with the shore line of the Property being purchased.

185 • Buyer waives the right to receive a CCCL affidavit or survey.

186 **10. Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be
 187 conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
 188 binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to
 189 Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to
 190 Broker as per Paragraph 21. In addition to other expenses provided in this Contract, Seller and Buyer will pay the
 191 costs indicated below.

192 (a) **Seller Costs:**

193 Taxes on deed
 194 Recording fees for documents needed to cure title
 195 Title evidence (if applicable under Paragraph 8)
 196 Estoppel Fee(s)
 197 • Other: _____

198 (b) **Buyer Costs:**

199 Taxes and recording fees on notes and mortgages
 200 Recording fees on the deed and financing statements
 201 Loan expenses
 202 Title evidence (if applicable under Paragraph 8)
 203 Lender's title policy at the simultaneous issue rate
 204 Inspections
 205 Survey
 206 Insurance
 207 • Other: _____

208 (c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real
 209 estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and
 210 other Property expenses and revenues. If taxes and assessments for the current year cannot be determined,
 211 the previous year's rates will be used with adjustment for any exemptions.

212 (d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, Seller will
 213 pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the
 214 last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
 215 resulted in a lien before closing; and Buyer will pay all other amounts. If special assessments may be paid in
 216 • installments, Seller Buyer (Buyer if left blank) will pay installments due after closing. If Seller is
 217 checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a
 218 Homeowners' or Condominium Association.

219 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
 220 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO
 221 PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY

222 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER
 223 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE
 224 COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

- 225 (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by
 226 FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at
 227 closing.
 228 (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with
 229 closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate
 230 in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that
 231 the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be
 232 contingent upon, extended, or delayed by the Exchange.

233 **11. Computation of Time:** Calendar days will be used when computing time periods, except time periods of 5 days
 234 or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal
 235 holidays specified in 5 U.S.C. 6103(a). Other than time for acceptance and Effective Date as set forth in Paragraph
 236 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or
 237 inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103)
 238 shall extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in**
 239 **this Contract.**

240 **12. Risk of Loss; Eminent Domain:** If any portion of the Property is materially damaged by casualty before closing
 241 or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain
 242 proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may
 243 terminate this Contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification,
 244 and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this Contract and receive
 245 all payments made by the governmental authority or insurance company, if any.

246 **13. Force Majeure:** **Seller** or **Buyer** will not be required to perform any obligation under this Contract or be liable to
 247 each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or
 248 prevented by an act of God or force majeure. An "act of God or force majeure" is defined as hurricanes,
 249 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably
 250 within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is unable
 251 in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period
 252 that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event
 253 continues beyond 30 days, either party may terminate this Contract by delivering written notice to the other; and
 254 **Buyer's** deposit(s) will be returned.

255 **14. Notices:** All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or
 256 electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by**
 257 **this Contract, regarding any contingency will render that contingency null and void, and this Contract will**
 258 **be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by**
 259 **an attorney or licensee (including a transactions broker) representing a party will be as effective as if**
 260 **delivered to or received by that party.**

261 **15. Complete Agreement; Persons Bound:** This Contract is the entire agreement between **Seller** and **Buyer**.
 262 **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless**
 263 **incorporated into this Contract.** Modifications of this Contract will not be binding unless in writing, signed or
 264 initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This
 265 Contract, signatures, initials, documents referenced in this Contract, counterparts, and written modifications
 266 communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding.
 267 Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any
 268 provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully
 269 effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this Contract. This
 270 Contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular or
 271 plural. This Contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if
 272 permitted, of **Seller**, **Buyer**, and **Broker**.

273 **16. Default and Dispute Resolution:** This Contract will be construed under Florida law. This Paragraph will survive
 274 closing or termination of this Contract.

- 275 (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this Contract, **Buyer**
 276 may elect to receive a return of **Buyer's** deposit(s) without thereby waiving any action for damages resulting

from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

(b) Buyer Default: If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this Contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this Contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this Contract.

~~17. **Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.~~

18. Escrow Agent; Closing Agent: **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

19. Professional Advice; Broker Liability: Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this Contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value.** **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this Contract. This Paragraph will survive closing.

20. Commercial Real Estate Sales Commission Lien Act: If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

21. Brokers: The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or listing broker to cooperating brokers.

Phillip Serna / P3419177

Seller's Sales Associate/License No.

Buyer's Sales Associate/License No.

329* Phillip.Sema@cbrealty.com
 330 Seller's Sales Associate Email Address
 331
 332* 239-692-4280
 333 Seller's Sales Associate Phone Number
 334
 335* Coldwell Banker Realty
 336 Listing Brokerage
 337
 338
 339* Listing Brokerage Address

 Buyer's Sales Associate Email Address

 Buyer's Sales Associate Phone Number

 Buyer's Brokerage

 Buyer's Brokerage Address

340 **22. Addenda:** The following additional terms are included in the attached addenda and incorporated into this Contract
 341 (Check if applicable):
 342* A. Back-up Contract
 343* B. Kick Out Clause
 344* C. Other _____

345* **23. Additional Terms:** _____
 346 _____
 347 _____
 348 _____
 349 _____
 350 _____
 351 _____
 352 _____
 353 _____
 354 _____
 355 _____
 356 _____
 357 _____
 358 _____
 359 _____
 360 _____

COUNTER-OFFER/REJECTION

362* Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
 363 deliver a copy of the acceptance to Seller).
 364* Seller rejects Buyer's offer

365 **This is intended to be a legally binding Contract. If not fully understood, seek the advice of an attorney before**
 366 **signing.**

367* **Buyer:** _____ Date: _____

368* Print name: _____ Town Of Fort Myers Beach

369* **Buyer:** _____ Date: _____

370* Print name: _____

371 **Buyer's address for purpose of notice:**

372* Address: _____

373* Phone: _____ Fax: _____ Email: _____

374* **Seller:** Gordon Zeng Date: Jan 19, 2022

375* Print name: GORDON ZENG

376** **Seller:** Donghe Zhu Date: Jan 19, 2022

377* Print name: DONGHE ZHU

Buyer () () and Seller (G2) (G2) acknowledge receipt of a copy of this page, which is 7 of 8 pages.
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378 **Seller's address for purpose of notice:**

379* **Address:** _____

380* **Phone:** _____ **Fax:** _____ **Email:** _____

381* **Effective Date:** _____ **(The date on which the last party signed or initialed and delivered the**
382 **final offer or counter-offer.)**

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