

RESOLUTION 2004 - 116

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH B.J. BINNS PLANTS & TREES, INC. FOR THE PURCHASE OF 13,000 TREES, PLANTS, AND ACCESSORIES (COLLECTIVELY "TREES") LOCATED ON THE COUNTRY ESTATES OPEN SPACE AND FISHING HOLE SITE, WHICH IS GENERALLY LOCATED AT THE SOUTHEAST CORNER OF GRIFFIN AND 190th AVENUE, FOR AN AMOUNT NOT TO EXCEED \$600,000; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT, IN SUBSTANTIALLY THE SAME FORM AS ATTACHED HERETO AS EXHIBIT "A"; AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Country Estates Open Space Fishing Hole Site is a 16.41 acre site generally located at the southeast corner of Griffin Road and 190th Avenue (the "Property"); and

WHEREAS, on June 5, 2003, the Town successfully obtained a Broward County grant award in the amount of \$750,000 for the purchase of the Country Estates Open Space and Fishing Hole Site; and

WHEREAS, on October 4, 2003, the Florida Community Trust (FCT) awarded the Town an additional grant in the amount of \$808,000 for the purchase of the Property; and

WHEREAS, the Town, in furtherance of the willing seller letter, is working to place the Property under contract; and

WHEREAS, as part of, and contingent upon the acquisition of the Property, the Town has agreed to purchase the entire nursery which includes 13,000 trees, plants, and accessories; and

WHEREAS, the Town has determined that the trees and plants are of good quality and grade; and

WHEREAS, if the Property is acquired the Town will seek to retain a professional nursery service provider under a four (4) year contract to maintain the trees; and

WHEREAS, the nursery service provider will be responsible for maintaining and insuring the nursery; and

WHEREAS, it is in the best interest of the Town to acquire the trees at a cost that is less than the wholesale price and to use the trees throughout the Town.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1. The above referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby authorizes the acquisition of the B.J. Binns Plant and Tree Nursery in conjunction with the acquisition of the Country Estates Open Space & Fishing Hole site.

Section 3. The Town Council hereby approves the Purchase and Sale Agreement, in substantially the same form as attached hereto as Exhibit "A", and to purchase the nursery for an amount not to exceed \$600,000.

Section 4. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 5. The Town Council authorizes the appropriate Town officials to execute any and all documents necessary to effectuate the intent of this Resolution.

Section 6. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 9th day of September 2004, on a motion by Vice Mayor Knight and seconded by Council Member Maines.

Fink Y
Knight Y
Blanton Y
Maines Y
Nelson Y

Ayes 5
Nays 0
Absent or
Abstaining 0

ATTEST:

Shari Canada
Shari Canada, Town Clerk

Mecca Fink
Mecca Fink, Mayor

Approved as to Form and Correctness:

Gary A. Poliakoff
Gary A. Poliakoff, J.D., Town Attorney

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AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT for Purchase and Sale ("Agreement") is entered into as of the date the Seller executes this Agreement ("Effective Date of this Agreement") by and between B.J. BINNS PLANTS & TREES, INC., a Florida corporation, ("Seller"), and TOWN OF SOUTHWEST RANCHES, a political subdivision of the State of Florida ("Buyer"), or its assigns, as follows:

ARTICLE 1. PURCHASE AND SALE OF THE PROPERTY. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller subject to the terms and conditions set forth herein, the following:

1.1 All of Seller's stock-in-trade as more particularly identified on the attached complete inventory and in accordance with the minimum quantities set forth therein constituting the tangible assets of the Seller as same is located upon that certain land that Buyer is purchasing from Robert J. Binns, Trustee for the Robert J. Binns Revocable Trust dated December 24, 2001, simultaneously with the closing of this Agreement. Said land being identified as Exhibit "A" (hereinafter the "Land") and the inventory of Seller's stock-in-trade, equipment and other tangible assets being sold to the Buyer, being specifically labeled Exhibit "B". Both exhibits attached hereto and incorporated herein by reference. The items listed in Exhibit "B" shall hereinafter be referred to as the "Property".

ARTICLE 2. PURCHASE PRICE.

