

**ASSET PURCHASE AGREEMENT BETWEEN  
TROPICAL BREEZE ESTATES, INC.AND  
THE CITY OF BOYNTON BEACH**

This Asset Purchase Agreement (the "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Boynton Beach, a Florida municipal corporation, (hereinafter referred to as "Purchaser") and Tropical Breeze Estates, Inc., a Florida corporation (hereinafter referred to as "Seller").

WITNESSETH:

**WHEREAS**, the Seller is the owner of a utility system consisting of a water treatment and distribution system and wastewater collection system in Palm Beach County, Florida, and serving the residential community more fully described on Exhibits "A" and "B", which are attached hereto and incorporated herein by reference (hereinafter referred to as the "Utility Area"); and

**WHEREAS**, Seller is currently operating its utility system; and

**WHEREAS**, Purchaser is engaged in providing utility services to the area where Seller's Utility System is located, is interconnected with Seller's Utility System, and is authorized to be in the business of furnishing water service to the various communities in the Purchaser's Service Area; and

**WHEREAS**, Purchaser desires to acquire, and Seller desires to sell the water distribution and wastewater collection facilities, (collectively "Facilities") which are installed to provide utility service to the Seller's community, subject to the terms and conditions of this Agreement, as such Facilities may be modified prior to Closing with the consent of the City of Boynton Beach.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

**ARTICLE I REPRESENTATIONS BY SELLER**

1. Seller represents and warrants that, to Seller's actual knowledge:

- 1.1 Seller is a Florida corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida authorizing it to construct, operate and maintain a public water distribution system.
- 1.2 Seller is, and at the Closing (the "Closing" as hereinafter defined) will be, the owner of the Facilities with good and marketable title, free and clear of all liens and encumbrances.
- 1.3 Purchaser is exempt from the Florida Public Service Commission regulation (hereinafter referred to as the "Commission").
- 1.4 Seller will cooperate fully with the Purchaser in any and all applications or petitions to public authorities deemed necessary or desirable by Purchaser in connection with the purchase of the Facilities from Seller as contemplated herein.
- 1.5 Attached hereto as Exhibits "A" and "B" are a detailed maps of the Facilities of Seller to be acquired by Purchaser, pursuant to this Agreement, showing both their respective installation and description. Said Facilities include all water utility distribution and wastewater collection assets and equipment owned by the Seller within the Property, including but not limited to a complete Utility system as shown in Exhibit "C". The engineering plans and specifications for the Facilities have been organized and will be transferred to Purchaser with all other records. Said Facilities expressly exclude customer deposits and accounts receivables, if any, both of which shall be transferred to the Seller within 180 days of Closing. The Facilities are constructed within Sellers lands or are otherwise accessible to Seller and Purchaser. To the extent that such rights of access do not exist, Seller agrees to grant those rights at Closing.
- 1.6 Attached hereto as Exhibit "D" is a list, signed by the Seller, and briefly describing, as of the date of this Agreement, the following:
  - 1.6.1 All pending or threatened action at law, suits in equity or administrative proceedings relating to the Facilities;
  - 1.6.2 All contracts or obligations of any nature between Seller and any other party including all developer agreements relating to the Property.
  - 1.6.3 All ~~real estate~~, easements and rights and/or privileges associated with the utility owned by Seller to be transferred hereunder.
- 1.7 Except as indicated in Section 1.6, there are no pending or threatened actions at law or suits in equity relating to the Facilities, or any pending or threatened proceedings before any governmental agency.
- 1.8 Except as indicated in Section 1.6, there are no contracts or obligations of any nature between Seller and any other party relating to the Facilities or service or promised service.

