

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

PALMER RANCH HOLDINGS, LTD.,
A Florida Limited Partnership,
f/k/a Palmer Ranch Development, Ltd.,
a Florida Limited Partnership,
Plaintiff,

v.

CASE NO. 2005-CA-006686 NC

SARASOTA COUNTY, FLORIDA,
a political subdivision of the
State of Florida,
Defendant.

SETTLEMENT AGREEMENT AND RELEASE

Palmer Ranch Holdings, Ltd., a Florida Limited Partnership, f/k/a Palmer Ranch Development, Ltd., a Florida Limited Partnership ("Palmer Ranch"), Sarasota County, Florida, a political subdivision of the State of Florida ("County"), and the School Board of Sarasota County, Florida, a body corporate existing under the laws of the State of Florida ("School Board") agree to this Settlement Agreement and Release ("Settlement Agreement") in full settlement of the above-styled case.

WHEREAS, the above-styled suit is presently pending in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida; and

WHEREAS, Palmer Ranch, County, and the School Board desire to fully and finally settle all issues that have arisen or could

have been brought in the lawsuit; and

WHEREAS, this is a settlement of disputed issues between the parties with all parties specifically denying any liability for the matters raised in the above-referenced lawsuit. This Settlement Agreement shall not be construed as an admission of liability on behalf of any party.

In consideration for the mutual promises set forth herein the parties agree as follows:

1. Upon the earlier to occur of the closing on the real property described in the Purchase and Sale Agreement referenced in paragraph 2 below or the payment to Palmer Ranch of the sums specified in Paragraph 3 below, Palmer Ranch shall dismiss this case with prejudice.

2. Contemporaneously with signing this Settlement Agreement, Palmer Ranch and the School Board will sign the attached Purchase and Sale Agreement in which Palmer Ranch agrees to purchase, and the School Board agrees to sell, the described parcel of property located on the Palmer Ranch DRI for a price of One Million, Nine Hundred Seventy-Five Thousand Dollars (\$1,975,000). As detailed in the Purchase and Sale Agreement, Palmer Ranch and the School Board further agree that Palmer Ranch will be given a credit of Three Hundred Seventy-Two Thousand, Three Hundred Four Dollars (\$372,304) against the

purchase price and that closing will occur within the first quarter of 2010.

3. In the event that closing of the real property purchases contemplated under the Purchase and Sale Agreement described in the immediately preceding paragraph shall not occur as a result of the inability of the School Board to deliver good and marketable title to the property to Palmer Ranch or upon Palmer Ranch exercising its right to terminate the Purchase and Sale Agreement during the Due Diligence Period as provided therein, School Board shall make or cause to be made to Palmer Ranch payment of the sum of Three Hundred Seventy-two Thousand Three Hundred Four Dollars (\$372,304) in full and final settlement of all claims in accordance with the remaining terms of this Settlement Agreement and Release.

4. Palmer Ranch releases the County and School Board from any and all claims (1) of entitlement to educational impact fee credits or reimbursement based upon any theory including, but not limited to, Palmer Ranch's, or its predecessor's, original donation of land to the School Board in the Palmer Ranch development of regional impact, or any subsequent exchange of land with the School Board, including both the 20 and 70 acre parcels referenced in Palmer Ranch's amended complaint and (2) that County Ordinance #2004-028, codified as Section 70-292,

commonly known as the Educational Impact Fee Ordinance, as currently amended, is unconstitutional, invalid, or void for any reason. Excluded from this Release are any and all claims of Palmer Ranch that may arise in the future against the County and the School Board based upon any future amendments to either the Educational Impact Fee Ordinance or the fee schedule of Impact Fees provided therein, or the future use or non-use of funds collected pursuant to the Educational Impact Fee Ordinance, or based upon a change in conditions occurring after the date of this Settlement Agreement. Palmer Ranch represents and warrants that it has the legal power to, and is, settling and releasing these claims for itself, its successors, assigns, and any individual or entity to whom it will sell real property in the Palmer Ranch DRI in the future. Additionally, and without in any way limiting the foregoing, to the extent that Palmer Ranch has reserved the right to receive impact fee payments or impact fee credits under any agreement with prior purchasers of real property in the Palmer Ranch DRI, Palmer Ranch hereby releases any and all claims of said prior purchasers to the same extent as it releases its own claims against the County and School Board as provided herein.

5. The County and the School Board acknowledge and agree that, other than the payment of school impact fees as may be

provided from time to time under the Educational Impact Fee Ordinance, the Palmer Ranch DRI has no further obligations to provide reporting for school impacts or to mitigate school impacts for the remaining build out of the DRI (except by payment of impact fees), including any amendments to the DRI that do not constitute substantial deviations under the applicable Florida Statutes. The parties agree that the terms and provisions of this agreement shall have no effect on the payment of future educational or other impact fees. The parties further agree that the terms and provisions of this agreement shall have no effect on the requirements for mitigating the impacts of the development of the Palmer Ranch DRI on infrastructure other than schools nor to eliminate any other reporting requirement of the DRI.

