

RESOLUTION NO. 02-68

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE CONTRACT FOR THE SALE AND PURCHASE OF REAL PROPERTY BETWEEN GILMAR HOMES, INC., AS SELLER AND THE TOWN OF MIAMI LAKES, FLORIDA, AS BUYER, AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO TAKE ALL STEPS NECESSARY AND EXPEND ALL APPROPRIATE FUNDS TO COMPLETE ALL INVESTIGATIONS CONTEMPLATED UNDER THE AGREEMENT AND TO CLOSE THE TRANSACTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes, Florida (the "Town") wishes to purchase a parcel of real property from Gilmar Homes, Inc.; and

WHEREAS, the Town has negotiated a Contract for the Sale and Purchase of real property by and between the Town and Gilmar Homes, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

**Section 1. Recitals.** The above recitals are true and correct and incorporated into this resolution by this reference.

**Section 2.** The Contract for Sale and Purchase by and between the Town and Gilmar Homes, Inc. (the "Contract"), in the form attached hereto as Exhibit "A" together with such non-material changes as may be acceptable to the Town Manager, and approved as to form and legality by the Town Attorney, is approved. The Mayor is authorized on behalf of the Town to execute and otherwise enter into the Contract.

**Section 3.** The Town Manager and the Town Attorney are authorized to take all steps necessary and expend all appropriate funds to complete all due diligence investigations

contemplated under the Contract and to close the transaction. The Mayor is authorized to execute all necessary documents to consummate the purchase of the property pursuant to the Contract.

**Section 4.** The Town Council finds and determines that the property being conveyed to the Town is within an area intended for open space and recreational use and shall be held or used for public purposes.

**Section 5.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 9<sup>th</sup> day of April, 2002.

  
\_\_\_\_\_  
WAYNE SLATON, MAYOR

ATTEST:

  
\_\_\_\_\_  
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
TOWN ATTORNEY

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

CONTRACT FOR SALE AND PURCHASE
FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR



PARTIES: Gilmar Homes, Inc., a Florida corporation ("Seller") of P.O. Box 8024, Hialeah, FL 33012 (Phone) and Town of Miami Lakes, a Florida municipal corporation ("Buyer"), of 6853 Main Street, Miami Lakes, FL 33014 (Phone) (305) 558-8511 hereby agree that Seller shall sell and Buyer shall buy the following described real property and personal property (collectively "Property") pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

I. DESCRIPTION:

(a) Legal description of the Real Property located in Miami-Dade County, Florida: Lot 1, Block 1, of FLORIDA TROPICAL ESTATES SECTION 1, according to the Plat thereof recorded in Plat Book 139, Page 24

(b) Street address, city, zip, of the Property is: Corner N.W. 148th Terrace and N.W. 89th Avenue

(c) Personal Property: None Folio 32-2021-006-0010

II. PURCHASE PRICE \$ 53,000.00

PAYMENT:

- (a) Deposit held in escrow by (Escrow Agent) in the amount of \$
(b) Additional escrow deposit to be made to Escrow Agent within days after Effective Date (see Paragraph III) in the amount of \$
(c) Subject to AND assumption of existing mortgage in good standing in favor of having an approximate present principal balance of \$
(d) New mortgage financing with a Lender (see Paragraph IV) in the amount of \$
(e) Purchase money mortgage and note to Seller (see rider for terms) in the amount of \$
(f) Other: \$
(g) Balance to close by U.S. cash or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations \$ 53,000.00

III. TIME FOR ACCEPTANCE OF OFFER; EFFECTIVE DATE; FACSIMILE: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before \* See Addendum the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. For purposes of delivery or notice of execution, parties include Buyer and Seller or each of the respective brokers or attorneys. The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed this offer. A facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

