

## RESOLUTION 2002-71

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT FOR PURCHASE AND SALE BETWEEN THE TOWN OF SOUTHWEST RANCHES AND MIRAMAR WEST DEVELOPMENT CORPORATION FOR 30 ACRES OF LAND WITHIN THE CITY OF PEMBROKE PINES LOCATED SOUTH OF 193 LANE AND 51 MANOR, KNOWN AS "FRONTIER TRAILS," IN THE AMOUNT OF \$2,000,000 FOR FUTURE NEEDS AS DETERMINED BY THE TOWN COUNCIL; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID AGREEMENT AND OBTAIN APPROPRIATE FINANCING; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, at the Town Council meeting of June 24, 2002, the Council authorized the Town Administrator to prepare a letter of intent from the Town to acquire the 30 acre "Frontier Trails" site located at 193 Lane and 51 Manor within the City of Pembroke Pines; and

**WHEREAS**, the Town residents reacted negatively to the City of Pembroke Pines' plan to increase the development density of the 30 acre site from 12 to 24 units; and

**WHEREAS**, 100% of the Town residents at the public input meeting on June 11, 2002 agreed that the Town should close 193 Lane at 51 Manor and pursue whatever legal action is necessary to achieve the closing of the roadway; and

**WHEREAS**, this action would satisfy the health and welfare issues raised by our residents if the density of development approved by the City of Pembroke Pines were allowed to occur.

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1:** The above referenced recitals are true and correct and are incorporated herein by reference.

**Section 2:** The Town Council authorizes the acquisition of additional land for future use from Miramar West Development Corporation, as represented on attachment "A", Agreement for Purchase and Sale in the amount of \$2,000,000.

The Mayor, Town Administrator and Town Attorney are authorized to execute the attached Agreement and make necessary adjustments as necessary.

**Section 3:** The Town Council is hereby taking this action to satisfy the health and welfare issues raised by our residents and to control the density of the development on the site.

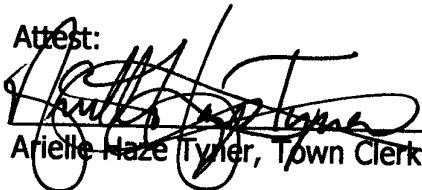
**Section 4:** The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

**Section 5:** That this Resolution shall become effective immediately upon its adoption.

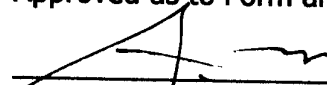
**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida this 12th day of September 2002.

  
\_\_\_\_\_  
Mecca Fink, Mayor

Attest:

  
\_\_\_\_\_  
Arielle Haze Tyler, Town Clerk

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

**AGREEMENT FOR PURCHASE AND SALE**

THIS AGREEMENT for Purchase and Sale ("Agreement") is entered into as of the date the Seller executes this Agreement ("Effective Date of this Agreement") by and between MIRAMAR WEST DEVELOPMENT CORPORATION ("Seller"), and TOWN OF SOUTHWEST RANCHES, a political subdivision of the State of Florida ("Buyer"), or its assigns, as follows:

**ARTICLE 1. PURCHASE AND SALE OF THE PROPERTY.** Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller subject to the terms and conditions set forth herein, the following:

- 1.1 That certain land (the "Land") described on Exhibit A attached hereto and made a part hereof.
- 1.2 Appurtenances. All rights, privileges and easements appurtenant to the Land, which are owned by the Seller.
- 1.3 Improvements. All improvements and fixtures located on the Land, which are owned by the Seller, if any (the "Improvements"), all of which shall be in good repair as of the Closing Date.

All of the items described above are hereinafter collectively referred to as the "Property."

**ARTICLE 2. PURCHASE PRICE.**

2.1 The purchase price for the Property (the "Purchase Price") shall be TWO MILLION DOLLARS (\$2,000,000) which shall be payable as set forth in this Article 2.

2.2 Deposit. Concurrently with the execution of this Agreement by Buyer, Buyer shall deliver to Escrow Agent (hereinafter defined) the sum of TEN THOUSAND DOLLARS (\$10,000) (the "Deposit"). Escrow Agent shall deposit the Deposit in its trust account.

2.3 Payment of Deposits to Seller. Escrow Agent shall pay to Seller on the Closing Date (hereinafter defined), the Deposit in the form of a trust account check or wire transfer payable to Seller.

