

## AGREEMENT OF SALE

THIS AGREEMENT, is made by and between:

**Key Ventures, LLC a Delaware Limited Liability Company, and Delaware Land Ventures, LLC** (hereinafter referred to as "Seller")

AND

**Town of Milton,** (hereinafter referred to as "Purchaser").

### W I T N E S S E T H

**1. Property.** Seller hereby agrees to sell, transfer and convey unto Purchaser, and Purchaser hereby agrees to purchase from Seller for the consideration and upon the terms and conditions hereinafter set forth, the real property consisting of 20 Acres at the southerly end of Seller property to be subdivided from Sellers larger property which is located on the south easterly intersection of Cave Neck Road and Sam Lucas Road and the Town of Milton and being part of Tax Parcel 2-35 21.00 44.00 Broadkill Hundred, Sussex County, Delaware, the general location of which is shown on the attached plot. (hereinafter sometimes referred to as the "Property")

**2. Purchase Price.** The purchase price is the sum of Ten Dollars (\$10.00), payable as follows:

a. Simultaneously herewith, Purchaser shall deliver to Seller, an initial deposit of One Dollars (\$1.00).

b. At settlement, Purchaser shall pay to Seller the sum of Ten Dollars (\$10.00), less the payments made under paragraph "a", which payments shall be credited to the purchase price as a deposit. This net amount shall be paid to Seller in cash or by certified or cashier check acceptable to Seller directly from Purchaser.

**3. Settlement.** Settlement shall occur thirty (30) days following the completion of all contingencies or sooner so long as Seller has obtained final site plan approval for its Intended Use (as defined in Paragraph 8) and is satisfied that all other approvals necessary to develop the balance of Sellers property will be irrevocably forthcoming, but not later than May 1, 2007, unless mutually extended in writing by both Seller and Purchaser.

**4. Transfer Taxes; Pro-Rated Charge.** Applicable transfer taxes, which are currently three percent (3%), shall be paid one-half by Purchaser and one-half by Seller. Taxes, water, sewer, and any other lienable charge imposed by the State of Delaware, Sussex County, the Town

of Milton or other political subdivision of the State of Delaware shall be pro-rated at the time of settlement. All other cost of settlement including but not limited to deed preparation, survey costs and title insurance premiums shall be paid by Purchaser.

**5. Possession of the Property and Risk of Loss.** Subject to Paragraph 8, possession of the property shall be delivered by Seller to Purchaser at the time of final settlement and the risk of loss shall remain on the Seller until that time.

**6. Title.** Seller shall deliver good, marketable, fee simple title, insurable for both owners and lenders coverage at regular rates by a reputable title insurer duly licensed to issue title insurance in the State of Delaware, free and clear of all liens and encumbrances, except as specified herein and except as to use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood of which the property is located, and publicly recorded easements for public utilities or any other easement which may be observed by an inspection of the property but which do not interfere with the Purchaser's Intended Use. If Seller is unable to deliver such title, Purchaser shall have the option of taking such title as the Seller can deliver or of being repaid all monies paid by Purchaser on account of the Purchase price, as their sole and exclusive remedy, and this Agreement shall become null and void.

**7. Contingencies.** Purchasers Intended Use of the property being purchased herein is for construction of a sewer plant to provide sewer service to the Town of Milton, Delaware and to the remainder of Sellers property as shown on Exhibit "A". The Intended Use of the remainder of Seller's property, on which this Agreement of Sale is contingent, is the development thereof as a residential development of no less than three hundred ninety (390) home sites, said use being heretofore and hereinafter referred to as Sellers Intended Use. Based upon initial investigation, the Purchaser and Seller believe the remaining property will support more than three hundred ninety (390) home sites. Purchaser and Seller will use their best efforts to take the necessary steps to gain all necessary permits and approvals and hereby agree to accept a preliminary site plan, as the basis to more forward to gain such permits and approvals. Sellers obligation to proceed to settlement shall be subject to the following conditions precedent. Upon the failure (as determined by Seller) of any such condition precedent, Seller shall have the option of waiving same and proceeding to settlement or of declaring this contract null and void. Both Seller and Purchaser shall, after the execution of this Agreement, and at all times thereafter, diligently and in good faith, proceed with attempting to fulfill the conditions precedent so that settlement may be achieved. The conditions precedent to this Agreement are as follows, to wit:

a. The land to be acquired by the Purchaser will be 20 acres generally located at the southerly end of said property, with access from Sam Lucas Road, the exact 20 acres to be agreed upon between the Seller and the Purchaser.

b. The Seller shall give or gift the 20 acres to the Town of Milton.

c. The Seller and Purchaser shall agree upon the location of the sewer plant structures on the 20 acre site and the method of buffering the sewer plant and equipment that shall be employed by the Buyer to protect the remaining property of Seller.

