

**RESOLUTION NO. 11-899**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE PURCHASE AND SALE AGREEMENT WITH THE GRAHAM COMPANIES, INC. (SELLER) FOR ACQUISITION OF A VACANT PARCEL CONSISTING OF APPROXIMATELY 1.60 ACRES (“PROPERTY”); AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PURCHASE AND SALE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO TAKE ALL STEPS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE PURCHASE AND SALE AGREEMENT, AND TO EXECUTE ANY DOCUMENTS NECESSARY TO ACCOMPLISH THE PURCHASE AND CLOSING OF THE PROPERTY; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town authorized the issuance of special obligation bonds to finance the cost of acquisition, construction and equipping of a new Town Hall;

**WHEREAS**, the Town desires to acquire and purchase a vacant parcel of property from The Graham Companies, Inc. (“Seller”) for the new Town Hall, which Property consists of approximately 1.60 acres and is located in the approximate vicinity of New Barn Road and 67<sup>th</sup> Avenue (the “Property”);

**WHEREAS**, on November 23, 2010, the Town Council authorized staff to perform due diligence on the Property, and said due diligence has been substantially completed;

**WHEREAS**, the Town Council desires to approve the Purchase and Sale Agreement for the Property attached hereto as Exhibit “A” (the “Agreement”) and authorize the Town Manager to execute the Agreement and take all steps necessary to implement the terms and conditions of the Agreement;

**WHEREAS**, the Town Council further wishes to authorize the Town Manager to execute all documents necessary to accomplish the purchase and closing of the Property, including the execution of an Ingress-Egress and Maintenance Reimbursement Agreement with the Seller granting the Town a non-exclusive ingress/egress easement across a private road

(Main Street) owned and maintained by Seller for access to and from the Property and S.W. 67<sup>th</sup> Avenue, and a Right of First Refusal Agreement granting Seller the right to purchase the Property in the event that the Town elects to sell the Property to a third party; and

**WHEREAS**, the Town Council finds that the purchase of this Property for a Town Hall site serves a valid public purpose and will promote the health, safety and welfare of the Town.

**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 are incorporated herein by this reference.

**Section 2. Town Council Approval of Purchase and Sale Agreement.** The Town Council hereby approves the Agreement attached hereto as Exhibit "A" for the purchase of the Property, 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.

**Section 3. Town Manager Authorization; Execution of Documents.** The Town Council hereby directs and authorizes the Town Manager to take all steps necessary to implement the terms and conditions of the Agreement. The Town Manager is further authorized to execute all documents necessary to accomplish the purchase and closing of the Property, including the execution of an Ingress-Egress and Maintenance Reimbursement Agreement and a Right of First Refusal Agreement.

**Section 4. Authorization of Fund Expenditure.** Notwithstanding any limitations imposed upon the Town Manager pursuant to the Town's Code or Charter, the Town Manager is authorized to expend funds to implement the terms and conditions of the Agreement and to purchase the Property.

**Section 5. Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED and ADOPTED this 10<sup>th</sup> day of May, 2011.

Motion to Adopt by Collins, second by Mayor.

Mayor Michael Pizzi Yes

Vice Mayor Nick Perdomo No

Councilmember Mary Collins Yes

Councilmember Tim Daubert Yes

Councilmember Nelson Hernandez Yes

Councilmember Ceasar Mestre Yes

Councilmember Richard Pulido Yes




MICHAEL PIZZI  
MAYOR

ATTEST:

  
MARJORIE TEJEDA  
TOWN CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE  
USE AND BENEFIT OF THE TOWN OF MIAMI LAKES, FLORIDA:

  
WEISS SEROTA HELFMAN PASTORIZA  
COLE & BONISKE, P.L.  
TOWN ATTORNEY

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is made and entered into as of the 16<sup>th</sup> day of May, 2011 ("Effective Date"), by and between **THE GRAHAM COMPANIES, a Florida corporation** (hereinafter referred to as "Seller"), and **TOWN OF MIAMI LAKES, a Florida municipal corporation** (hereinafter referred to as "Purchaser" or the "Town").

**WHEREAS**, Seller is the owner of certain real property consisting of approximately 1.60 acres of vacant land, located in Miami-Dade County, Florida, and more specifically described and depicted on **Exhibit "A"** attached hereto and made a part hereof (hereinafter defined as the "Land"); and

**WHEREAS**, Purchaser desires to purchase and Seller desires to sell the Property, upon the terms and conditions hereinafter set forth in this Agreement; and

**WHEREAS**, the Purchaser desires to acquire and purchase the Property for municipal purposes, including use of the Property as a Town Hall site.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

### **SECTION 1: DEFINITIONS**

For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

**1.1. Business Day**. Monday through Friday excluding bank holidays on which national banking associations are authorized to be closed.

**1.2. Closing**. The Closing and consummation of the purchase and sale of the Property as contemplated by this Agreement.

**1.3. Closing Date (or Date of Closing)**. The date upon which Closing occurs.

**1.4. Condemnation Proceeding**. Any proceeding or threatened proceeding in condemnation, eminent domain or written request in lieu thereof.

**1.5. Deed**. The Special Warranty Deed of conveyance of the Property from Seller to Purchaser.

**1.6. Earnest Money**. The funds to be paid by Purchaser to Escrow Agent pursuant to Section 3 hereof, plus any interest earned thereon.

**1.7. Environmental Report.** The environmental assessment audit to be conducted by Purchaser's environmental engineer, at Purchaser's expense, with respect to the Property, certified and delivered to Purchaser.

**1.8. Environmental Requirement.** All laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any federal, state or local governmental authority and relating to or addressing the protection of the environment or human health.

**1.9. Escrow Agent.** Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

**1.10. Evidence of Authority.** Evidence of authority for the execution and performance of this Agreement by Seller or Purchaser, including, without limitation, necessary resolutions, authorizations, consents, orders or directions.

**1.11. Governmental Authority.** Any federal, state, county, municipal or other entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.

**1.12. Hazardous Substances.** Any material or substance that, whether by its nature or use, is now or hereafter defined as hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product.

**1.13. Legal Requirement.** All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities and quasi-governmental authorities, officials, agencies, and officers, ordinary or extraordinary, which now may be applicable to the Property or any use, operation or condition thereof.

**1.14. Owner's Title Policy.** An Owner's policy of title insurance on the most current ALTA Form for the Property in the amount of the Purchase Price, subject only to the Permitted Exceptions, and containing such additional endorsements permitted under Florida title insurance regulations as reasonably requested by Purchaser.

**1.15. Permitted Exceptions.** Those matters identified or referred to in Section 5.1 and such other title exceptions as may hereafter be approved in writing (or deemed to have been approved by Purchaser) subject to and in accordance with the terms and provisions of Section 5 herein.

**1.16. Person.** Any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

**1.17. Property.** The Land, together with all rights and easements appurtenant thereto.

**1.18. Purchaser's Attorney.** Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., Attention: Lillian M. Arango, Esq. Purchaser's Attorney's mailing address is 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, Florida 33134. Telephone: (305) 854-0800; Telecopier: (305) 854-2323, e-mail: larango@wsh-law.com.

**1.19. Seller's Attorney. Greenberg Traurig, P.A. Attn.:** Steven A. Landy, Esq. Seller's Attorney's mailing address is 333 Avenue of the Americas (333 S.E. 2nd Avenue) Miami, Florida 33131, Telephone: (305)579-0758, e-mail landys@gtlaw.com.

**1.20. Survey.** A survey of the Property to be obtained by Purchaser prepared by a licensed surveyor in the State of Florida, certified as meeting the minimum standards for survey in the State of Florida. The Survey shall (i) show the square footage and acreage of the Land; (ii) show the location of any and all improvements, utility and other lines and easements, either visible or recorded, and the recording references of all recorded easements shown on the Title Commitment, (iii) show the elevation and flood zone information, and (iv) contain such other items as may be reasonably required by Purchaser.

