

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

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

**COMPLETED BY:** Chris Kovanes, Programs Administrator

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, EXECUTING THE PURCHASE CONTRACT FOR THE PARCEL KNOWN AS SUNDANCE AT DAVIE, INC.

**REPORT IN BRIEF:** The final contract for the purchase of 3.88 acres known as Sundance at Davie, Inc. is ready for signing. Once purchased, a passive park will be created in months to come. The parcel is generally located on the east side of S.W. 71<sup>st</sup> Terrance approximately 500 feet north of Nova Drive. The agreed selling price is \$915,000 as stated in the purchase contract.

**PREVIOUS ACTIONS:** This item was discussed under Old Business at the September 4 Council Meeting for public discussion.

**CONCURRENCES:** Not Applicable

**FISCAL IMPACT:** \$915,000

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

**Attachment(s):** Resolution, Documentation from Town Attorney Kiar, Purchase contract.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, EXECUTING THE PURCHASE CONTRACT FOR THE PARCEL KNOWN AS SUNDANCE AT DAVIE, INC.

WHEREAS, the Town of Davie is sensitive to the concerns of residents' requests for a passive park to be created on an available 3.88 acre parcel located on S.W. 71<sup>st</sup> Terrace; and

WHEREAS, the Town has negotiated a selling price and specific conditions for the purchase of the 3.88 acre parcel known as Sundance at Davie, Inc.; and

WHEREAS, the Town is purchasing this property for the purpose of a passive park.

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

SECTION 1. That the Town Council of the Town of Davie does hereby approve the purchase contract for the parcel known as Sundance at Davie, Inc.

SECTION 2. This resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002

\_\_\_\_\_  
Mayor/Councilmember

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002

**CONTRACT FOR SALE AND PURCHASE**

**THIS CONTRACT FOR SALE AND PURCHASE** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between the **TOWN OF DAVIE**, a municipal corporation of the State of Florida (hereinafter referred to as "**TOWN**"), whose address is 6591 SW 45<sup>th</sup> Street, Davie, Florida 33314; and **SUNDANCE AT DAVIE, INC.**, (hereinafter known as "**SELLER**"), whose address is \_\_\_\_\_;

**WHEREAS**, **SELLER** is the owner of that certain real property described in Exhibit "A" attached hereto and made a part hereof which **PROPERTY** is located within the Town of Davie, Broward County, Florida (the "**PROPERTY**"); and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and payments contained herein, the parties hereto agree as follows:

1. The aforesaid recitations are true and correct and are incorporated herein.

2. **PROPERTY**: The parties hereby agree that **SELLER** shall sell and **TOWN** shall purchase the real property described in Exhibit "A" attached hereto and made a part hereof situate, lying and being in Broward County, Florida, upon the terms and conditions hereinafter set forth.

3. **PURCHASE PRICE**: **TOWN**, as Purchaser, agrees to pay as and for the total purchase price for the **PROPERTY** in the manner and at the times hereinafter specified, the total sum of **NINE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$915,000.00)**, subject to the credits, prorations and adjustments hereinafter specified.

The proceeds of sale, adjusted for prorations or credits, if any, shall be paid at closing by a check drawn on the **TOWN** payable to **SELLER**.

4. **CONVEYANCE**: The **PROPERTY** shall be conveyed by **SELLER** to **TOWN** at closing by delivery of a properly executed and acknowledged Warranty Deed in statutory form, subject only to the following ("Acceptable Exceptions"):

- (A) Zoning regulations and prohibitions imposed by governmental authority.
- (B) Taxes for the year of closing and subsequent years.
- (C) Other matters of record.

**SELLER** agrees to deliver possession to the **PROPERTY** to **TOWN** on the date of closing.

5. **PRORATION OF TAXES**: In the event the date of closing shall occur between January 1 and November 1, **SELLER** shall, in accordance with Florida Statutes §196.295, place in escrow with the Broward County Revenue Collection Division that amount of money determined by the Broward County Revenue Collection Division as being due pursuant to Florida Statutes §196.295.

6. **GENERAL PRORATIONS:** Any charges to be prorated shall be prorated as of the date of closing.

7. **CLOSING:** It is agreed that this transaction shall be closed and TOWN shall pay the purchase price, adjusted as provided herein, and execute all papers or documents necessary to be executed by TOWN, and SELLER shall execute all papers or documents necessary to be executed by SELLER under the terms of this contract on or before December 23, 2002. The closing shall take place at TOWN'S office, or such other place as TOWN designates. However, nothing contained in this Article shall act or be construed as a limitation of any sort upon the TOWN'S right to examine the Abstract, or the TOWN'S right to require SELLER to cure defects in Title, if any, or as a limitation of other time established herein for TOWN'S benefit.

8. **EVIDENCE OF TITLE:** The SELLER shall provide by November 10, 2002, to TOWN a complete abstract of title prepared by a reputable abstract firm purporting to be an accurate synopsis of the instruments affecting the title to the real property recorded in the Public Records of that county to the date of this contract, or a copy of the Seller's prior title policy together with a certified report from Attorney's Title updated to November 10, 2002, showing the SELLER has good and marketable title. The abstract shall be delivered to the TOWN upon its completion, but in no event shall delivery to the TOWN be later than twenty (20) days prior to the closing. TOWN shall have fifteen (15) days from the date of receiving said abstract of title to examine same. If title is found to be defective, TOWN shall, within said period, notify the SELLER in writing specifying the defects. If the said defects render the title unmarketable, the SELLER shall have ninety (90) days from receipt of such notice to cure the defects, or elect not to cure the defects, and if after said period, SELLER shall have not cured the defects, TOWN shall have the option of (1) accepting title as it then is, or (2) terminating this Contract and demanding a refund of all deposits paid hereunder which shall be returned to the TOWN and thereupon, the TOWN and SELLER shall be released of all further obligations to each other under this contract.

9. **CLOSING COSTS:** SELLER shall cause to be placed upon the Warranty Deed conveying the PROPERTY state surtax, if any, and documentary stamps as required by law. SELLER shall further pay all tangible personal property taxes and the cost of recording any corrective instruments which TOWN deems necessary to assure good and marketable title. TOWN shall pay for the cost of recording the Warranty Deed.

10. **SPECIAL ASSESSMENTS AND PENDING LIENS:** Liens for Special Assessments shall be paid by SELLER prior to closing or credited to TOWN, as hereinafter provided. The amount of a certified lien shall be discharged by SELLER prior to closing, and SELLER shall exhibit appropriate receipts, satisfactions or releases providing such payment, or in the alternative, SELLER shall cause said lien(s) to be satisfied out of the proceeds of sale received by SELLER at closing. Pending liens of which the SELLER has no knowledge of any, shall be assumed by the TOWN.

11. **MECHANIC'S LIENS:** SELLER hereby represents and warrants to TOWN that as of the date hereof and as of closing, there are and shall be no claims or potential claims for mechanic's Liens, either statutory or at common law, and that neither SELLER nor SELLER'S agent has caused to be made on the PROPERTY within ninety (90) days immediately preceding the date of this contract any improvement which could give rise to any Mechanic's Liens. In addition, SELLER represents and warrants to TOWN that neither SELLER nor SELLER'S agent shall cause any improvement to be made on the PROPERTY within the date of full execution of this Contract and closing which could give rise to any Mechanic's Lines for which any bills shall remain unpaid at closing.

- (A) If any improvements have been made within said ninety (90) day period, SELLER shall deliver releases or waivers of all Mechanic's Liens executed by general contractors, subcontractors, suppliers or materialmen in addition to SELLER'S Mechanics' Lien Affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further reciting that in fact all bills for work to the PROPERTY which could serve as the basis for a Mechanic's Lien have been paid.

12. **TIME OF THE ESSENCE**: Time is of the essence throughout this Contract.

13. **PUBLIC DISCLOSURE**: SELLER agrees to make disclosures in accordance with Florida Statutes §286.23.

14. **BROKER'S COMMISSIONS**: Each party represents unto the other that there is no real estate commission due and owing to any party whatsoever by reason of this Agreement.

15. **DEFAULT**:

- (A) In the event SELLER should refuse, neglect or otherwise fail to carry out any of the terms and conditions of this Contract, this Contract may be terminated at TOWN'S election, or the TOWN may sue for specific performance.
- (B) In the event TOWN should refuse, neglect or otherwise fail to carry out any of the terms and conditions of this Contract, SELLER may proceed at law or in equity to enforce its rights under this Contract.
- (C) In any litigation (including all appeals) arising out of the Contract involving SELLER or TOWN, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

16. **PERSONS BOUND**: The benefits and obligations of the covenants herein shall inure to and bind the respective heirs, personal representatives, successors and assigns (where assignment is permitted) of the parties hereto. Whenever used, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

17. **SURVIVAL OF CONTRACT**: The covenants and representations in this Contract shall survive delivery of deed and possession for a period of three (3) years from the date of closing.

18. **WAIVERS**: Failure of either party to insist upon strict performance of any covenant or condition of this Contract, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Contract shall be waived or modified except by the parties hereto in writing.

19. **MODIFICATION:** This contract incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

- (A) It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

20. **CONTRACT EFFECTIVE:** This Contract or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until it is approved by the TOWN. This Contract is subject to the requirements of Florida Statutes §166.045 and approval of the Town Council as provided therein.

21. **ENVIRONMENTAL CONTAMINATION:** SELLER hereby grants to TOWN the right to perform, or have performed, an environmental audit of the PROPERTY. The conduct of such an audit shall be a condition precedent to the closing of this sale and purchase.

