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October 12, 2020

## Via e-mail

Gail L. Coniglio, Mayor Julie Araskog Lewis Crampton Bobbie D. Lindsay Danielle H. Moore Margaret A. Zeidman Town Council Members Town of Palm Beach P.O. Box 2029 Palm Beach, FL 33480

Re: Root Trail Access to the Beach

Dear Town Council Members and Mayor Coniglio:

In connection with the above-referenced matter, I represent Root Trail Partners, LLC ("RTP"), the owner of the North 10 feet of the parcel at the end of Root Trail leading from North Ocean Boulevard to the beach (the "North Root Trail Parcel"). Ocean Towers Condominium Association, Inc. ("OT") is the owner of the South 10 feet of the parcel at the end of Root Trail leading from North Ocean Boulevard to the beach (the "South Root Trail Parcel"). Sometimes in this letter, I will be referring to both the North Root Trail Parcel and the South Root Trail Parcel as the "Root Trail Parcel".

For the past few years, there has been increasing concern regarding the use of the Root Trail Parcel to gain access to the beach. You have in your materials for the Town Council Meeting on October 13, 2020, a September 30, 2020 Memo from Nicholas Caristo, Chief of Police (the "Police Memo"), concerning the multiple problems that have been going on with trespass and related complaints in the area of the Root Trail Parcel. That Memo, which does describe some of the issues in that area, nonetheless misses many of the multiple issues that have been caused by the public in the area of Root Trail.

To resolve most of the issues, RTP and OT recently came to an agreement to fence off the Root Trail Parcel and to add berm and landscaping improvements. These improvements would both beautify the area, increase the berm to help with potential flooding, and prevent many of the incidents caused by a certain segment of the public using that area.

When RTP and OT went to the Town to obtain the necessary permits for the improvements to the Root Trail Parcel, it apparently caused the Town's staff to inquire as to the ownership of both the North Root Trail Parcel and the South Root Trail Parcel. See in your materials for the Town Council Meeting on October 13, 2020 the October 2, 2020 Memo from Wayne Bergman, Director of Planning, Zoning & Building (the "Ownership Memo"). Last week this Memo came to the attention of RTP and OT and they were surprised to see that the Town may be coming to the conclusion that the Town may be claiming an ownership interest in both the North Root Trail Parcel and the South Root Trail Parcel.

I am writing to you to provide evidence that RTP does indeed own the North Root Trail Parcel. Many of these same arguments apply to OT's ownership of the South Root Trail Parcel.

# 1. The Grantors of a December 12, 1911 deed recorded at Deed Book 22, Page 48, did not have authority to deed the North Root Trail Parcel to the Town of Palm Beach.

In the year 1900, Enoch Root and Victoria A. Root, husband and wife (the "Roots"), subdivided a strip of land extending from Lake Worth to the Ocean. That land now comprises the lots on the North side of Root Trail, which lost include the North 10 feet of Root Trail. The Plat for that is recorded in Plat Book 1, Page 22, a copy of which is attached as Exhibit "A" (the "Plat"). Please note that many of the attachments to this letter are copies of very old documents and can sometimes be hard to read, but these are the best copies available.

On the Plat itself, the Roots dedicated "a private trail ten feet wide South of the red line and running from Lake Worth to the Ocean Beach for access to lots sold and for the use of lot owners". It needs to be noted that this dedicated strip of land runs over the lots that were subdivided on the Plat, similar to an easement. This dedicated strip of land comprises the North 10 feet of Root Trail today and the North Root Trail Parcel.

Soon thereafter, the Roots started selling various of the parcels on the Plat to third parties. See Exhibit "B" attached hereto copies of some of these deeds for these lots. This list is not complete as some deeds were recorded in Dade County records since Palm Beach County was not carved out of Dade County until 1909.