**1.21. Termination Date.** The date which is thirty (30) days after the Effective Date, by which date Purchaser must notify Seller of its election to terminate this Agreement, as further set forth in Sections 9 and 10 of this Agreement.

**1.22. Title Commitment.** The commitment for title insurance to be obtained by Purchaser pursuant to Section 5 below.

**1.23. Title Company.** First American Title Insurance Company or such other nationally recognized title insurance company licensed to write title insurance in the State of Florida which is approved by Purchaser..

## **SECTION 2: PURCHASE AND SALE**

Purchaser shall purchase the Property from Seller, and Seller shall sell, and convey the Property to Purchaser, subject to and in accordance with the terms and conditions of this Agreement.

## **SECTION 3: EARNEST MONEY**

Within three (3) Business Days after the Effective Date, Purchaser shall deposit in escrow with the Escrow Agent \$500,000.00 as Earnest Money, to be delivered to Seller at Closing and applied as a credit against the Purchase Price (as defined below) at Closing. Escrow Agent shall hold and disburse the Earnest Money in accordance with the terms of this Agreement. If requested by Purchaser, Escrow Agent shall invest the Earnest Money in an interest-bearing account of a financial institution. Purchaser and Seller agree to sign all forms and reports reasonably required in connection with the holding and investing by Escrow Agent of the Earnest Money. For purposes of reporting earned interest with respect to the Earnest Money, Purchaser and Seller shall provide Escrow Agent with their respective Federal Tax Identification Numbers. Any interest earned on the Earnest Money shall belong to the party entitled to the Earnest Money. Notwithstanding the foregoing, interest will not be reported as applicable to Seller unless the Earnest Money is delivered to Seller.

## SECTION 4: PURCHASE PRICE

The purchase price for the Property shall be Two Million Two Hundred and Thirty Nine Thousand and No/100 Dollars (\$2,239,000.00) (herein referred to as the "**Purchase Price**"). The entire Purchase Price, less the amount of the Earnest Money (together with delivery to Seller of the Earnest Money by Escrow Agent), and subject to adjustments and prorations as herein provided, shall be due and payable by cashier's check or in immediately available funds, by wire transfer, at Closing.

## SECTION 5: TITLE/SURVEY

**5.1. Title Commitment and Permitted Exceptions.** Purchaser will obtain a Title Commitment covering the Property with an effective date no earlier than April 30, 2011 to be issued by the Title Company pursuant to which the Title Company will agree to issue the Owner's Title Policy to Purchaser. Purchaser will deliver a copy of the Title Commitment to Seller within ten (10) days after the Effective Date. The cost of the Title Commitment and the Owner's Title Policy shall be paid by Purchaser. In the event Purchaser determines to proceed with the transaction set forth herein beyond the Termination Date, all matters affecting title to the Property (except the requirements Seller may agree to satisfy as set forth below) through the effective date of the Commitment ("**Title Date**"), shall be deemed to be "**Permitted Exceptions**" and acceptable to Purchaser, including but not limited to the following:

### **Permitted Exceptions:**

- 5.1.1** The lien of all ad valorem real estate taxes and assessments for the year 2011, subject to proration as herein provided;
- 5.1.2** Any items shown on the Title Commitment, except the Acceptable Requirements (as hereinafter defined) to be satisfied at or prior to Closing;
- 5.1.3** All laws, ordinances, and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations; and
- 5.1.4** All matters which would be disclosed by an accurate survey of the Property .
- 5.1.5** Easements, restrictions, conditions, limitations, covenants, reservations and other matters of record, if any.
- 5.1.6** The Deed Restrictions to be included in the Deed.
- 5.1.7** The Right of First Refusal Agreement in favor of Seller to be executed and delivered at Closing.
- 5.1.8** The Ingress-Egress and Maintenance Reimbursement Agreement to be executed and delivered at Closing.

**5.1.9** Any requirements seller is unwilling to satisfy in accordance with Section 5.2 below.

**5.2. Requirements.** Within five (5) business days after Receipt of the Title Commitment, Seller will notify Purchaser in writing ("**Requirements Notice**") as to which requirements set forth in Schedule B, Section I of the Commitment Seller will agree to satisfy at or prior to Closing ("**Acceptable Requirements**"). In the event there are any matters within the requirements set forth in the Title Commitment that Seller is unwilling to satisfy at or prior to Closing, the same shall be deemed Permitted Exceptions in the event Purchaser elects to proceed with the transaction set forth herein beyond the Termination Date. Seller shall be responsible for satisfying the Acceptable Requirements as and to the extent provided in the Requirements Notice on or before Closing.

**5.3. New Title Matters.** In the event that between the Effective Date of the Title Commitment and the time of Closing, new title matters arise which render title to the Property unmarketable or which would reasonably be expected to adversely affect development or use of the Property by Purchaser, and which are not caused by Purchaser, or any party claiming by, through or under Purchaser (hereinafter referred to as "**New Title Matter(s)**") Seller shall have a reasonable period of time after notification by Purchaser of such New Title Matter to remedy such New Title Matter and, if necessary, the Closing shall be delayed for such period, not to exceed thirty (30) days. If such New Title Matter is not cured within such period, then Purchaser may, at its sole option, exercised by written notice to Seller within five (5) Business Days following the expiration of the thirty (30) cure period, either (i) terminate this Agreement and receive a refund of the Earnest Money, (ii) give Seller additional time (not to exceed thirty (30) days) in writing to cure such objections (in which event, the Closing shall be delayed for an equivalent period of time), or (iii) elect to close subject to such New Title Matter, without reduction in the Purchase Price and without any claim against Seller with respect to such New Title Matter. Notwithstanding the foregoing, Seller agrees to remove by payment, bonding or otherwise any New Title matter in a liquidated amount against the Property capable of removal by the payment of money or bonding, provided the cost of removal shall not in the aggregate exceed One Hundred Thousand and no/100 Dollars (\$100,000.00). In no event, however, shall Seller be obligated to bring suit or to expend any sum of money in excess of the amount set forth above to buy-out or settle any New Title Matter. In addition, and notwithstanding anything herein to the contrary, Seller agrees not to enter into any mortgage or other contract from and after the date hereof encumbering the Property until Closing. In the event of termination, neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

## **SECTION 6: SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller, "to its knowledge" (without independent investigation), represents and warrants to Purchaser and covenants and agrees with Purchaser, on and as of the date hereof, to be certified to Purchaser on or as of the Closing, as follows:

**6.1. Title.** Seller is the fee simple owner of the Land and there are no other parties with a right to ownership, possession or use of the Property.



**6.2. No Conflict with Laws.** The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations hereunder will not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court or governmental instrumentality.

**6.3. Authority/Status.** Seller is a Corporation, duly organized, validly existing and in good standing under the laws of the State of Florida. The Execution, delivery and performance of this Agreement by Seller has been duly authorized. No consent of any other person or entity to such execution, delivery or performance is required

**6.4. No Bankruptcy.** Seller is not a party to any voluntary or involuntary proceedings under any applicable laws relating to the insolvency, bankruptcy, moratorium or other laws affecting creditors rights to the extent that such laws may be applicable to Seller or the Property.

**6.5. No Litigation.** Seller is not a party to or affected by any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which would or could have an adverse effect upon the Property or upon the ability of Seller to fulfill its obligations under this Agreement. There are no lawsuits, administrative actions, governmental investigations or similar proceedings pending or threatened against or adversely affecting the Property or any portion thereof or any interest therein.

**6.6. Condemnation.** There are no proceedings pending or threatened against or affecting the Property or any portion thereof or interest therein in the nature of or in lieu of condemnation or eminent domain proceeding.

**6.7. No Hazardous Substances on Property.** Seller has not received notice of any violation of Hazardous Substances on the Property and has no knowledge of Hazardous Substances being disposed of or used on the Property.

**6.8. No Rights to Purchase.** Except for this Agreement, Seller has not entered into, and has no actual knowledge of any agreement, commitment, option, right of first refusal or any other agreement, whether oral or written, with respect to the purchase, assignment or transfer of all or any portion of the Property which is currently in effect.

**6.9. Knowledge.** The phrase "to its knowledge" set forth above shall mean the knowledge of Stuart S. Wyllie and Carol G. Wyllie,

**6.10. Survival.** The foregoing representations, warranties, covenants and agreements of Seller in this Section 6 shall survive the Closing or termination of this Agreement for a period of six months (6) months.

## **SECTION 7: PURCHASER'S REPRESENTATIONS AND WARRANTIES**

Purchaser represents and warrants to Seller that the following facts and conditions exist and are true as of the date hereof and shall exist and be true as of the date of the Closing.

**7.1. Authority/Status.** Purchaser is validly formed municipal corporation in good standing organized and existing under the laws of the State of Florida and has all requisite power

and authority to purchase the Property and to enter into and perform its obligations hereunder. The Execution, delivery and performance of this Agreement by Seller has been duly authorized. No further consent to such execution, delivery or performance is required.

**7.2. Recognition of "As Is" Nature of Purchase.** Purchaser has previously reviewed and considered the nature of this transaction and the Inspection Period (as defined below) will enable Purchaser to thoroughly investigate the Property and all aspects of the transaction. In electing to proceed with this transaction beyond the Inspection Period, Purchaser shall have determined that the Property is satisfactory to Purchaser in all respects and will be purchasing the Property in "AS IS" condition and situation, except to the extent otherwise expressly set forth in this Agreement. Purchaser has and will rely solely on Purchaser's own independent investigations and inspections, and Purchaser has not relied and will not rely on any representation of Seller other than as expressly set forth in this Agreement. The provisions set forth herein shall survive Closing or the early termination of this Agreement.

## **SECTION 8: SELLER'S COVENANTS**

From and after the date hereof, through and including the Closing Date, Seller agrees as follows (each of which covenants is a condition to Purchaser's obligations to close under this Agreement and must be satisfied by Seller or waived by Purchaser in writing prior to Closing):

**8.1. Notices.** Seller shall, promptly upon Seller's obtaining knowledge thereof, provide Purchaser with a written notice of any event which has a material and adverse effect on the physical condition of the Property.

**8.2. Notices of Violation.** Promptly upon receipt of written notice thereof from any party other than Purchaser, Seller shall provide Purchaser with written notice of any violation of any Legal Requirements affecting the Property.

**8.3. Seller's Cooperation with Waiver of Plat And Release of Reservations.** If requested by Purchaser, prior to Closing, Seller will reasonably cooperate with Purchaser, at no cost and expense to Seller, in connection with an application for a Waiver of Plat for the Property and the release of roadway and canal and drainage reservations, provided that such cooperation does not impose any restrictions, liabilities, costs, liability or expenses on Seller, the Property or any other property of Seller.

## **SECTION 9: PURCHASER'S DUE DILIGENCE AND INSPECTION OF PROPERTY.**

**9.1. Inspection of Property.** Purchaser or its appointed agents or independent contractors shall have, at all reasonable times prior to the Closing, the privilege of going upon the Land, at Purchaser's sole cost and expense, to inspect, examine, test, investigate, appraise and survey the Property, including, without limitation, soil, groundwater, environmental tests and inspections, and habitat and vegetation analysis. In exercising the privileges granted pursuant to this subsection 9.1, Purchaser shall restore the Property to the condition existing prior to such activities on the Property. In consideration of Purchaser's right to inspect the Property as described in this subsection 9.1, subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, Purchaser agrees to indemnify, defend and hold Seller harmless from any actions, suits, liens, claims, damages, expenses, losses and liability for damage to personal

property or personal injury arising from or attributable to any acts performed by Purchaser or its appointed agents or independent contractors in exercising Purchaser's rights under this subsection 9.1 (including, without limitation, any rights or claims of materialmen or mechanics to liens on the Property, but excluding any matter to the extent arising out of the negligence or misconduct of Seller). Purchaser shall obtain the consent of Seller and 48 hour notice for inspections of the Property. There shall be no invasive testing of the Property without the prior consent of Seller, such consent not to be unreasonably withheld or delayed. Purchaser shall maintain at least \$1,000,000.00 of liability insurance naming Seller as an additional insured. Purchaser shall be responsible for any deductible under said liability insurance. Purchaser recognizes that there are cattle located on the Property. In connection with Purchaser's inspections, Purchaser will coordinate its activities with Seller to minimize disruption to the cattle. The liability of Purchaser under this section 9.1 shall survive Closing or the earlier termination of this Agreement.

**9.2. Conditions Precedent/Termination Right.** In addition to any other termination right or other remedy specified herein and notwithstanding any provision of this Agreement which may be interpreted to the contrary, if Purchaser is dissatisfied, for any reason and in Purchaser's exclusive judgment, with the results of Purchaser's investigation and study of the Property, or the condition of the Property is not acceptable to Purchaser for any reason whatsoever, then Purchaser may terminate this Agreement by notifying Seller or Seller's Attorney of such termination on or before the 6:00 p.m. on the Termination Date (the period between the Effective Date and the Termination Date shall be referred to as the "**Inspection Period**"), whereupon the Earnest Money shall be refunded to Purchaser by the Escrow Agent and thereafter neither party hereto shall have any further rights, obligations, or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

**9.3. Ingress-Egress and Maintenance Reimbursement Agreement.** During the Inspection Period, Purchaser and Seller will negotiate the terms and conditions of an Ingress-Egress and Maintenance Reimbursement Agreement ("**Ingress-Egress and Maintenance Reimbursement Agreement**") pursuant to which a non-exclusive easement for ingress and egress to and from the Property will be provided at the southern and western boundaries of the Property for legal and insurable access to and from NW. 67th Avenue ("Ludlam Road") across the ingress/egress easement owned and maintained by Seller ("**Private Road**") contained in the Plat of Miami Lakes Town Center Two-East, Plat Book 159, Page 67, of the Public Records of Miami-Dade County, Florida, and across approximately 25 feet parallel with the Property's westerly boundary and located on Seller's adjacent property to the west. The Ingress-Egress and Maintenance Reimbursement Agreement shall provide for Purchaser, its successors and assigns, to reimburse Seller for the annual operating costs ("**Operating Costs**") associated with its share of the maintenance of the Private Road and the easement area. Said reimbursement shall be made annually, in arrears. Seller's Operating Costs shall mean the total actual costs and expenses incurred in operating, maintaining and repairing the Private Road and the easement area, including, without limitation, the cost of all materials, supplies and services purchased or hired therefore, the cost and expense of landscaping, gardening and planting, cleaning, line painting, paving, lighting, removal of debris, property taxes, and periodic capital improvements. As soon as practical after the end of each fiscal year, and normally before the next March 31st, Seller will furnish Purchaser with a statement showing the Operating Expenses for such fiscal year,

reflecting Purchaser's share of the Operating Costs. Purchaser's share shall be one half (1/2) of the section of the Private Road and easement area Purchaser's property fronts based on a linear footage calculation of approximately 265 feet of frontage on the Private Road, together with the length of the North/South portion of the easement. Upon receipt of said statement, Purchaser shall have sixty (60) days from receipt of invoice to remit payment. In the event Seller and Purchaser are unable to agree on the terms and conditions of the Ingress-Egress and Maintenance Reimbursement Agreement during the Inspection Period, either Purchaser shall accept the Ingress-Egress and Maintenance Reimbursement Agreement acceptable to Seller, or exercise its rights to terminate this Agreement. The Ingress-Egress and Maintenance Reimbursement Agreement is also subject to the approval of Seller's lender.

**9.4. Right of First Refusal Agreement.** During the Inspection Period, Purchaser and Seller will negotiate the terms and conditions of a Right of First Refusal Agreement pursuant to which Seller will be granted a Right of First Refusal ("**Right of First Refusal Agreement**") for fifty (50) years after Closing to purchase the Property in the event Purchaser desires to sell the Property to a third-party. In the event Seller and Purchaser are unable to agree on the terms and conditions of the Right of First Refusal Agreement during the Inspection Period, either Purchaser shall accept the Right of First Refusal Agreement acceptable to Seller, or exercise its rights to terminate this Agreement.

## **SECTION 10: CLOSING**

Subject to the satisfaction of all conditions on or before Closing, the Closing Date shall occur on or before the date which is five (5) days after the Termination Date, unless the Closing Date is otherwise extended pursuant to the provisions of this Agreement or by written agreement of the parties. Notwithstanding the foregoing, Purchaser shall have the right to elect to close early, within fifteen (15) days of the Effective Date, and shall so notify Seller of its election. The Closing shall be held at the offices of Seller, at a time mutually acceptable to both parties. If no such selection is timely made, the Closing shall be held at 10:30 a.m. local time on the Closing Date or at such other date, time or other place as may be mutually agreed in writing by the parties hereto.

**10.1. Delivery: Possession.** At Closing: (i) Seller shall deliver to Purchaser the items required of Seller under this Agreement, (ii) Purchaser shall deliver to Seller the balance of the Purchase Price (after crediting the Earnest Money and making other adjustments and prorations as provided herein) and the other items required of Purchaser under this Agreement, and (iii) Escrow Agent shall deliver the Earnest Money to Seller. Seller shall deliver possession of the Property to Purchaser, subject only to the Permitted Exceptions at the time of Closing. Risk of loss shall remain with Seller until Closing.

### **10.2. Closing Costs.**

**10.2.1 Seller's Costs.** (i) the fees and expenses of Seller's attorneys, (ii) the documentary stamps and surtax due on the Deed, and (iii) the cost of recording any corrective instruments agreed to, or that Seller is responsible for under this Agreement.

**10.2.2 Purchaser's Costs.** Purchaser shall pay (i) any costs incurred by Purchaser in preparing and performing its due diligence investigations, (ii) the cost of the Title Commitment, (iii) the premium for the Owner's Title Policy, (iv) the cost of recording the Deed, (v) the cost of the Survey, and (vi) the fees and expenses of Purchaser's Attorney.

**10.2.3 Other Costs.** Any other costs not specifically provided for in subsection 11.2.1, subsection 11.2.2 or otherwise pursuant to the terms of this Agreement shall be paid by the party who incurred those costs.

**10.3. Purchaser's Conditions to Closing.** Purchaser's obligation to purchase the Property or otherwise to perform any obligation provided in this Agreement is expressly conditioned upon the fulfillment or satisfaction of each of the following conditions precedent on or before the Closing Date (any of which may be waived only in writing by Purchaser in its discretion):

**10.3.1** Purchaser shall have obtained all Governmental Approvals necessary to purchase the Property;

**10.3.2** Seller shall have fully performed each undertaking and covenant and agreement to be performed by Seller under this Agreement including, but not limited to, delivery of all items and documents required under Section 13 below;

**10.3.3** Each representation and warranty made in this Agreement by Seller shall be complete, true and accurate, in all material respects;

**10.3.4** The Owner's Title Policy shall be issued, or in lieu of issuance of the foregoing at Closing, the Title Company shall have delivered a "marked up" Title Commitment, subject only to the Permitted Exceptions, with gap coverage, deleting all requirements and deleting the standard exceptions (the foregoing shall not expand Seller's liability with respect to title hereunder);

**10.3.5** Except as cured by Seller or otherwise approved or waived in writing by Purchaser, no event shall have occurred subsequent to the Termination Date which may have a material and adverse effect on the physical condition of the Property;

**10.3.6** No amendments, restatement, adoption or repeal of any laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental authorities, officials, agencies and officers, ordinary or extraordinary, shall have occurred which is applicable to the Property and has or could have an adverse effect upon the value, use, operation, zoning, development or condition thereof.

If any of the foregoing conditions are not satisfied at or before Closing, then in addition to any remedy available to Purchaser under this Agreement, either party may extend the Closing Date for an additional 30 days in order to satisfy the foregoing conditions, or Purchaser may terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser and the parties shall be released from all obligations and liabilities under this Agreement except those that expressly survive termination of this Agreement.

## **SECTION 11: PRORATIONS AND CREDITS AT CLOSING**

All prorations provided to be made "as of the Closing Date" shall each be made as of 11:59 p.m. local time on the date immediately preceding the Closing Date. In each proration set forth below, the portion thereof allocable to periods beginning with the Closing Date shall be credited to Purchaser, or charged to Purchaser, as applicable, at Closing or, in the case of allocations made after Closing, upon receipt of such payments or invoice as of the Closing Date. Except as may otherwise be specified herein, the following items shall, as applicable, be prorated between Purchaser and Seller or credited to Purchaser or Seller:

### **11.1. Property Taxes and Assessments.**

**11.1.1 Taxes.** Seller acknowledges and agrees that the Property is being purchased by an exempt governmental entity and that the Seller must comply with Section 196.295, Florida Statutes, regarding real estate taxes. Purchaser and Seller recognize that the Property is under a tax folio number which includes additional property. Seller and Purchaser will cooperate in obtaining a tax apportionment from the Miami-Dade County Property Appraiser for appropriate proration.

**11.1.2 Special Assessments.** Certified, confirmed and ratified special assessment liens as of Date of Closing (and not as of the date of this Agreement) shall be paid by Seller or Purchaser shall receive a credit therefor. Pending liens as of Date of Closing shall be assumed by Purchaser; provided, however, that where the improvement for which the special assessment was levied, had been substantially completed as of the date of this Agreement, such pending liens shall be considered as certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the estimated assessment for the improvement.

**11.2. Other Matters.** Seller and Purchaser shall make such other adjustments and apportionments as are expressly set forth in this Agreement.

## **SECTION 12: CONVEYANCES AND DELIVERIES AT CLOSING**

**12.1. Special Warranty Deed.** At Closing, Seller shall convey the Property to Purchaser by a duly executed and recordable Special Warranty Deed in the form attached hereto as **Exhibit "B"** (herein referred to as "**Deed**"), subject only to the Permitted Exceptions. The Deed will contain the restrictive covenants set forth in the form attached as Exhibit B.

**12.2. Section 1445 Certificate.** At Closing, Seller shall execute and deliver to Purchaser and the Title Company a certificate in the form of **Exhibit "C"** attached hereto stating that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and the regulations thereunder.

**12.3. Form 1099.** At Closing, Seller shall execute and deliver to Purchaser and the Title Company such federal income tax reports respecting the sale of the Property as required by the Internal Revenue Code and such other information required by the Title Company to complete IRS Form 1099 with respect to this transaction.

**12.4. Affidavit of Title.** At Closing, Seller shall execute and deliver to Purchaser and to the Title Company a no-lien, possession and gap title affidavit in form reasonably acceptable to the Title Company, Seller and Purchaser.

**12.5. Corporate Resolution.** At Closing, Seller shall deliver an appropriate Corporate Resolution and Incumbency certificate authorizing the transaction set forth herein.

**12.6. Closing Statement.** At Closing, Seller and Purchaser shall execute and deliver a Closing Statement which shall, among other items, set forth the Purchase Price, all credits against the Purchase Price, the amounts of all prorations and other adjustments to the Purchase Price and all disbursements made at Closing on behalf of Purchaser and Seller in accordance with the terms of this Agreement.