IV. FINANCING:

[X] (a) This is a cash transaction with no contingencies for financing;
(b) This Contract is conditioned on Buyer obtaining a written loan commitment within days after Effective Date for (CHECK ONE ONLY): [ ] a fixed; [ ] an adjustable; or [ ] a fixed or adjustable rate loan in the principal amount of \$ , at an initial interest rate not to exceed % , discount and origination fees not to exceed % of principal amount, and for a term of years. Buyer will make application within days (5 days if left blank) after Effective Date and use reasonable diligence to obtain a loan commitment and, thereafter, to satisfy terms and conditions of the commitment and close the loan. Buyer shall pay all loan expenses. If Buyer fails to obtain a commitment or fails to waive Buyer's rights under this subparagraph within the time for obtaining a commitment or, after diligent effort, fails to meet the terms and conditions of the commitment by the closing date, then either party thereafter, by written notice to the other, may cancel this Contract and Buyer shall be refunded the deposit(s); or (c) The existing mortgage, described in Paragraph II(c) above, has: [ ] a variable interest rate; or [ ] a fixed interest rate of % per annum. At time of title transfer, some fixed interest rates are subject to increase; if increased, the rate shall not exceed % per annum. Seller shall furnish a statement from each mortgagee stating the principal balance, method of payment, interest rate and status of mortgage or authorize Buyer or Closing Agent to obtain the same. If Buyer has agreed to assume a mortgage which requires approval of Buyer by the mortgagee for assumption, then Buyer shall promptly obtain the necessary application and diligently complete and return it to the mortgagee. Any mortgage charge(s) not to exceed \$ (1% of amount assumed if left blank), shall be paid by Buyer. If Buyer is not accepted by mortgagee or the requirements for assumption are not in accordance with the terms of this Contract or mortgagee a charge in excess of the stated amount, Seller or Buyer may rescind this Contract by written notice to the other party unless either elects to pay the increase in interest rate or excess mortgage charges.

V. TITLE EVIDENCE: At least \* days before closing date, (CHECK ONLY ONE): [ ] Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney; or [ ] Buyer shall at Buyer's expense obtain (CHECK ONLY ONE): [ ] abstract of title; or [ ] title insurance commitment (with legible copies of instruments listed as exceptions attached thereto) and, after closing, an owner's policy of title insurance.

VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on \* See Addendum unless modified by other provisions of this Contract.

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VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Buyer shall take title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; public utility easements of record (easements are to be located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines, unless otherwise stated herein); taxes for year of closing and subsequent years; assumed mortgages and purchase money mortgages, if any (if additional items, see addendum); provided, that there exists at closing no violation of the foregoing and none prevent use of the Property for public park purposes... purpose(s).

VIII. OCCUPANCY: Seller warrants that there are no parties in occupancy other than Seller, but if Property is intended to be rented or occupied beyond closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F. Seller shall deliver occupancy of Property to Buyer at time of closing unless otherwise stated herein. If occupancy is to be delivered before closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy unless otherwise stated herein.

IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.

X. RIDERS: (CHECK those riders which are applicable AND are attached to this Contract);
[ ] COMPREHENSIVE RIDER [ ] HOMEOWNERS' ASSN. [ ] COASTAL CONSTRUCTION CONTROL LIMIT
[ ] CONDOMINIUM [ ] "AS IS" [ ] INSULATION
[ ] VA/FHA [ ] LEAD-BASED PAINT

XI. ASSIGNABILITY: (CHECK ONLY ONE): Buyer [ ] may assign and thereby be released from any further liability under this Contract; [X] may assign but not be released from liability under this Contract; or [ ] may not assign this Contract.

XII. DISCLOSURES:
(a) Radon is a naturally occurring radioactive gas that when 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 or Radon testing may be obtained from your County Public Health unit.
(b) Buyer acknowledges receipt of the Florida Building Energy-Efficiency Rating System Brochure.
(c) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.
(d) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.
(e) If Buyer will be obligated to be a member of a homeowners' association, BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION DISCLOSURE.

XIII. MAXIMUM REPAIR COSTS: Seller shall not be responsible for payments in excess of:
(a) \$ for treatment and repair under Standard D (if blank, then 2% of the Purchase Price).
(b) \$ for repair and replacement under Standard N (if blank, then 3% of the Purchase Price).

XIV. SPECIAL CLAUSES; ADDENDA: if additional terms are to be provided, attach addendum and CHECK HERE [X].

XV. STANDARDS FOR REAL ESTATE TRANSACTIONS: Standards A through W on the reverse side or attached are incorporated as a part of this Contract.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR.
Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

COPYRIGHT 1998 BY THE FLORIDA BAR AND THE FLORIDA ASSOCIATION OF REALTORS
See Attached Signature Page See Attached Signature Page
(Buyer) (Date) (Seller) (Date)

Social Security or Tax I.D. # Social Security or Tax I.D. #
(Buyer) (Date) (Seller) (Date)
Social Security or Tax I.D.# Social Security or Tax I.D. #

Deposit under Paragraph 11 (a) received; IF OTHER THAN CASH, THEN SUBJECT TO CLEARANCE.
(Escrow Agent)

BROKER'S FEE: The brokers named below, including listing and cooperating brokers, are the only brokers entitled to compensation in connection with this Contract:

Name:
Cooperating Brokers, if any N/A Listing Broker N/A

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**SIGNATURE PAGE  
TO CONTRACT FOR SALE AND PURCHASE BETWEEN  
GILMAR HOMES, INC., AS SELLER, AND  
TOWN OF MIAMI LAKES, AS BUYER**

**BUYER:**

**SELLER:**

**TOWN OF MIAMI LAKES  
a Florida municipal corporation**

**GILMAR HOMES, INC.**

By: Wayne Slaton, Mayor  
Dennis J. White  
Dennis J. White,  
Town Manager

By: G. Arguelles  
Name: Gilberto Arguelles  
Title: P/De.

Executed on April 9<sup>th</sup>, 2002

Executed on April 1, 2002

**ATTEST:**

By: Beatris Arguelles  
Beatris Arguelles,  
Town Clerk

Approved as to legal sufficiency

By: Nina L. Boniske, Esq.  
Nina L. Boniske, Esq.  
Town Attorney

### STANDARDS FOR REAL ESTATE TRANSACTIONS

**A. EVIDENCE OF TITLE:** (1) An abstract of title prepared or brought current by a reputable and existing abstract firm (if not existing then certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments affecting title to the real property recorded in the public records of the county wherein the real property is located through Effective Date. It shall commence with the earliest public records, or such later date as may be customary in the county. Upon closing of this Contract, the abstract shall become the property of Buyer, subject to the right of retention thereof by first mortgagee until fully paid. (2) A title insurance commitment issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's title to the real property, subject only to liens, encumbrances, exceptions or qualifications provided in this Contract and those to be discharged by Seller at or before closing. Seller shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications provided in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving evidence of title to examine it. If title is found defective, Buyer shall within said 5 days notify Seller in writing specifying the defect(s). If defect(s) render title unmarketable, Seller will have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within five (5) days after expiration of the thirty (30) day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be immediately returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided therefor. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this contract. If evidence of title is delivered to Buyer less than 5 days prior to closing, Buyer may extend closing date so that Buyer shall have up to 5 days from date of receipt of evidence of title to examine same in accordance with this Standard.

**B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a 30-day grace period in the event of default if a first mortgage and a 15-day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the real property; shall require all prior liens and encumbrances to be kept in good standing and forbid modifications of or future advances under prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the real property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonable require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller; but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the real property is located. All personal property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded financing statements. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

**C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the real property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the real property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

**D. TERMITES/WOOD DESTROYING ORGANISMS:** Buyer, at Buyer's expense, within the time allowed to deliver evidence of title, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") to determine if there is any visible active termite infestation or visible damage from termite infestation, excluding fences. If either or both are found, Buyer shall have 4 days from date of written notice thereof within which to have cost of treatment, if required, estimated by the Operator and all damage inspected and estimated by a licensed builder or general contractor. Seller shall pay valid costs of treatment and repair of all damage up to the amount provided in Paragraph XIII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller or Buyer may elect to proceed with the transaction, and receive a credit at closing on the amount provided in Paragraph XIII(a). "Termites" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.

**E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the real property sufficient for its intended use as described in Paragraph VII hereof, title to which is in accordance with Standard A.

**F. LEASES:** Seller shall, not less than 15 days before closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. Seller shall, at closing, deliver and assign all original leases to Buyer.

**G. LIENS:** Seller shall furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the real property for 90 days immediately preceding date of closing. If the real property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the closing of this Contract.

**H. PLACE OF CLOSING:** Closing shall be held in the county wherein the real property is located at the office of the attorney or other closing agent ("Closing Agent") designated by Seller.

**I. TIME:** In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. Time is of the essence in this Contract.

**J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish closing statement, mortgage, mortgage note, security agreement and financing statements.