In the Ownership Memo, it is alleged that the Town gained ownership of the North Root Trail Parcel via a deed dated December 12, 1911 recorded at Deed Book 22, Page 408, and Deed Book 410 (the "Root Deeds"), attached hereto as Exhibit "C". In the Root Deeds, Enoch Root and Victoria A. Root, husband and wife, quit-claimed the North 10 feet of what is now Root Trail and the North Root Trail Parcel to the Town.

When a party quit-claims an interest in real property to another, the grantor is not saying that he or she owns that property and is giving ownership to the grantee. The quit-claim merely provides that <u>if</u> the grantor owns the property, then such ownership interest is transferred to the grantee. This is the case with the Root Deeds, however, the Roots did not have authority to transfer an

ownership interest in that property to the Town since, once the first lot on the Plat was sold to a third party, the Roots no longer could deed property already dedicated to anyone else. As noted above, that property was already dedicated to all of the lot owners. A binding deed would have required the joinder of the Roots and all other parties to whom they had sold lots on the Plat. The Roots Deeds did not have the joinder of such other owners and therefore failed to convey the North Root Trail Parcel to the Town.

# 2. Even if the Root Deeds were valid, the Town never accepted the transfer of the ownership of the North Root Trail Parcel.

For a transfer of ownership of property to be valid, there has to be an acceptance by the grantee of that ownership. In the public records, there is no record that the Town ever accepted ownership of the North Root Trail Parcel. There is, however, evidence that the Town did <u>not</u> accept ownership of the North Root Trail Parcel.

- a. If a property is owned by a municipality, then no real estate taxes are due on such property. For the North Root Trail Parcel, real estate taxes were due, as evidenced by the Tax Collector's Certification recorded at Official Records Book 8659, Page 565; the publication that the North Root Trail Parcel was going to a tax sale recorded at Official Records Book 8659, Page 566; and the tax deed itself, recorded at Official Records Book 8659, Page 567 (the "Tax Deed"). These documents are attached hereto as Exhibit "D". Taxes have continued to be due and paid on the North Root Trail Parcel right up to the current time, and the Town has been a beneficiary of those tax payments.
  - Similarly, OT has been paying taxes on the South Root Trail Parcel for decades.
- b. The Town's own records, as late at 2017, in a map published by the Town's Planning, Zoning & Building Department entitled "Town of Palm Beach Existing Road, Bicycle Pedestrian Network Map 2017" shows the Root Trail Parcel as "Beach Access Private". A copy of this map is attached hereto as Exhibit "E".

After 113 years from the original purported conveyance of the North Root Trail Property to the Town, too much time has elapsed for the Town to now accept ownership of the North Root Trail Property, particularly when the purported grant was defective in the first place.

3. Even if the Root Deeds were valid and even if the Town had accepted the transfer of the ownership of the North Root Trail Parcel, any interest in the North Root Trail Parcel was eliminated by the Tax Deed.

As stated above, the North Root Trail Parcel was sold by the Tax Deed. That Tax Deed sale occurred in 1991. The State of Florida's interest in tax deeds, in general, is to give finality to any claims of ownership of the transferred parcel. This maximizes the return to the taxing authorities. While the governing statutes have various exceptions for certain rights in a property sold by a tax deed (see Florida Statute 712.03), there is no exception for any purported claim of ownership by the Town. Indeed, the Tax Deed also eliminated the rights of the owners on the North side of Root Trail that was granted to them under the terms of the Plat.

### It is contrary to the interests of the Town to assert ownership in the Root Trail 4. Parcel.

As mentioned earlier and borne out by the Police Memo, there has been a dramatic increase in reported crime in the area of the Root Trail Parcel. This dramatic increase in crime corresponds to the dramatic increase to non-Town residents using the Root Trail Parcel for beach access. Problems from non-neighbors have included multiple reports of trespassing, not just on the Root Trail Parcel, but on nearly all of the surrounding private property, including the Warden House where multiple times there have been incidents of what appear to be homeless people sleeping. Further, bicycle theft and car theft have been reported, along with indecent exposure, car damage caused by beachgoers, and beachgoers' unleashed dogs threatening residents. At all hours, including in the middle of the night, residents report being disturbed because of loud noise coming from beachgoers. Often those beachgoers appear to be drunk or on drugs.