**12.7. Disclosure Affidavit.** At least ten (10) days prior to Closing, Seller shall execute and deliver to Purchaser an affidavit in recordable form as required by the provisions of Section 286.23, Florida Statutes. Purchaser shall prepare the affidavit and submit it to Seller for review and approval within 10 days after the Effective Date.

**12.8. Ingress-Egress and Maintenance Reimbursement Agreement.** At Closing, Seller and Purchaser will execute and deliver the Ingress-Egress and Maintenance Reimbursement Agreement.

**12.9. Right of First Refusal Agreement.** At Closing, Seller and Purchaser will execute and deliver the Right of First Refusal Agreement.

**12.10. Physical Possession.** At Closing, Seller shall deliver to Purchaser possession of the Property free of any tenants, lessees, or occupants.

**12.11. Seller's Certificate.** At Closing, Seller shall deliver to Purchaser a certificate of Seller dated as of the Closing Date certifying (i) that all representations and warranties of Seller under this Agreement are true and correct, in all material respects as of the Closing Date (except as the same may have been changed as permitted in accordance with the terms of this Agreement and disclosed to Purchaser prior to Closing).

**12.12. Other Documents.** At Closing, Seller and Purchaser shall deliver to each other any other documents expressly required to be delivered or furnished pursuant to any other provisions of this Agreement or reasonably required to carry out the purpose and intent of this Agreement.

## SECTION 13: NOTICES

All notices, consent, approvals and other communications which may be or are required to be given by either Seller or Purchaser under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, (b) electronic facsimile (including e-mail) or other transfer device (including e-mail) with telephone or other confirmation of receipt, provided that a hard copy of such notice is mailed by US first class mail, postage prepaid, on or before the next Business Day following such electronic delivery or (c) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air or DHL Express), with all delivery charges paid by the sender and addressed to the Purchaser or Seller, as applicable, as follows, or at such other address as each may request in writing. Such notices shall be deemed received, (1) if delivered by hand or overnight delivery service on the date of delivery and (2) if sent by electronic transfer on the date transmission is confirmed by telephone or return electronic transfer from the receiving party, provided that a hard copy of such notice is mailed by US first class mail, postage prepaid, on or before the next Business Day following such telecopy delivery. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

If to Seller:                   The Graham Companies  
                                  Attention: Stuart S. Wyllie, President  
                                  6843 Main Street  
                                  Miami Lakes, Florida 33014  
                                  Telephone: (305) 821-1130  
                                  Email: stu.wyllie@grahamcos.com

With a copy to:               Steven A. Landy, Esq.  
                                  Greenberg Traurig, P.A.  
                                  333 Avenue of the Americas  
                                  (333 S.E. 2nd Avenue)  
                                  Miami, Florida 33131  
                                  Telephone No.: (305) 579-0758  
                                  Email: landys@gtlaw.com

If to Purchaser:              Town of Miami Lakes  
                                  15700 N.W. 67<sup>th</sup> Avenue  
                                  Suite 302  
                                  Miami Lakes, Florida  
                                  Attention: Alex Rey, Town Manager  
                                  Telephone No.: (305) 364-6100  
                                  Fax No.: (305) 558-8511  
                                  Email: reya@miamilakes-fl.gov

With a copy to:               Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
                                  2525 Ponce de Leon Blvd., Suite 700  
                                  Coral Gables, Florida 33134  
                                  Attention: Lillian M. Arango, Esq.  
                                  Telephone No.: (305) 854-0800  
                                  Email: larango@wsh-law.com



## SECTION 14: CONDEMNATION

**14.1. Condemnation.** At Closing, Seller shall assign to Purchaser all of Seller's right, title and interest in and to all awards in condemnation, or damages or any kind, to which Seller is entitled at the time of Closing, by reason of any exercise of power of eminent domain with respect thereto or for the taking of the Property or any part thereof or by reason of any other event affecting the Property which gives rise to a damage claim against a third Party after the date hereof. Prior to the Closing Date, if all or any portion of the Property is taken, or if access thereto is reduced or restricted by eminent domain or otherwise (or if such taking, reduction or restriction is pending, threatened or contemplated) (hereinafter a "Condemnation Proceeding"), Seller shall immediately notify Purchaser of such fact. In the event that such notice related to the taking of all or any portion of the Property (a portion of which constitutes 2% or more of the Property), Purchaser shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than thirty (30) days after receipt of Seller's notice; whereupon the Earnest Money shall be refunded to Purchaser and thereafter neither Party shall have any rights, obligations or liabilities hereunder except with respect to those rights, obligations or liabilities which expressly survive the termination of this Agreement. If Purchaser does not elect to terminate this Agreement as herein provided, Seller shall pay to Purchaser any award received by Seller prior to Closing and Purchaser shall have the right to participate with Seller in any Condemnation Proceeding affecting the Property; provided, that in doing so Purchaser shall cooperate with Seller in good faith.

## SECTION 15: BROKERS

Each party represents to the other that such party has not incurred any obligation to any broker, finder or real estate agent with respect to the purchase or sale of the Property. Each of Seller and Purchaser warrants and represents to the other that such party has employed (expressly or impliedly) no other broker, agent or other such Person as to which a commission or other such fee is or would become due or owing as a result of the purchase and sale contemplated hereby and has made no agreement (express or implied) to pay any broker's commission or other such fees in connection with the purchase and sale contemplated by this Agreement. Each of Seller and Purchaser agrees to indemnify and defend the other against, and to hold the other harmless of and from all claims, demands and liabilities (including reasonable attorney's fees and expenses incurred in defense thereof) for any commission or fees payable to, or claimed by, any broker, agent or other such Person arising out of the employment or engagement of such Person employed (expressly or impliedly) by Seller or Purchaser, as applicable, or with whom Seller or Purchaser, as applicable, has or is claimed to have, made an agreement (express or implied) to pay a commission or other such fee; provided, however, Purchaser's indemnification obligations under this Section 16 are subject to the provisions and monetary limitations of Section 768.28, Florida Statutes. The representation, warranties, undertakings and indemnities of this Section 15 shall survive the Closing hereunder and any termination of this Agreement.

## SECTION 16: DEFAULT/REMEDIES

**17.1 Seller's Default/Purchaser's Remedies.** If Seller defaults in the observance or performance of its covenants and obligations hereunder, Purchaser, at its option, shall have the right, as its sole and exclusive remedies to either: (i) terminate this Agreement and receive a refund of the Earnest Money, or (ii) seek specific performance of this Agreement (provided that

any such specific performance action is commenced within six (6) months of the Termination Date. Notwithstanding anything herein to the contrary, in either election, Purchaser shall not have the right to seek damages for Seller's default hereunder. Notwithstanding the foregoing, in of any representation of Seller that expressly survives Closing or the termination or cancellation of this Agreement, the non-defaulting party shall be entitled to seek any redress permitted by law or equity. The provisions hereof shall survive Closing and the termination of this Agreement.