**K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. Documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgages title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title or abstract charge, title examination, and settlement and closing fee, shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

**L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations to be made through day prior to closing, or occupancy, if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the real property by January 1st of year of closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at closing.

**STANDARDS (CONT.)**

**M. SPECIAL ASSESSMENT LIENS:** Certified, confirmed and ratified special assessment liens as of date of closing (not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

**N. INSPECTION, REPAIR AND MAINTENANCE:** Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage do not have any Visible Evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may, at Buyer's expense, have inspections made of those items within 20 days after the Effective Date, by a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or by an appropriately licensed Florida contractor, and Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XIII(b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XIII(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to closing, the cost thereof shall be paid into escrow at closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to closing, to confirm that all items of personal property are on the real property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (a) "Working Condition" means operating in the manner in which the item was designed to operate; (b) "Cosmetic Condition" means aesthetic imperfections that do not affect the working condition of the item, including, but not limited to: pitted marcite; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (c) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

**O. RISK OF LOSS:** If the Property is damaged by fire or other casualty before closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of Seller and closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall have the option of either taking the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or of canceling this Contract and receiving return of the deposit(s).

**P. PROCEEDS OF SALE; CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If an abstract of title has been furnished, evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence. All closing proceeds shall be held in escrow by Seller's attorney or other mutually acceptable escrow agent for a period of not more than 5 days after closing date. If Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all deposit(s) and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to by special warranty deed and bill of sale. If Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. If a portion of the purchase price is to be derived from institutional financing or refinancing, requirements of the lending institution as to place, time of day and procedures for closing, and for disbursement of mortgage proceeds shall control over contrary provision in this Contract. Seller shall have the right to require from the lending institution a written commitment that it will not withhold disbursement of mortgage proceeds as a result of any title defect attributable to Buyer-mortgagor. The escrow and closing procedure required by this Standard shall be waived if the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended.

**Q. ESCROW:** Any escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgement of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

**R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

**S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract, or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

**T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice given by or to the attorney for any party shall be as effective as if given by or to that party.

**U. CONVEYANCE:** Seller shall convey title to the real property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

**V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**W. WARRANTY:** Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

Buyer ( ) ( ) and Seller ( ) ( ) acknowledge receipt of a copy of this page.

**ADDENDUM NUMBER ONE  
TO CONTRACT FOR SALE AND PURCHASE BETWEEN  
GILMAR HOMES, INC., AS SELLER, AND  
TOWN OF MIAMI LAKES, AS BUYER**

**THIS ADDENDUM NUMBER ONE** shall be construed as part of that certain Contract for Sale and Purchase of real property executed by the parties of even date herewith (the "Contract").

1. **Addendum Number One Controls.** In the event of any conflict between this Addendum Number One and the Contract it is agreed that this Addendum Number One shall control.

2. **This Contract.** All references herein to "this Contract" shall include Addendum Number One of the Contract.

3. **Time for Acceptance.** The parties acknowledge and agree that Seller shall execute this Contract, which will then be presented to the Town Council of Miami Lakes for consideration. Buyer's obligations under this Contract are expressly subject to and contingent upon approval of this Contract by the Town Council of Miami Lakes.

4. **Seller's Delivery of Property Records.** Within five (5) days after the Effective Date, Seller shall deliver to Buyer copies of all records relating to the Property that it may have in its possession or control including, but not limited to the following: any and all permits, appraisals, paid tax bills, tax assessment notices, title insurance policies, surveys, site plans, plans and specifications, plats, soil tests, reports, environmental audits, engineering reports and similar technical data and information, and material correspondence (which shall mean correspondence, other than attorney/client privileged correspondence, which discloses claims, allegations or adverse information regarding the Property or claims, allegations or adverse information that the Property violates any governmental requirements, that there are hazardous substances, hazardous wastes, pollutants or contaminants on or about the Property, or that there are defects, deficiencies or hazardous conditions in or on the Property) (the foregoing collectively referred to as the "Property Records"). Seller shall have a continuing obligation to deliver to Buyer copies of all Property Records, and if Seller obtains or becomes aware of any additional Property Records, Seller represents and warrants that it shall immediately deliver such additional Property Records to Buyer. All Property Records and other intangible property relating to the Property shall be conveyed by Seller to Buyer at Closing pursuant to a general assignment.