This has understandably greatly upset the neighbors.

RTP and OT were both very concerned about this alarming increase of crime in the area and that is why both parties stepped up to the plate to do something about it; i.e., fence off access to the general public, but provide gated access to all of the owners on Root Trail, not just the owners on the North side of Root Trail which previously had access by the terms of the Plat. As part of fencing off the access, funds were also raised to improve the berm and the landscaping on the Root Trail Parcel – none of which were at public expense.

Indeed, written confirmation of the access for the neighbors on Root Trail was recently concluded and a copy of the agreement was provided to an attorney for several of the neighbors, neighbors who previously mistakenly thought that they were going to lose their access to the beach. Preventing access to owners on Root Trail never was part of the plan - improving the area for all residents was. The owners of RTP are and have always been civic-minded, and that will continue.

If the Town asserts its ownership, then the fencing, berm improvement, and landscaping improvement are all forfeited. Crime will continue, if not increase, and the quiet enjoyment of their homes will be lost to all of the residents on Root Trail. This is contrary to the Town's interest and the interests of the residence on Root Trail.

I appreciate your understanding of this matter, and I request time to address this issue with you during your general discussions of the beach access at the October 13, 2020 Town Council Meeting. Please feel free to contact me with any questions you may have. Thank you.

Guy Rabideau cc: John C. Randolph, Esq. (via e-mail)

Mr. Paul Castro (via e-mail)

Mr. Wayne Bergman (via e-mail) Enclosures

Guy Rabideau, Esq. Page 4 October 12, 2020 man and grand grand from the form of the grand of the grand of the contract of

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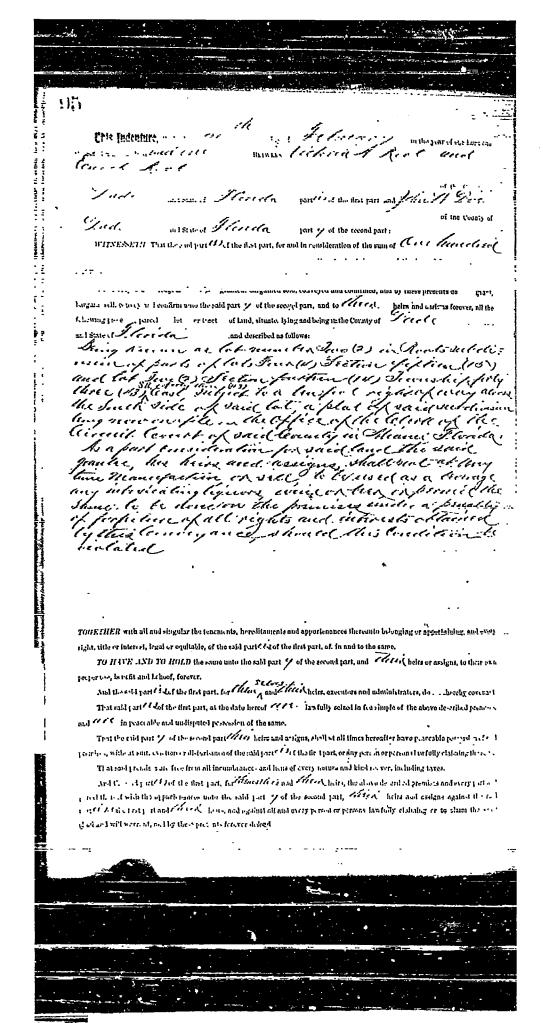
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# **EXHIBIT "C"**