d. Seller and Purchaser acknowledge that the property to be sold is encumbered by two mortgages totaling approximately \$3.26 million, which will have to be released by the lenders in order for the Purchaser to acquire title to the property free of liens and encumbrances, and therefore the Town shall annex the entire 86+ acres and credit and/or waive all annexation fees for the annexed property to Seller, to be used to pay those release fees, if any, or any other development fees or costs, so that the Seller does not have to come out of pocket in order to give or gift the property to the Purchaser. Seller shall make reasonable attempts to obtain the amount of the required release fees from both lenders within sixty (60) days of the date of this agreement in order to confirm the Seller's ability to obtain a release fee from each which is satisfactory to Seller. If Seller is unable to obtain such satisfactory release fees Seller shall so notify Purchaser, and this agreement shall become null and void and Purchaser's deposit shall be refunded to Purchaser as Purchaser's sole and exclusive remedy.

e. The Town will annex all of the property being sold and all of Seller's remaining property, and will zone Seller's remaining property LPD, or with some other zoning classification agreed upon by the Seller and the Town of Milton, which will permit the balance of the 86+ acre property to be developed in a manner which will permit the construction and sale of residential property and/or residential units at the rate of six (6) units per acre, which residential property and/or units may be made up of a combination of single-family units, duplexes, multi-family units, townhouses and/or condominiums, as well as any other uses, if any, which other uses both the Seller and the Purchaser agree would be beneficial to the Town of Milton, the site plan to be agreed upon between the Seller and the Town, with the attached exhibit "A" being generally acceptable to Purchaser and Seller. The zoning classification and the physical condition of Seller's remaining property must allow said property to be developed at the rate of six (6) units per acre based on the entire 66+ acres, ie., 396+ units, without any deduction for streets, common areas, wetlands, ponds or any other use, or condition. The Purchaser will provide sewer and water service to the balance of Seller's land, not being given or gifted to the Purchaser, for use as a sewer plant, at the rate of six (6) units per acre and shall reserve that capacity for sewer and water for the sole use of the Seller or its successors and assigns for the balance of Seller's land. Seller shall pay all sewer and water impact fees and all hookup fees at the same cost and in the same manner as provided for all other residents or property owners of the Town of Milton, which the Purchaser agrees is at the time of issuance of building permits for the structure or structures to be served. Those reserved sewer and water hookups shall be available for use by Seller at a rate that Seller so chooses.

f. It is anticipated that the sewer plant will be built and online within two (2) years from the date of this Agreement

g. The Purchaser also agrees to serve the six (6) individual lots owned by Seller which are contiguous to the property to be annexed and which front on Cave Neck Road, with sewer and water hook ups, should Purchaser so request.

h. The Purchaser agrees that the zoning classification and the use of the property, as contemplated herein, do not conflict with the Comprehensive Plan of the Town of Milton and agree to active support Purchaser's efforts to gain annexation and subdivision approval as set forth herein.

i. The Purchaser agrees to give an easement back to Seller and their successors and assigns, if necessary in the sole discretion of Seller, to use any portion of the property being sold hereunder, which does not interfere with Purchaser's use of the property as a sewer plant, for the purpose of a shared water retention pond or ponds to satisfy the drainage needs of Seller's adjacent property.

j. The Purchaser agrees to cooperate with the Seller and the State of Delaware, and its agencies and Sussex County, in promoting the anticipated use of the balance of Seller's land at the PLUS review and otherwise and to provide, for purpose of that review, a survey of Town of Milton utilities that show that the Town can now, or at the time the new sewer plant contemplates herein comes on line, provide the balance of the Seller's land with sufficient sewer, water and other utility services to support the anticipated project.

k. The annexation, zoning and subdivision shall be completed simultaneously and shall be contingent one upon the other so the Seller and the Purchaser shall both agree as to the final development plan for the balance of Seller's property to be annexed into the Town of Milton prior to settlement hereunder.

l. The Town shall pass such ordinances and charter changes and obtain such approvals as are necessary in order to perform the items necessary to meet all of the above contingencies and conditions precedent