2.4 Contingency. This Contract is contingent upon two appraisals equal to or greater than the purchase price and the approval of the Town Council.

2.5 Cash at Closing. Buyer shall pay the balance of the cash (\$1,990,000) to Seller on the Closing Date in the form of attorneys trust account check, cashier's check or a wire transfer payable to the Seller.

**ARTICLE 3. CLOSING.**

3.1 Escrow Agent. The escrow agent shall be Becker & Poliakoff, P.A., whose address is: Becker & Poliakoff, P.A., Attention: Theda J. Collins, Esquire, 3111 Stirling Road, Fort Lauderdale, FL 33312 (the "Escrow Agent").

3.2 Close. The Closing of title (the "Closing") shall take place at 10:00 a.m. on or before September 13, 2002 (the "Closing Date"), at the offices of Buyer's Attorney, Becker & Poliakoff, P.A., 3111 Stirling Road, Fort Lauderdale, Florida 33312.

3.3 Escrow and Title Costs. Seller shall pay for the proratable items chargeable to Seller at the Closing, the documentary transfer taxes on the Warranty Deed, the cost of the title abstract or the cost of providing the title commitment, the cost of curing title defects, if any, including but not limited to, the cost of obtaining and recording any corrective instruments, such as, satisfactions, releases, partial releases, disclaimers or the like; and Seller's own

attorney's fees. Buyer shall pay for proratable items chargeable to Buyer at the Closing, the charge for recording the Warranty Deed, Buyer's own attorney's fees, documentary stamp tax, intangible tax and recording fees related to the note and mortgage, and the Buyer's Title Insurance Policy.

3.4 Prorations. The following items shall be prorated and adjusted between Buyer and Seller as of midnight preceding the Closing Date, and made on the basis of a thirty day month:

3.4.1 Taxes. All nondelinquent general and special real property taxes and assessments based on the tax statement last available to Seller.

3.4.2 Pending and Certified Liens. Certified municipal liens and pending municipal liens for which work has been substantially completed on the Closing Date shall be paid by the Seller and other certified liens for which work has not been substantially completed on the Effective Date and other pending liens shall be assumed by Buyer;

3.4.3 Other Items. All operational expenses and rentals upon the Property and all other items required to be prorated by any other provision of this Agreement to be prorated and adjusted.

3.5 Re-Proration of Taxes. At Closing, the above-referenced items shall be prorated and adjusted as indicated. If subsequent to the Closing Date, taxes for the year of Closing are determined to be higher or lower than as prorated, a re-proration and adjustment will be made at the request of Buyer or Seller upon presentation of the actual tax bill, and any payment required as a result of the re-proration shall be made within ten days following demand. All other prorations and adjustments shall be final.

#### ARTICLE 4 DELIVERY OF DOCUMENTS

4.1 Delivery by Seller. Prior to the Closing, Seller shall deliver the following closing documents to Buyer:

4.1.1 A Warranty Deed conveying title to the Property, in recordable form (the "Deed"), subject only to the Permitted Exceptions (as hereinafter defined);

4.1.2 A Mechanics/Construction Lien Affidavit from Seller attesting that (a) no individual, entity or governmental authority has any claim against the Property under the applicable Mechanics/ Construction lien law, (b) no individual, entity or governmental authority is either in possession of the Property or has a possessory interest or claim in the Property, and (c) no improvements to the Property have been made for which payment has not been made.

4.1.3 A "Gap Affidavit" in form and content reasonably satisfactory to Buyer's title insurer to allow the title agent to insure the gap period in accordance with applicable Florida Statutes;

4.1.4 A Seller's non-foreign affidavit, under penalty of perjury, including Seller's United States Taxpayer Identification Number and permanent mailing address, stating that Seller is not a foreign person, as required under Internal Revenue Code, Section 1445(b)(2);

4.1.5 Closing Statement

4.1.6 Estoppel letter from the holder of any mortgage encumbering the Property setting forth the amount required to pay off or release such mortgage from the Property.

4.1.7 Such other documents as Buyer may reasonably request in order to consummate the transaction herein contemplated.

4.18 DR-219. The Florida Department of Revenue Return for Transfer of Interest in Florida Real Property.

4.1.9 Assignment to Buyer of all permits, licenses or approvals issued by any board, association, governmental body or agency having jurisdiction over the Property relating to the ownership or use of the Property.

4.2 Copies of Seller's closing documents shall be delivered to Buyer's attorney for review not less than ten (10) days prior to Closing.

4.3 Delivery by Buyer. At Closing, Buyer shall execute and deliver to Seller the following items:

4.3.1 The cash portion of the Purchase Price;

4.3.2 Buyer shall cause Escrow Agent to issue its trust account check for the Deposit to Seller;

4.3.3 Resolution for Town Council evidencing Buyer's power and authority to enter into this Agreement and consummate the transaction herein contemplated.

4.3.4 Such additional documents as Seller may reasonably deem necessary or proper to carry out this Agreement.

4.3.5 Closing Statement.

4.4 Copies of Buyer's closing documents shall be delivered to Seller's attorney for review not less than five (5) days prior to Closing.

#### ARTICLE 5. EVIDENCE OF TITLE.

5.1 Delivery of Abstract. The Seller, at its cost, shall deliver (i) a prior owner's title insurance policy on the Property issued by a nationally recognized title insurance company acceptable to Buyer's attorney, in its discretion, together with a computer update from the date of the policy through the Effective Date, together with hard copies of all exceptions listed thereon ("Prior Policy"), within five days following the Effective Date or, (ii) an Abstract on the Property ("Abstract") to Buyer's Attorney, Becker & Poliakoff, P.A., attention: Theda J. Collins, Esquire, within ten (10) days following the Effective Date. In the event the prior owner's title policy is unacceptable, Seller shall deliver the Abstract to Buyer's attorney. If the Abstract is provided, upon the closing of this transaction the abstract shall become the property of Buyer.

5.2 Title. Seller shall convey to Buyer good, marketable and insurable title to the Property, subject only to the Permitted Exceptions as set forth in subsection 5.6 below. Buyer shall have thirty days from the date of receiving the Abstract or Prior Policy to examine title. If title is found defective, Buyer shall, within forty-five days after receipt of the Abstract or Prior Policy, notify Seller in writing of the specific title defect(s). Seller may, but has no obligation to, correct such defect(s) within sixty days from its receipt of the notice from Buyer. Buyer, at its option, and at Seller's request may extend the time to cure the defect and the Closing Date by a period of time equal to the period of time that is required to cure the title defect not to exceed one hundred twenty days. If Seller is not successful in removing the defect(s) within that time, Buyer shall have the option, in its discretion, of either accepting the title in its existing condition, and closing in accordance with the terms of this Contract or of terminating this Contract by written notice of termination to Seller. Upon the termination of this Contract, Escrow Agent shall return the Deposit to Buyer, and, thereafter, Buyer nor Seller shall have any further rights or obligations hereunder.

5.3 Delivery of Certificate of Filing Officer. Within fifteen (15) days following the Effective Date, Seller, at its cost, shall deliver to Buyer from the filing officer, as described in Florida Statutes, Section 679.401 (1991), a certified copy of any filed instrument naming the Seller as debtor under the Uniform Commercial Code-

Secured Transactions. Failure by Seller to deliver the foregoing shall entitle Buyer to order the report at Seller's cost and expense.

5.4 Tax Reports. Within fifteen days after the Effective Date, Seller shall deliver to Buyer from the tax collector for the county in which the Property is located a statement of the ad valorem real property taxes for the Property for the year of closing (if then known and if not then known, for the prior year) and whether there are any unpaid taxes then due.

5.5 Survey.

5.5.1 Delivery of Survey. Seller agrees, within five (5) days after Effective Date to deliver to Buyer copies of all surveys Seller for the Land which Seller has or which are available to Seller. Thereafter, Buyer at its option and cost may obtain a survey (the "Survey") of the Land and all improvements thereon prepared by a land surveyor or engineer registered and licensed in the State of Florida. The Survey shall: show the legal description of the Land to be the same as Exhibit "A" hereto; be certified to Buyer, to Buyer's Attorney, and to the Title Company; include a certification that the Survey satisfies the minimum requirements adopted by the Florida Society of Professional Land Surveyors and the Florida Land Title Association and that there are no encroachments, overlaps, boundary line disputes, easements or claims of easements other than as shown; be certified as of a date subsequent to the Effective Date; show the flood zone designation of the Land; show the topography of the Land; show the locations and recording information of all Permitted Exceptions; and state the gross and net acreage of the Land.

