

RESOLUTION 18-16  
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS  
BEACH, FLORIDA AUTHORIZING THE CONTRACT FOR A PROPERTY  
EXCHANGE WITH LIGHTHOUSE ISLAND RESORT, INC.

WHEREAS: The Town owns certain real property adjacent to the Lighthouse Island Resort, Inc. ("Lighthouse") subject to a certain easement for use expiring in September of 2019; and,

WHEREAS: Lighthouse proposes an exchange of real property pursuant to the terms of the Contract for Exchange which is attached hereto; and,

WHEREAS: The Town Council finds that this exchange of real property is in the best interests of the Town, its citizens and visitors to the Town

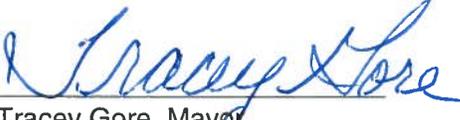
NOW, THEREFORE, BE IT RESOLVED that:

1. The Contract for Exchange with the Lighthouse is approved.
2. The Town Manager and Town Attorney are authorized to complete any and all measures necessary to put into effect the terms and provisions of said Contract as provided therein.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Shamp and seconded by Council Member Boback and upon being put to a vote, the result was as follows:

Tracey Gore, Mayor	aye	Joanne Shamp, Vice Mayor	aye
Anita Cereceda, Council Member	aye	Dennis C. Boback, Council Member	aye
Bruce Butcher, Council Member	aye		

**DULY PASSED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA,  
THIS 18<sup>TH</sup> DAY OF JUNE 2018.**

By:   
Tracey Gore, Mayor

ATTEST:  
By:   
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By:   
Peterson Law Group, Town Attorney

## CONTRACT FOR EXCHANGE

THIS CONTRACT, effective the date last signed below (the “**Effective Date**”), is by and between TOWN OF FORT MYERS BEACH (hereinafter sometimes referred to as “**Town**”), and THOMAS F. KOLAR (hereinafter sometimes referred to as “**Lighthouse**”).

### WITNESSETH

WHEREAS, Town is the owner of two parcels of real property located adjacent to the Lighthouse Resort, being the Cottage Parcel and the Remnant Parcel described on Exhibit “A” attached hereto, together with any improvements located thereon (the Cottage Parcel and the Remnant Parcel are referred to collectively in this Contract as “**Parcel A**”); and

WHEREAS, Lighthouse is the owner of certain real property described on Exhibit “B” attached hereto, together with any improvements located thereon (“**Parcel B**”); and

WHEREAS, Town wishes to convey Parcel A to Lighthouse, in exchange for Parcel B, and Lighthouse wishes to convey Parcel B to Town, in exchange for Parcel A.

NOW, THEREFORE, subject to the terms and conditions contained in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lighthouse and Town hereby agree as follows:

1. Purchase and Sale of Parcel A. Town agrees to convey Parcel “A” to Lighthouse, together with all appurtenances relating thereto, subject to the terms, provisions, conditions, prerequisites and limitations contained in Exhibit “A-1”, attached hereto and made a part of this Contract. Thomas Kolar hereby assigns to Lighthouse Island Resort, Inc., a Florida corporation, all of its rights to acquire Parcel “A” from the Town pursuant to Exhibit “A-1”, and by its signature below Lighthouse Island Resort, Inc. accepts all obligations of Thomas Kolar/Lighthouse set forth in Exhibit “A-1.”

2. Purchase and Sale of Parcel B. Lighthouse agrees to convey Parcel “B” to Town, together with all appurtenances relating thereto, subject to the terms, provisions, conditions, prerequisites and limitations contained in Exhibit “B-1”, attached hereto and made a part of this Contract.

3. Closing Date; Place of Closing. Subject to the limitations contained elsewhere herein, the Closing of the exchange of parcels hereunder (the “Closing”) shall occur within thirty (30) days of Lighthouse having satisfied or waived in writing the “Zoning Condition” defined in Exhibit “A-1”, provided that the Closing shall occur no later than December 31, 2018 (the “Closing Date”). Notwithstanding the above, if the parties so agree, the Closing Date may be extended for one (1) additional period of six (6) months, by the execution of an amendment to this Contract by both Town and Lighthouse prior to the initial Closing Date. Closing shall occur in the offices of Roetzel & Andress, LPA or at such other place agreed to by the parties.

4. Town of Fort Myers Beach Approval. The execution of this Contract by Town is subject to the approval of the Town of Fort Myers Beach Town Council.



If to Lighthouse: Lighthouse Island Resort  
1051 – 5th Street  
Fort Myers Beach, FL 33931  
Attn: Tommy Kolar  
Email: t.kolar@yahoo.com

With Copy to: Roetzel & Andress, LPA  
Attention: Sean M. Ellis, Esquire  
2320 First Street, Suite 1000  
Fort Myers, FL 33901  
Phone: (239) 338-4245  
Fax: (239) 337-0970  
Email: sellis@ralaw.com

Or to any other address or addresses as any party may designate from time to time by notice given in accordance with this Section. Any such notice will be deemed delivered: (i) on the date on which the return receipt is signed or delivery is refused, or the notice is designated by the postal authority as not deliverable as the case may be if mailed; (ii) On the date delivered by personal delivery; (iii) on the date delivered by a recognized national overnight courier service; or (iv) on the date of successful transmission if sent by email or fax. Notices to and from each party's respective counsel in the manner provided for herein will constitute valid notice under this Agreement.

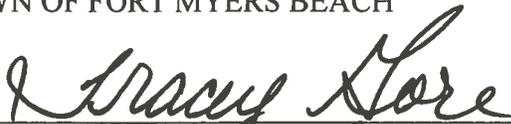
11. Representations as to Brokers. Lighthouse and Town hereby acknowledge and agree that no brokers are entitled to any compensation by payment of a real estate commission, finder's fee, or other compensation. Lighthouse and Town shall indemnify each other and agree to hold each other harmless from any claim for commission, finder's fee, or other compensation made by any broker not listed above or other party if such claim is made as a result of introductions, negotiations, or other contact to or with Lighthouse or Town not disclosed in this provision.

IN WITNESS WHEREOF, the undersigned have executed this Contract the day and year set forth below.

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Michelle Mayher, Town Clerk  
Dated: 7-9-18, 2018

By:   
Print Name: Tracy Gore  
Its: MAYOR  
Dated: 7-9-, 2018

*Approved as to Form:*  
  
Town Atty's Office

12681718\_7

THOMAS F. KOLAR

By:  \_\_\_\_\_  
Thomas F. Kolar

Dated: 6.29.18 \_\_\_\_\_, 2018

Acceptance of assigned rights per Section 1 above:

LIGHTHOUSE ISLAND RESORT, INC., a Florida  
corporation

By:  \_\_\_\_\_  
Print Name: Thomas Kolar \_\_\_\_\_

Its: \_\_\_\_\_  
Dated: 6.29 \_\_\_\_\_, 2018

**EXHIBIT A**

**PARCEL A**

**Cottage Parcel**

A tract of land lying in part of Lots 19 and 9, Block 3, Business Center as recorded in Plat Book 9, at Pages 9 and 10, Public Records of Lee County, Florida, described as follows:

Beginning at the Northwesterly corner of Lot 19, Block 3, of the aforesaid Business Center; thence run S.63°58'26"E. along the Northeasterly line of said Lot 19 for 28.00 feet; thence run S.26°01'34"W. for 95.00 feet to a point lying in the aforesaid Lot 9; thence run N.63°58'26"W. for 28.00 feet to the Northwesterly line of said Lot 9 and the Southeasterly right-of-way line of Estero Boulevard (State Road 865); thence run N.26°01'34"E. along said right-of-way line to the point of beginning.

Said tract contains 2,660 square feet, more or less.

Bearings are based on the Southeasterly right-of-way line of the aforesaid Estero Boulevard as being N.26°01'34"E.

AND

**Remnant Parcel**

A portion of Lot 14, Block 3, BUSINESS CENTER, a subdivision according to the Plat recorded in Plat Book 9, Pages 9 and 10 of the Public Records of Lee County Florida, said portion being bounded by Crescent Street to the East, Fifth Street to the South, and Lighthouse's Property to the West and North.

**EXHIBIT A-1**

**Conveyance of Parcel A To Lighthouse**

The conveyance and acquisition of Parcel A by Town to Lighthouse (hereinafter sometimes referred to as the "Property" or "Real Property") will be subject to following terms and conditions:

1. Fair Market Value. The parties agree that the fair market value of Parcel "A" is:

Cottage Parcel:	\$115,454.00
Sign Parcel :	\$ 47,310.10
<b>Parcel A Total:</b>	<b>\$162,764.10</b>

2. Conveyance of the Property. At Closing, Town shall sell, transfer and convey the Property to Lighthouse by special warranty deed, conveying good and marketable title to the Property and such as will be insurable by a responsible title company, warranting specifically the Property to be free and clear of all liens, security instruments and encumbrances arising by, through or under Town, except the Permitted Exceptions, defined below.

3. Property Conveyed "As Is". Lighthouse will accept the Property in an "AS IS" condition with all faults. Lighthouse represents and warrants to Town that Lighthouse has inspected the condition of the Property, the compliance or non-compliance of the Property with existing laws, codes, rules, regulations and ordinances, the zoning and permitted uses of the Property and such other inspections relating to the Property as Lighthouse has deemed necessary or desirable. Town makes no representation or warranty of any nature whatsoever regarding the condition of the Property, the compliance or non-compliance of the Property with existing laws, codes, rules, regulations or ordinances, the permitted uses or zoning of the Property, or any other matter relating to the Property.

4. Title Evidence.

(a) Title Commitment. Lighthouse may obtain a title insurance commitment issued through an agent selected by Lighthouse, undertaking to insure fee simple title to the Property in Lighthouse, subject only to such matters as are acceptable to Lighthouse (the "Permitted Exceptions").

(b) Exceptions to Title. The Permitted Exceptions shall not include any liens, nor any matter that in the opinion of Lighthouse's attorney constitutes a defect in title. Any matters not objected to by Lighthouse as set forth in Section 4(d) below shall be deemed "Permitted Exceptions" as such term is used in this Contract. At Closing, Town will deliver an affidavit meeting the requirements of Section 627.7842, Florida Statutes.

(c) Title Insured. The insurer's insurance commitment shall undertake to issue to Lighthouse, upon recording of the deed of conveyance (and the discharge of all liens, obligations and mortgages that are to be satisfied by Town at or before Closing), an ALTA owner's policy of title insurance with Florida modifications in the amount of the fair market value of the Property

as set forth in Section 1 above, insuring title to Lighthouse to the subject Real Property, subject only to the Permitted Exceptions.

(d) Title & Survey Examination. Lighthouse will have fifteen (15) days from the date of receiving the title commitment to examine the same, and to notify Town in writing, specifying any title defects. Lighthouse will have fifteen (15) days from the date of receiving any survey of the Property examine the same, and to notify Town in writing, specifying any title defects. Town shall have sixty (60) days from receipt of Lighthouse's notice within which to remove said defects, and if Town is unsuccessful in removing them within said time and notifies Lighthouse in writing of such unsuccessful attempts to remove such defects, Lighthouse shall have the option of (1) accepting the title as it then is, with no reduction in the purchase price, or (2) giving Town an additional amount of time to cure said defects, or (3) demanding a refund of the deposits paid hereunder, if any, which shall be promptly returned to Lighthouse after which time Lighthouse and Town shall be released from all further obligations under this Contract. If Lighthouse fails to make such election within five (5) days of receipt of Town's notice of its failure to remove the defects, or if Lighthouse fails to give notice to Town of the defects in title within the time specified herein, Lighthouse shall be deemed to have agreed that Town's title as shown on the title commitment conforms to the requirements of this Contract. Town agrees that if title or survey does not conform to the requirements of the Contract, it will use diligent efforts to correct the defects in the title within the time provided.

5. Zoning Condition to Close. Lighthouse Resort is a CPD approved for 72 units. Prior to the CPD approval, Lighthouse conveyed the Cottage Parcel to the Town of Fort Myers Beach. Said Cottage Parcel is not part of the CPD. Lighthouse currently has an easement to use the Cottage Parcel. This Contract for Exchange provides for Lighthouse to acquire ownership of the Cottage Parcel, as well as a remnant portion of Lot 14 (the "Remnant Parcel"). The Cottage Parcel and Remnant Parcel are collectively referred to in this Contract as "Parcel "A." The Cottage Parcel currently contains three (3) guest units. This Contract is subject to a condition that Lighthouse is authorized by the Town to amend the CPD to (i) add Cottage Parcel and Sign Parcel to the CPD, and (ii) obtain approval of a density of 75 guest units, which authorization, to the extent necessary to obtain 75 guest units, may request a transfer of density from Parcel "B" to attain the 75 guest units. A condition of this Contract is Town Council approval of 75 guest units and inclusion of the Cottage Parcel and Remnant Parcel in the Lighthouse CPD. Should this condition not be fulfilled then Lighthouse may terminate this Contract. Within sixty (60) days of the Effective Date of this Contract, Lighthouse shall submit its application for such CPD amendment. Town will authorize Lighthouse Island Resort, Inc., a Florida corporation, to act as authorized agent of Town for such CPD amendment / approval.

6. Town's Representations and Warranties. To induce Lighthouse to enter into this Contract and to acquire the Property, Town covenants with and represents and warrants to Lighthouse as follows:

(a) That to the best of Town's knowledge Town owns the entire fee simple title to the Property;

(b) That no receivership, bankruptcy or reorganizational proceedings are pending or, to Town's knowledge, contemplated against Town in any court;

(c) That subject to the approval of the Town of Fort Myers Beach Town Council, Town has the full power and authority to enter into this Agreement with Lighthouse and to perform all of Town's obligations hereunder.

(d) That all information provided by Town to Lighthouse prior to execution of this Contract concerning the Property is, to the best of Town's knowledge, all true and correct representations of the current condition of the Property.

7. Lighthouse's Representations and Warranties. To induce Town to enter into this Contract and convey the Property to Lighthouse, Lighthouse represents and warrants as follows, which representations and warranties shall survive the Closing:

(a) That Lighthouse is solvent and no receivership, bankruptcy or reorganizational proceedings are pending or, to Lighthouse's knowledge, contemplated against Lighthouse in any court;

(b) That Lighthouse has the full power and authority to enter into this Agreement with Town and to perform all of Lighthouse's obligations hereunder.

(c) That Lighthouse has used its best due diligence in examining the nature of the Property and is satisfied with the current condition of the Property.

8. Assignment of Contract. Except as set forth in Section 1 of Page 1 of the Contract, Lighthouse shall not assign this Contract to any other person or entity without Town's prior written consent, such consent not to be unreasonably withheld.

9. Prorations, Adjustments and Closing Costs. At Closing, the parties shall be responsible for and shall pay as follows:

(a) Town shall pay certified, confirmed and ratified special assessment liens, as of the date of Closing, of any kind made by any governmental branch or agency. Pending liens as of date of Closing shall be assumed by Lighthouse.

(b) Town shall pay any Florida documentary stamp taxes payable on the deed;

(c) Town shall pay the premium necessary for the issuance of the Owner's Title Policy and all related costs of the title company;

(d) Each party shall pay its own attorney fees;

(e) Real property taxes, if any, shall be prorated with due allowance made for maximum allowable discount. If the tax bill for the year of Closing is not available at Closing, then the taxes shall be prorated based on the tax bill for the year prior to Closing;

(f) Town shall pay all costs to cure any title defects;

(g) Lighthouse shall pay recording fees on the deed;

**EXHIBIT B**

**LEGAL DESCRIPTION – PARCEL B**

2639 Estero Blvd, Fort Myers Beach, Florida:

Lots 18 and 19, BLOCK C, WINKLER SUBDIVISION, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court in Plat Book 8, Page 45, of the Public Records of Lee County, Florida.

## EXHIBIT B-1

### Conveyance of Parcel B To Town

The acquisition and conveyance of Parcel B (hereinafter sometimes referred to as the "Property" or "Real Property") shall be subject to following terms and conditions:

1. Fair Market Value. The parties agree that the fair market value of Parcel "B" is **\$350,000.00**. Of that fair market value, the parties acknowledge that \$162,764.10 will be allocated as consideration towards the exchange for Parcel "A", and that the balance of the value will be donated by Lighthouse to Town.

2. Conveyance of the Property. At Closing, Lighthouse shall sell, transfer and convey the Property to Town by special warranty deed, conveying good and marketable title to the Property and such as will be insurable by a responsible title company, warranting specifically the Property to be free and clear of all liens, security instruments and encumbrances arising by, through or under Lighthouse, except the Permitted Exceptions, defined below.

3. "As Is" Purchase. Town will accept the Property in an "AS IS" condition with all faults. Town represents and warrants to Lighthouse that Town has inspected the condition of the Property, the compliance or non-compliance of the Property with existing laws, codes, rules, regulations and ordinances, the zoning and permitted uses of the Property and such other inspections relating to the Property as Town has deemed necessary or desirable. Lighthouse makes no representation or warranty of any nature whatsoever regarding the condition of the Property, the compliance or non-compliance of the Property with existing laws, codes, rules, regulations or ordinances, the permitted uses or zoning of the Property, or any other matter relating to the Property.

4. Title Evidence.

(a) Title Commitment. Lighthouse will provide Town, within 25 days of the Effective Date, a title insurance commitment issued through an agent selected by Lighthouse, undertaking to insure fee simple title to the Property in Lighthouse, subject only to such matters as are acceptable to Lighthouse (the "Permitted Exceptions").

(b) Exceptions to Title. The Permitted Exceptions shall not include any underlying mortgage or similar obligation, nor any matter that in the opinion of Town's attorney constitutes a defect in title. Any matters not objected to by Town as set forth in Section 4(d) below shall be deemed "Permitted Exceptions" as such term is used in this Contract. At Closing, Lighthouse will deliver an affidavit meeting the requirements of Section 627.7842, Florida Statutes.

(c) Title Insured. The insurer's insurance commitment shall undertake to issue to Town, upon recording of the deed of conveyance (and the discharge of all liens, obligations and mortgages that are to be satisfied by Lighthouse at or before Closing), an ALTA owner's policy of title insurance with Florida modifications in the amount of the fair market value of the

Property as set forth in Section 1 above, insuring title to Town to the subject Real Property, subject only to the Permitted Exceptions.

(d) Title Examination. Town shall have fifteen (15) days from the date of receiving the title commitment to examine the same, and to notify Lighthouse in writing, specifying any title defects. will have fifteen (15) days from the date of receiving any survey of the Property examine the same, and to notify Lighthouse in writing, specifying any title defects. Lighthouse shall have sixty (60) days from receipt of Town's notice within which to remove said defects, and if Lighthouse is unsuccessful in removing them within said time and notifies Town in writing of such unsuccessful attempts to remove such defects, Town shall have the option of (1) accepting the title as it then is, with no reduction in the purchase price, or (2) giving Lighthouse an additional amount of time to cure said defects, or (3) demanding a refund of the deposits paid hereunder, if any, which shall be promptly returned to Town including all accrued interest, if any, after which time Town and Lighthouse shall be released from all further obligations under this Contract. If Town fails to make such election within five (5) days of receipt of Lighthouse's notice of its failure to remove the defects, or if Town fails to give notice to Lighthouse of the defects in title within the time specified herein, Town shall be deemed to have agreed that Lighthouse's title as shown on the title commitment conforms to the requirements of this Contract. Lighthouse agrees that if title does not conform to the requirements of the Contract, it will use diligent efforts to correct the defects in the title within the time provided.

5. Lighthouse's Representations and Warranties. To induce Town to enter into this Contract and to acquire the Property, Lighthouse covenants with and represents and warrants to Town as follows:

(a) That to the best of Lighthouse's knowledge Lighthouse owns the entire fee simple title to the Property;

(b) That Lighthouse is not a "foreign person" within the meaning of the Foreign Investment Real Estate Tax Act as amended;

(c) That Lighthouse is solvent, and no receivership, bankruptcy or reorganizational proceedings are pending or, to Lighthouse's knowledge, contemplated against Lighthouse in any court;

(d) That Lighthouse has the full power and authority to enter into this Agreement with Town and to perform all of Lighthouse's obligations hereunder.

(e) That all information provided by Lighthouse to Town prior to execution of this Contract concerning the Property is, to the best of Lighthouses knowledge, all true and correct representations of the current condition of the Property as of the dates set out in said informational packet.

6. Town's Representations and Warranties. To induce Lighthouse to enter into this Contract and convey the Property to Town, Town represents and warrants as follows, which representations and warranties shall survive the Closing:

(a) That no receivership, bankruptcy or reorganizational proceedings are pending or, to Town's knowledge, contemplated against Town in any court;

(b) That subject to the approval of the Town of Fort Myers Beach Town Council, Town has the full power and authority to enter into this Agreement with Lighthouse and to perform all of Town's obligations hereunder.

(c) That Town has used its best due diligence in examining the nature of the Property and is satisfied with the current condition of the Property.

7. Assignment of Contract. Town shall not assign this Contract to any other person or entity without Lighthouse's prior written consent, such consent not to be unreasonably withheld.

8. Prorations, Adjustments and Closing Costs. At Closing, the parties shall be responsible for and shall pay as follows:

(a) Lighthouse shall pay certified, confirmed and ratified special assessment liens, as of the date of Closing, of any kind made by any governmental branch or agency. Pending liens as of date of Closing shall be assumed by Town.

(b) Lighthouse shall pay the Florida documentary stamp taxes payable on the deed, if any;

(c) Lighthouse shall pay the premium necessary for the issuance of the Owner's Title Policy and all related costs of the title company;

(d) Each party shall pay its own attorney fees;

(e) Real property taxes, if any, shall be prorated with due allowance made for maximum allowable discount. If the tax bill for the year of Closing is not available at Closing, then the taxes shall be prorated based on the tax bill for the year prior to Closing;

(f) Lighthouse shall pay all costs to cure any title defects;

(g) Town shall pay recording fees on the deed;