8. **Possession Prior to Settlement.** Purchaser shall have possession of the subject lands and premises on the date of actual settlement; expressly provided however, Purchaser may enter the property early to conduct whatever engineering and similar studies that must be done in order to achieve Purchaser's Intended Use and to achieve actual settlement. Purchaser agrees to return the land to its normal state to the extent that the same is in any way disrupted by such early entry for such engineering and testing. If Seller farms the land or leases the land to others to farm, Seller shall make arrangements that Purchaser may so enter early for said engineering and

testing; and further, Seller shall arrange that any lease shall terminate on or before the date of actual settlement. Risk of loss shall remain with Seller until actual settlement. In the event of condemnation prior to settlement of all of the lands herein to be sold to Purchaser's as well as the remaining land of Seller or of so much of the lands so as to unreasonably interfere with Purchaser's Intended Use or Seller Intended Use, then Purchaser and Seller will both try to agree to the waiving of said lands condemned for a proportionate receipt of the condemnation proceeds; or if they can not agree, of declaring this contract null and void by either Purchaser or Seller, in which case Purchaser shall receive back all monies paid by Purchaser unto Seller on account of the purchase price, as Purchaser's sole and exclusive remedy and Seller shall receive the full condemnation award. In the event of a partial condemnation of the premises and/or Seller's additional land of a degree that will not unreasonably interfere with Purchaser's Intended Use or Seller's Intended Use, then the amount of money realized in said condemnation shall be granted to the Seller and the parties shall proceed to settlement but only if Seller is satisfied with the condemnation award.

**9. Purchaser's Default.** If Purchaser shall, for some reason not excused hereunder, fail or refuse to perform its obligations to Seller, and Seller shall not also be in default, all monies paid hereunder by Purchaser on account of the purchase price may be retained by Seller as liquidated damages, whereupon, all rights and obligations hereunder shall cease and terminate, or Seller may elect to pursue such other and further remedies, including but not limited to a suit for damages or to enforce the payments of the full appraised value of the property, which may be available to Seller either at law or in equity.

**10. Seller's Default.** If Seller shall, for some reason not excused hereunder, fail or refuse to perform his obligation to Purchaser, and Purchaser shall not also be in default, Purchaser shall have all monies paid hereunder on account of the Purchase Price, refunded forthwith, as Purchaser's sole and exclusive remedy whereupon all rights and obligations hereunder shall cease and determine.

**11. Seller's Representations and Warranties.** To induce Purchaser to enter into this contract, Seller represents and warrants to Purchaser as follows, each and all of which representations and warranties shall be true and correct as of the date hereof and as of the date of settlement, as herein defined, unless otherwise specified below:

a. Seller has no knowledge of any pending or threatened condemnation or similar proceeding affecting the property or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.

b. Seller has no knowledge, information or belief of any litigation, governmental proceeding, judgment, cause of action, special assessment, or charges pending, threatened against, or related to the property or any portion thereof, or the Seller, with respect to the property or any portion thereof.

c. To the best of Seller's knowledge, information, and belief, the property is free of hazardous waste and toxic substance contamination, and Seller has never used, or permitted others to use, the property or any portion thereof for the storage or disposal of any oil, hazardous waste, or other toxic substance.

d. To the best of Seller's knowledge, information, and belief, the property has not been used for military or industrial use.

e. There are no persons with any rights to occupy or use the property as tenant other than the current year to year farm lessee whose lease may be terminated by giving the farm tenant the required statutory notice.

f. Each and all of the above representations and warranties shall be true and correct as of the date hereof and as of the date of settlement, as herein defined, but shall not survive settlement.

**12. Use of Gender and Number.** The singular of any word may denote two or more, the plural one alone, and the words of one gender may denote another gender whenever appropriate under the actual circumstances.

**13. Succession.** This Agreement shall benefit and bind the parties hereto, their respective, successors and assigns.

**14. Assignment.** This Agreement may not be assigned by Purchaser, without the consent, in writing, of Seller.

**15. Entire Understanding of the Parties.** This Agreement constitutes the entire agreement and understanding between the parties hereto relating to the sale and purchase of the property and it supersedes all prior or other agreements and representations in connection with the sale and purchase of the property. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the \_\_\_\_ day of September, A.D. 2006.

PURCHASER:

Town of Milton, Delaware  
Milton Town Council

*[Signature]*  
Witness

By: *[Signature]* (SEAL)  
Mayor

Sellers hereby approve, accept and are bound by the above Agreement this \_\_\_\_ day of \_\_\_\_\_, A.D. 2006.

Delaware Land Ventures, LLC

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(SEAL)

EI Number: \_\_\_\_\_

Key Ventures, LLC

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(SEAL)  
Authorized Member

EI Number: \_\_\_\_\_

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the \_\_\_\_ day of September, A.D. 2006.

PURCHASER:

Town of Milton, Delaware  
Milton Town Council

\_\_\_\_\_  
Witness

By: Don Post (SEAL)  
Mayor

Sellers hereby approve, accept and are bound by the above Agreement this 18<sup>th</sup> day of October, A.D. 2006.

[Signature]  
Witness

EI Number: \_\_\_\_\_

Delaware Land Ventures, LLC

[Signature] (SEAL)

[Signature]  
Witness

EI Number: \_\_\_\_\_

Key Ventures, LLC

[Signature] (SEAL)  
Authorized Member