This Inducture, made this 12th day of Alexember a. D. . 1911, between brock Root and Victoria a. Root hurband + wife of the bounty of Palm Beach and State of Ilouida parties of the first and Lower of Palm . Beach, a corporation of the Country of Value Buch and I tate of Florida party of the second part, Witnesseth. That the said partie of the first part, for and in consed. enalion of the since of One Wollars in hand paid by the said party of the second part, the receipt whereas is hereby askennoledged have remised, released and · quit- claimed, and by these presents do remise, reliais and quit- claim unto the said party of the second part and its successors forever, all the right, title, interest. claims and demand which the said parties ? the purch part and to the following described lot, pine, or parel of land, io wit deing a right of way in what ies known as Roots Subdivision to Palue Beach, Palus. Beach County, Florida, and Known as Roots' Trail. Yen fut wide not the South rich of lot laid out in road on the Heet to the Atlantie O cean on the Cart, Said trail on strip of land hereby Juil- claimed, to be kept open and maintained, by said granter, and its successors as a public highway for the henefit of Have and to Hold the same together with all and ... kingular the appointenances thereinto belonging or in any wise apperlaining, and all the estate, right. Title, interest and claim whatever of the said parties of the first part, either in law or equily, to the only proper. part, its successors, forever In thitness thereof, The said parties of the first part have knownto set their hands and seals the lay and year find above written. Signed, realed and luck Root Geel delivered in presence of Victoria a Roof God Henry J. Grant 74. D. metraly State D. Florida County Q Palus Beach hereby butity that on this day

uppeared before me, an officer duly authorized to administer outto and take asknowledgments, bush Root, and Victoria a. Prot to me well known to be the the persons described in and who executed the tore young instrument and who asknowledged before me that they executed the same freely and voluntarily for the purps therein expressed. and I Further bestify, that the said . Dietoria a. Root known to me to be the wife of the raid . Ewoch Road on a separate and private examination, taken and made by and before me, reparalely and apart from her said husband, did acknowledge that she executed the foregoing bleed for the purpose relinginshing, alienating and conveying all her right, . Title and interest, whether of dower . homestead or of ... reparate property, etatutory or ignitable, in and to the lands described therein and that she executed said bleed freely and voluntarely and without any com pulsion, constraint apprehension or fear of or from ther raid husband. Withers my hand and official seal at Hest Talin Beach, County of Talin Beach and State of Florida This 18 day of Merember a. W. 1911 ... William & metall ... notary Public my commission experies may 6, a. N. 1844 Filed July 1-1912

Filed July 1-1912
Recorded July 2-1912
Aled Book 22- Page 408
Housson Delaman Jo
Clerk Circuit-Comb.
July & Fermo. DE

This Indenture, made this 3rd day of June a. D. 1912. between Dorinda H. Brelaford, midow, Galon Beach, of the Country of Palm Beach and State of Florida, party of the first part, and Town of Palm Beach of the Country of Galm Seach and State of Florida party of the second part, Fitneseth, That the said part of the first part, for and in consideration of the sum of One Wollars in hand paid by the said party of the secand part, the receipt whereof is hereby acknowledged, has remised, released and quit- claimed, and by These presents does remise, release and quit-claim unto the said party of the record part, and its successors all the right, title, interest claim and demand which the said party of the first part has in and to the following described lot fier or parcel of land, situate, by Thousand to mit: Being a night of may ten feet mide beginning at the back side of the present County road and running last, on the north line of tract of land deeded on march 22 nd 1893 by Elizabeth I'm. Hungel and husband to Dorinda W. Greleford and recorded in Book " page 211 Records of Wade County Florida, to the atlantic decan, thence south ten. (10) feet there meat parallel to the first line, and ten (10) feet therefrom, to the present lounty and ... Theree north ten (10) feet to the place of beginning ... Said Right of way to be kept open and and main tained, by said town of Palm Beach and if not used as public highway to revent to owners To have and to hold the same, together with all my singular the appartenances thereinto belonging on a anymise apportaining, and all the estate, right, title, interestyclain whateverte of the and faite of the first part, either in down or equity, to the only proper use, benefit and telant of the exist part the second part his and assigns forever En Atuesa Ahereof the said parting the first part he - Teremeto set haved and seed the day and year first above matter med pealed I delivered in present m. Drelsford

State of Florida

Bounty of Palm Beach }

I an officer authorized to take acknowledgments of deeds according to the laws of the Btate of Florida duly qualified and acting, Hereby Certify that

Bounda H. Brelsford to me personally known this day has acknowledged before me that she executed the foregoing instrument, and I further letify that I know the raid person making said acknowledge ment to be the individual described in and who executed the said instrument.

