

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Chris Kovanes, Programs Administrator, 797-1102

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, EXECUTING THE PURCHASE CONTRACT FOR THE PARCEL KNOWN AS FALCON'S LEA TRACT B.

**REPORT IN BRIEF:** This project is in it's final stage of completion. The seller, Culverhouse Investment Properties, Ltd. and Town Attorney, Monroe Kiar, have agreed upon a contract for the purchase of Falcon's Lea Track B parcel.

As agreed upon on October 3, 2001 via resolution, R-2001-271, \$750,000 will be allocated towards purchase of this parcel. Originally, one million dollars were set aside in the 1998 Parks Bond for the intent to purchase land for recreational use in the western area of Davie.

Again, this resolution will merit the final closure of this purchase.

**PREVIOUS ACTIONS:** Resolution passed on Oct. 2, 2001 for purchase of parcel.

**CONCURRENCES:** Not Applicable.

**FISCAL IMPACT:** \$750,000, 1999 Parks Bond, 1 Million allocated towards west Davie.

**ADDITIONAL COMMENTS:** Not Applicable.

**RECOMMENDATION(S):** Motion to approve the resolution.

Attachment(s): Resolution,  
Purchase Contract

RESOLUTION \_\_\_\_\_

**A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, EXECUTING THE PURCHASE CONTRACT FOR THE PARCEL KNOWN AS FALCON'S LEA TRACT B.**

WHEREAS, the Town recognizes the need for additional community level parks within the Town; and

WHEREAS, the citizens of the Town of Davie endorsed the acquisition of an "West Davie Park Site" as an element of the 1998 Park and Recreation Bond Initiative; and

WHEREAS, the Town has identified an available 3.8 acre parcel located on the Southeast Corner of Stirling Road and Falcon's Lea, in Davie, Florida; and

WHEREAS, the Town has obtained two appraisals pursuant to Section 166.045 Florida Statutes; and

WHEREAS, the Town conducted a public hearing on October 3, 2001 for consideration of entering into the aforesaid Assignment of Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council does hereby authorize the Mayor to execute the Contract for purchase of parcel known as Falcon's Lea Tract B.

SECTION 2: This resolution shall take effect immediately upon the passage and adoption.

PASSED AND ADOPTED, THIS \_\_\_\_\_ DAY \_\_\_\_\_, 2001.

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Attest:

MAYOR/COUNCIL MEMBER

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TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

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**AGREEMENT FOR SALE AND PURCHASE  
OF REAL PROPERTY**

**Between**

**McCANN INVESTMENT PROPERTIES, LTD.,  
a Florida limited partnership,**

**as Seller**

**and**

**THE TOWN OF DAVIE,  
a municipal corporation of the State of Florida ,**

**as Buyer**

November 8, 2001

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**AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY**

**THIS AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY** ("Agreement"), made this 8<sup>th</sup> day of November, 2001 ("Execution Date"), by and between **McCANN INVESTMENT PROPERTIES, LTD.**, a Florida limited partnership ("Seller"), having an office at 3225 S. MacDill Avenue, PMB #253, Suite 129, Tampa, Florida 33629-8171, and **THE TOWN OF DAVIE**, a municipal corporation of the State of Florida ("Buyer"), having an office at 6591 SW 45<sup>th</sup> Street, Davie, Florida 33314.

**W I T N E S S E T H:**

**WHEREAS**, Seller owns a certain parcel of real property situated in the Town of Davie, Broward County, Florida, as legally described on Exhibit "A" attached hereto (the "Land"); and

**WHEREAS**, Buyer desires to purchase the Land from Seller and Seller desires to sell the Land to Buyer, together with any and all improvements, easements, hereditaments, privileges, appurtenances and other rights appertaining to the Land, all rights, if any, which Seller has in any streets, roadways, and avenues directly abutting the Land to the centerline thereof, whether opened, vacated or proposed (collectively, the "Property"), all in accordance with the terms and provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants herein contained and the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

I. **RECITALS**. The foregoing recitals are true and correct and are incorporated herein as if repeated at length.

1. **SALE AND PURCHASE OF PROPERTY**. Subject to the terms and conditions hereinafter set forth, Seller shall sell the Property to Buyer and Buyer shall purchase the Property from Seller at the Closing (as hereinafter defined).

2. **PURCHASE PRICE AND TERMS OF PAYMENT**. The purchase price for the Property (the "Purchase Price") is **SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$750,000.00)** subject to prorations and adjustments as provided in this Agreement and payable as follows:

A. To secure the performance by Buyer of its obligations under this Agreement, Buyer shall, within three (3) business days after the Effective Date (hereinafter defined), deposit with

the law firm of Katz, Barron, Squitiero & Faust, P.A. ("Escrow Agent"), the sum of **SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (75,000.00)** (the "Escrow Deposit"), in immediately available funds and in lawful money of the United States of America, which shall be held as an earnest money deposit. Escrow Agent shall invest the Escrow Deposit in an interest bearing account, certificate of deposit or money market account maintained with or issued by a commercial bank doing business in Dade or Broward County, Florida. The Escrow Deposit shall be applied towards the Purchase Price at the Closing or otherwise disbursed in accordance with the terms hereof.

B. The balance of the Purchase Price (the "Balance of the Purchase Price"), subject to the prorations and adjustments for which provision is herein made, shall be paid by Buyer to Seller at the Closing in the form of a wire transfer of Federal funds, to an account designated by Seller in writing (in same day, immediately available U.S. funds).