5.5.2 Survey Defects. Buyer shall have fifteen days from the date of receiving the Survey to examine same. If the Survey shows any encroachment on the Land, or that any improvement located on the Land encroaches on the land of others, or if the Survey shows any other defect which would affect either the title to the Property or Buyer's intended use of the Property, Buyer shall notify Seller of such defect within fifteen days after receipt of the Survey and such encroachment or defect shall be treated in the same manner as title defects are treated under this Contract.

5.6 Buyer's Title Insurance Policy. Buyer shall obtain, at Buyer's cost, an ALTA Owner's Policy of Title Insurance ("Buyer's Title Insurance Policy"), issued by a nationally recognized title insurance company (the "Title Company"), with liability in the amount of the Purchase Price, insuring Buyer's title in the Property free and clear of all liens and encumbrances excepting only (i) current real property taxes and assessments not delinquent; (ii) items shown on the title commitment which are approved by Buyer; (iii) the Title Company's standard exceptions (as many as possible of which shall be deleted on the final policy); (iv) all laws, ordinances and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations; (v) matters which would be disclosed by an accurate survey of the Property; (vi) restrictions, easements, reservations, covenants, agreements, limitations and other matters of record; and (vii) such other matters or exceptions which have been approved by Buyer (the "Permitted Exceptions").

ARTICLE 6. INVESTIGATION PERIOD.

6.1 Suitability for Use. For a period of thirty days following the Effective Date hereof ("Investigation Period"), Buyer shall determine, in its sole discretion, whether the Property is suitable for Buyer's intended use of the Property.

6.2 Seller's Delivery of Property Records. Within ten (10) days from the Effective Date, Seller shall deliver to Buyer copies of all the following documents in Seller's possession relating to the Property: Any and all licenses, security agreements, forms UCC-1 affecting the Property, contracts relating to the operation of the Property, appraisals, paid tax bills for the year 2000, tax assessment notices, title insurance policies, surveys, site plans, plats, soil tests, reports, engineering reports and similar technical data and information, plans and specifications for proposed improvements to the Property, and material correspondence (which shall mean correspondence, other than attorney/client privileged correspondence) which discloses claims, allegations or adverse information regarding the Property or Seller with respect to the Property or claims, allegations or adverse

information that the Property violates any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, agreement or other direction or requirement of any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them ("Governmental Authority") now existing or hereafter enacted, adopted, promulgated, entered, or issued applicable to the Seller or the Property ("Governmental Requirement"), that there is hazardous or toxic waste on or about the Property, or that there are defects, deficiencies or hazardous conditions in or on the Property).

6.3 Buyer's Right to Terminate. Buyer may elect to terminate this Contract at any time before 9:00 p.m., of the last day of the Investigation Period by written notice to Seller. Upon a termination of this Contract, Escrow Agent shall return the Deposit to Buyer, and, thereafter this Contract shall be terminated and neither Buyer nor Seller shall have any further rights or obligations hereunder. In the event this Contract has not been terminated pursuant to this subsection 6.5, then the Property's physical condition shall be deemed approved by Buyer subject to any matters shown on the reports which Seller has agreed to cure, repair or replace. Seller shall exercise due diligence if making any and all cures, repairs and replacements.

#### ARTICLE 7. SELLER WARRANTIES.

7.1 Seller's Warranties. Seller makes the following warranties to Buyer, each of which shall be true as of the Closing Date:

7.1.1 Seller is the sole owner of the Property, has good, indefeasible and marketable title to the Property, free and clear of all liens, encumbrances and other matters except the Permitted Exceptions and has full power, authority and right to execute, deliver and perform this Agreement. Neither the execution and delivery of this Agreement nor its performance are restricted by or violate any contractual or other obligation of Seller.

7.1.2 Seller has not, nor to the best of Seller's knowledge and belief, Seller's predecessors in title or use, have not, used or permitted the Property to be used as a burial ground, land fill area, or area for the dumping of any materials which would qualify as Hazardous Waste under State or Federal Laws; there is no Asbestos or Radon Gas contained within or on the Property.

7.1.3 There is ingress and egress to the Property to and from dedicated public thoroughfares.

7.1.4 The Property is not in violation of any Building, Zoning, or Fire Codes.

7.1.5 The zoning of the Property is such as to allow the present use of the Property.

7.1.6 The Property is in full compliance with all federal, state and local environmental laws, rules, regulations, codes or ordinances.