**17.2 Purchaser's Default/Seller's Remedies.** If Purchaser defaults in the observance or performance of its covenants and obligations hereunder, then Seller, as its sole and exclusive remedy, shall (as an election of remedies) receive a portion of the Earnest Money from Escrow Agent in the amount of \$25,000.00 as liquidated damages. Purchaser and Seller acknowledge the difficulty of ascertaining the actual damages in the event of such default, that it is impossible to more precisely estimate the damages to be suffered by Seller upon such default, that the retention of a portion of the Earnest Money in the amount of \$25,000.00 by Seller is intended not as a penalty but as full liquidated damages and that such amount constitutes a good faith estimate of the potential damages arising therefrom. Seller's right to so terminate this Agreement and to receive liquidated damages in the amount of \$25,000.00 as aforesaid is Seller's sole and exclusive remedy. Seller hereby waives, relinquishes and releases any and all other rights and remedies, including but not limited to: (1) any right to seek or claim additional sums under the Earnest Money or sue Purchaser for damages or to prove that Seller's actual damages exceed the amount which is hereby provided Seller as fully liquidated damages, or (2) any other right or remedy which Seller may otherwise have against Purchaser, either at law, or equity or otherwise. Notwithstanding the foregoing, in the event of a default by Purchaser of any indemnification obligations that expressly survive Closing or the termination or cancellation of this Agreement, the non-defaulting party shall be entitled to seek any redress permitted by law or equity. The provisions hereof shall survive Closing and the termination of this Agreement

## SECTION 17: ESCROW AGENT

**17.1. Performance of Duties.** Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent shall not be deemed to have any implied duties or obligations under or related to this Agreement.

**17.2. Reliance.** Escrow Agent may (i) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (ii) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (iii) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or corrections as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; Escrow Agent's duties under this Agreement are and shall be limited to those duties specifically provided in this Agreement.

**17.3. Right to Interplead.** If the parties (including Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or about the propriety of any action contemplated by Escrow Agent, Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, Escrow Agent shall be released from all obligations under this Agreement.

**17.4. Attorney's Fees and Costs.** In any suit between Purchaser and Seller wherein Escrow Agent is made a party because of acting as Escrow Agent hereunder, or in any suit wherein Escrow Agent interpleads the subject matter of the Escrow, Escrow Agent shall recover reasonable attorney's fees and costs incurred with the fees and costs 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 parties hereby agree that Escrow Agent shall not be liable to any party or person for misdelivery to Purchaser or Seller of items subject to this escrow, unless such misdelivery is due to willful breach of this Agreement or gross negligence of Escrow Agent.

**17.5. Escrow Agent as Counsel for Purchaser.** It is acknowledged that Escrow Agent is counsel for Purchaser. It is agreed that Escrow Agent shall not be disabled or disqualified from representing Purchaser, its council members, officers, directors or agents in connection with any dispute or litigation which may arise out of or in connection with this transaction or this Agreement as a result of Escrow Agent acting as the escrow agent under this Agreement and the Seller, waives any claim or right to assert a conflict arising out of or in connection with the foregoing.

## **SECTION 18: GENERAL PROVISIONS**

**18.1. Entire Agreement.** This Agreement, and all the Exhibits referenced herein and annexed hereto, contain the final, complete and entire agreement of the parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. Except as may be otherwise expressly provided herein, the agreements embodied herein may not be amended except by an agreement in writing signed by the parties hereto.

**18.2. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

**18.3. Interpretation.** The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit to expand the scope or content of this Agreement or any provision hereto. If any party to this Agreement is made up of more than one Person, then all such Persons shall be included jointly and severally, even though the defined term for such party is used in the singular in this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

**18.4. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. A facsimile copy or other electronic copy (i.e. PDF or TIFF format) of this Agreement and any signatures herein shall be considered for all purposes as originals.

**18.5. Non-waiver.** No waiver by Seller or Purchaser of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to Seller or Purchaser upon any breach under this Agreement shall impair such right to remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller or Purchaser of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

**18.6. Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**18.7. Exhibits.** The Exhibits referred in and attached to this Agreement are incorporated herein in full by this reference.

**18.8. Attorneys' Fees.** In the event of any controversy, claim or dispute between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees including, but not limited to, court costs and other expenses through all appellate levels.

**18.9. Business Days.** If any date provided for in this Agreement shall fall on a day which is not a Business Day, the date provided for shall be deemed to refer to the next Business Day.

**18.10. Time is of the Essence.** Time is of the essence in this Agreement.

**18.11. No Personal Liability of Council Members, Administrative Officials or Representatives of Purchaser.** Seller acknowledges that this Agreement is entered into by a municipal corporation as Purchaser and Seller agrees no individual council member, administrative official or representative of Purchaser shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.

**18.13. Radon Disclosure.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This disclosure is made pursuant to §404.056(8), Florida Statutes.

**18.14. Waiver of Trial by Jury.** SELLER AND PURCHASER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION THEREWITH.

**18.15. No Contract With Other Persons.** Seller agrees not to enter into a contract for the sale, lease, use or occupancy of the Property with any person or entity other than Purchaser for so long as this Agreement is in effect.

**18.16. Assignment.** Purchaser may not assign its rights under this Agreement.

**18.17. Police/Regulatory Powers.** Purchaser 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, any improvements thereon, or any operations at the Property. Nothing in this Agreement shall be deemed to create an affirmative duty of Purchaser 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 Agreement.

**18.18. Negotiated Agreement.** The parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

**18.19. No Recordation.** Neither this Agreement nor any notice or memorandum of this Agreement shall be recorded in any public records.

**18.20. Merger.** Unless expressly set forth herein, the terms and provisions of this Agreement shall not survive the closing and such terms and provisions shall be deemed merged into the Deed and extinguished at Closing.

**[SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed, as of the day and year written their signatures.

**PURCHASER:**

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

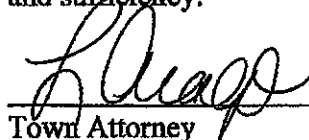
ATTEST:

  
Town Clerk

  
Alex Rey, Town Manager

Date Executed: May 20, 2011

Approved as to legal form  
and sufficiency:

  
Town Attorney

**IN WITNESS WHEREOF**, Seller and Purchaser have caused this Agreement to be executed, as of the day and year written their signatures.

**SELLER:**

**THE GRAHAM COMPANIES, a  
Florida corporation**

By: 

Name: GUY WILLE

Title: President

Date Executed: 5/16, 2011

**ESCROW AGENT:**

**WEISS SEROTA HELFMAN  
PASTORIZA COLE & BONISKE, P. L.**

By: *L. Arango*  
Name: *Liliana Arango*  
Title: *Attorney*

Date: *May 18*, 2011



## EXHIBIT "A"

### LEGAL DESCRIPTION

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST QUARTER (SW ¼) OF SECTION 13, TOWNSHIP 52 SOUTH, RANGE 40 EAST AND ALSO WITHIN THE NORTHWEST QUARTER (NW ¼) OF SECTION 24, TOWNSHIP 52 SOUTH, RANGE 40 EAST, SAID PARCEL ALSO BEING A PORTION OF TRACT 41, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2 AT PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA AND ALSO BEING A PORTION OF TRACT 13, CHAMBERS LAND COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2 AT PAGE 68 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. SAID PARCEL BEING BOUNDED ON THE EAST AND NORTHEAST BY TRACT "B", MIAMI LAKES TOWN CENTER ONE - EAST, AS RECORDED IN PLAT BOOK 153 AT PAGE 50 AND BOUNDED ON THE SOUTH AND WEST BY TRACT "C", MIAMI LAKES TOWN CENTER TWO - EAST, AS RECORDED IN PLAT BOOK 159 AT PAGE 67 AND ALSO BOUNDED ON THE WEST BY TRACT "D", MIAMI LAKES TOWN CENTER THREE - EAST, AS RECORDED IN PLAT BOOK 163 AT PAGE 84, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE MOST WESTERLY NORTH CORNER OF SAID TRACT "B", THENCE ALONG THE WESTERLY LINE OF SAID TRACT "B" FOR THE FOLLOWING FOUR COURSES, S. 48°49'56" E FOR A DISTANCE OF 150.64 FEET TO A POINT; THENCE 30°25'00" E FOR A DISTANCE OF 109.96 FEET TO A POINT; THENCE 20°06'18" W FOR A DISTANCE OF 59.06 FEET TO A POINT; THENCE S 07°49'47" E FOR A DISTANCE OF 113.00 FEET TO A CORNER OF SAID TRACT "C"; THENCE ALONG A NORTHERLY LINE OF SAID TRACT "C" AND THE NORTHERLY LIMIT OF A PLATTED INGRESS-EGRESS EASEMENTS 82°10'13" W FOR A DISTANCE OF 190.42 TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 38.00 FEET, THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 24.43 FEET THROUGH A CENTRAL ANGLE OF 36°50'02" TO A POINT, THENCE N 60°59'45"W FOR A DISTANCE OF 36.18 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 20.00 FEET, THENCE ALONG SAID CURVE TO THROUGH RIGHT FOR AN ARC DISTANCE OF 25.07 FEET THROUGH A CENTRAL ANGLE OF 71°49'34" TO A POINT ON THE EASTERLY LINE OF SAID TRACT "C" THENCE CONTINUING ALONG THE EASTERLY LINE OF SAID TRACT "C" AND THE EASTERLY LINE OF SAID TRACT "D" N 10°49'49" E FOR A DISTANCE OF 352.76 FEET TO A POINT; THENCE S 84°16'27" E FOR A DISTANCE OF 23.51 FEET TO THE POINT OF BEGINNING, SAID LANDS LYING IN AND BEING IN THE TOWN OF MIAMI LAKES, FLORIDA.