3. SURVEY. Within the review periods provided in Paragraph 5.A below, Buyer shall have the right to obtain, at Buyer's sole cost and expense, a boundary survey of the Land certified to Seller, Buyer, the Title Company (as hereinafter defined), and their respective counsel and prepared in accordance with the minimum technical standard set forth in Section 472.027 Florida Statutes (1993) ("Survey"). In the event that the Survey shall disclose any condition which shall render Seller's title other than good, marketable and insurable, (other than Permitted Exceptions, as hereinafter defined), then such defects shall be treated in the same manner as a title defect in Paragraph 5.A below, and Buyer shall be permitted to object to same in writing within the review periods and pursuant to the standards provided in Paragraph 5.A below.

4. TITLE.

A. Within fifteen (15) days from the Effective Date, Seller shall deliver to Buyer, at Seller's sole cost and expense, an ALTA Form B Title Insurance Commitment ("Commitment") with respect to the Land issued by a nationally recognized title insurance company ("Title Company") reasonably acceptable to Buyer (First American Title Insurance Company and Chicago Title Insurance Company being so acceptable to Buyer) pursuant to which the Title Company agrees to issue an owner's policy of title insurance ("Owner's Policy") consistent with the Commitment in the amount of the Purchase Price effective as of the Closing Date. The Commitment shall show Seller to be vested with fee simple title to the Land and with legal access thereto from publicly dedicated roadways, subject to the Permitted Exceptions (as hereinafter defined). The Owner's Policy shall insure title to the Land and ingress and egress thereto over publicly dedicated roadways. Seller shall be responsible for paying the premium for any such Owner's Policy.

Buyer shall have until thirty (30) days after the Effective Date within which to obtain and examine the Commitment and Survey. If Buyer finds title to be defective (i.e., matters which render title other than good, marketable and insurable in accordance with the standards of the Florida Bar and the Title Company and which are not otherwise Permitted Exceptions) or the Survey shows matters other than as permitted under Paragraph 4 above, Buyer shall, no later thirty (30) days after

the Effective Date, notify Seller in writing specifying the defect(s); provided that, if Buyer fails to give Seller written notice of defect(s) before the expiration of said period, the defects shown in the Commitment or Survey shall, anything in this Agreement notwithstanding, be deemed to be Permitted Exceptions and shall be waived as title objections to closing this transaction and Seller shall be under no obligation whatsoever to take any corrective action with respect to same nor to warrant against same in its special warranty deed of conveyance. If Buyer has given Seller timely written notice of defect(s) and the defect(s) render the title other than as required by this Agreement, Seller shall have the option to (i) elect to cancel this Agreement, which Seller may do within five (5) business days of receipt of Buyer's notice of defect, or (ii) elect to attempt to cure the defect(s) contained in Buyer's notice of defect(s) in title, in which event Seller shall use its reasonable efforts to cause such defects to be cured by the Closing Date; provided that, in no event shall Seller be obligated to bring suit or to expend any sums of money in excess of TEN THOUSAND DOLLARS (\$10,000.00) to buy-out, settle or otherwise cure any such title defect. At Seller's option, the Closing Date may be extended for a period not to exceed thirty (30) days for purposes of eliminating any title defects. In the event that Seller does not eliminate all timely raised title defects as of the date specified in this Agreement for Closing, as the same may be extended under the preceding sentence, Buyer shall have the option of either: (a) closing and accepting the title "as is," without reduction in the Purchase Price and without claim against Seller therefor (in which event the uncured defects shall be deemed to be Permitted Exceptions), or (b) canceling this Agreement. Notwithstanding the foregoing limitations on Seller's obligations, any mortgages, judgments or other liens (exclusive of taxes, assessments and charges to be prorated hereunder) of a definite, liquidated and ascertainable amount, which can be discharged by the payment of money will be paid, released, and discharged as an encumbrance upon the Land at Closing by application of the Purchase Price or otherwise. Buyer and Seller agree that the Purchase Price may be used for such purposes. On the date of Closing, the Commitment shall be "down dated" to the date of the most current public records available by computer title search and as "down dated" shall confirm the status of Seller's title as required hereby. If any new matters of title shall first appear which are not Permitted Exceptions and which render Seller's title other than as required hereby, such new matters shall be treated as title defects in accordance with the foregoing provisions and, if caused by Seller (other than as specifically contemplated by this Agreement), such defects shall be eliminated by Seller prior to Closing.

B. At Closing, Seller shall convey the Land by special warranty deed in the form of Exhibit "B" attached hereto ("Deed") conveying good, marketable and insurable title to the Land being conveyed, free and clear of all liens, claims, easements, limitations, restrictions or encumbrances whatsoever, except for the following (collectively, "Permitted Exceptions"), to wit:

- (i) Taxes for the year of Closing and subsequent years;
- (ii) The "standard exceptions" contained in an ALTA Form B Title Insurance Policy; provided that Seller shall provide at Closing an Affidavit in the form of Exhibit "C" attached hereto and incorporated herein and such other affidavits and certifications reasonably required by the Title Company (collectively, the "Affidavits") in order to delete the standard pre-

printed exceptions with regard to the "gap," party in possession and mechanic's lien exception (it being agreed and understood that, except for execution and delivery of the Affidavits, Seller shall have no obligation to execute any other documentation or take any other action to cause any of the "standard exceptions" to be deleted from the Commitment and/or the Owner's Policy);

(iii) Zoning restrictions and prohibitions imposed by any governmental or quasi-governmental authority;

(iv) Any matter created by or through Buyer;

(v) Any improvement liens assumed by Buyer pursuant to the provisions of this Agreement;

(vi) Matters specifically deemed to be a Permitted Exception under this Agreement; and

(vii) Those matters more particularly set forth on Exhibit "D" attached hereto and incorporated herein, (which Buyer will have the opportunity to review, and if Buyer is dissatisfied in any manner therewith, as its sole remedy, cancel this Agreement prior to the Inspection Completion Date).