- (A) In the event that the environmental audit provided for results in a finding that environmental contamination (as defined in Florida Administrative Code Chapter 17-70) of the PROPERTY has resulted, the TOWN, at its sole discretion, may: (1) elect to terminate this Contract without further liability; (2) obtain a cost estimate from a reputable licensed environmental consultant as to the cost of cleanup of any environmental contamination and notify SELLER of the cost estimate in writing, in which event the SELLER shall have the option of:
  - (i) cleaning up the environmental contamination itself;
  - (ii) reducing the purchase price of the PROPERTY by the amount of the cost estimate; or
  - (iii) elect to terminate the contract without further liability.
  - (iv) BUYER shall have until December 21, 2002 to obtain the estimated cost of cleanup, if necessary, as determined by the environmental audit of the property.
- (B) SELLER represents and warrants to TOWN that as of the effective date and as of closing that neither SELLER, or to the best of SELLER'S knowledge any third party has used, produced, manufactured, stored, disposed of or discharged any hazardous waste or toxic substance in, under or about the PROPERTY during the time in which SELLER owned the PROPERTY.

22. **RADON:** Radon is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present a 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 testing may be obtained from the County public health unit.

23. **FURTHER UNDERSTANDING:** The parties agree that each shall cooperate with the other in good faith and shall correct any mathematical errors, execute such further documents and perform such further acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Contract.

24. **NOTICES:** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified as the place for giving of notice in compliance with the provisions of this paragraph. The party(ies) may change the addresses at which notice is to be given by notice given as provided in this Article. Notices shall be deemed given when received by the addressee.

AS TO TOWN:

Thomas Willi, Town Administrator  
6591SW 4t5th Street  
Davie, Florida 33314

With a copy to:

Monroe D. Kiar, Esquire  
Town Attorney  
6191 SW 45<sup>th</sup> Street, Suite 6151A  
Davie, Florida 33314

AS TO SELLER:

Sundance at Davie, Inc.  
Attn: Manny Larrieu  
3971 SW 8<sup>th</sup> Street, Suite 205  
Coral Gables, Florida 33134

With a copy to:

C. William Laytrom, Jr., Esquire  
1177 SE Third Street  
Fort Lauderdale, Florida 33316

25. SELLER warrants and represents there is legal access to Exhibit "A".

26. The Addendum to Contract on Exhibit "B" is attached hereto and incorporated within this Agreement and are a part hereof.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 2002.

Signed, sealed and delivered  
in the presence of:

Marie C. Roca

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

BY: \_\_\_\_\_

C. William Laystrom Jr.  
C. WILLIAM LAYSTROM, JR.  
Marie C. Roca  
MARIE C. ROCA

SUNDANCE AT DAVIE, INC.  
BY: Manuel A. Larrieu  
MANUEL A. LARRIEU, AS PRESIDENT

George Larrieu  
GEORGE LARRIEU, CORPORATE SECRETARY

STATE OF FLORIDA  
COUNTY OF BROWARD

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2002, before me personally appeared \_\_\_\_\_, of the TOWN OF DAVIE, a municipal corporation organized and existing under the laws of the State of Florida, to me well known and known to me to be the person who acknowledged the execution thereof to be his free act and deed as such officer for the use and purposes therein mentioned.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2002.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Type, Print Name

STATE OF FLORIDA  
COUNTY OF BROWARD

I HEREBY CERTIFY that on this 28 day of OCTOBER, 2002, before me, an officer to take acknowledgments, personally appeared Manuel A. Larrieu, to me known to be the person described in and who executed the same.

WITNESS my hand and official seal this 28 day of OCTOBER, 2002.

My Commission Expires:

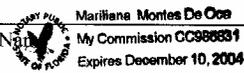
Mariliana Montes De Oca  
Notary Public  
\_\_\_\_\_  
Type, Print Name  
  
Mariliana Montes De Oca  
My Commission CC986631  
Expires December 10, 2004

EXHIBIT "A"

Parcel B of the University Parc Plat according to the plat thereof  
as recorded in Plat Book 170, Page 95 of the Public Records of  
Broward County, Florida.

EXHIBIT "B"  
ADDENDUM TO CONTRACT

1. In addition, Town shall provide Seller with a credit at the Town's utility department in the amount of \$12,438.00 which represents a reimbursement of fees previously paid by Seller to Town for development of the subject property.
2. Town agrees that during the due diligence period, Town will attempt to release the traffic signalization bond currently being held by Broward County for a traffic signal at 71<sup>st</sup> Terrace and Nova Drive. In the event the Town is unable to release the traffic signalization bond, then town may elect to reimburse Seller for the cost of the bond. If the Town does not elect to reimburse Seller, then Seller shall have the option to close or cancel the contract. If the contract is canceled, Town shall be entitled to a refund of all deposits.
3. The parties acknowledge that it is the intent of the Seller to qualify this transaction as a part of a tax deferred exchange under Section 1031 of the Internal Revenue Code, and that this tax treatment is a material part of the consideration to the Seller. Buyer agrees to cooperate in the exchange and execute assignment and other necessary documentation, provided that Buyer incurs no additional liability, cost or expense.
4. The Town is afforded 45 days to conduct any due diligence it deems necessary during which time it has the exclusive right to cancel this contract for any reason.
5. The Town shall give the SELLER sixty (60) days written notice in which to remove the trailer currently on the park site and for the Seller's cleanup of the area around the pad. SELLER agrees to remove said trailer and to clean up the area around the pad and to vacate the site within said sixty (60) day period.