- 1.9 Neither Seller nor any entity or individual affiliated with Seller has executed any agreement with purchasers of lots within the Service Area, or any other parties, whereunder such purchases or other parties have acquired any interest in the Facilities used or to be used in rendering service to them.
- 1.10 Facilities are capable of rendering utility service in the ordinary course of business in compliance with all federal, state and local rules and regulations including but not limited to all rules and regulations related to environmental protection and drinking water.
- 1.11 Prior to the Closing, the consummation of the transactions contemplated herein will have been duly authorized by all necessary action, corporate or otherwise, on behalf of Seller.
- 1.12 Seller has filed all tax returns which are required to be filed, and each return which has been filed is true and correct, and Seller has paid all taxes shown as payable on such returns when and as required by applicable law associated with the Facilities.
- 1.13 No representation or warranty by Seller in this agreement, or any statement or certificate furnished or to be furnished to Purchaser pursuant hereto or in connection with the transactions contemplated herein, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

## **ARTICLE II CLOSING AND PURCHASE PRICE**

- 2.1 The Closing shall take place within ninety (90) days of the date of the execution of this Agreement by the Purchaser
- 2.2 At the Closing, the Seller will, upon due performance by Purchaser of its obligations under the Agreement, deliver:
  - 2.2.1 such good and sufficient warranty deeds, bills of sale with covenants of warranty, and sufficient instruments of sale, in form and substance reasonably satisfactory to Purchaser's counsel, as shall be required to vest in Purchaser marketable title to all of the Facilities uses for the existing water system, free and clear of liens and encumbrances of every nature that would render title to the Facilities unmarketable.
  - 2.2.2 all of the files, documents, papers, agreements, books of account, customer lists, original cost invoices, engineering drawings, and records possessed by Seller pertaining to the water and sewer utility business conducted by Seller in the Property, other than its minute books and stock records, and any other records reasonably needed by Seller;

- 2.2.3 all orders, permits, license or certificates issued or granted to Seller by any governmental authority in connection with any authorization related to the construction, operation or maintenance of its Facilities or the conduct of its water and sewer utility business; and
- 2.2.4 Opinions of Counsels, dated as of the Closing, that upon the delivery to Purchaser of the Bill of Sale and the approval respective legislative parties under Section 180.301, Florida Statutes, that Purchaser will then have title to the Facilities, free and clear of all liens and encumbrances in connection with the acquisition, construction, installation, and financing of the Facilities.
- 2.3 At the Closing and from time to time thereafter, Seller shall execute and deliver such further instruments of sale, conveyance, transfer and assignment, and take such other action (without expending funds or bring suit) as Purchaser may reasonably request, in order more effectively to sell, convey, transfer and assign to Purchaser any of the Seller's Facilities, to confirm the title of Purchaser thereto, and to assist Purchaser in exercising rights with respect thereto.
- 2.4 The Purchaser acknowledges that the Utility System is being purchased "as is," and may repair or replace facilities as it deems necessary without any additional assessments imposed against the Seller's customer **(FOR HOW LONG WILL THEY NOT BE ASSESSED? PERPETUITY And who imposes the assessments?).BBU**
- 2.5 In order to perform repairs or system improvements, it is understood that the Seller will grant both temporary and permanent easements to the Purchaser so that the Purchaser may provide continuous utility services.
- 2.6 Purchase Price: At the Closing, Purchaser shall, upon due performance by Seller of its obligations under the Agreement, deliver to the Seller, the Purchase Price (the "Purchase Price") in the amount of Ten and 00/100 Dollars (\$10.00). Purchaser does not assume any liabilities of Seller wholly arising prior to Closing. Any and all costs and fees, other than Seller's legal fees and expenses, associated with the Closing shall be the Purchaser's responsibility.
- 2.7 Connection Fees: At the Closing, Seller shall provide documentation, to the satisfaction of the Purchaser, evidencing the imposition of an assessment against the individual units/lots for the connection fee to be paid to the Purchaser. The assessment shall provide for the payment of a connection fee in the amount of Two Hundred Seventy Five and 00/100 Dollars (\$275.00) per unit/lot served by the Utility System. The Seller pay the assessment to

Purchaser in quarterly payments commencing ninety (90) days after Closing with no interest. This paragraph shall survive Closing.

2.8 At Closing, the Seller shall provide the Purchaser with a signed Water Service Agreement for each unit/lot that will receive utility services from the Purchaser. If a unit/lot does not sign a Water Service Agreement, the Purchaser shall not provide utility services to the unit/lot that does not sign the Water Service Agreement. The Purchaser will waive the \$100.00 deposit for all customers within the Seller's service area if the individual lot/unit owners sign the Utility Service Agreement prior to Closing. If individual unit/lot owners do not sign the Utility Service Agreement by Closing, the individual unit/lot owners will be required to apply to the Purchaser for service through the standard process outlined in the Purchaser's Customer Service Policy, and the unit/lot owner will be required to post a \$100.00 deposit. This paragraph shall survive closing.

