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June 22, 2009

William Shuman, President  
Hillsmere Shores Improvement Association, Inc.  
P. O. Box 3485  
Annapolis, Maryland 21403-0485

**Re: East Bay View**

Dear Mr. Shuman:

As you know, I represented certain of the owners of property along Bay View in the case of Singleton vs. Hillsmere. I have now been asked to represent the owners of Lots 6 -8, 10 - 14 and 16. It is my understanding that there has been some discussion between at least some of those lot owners and yourself about presenting an offer to the Community for the purpose of avoiding future litigation and resolving all open issues with respect to the waterfront rights along East Bay View.

Enclosed is a Contract to purchase all of those waterfront rights. In evaluating this Contract, it is important for you to know the following.

1. First, my clients will not purchase "limited" rights. That is, they are purchasing every claim that Hillsmere could make of any sort to the land or water rights lying to the water side of their existing platted lots. The purpose of this Contract is to resolve once and for all, all questions as to Lots 6 through 17.

2. The price that is offered is not a negotiable price. In previous negotiations, the Association had suggested numbers which were out of line with any rational resolution. My clients have spent a great deal of time carefully evaluating the cost of litigation and the value of this property to each of them, and have come up with a number which they believe is fair and reasonable. This number will provide reasonable compensation to the Community for something which has not been used by any person for some period of time. As you are aware, at the trial of Singleton, et al. vs. Hillsmere, only three people came to the trial to state that they had actually walked on the water side of any of the bulkheads. Apparently, there were two other people who potentially could have appeared, but were not there. It is clear that Hillsmere has not made use of this property, nor is there any reasonable use to be made of it, as further evidenced by the existence of a very useable Community Beach and a very useable Community marina on either side of these properties.

As opposed to litigation, the monies from this Contract could be put to direct and immediate use for the Community. They do not result in increased special Community benefit taxes and would be a sure result. Additionally, as I am certain you are aware, the rights acquired by the Singletons, the Hertzes and Dr. Sahandy, as well as the absence of any waterfront property

William Shuman, President  
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in front of Lots 1 and 2, effectively make it impossible to utilize any of this strip of land.

At the time you execute the contract, please complete the percentage in Section 3.

If you wish to employ an attorney in this matter, please have him or her contact me directly. You may certainly speak with the property owners as well.

My clients and I look forward to hearing from you.

Yours sincerely,

  
William M. Simmons

WMS: nkh

Enc.

cc: Mr. and Mrs. Thomas P. DeVito  
Mr. William Koutoumpis  
Mr. and Mrs. Alan R. Ballman, Jr.  
Ms. Janet Adrian  
Ms. Delores M. Harned  
Mr. and Mrs. Nguyenanh Chu  
Ms. Frigga Gibbs  
Mr. and Mrs. Oliver Birch  
Mr. James N. Leary

## CONTRACT and AGREEMENT

**THIS CONTRACT and AGREEMENT** is made this \_\_\_\_\_ day of June, 2009, by and between **HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INCORPORATED**, hereinafter referred to as "Hillsmere," and Alan R. Ballman, Jr., Kathleen Ray Ballman, James N. Leary, Thomas Paul DeVito, III, Teri Sanford DeVito, Robert R. Harned, Delores M. Harned, the Janet L. Adrian Revocable Trust, Oliver Birch and Victoria Birch, Trustees of the Oliver Birch Living Trust, Nguyenanh Chu, Loni T. Nguyen, Frigga K. Gibbs, and William Koutroumpis, hereinafter referred to as "Buyers."

### EXPLANATORY FACTS

Hillsmere claims to be the owner of all that property shown on the plat of Section 1, Hillsmere Estates and lying to the South of Lots 1 through 17, Section A, being a portion of the "Community Beach," by virtue of a deed recorded among the land records of Anne Arundel County in Liber 1915, at Folio 286.

As a result of the lawsuit known as "Singleton v. Hillsmere," Hillsmere Shores was divested of title to certain portions of the Community Beach lying to the South of Lots 9, 15, and 17 by virtue of adverse possession. The Buyer are the owners of lots 6 - 8, 10 - 14, and 16, each of whom have similar claims that they have raised with Hillsmere. The Buyers and Hillsmere are desirous of settling their dispute without additional court action. The Buyers have offered to buy any and all the interest of Hillsmere in the property lying to the South of Lots 6 through 17, including any rights to land above or below the water, and any and all riparian rights thereto, for their benefit, and the benefit of the owners of Lots 9, 15, and 17. Hillsmere and the Buyers have

reached agreement on a price for such sale, and now wish to reduce to writing their agreements concerning the release of any claims, as well as the purchase and sale of the property.

### COVENANTS AND CONSIDERATION

NOW, THEREFORE, in consideration of the Explanatory Facts, the mutual covenants, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1.       **Sale of Property.** Hillsmere hereby agrees to sell, and Buyers hereby agree to buy, the hereinafter described property at and for a purchase price of One Hundred Thirty Thousand Dollars (\$130,000.00), which monies shall be due and payable at closing.

2.       **Property.** The property to be purchased by Buyers and sold by Hillsmere is all that property shown on the plat of Section 1, Hillsmere Estates, which plat is recorded among the plat records of Anne Arundel County in Plat Book 23, at Folio 14, being part of the Community Beach and being defined as bounded on the west by the southerly extension of the westerly boundary line of Lot 6 to the mean high water line, and from the mean high water line into the waters of the South River as the agreed riparian division line; on the north by the southern boundary of Lots 6 through 17, Section A, as shown on the Plat; on the east by the southern extension of the easterly or North 30 degree, 01 minute, 40 second, East, 70.20 foot line of Lot 17 as described in Exhibit B to the Order of the Circuit Court for Anne Arundel County recorded among the Land Records of Anne Arundel County in Liber 20598, folio 314, to the mean high water line, and from the mean high water line into the waters of the South River as the agreed riparian division line; and on the south by the limits of any land owned by Hillsmere, whether that limit shall be the mean high water line, or some greater limit as set forth in any patent to the land

originally forming the property which is Hillsmere Estates, together with all riparian rights attendant thereto, all of which is hereinafter referred to as the "Property," a graphic depiction of which is attached as Exhibit A.

3. **Contingency.** The parties acknowledge that this Contract has been executed by William Shuman, as President of Hillsmere Shores Improvement Association, with the authority of an affirmative vote of the Board of Directors. Notwithstanding the foregoing, the parties agree that this Contract shall be contingent upon Hillsmere Shores Improvement Association's membership approving the sale of the property, which approval shall be obtained by a vote in accordance with the By-Laws of Hillsmere Shores Improvement Association, which require that such a motion be passed by not less than a majority of a quorum at a meeting to be held, which quorum shall be not less than \_\_\_\_\_ % of the Membership present in person or by proxy. The parties hereby agree that in the event such approval is not obtained within 45 days from the date of the ratification of this Contract, the Buyers may terminate this Contract. In the event the Buyers do not terminate the Contract at the end of 45 days, this contingency shall be automatically extended for an additional 30 days, after which, if such approval is not obtained, the parties agree that either party may void this Contract, in which event, each party shall retain any rights or claims to the property which they currently hold and agree that any terms of this Contract shall be deemed a settlement negotiation, and not admissible in any litigation which may arise over the rights in the property. Hillsmere agrees to diligently pursue such approval and, in doing so, to represent in its communications with the membership that the Contract has been approved by the Board and that the Board and the President believe that the sale is in the best interest of the Community.

4. **Deed.** The parties hereby agree that the Deed to the Property from the Association shall be a special warranty deed. Hillsmere agrees that it will deed all the Property to all Buyers in one deed, or any portion of the Property to any lot owner as directed by Buyers, so long as the total property conveyed is the property to be sold hereunder. The parties acknowledge that the deed granting ownership of the property to Hillsmere Shores Improvement Association, which deed is recorded among the Land Records of Anne Arundel County in Liber 1915, at Folio 286, contains a restrictive covenant which states that:

In the event Hillsmere shall, by lawful action of its membership, by operation of law, or otherwise, cease to exist as a recorded body, or should abandon said property or fail to apply the same for the use and purposes herein set forth, according to the terms of this Agreement and such abandonment or failure shall continue for a period of six months, then in that event, the party of the first part [being Hillsmere Estates, Inc.], its successors and assigns, shall, after 30 days notice to the party of the second party of its improper use of the property hereby granted, shall then become reinvested with the fee simple title in and to all the property conveyed hereunder, including all improvements now thereon, or thereafter attached, also including any improvements of the facilities which may hereafter be erected thereto, to the same extent as if this conveyance had never been made.

Hillsmere Shores hereby warrants that, to the best of its knowledge, and after due investigation, that Hillsmere Estates, Inc. is a defunct corporation, that it has never assigned any of its rights under the Covenants to any other individual, and that to the extent Hillsmere has become vested with any such rights, it conveys any such rights with respect to the Property to be sold to Buyers. In furtherance of the Covenants set forth in the deed to Hillsmere, the Buyers hereby agree that Buyers will accept the Property subject to the Covenant and restriction that the Property shall be used solely by Buyers and the owners of Lots 9, 15, and 17 as owners of a lot in Hillsmere, their

successors and assigns, for recreational purposes and that none of the Property hereby conveyed shall be used for commercial purposes. The parties agree that this Covenant is to continue the agreement set forth in the original Deed of Restrictions that the Property will be used solely for the property owners in Hillsmere, solely for residential and recreational uses, and for no commercial purposes.

5. **Settlement.** Settlement shall be on or before 30 days after satisfaction of the contingency in Section 3, time being of the essence to each and every term of this Contract, at which time Buyers and Seller agree to make full settlement in accordance with the terms of this Contract. Settlement shall be held at the law offices of William M. Simmons, 20 West Street, Annapolis, Maryland 21401.

6. **Apportionment of Taxes, etc.** All taxes, general or special, and all public or governmental charges or assessments against the premises which are or may be payable on an annual basis (including any other benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements, completed or commenced on, prior to, or subsequent to the date of this Contract), whether the assessments therefor have been levied or not, are to be adjusted and apportioned as of the day of settlement, and are to be assumed and paid thereafter by the Buyers. All payments on any encumbrances shall be current through the date of settlement.

7. **Transfer and Recordation Taxes.** Recordation and transfer taxes shall be paid one-half by the Buyers and one-half by the Seller.

**Section 14-104 of the Real Property Article of the Annotated Code of Maryland provides that, unless otherwise negotiated in the Contract or provided by local law, the cost of any recordation tax or any State or local transfer tax shall be shared equally**

**between the Buyer and Seller.**

**8. Agency.** Buyers and Seller represent to each other that neither has dealt with any broker, agent or finder in connection with the purchase of this Property. Each party covenants to indemnify and hold harmless the other party from and against any and all costs, expenses or liabilities to any broker, agent, or finder who alleges that Buyers or Seller, as the case may be, dealt with such broker, agent, or finder with respect to the purchase of this Property or negotiation therefor.

**9. Release of Claims.** The parties hereby agree that in consideration of this Contract, and the settlement to be conducted thereunder, at the time of settlement, the deed for the property shall constitute an agreement by Buyers and Hillsmere as follows:

a. That Buyers release Hillsmere from any and all claims, actions, causes of action, damages, or liability whatsoever, for actions, either known or unknown, arising from the beginning of time up and through the date of the signing of the Deed.

b. That Hillsmere releases Buyers from any and all claims, action, causes of action, damages, or liability whatsoever, for actions, either known or unknown, arising from the beginning of time up and through the date of the signing of the Deed.

**10. Consent.** It is understood by the parties that the Hillsmere By-Laws require that any structures to be built or commenced on property in Hillsmere require the advance approval of Hillsmere Shores Improvement Association, Inc. In consideration of the deed and this Agreement, Hillsmere agrees that it will grant approval for any pier, bulkhead, or other water dependent facility to be built on the Property to be conveyed herein, so long as such improvements have been approved by all governmental authorities having regulatory oversight over such construction, including the Maryland Department of the Environment and the Anne Arundel

County Department of Inspections and Permits. Nothing in this paragraph shall preclude Hillsmere, as an adjacent land owner, from voicing any objections that it might have to such construction arising as a result of governmental regulation or law. Hillsmere shall, however, be prohibited from raising any issue concerning its authority to approve or disapprove construction in Hillsmere, it being presumed that the deed to the Property carries with it the right to construct water dependent facilities.

11. **Binding Effect.** The provisions of this Contract shall be binding upon, and inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns, and the provisions hereof shall survive the execution and delivery of the Deed and shall not be merged therein.

AS WITNESS the hands and seals of the parties hereto the day and year first above written.

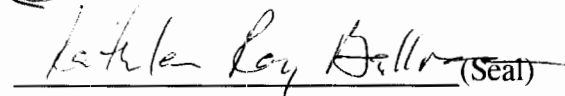
WITNESS:

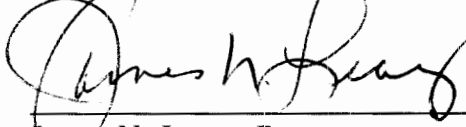
**HILLSMERE SHORES IMPROVEMENT  
ASSOCIATION, INCORPORATED**

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\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_ (Seal)  
William Shuman, President

 (Seal)  
Allan R. Ballman, Buyer

 (Seal)  
Kathleen Ray Ballman, Buyer

 (Seal)  
James N. Leary, Buyer

Thomas P. DeVito III (Seal)

Thomas Paul DeVito, III, Buyer

Teri Sanford DeVito (Seal)

Teri Sanford DeVito, Buyer

Robert A. Harned (Seal)

Robert ~~A.~~ Harned, Buyer

Delores M. Harned (Seal)

Delores M. Harned, Buyer

THE JANET L. ADRIAN REVOCABLE TRUST, Buyer

By: Janet Adrian (Seal)

Janet Adrian, Trustee

THE OLIVER BIRCH LIVING TRUST, Buyer

By: O. Birch (Seal)

Oiver Birch, Trustee

By: Victoria Birch (Seal)

Victoria Birch, Trustee

Nguyenanh Chu (Seal)

Nguyenanh Chu, Buyer

Loni T. Chu (Seal)

Loni T. Chu, Buyer


NGUYEN M.C.

Frigga K. Gibbs (Seal)