5. INSPECTION PERIOD; ACCESS.

A. Buyer shall have a period commencing on the Effective Date and terminating at 5:00 p.m. on the thirtieth (30<sup>th</sup>) day thereafter (the "Inspection Completion Date") in which to review, examine, evaluate or otherwise satisfy itself with respect to all aspects of the Property, including, but not limited to, matters relating to soil condition, environmental condition and zoning. Buyer and Buyer's agents shall have the reasonable right of ingress and egress to the Land for the inspections contemplated herein, upon reasonable prior written notice to Seller, from time to time. Buyer may make, at its sole cost and expense, such inspections, tests and verifications as Buyer considers reasonably necessary (the "Inspections"). Notwithstanding any other provision of this Agreement, the Inspections shall be exercised and conducted by Buyer, its employees, agents and independent contractors in all respects in a commercially reasonable manner, in compliance with all applicable laws, ordinances, regulations and requirements, including, without limitation, all environmental and ecological laws, ordinances, regulations and requirements of all governmental bodies, authorities and agencies having jurisdiction. Buyer shall, at Buyer's expense, promptly cause: (i) all borings made by or on behalf of Buyer to be plugged or capped in a safe manner; (ii) all property, if any, damaged or destroyed by Buyer, its employees, agents and independent contractors to be repaired, restored and replaced; and (iii) all debris, if any, and all underbrush cut or uprooted, if any, resulting from or in connection with the Inspections to be removed from the Land. Buyer shall not cut or uproot, nor permit or cause any of Buyer's employees, agents or independent contractors to cut or uproot, any living trees or disturb any wetlands situated on the Land without the prior written consent of Seller, which may be granted or withheld in Seller's sole discretion. Buyer

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shall not destroy or disturb, nor permit or cause any of its employees, agents or independent contractors to destroy or disturb, any endangered or threatened species of animal, fish, fowl or plant or the habitat thereof, if any, located on the Land. Buyer hereby indemnifies and holds Seller harmless from and against any and all loss, cost, damage, liability, lien or other exposure suffered or incurred by Seller on account of the acts or omissions of Buyer, its agents and/or contractors with respect to the Inspections (including, without limitation, attorneys' fees and costs through all trial and appellate levels incurred by Seller through the defense thereof) and Buyer shall repair all damage done to all or any portion of the Land pursuant to its Inspections. Buyer shall not permit any liens to be placed against the Land, or any portion thereof and shall promptly remove any such liens so filed by payment or bonding of same in the manner required by Florida law so that the same no longer constitutes a lien on any portion of the Land. Prior to performing any Inspections hereunder, Buyer shall furnish Seller with a certificate evidencing that Buyer has obtained a general liability policy with limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) combined single limit for bodily injury and property damage liability in any one occurrence, insuring Buyer and Seller as additional insured.

B. Buyer shall have the right, in its sole discretion, to cancel this Agreement for any reason or for no reason whatsoever, by the delivery of written notice thereof to Seller on or before the Inspection Completion Date, whereupon this Agreement shall be deemed terminated. In the event Buyer does not deliver such termination notice on or before the Inspection Completion Date, then this right of termination shall be deemed of no further force or effect and the right hereinabove set forth of Buyer to so terminate shall be deemed to have been waived by Buyer.

C. In the event Buyer terminates this Agreement as permitted herein or elsewhere in this Agreement, as a condition to the return of the Escrow Deposit, Buyer shall deliver to Seller true copies of all reports, studies, surveys, inspections and other materials which Buyer may have obtained with respect to the Property (sometimes hereinafter "Buyer's Reports").

The terms and provisions of this paragraph 5 shall survive the Closing or any earlier termination of this Agreement.

6. CONDITIONS. It shall be a condition to Buyer's obligations under this Agreement that the following "Conditions" shall be satisfied or waived on or before the Closing (or such other time set forth below), to wit:

A. Condition of the Property: As of the Closing Date, the Property shall be materially in the same condition, including without limitation environmental condition, as it was in as of the Effective Date, except for changes in condition caused solely by the act or omission of Buyer.

B. Environmental Audit: Within thirty (30) days after the Effective Date, Buyer shall have obtained a Phase I environmental audit of the Property that shall find that the Property is not environmentally contaminated (as defined in Florida Administrative Code Chapter 17-70).

Buyer shall use good faith efforts to cause Condition B. above to be satisfied prior to thirty (30) days after the Effective Date and shall regularly apprise Seller of its progress towards satisfaction of that Condition. In the event that Conditions A or B is not satisfied on or before the Closing Date ((or earlier date if specified otherwise), then: (i) Buyer shall have the right to terminate this Agreement by written notice to Seller on or before the Closing Date (or within three (3) business days after such earlier date specified), whereupon this Agreement shall be deemed terminated; or (ii) if Buyer shall not timely exercise its right to terminate, Buyer shall be deemed to have waived the Conditions set forth in this Paragraph and shall proceed to Closing on the Closing Date.