5. **Feasibility Inspection.**

5.1 Commencing upon the Effective Date and for a period of sixty (60) days thereafter, Buyer or its authorized agents, personnel, employees, or independent contractors shall be entitled to enter upon the Property during reasonable business hours for the purpose of making physical inspections of the Property. Buyer may also make all inspections and



investigations of the Property which it may deem necessary, including but not limited to soil borings, percolation tests, engineering, environmental, and topographical studies, and availability of utilities and other land use, zoning and development restrictions and any other factors considered appropriate by Buyer. All inspections shall be made at Buyer's expense. Buyer's investigation of the physical condition of the Property may also include all examinations, tests, inspections, assessments and inquiries necessary to determine whether the Property is contaminated by hazardous substances or pollutants.

**5.2** Notwithstanding anything to the contrary in this Contract, Buyer shall have the right, for any reason or no reason, to elect (in its sole and absolute discretion) to terminate this Contract by delivering written notice to Seller or Seller's attorney to that effect no later than the sixtieth (60<sup>th</sup>) day following the Effective Date (the "Expiration Date"). If Buyer so delivers said notice not later than the Expiration Date, then (a) this Contract shall be terminated and of no further force and effect except for those provisions which expressly survive termination; (b) the Escrow Agent shall deliver the Deposit to Buyer; and (c) the parties shall have no further liability to one another under this Contract.

**5.3** Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as amended or superseded, Buyer hereby indemnifies and holds Seller harmless in connection with any liability or damages as a result of Buyer's inspections including attorneys' fees and costs at both the trial and appellate levels.

## **6. Title Evidence.**

**6.1** Prior to the Expiration Date (as defined in Section 5.2 above), Buyer shall (i) prepare or cause to be prepared a title insurance commitment in the amount of the Purchase Price and in accordance with the provisions of Standard A (the "Title Commitment") and (ii) deliver to Seller a copy of the Title Commitment and written notice of any title defects which render title unmarketable. Seller shall have a period of sixty (60) days after receipt of the Title Commitment and written notice of title defects within which to cure or remove such title defects.

If, after the exercise of reasonable efforts and diligence and upon the expiration of the sixty (60) day period, the Seller is unable to cure or remove any such title defects, then the Buyer shall have the option to terminate this Contract or to waive such defects and proceed to close, accepting title as it then is with a credit against the Purchase Price in an amount equal to the total of all costs and expenses (including reasonable attorneys' fees) necessary to cure the title defects.

In the event Buyer shall elect to terminate this Contract pursuant to this Section, then Escrow Agent shall promptly return to Buyer the Deposit and the parties hereto shall thereafter be relieved of all rights and obligations hereunder, except for those rights and obligations which expressly survive the termination of this Contract.

**6.2** Seller shall be responsible for the cost of the title search. Buyer shall be responsible for the cost of the Title Commitment, title insurance premium and the costs of any title updates.

**7. Closing Date.** Provided Buyer has not terminated this Contract as provided for herein or the Closing Date is not extended by the terms of this Contract or the mutual agreement

of the parties, this transaction shall be closed and the deed and other closing documents delivered on or before the fifteenth (15<sup>th</sup>) day following the Expiration Date. Closing shall take place at the office of Buyer's attorney or such other place as mutually agreed upon by the parties and at a time mutually agreed upon by the parties.

**8. Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer as follows:

**8.1 Seller's Authority.** Seller has full power and authority to own and sell the Property and to comply with the terms of this Contract. The execution and delivery of this Contract by Seller and the consummation by Seller of the transaction contemplated by this Contract are within Seller's capacity.

**8.2 No Legal Bar.** The execution by Seller of this Contract and the consummation by Seller of the transaction hereby contemplated does not, and on the Closing Date will not result in a breach of or default under any indenture agreement, instrument or obligation to which Seller is a party and which affects all or any portion of the Property.

**8.3 Title; No Homestead.** Seller is the owner of fee simple title to the Property, which title is marketable and insurable. The Property is not the homestead of Seller as defined under Florida law, and Seller agrees to include this representation in the deed of conveyance to Buyer.

**8.4 Litigation.** There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened against Seller or the Property and Seller is not aware of any facts which might result in any such action, suit or proceeding. If Seller is served with process or receives notice that litigation may be commenced against it, Seller shall promptly notify Buyer.

**8.5 Hazardous Materials.** (a) Seller has conducted no activity on the Property involving the generation, treatment, storage or disposal of hazardous materials, substances or pollutants; (b) no portion of the Property is now being used or to the best of Seller's knowledge has ever been used to treat, store, generate or dispose of hazardous materials, substances or pollutants; (c) Seller has received no written notice that any previous owner, occupant, or tenant conducted any such activity; (d) Seller has received no written notice of any discharge, spill, or disposal of any hazardous materials, substances or pollutants on or under the Property; (e) Seller has received no written notice from any governmental authority or any other party of any hazardous materials, substances or pollutants violations concerning the Property or any portion thereof, nor is Seller aware of any such violation; (f) Seller has received no written notice as to any locations off the Property where hazardous materials, substances or pollutants generated by or on the Property have been treated, stored, deposited or disposed of; and (g) Seller has no knowledge of the presence of any hazardous materials, substances or pollutants upon the Property. Seller agrees that it will indemnify, defend and hold harmless Buyer from any and all claims, judgments, liabilities, losses, damages, actions, causes of actions, suits, response costs, remediation costs, fines, penalties, fees, and expenses (including reasonable attorneys' fees and expenses, incurred at both the trial and appellate levels) arising out of or in

any way relating to the existence, use, or misuse, handling or mishandling, storage, spillage, discharge or seepage into the ground, in water bodies or the ground water (including aquifers) at any time prior to closing of any hazardous materials, substances or pollutants in, on, under, at or used upon the Property.

**8.6 Parties in Possession.** There are no parties other than Seller in possession of any portion of the Property as lessees, tenants at sufferance or trespassers or otherwise.

**8.7 No Special Assessments and Impact Fees.** No portion of the Property is affected by any outstanding special assessments or impact fees imposed by any governmental authority.

**8.8 Commitments to Governmental Authorities.** No commitments relating to the Property have been made to any governmental authority, utility company, school board, church or other religious body or any homeowner or homeowners association, merchant's association or any other organization, group or individual which would impose an obligation upon Buyer or its successors or assigns to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property; and no governmental authority has imposed any requirement that any owner of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with the Property.

**8.9 Compliance with Laws.** The Property and the present uses thereof are in compliance with all applicable governmental requirements. Seller has fully complied with all governmental requirements in its operation, use and management of the Property.

**8.10 Adverse Information.** Seller has no information or knowledge of (a) any action by adjacent landowners, or (b) any other fact or condition of any kind or character which could materially adversely affect the current use or operation of the property.

**8.11 Survival of Representations.** All of the representations of Seller set forth in this Contract must be true upon the execution of this Contract, and must be true as of the Closing Date. The representations, warranties and agreements of Buyer or Seller set forth in this Contract shall survive the Closing. Seller will not cause or permit any action to be taken which would make any of the foregoing representations and warranties untrue as of the Closing Date. Seller must immediately notify Buyer in writing of any event or condition which occurs prior to Closing, which causes a change in any of the representations set forth in this Contract. Buyer's obligation to close this transaction is subject to and contingent upon the foregoing representations being true as of the Closing Date. If any of the representations are not true on the Closing Date, Buyer shall the option to (a) grant additional time to Seller to cure such defect, in which case the Closing will be rescheduled accordingly, or (b) terminate this Contract, in which case the Escrow Agent shall return the Deposit to the Buyer and the parties shall be relieved of all rights and obligations hereunder, except those that expressly survive termination.

**9. Seller's Affirmative Covenants.**

**9.1 Acts Affecting Property.** From and after the Effective Date, Seller will refrain from (a) performing any grading, excavation, construction, or making any other change or improvement upon or about the Property; (b) creating or incurring, or suffering to exist, any mortgage, lien pledge, or other encumbrances in any way affecting the Property; and (c) committing any waste or nuisance upon the Property; provided, however, that notwithstanding the foregoing, subject to the terms and conditions of this Contract, Seller may continue to use the Property consistent with the current use thereof prior to Closing.

**9.2 Maintenance of Property.** From the Effective Date until the Closing, the Property will be kept in good order and condition. Seller will observe all governmental requirements affecting the Property its use, until the Closing Date.

