

Prepared by:

Robert Banks
Assistant County Attorney
301 North Olive Avenue
West Palm Beach, FL 33401

Return To:

CONTRACT FOR THE SALE AND PURCHASE OF DEVELOPMENT RIGHTS

THIS CONTRACT entered into this 4th day of June, 2002 by and between Palm Beach County, Florida (hereinafter referred to as "County") and M/I Schottenstein Homes, Inc., an Ohio corporation (hereinafter referred to as "Developer").

WHEREAS, the County has established a Transfer of Development Rights (hereinafter referred to "TDR") Special Density Program pursuant to Section 6.10 of the Palm Beach County Unified Land Development Code (hereinafter referred to as "ULDC").

WHEREAS, the County has established a TDR Bank to facilitate the purchase and transfer of development rights.

WHEREAS, the Developer is desirous of purchasing 25 development rights and "County" is desirous of selling and transferring 25 development rights from the TDR bank for use on the subject property (hereinafter referred to as the "Property"), as described in Exhibit A.

WHEREAS, Developer seeks to use the development rights within the Property more particularly described as in Exhibit A attached hereto and made a part hereof.

WHEREAS, Resolution-R-2002-0624 requires as a condition of approval that upon signing of this contract, that the funds for the purchase of the 25 TDR units be placed in escrow to be released to the County upon approval of the first building permit for the project.

NOW THEREFORE, in consideration of the premises and other valuable consideration, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein for reference.
2. Purchase and Sale. The County hereby agrees to sell and "Developer" hereby agrees to purchase the 25 TDR units to be used within the Property.
3. Purchase Rights. The purchase price for each TDR unit is \$10,339.00 for a total purchase price of \$259,975.00.
4. Timing. The Developer shall immediately place the funds for the total purchase price for the development rights, in full, by cash, or certified or cashiers check, into an escrow account. The said escrow account shall be established as set forth in the TDR Escrow Agreement which is incorporated and made a part thereof. After delivery of sworn receipt from Escrow Agent to the County, County shall deliver executed deed conveying the applicable TDR units from the County TDR Bank to the subject property, to the Escrow Agent. Prior to issuance of the first building permit for the project, full payment for all the TDR units shall be made to the County, from said escrow account. After full payment for the TDR units is made to the County, Escrow Agent shall deliver the TDR deed to Developer to be recorded in the public records by the Developer. Building permits issued for sales models and/or temporary real estate sales and management offices permitted pursuant to ULDC standards shall not require the release of the escrow funds.
5. Escrow Agreement. Simultaneously with this contract, the parties have entered into an escrow agreement which provides for disbursement of the escrow funds required by this contract.

6. Termination of Contract. In the event that the approval of this development is revoked in accordance with Section 5.8 of the Palm Beach County Unified Land Development Code, or formally abandoned by the Developer and that the abandonment has been approved by the County prior to disbursement of escrowed funds to the County, this Contract shall be deemed terminated. In the event this Contract is terminated, the escrow funds shall be disbursed to the Developer and the TDR deed returned to the County pursuant to paragraph 7 of the Escrow Agreement.
7. Notices. Unless otherwise specifically provided herein, all notices shall be in writing and sent to the parties, by certified mail, return receipt requested, postage prepaid, or by other nationally recognized overnight courier service. Unless otherwise specifically provided herein, said notices shall be effective on the third (3rd) day following such notice being deposited in the United States mails or one (1) business day following mailing by overnight express mail.