7. CLOSING AND CONVEYANCE OF TITLE.

A. The sale and purchase of the Property shall be closed (the "Closing") at Seller's attorneys' offices at 100 N. E. 3<sup>rd</sup> Avenue, Suite 280, Ft. Lauderdale, Miami, Florida 33131, by payment of the Balance of the Purchase Price due hereunder and delivery of the Deed and other required instruments at 10:00 a.m. on the fifteenth (15<sup>th</sup>) day after the Inspection Completion Date ("Closing Date"); or such earlier date and time as may be agreed to by Buyer and Seller in writing. If the Closing Date shall fall upon a Saturday, Sunday or other federal legal holiday, the Closing shall be held the next succeeding regular business day, at 10:00 A.M., at Seller's attorneys' offices as aforesaid.

B. At Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(i) the Deed;

(ii) the Affidavits;

(iii) Seller's FIRPTA Affidavit, certifying that Seller is not a "foreign person" under Section 1445 of the Internal Revenue Code of 1986, as amended;

(iv) Such documents with respect to the due authorization, power and authority of Seller to enter into this Agreement and to execute and deliver its closing documents, as reasonably required by the Title Company;

(v) A Closing Statement in customary form to be prepared and executed by the parties; and

(vi) Any other documents reasonably necessary to consummate the transaction contemplated hereby.

C. At Closing, Buyer shall deliver or cause to be delivered Seller the following:

(i) The Balance of the Purchase Price;

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(ii) A Closing Statement in customary form to be prepared and executed by the parties;

(iii) A DR-219 Reporting Form or other form required by the State of Florida in connection with the payment of documentary stamps or transfer tax, if any, imposed upon the transfer of title to the Land;

(iv) Such documents with respect to the due authorization, power and authority of Buyer, to enter into this Agreement and to execute and deliver any such closing documents as reasonably required by the Title Company;

(v) Such documents as may be reasonably necessary to comply with Section 1099 of the Internal Revenue Code of 1986, as amended;

(vi) Any other documents reasonably necessary to consummate the transaction contemplated hereby.

D. Buyer and Seller shall provide reasonable notice to the other party, and shall promptly review all closing documents and instruments prepared by the other party, so as to achieve the Closing of the transaction contemplated hereby in a timely manner.

E. The cost of recording any corrective title instruments and the documentary stamps required in connection with the Deed shall be paid by Seller. The cost of the Commitment, the premium applicable to the Owner's Title Policy and the cost to record the Deed shall be paid by Seller. Each party shall bear its respective attorneys' fees (except as provided in Paragraph 20 of this Agreement).

#### 8. PRORATIONS.

A. Seller shall pay the real estate taxes and assessments (both general and special) for the year of the Closing (collectively, the "Taxes") pursuant to the provisions of Section 196.295, Florida Statutes. Municipal and public improvement liens, if any, which have been certified, or for which the work has been substantially completed on the date hereof, shall be paid by Seller and any other such liens, whether pending on the Closing Date or not, shall be assumed by Buyer. Notwithstanding the foregoing: (i) water and sewer assessments, whether or not included in the Taxes, shall not be prorated and shall be the sole responsibility of Buyer, and (ii) to the extent any of the certified liens are payable in installments, Buyer shall take title subject to such lien(s) and assume the balance of such installment payments. In such event, the installment payment for the year of Closing shall be prorated as of 12:01 a.m. of the Closing Date.

B. In the event of any mathematical error in the prorations or adjustments to be made hereunder or any mistake of fact as to the amount of any prorated item or adjustment which is discovered within one year after the Closing, the parties agree to correct such mistake and the party

whose credit was overstated as a result of such mistake shall reimburse the other party, promptly upon request.

C. The provisions of this Paragraph 8 shall survive the Closing and the delivery of the Deed (hereinafter defined).

9. INTENTIONALLY DELETED

10. INTENTIONALLY DELETED

11. ASSIGNMENT. Buyer shall not assign its rights or interests hereunder except (a) after obtaining Seller's prior written consent, which may be withheld at the sole and absolute discretion of Seller; or (b) in whole and not in part, to another governmental entity.

12. BROKERAGE. Each party hereto represents and warrants to the other that neither party has consulted, dealt or negotiated with any real estate broker, salesperson or agent in connection with the sale and purchase of the Property (except for D. C. Casey Company ("Broker") and each party hereby agrees to indemnify and hold harmless the other from and against any and all loss, damage and liability resulting from or arising out of any claim that such party has consulted, dealt or negotiated with any real estate broker, salesperson or agent other than the Broker in connection with the transaction which is the subject of this Agreement. As, if and when this transaction closes, Seller shall pay the Broker's commission pursuant to a separate agreement between Seller and the Broker. The representations and warranties in this Paragraph shall survive the Closing and delivery of the Deed, and the termination (whether by Buyer or Seller) of this Agreement.

13. NOTICES.

A. All notices required or allowed by this Agreement shall be sent by certified or registered mail, return receipt requested, postage prepaid, by personal delivery with receipt acknowledged in writing, via Federal Express or other material recognized overnight delivery service or via confirmed telefax (with a duplicate copy to follow via Federal Express), addressed to the party or person to whom such notice is to be given at the following addresses and shall be deemed given upon receipt:

To Seller: McCann Investment Properties, Ltd.  
3225 S. MacDill Avenue, PMB #253, Suite 129  
Tampa, Florida 33629-8171  
Attn: Thomas P. Purcell, President of Joy McCann General  
Partner, Inc.

with a copy to Mark J. Bryn, Esq.  
One Biscayne Tower, Suite 3599  
Miami, FL 33131

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with a copy to: Katz, Barron, Squitiero & Faust, P.A.  
100 N. E. 3<sup>rd</sup> Avenue, Suite 280  
Ft. Lauderdale, FL 33301  
Attn: William A. Zeiher, Esq.

To Buyer: Thomas Will, Town Administer  
Town of Davie  
6591 SW 45<sup>th</sup> Street  
Davie, FL 33314

with a copy to: Monroe D. Kiar, Esq.  
Town of Davie  
6591 SW 45<sup>th</sup> Street  
Davie, FL 33314

To Escrow Agent: Michael D. Katz, Esquire  
Katz, Barron, Squitiero & Faust, P.A.  
2699 South Bayshore Drive, 7th Floor  
Miami, Florida 33133

B. A notice may be given either by a party or such party's attorney at law. With respect to the giving of all notices under this Agreement by Buyer or Seller, time shall be of the essence of this Agreement.

14. DEFAULT. If the sale and purchase of the Property shall not be closed because of default by Buyer, or if Buyer should otherwise materially default hereunder prior to the occurrence of the Closing, then Seller shall retain the Escrow Deposit as agreed liquidated damages, it being expressly understood and agreed that in such event Seller will suffer damages incapable of exact ascertainment, and thereafter this Agreement shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder, except for (i) such additional rights and remedies for which specific provision is made herein (including, but not limited to, Seller's right to pursue full recourse against Buyer under any indemnification and/or hold harmless agreements contained in this Agreement); and (ii) all obligations of Buyer expressly surviving Closing or accruing upon or subsequent to Closing. If the sale and purchase of the Property shall not be closed because of default by Seller, or if Seller shall otherwise materially default hereunder prior to Closing, then Buyer shall, as its sole and exclusive remedies, have the right to sue Seller for specific performance of this Agreement or (in the alternative) to receive the return of the Escrow Deposit and upon such return, this Agreement shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder, except for (i) such additional rights and remedies for which specific provision is made herein (including, but not limited to, Buyer's right to pursue full recourse against Seller under the indemnification and/or hold harmless agreement contained in this Agreement); and (ii) all obligations of Seller expressly surviving Closing or accruing upon or subsequent to Closing (the obligations described in (i) and (ii) shall be referred to herein collectively as the "Seller's Recourse

Obligations"). In addition, Buyer hereby knowingly and intentionally forever waives and releases any and all rights to recover monetary damages against Seller. Notwithstanding anything to the contrary contained herein, in the event of any default by Buyer or Seller hereunder (other than Buyer's or Seller's default in Closing as provided hereunder), the non-defaulting party shall provide the defaulting party with written notice of such default and the non-defaulting party shall thereafter have five (5) days in which to fully cure such default, time being of the essence; provided that, in the event any such default shall not be reasonably susceptible of cure within such five (5) day period and the defaulting party has commenced such cure within said period and diligently and continuously prosecutes such cure thereafter, then the defaulting party shall have such additional reasonable period of time necessary to effect a cure not to exceed thirty (30) days.

15. ESCROW DEPOSIT. If the Escrow Deposit is in the form of immediately available funds, the Escrow Deposit shall be held in escrow by the Escrow Agent upon the following terms:

A. The Escrow Deposit shall be deposited by the Escrow Agent upon its receipt thereof in an interest-bearing commercial bank account, certificate of deposit or money market account, issued by or maintained with a commercial bank doing business in Dade or Broward County, Florida.

B. If the Closing takes place, the Escrow Agent shall deliver the Escrow Deposit to, or upon the instruction of, Seller at the Closing. Interest accrued on the Escrow Deposit, if any, shall not be a credit against the Purchase Price and shall be paid to Buyer at Closing.

C. If this Agreement is terminated in accordance with the terms hereof, the Escrow Agent shall pay the Escrow Deposit (together with any interest which shall have accrued thereon) to, or upon the instruction of, the party entitled thereto in accordance with the provisions of this Agreement.

D. If the Closing does not take place under this Agreement by reason of the failure of either party to comply with such party's obligations hereunder, the Escrow Agent shall pay the Escrow Deposit (together with any interest which shall have accrued thereon) to the party entitled to receive the Escrow Deposit in accordance with the applicable provisions of this Agreement.

E. It is agreed that the duties of the Escrow Agent are only as herein specifically provided, and are purely ministerial in nature, and that the Escrow Agent shall incur no liability as an escrow agent whatsoever, except for its gross negligence or willful misconduct, as long as the Escrow Agent has acted in good faith. Seller and Buyer each hereby release the Escrow Agent from any act done or omitted to be done by the Escrow Agent in good faith in the performance of its duties hereunder. Further, the parties acknowledge that Escrow Agent is the party representing Seller in this transaction and may continue to do so in any action or proceeding between the parties or otherwise.

F. The Escrow Agent is acting as a stakeholder only with respect to the Escrow Deposit. If there shall exist any dispute as to whether the Escrow Agent is obligated to deliver the

Escrow Deposit or as to which party the Escrow Deposit is to be delivered, the Escrow Agent shall not be required to make any delivery, but in such event the Escrow Agent may hold the same until receipt by the Escrow Agent of an authorization in writing, signed by all the parties having any interest in such dispute, directing the disposition of the Escrow Deposit, or, in the absence of such authorization, the Escrow Agent may hold the Escrow Deposit until the final determination of the rights of the parties in an appropriate proceeding. Also, the Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit the Escrow Deposit in the registry of a court having appropriate jurisdiction pending such determination. The Escrow Agent shall be reimbursed for all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements including all appellate proceedings, by the party determined not to be entitled to the Escrow Deposit. Upon making delivery of the Escrow Deposit in the manner provided in this Agreement, the Escrow Agent shall have no further liability hereunder.

16. ACCEPTANCE OF DEED; REPRESENTATIONS AND WARRANTIES.

A. The acceptance of the Deed by Buyer shall be deemed to be an acknowledgment by Buyer that Seller has fully performed, discharged and complied with all of Seller's obligations, representations, warranties, covenants and agreements hereunder, that Seller is discharged therefrom and that Seller shall have no further liability with respect thereto, except for (i) the post-Closing tax adjustments (if any) required hereunder, (ii) those, if any, which are herein specifically stated to survive the Closing, and (iii) those, if any, contained in the Deed. The acceptance of the Deed by Buyer shall be further deemed to be an acknowledgment by Buyer that Buyer has examined the Land and is fully familiar with the physical condition thereof.

B. Buyer represents, warrants and agrees that neither Seller nor the employees, agents or attorneys of Seller have made any verbal or written representations, warranties or statements of any nature or kind whatsoever to Buyer, whether express or implied, and, in particular, that no representations or warranties have been made with respect to the physical condition or operation of the Land, the zoning and other laws, regulations and rules applicable to the Land or the compliance of the Land therewith, the occupancy of the Land or any part thereof, the quality or condition of the Land, or any other matter or thing affecting or related to the Land or the transactions contemplated hereby, except as and solely to the extent herein specifically set forth. By the act of closing, Buyer agrees to accept the Land "as is," in its present condition, and further agrees that Seller shall not be liable for any latent or patent defects in the Land or bound in any manner by guaranties, promises, projections, operating statements or other information pertaining to the Land heretofore or hereafter made, furnished or claimed to have been made or furnished by Seller or any other person or entity including, without limitation, any employee, agent, attorney or other person representing or purporting to represent Seller, whether verbally or in writing, except as and solely to the extent that the same is expressly set forth herein.

C. Buyer represents and warrants that the execution and delivery of this Agreement and the purchase of the Property by Buyer have been duly authorized and that no other

action or approval not already taken or obtained is required in order to enable Buyer to consummate the transactions contemplated by this Agreement.

D. The provisions of this Paragraph shall survive the Closing and delivery of the Deed.

17. PUBLIC DISCLOSURES. Seller agrees to make any disclosures required by, and in accordance with, Section 286.23, Florida Statutes.

18. FURTHER ASSURANCES. Each of the parties hereto agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further acts, assignments, transfers and assurances as shall reasonably be requested of it in order to carry out this Agreement and give effect thereto. The parties hereto acknowledge that it is to their mutual benefit to effectuate an orderly and efficient transfer of the ownership as contemplated hereby. Accordingly, without in any manner limiting its specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

19. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and venue for any litigation hereunder shall be Broward County, Florida. The provisions of this Paragraph shall survive the termination of this Agreement or the Closing (as the case may be).

20. ATTORNEYS' FEES. In the event of any dispute hereunder, or in connection with the execution of this Agreement, or otherwise relating to the relationship of Buyer and Seller contemplated hereby, the prevailing party in any legal proceeding brought to resolve such dispute shall be entitled to recover from the nonprevailing party in any such proceeding, all of such prevailing party's reasonable attorney's fees and disbursements, at both trial and appellate levels and in bankruptcy. The provisions of this Paragraph shall survive the Closing.

21. APPROVAL BY TOWN COUNCIL. Seller acknowledges that it has been advised that this Agreement and any modification, amendment or supplementation thereto shall not be effective and binding on either party until it is approved by the Town Council of Davie. This Agreement is subject to the requirements of Section 166.045, Florida Statutes and approval of the Town Council (governing body of the municipality) as provided therein. The Effective Date of the Agreement shall be deemed to be the date upon which this Agreement is approved by the Town Council of Davie. Buyer shall promptly deliver notice to Seller of the approval or disapproval of this Agreement. If the Town Council of Davie does not approve this Agreement on or before November 25, 2001, Seller shall have the right to cancel this Agreement by sending written notice to Buyer, whereupon the parties shall be thereafter relieved and released of and from any and all further obligation each to the other hereunder; provided that indemnities and obligations which expressly survive termination or cancellation hereof shall not be released.

22. CONDEMNATION OR EMINENT DOMAIN. In the event any condemnation or eminent domain proceeding shall be commenced at any time prior to the Closing, which proceeding results or will result in a taking of all or any material part of the Land, then Buyer, at its option, shall elect to either:

A. terminate this Agreement; or

B. close the transaction contemplated by this Agreement, without diminution of the Purchase Price.

Buyer shall notify Seller in writing of its election pursuant to either Paragraphs (A) or (B) above within five (5) business days of Buyer's receipt of written notice of any condemnation or eminent domain proceeding with respect to the Land. In the event Buyer does not timely provide Seller with such notice, Buyer shall be deemed to have elected Paragraph (B) above. In the event Buyer properly closes hereunder and pays the full Purchase Price, any applicable condemnation award(s) shall be assigned to Buyer.

23. Intentionally Omitted.

24. Intentionally Omitted.

25. EFFECT OF TERMINATION OR CANCELLATION. Except with respect to termination or cancellation of this Agreement by Seller by reason of default hereunder on the part of Buyer, in the event of any other termination or cancellation of this Agreement under any right or option to so terminate or cancel expressly reserved or granted herein, the Escrow Deposit shall be returned to Buyer (subject to Buyer's obligation to confirm that the Land is lien free, as provided in Section 5.B. hereof and to deliver to Seller the Buyer's reports, as provided in Section 5.D. hereof) and the parties shall be thereafter relieved and released of and from any and all further obligation each to the other hereunder; provided that indemnities and obligations which expressly survive termination or cancellation hereof shall not be released.

26. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding between Seller and Buyer relating to the sale and purchase of the Property, superseding all prior agreements (if any) between Seller and Buyer relating to the sale of the Property, and shall not be altered, modified or amended, except by an instrument in writing, signed by the party against whom enforcement of such alteration, modification or amendment is sought.

27. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which when taken together will constitute the same agreement. The provisions of this Paragraph shall survive the Closing and the delivery of the Deed.

28. AMENDMENTS. This Agreement may not be changed, modified, supplemented or terminated, nor may any of the obligations hereunder or provisions hereof be waived, except by an

instrument executed by the party hereto which is or will be affected by the terms of such change, modification, supplementation or termination. The provisions of this Paragraph shall survive the Closing and the delivery of the Deed.

29. WAIVER. No waiver by either party of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

30. SUCCESSORS AND ASSIGNS. The covenants, agreements, representations and warranties herein contained shall inure to the benefit of, and shall bind, the successors and permitted assigns of the respective parties hereto. The provisions of this Paragraph shall survive the termination of this Agreement or the Closing (as the case may be).

31. NO THIRD PARTY BENEFICIARIES. Buyer and Seller agree that there are no intended third party beneficiaries of any of the provisions of this Agreement or any of the other agreements or instruments executed in connection herewith, and no third parties shall have any rights hereunder or thereunder. The provisions of this Paragraph shall survive the Closing and the delivery of the Deed.

32. PARTIAL INVALIDITY. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. The provisions of this Paragraph shall survive the termination of this Agreement or the Closing (as the case may be).

33. INTERPRETATION.

A. The headings of the various Paragraphs of this Agreement have been inserted solely for the purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

B. This Agreement and the Exhibits hereto and all other closing documents and instruments to be executed in connection herewith have been negotiated at arms length by Seller and Buyer, and the parties mutually agree that for the purpose of construing the terms of this Agreement or said Exhibits or other documents or instruments, neither party shall be deemed responsible for the authorship thereof.

C. Words used herein in the singular or plural shall include the plural or singular and words used herein in the masculine, feminine or neuter gender shall include the other genders, all where the context of this Agreement requires. The terms "hereof," "herein," "hereunder" or words of similar import shall refer to this Agreement in its entirety. The terms "Seller" and "Buyer" shall include the heirs, personal representatives, administrators, successors and permitted assigns of the

respective parties hereto. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders.

D. The obligations of Buyer and Seller to close the transaction contemplated hereby are subject to the express conditions precedent set forth in this Agreement, each of which is for the sole benefit of the party benefitted thereby, which conditions precedent may be waived at any time by written notice thereof from Buyer to Seller or Seller to Buyer, as the case may be. The waiver of any particular condition precedent shall not constitute the waiver of any other condition precedent.

E. The provisions of this Paragraph shall survive the Closing and the delivery of the Deed.

34. INTENTIONALLY DELETED

35. INTENTIONALLY DELETED

36. NO RECORDING OR NOTICE OF PENDENCY. The parties agree that neither this Agreement nor any memorandum or notice thereof shall be recorded prior to the Closing, and Buyer agrees not to file any Notice of Pendency against the Land.

37. TIME OF THE ESSENCE. Time is of the essence in this transaction and this Agreement, and it may be extended only by written agreement by and between the parties hereto. Such extension of any one time period shall not be deemed to extend any other time period or periods not expressly agreed upon in writing. The provisions of this Paragraph shall survive the Closing and the delivery of the Deed. However, if the Closing Date or any other date by which any performance shall be due or by which any condition shall expire hereunder shall fall upon a Saturday, Sunday or other federal legal holiday, such date shall be automatically extended to the next succeeding regular business day.

38. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk 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.

39. WAIVER OF TRIAL BY JURY. EXCEPT AS PROHIBITED BY LAW, NEITHER SELLER NOR BUYER SHALL SEEK A JURY TRIAL ON ANY LAWSUIT, PROCEEDING OR COUNTERCLAIM BASED UPON, OR ARISING OUT OF THIS AGREEMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES HERETO AS SELLER AND BUYER. IF THE SUBJECT MATTER OF ANY SUCH LAWSUIT IS ONE IN WHICH THE WAIVER OF A JURY TRIAL IS PROHIBITED, NEITHER SELLER NOR BUYER SHALL PRESENT AS A COUNTERCLAIM IN SUCH LAWSUIT ANY CLAIM NOT ARISING OUT OF THIS AGREEMENT. FURTHERMORE, NEITHER SELLER

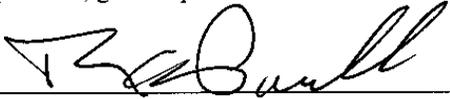
**NOR BUYER SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY SUCH ACTION IN WHICH A JURY TRIAL CANNOT BE WAIVED. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT OR THE CLOSING (AS THE CASE MAY BE).**

**IN WITNESS WHEREOF**, Buyer and Seller have caused this Agreement to be executed as of the day and year first above written.

SELLER:

**McCANN INVESTMENT PROPERTIES, LTD**, a Florida limited partnership

By: Joy McCann General Partner, Inc., a Florida corporation, general partner

By:   
Thomas K. Purcell, President

BUYER:

**TOWN OF DAVIE**, a municipal corporation under the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Escrow provisions hereof agreed to this \_\_\_ day of November, 2001

KATZ, BARRON, SQUIERO & FAUST, P.A.