7.2 Seller's Representations. Seller represents to Buyer that:

7.2.1 Seller has not received any notice, written or otherwise, from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property by reason of a violation of any regulation or otherwise;

7.2.2 Seller has not received notice of any pending or contemplated condemnation action with respect to the Property;

7.2.3 There are no claims or actions or threats of action pending against the Property or Seller that would limit or prohibit Seller from performing all of the terms, covenants and provisions of this Agreement by Seller; and

7.2.4 There are no outstanding or unperformed contracts for improvements or repairs to the Property, or any unpaid or disputed bills for labor, materials or services in connection with any repairs or improvements to any portion of the Property.

7.2.5 To the best of Seller's knowledge, there are no proposed or pending plans to change or redefine the zoning classification of all or any part of the Property. Seller agrees to immediately furnish Buyer with copies of any such proposed changes received by Seller ("immediately" means within 24 hours).

7.2.6 There are no recorded or unrecorded leases for all or any part of the Property.

7.2.7 Seller will cause all encumbrances against the Property to be paid out of the closing proceedings.

7.2.8 There are no outstanding requirements or recommendations by (i) the insurance company insuring the Property; or (ii) any board of fire underwriters or (iii) other body exercising similar functions, requiring or requesting any repair or work to be done to the Property.

7.2.9 There are no outstanding management contracts relating to the Property.

7.2.10 That the within transaction does not represent a sale of all or substantially all of Seller's assets.

7.2.11 The Property is located in a Flood Zone

7.2.12 Seller has exclusive possession of the Property and there are no tenants in possession or with a right to possession of the Property or any portion thereof.

7.2.13 At closing there will be no unpaid bills or claims for labor performed, services rendered or materials furnished or contracted to be performed or furnished upon the Property and there will be no unpaid taxes of any kind that might become a lien upon the Property, except the ad valorem real estate taxes for the year of closing which are not yet due and payable; and provided any such matters exist, Seller agrees to transfer such matters to bond or to pay them at the closing.

7.2.14 Seller shall not commit or suffer any waste of or to the Property.

7.2.15 There is no pending or to the best of Seller's knowledge any threatened, litigation against Seller that could result in a judgment lien against the Property or in equitable relief affecting the Seller.

7.2.16 There are no public special improvement district liens against the Property for any improvements on or benefiting the Property, nor to the best of Seller's knowledge any work pending or authorized but not yet commenced as of the date hereof which would result in the creation of any lien for such improvements, including but not limited to water, sewer, paving, drainage, electrical, gas or other public or community improvement which may give rise to any such lien.

7.2.17 There exists no agreement, option, right of first refusal or other rights of any kind or nature with respect to the Property with or in favor of any third party.

7.2.18 No portion of the Property is being or previously has been acquired by a governmental authority in the exercise of its power to condemn or to acquire through eminent domain or private purchase in lieu thereof nor, to the best of Seller's knowledge, are any of these proceedings or actions in existence or pending with respect to the Property.

7.2.19 Seller has disclosed to Buyer all adverse information to which Seller has knowledge with respect to the Property. Seller's representations and warranties in subparagraphs 7.1.2 through 7.2.19 are true on the date of



this Agreement, will be true on the Closing Date, and will survive the Closing Date.

7.3 Buyer's Pre-Closing Remedies for Seller's Misrepresentations. In the event that Buyer becomes aware prior to Closing that any of Seller's warranties or representations set forth in this Contract are not true on the Effective Date or at anytime thereafter or at Closing: Buyer may either: (a) terminate this Contract by written notice thereof to Seller in which event the Deposit shall be returned to Buyer and the parties will be relieved of all further obligations hereunder, or (b) elect to close under this Contract notwithstanding the failure of such representation and warranty, and the Seller shall have no further liability to Buyer hereunder.

ARTICLE 8. BUYER WARRANTIES. Buyer represents and warrants to Seller (the following being hereinafter sometimes referred to as "Buyer's Warranties") that:

8.1 Authority to Execute. The execution of this Agreement, the delivery by Buyer to Seller of all monies, items and documents provided for herein, Buyer's performance hereof and the transactions contemplated hereby have been duly authorized by the requisite action on the part of Buyer. This Agreement constitutes valid and binding obligations of Buyer and is enforceable against Buyer in accordance with its terms.

8.2 No Encumbrance. Buyer shall neither encumber nor cause any liens to be created against the Property as a result of its inspections in any way, nor record this Agreement or a memorandum hereof, prior to the Closing.

ARTICLE 9. BUYER'S CONTINGENCIES.