**10. Condemnation.** In the event of the institution of any proceedings by any governmental authority which shall relate to the proposed taking of the Property or any portion of the Property by eminent domain prior to Closing, or in the event of the taking of the Property or any portion of the Property by eminent domain prior to Closing, Seller shall promptly notify Buyer and Buyer shall thereafter have the right and option to terminate this Contract by giving Seller written notice of Buyer's election to terminate within thirty (30) days after receipt by Buyer of the notice from Seller. Seller hereby agrees to furnish Buyer with written notice of a proposed condemnation within two (2) business days after Seller's receipt of such notification. Should Buyer terminate this Contract, then, except as otherwise provided for herein, the parties hereto shall be released from their respective obligations and liabilities hereunder. Should Buyer elect not to terminate, the parties hereto shall proceed to Closing and Seller shall assign all of its right, title and interest in all awards in connection with such taking to Buyer.

**11. Real Estate Commission.** Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller that, except for Broker, there are no brokers, salespersons or finders involved in this transaction. Seller and Buyer agree to indemnify and hold each other harmless from any and all claims for any brokerage fees or similar commissions asserted by brokers, salespersons or finders claiming by, through or under the indemnifying party. The provisions of this Section shall expressly survive the closing or termination of this Contract. Buyer's obligation to indemnify Seller under this Section 11 is subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as amended or superseded.

**12. Notices.** Any notice, request, demand, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand-delivered or sent by Federal Express or a comparable overnight mail service, or mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to Buyer or Seller at their respective addresses set forth in this Contract. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. Notices may be given by telecopy provided a hard copy of such notice is mailed in accordance with this Section on the next business day following such telecopy delivery.

**13. No Personal Liability of Buyer.** This Contract is made and entered by Buyer as a Florida municipal corporation. Seller acknowledges and agrees that the council members,

employees and agents of Buyer shall have absolutely no personal liability whatsoever under or with respect to this Contract or any other document executed in connection with the Contract, or any of the provisions of any of the foregoing, or any obligation or liability arising out of or in connection with any of the foregoing.

**14. Standards for Real Estate Transactions.** Paragraphs V, VI and XIII, and Standards for Real Estate Transactions B, D, H and N are hereby deleted from this Contract. With regard to Real Estate Transaction Standard S, the parties hereby agree to delete Seller's option to proceed in equity to enforce Seller's rights under the Contract and that the sole remedy of Seller in the event of a default by Buyer shall be to receive and retain the Deposit as agreed upon liquidated damages, as consideration for the execution of this Contract and in full settlement of any claims.

**15. Miscellaneous.**

**15.1 Amendment.** No modification or amendment of this Contract shall be of any force or effect unless in writing executed by both Seller and Buyer.

**15.2 Governing Law.** This Contract shall be interpreted in accordance with the laws of the State of Florida. Venue for an trial or other proceeding with respect to this Contract shall be in Monroe County, Florida.

**15.3 Entire Contract.** This Contract sets forth the entire agreement between Seller and Buyer relating to the Property and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

**15.4 Successors and Assigns.** This Contract shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto.

**15.5 Construction of Contract.** All of the parties to this Contract have participated freely in the negotiation and preparation hereof, accordingly, this Contract shall not be more strictly construed against any one of the parties hereto as a matter of judicial construction.

**15.6 Gender.** As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular as the context may require.

**15.7 Police/Regulatory Powers.** Buyer cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Property. Nothing in this Contract shall be deemed to create an affirmative duty of Buyer to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances,

rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum Number One to be executed as of the day and year set forth below.

BUYER:

SELLER:

TOWN OF MIAMI LAKES  
a Florida municipal corporation

GILMAR HOMES, INC.

By: *Dennis J. White*  
Dennis J. White,  
Town Manager

By: *Alberto Aguiar*  
Name: Alberto Aguiar  
Title: \_\_\_\_\_

Executed on April 11<sup>th</sup>, 2002

Executed on April 1, 2002

ATTEST:

By: *Beatris Arguelles*  
Beatris Arguelles,  
Town Clerk

Approved as to legal sufficiency:

By: *Allison S. Bieler*  
~~Nina L. Boniske~~, Esq. Allison S. Bieler  
Town Attorney

The undersigned acknowledges and agrees to act as Escrow Agent in accordance with the terms and conditions of this Contract.

WEISS SEROTA HELFMAN  
PASTORIZA & GUEDES, P.A.

By: *Allison S. Bieler*

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*g.A.*