2.9 The Purchaser recognizes that the Seller is requesting extra valves on the customer side, only if the individual customer expressly requests and the separate assessment will be included in the stated connection fee of \$275. If either party defaults in the performance of any of its obligations or requirements under this Agreement, and the defaulting party fails to remedy such default within fourteen (14) days after written notice by the other Party of such default(s) (the "Default Notice"), except for a failure to close in accordance with the terms of this Agreement which shall constitute an immediate default for which no Default Notice is required, the non-defaulting Party shall have, as its sole remedy for such default, the option to pursue an action against the defaulting party for specific performance of this Agreement and obtain such orders or decrees as appropriate to achieve specific performance of the defaulting parties' obligations under this Agreement. In the event either Party is required to enforce this Agreement by court proceedings or otherwise, the prevailing party shall be entitled to collect from the non-prevailing party its reasonable attorneys' fees, paraprofessional fees and costs incurred pretrial, at trial, and at all levels of proceedings, including appeals.

### **ARTICLE III AGENCY APPROVALS**

3.1 Within fifteen (15) days following the execution of this Agreement Purchaser will file applications for transfer with the appropriate regulatory agencies requesting the transfer of the Public Utility permits or sequential water use permit. Seller agrees to cooperate fully with Purchaser in Purchaser's application for such transfers and approvals.

3.2 The Purchaser acknowledges that annexation of the Seller's development and the property contained within Seller's development is not required for the Purchaser to acquire Seller's Utility System.

#### ARTICLE IV GENERAL

4.1 Upon purchase of the Facilities of Seller, Purchaser agrees to supply all customers within the Tropical Breeze Estates with continuous (subject to unavoidable outages) adequate and customary utility service, and to operate, continuously maintain and promptly repair Facilities acquired herein. The Tropical Breeze Estates customers shall receive a rate no less favorable than the rate offered by the City of Boynton Beach to any other customer it serves outside of the boundaries of the City of Boynton Beach. This warranty shall survive the Closing of this Agreement.

4.2 Following Closing, the unit/lot owners served by the Utility System shall call Purchaser's Customer Service centers for all utility service issues.

4.3 The Purchaser agrees to assume all responsibilities and costs for the initial connection of Seller's Facilities to Purchaser's Utility System.

4.4 The Seller agrees to assume all responsibilities and costs for the disconnection of Seller's Facilities equipment from the Seller's Utility Area.

4.5 The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

4.6 Any notice of delivery required to be made hereunder may be made by mailing a copy thereof addressed to the appropriate party as follows:

If to Purchaser: Mr. Colin Groff, Utilities Director City of Boynton Beach  
124 E. Woolbright Road  
Boynton Beach, Florida 33435

With Copy To: Lori Laverriere, City Manager  
100 E. Boynton Beach Blvd.  
Boynton Beach, FL 33435

With Copy To: James A. Cherof, City Attorney  
100 E. Boynton Beach Blvd.  
Boynton Beach, FL 33435

If to Seller:

Delivery, when made by registered or certified mail, shall be deemed complete upon mailing.

4.7 The Attachments to this Agreement are a part hereof and are hereby incorporated in full by reference.

4.8 This Agreement shall be governed by the laws of the State of Florida. Venue for any litigation filed to enforce the terms and conditions of this Agreement shall be filed in the appropriate state or federal court located in Palm Beach County, Florida

4.9 The representations and warranties contained herein Article I shall survive, and continue in effect, after the Closing for a period of one year from the date of Closing.

4.10 Seller agrees to indemnify Purchaser, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of the Seller under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Purchaser by Seller. This provision shall survive Closing.

4.11 To the extent permitted by law, and subject to the limitations contained in Section 768.28, Florida Statutes, Purchaser agrees to indemnify Seller, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost, accruing or resulting from any misrepresentation or breach of any representation, or warranty or agreement made or to be performed by Purchaser under this Agreement or from any misrepresentation in or material omission from any certificate or other documents furnished or to be furnished to Seller by Purchaser. This provision shall survive Closing.

4.12 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4.13 Modification. This Agreement may not be changed, altered, modified, amended or terminated except by written agreement signed by both the Seller and Purchaser.

4.14 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, assigns and successors in interest. This Agreement is solely for the benefit of the Parties to this Agreement and no right or cause of action shall accrue upon, to or for the benefit of any third party not a party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties to this Agreement any right, remedy or claim under or by reason of this Agreement or any provisions or conditions of this Agreement, and all of the provisions, representations, covenants and conditions contained in this Agreement shall inure to the sole benefit of

and shall be binding upon the Parties to this Agreement and their respective representatives, successors and assigns.

4.15 Severability. In the event that any paragraph, section, term, provision or portion of this Agreement is determined to be illegal, unenforceable, or otherwise invalid, such paragraph, section, term, provision or portion of this Agreement shall be given its nearest legal meaning or be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute the entire agreement.

4.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and a complete set of which taken together shall constitute one and the same agreement. The parties agree and intend that a signature by facsimile machine or electronic transmission (i.e. e-mail) shall bind the party so signing with the same effect as though the signature was an original.

4.17 Entire Agreement. This Agreement constitutes the complete understanding and entire agreement of the Seller and Purchaser with respect to the matters addressed in this Agreement and there are no other agreements, representations, or warranties other than as set forth in this Agreement. No agreement or representation, unless set forth in this Agreement, shall bind any of the Parties to this Agreement.

4.18. WAIVER OF BREACH. The failure of the Seller or Purchaser to enforce any provisions of this Agreement shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Agreement, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

4.19. TIME AND TIME PERIODS. Time is of the essence in the performance of each of the obligations contained in this Agreement. Unless otherwise specifically provided in this Agreement, time periods shall be determined on calendar days, including Saturdays, Sundays and legal holidays. Wherever any time limit or date provided in this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the State of Florida, then that date is automatically extended to the next day that is not a Saturday or Sunday or legal holiday. For purposes of this Agreement, the term "Business Day" means any weekday that is not a legal holiday under the laws of the State of Florida.

4.20. HEADINGS. The headings, captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such paragraphs of this Agreement or in any way affect this Agreement.

4.21. CONSTRUCTION OF AGREEMENT. The Purchaser and Seller acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all Parties and their respective counsel. Accordingly, all Parties agree that the provisions



of this Agreement shall not be construed or interpreted for or against any Party based upon authorship.

4.22. EXECUTION OF DOCUMENTS. Each Party covenants and agrees that it will at any time and from time to time do such acts and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such documents reasonably requested by the other Party necessary to carry out fully and effectuate the transaction contemplated by this Agreement and to convey good and insurable title for all conveyances subject to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

ATTEST:

CITY OF BOYNTON BEACH, a municipal corporation of the State of Florida

\_\_\_\_\_  
Judith Pyle, City Clerk

By: \_\_\_\_\_  
Steven B. Grant, Mayor

Approved as to Form:

(SEAL)

\_\_\_\_\_  
Office of the City Attorney

STATE OF FLORIDA            )  
  )ss  
  :  
COUNTY OF PALM BEACH    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Steven B. Grant, as Mayor of the City of Boynton Beach, Judith Pyle, City Clerk of the City of Boynton Beach, and \_\_\_\_\_, as Attorney for the City of Boynton Beach, who are personally known to me or have produced \_\_\_\_\_ as identification.

My Commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Printed Name of Notary Public

TROPICAL BREEZE ESTATES, INC., a  
Florida corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(CORPORATE SEAL)

STATE OF FLORIDA )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, and as \_\_\_\_\_ and \_\_\_\_\_ of Tropical Breeze Estates, Inc., a Florida not-for-profit corporation, who is personally known to me or has produced a \_\_\_\_\_ as identification, on behalf of Tropical Breeze Estates, Inc., and has executed the foregoing instrument on behalf of Tropical Breeze Estates, Inc..

My commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Printed Name of Notary Public