2.1 The purchase price for the Property (the "Purchase Price") more particularly identified on Exhibit "B" attached hereto shall be Six Hundred Thousand Dollars and No Cents (\$600,000.00) and shall be payable as follows:

2.2 **Deposit.** Concurrently with the execution of this Agreement by Buyer, Buyer shall deliver to Escrow Agent (hereinafter defined) the sum of TEN THOUSAND and NO/100 Dollars (\$10,000.00) (the "Deposit"). Escrow Agent shall deposit the Deposit in its trust account.

2.3 **Payment of Deposits to Seller.** Escrow Agent shall pay to Seller on the Closing Date (hereinafter defined), the Deposit in the form of a trust account check or wire transfer payable to Seller.

ARTICLE 3. CLOSING.

3.1 **Escrow Agent.** The escrow agent shall be Becker & Poliakoff, P.A., whose address is: Becker & Poliakoff, P.A., Attention: Carol Capri Kalliche, Esquire, 3111 Stirling Road, Fort Lauderdale, FL 33312 (the "Escrow Agent").

3.2 **Close.** The Closing of title (the "Closing") shall take place at 10:00 a.m. on or before sixty (60) days from the Effective Date, or simultaneously with the closing on the sale of the Land, at the offices of Buyer's Attorney, Becker & Poliakoff, P.A., 3111 Stirling Road, Fort Lauderdale, Florida 33312.

ARTICLE 4. DELIVERY OF DOCUMENTS.

4.1 **Delivery by Seller at Closing.** At or prior to the Closing, Seller shall deliver the following closing documents to Buyer:

4.1.1 A Bill Of Sale conveying title to all of the stock-in-trade, equipment and other tangible assets as set forth in Exhibit "B"; said Bill Of Sale warranting all property to be free and clear of all debts of other encumbrances of any kind.

4.1.2 Closing Statement

4.1.3 Copies of Seller's closing documents shall be delivered to Buyer's attorney for review not less than

4.2 Delivery by Buyer at Closing. At Closing, Buyer shall execute and deliver to Seller the following items:

4.2.1 The cash portion of the Purchase Price;

4.2.2 Buyer shall cause Escrow Agent to issue its trust account check for the Deposit to Seller;

4.2.3 Resolution evidencing Buyer's power and authority to enter into this Agreement and consummate the transaction herein contemplated.

4.2.4 Such additional documents as Seller may reasonably deem necessary or proper to carry out this Agreement.

ARTICLE 5. WARRANTY OF SELLER.

The Seller warrants that the property being transferred to Buyer is free and clear of all liens or other encumbrances and there are no outstanding liens, charges, security interests or other encumbrances of any kind and further, the Seller agrees to maintain the inventory of trees until closing in accordance with the minimum amounts guaranteed as set forth on Exhibit "B" attached hereto.

ARTICLE 6. RISK OF LOSS.

The Seller shall bear the risk of any and all loss regarding the accidental loss or destruction of the subject property prior to the closing of this transaction, including but not limited to, loss caused by hurricane, windstorm, flood or any other act of God.

ARTICLE 7. CONTINGENCIES.

This Purchase and Sale Agreement is contingent upon the following:

7.1. The Buyer's public notice and hearing on the execution of this Agreement and the approval by resolution of the terms and conditions herein set forth.

7.2. The simultaneous closing of Buyer's Purchase of the Land. In the event this contingency has not been satisfied or waived by each of the parties on or before the closing date herein established, then either party has the right to cancel this Agreement, and Escrow Agent shall return the Deposit to Buyer, and thereafter this Agreement shall be terminated and neither Buyer nor Seller shall have any further rights or obligations hereunder.

ARTICLE 8. BUYER REPRESENTATIONS AND WARRANTIES.

Buyer represents and warrants to Seller (the following being hereinafter sometimes referred to as "Buyer's Warranties") that:

8.1 Authority to Execute. Buyer (i) is a political subdivision of the State of Florida; (ii) has all requisite power and authority to own its properties and assets and to carry on its business now being conducted; (iii) subject to Section 9.1.1 below, has full power and authority to execute, deliver and perform this Agreement and consummate the transactions contemplated hereby, including the execution, delivery and performance of each of the documents required to be delivered by Buyer to Sellers pursuant to this Agreement, and any and all other documents or instruments necessary or desirable to the consummation hereof; and (iv) prior to the expiration the Investigation Period, the execution, delivery and performance of this Agreement by Buyer and the consummation of the transaction contemplated herein shall have been duly authorized by all required action on the part of Buyer.

8.2 No Encumbrance. Buyer shall neither encumber nor cause any liens to be created against the Property as a result of its inspections in any way, nor record this Agreement or a memorandum hereof, prior to the Closing.

ARTICLE 9. BUYER'S CONTINGENCIES.

9.1 Buyer's Contingencies. Buyer's obligation to purchase the Property and close the transaction pursuant to this Agreement is expressly contingent upon satisfaction of the following conditions ("Buyer's Contingencies") and Buyer shall have no obligation to close under this Agreement unless all the following conditions have either been satisfied or waived by Buyer:

9.1.1 Approval of Property. Public Notice and Hearing and approval by the Town Council by Resolution of this Agreement, the Property's physical condition or waiver of any objections thereto pursuant to terms hereof; and

9.1.2 Compliance with Covenants. Seller shall have performed all covenants, agreements and obligations and complied with all conditions required by this Agreement to be performed or complied with by Seller prior to the Closing Date.

9.1.3 Delivery of Documents. Seller shall be prepared to deliver to Buyer all instruments and documents to be delivered to Buyer at the Closing pursuant to this Agreement;

9.1.4 No Prior Termination. This Agreement shall not have been previously terminated pursuant to any other provision hereof;

9.1.5 Representations and Warranties. All of Seller's representations and warranties shall be true and correct;

9.1.6 Purchase of Land. Buyer's obligation to purchase the subject Property is contingent upon the simultaneous closing on the purchase from Robert J. Binns, Trustee, of the Land described in the attached Exhibit "A".

9.1.7 Other: Any other act or report required by the Charter of the Town of Southwest Ranches which must be performed or obtained by a municipality when purchasing real property.

9.8 Time Periods. Buyer agrees to act reasonably and expeditiously in approving or disapproving Buyer's Contingencies.

9.9 Remedies. If the conditions to Buyer's obligations have not been satisfied on or before the Closing Date, Buyer shall have the option of continuing the Closing Date for a period not to exceed forty-five (45) days until such time as the conditions have been satisfied. This option is a continuing option and not an election of remedies; therefore, at any time after the Closing Date if the conditions to Buyer's obligations to close have not been satisfied, Buyer can elect to terminate this Agreement and pursue its remedies against Seller as elsewhere provided in this Agreement.

ARTICLE 10. SELLER'S CONTINGENCIES.

10.1 Seller's Contingencies. Seller's obligation to sell the Property pursuant to this Agreement is expressly contingent upon satisfaction of each of the following conditions ("Seller's Contingencies") and Seller shall have no obligation to close under this Agreement unless all the following conditions have been satisfied or have been waived by Seller:

10.1.1 Payment and Documents. Delivery and execution by Buyer of all monies, items, and any other instruments required to be delivered and paid by Buyer herein to Seller;

10.1.2. Buyer's Warranties. Buyer's Warranties must be and remain true and correct as of the Closing;

ARTICLE 11 MAINTENANCE AND MANAGEMENT OF THE PROPERTY.

11.1 Seller will Continue to Maintain. From the date of this Agreement until the Closing Date, Seller agrees to continue to manage and maintain the Property and to keep same free and clear of all liens and encumbrances.

ARTICLE 12. DEFAULT

12.1 Buyer's Default. In the event that this transaction fails to close due to refusal or intentional default on the part of Buyer, the parties, have agreed that Seller shall be entitled to receive the Deposit as liquidated damages, and thereafter, neither Buyer nor Seller shall have any further obligation under this Agreement. The parties agree that is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to Seller that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Each party specifically confirms the accuracy of the statements made above and the fact that each party was represented by counsel who explained the consequences of this liquidated damages provision at the time this agreement was made. Buyer and Seller agree that this is a bona fide liquidated damages provision and not a penalty or forfeiture provision.

12.2 Seller's Default. In the event Seller shall fail to convey title to Buyer pursuant to this Agreement, Buyer shall in its sole discretion (a) be entitled to seek specific performance of this Agreement or damages at law; or (b) elect to terminate this Agreement and receive a refund of the Deposit, together with any interest earned thereon, in which event neither Buyer nor Seller shall have any further rights or obligations hereunder.

ARTICLE 13. MISCELLANEOUS.

13.1 Survival of Conditions. The covenants, agreements, warranties and representations made by Buyer and Seller herein shall survive the Closing.

13.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors and assigns.

13.3 Assignment. Buyer may not assign its rights under this Agreement.

13.4 Entire Agreement. This Agreement and the Exhibits attached hereto contain the entire agreement between Buyer and Seller and supersede all prior agreements, whether written or oral. The Exhibits attached hereto are hereby incorporated herein by reference as if set forth herein in full. Neither this Agreement nor any of its provisions may be changed, amended, waived or otherwise modified, other than by an agreement in writing duly executed by or on behalf of the party against whom enforcement of any change, amendment, waiver, modification, consent or discharge is sought.

13.5 Time of Essence. Time is of the essence of this Agreement and of each and every term, condition, obligation and provision hereof.

13.6 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.7 Attorneys' Fees. In the event of any action, suit or other proceeding to enforce this Agreement or arising out of the breach of any of its covenants, conditions, agreements or provisions, the prevailing party shall be

entitled to have and recover of and from the other party all of such party's costs and expenses of suit, including attorneys' fees, incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

13.8 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations required under this Agreement or by law by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if personally served, or sent by registered or certified mail, return receipt requested, postage prepaid, or sent by reasonably reliable courier service providing overnight or sooner delivery, postage prepaid, and addressed as follows:

To Buyer: Town of Southwest Ranches
6589 S. W. 160 Avenue
Southwest Ranches, FL 33331
Attn: John Canada

With Copy To: Carol Capri Kalliche, Attorney at Law
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, Florida 33312

To Seller: B.J. Binns Plants & Trees, Inc.
Mr. Robert Binns
2861 N. E. 28 St.
Fort Lauderdale, Florida 33306

With Copy To: John E. Aurelius, Esq.
JOHN E. AURELIUS, P.A.
4367 North Federal Highway, Suite 101
Fort Lauderdale, FL 33308

To Escrow Agent: Becker & Poliakoff, P.A.
3111 Stirling Road
Ft. Lauderdale, FL 33312-6525
Attn: Carol Capri Kalliche, Esquire

The effective date of delivery of any such notice or other item shall be: a) the date of personal service; b) the delivery date on the return receipt; or c) the day of deposit, postage prepaid, with a reasonably reliable courier service providing overnight or sooner delivery, whichever is applicable. The parties may designate any other address for the service of notices by furnishing same in accordance with this Paragraph.

13.10 Invalid Provisions. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, unenforceable or illegal in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth. In the event the Loan to Buyer is not permitted by any authority, this Agreement at Buyer's option shall be null and void and the Deposit shall be returned to Buyer.

13.11 No Waiver. The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement and shall not be considered a waiver of any other covenant, condition or promise. The waiver shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any remedy provided by law, and the provisions in this Agreement for any remedy shall not exclude any other remedy unless such remedy is expressly excluded.

13.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

13.13 Further Assurance. Each party agrees to cooperate with the other party and to execute such additional instruments and documents as may be reasonably necessary or proper in order to carry out the provisions of this Agreement.

13.14 Saturdays, Sundays, Holidays. If any date or time period specified herein shall be on or expire on a day which is a Saturday, Sunday or day which is widely recognized as a legal holiday in the state in which the Property is located, such date or time period shall be deemed to be or extend to the next immediately following business day.

13.15 Acceptance. This Agreement shall not be binding or enforceable against either party until fully executed by both parties.

13.16 Escrow Agent. Escrow Agent shall act as Escrow Agent and has executed this Agreement solely for the purpose of signifying its agreement to act as escrow agent under the terms of this Agreement. Escrow Agent is not a party to this Agreement. Escrow Agent's duties, obligations and liabilities hereunder are solely limited to the functions as required of it as Escrow Agent to receive and disburse funds as required under this Agreement. In the event of doubt as to Escrow Agent's duties or liabilities under this Agreement, Escrow Agent may, in Escrow Agent's sole discretion, continue to hold the subject matter of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto or Escrow Agent may deposit same with the Clerk of the Circuit Court having jurisdiction of the dispute, and upon notifying the parties concerned of such action, all liability on the part of Escrow Agent shall fully terminate, except to the extent of accounting for any items theretofore delivered out of escrow. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the subject matter of this escrow, Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs including reasonable attorneys' fees and cost for post judgment proceedings, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that Escrow Agent shall not be liable to any party or person whomsoever for mis-delivery to Seller or Buyer of items subject to this escrow, unless such mis-delivery shall be due to willful breach of this Agreement or gross negligence on the part of Escrow Agent. Buyer agrees that Escrow Agent may represent itself and may also represent Buyer with respect to this transaction and matters arising out of this transaction. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection from any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or error of judgment, or for any acts or omissions of any kind unless caused by its willfulness conduct or gross negligence, and Buyer and Seller agree to indemnify and hold the Escrow Agent harmless from any claims, demands, causes of action, liability, damages or judgments, including the cost of defending any action against it, together with any reasonable attorneys' fees incurred therewith, in connection with Escrow Agent's undertaking pursuant to the terms and conditions of the Agreement, unless such act or omission is a result of the willfulness conduct or gross negligence of the Escrow Agent. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertions contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions of this Agreement have been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it; the sufficiency of the title to the property to be conveyed; nor as to the identity, authority, or rights of any persons executing same. The duties of the Escrow Agent shall be limited to the safekeeping of the deposits and to disbursements of same in accordance with the written instructions described above. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Upon the Escrow Agent's disbursing the deposit in accordance with the provisions hereof, the Escrow shall terminate as regards this Agreement, and Escrow Agent shall thereafter be released of all liability hereunder in connection therewith.

13.17 Not Recordable. This Agreement shall not be recorded in the Public Records. Recording of same shall constitute a default by the recording party.

ARTICLE 14. SPECIAL PROVISIONS.

14.1 Indemnification. Sellers agree to save, indemnify and hold harmless Buyer, its officers, directors, employees, agents and managers, against any and all claims, demands, losses, costs, expenses, settlements, damages, attorney's fees and costs which arise out of or result from Seller's operation of the Property prior to the Closing Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ATTEST:

By: Shari Canada
Shari Canada, Town Clerk

BUYER:
TOWN OF SOUTHWEST RANCHES,
a political subdivision of the State of Florida

By: John Canada
Name John Canada, Town Administrator
Executed this 9 day of September, 2004.

Approved for legal form and sufficiency:

Carol Capri Kallich
Carol Capri Kalliche, Deputy Town Attorney

MAYOR:

Mecca Fink
Mecca Fink

SELLER:
B.J. BINNS PLANTS & TREES, INC.,
a Florida corporation

By: Karen Sue Parker
President, President
Executed this 14 day of Sept, 2004.

The escrow instructions set forth above are hereby acknowledged and accepted by:

BECKER & POLIAKOFF, P.A., as Escrow Agent:

By: Carol Capri Kallich
Date: This 22nd day of Sept., 2004

Exhibit "A"
Legal Description

All that portion of Tracts 52 that lies South of the South right-of-way line of the New River Canal, together with all of Tract 61 in Section 25, Township 50 South, Range 39 East, according to the Plat of THE EVERGLADES LAND COMPANY'S SUBDIVISION OF SECTION 36 & SOUTH HALF OF SECTION 25, TOWNSHIP 50 SOUTH, RANGE 39 EAST, as recorded in Plat Book 1, Page 63 of the Public Records of Dade County, Florida, said property being and situate in Broward County, Florida.

less and accepting therefrom the following described property:

A portion of Tract 52, EVERGLADES LAND COMPANY'S SUBDIVISION, being more particularly described as follows: Commence at the SE corner of said Section 25; thence North 00°07'32" West along the East line of said Section 25 for 1156.60 feet; thence South 88°56'04" West along the South right-of-way line of the C-11 canal for 1992.08 feet to the point of beginning; thence South 00°34'35" East for 26.19 feet; thence North 88°56'04" West for 179.42 feet; thence North 01°52'01" West for 17.00 feet, thence North 88°07'59" East along the South right-of-way line of the C-11 canal for 179.78 feet to the point of beginning and containing 0.089 acres more or less.

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EXHIBIT "B"

1. 8,650 field grown trees.
2. 2,200 container-grown trees, as same are on the subject property in 30-gallon containers.
3. Greenhouse frame.
4. Pump house with irrigation pump and irrigation system.
5. 3 metal storage containers.
6. 1 three-bedroom mobile home.
7. 2 office trailers.
8. 1 Ted shed.

All items as set forth on this inventory are being sold "as is – where is", without any warranty or representation of the Seller either express or implied, with respect to the Property (and any personal property) regarding its condition, habitability, merchantability, value, profitability, or its fitness for a particular purpose.