In Hitness thereof, I herewite set my hard and of piciel real, at Palm Beach, said County and State, this third day of June. a. W. 1912.

Enoch Root

My commission expires bee 2151923.

Filed July 1-19 tr Accorded July 3-1912 Deed Book 22- Page 410 Kutson Blaundere fr Clerk Great Gond by Fred & Ferms D. C

articles of agreement, made this 18th day of fune, in the year of our bond one thousand nine hundred and twelve Between a Hofman and anna Hofman his mife, faction of the first part, and M. H. Milton, party of the second sout thineseth, that if the said party of the second party is the second party of the second party in the second fact on his fact to be made "in feeformed, the said faction of the first part facely coverned and agree to convey and assure to the fact, agthe second by a good and siefficient deed, the lat price or paried of ground situated in the lounting of alm George. I shall of thousand a feelow to mit tomornous at the houth theat (64) covere of Rot Court to My Block one hundred (100), remaining Mosth on aidden threet a distance of severity sevents.

# EXHIBIT "D"

Address: VHCIZ

Property Appraisers Parcel Identification (Folio) Number(s):

-513 06/93	TAX COLLECTOR'S CERTIFICATION					DATE OF TAX DEED APPLICATION 9-20-94			
This is to c	ertify that <u>COU</u>	NTY OF PALM BEAC	H	, holde	er <b>of</b>	Tax Sale Ce	rtifica	te Number <u>18453</u>	
sued the	1ST	day of_		JUNE		<del> </del>	.19	91, and which encumb	ers
50 43 43 14 as surrendered	00 002 0041 same in my of	fice and made writt	.3 P. enap	r or su	B P fort	OF GOV L	T 2	State of Florida, to LYG E OF OCEAN BLVD	s.
eve been paid:		and Filed in Connecti						ee, and Tax Collector's fee	s 
ertificate Number	Date of Sale	Amount of Certificate	£		lr	terest		Total	
18453	6-1-91	413	22			247	93	661	15
Certificates Rede	emed by Applica	ant in Connection Wi	th Thi	is Tax Dec	ed A	pplication:			
ertificate Number	Date of Sale	Face Amount of Certificate	•	Tax Collect	tor's	interest		Total	
11321	6-1-88	256	01	5	00	243	21	504	22
12682	6-1-88	265	65	5	00	255	02.	525	67
14270	6-1-90	403	23	5	00	209	68	617	91
18609	6-1-92	417	93	5	00	175	53	598	46
16428	6-1-93	423	59	5	00	33	89	462	48
15084	6-1-94	433	49	5	00	26	01	464	50
SUBJECT TO	994 & SUBSEQ	UENT TAXES Applicant's Possessi		10000	46 -		l	Total Amount Paid	<u> </u>
Certificat	es Redeemed By	Applicant s Possessi Applicant	on an	d Cost of	tne 			3834	39
2. Total of D	Delinquent Taxes	s Paid by Tax Deed Ap	pplica	int			••••		
3. Total of C	Current Taxes Pa	id by Tax Deed Appli	cant	• • • • • • • • • • • • • • • • • • • •	• • • •		••••		$oxed{oxed}$
	-	ence Report Fee							00
									├
	tified By Tax Col Court Statutory F	lector To Clerk of Cou						60	00
	•	lail Charge						23	20
		g Charge						90	00
		• • • • • • • • • • • • • • • • • • • •						42	00
								4,174	59
12. Interest (	Computed by Cle	rk of Court Pursuant	to Se	ction 197	.542	F.S. 6 mon	ths	<b>₹ 9%</b> 375	72
		tutory or Opening B						4,550	31
	1	**Done this the26				OCTOBER		, 1994	
	OHN K. CLARK			• –		BEACH		COUNTY	-