9.1 Buyer's Contingencies. Buyer's obligation to purchase the Property and close the transaction pursuant to this Agreement is expressly contingent upon satisfaction of the following conditions ("Buyer's Contingencies") and Buyer shall have no obligation to close under this Agreement unless all the following conditions have either been satisfied or waived by Buyer:

9.1.1 Approval of Property. Public Notice and Hearing and approval by the Town Council by Resolution of this Contract, the Property's physical condition or waiver of any objections thereto pursuant to Article 6 hereof, and

9.1.2 Title Materials. Buyer's approval of the items on the Title Commitment or waiver of any objections thereto pursuant to Article 5 hereof.

9.1.3 MAI Appraisal. Appraisal by two licensed appraisers indicating that the market value of the property is equal to or greater than the Purchase Price.

9.1.4 Environmental and other Reports. All environmental reports and other reports performed during the Investigation Period revealing that the property is free and clear of all hazardous or toxic materials or wastes; that the land has adequate permeability, that there are no chasms beneath the property, that the property has never been used as a land fill and that nothing exists which would prohibit the Buyer from its intended use of the property.

9.1.5 Compliance with Covenants. Seller shall have performed all covenants, agreements and obligations and complied with all conditions required by this Contract to be performed or complied with by Seller prior to the Closing Date.

9.1.6 Delivery of Documents. Seller shall be prepared to deliver to Buyer all instruments and documents to be delivered to Buyer at the Closing pursuant to this Contract;

9.1.7 No Prior Termination. This Contract shall not have been previously terminated pursuant to any other provision hereof.

9.1.8 Representations and Warranties. All of Seller's representations and warranties shall be true and correct;

9.1.9 Status of Title. The status of title to the Property shall be as required by this Contract.

9.1.10 Other. Any other act or report required by the Charter of the Town of Southwest Ranches which must be performed or obtained by a municipality when purchasing real property.

9.2 Time Periods. Buyer agrees to act reasonably and expeditiously in approving or disapproving Buyer's Contingencies.

9.3 Remedies. If the conditions to Buyer's obligations have not been satisfied on or before the Closing Date, Buyer shall have the option of continuing the Closing Date for a period not to exceed thirty (30) days until such time as the conditions have been satisfied. This option is a continuing option and not an election of remedies; therefore, at any time after the Closing Date if the conditions to Buyer's obligations to close have not been satisfied, Buyer can elect to terminate this Contract and pursue its remedies against Seller as elsewhere provided in this Contract.

#### ARTICLE 10. SELLER'S CONTINGENCIES.

10.1 Seller's Contingencies. Seller's obligation to sell the Property pursuant to this Agreement is expressly contingent upon satisfaction of each of the following conditions ("Seller's Contingencies") and Seller shall have no obligation to close under this Agreement unless all the following conditions have been satisfied or have been waived by Seller:

10.1.1 Payment and Documents. Delivery and execution by Buyer of all monies, items, and any other instruments required to be delivered and paid by Buyer herein to Seller;

10.1.2 Buyer's Warranties. Buyer's Warranties must be and remain true and correct as of the Closing;

#### ARTICLE 11. DAMAGE OR DESTRUCTION OF THE PROPERTY; CONDEMNATION.

11.1 If, between the Effective Date of this Contract and the Closing Date, the Property materially damaged or destroyed, or a taking or condemnation of a portion of the Property is threatened, or commenced, Buyer may elect, by providing written notice within ten days after receipt of notice from Seller of such damages, destruction, taking or condemnation accompanied by information regarding the amount and payment of insurance or condemnation proceeds, to terminate this Contract or to purchase the Property whereupon, at the election of Buyer, in its sole discretion, Seller shall either repair or replace the damaged or destroyed Property to its original condition, or assign all of Seller's interest in and to all proceeds to Buyer, including, but not be limited to, insurance and condemnation proceeds.

11.2 If, as a result of damage, destruction, taking or condemnation of the Property, Buyer elects to terminate this Contract as provided above, this Contract shall be of no further force and effect, and Escrow Agent is hereby authorized and instructed to return the Deposit to Buyer.

11.3 If Buyer elects to purchase the Property despite such damage, destruction, taking or condemnation, Seller shall assign its rights to Buyer and Buyer shall be entitled to receive any insurance proceeds or condemnation awards payable as a result of such damage, destruction, taking or condemnation.

#### ARTICLE 12. MAINTENANCE AND MANAGEMENT OF THE PROPERTY.

12.1 Seller will Continue to Maintain. From the date of this Agreement until the Closing Date, Seller agrees to continue to manage and maintain the Property and to keep same free and clear of all liens, encumbrances,

waste or trash.

#### ARTICLE 13. DEFAULT

13.1 Buyer's Default. In the event that this transaction fails to close due to refusal or intentional default on the part of Buyer, the parties have agreed that Seller shall be entitled to receive the Deposit as liquidated damages, and thereafter, neither Buyer nor Seller shall have any further obligation under this Contract. The parties agree that is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to Seller that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Each party specifically confirms the accuracy of the statements made above and the fact that each party was represented by counsel who explained the consequences of this liquidated damages provision at the time this agreement was made. Buyer and Seller agree that this is a bona fide liquidated damages provision and not a penalty or forfeiture provision.

13.2 Seller's Default. In the event Seller shall fail to convey title to Buyer pursuant to this Agreement, Buyer shall in its sole discretion (a) be entitled to seek specific performance of this Agreement or damages at law; or (b) elect to terminate this Agreement and receive a refund of the Deposit, together with any interest earned thereon, in which event neither Buyer nor Seller shall have any further rights or obligations hereunder.

#### ARTICLE 14. ENERGY-EFFICIENCY RATING DISCLOSURE

**TO PROSPECTIVE BUYERS: RADON GAS: Notice to Prospective Purchaser/Tenant.** Radon is a naturally occurring radioactive gas, that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This notice is given to you pursuant to Chapter 404.056(8) Florida Statutes.

#### ARTICLE 15. MISCELLANEOUS

15.1 Survival of Conditions. The covenants, agreements, warranties and representations made by Buyer and Seller herein shall survive the Closing.

15.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors and assigns, which assignment shall be only in accordance with Section 16.4.

15.3 Assignment. Buyer may assign its rights under this Agreement to a wholly owned subsidiary or newly formed corporation.

15.4 Entire Agreement. This Agreement and the Exhibits attached hereto contain the entire agreement between Buyer and Seller and supersede all prior agreements, whether written or oral. The Exhibits attached hereto are hereby incorporated herein by reference as if set forth herein in full. Neither this Agreement nor any of its provisions may be changed, amended, waived or otherwise modified, other than by an agreement in writing duly executed by or on behalf of the party against whom enforcement of any change, amendment, waiver, modification, consent or discharge is sought.

15.5 Time of Essence. Time is of the essence of this Agreement and of each and every term, condition, obligation and provision hereof.

15.6 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.7 **Attorneys' Fees.** In the event of any action, suit or other proceeding to enforce this Agreement or arising out of the breach of any of its covenants, conditions, agreements or provisions, the prevailing party shall be entitled to have and recover of and from the other party all of such party's costs and expenses of suit, including attorneys' fees, incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

15.8 **Notices.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations required under this Agreement or by law by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if personally served, or sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reasonably reliable courier service providing overnight or sooner delivery, postage prepaid, and addressed as follows:

To Buyer: Town of Southwest Ranches  
6589 S. W. 160 Avenue  
Southwest Ranches, FL. 33331  
Attn: John Canada

With Copy To: Theda J. Collins, Esquire  
Becker & Polliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312

To Seller: Miramar West Development Corporation

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To Escrow Agent: Becker & Polliakoff, P.A.  
3111 Stirling Road  
Ft. Lauderdale, FL 33312-6525  
Attn: Theda J. Collins, Esquire

The effective date of delivery of any such notice or other item shall be: a) the date of personal service; b) the delivery date on the return receipt; or c) the day of deposit, postage prepaid, with a reasonably reliable courier service providing overnight or sooner delivery, whichever is applicable. The parties may designate any other address for the service of notices by furnishing same in accordance with this Paragraph.

15.10 **Invalid Provisions.** If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, unenforceable or illegal in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth. In the event the Loan to Buyer is not permitted by any authority, this Agreement at Buyer's option shall be null and void and the Deposit shall be returned to Buyer.

15.11 **No Waiver.** The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement and shall not be considered a waiver of any other covenant, condition or promise. The waiver shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any remedy provided by law, and the provisions in this Agreement for any remedy shall not exclude any other remedy unless such remedy is expressly excluded.

15.12 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

15.13 Further Assurance. Each party agrees to cooperate with the other party and to execute such additional instruments and documents as may be reasonably necessary or proper in order to carry out the provisions of this Agreement.

15.14 Saturdays, Sundays, Holidays. If any date or time period specified herein shall be on or expire on a day which is a Saturday, Sunday or day which is widely recognized as a legal holiday in the state in which the Property is located, such date or time period shall be deemed to be or extend to the next immediately following business day.

15.15 Acceptance. This Agreement shall not be binding or enforceable against either party until fully executed by both parties.

15.16 Escrow Agent. Escrow Agent shall act as Escrow Agent and has executed this Contract solely for the purpose of signifying its agreement to act as escrow agent under the terms of this Contract. Escrow Agent is not a party to this Contract. Escrow Agent's duties, obligations and liabilities hereunder are solely limited to the functions as required of it as Escrow Agent to receive and disburse funds as required under this Contract. In the event of doubt as to Escrow Agent's duties or liabilities under this Contract, Escrow Agent may, in Escrow Agent's sole discretion, continue to hold the subject matter of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto or Escrow Agent may deposit same with the Clerk of the Circuit Court having jurisdiction of the dispute, and upon notifying the parties concerned of such action, all liability on the part of Escrow Agent shall fully terminate, except to the extent of accounting for any items theretofore delivered out of escrow. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the subject matter of this escrow, Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs including reasonable attorneys' fees and cost for post judgment proceedings, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that Escrow Agent shall not be liable to any party or person whomsoever for mis-delivery to Seller or Buyer of items subject to this escrow, unless such mis-delivery shall be due to willful breach of this Contract or gross negligence on the part of Escrow Agent. Buyer agrees that Escrow Agent may represent itself and may also represent Buyer with respect to this transaction and matters arising out of this transaction. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection from any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or error of judgment, or for any acts or omissions of any kind unless caused by its willfulness conduct or gross negligence, and Buyer and Seller agree to indemnify and hold the Escrow Agent harmless from any claims, demands, causes of action, liability, damages or judgments, including the cost of defending any action against it, together with any reasonable attorneys' fees incurred therewith, in connection with Escrow Agent's undertaking pursuant to the terms and conditions of the Contract, unless such act or omission is a result of the willfulness conduct or gross negligence of the Escrow Agent. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertions contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions of this Contract have been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it, the sufficiency of the title to the property to be conveyed, nor as to the identity, authority, or rights of any persons executing same. The duties of the Escrow Agent shall be limited to the safekeeping of the deposits and to disbursements of same in accordance with the written instructions described above. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and no implied duties or obligations shall be read into this Contract against the Escrow Agent. Upon the Escrow Agent's disbursing the deposit in accordance with the provisions hereof, the Escrow shall terminate as regards this Contract, and Escrow Agent shall thereafter be released of all liability hereunder in connection therewith.

15.17 Not Recordable. This Agreement shall not be recorded in the Public Records. Recording of same

shall constitute a default by the recording party.

**ARTICLE 16 SPECIAL PROVISIONS**

16.1 **Indemnification.** Sellers agree to save, indemnify and hold harmless Buyer, its officers, directors, employees, agents and managers, against any and all claims, demands, losses, costs, expenses, settlements, damages, attorney's fees and costs which arise out of or result from Seller's operation of the Property prior to the Closing Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**BUYER:**  
**TOWN OF SOUTHWEST RANCHES,**  
a political subdivision of the State of Florida

By: *John ...*  
Name: John ...  
Title: Town Administrator  
Executed this \_\_\_ day of \_\_\_\_\_, 2002

Approved for legal form and sufficiency:

\_\_\_\_\_  
Gary A. Poliakoff, J.D., Town Attorney

**SELLER:**

\_\_\_\_\_  
**Miramar West Development Corporation**  
Executed this \_\_\_ day of \_\_\_\_\_

The escrow instructions set forth above are hereby acknowledged and accepted by:

**BECKER & POLIAKOFF, P.A., as Escrow Agent:**

By: *Shawn J. ...*  
Date: 11-18-02 *Shy*

**Exhibit "A"**  
**Legal Description**

**Lot 1,2,3,4 and 5, Block 1, Lots 1, 2, 3, 4 and 5, Block 2,  
Lots 1 and 2, Block 3 and Lots 1, 2 and 3, Block 4, FRONTIER  
TRAILS, as recorded in Plat Book 97, Page 8, of the Public  
Records of Broward County, Florida.**