By: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

All of Tract "B" of FALCON'S LEA, according to the Plat thereof, as recorded in Plat book 128, Page 6, of the Public Records of Broward County Florida.

**EXHIBIT "B"**

**SPECIAL WARRANTY DEED**

Instrument Prepared By and Return to:

**THIS INDENTURE**, made as of this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between **McCann Investment Properties, Ltd., f/k/a Culverhouse Investment Properties, Ltd.**, a Florida limited partnership ("Grantor"), whose mailing address is 3325 S. MacDill Avenue, PMB #253, Suite 129, Tampa, Florida 33629-8171, and **Town of Davie**, a municipal corporation of the State of Florida ("Grantee"), having an office at 6591 SW 45<sup>th</sup> Street, Davie, Florida 33314.

**WITNESSETH:**

Grantor, for and in consideration of the sum of Ten and No/100 U.S. Dollars (\$10.00), and other good and valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's successors and assigns, forever, the land (the "Land") lying and being in the County of Broward, State of Florida, more particularly described on Exhibit "A" attached hereto.

**SUBJECT, HOWEVER**, to the following encumbrances and restrictions:

- A. Real property taxes for the year **[insert year of Closing]** and subsequent years;
- B. Zoning and other regulatory laws and ordinances affecting the Land;
- C. Restrictions, reservations, covenants, conditions, limitations, easements and rights-of-way of record, if any, without the intention of reimposing same;
- D. **[List all other Permitted Exceptions not previously mentioned as attached Exhibit "C"].**

Grantor hereby covenants with Grantee that it is lawfully seized of the Land in fee simple; that Grantor has good right and lawful authority to sell and convey the Land; that it hereby specially warrants the title to the Land as previously described and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but not otherwise.



**EXHIBIT "C"**

**AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, the undersigned Notary Public, personally appeared \_\_\_\_\_ ("Affiant"), as \_\_\_\_\_ of Joy McCann General Partner, Inc., general partner of **McCann Investment Properties, Ltd**, a Florida limited partnership ("Owner"), to me well known to be the person who made and subscribed to the following Affidavit as such officer, who, upon being first duly sworn on oath, deposed and said as follows:

1. Affiant has personal knowledge of the business and affairs of the Owner and of all facts stated hereinafter.

2. Owner is the record owner of property (the "Land") situated in Broward County, Florida, described on Exhibit "A" attached hereto.

3. Owner is in possession of the Land and no other person or entity has any right or lawful claim to possession thereof, except for \_\_\_\_\_.

4. There are no unpaid bills for improvements to the Land for work performed thereon or materials furnished thereto within a period of 90 days prior to the date hereto.

5. There have been no changes in title to the Land resulting from actions by Owner from and after \_\_\_\_\_, 20\_\_, at \_\_\_\_, [**insert date of Commitment**] which would give rise to any lien or adversely affect title to the Land between said date through the date of recording of the deed transferring title to the Land to \_\_\_\_\_ ("Buyer").

6. Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Buyer that withholding of tax is not required upon the disposition of a U.S. real property interest by Owner, Affiant hereby certifies the following, on behalf of Owner:

A. Owner is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

B. Owner's U.S. employer identification number is \_\_\_\_\_; and

C. Owner's office address is 3225 S. MacDill Avenue, PMB #253, Suite 129, Tampa, Florida 33629-8171. Affiant understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

D. Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Owner.

**FURTHER AFFIANT SAYETH NAUGHT.**

**McCann Investment Properties, Ltd.,** a  
Florida limited partnership

By: Joy McCann General Partner, Inc.,  
general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

[Affix Notarial Stamp]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

*[Composite Exhibit "A" to be attached]*

**EXHIBIT "D"**

**ADDITIONAL PERMITTED EXCEPTIONS**

1. Restrictions, dedications, and easements contained in Plat of FALCON'S LEA, recorded in Plat Book 128, page 6.
  2. Declaration of Covenants, Conditions and Restrictions, recorded in Official Records Book 13719, Page 568; as amended by Amendment filed January 28, 1987, in Official Records Book 14120, Page 12.
  3. Bill of Sale for Utilities filed December 17, 1986, in Official Records Book 13995, page 337.
  4. Agreement filed in Official Records Book 21833, page 461.
  5. Assignment and Assumption of Utility Agreements filed December 29, 1997, in Official Records Book 27469, page 707.
  6. Assignment of Easements filed December 29, 1997, in Official Records Book 27469, page 701.
  7. Resolutions filed in Official Records Book 13743, page 709; and in Official Records Book 14748, page 391.
  8. Resolution and Interlocal Agreement No. 86-4-9, by Cooper City, Florida, filed May 13, 1987, in Official Records Book 14432, page 759.
  9. Easement filed in Official Records Book 10696, page 516.
  10. Resolution by the South Broward Drainage District filed April 5, 1988, in Official Records Book 15325, page 40.
  11. Ordinance No. 86-14-B by Town of Davie, filed March 24, 1986, in Official Records Book 13271, page 766.
  12. Utility Easements filed in Official Records Book 12431, page 481; and in Official Records Book 12911, page 311.
  13. Resolutions filed in Official Records Book 12942, page 467; in Official Records Book 15325, page 40; and in Official Records Book 18324, page 409.
  14. Water and Sewer Agreement as set forth in instrument recorded in Official Records Book 13719, Page 544.
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15. Utility Agreement filed in Official Records Book 9833, page 24.

NOTE: UNLESS OTHERWISE INDICATED, ALL OF THE RECORDING INFORMATION CONTAINED HEREIN REFERS TO THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

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