6. Except as provided in paragraph 9 below, each party shall bear its own attorneys' fees and costs.


7. The parties acknowledge that they have had the advice of counsel of their own selection in connection with the terms and conditions of this Settlement Agreement; that they have read and understand the terms and conditions of this Settlement Agreement; that they are entering into this Settlement Agreement of their own free will; and that they intend to be bound by the terms hereof.

8. The parties agree that there are no promises or agreements, oral or otherwise, inducing entry into this Settlement Agreement. The parties are relying only on the express terms, conditions and agreements set forth herein. The parties further agree that any promise or agreement, not expressly set forth in writing and signed by all parties, cannot be relied upon and will not be valid or enforceable.

9. In the event any party hereto is required to file suit to enforce the terms and conditions of this Settlement Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs against the non-prevailing party.


PALMER RANCH HOLDINGS, LTD.,
F/K/A PALMER RANCH DEVELOPMENT, LTD.

BY:


Mark F. CUPERHOUSE
Its OWNER

Date:

12/30/09


Charles J. Bartlett
Florida Bar No. 0273422
Icard, Merrill, Cullis, Timm,
Furen & Ginsburg, P.A.
2033 Main Street, Suite 600
Sarasota, Florida 34237
Attorneys for Palmer Ranch Holdings, Ltd.

BOARD OF COUNTY COMMISSIONERS
SARASOTA COUNTY

By: _____
John Thaxton, Chair

Date: _____

ATTEST:
KAREN E. RUSHING, Clerk
Of the Circuit Court and
Ex-Officio Clerk of the
Board of County Commissioners

BY: _____

Gregory T. Stewart
Nabors, Giblin & Nickerson, P.A.
Florida Bar No. 0203718
1500 Mahan Drive, Suite 200
Post Office Box 1100
Tallahassee, Florida 32302

Stephen E. DeMarsh
Florida Bar No. 335649
Sarasota County Attorney
Office of the County Attorney
1660 Ringling Boulevard
Second Floor
Sarasota, Florida 34236
Attorneys for Sarasota County

THE SCHOOL BOARD OF
SARASOTA COUNTY, FLORIDA

By: _____
Shirley Brown, Chair

Date: _____

Arthur S. Hardy
Florida Bar No. 0721492
Matthews, Eastmoore, Hardy,
Crauwels & Garcia, P.A.
1777 Main Street, Suite 500
Sarasota, Florida 34236
Attorneys for The School Board
of Sarasota County, Florida

PURCHASE AND SALE AGREEMENT OF REAL ESTATE

**SELLER: THE SCHOOL BOARD OF SARASOTA
COUNTY, FLORIDA**

**BUYER: PALMER RANCH HOLDINGS, LTD., a
Florida limited partnership, or assigns**

**Address: 1960 Landings Boulevard
Sarasota, Florida 34231**

**Address: 8588 Potter Park Drive, Suite 500
Sarasota, Florida 34238**

BUYER agrees to purchase from SELLER, and SELLER agrees to sell to BUYER, the real property located in Sarasota County, Florida (the "Property"), legally described as:

SEE EXHIBIT "A" ATTACHED HERETO
(Property tax ID # 0117-00-1020)

UPON THE FOLLOWING TERMS AND CONDITIONS:

\$ 1,975,000 Purchase Price (note: see BUYER credit referenced in section II below)

- I. Except as otherwise provided herein, this sale shall be closed and the deed and monies in cleared U.S. funds shall be delivered on March 31, 2010, unless BUYER elects to close earlier upon 15 days notice to SELLER. SELLER shall deliver possession of the Property to BUYER at closing. The closing and title agent for transaction shall be Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., 2033 Main Street, Suite 600 Sarasota, FL 34237.
- II. This Agreement is part of a settlement agreement (the "Settlement Agreement") involving the parties and related to litigation captioned as Palmer Ranch Holdings Ltd. vs. Sarasota County (2005-CA-006686 NC). Pursuant to the terms of the Settlement Agreement, BUYER will receive a credit from SELLER of \$372,304 to be applied against the Purchase Price. The Settlement Agreement shall control if in conflict with this Agreement.

GENERAL CONDITIONS

CONVEYANCE: 1. SELLER shall convey title to the Property by special warranty deed, subject to zoning and other restrictions, prohibitions, and regulations imposed by governmental authorities; covenants, restrictions, reservations, and easements of record; taxes for the year of closing; and all matters disclosed by the title commitment and the survey.

EVIDENCE OF TITLE: 2. SELLER will, at BUYER'S expense, deliver to BUYER a title insurance commitment covering the Property in the amount of the full Purchase Price within 30 days of the full execution of this Agreement (the "Effective Date").

SURVEY: 3. BUYER may, at BUYER'S expense, obtain a survey of the Property.

DUE DILIGENCE PERIOD: 4. BUYER shall have 30 days from the Effective Date ("Due Diligence Period") to complete any inspections BUYER deems necessary, including but not limited to all title and survey examinations. Should BUYER decide during the Due Diligence Period, in BUYER'S sole discretion, that the Property does not conform to BUYER'S intended use or that BUYER has objections to title or survey matters, BUYER may terminate this Agreement by giving notice of termination to SELLER on or before the last day of the Due Diligence Period. If BUYER does not give notice of termination by such date, (i) this Agreement shall continue in full force and effect, (ii) BUYER'S right to terminate this Agreement shall expire and be of no further force and

effect, and (iii) BUYER shall be deemed to have waived and accepted all title and survey matters, notwithstanding any other provision of the Agreement. If this Agreement is properly and timely terminated by BUYER (by giving notice to SELLER prior to the expiration of the Due Diligence Period), all further rights and obligations of the parties under this Agreement shall terminate.

**PROPERTY
SOLD "AS IS":**

5. (a) SELLER makes and has made no representation or warranty, express or implied, concerning any portion of the Property, its condition, the use to which it may be put, its suitability for any purpose, any environmental matters, or any other thing or matter directly or indirectly related thereto; (b) BUYER is responsible for determining that all aspects of the Property are satisfactory to BUYER; (c) BUYER shall purchase and accept every portion of the Property in its "AS IS" "WHERE IS" condition without requiring any action, expense, or other thing or matter on the part of SELLER to be paid or performed, or without any reduction in the Purchase Price, and upon acceptance of the deed at closing, BUYER shall be conclusively deemed to have accepted the Property in its "AS IS" "WHERE IS" condition; (d) SELLER makes and has made no representation or warranty, express or implied, as to the reliability or accuracy of any information or reports provided to BUYER which are or were produced by a third party, it being expressly understood that verification of the accuracy of such information or reports is the responsibility of BUYER; (e) all statements, warranties, or representations of SELLER made within this Agreement are to the best of SELLER'S present knowledge, without inquiry or investigation; and (f) **SELLER DISCLAIMS ANY WARRANTIES WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY COMMON LAW IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR HABITABILITY.**

TAXES:

6. Because SELLER is a governmental entity, there currently are no ad valorem or non-ad valorem real property taxes levied against the Property. All taxes and assessments, including those imposed by an association, regardless of when levied or when due and payable, shall be BUYER'S responsibility.

COSTS:

7. SELLER shall pay the documentary tax on the deed, if required by law (BUYER shall not be responsible for any documentary stamp taxes). BUYER shall pay for recording the deed, as well as any loan expenses. BUYER shall also pay the title insurance premium and cost of related title services, including the cost of any mortgagee title insurance and related mortgagee endorsements issued simultaneously with the owner's policy.

DEFAULT:

8. If all the terms and conditions hereof have been fulfilled by either party and the other party fails to close or otherwise comply with the terms and provisions of this Agreement, then, the non-defaulting party by giving written notice to the defaulting party, may elect to enforce any equitable remedy available to the non-defaulting party because of such default.

**ATTORNEYS'
FEES:**

9. In any litigation arising out of this Agreement or the transaction to which this Agreement relates, the prevailing party shall be entitled to recover reasonable attorneys' and paralegal fees and court costs for both original and appellate proceedings. Venue shall be in Sarasota County.

NO BROKER:

10. Each party represents to the other that such party has not consulted with a real estate broker or salesperson in connection with the transaction that is the subject of this Agreement.

MISC.:

11. This Agreement embodies the entire agreement between the parties. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.** This Agreement shall bind and inure to the benefit of the

successors and assigns of the parties. This Agreement shall be construed and enforced in accordance with Florida law. Where the context requires, the singular includes the plural and vice versa, and the use of any gender includes all genders. No provision of this Agreement shall be construed against the drafting party. A facsimile or electronic signature shall be deemed an original. This Agreement may be executed in counterparts, which, when taken together, shall have the same effect as though the parties signed a single signature page.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated above their respective signatures.

Executed by SCHOOL BOARD on _____, 20____.

THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA

By: _____
Print Name: _____
Title: _____
As its authorized representative

Executed by PALMER on 12/30, 2009.

PALMER RANCH HOLDINGS, LTD.

By: Palmer Ranch Holdings, Inc.,
a Florida corporation
By: Hugh J. Culverhouse
Print Name: HUGH CULVERHOUSE
Title: OWNER
As its authorized representative

APPROVED FOR LEGAL CONTENT
_____, 20____

By: _____
Jeffrey A. Grebe, Esq.
WILLIAMS PARKER HARRISON
DIETZ & GETZEN
200 S. Orange Avenue
Sarasota, Florida 34236

ATTORNEYS FOR THE SCHOOL
BOARD OF SARASOTA COUNTY