Frigga K. Gibbs, Buyer

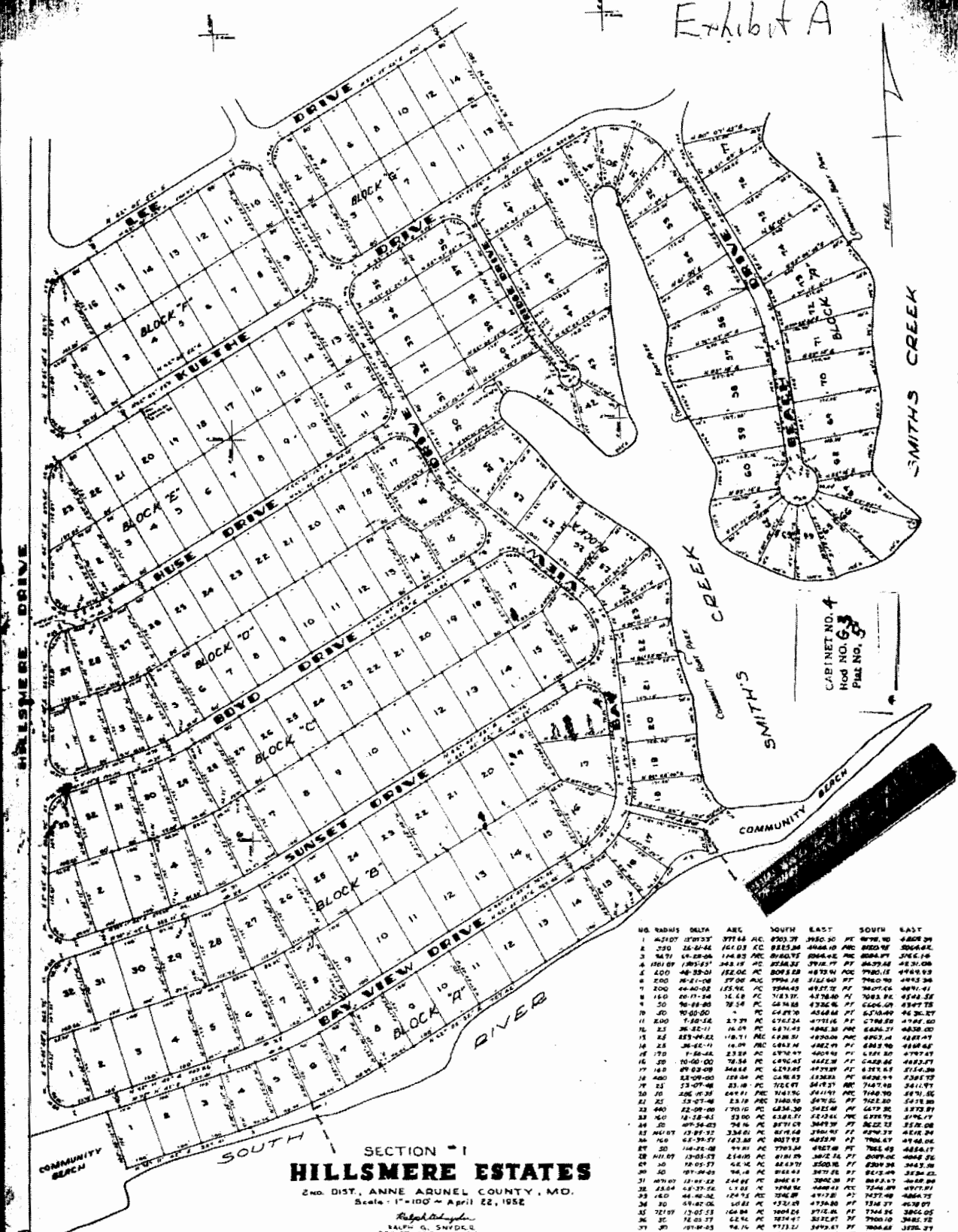
Frigga <sup>FKG</sup>

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 (Seal)  
William Koutroumpis, Buyer

May 15, 2009  
H:\Doc\Hillsmerelandowner.con.wpd

Exhibit A



SECTION 1  
**HILLSMERE ESTATES**  
 2ND DIST. ANNE ARUNDEL COUNTY, MD.  
 Scale - 1"=100' - April 22, 1952

Ralph G. Snyder,  
 REGISTERED SURVEYOR,  
 LINTHICUM HEIGHTS, MD.

PLAT NO. 1020  
 Filed - May 28, 1952.

The requirements of Sections 72A  
 to 72D of the Annotated Code of Md.  
 1939 Edition (Title, Chapter of Laws)  
 and the Courts of Circuit Courts) as  
 far as they relate to the making of  
 this plat, the setting of markers, have been  
 complied with.

C. Carroll, Inc.  
 PRESIDENT  
 HILLSMERE ESTATES, INC.  
 OWNERS OF THE LAND SHOWN HEREON

The Requirements of the Anne Arundel County  
 Health Department have been complied with in preparing  
 this plat.

W. French, HEALTH OFFICER

NO.	OWNER	AREA	SOUTH	EAST	SOUTH	EAST
1	62107	12-07-57	371.44	AC	8203.37	2552.30
2	250	12-07-54	141.03	AC	8225.26	4046.10
3	9479	14-12-04	144.83	AC	8240.75	3064.42
4	10189	18-01-51	143.19	AC	8254.25	3702.77
5	200	14-12-04	152.00	AC	8075.23	4872.50
6	200	14-12-04	177.04	AC	7794.18	3122.60
7	200	14-12-04	175.94	AC	7264.65	4277.72
8	150	14-12-04	16.24	AC	7183.37	4376.40
9	20	14-12-04	78.24	AC	6474.68	4736.76
10	20	14-12-04	78.24	AC	6474.68	4736.76
11	200	1-02-52	2.73	AC	6712.24	4773.16
12	23	14-12-04	16.24	AC	6371.43	4042.30
13	23	14-12-04	16.24	AC	6371.43	4042.30
14	23	14-12-04	16.24	AC	6371.43	4042.30
15	23	14-12-04	16.24	AC	6371.43	4042.30
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50	23	14-12-04	16.24	AC	6371.43	4042.30

CABINET NO. 4  
 Rod NO. 63  
 Plat NO. 1020