Palm Beach Daily Business Review

Published daily, Monday through Friday except legal holidays West Palm Beach, Palm Beach County, Florida

STATE OF FLORIDA COUNTY OF PALM BEACH:

Before the undersigned authority personally appeared D. Mullin, who on cath says that she is the General Manager of the Palm Beach Delty Business Review I/k/a Palm Beach Review, a newspaper published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertisement, being a Legal Advertisement or Notice in the matter of

CERT. NO. 18453
NOTICE OF APPLICATION FOR TAX DEED NAME IN WHICH ASSESSED: RHODES L PERDUE ET AL

was published in said newspaper in the issues of Feb 7, 1995 Feb 14, 1995 Feb 21, 1995 Feb 28, 1995

Afflant further says that the said Palm Beach Daily Business Review is a newspaper published at West Palm Beach, in said Palm Beach County, Floride, and that the said newspaper has herestorier been continuously published in said Palm Beach County, Floride, and has been entered as second class mail matter at the post office in West Palm Beach in said Palm Beach ter at the post office in West Palm Beach in said Palm Beach County, Floride, for a period of only year next preceding the first publication of the attached copy of advertisement; and affliant number says that the has neither field nor promised any person, firm or corporation any discount rebate, commission or refund for the purgose of securing this swertisement for publication in said negacings?

Februa

(SEAL) D. Mullin p

INDA RAPPAPOZIT MY COMMISSION # CC267 (80 EXPIRES February 14, 1907 SOUDED THRU TROY FAIN INSURANCE, INC.

NOTICE OF APPLICATION
POIL TAX BEEN
NOTICE IS TENEBY GIVEN,
that COUNTY OF PALM BEACH the holder of the following certifi-cate has filed seld certificate for a tex deed to be issued thereon. The certificate number and year of issuance, the description of the property, and the names in which it assessed are as follows: Certificate No. 18453

Year of leguarice JUNE 1, 1991 cription of Propert

14-43-43, N 10.3 FT OF SUB. P OF GOV LT 2 LYG E OF OCEAN BLVD 50-43-43-14-00-002-0041 Name in which as

RHODES L PERDUE ET AL Said property being in the County of PALM BEACH, State of

Florica.

Unless said certificate shall be redeemed according to less the property described in such certificate shall be said to the highest bidder at the countrieuse door on the 15th day of MARCH, 1965, in

me 16th day of MARCH, 1966, in Courthouse Lobby, Becond Street entrance at 11:00 a.m. Dated this 7th day of FEBRUARY, 1968. SUBJECT TO 1864 TAXES DOROTHY H. WILKEN Clerk of Electric Court of

Clerk of Clouit Court of PALM BEACH County, Florida (Circuit Court Beet) DELINQUENT REAL ESTATE TAKES DUE FOR THE YEARS: 1990,1997,1998,1990,2 a 1990 TOTAL AMOUNT TO BE RE-DEEMED: \$4,850.31 27-14-21-28 P95-1-0207125

ORB 8659 Fa 567 DOROTHY H. WILKEN, CLERK PE COUNTY, FL

COUNTY OF PALM BEACH

I, DOROTHY H. WILKEN, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, State of Florida, do hereby certify that I, the Clerk, did on the 7th day of February, 1995 mail a copy of notice addressed to:

SEIDEN HOLDING CORPORATION, & LOUIS LEIBOVIT ATIT, 200 WORTH AVENUE, FALS DEACH, FL RHODES L PERDUE ET AL, 340 E PACES FERRY RD NE, ATLANTA, GA 30305 TOWN OF PALM BEACH, 360 S COUNTY ROAD, PALM BEACH, FL 33480 COUNTY OF PALM BEACH, 2 PREM, BLDG 503, 3323 BELVEDERE ROAD, WES TPALM BEACH, FL 33406 LMG PROPERTIES INC, Z SUNBURST TRUST DEPT, P.O.BOX 23053, JACKSON, MS 39225 RICHARD F OR MILDRED OLSON, 7901 NE 8TH COURT, BOCA RATON, FL 33487 HEARTWOOD 88' INC, TAX CERTIFICATE DEPT, 2981 GATEWAY DRIVE, POMPANO BEACH, FL 33069 TCJV 1 RICHARD SUNSHINE TR, 140 BEACON LANE, JUPITER, INLET COLONY FL 33469 SOUTHTRUST EST & TRS CO, 135 W CENTRAL BLVD # 1200, ORLANDO, FL 32801 BANK ATLANTIC, TAX CERT DEPT J CHIN, 2981 GATEWAY DRIVE, POMPANO BEACH, FL 33069

DOROTHY H. WILKEN

CLERK OF THE CIRCUIT COURT

DEPUTY CLERK



MAR-15-1775 S:13FM 95-080079 ORB 8659 F9 568 I STANDARD ORB SERVED COM Com : 4,560.00 Doc 32,20 90ROTHY H. WILKEN, CLERK PB COUNTY, FL

ĭ.

Property Appraisers Parcel Identification (Folio) Number(s):



		TAX DEED		
v State of florida	,			
COUNTY OF PALM	ВЕАСН			
The following	Tax Sale Certificate Numbere	ad 18453 issued on June	e 1, 1991 was filed in the O	ffice of the Toy
Collector of this Count or tax sale certificates of due notice of sale havi- such land was on the _	ty and application made for the on the land described as requir	e issuance of a tax deed, the ar red by law to be paid or redeem	pplicant having paid or redeemed ned, and the costs and expenses of to do so having appeared to re- as required by law for cash to the	all other taxes of this sale, and
nd was sold to:	PB HARIZONS INC	c ·		
	<del></del>	·		
ADDRESS: APT	B1 701 NW 13TH STREET	BOCA RATON FL 33486	· · · · · · · · · · · · · · · · · · ·	
being the highest bidde	er and having paid the sum of	his bid as required by the Law	s of Florida.	
NOW, this	15th day of March	1 , 19 95, the County o	of Palm Reach, State of Florida, AND 00/00 Dollars, b	in consideration
			a the County and State and descr	
	· · · · · · · · · · · · · · · · · · ·	<b>.</b>	\	
<del></del>	14-43-43, N	1 10.3 FT OF SUB P		<del></del>
	OF GOV LT 2	LYG E OF OCEAN		
	BLVD	•		
,				
<del></del>	<del></del>	· <del>- · · · · · · · · · · · · · · · · · · </del>		<del></del>
TAX DEED FILE NU	MBER: 18453'91 RER: 50-43-43-14-00-00	CLERK OF THE CIR 02-004 PALM BEACH COUN	CUIT COURT	ti a
Williams	20			
Rachelle R. Adam	Sudany	BY: Leah S.E	meison (seal)	
Jamesa T.	Tambers	Deputy Clerk LEah S. Emer	son	
Tamara T. Stamba STATE OF FLORIDA	<del>-</del>		in the second	63
COUNTY OF PALM				
On this 15t	h day of March	, 19 <u>95,</u> before me <u>TAM</u>	ARA T. STAMBAUCH person court in and for the State and this	ally appear
LEAH S. E to be the person			Court in and for the State and this d acknowledged the execution of	
			personally known to me and who	
	and and official seal date afore	esaid.	7 4 /	1
		lamaia 1	. Nombang	۷
		NOTARY PU	BLIC STATE OF FLORIDA	



# **EXHIBIT "E"**