As to County: Palm Beach County Zoning Division
 100 Australian Avenue
 West Palm Beach, Florida 33406

cc: Palm Beach County Attorney
 301 North Olive Avenue, Suite 601
 West Palm Beach, FL 33401
 ATTN: Landuse Section

As to Developer: M/I Schottenstein Homes, Inc.
 4 Harvard Circle, Suite 950
 West Palm Beach, Florida 33409
 ATTN: Marilou Gonzalez

8. Governing Law, Venue. This instrument shall be governed by and enforced and construed under the laws of the State of Florida. Venue for all actions shall be in Palm Beach County.
9. Assignment. This contract is assignable to any entity that is controlled by Developer, for the benefit of this Property only. With the exception of this assignment provision, neither this Contract nor any interest therein may be assigned without the prior written consent of the County. Prior to approval of assignment of the contract, the escrow agreement shall be modified to reflect the assignment.
10. Enforcement. In the event any action, suit or proceeding is commenced with respect to this contract, each party shall be responsible for their own fees and costs.
11. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a final judgment of a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
12. Public Records. This document shall be recorded in the public records of Palm Beach County, Florida.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the dates set after their respective signatures.

ATTEST:
DOROTHY H. WILKEN, Clerk

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:

By: _____
Deputy Clerk

Warren H. Newell, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

Signed, sealed and delivered in
the presence of:

Developer

M/I Schottenstein Homes, Inc., an Ohio
corporation

Lynda C. Tobias
Signature

By: Mark E. Welch
Name: Mark E. Welch

LYNDA C. TOBIAS
Print

Title: Division President

Marilou Gonzalez
Signature

Date: June 4th, 2002

Marilou Gonzalez
Print

STATE OF FLORIDA
SS:
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 4th day of JUNE, 2002, by MARK E. WELCH as DIVISION PRESIDENT of M/I Schottenstein Homes, Inc., an Ohio corporation who is personally known to me or has produced _____ (type of identification) as identification and who did (did not) take an oath.

My Commission Expires:

Notary Public
State of Florida Lynda C. Tobias

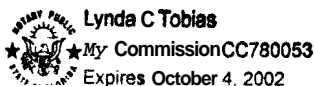


EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION (as Surveyed)

Parcel 1

A parcel of land lying in Section 16, Township 46 South, Range 42 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Section 16;
Thence South 89°-59'-03" West, along the North line of said Section 16, a distance of 992.01 feet to the Point of Beginning;
Thence continue South 89°-59'-03" West, along the North line of said Section 16, a distance of 533.71 feet to a point on a line 1119.33 feet East of and parallel to the North South Quarter Section line of said Section 16;
Thence South 1°-17'-53" West, along said parallel line, a distance of 691.18 feet to a point on the South line of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of said Section 16;
Thence North 90°-00'-00" East, along the South line of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of said Section 16, a distance of 536.61 feet;
Thence North 1°-03'-26" East, a distance of 691.26 feet to the Point of Beginning.

LESS HOWEVER, the North 25 feet thereof for right of way to Palm Beach County, Florida as recorded in Official Record Book 1948, page 195 of the public records of Palm Beach County, Florida.

AND ALSO LESS HOWEVER, that portion of the property as described in Chancery Case 407 as recorded by Lake Worth Drainage District in Official Record Book 6495, page 761 of the public records of Palm Beach County, Florida.

AND

Parcel 2

The West 719.33 feet of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of Section 16, Township 46 South, Range 42 East, Palm Beach County, Florida, LESS the East 344.67 feet and LESS the South 315.89 feet thereof.

LESS HOWEVER, the North 25 feet thereof for right of way to Palm Beach County, Florida as recorded in Official Record Book 1948, page 195 of the public records of Palm Beach County, Florida.

EXHIBIT A

LEGAL DESCRIPTION

LESS HOWEVER, the West 30 feet thereof for right of way to Palm Beach County, Florida as recorded in Deed Book 729, page 553 of the public records of Palm Beach County, Florida.

ALSO LESS HOWEVER, that portion of the property as described in Chancery Case 407 as recorded by Lake Worth Drainage District in Official Record Book 6495, page 761 of the public records of Palm Beach County, Florida.

AND ALSO LESS HOWEVER, Parcel 106 and Parcel 107 as described in that certain Order of Taking by Palm Beach County, Florida, as recorded in Official Record Book 12313, pages 1550 through 1580, inclusive, of the public records of Palm Beach County, Florida.