CFN 2011R0382077  
 DR Bk 27718 Pgs 3987 - 3993; (7pgs)  
 RECORDED 06/10/2011 16:00:30  
 DEED DOC TAX 13,434.00  
 SURTAX 10,075.50  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by:  
 Record and return to:

Lillian M. Arango, Esq.  
 Weiss Serota Helfman Pastoriza Cole &  
 Boniske, P.L.  
 2525 Ponce de Leon Blvd., Suite 700  
 Coral Gables, Florida 33134



Folio Number: A portion of 32-2013-001-0430  
 and 32-2013-001-0140

(space reserved for the Clerk of the Courts)

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED is made and executed this 8<sup>th</sup> day of June, 2011, by **THE GRAHAM COMPANIES, a Florida corporation ("Grantor")**, whose mailing address is 6843 Main Street, Miami Lakes, Florida 33014 to the **TOWN OF MIAMI LAKES, a Florida municipal corporation ("Grantee")**, whose mailing address is 15700 N.W. 67<sup>th</sup> Avenue, Miami Lakes, Florida 33014.

**WITNESSETH:**

That Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee the real property ("**Property**") located in Miami-Dade County, Florida, and more particularly described as:

**SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.**

**SUBJECT TO**, those matters set forth in **Exhibit "B"** attached hereto and by this reference made a part hereof.:

**TOGETHER** with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to the Property.

**AND GRANTOR**, subject to the matters set forth in Exhibit "B" hereto, hereby specially warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but against no others.

**IN WITNESS WHEREOF**, Grantor has caused this Statutory Warranty Deed to be executed and delivered as of the day and year first written above.

Witnesses;

[Signature]  
Print Name: Steven A. Landy

[Signature]  
Print Name: L. Arango

THE GRAHAM COMPANIES, a Florida corporation

By: [Signature]  
Name: Stuart S. Wyllie  
Title: President and Chief Executive Officer  
6843 Main Street  
Miami Lakes, FL 33014

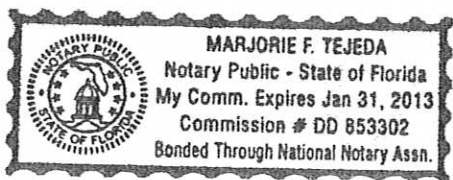
STATE OF FLORIDA                     )  
  ) SS:  
COUNTY OF MIAMI-DADE            )

The foregoing instrument was acknowledged before me this 8th day of June 2011 by Stuart S. Wyllie, as President and Chief Executive Officer of The Graham Companies, a Florida corporation, who (check one)  is personally known to me or [ ] has produced a \_\_\_\_\_ drivers license as identification.

My Commission Expires:

[Signature]  
Notary Public  
Print Name: Marjorie Tejedda  
Commission Number: DD 853302

[NOTARY SEAL]



## EXHIBIT "A"

### LEGAL DESCRIPTION

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST QUARTER (SW ¼) OF SECTION 13, TOWNSHIP 52 SOUTH, RANGE 40 EAST AND ALSO WITHIN THE NORTHWEST QUARTER (NW ¼) OF SECTION 24, TOWNSHIP 52 SOUTH, RANGE 40 EAST, SAID PARCEL ALSO BEING A PORTION OF TRACT 41, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2 AT PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA AND ALSO BEING A PORTION OF TRACT 13, CHAMBERS LAND COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2 AT PAGE 68 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. SAID PARCEL BEING BOUNDED ON THE EAST AND NORTHEAST BY TRACT "B", MIAMI LAKES TOWN CENTER ONE - EAST, AS RECORDED IN PLAT BOOK 153 AT PAGE 50 AND BOUNDED ON THE SOUTH AND WEST BY TRACT "C", MIAMI LAKES TOWN CENTER TWO - EAST, AS RECORDED IN PLAT BOOK 159 AT PAGE 67 AND ALSO BOUNDED ON THE WEST BY TRACT "D", MIAMI LAKES TOWN CENTER THREE - EAST, AS RECORDED IN PLAT BOOK 163 AT PAGE 84, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE MOST WESTERLY NORTH CORNER OF SAID TRACT "B", THENCE ALONG THE WESTERLY LINE OF SAID TRACT "B" FOR THE FOLLOWING FOUR COURSES, S. 48°49'56" E FOR A DISTANCE OF 150.64 FEET TO A POINT; THENCE S 30°25'00" E FOR A DISTANCE OF 109.96 FEET TO A POINT; THENCE S 20°06'18" W FOR A DISTANCE OF 59.06 FEET TO A POINT; THENCE S 07°49'47" E FOR A DISTANCE OF 113.00 FEET TO A CORNER OF SAID TRACT "C"; THENCE ALONG A NORTHERLY LINE OF SAID TRACT "C" AND THE NORTHERLY LIMIT OF A PLATTED INGRESS-EGRESS EASEMENT S 82°10'13" W FOR A DISTANCE OF 190.42 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 38.00 FEET, THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 24.43 FEET THROUGH A CENTRAL ANGLE OF 36°50'02" TO A POINT, THENCE N 60°59'45" W FOR A DISTANCE OF 36.18 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 20.00 FEET, THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 25.07 FEET THROUGH A CENTRAL ANGLE OF 71°49'34" TO A POINT ON THE EASTERLY LINE OF SAID TRACT "C" THENCE CONTINUING ALONG THE EASTERLY LINE OF SAID TRACT "C" AND THE EASTERLY LINE OF SAID TRACT "D" N 10°49'49" E FOR A DISTANCE OF 352.76 FEET TO A POINT; THENCE S 84°16'27" E FOR A DISTANCE OF 23.51 FEET TO THE POINT OF BEGINNING, SAID LANDS LYING IN AND BEING IN THE TOWN OF MIAMI LAKES, FLORIDA.

**EXHIBIT "B" TO  
SPECIAL WARRANTY DEED**

The Property is sold and conveyed subject to the following:

- (a) Taxes and Assessments for the year 2011 and subsequent years.
- (b) All laws, ordinances, and governmental regulations, including but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations.
- (c) Easements, restrictions, conditions, limitations, covenants, reservations and other matters of record.
- (d) Matters which would be shown by an accurate survey and inspection of the Property.

The following provisions shall constitute covenants running with the title to the Property, binding upon the Grantee and its successors and assigns, and all parties now or hereafter having an interest in the Property, and by accepting this conveyance, Grantee agrees that the Property shall be bound by such covenants, which shall run to the benefit of Grantor, and Grantor's successors and assigns and shall automatically be deemed included in any deed to all or any portion of the Property:

1. No building, wall or other structure or sign or improvement of any nature shall be erected, placed or altered on the Property until the construction plans and specifications and a plan showing the location of the structure and any signs, together with a landscaping plan for landscaping of the Property as may be required by the Grantor, have been approved in writing by the Grantor, such approval not to be unreasonably withheld. Each building, wall or other structure or sign or improvement of any nature and the landscaping shall be erected, placed or altered upon the property only in accordance with the plans and specifications and plot plan so approved. Refusal of the approval of plans, specifications and plot plan, or any of them may be based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any building, wall, other structure, sign or improvement, and any change in the appearance of the landscaping as approved and installed initially shall be deemed an alteration requiring approval. The Grantor shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. Buildings or other structures shall not exceed four (4) stories in height;

2. The approval of plans, specifications and plot plans required in paragraph 1 above shall extend and apply to the exterior colors and materials; exterior lighting; the number of spaces, dimensions of spaces, design, layout and location of all parking areas; which parking areas shall be screened from access roads and adjoining property in accordance with approved landscape plans; storm drainage facilities and finish grades so that water runoff from the Property will not create a nuisance or hardship to adjoining property; air conditioning installations; and curb cuts, driveways, and vehicular access to the Property;

3. The structures, paved areas, landscaping and grounds of the Property shall be maintained in a neat and attractive manner. Upon the Owner's failure to do so by the owner of the Property ("Owner"), Grantor may, at its option, after giving the Owner ten (10) days' written notice sent to Owner's last known address, have the Property cleaned (including, without limitation, the removal, hauling away and disposal of old or wrecked vehicles) and have the grass cut and landscaping maintained and remove and replace any landscaping materials that are, in Grantor's judgment in need of replacing, when and so often as necessary in Grantor's judgment. Upon the Owner's failure to maintain any building, structure, paved area, driveway or sidewalk all in good repair and appearance, the Grantor may, at its option, after giving the Owner thirty (30) days' written notice sent to the Owner's last known address, make repairs and improve the appearance in a reasonable and workmanlike manner and such work may include, without limitation, the following: cleaning, painting, repairing, replacing and taking care of the exterior building and structure surfaces, signs, lights and light standards, roofs, gutters, downspouts, windows and doors. The Owner of the Property shall reimburse the Grantor for the cost of any work above required and to secure such reimbursement, the Grantor shall have a lien upon the parcel upon which the work was performed enforceable as herein provided. Upon performing the work herein provided, the Grantor shall be entitled to file in the Public Records of Miami-Dade County, Florida, a notice of its claim of lien by virtue of this Contract with the Owner. Said notice shall state the costs of said work and shall contain a description of the property against which the enforcement of the lien is sought. The lien herein provided shall date from the time that the work is completed, but shall not be binding against creditors or subsequent purchasers for a valuable consideration and without notice until said notice is recorded. The lien herein provided shall be due and payable forthwith upon the completion of the work and if not paid, said lien may be enforced by foreclosure in the same manner as mortgages or by any other means provided by law. The amount due and secured by said lien shall bear interest at eighteen percent (18%) per annum from the date of recording said notice of lien and in any action to enforce payment, Grantor shall be entitled to recover costs and attorneys' fees. The liens herein provided shall be subordinate to the lien of any first mortgage encumbering the Property or any portion thereof to any institutional lender; provided, however, that any such mortgagee when in possession and any purchaser at any foreclosure sale, and all person claiming by, through or under such mortgagee or purchaser, shall hold title subject to the obligations and liens herein provided. Notwithstanding the foregoing, the lien rights set forth above shall not apply while the Property is owned by a Municipal Corporation

4. No tents, trailers, vans, shacks, tanks (excepting underground tanks) or temporary or accessory buildings or structures shall be erected or permitted to remain on the Property except those needed during construction, and after the completion of construction of the main structure and issuance of a certificate of occupancy, all such tents, trailers, vans, shacks, tanks (except underground tanks), temporary and accessory buildings or structures shall be removed forthwith;

5. At all times during the course of construction of improvements and landscaping upon the Property, construction debris of all kinds will be removed from the Property and adjoining streets and when such construction or landscaping is completed, all debris, equipment and excess surplus or remainder of construction materials, of whatever nature, shall be promptly

cleared and removed from these adjoining properties. Construction shall be deemed completed when a Certificate of Occupancy is issued;

6. All utilities within the Property, whether in street rights of way or utility easements or on private property, shall be installed and maintained underground;

7. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the Property, and no waste paper, trash, refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the adjoining properties, or from any street;

8. In order to maintain the high standards of Miami Lakes with respect to appearance, all trucks and commercial vehicles, boats, house trailers, boat trailers, recreational vehicles, and other trailers and vehicles of every other description (except automobiles, police vehicles, public works and park utility pick up trucks) shall be required to be parked only within a building or walled-in or landscape shielded area. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services;

9. Architectural guidelines for Town Center are also to be complied with and include, but are not limited to: (1) Roof must have genuine terra cotta barrel tiles of the type in which each exposed 1/2 circle constitutes a separate tile rather than being joined in a series at casting; (2) No imitation materials can be used which would be visible from the exterior of the building (e.g., if it is supposed to look like brick, it must be genuine brick); (3) All metal which is visible from the exterior of the building must be dark bronze or black or a color approved by the Grantor; (4) Colors must be white or earthtones; (5) "Menu signs" (listing multiple parties) cannot be used nor shall any sign be used without prior approval of the Grantor.

10. The agreements and restrictions herein contained may be modified, amended, derogated or cancelled at any time by an instrument, executed by Grantor and its successors and Grantee and its successors and assigns, and recorded.

11. The Property may be used only for general and municipal offices, and activities related to the above purpose, provided that the Property may be left vacant and provided further that the Grantor shall have the right, upon written request from time to time to it, to permit any other lawful use of the Property.

12. There shall be a minimum of two (2) square feet of land area for each one (1) square foot of building area. For example, if a building(s) has 25,000 gross square feet on each floor and is three (3) stories high, it will be deemed to have 75,000 square feet of roofed building floor area which would require a minimum 150,000 square foot lot.

13. Outside storage of materials, supplies or products shall not be permitted within any setback area, whether located in the open or whether situated within a trailer, van or other

type of container, and further, all such outside storage shall be located in such place, or properly screened by a masonry wall, so as not to be visible from any property line.

14. No part of the Property and no building or other improvement thereon shall be used for any purpose or in any such manner which shall be a nuisance to the occupants or owners of any neighboring land or building by reason of the emission from said land or any part thereof, or the creation thereon, of odors, gases, dust, smoke, noise, fumes, cinders, soot, glare, reflected sunlight, vibrations, radiation or waste or otherwise. The Grantor is vested with the authority to issue, amend and cancel from time to time specific performance standards.

15. The subject Property shall not be subdivided without the prior written consent of the Grantor.

16. There shall be minimum ratios between the number of parking spaces on the Property and the square feet of roofed building floor area or number of employees, as the case may be, per designated category of use as follows:

One (1) parking space for each two hundred fifty (250) square feet, or any fraction thereof, of office and/or display space; or one (1) parking space for each employee per shift; whichever requires the greater number of parking spaces.

17. The Grantor shall have the right to approve the landscaping plan for any improvements that may from time to time be constructed on the Property. The plan will include grass, irrigation, trees and other major landscape features. Purchaser agrees, to provide theme trees ("Theme Trees") of the fast growing variety of Florida Live Oak with a minimum height of sixteen (16) feet when planted. Said Theme Trees may be complimented with other trees such as the Sable Palm.

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STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY that this is a true copy of the  
original filed in this office on June 10 day of

WITNESS my hand and Official Seal.  
HARVEY RUVIN, CLERK of Circuit and County Courts  
By By #7095 D.C.