AND

Parcel 3

A parcel of land lying in Section 16, Township 46 South, Range 42 East, Palm Beach County, Florida, said parcel being more particularly described as follows:

The South 315.89 feet of the West 719.33 feet of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of said Section 16.

LESS HOWEVER, the West 30 feet thereof for right of way to Palm Beach County, Florida as recorded in Deed Book 729, page 553 of the public records of Palm Beach County, Florida.

AND

Parcel 4

A parcel of land lying in Section 16, Township 46 South, Range 42 East, Palm Beach County, Florida, said parcel being more particularly described as follows:

The East 344.67 feet of the West 719.33 feet, LESS the South 315.89 feet of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of said Section 16.

LESS HOWEVER, the North 25 feet thereof for right of way to Palm Beach County, Florida as recorded in Official Record Book 1948, page 195 of the public records of Palm Beach County, Florida.

AND ALSO LESS HOWEVER, that portion of the property as described in Chancery Case 407 as recorded by Lake Worth Drainage District in Official Record Book 6495, page 761 of the public records of Palm Beach County, Florida.

EXHIBIT A

LEGAL DESCRIPTION

AND

Parcel 5

A parcel of land lying in Section 16, Township 46 South, Range 42 East, Palm Beach County, Florida, said parcel being more particularly described as follows:

The East 200 feet of the West 919.33 feet of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of said Section 16.

LESS HOWEVER, the North 25 feet thereof for right of way to Palm Beach County, Florida as recorded in Official Record Book 1948, page 195 of the public records of Palm Beach County, Florida.

AND ALSO **LESS** HOWEVER, that portion of the property as described in Chancery Case 407 as recorded by Lake Worth Drainage District in Official Record Book 6495, page 761 of the public records of Palm Beach County, Florida.

AND

Parcel 6

A parcel of land lying in Section 16, Township 46 South, Range **42** East, Palm Beach County, Florida, said parcel being more particularly described as follows:

The East 200 feet of the West 1119.33 feet of the North Half (N ½) of the North Half (N ½) of the Northeast Quarter (NE ¼) of said Section 16.

LESS HOWEVER, the North 25 feet thereof for right of way to Palm Beach County, Florida as recorded in Official Record Book 1948, page 195 of the public records of Palm Beach County, Florida.

AND ALSO LESS HOWEVER, that portion of the property as described in Chancery Case 407 **as** recorded by Lake Worth Drainage District in Official Record Book 6495, page 761 of the public records of Palm Beach County, Florida.

Return To:

Robert Banks
Assistant County Attorney
301 North Olive Avenue
West Palm Beach, FL 33401

TRANSFER OF DEVELOPMENT RIGHTS ESCROW AGREEMENT

Palm Beach County, (the "County"), being the stated beneficiary of this agreement, M/I Schottenstein Homes, Inc., an Ohio corporation ("Developer") and Broad and Cassel (the "Escrow Agent"), in consideration of the mutual covenants contained in this Agreement, hereby agree as follows:

1. Developer received approval for and has contracted to buy 25 TDR units in Palm Beach County, Florida for use in the development known as Bethesda PUD. The approval for the transfer of these TDR units was granted by Resolution #R-2002-0624. The County requires that Developer pay County for the TDR units prior to the issuance of the first building permit other than for sales models or a temporary real estate sales and management office is issued by County to Developer. Developer is to pay \$259,975.00 for the purchase of 25 TDR units.
2. Establishment of Escrow Account. The parties hereby authorize and direct the Escrow Agent to establish an Escrow Account (the "Account") at Wachovia Bank, a national banking association, located at 975 South Federal Highway, Boca Raton, Florida 33432 (the "Bank") to be held pursuant to the terms of this Agreement. The account shall be an interest bearing account, maintained in a segregated account which is not a loan reserve or hold back of bank funds. When the escrowed funds are released to the County, all interest earned by such funds while in escrow shall accrue to the County. If the County is not entitled to the funds, the interest earned by such funds shall accrue to the Developer. Developer shall pay all costs, fees and expenses of Bank and Escrow Agent arising from or in connection with the Account.
3. Deposit of Funds. Upon execution of this agreement, Developer shall deposit \$259,975.00 into the Account. The Escrow Agent shall hold funds in escrow. Developer shall evidence such deposit by delivering to County two copies of a sworn receipt (which is attached hereto as Exhibit "A") executed by Escrow Agent.
4. Delivery of Deed. Upon receipt of the evidence of deposit of funds, County shall deliver to Escrow Agent an executed deed conveying the 25 TDR units to developer. This deed shall be held by the Escrow Agent.
5. Disbursement of Escrowed Funds. Escrow agent shall hold the escrow funds until Developer directs escrow agent to disburse the funds to the County. Building permits to be issued, if all other applicable requirements are met, after disbursement of funds to the County. Any accrued interest earned on the escrow account shall be disbursed to the County.
6. Release of Deed. After the disbursement of funds to the County, Escrow Agent shall deliver the deed to Developer to be recorded in the public records by the Developer.
7. Revocation or abandonment of Approval. In the event that the approval of this development is revoked in accordance with Section 5.8 of the Palm Beach County Unified Land Development Code, or formally abandoned by the Developer and that the abandonment has been approved by the County,

As to Escrow Agent: Broad and Cassel
7777 Glades Road, Suite 300
Boca Raton, Florida 33434
ATTN: Richard B. MacFarland

- G. Captions. Captions contained in this Agreement are inserted only as a matter of convenience or for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.
- H. Venue. This instrument shall be governed by and enforced and construed under the laws of the State of Florida. Venue for all actions shall be in Palm Beach County.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement this 4th day of June, 2002.

Witnesses:

Lynda C. Tobias

LYNDA C. TOBIAS
Typed or Printed Name

Date: June 4, 2002

Marilou Gonzalez

Marilou Gonzalez
Typed or Printed Name

DEVELOPER

M/I Schottenstein Homes, Inc., an Ohio corporation

Mark E. Welch
Typed or Printed Name: Mark E. Welch

Date: June 4th, 2002

1561 471-3440
Telephone Number

Witnesses:

Susan Mantz

Susan Mantz
Typed or Printed Name

Zelica M. Giggley

Zelica M. Giggley
Typed or Printed Name

ESCROW AGENT

Broad and Cassel
Jeffrey A. Deutch, as President of Jeffrey A. Deutch, P.A.

Jeffrey A. Deutch
Typed or Printed Name: Jeffrey A. Deutch

Date: 6-5, 2002

561-483-7000
Telephone Number

ATTEST:

DOROTHY H. WILKEN, Clerk

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Warren H. Newell, Chairman

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
County Attorney

EXHIBIT A

CERTIFIED RECEIPT

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Escrow Agent, who, being by me first duly sworn, deposes and says:

1. Escrow Agent hereby acknowledges that it has received \$259,975.00 to be held by Escrow Agent pursuant to the Transfer of Development Rights Escrow Agreement dated June 4, 2002 in connection with Resolution #R-2002-0624 of the Development known as Bethesda PUD, Zoning Petition PDD/TDR 2001-059, in connection with the purchase of 25 development rights.

2. Escrow Agent acknowledges that this Affidavit is being given as an inducement to Palm Beach County to deliver an executed deed conveying the development rights to the Escrow Agent.

Further Affiant sayeth not.

Broad and Cassel

By: _____

Jeffrey A. Deutch
Jeffrey A. Deutch,
as President of Jeffrey A. Deutch, P.A.

SWORN TO before me this 5th day of June, 2002.

Susan L. Mantz

NOTARY PUBLIC

My commission expires:

