

2250 East Devon Avenue, Suite 239
Des Plaines, Illinois 60018
708-635-0400

1991 NOV 12 PM 12:48

91593154

\$19'

REAL ESTATE CONTRACT

75882625

1. THOMAS E. DVORAK and KAREN ANCIULIS (Purchasers), agree to purchase and AMERICA FINANCIAL GROUP INC. A/K/A AFG MORTGAGE CORP., BRIARS OF BRITTANY and AFG DEVELOPMENT COMPANY. Seller agrees to sell at a purchase price of ~~\$170,000.00~~ ^{*340,000 -} upon the terms set forth herein the single family residential lot legally described in Exhibit "A" and having approximate lot dimensions of 165.61 ft. X 85.00 ft. X 152.84 ft. X 77.91 ft., which said property is commonly known as Lot # 2 located in McDonald Creek Subdivision (Now known as Briars of Brittany) on Brittany Court, in Arlington Heights, Illinois.

2. Seller agrees to cause the construction upon the said property a new Single Family Dwelling in accordance with Plan 88 and in accordance with the specifications noted thereon as supplemented by the specifications attached hereto as Exhibit A.

3. The above stated purchase price shall be paid by the Purchaser as follows:

- (A) ~~\$37,000.00~~ ^{*340,000 -} shall be paid to the Seller concurrently with the execution of this agreement, to be applied on said purchase when consummated.
- (B) Seller to submit monthly contractors statements to Purchaser with the Purchase having the option to either pay the amount requested on each statement within five (5) working days of statement date or delay each monthly payment until closing.
- (C) The total balance of the purchase price shall be paid to the Seller on the house closing date, provided that the residence shall have been substantially completed and approved for occupancy by the Village of Arlington Heights.

4. The above-stated purchase price included the base price for said residence and lot and all of the items contained in the plans and specifications. Seller agrees to provide all materials, labor and to do everything required of the Seller by this agreement. Notwithstanding any other provisions herein contained to the contrary, in the event the Seller shall at any time or from time to time be unable to obtain certain materials or supplies, the Seller shall have the final unilateral right to substitute other materials or supplies of equal or superior quality and utility, as determined by Seller in the exercise of its sole discretion. Furthermore, the Seller expressly reserves the right to deviate from or alter the plans and/or specifications if reasonable in the Seller's sole discretion provided, however, that no change shall be made in the plans or specifications which will materially reduce the value of the residence.

- 10% at contract
- 10% at foundation
- 10% under roof

new directions in mortgage financing and investment

91593154

BOX 15

5. Seller agrees that all materials to be used will be new and of high quality. Seller further agrees that the work shall be completed in a neat, good and workmanlike manner, and that the residence will comply with all applicable zoning and building laws and ordinances.
6. Seller agrees to convey to Purchaser title to the property (in joint tenancy, unless otherwise requested by Purchaser) by a recordable Trustee's Deed, with release of homestead rights and proper bill of sale, such bill of sale to cover all items of personal property included in the residence, subject to building lines, covenants, conditions and restrictions of record, public utility easements and roads and highways, if any, general real estate taxes not yet due and payable as of the date of closing and subsequent years, applicable building and zoning laws and ordinances and any acts done or suffered by or judgments against Purchaser or anyone claiming by, through or under Purchaser.
7. The time of closing shall be the time designated by the Seller in a written notice to Purchaser, furnished either personally or by certified mail at least ten (10) days prior to such designated closing date. The sale shall be closed through a deed and money escrow at the Ticor Title Insurance Company, located at Schaumburg, Illinois in accordance with the general provisions of the Usual Builders and Developers escrow agreement then in use by the Ticor Title Insurance Company, with such special provisions of this agreement. The cost of such escrow shall be borne by the Purchaser and Purchaser agrees to fully cooperate with the Seller and to cause the creation of such escrow at least (10) days prior to the intended closing date. Purchaser agrees to cause the execution and delivery of all closing papers pertaining to or required of Purchaser at least five (5) days prior to the closing date. The closing shall occur through a Lender's Agency Escrow (at the Purchaser's expense) with said escrowee; but in no event shall the closing be delayed by Purchaser beyond the designated closing date.
8. Seller agrees that the residence will be substantially completed and habitable on or before the closing and said residence shall be approved for occupancy by the applicable Governmental Authority on or prior to the date of closing. Seller shall have no liability whatever for any delay caused by or resulting in and from inclement weather, strikes, or material shortages, an act of war, riot, insurrection or any act of civil disobedience, fire or other casualty, modifications, changes, deletions or extras requested by Purchaser, any act of interference, hindrance, harassment or delay on the part of the Purchaser, or in the event of the failure of the Purchaser to pay any sums of money as and when herein above required, or any other cause or delay which is in fact beyond the control of the Seller or

91003154

without fault on the part of Seller. Failure of completion of patios, landscaping, walks and driveways (if required under the plans or specifications) prior to closing shall not constitute a default hereunder nor excuse the Purchaser from closing the purchase; provided, however, that the Seller's obligation to provide patios, landscaping, walks and driveways (if required under the plans or specifications) shall continue to survive the closing and be completed at Seller's expense as soon as reasonably practical. The issuance of the Certificate of Occupancy shall be deemed conclusive evidence that said residence has been substantially completed and is habitable.

9. If this contract is terminated without Purchaser's fault, the sole right and remedy of the Purchaser shall be the rescission of this agreement and the return to Purchaser of all monies paid by the Purchaser. In the event, however, that the Purchaser shall fail or refuse to perform any of the obligations of the Purchaser under this agreement, or fail to create and fund the escrow as hereinabove provided, then, upon ten (10) days written notice to the Purchaser, all monies heretofore paid by the Purchaser shall be retained by the Seller as liquidated damages, and this agreement shall thereupon become null and void forthwith, without any further action. In the event that the sale is scheduled to be closed but the closing is delayed as a result of the Purchaser's failure to pay any monies as and when required hereunder or for any other default of Purchaser, then the Purchaser agrees to pay to Seller, at closing, in consideration of Seller's forbearance and consent to such delayed closing, as additional purchase price, a sum equal to \$100.00 per day from the date of the issuance of the Certificate of Occupancy to the date of closing.

10. Purchaser shall have his choice of color selections (unless already installed or completed in the residence at the time of execution of this agreement) with regard to all surfaces to be painted, brick, roof shingles, tile, countertops and cabinets; provided, however, that Purchaser shall designate color choices and make such selections within ten (10) days after Seller shall initially request such determination. All such color selections and any other option available to the Purchaser hereunder shall be limited to selections from samples or charts to be made available to Seller. Purchaser will not be permitted to select the same brick, exterior paint color or exterior roof color as may exist or have been selected with respect to any other home previously contracted for on any adjacent lot.

11. It is expressly understood and agreed that no changes, alterations, modifications, deletions or extras need be provided nor supplied by Seller unless the same shall have been expressly

91503154

authorized by the Purchaser and approved by Seller in a separate written instrument signed by the Purchaser and the duly authorized agent of Seller, and such written instrument specifically sets forth the nature and amount of the additional cost or credit therefore and expressly provides for the manner and time of payment with respect thereto. Payments for all extras must be paid within three (3) days of written acceptance by Seller.

12. This contract is subject to the following conditions and stipulations:

(a) Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent prior to the time of closing or through the escrow, a title commitment for an Owner's Title Insurance Policy issued by the Tior Title Insurance Company in the amount of the Purchase price, covering title to the real estate on or after the date hereof, showing title in the grantor subject only to (i) the general exceptions contained in the Policy; (ii) the title exceptions set forth in Paragraph 6 above, and (iii) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which the Seller may so remove at that time by using the funds to be paid upon the delivery of the deed (all of which are herein referred to as the permitted exceptions). The title commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated. Said title commitment shall be an ALTA residential form and shall guarantee the Purchaser against any unrecorded mechanic lien claims.

(b) If the title commitment discloses unpermitted exceptions, Seller shall have thirty (30) days from the date of delivery thereof to have the exceptions removed from the commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions. If seller fails to have the exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, Purchaser may terminate this contract or may elect, upon notice to the Seller within ten (10) days after the expiration of the 30-day period, to take title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount. If the Purchaser does not so elect, this contract shall become null and void without further actions of the parties, and all monies heretofore paid by the Purchaser shall be returned to the Purchaser. Seller shall not be deemed in default if the title company shall waive, insure over or issue an endorsement thereby protecting the Purchaser with respect to any otherwise unpermitted lien, encumbrances or title matter.

(c) Water and other utility charges, fuels, general real estate taxes and other similar items shall be adjusted ratably as of the time

of closing. General real estate taxes shall be prorated on the basis of the last ascertainable tax bill. Seller shall pay the amount of any stamp tax imposed by the State and County Laws on the transfer of the title, and shall furnish complete Real Estate Transfer Declarations signed by the Seller or the Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

(d) The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this contract.

(e) Seller agrees to provide Purchaser, at closing, with a "Location Survey" showing the residence upon the above-mentioned lot.

(f) Time is of the essence of this contract.

(g) All notices herein required shall be in writing and shall be served on the parties at the addresses following their signatures. All notices shall be registered or certified mail, return receipt requested.

(h) Purchaser and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Settlement Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosures when asked, such failure shall be considered to be a breach on the part of said party.

(i) Purchaser hereby represent to the Seller that it has had no dealing with respect to the above described property with any real estate broker or real estate sales person.

(j) Purchaser shall not assign or transfer this agreement or any of the Purchaser's rights hereunder without the prior written consent of the Seller and any attempted assignment or transfer contrary to the provisions hereof shall be void for all purposes.

(k) Purchaser shall have no right to possession for any purpose prior to the closing, and prior thereto the property shall be under the sole control and exclusive possession of the Seller. Purchaser acknowledges that if he or any member of his family or any of his invited guests or friends shall enter the premises prior to closing, it shall be solely at the risk of the Purchaser and without the Seller's consent, and Purchaser hereby releases the Seller and its agents and agrees to hold the Seller harmless and indemnify it from any claim for injury or damage to the person or property of the Purchaser or any person that Purchaser may bring into the property or permit to enter the property.

(l) Seller does hereby agree that it will clean all yards of debris and that the residence will be "broom swept" at or prior to the time of closing.

91333154

(m) The Seller expressly reserves the right to obtain construction loan financing at any time prior to closing, in which event it is understood and agreed that such construction loan must be paid and discharged at or prior to closing (but Seller reserves the right to use a portion of the balance of the purchase price in order to accomplish such discharge and the obtaining of an appropriate release deed with respect thereto).

13. Illinois Law provides that every contract for the construction of a new home, as here, carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. This Law further provides that this Implied Warranty does not have to be in writing to be a part of the contract and it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defects in workmanship which may not easily be seen by the Purchaser. However, the Law also provides that Seller-Builder and Purchaser may agree in writing, as here, that this Implied Warranty is not included as a part of their particular contract.

(a) **WARRANTY DISCLAIMER** - The Seller hereby disclaims and the Purchaser hereby waives the Implied Warranty of Habitability described in Paragraph 13 above and they acknowledge, understand and agree that it is not a part of the contract.

(b) **LIMITED WARRANTY** - Attached hereto as Exhibit B and expressly incorporated herein is a Limited Warranty which sets forth the only warranties imposed upon and burdening the Seller. It is expressly understood and agreed that said Limited Warranty is the only warranty with respect to the said property and the residence thereon and that no other warranties of any kind either expressed or implied shall apply. The Purchaser accepts the Limited Warranty as a substitution for the Implied Warranty of Habitability described in Paragraph 13 above.

(c) **EFFECT AND CONSEQUENCES OF THIS WAIVER DISCLAIMER** - Purchaser acknowledges and understands that if a dispute arises with Seller and one dispute results in a lawsuit, Purchaser will not be able to rely on the Implied Warranty of Habitability described in Paragraph 13 above as a basis for suing the Seller or as the basis for a defense if Seller sues the Purchaser. Purchaser may, however, rely on the Limited Warranty referred to above.

14. The Seller hereby reserves the right to display signs upon the property at any time prior to the date of closing. The Purchaser shall, forthwith upon the request of the Seller, furnish the Seller with reasonable evidence of his ability to pay all sums of money as and when due hereunder, and the failure or delay of the Purchaser in furnishing said reasonable evidence shall justify a delay by Seller in either the commencement or the completion of the residence.

15. The Seller is and for all purposes shall be and remain an independent contractor and shall not for any purpose be construed to be a principal or agent of the Purchaser. The Seller shall have exclusive control over the manner and means of its performance under this contract, and the Seller may either act as a subcontractor or subcontract to any other firm, entity or individual any part of the work or construction relative to the construction of said residence.

16. It is expressly acknowledged and agreed that it is not the obligation or responsibility of the Seller to assure that the plans and specifications furnished or provided by the Purchaser will comply with applicable ordinances, statues, codes and regulations including, but not limited to, any zoning and building laws. If the Seller shall determine that the plans or specifications violate any ordinance, statue, codes or any regulation, including, but not limited, to any zoning and building laws, the parties agree that the necessary changes shall promptly be made to comply with such laws and regulations, evidenced by an appropriate written change order. The cost of any such change shall be deemed an authorized extra and shall be payable by Purchaser within three (3) days of the written acceptance by Seller.

This agreement constitutes the entire agreement between the parties. No representations, warranties, guarantees, undertakings or promises, whether written or oral, whether expressed or implied have been made by either Seller or Purchaser, unless and to the extent expressly stated herein. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at America Financial Group, Inc., Suite #239, 2250 East Devon Avenue, Des Plaines, Illinois this 7th day of June 1991.

SELLER:

PURCHASER:

BY Allen T. Hayes
Allen T. Hayes

NAME Thomas E. Dvorak

1611 Bow Trail, Wheeling, IL 60090

ADDRESS

Karen Anciolis

Tara Grunstein

9150315

6/9/91
home s.f. 3140
(Livable)

[Handwritten signature]

UNOFFICIAL COPY

9 1 3 9 3 1 5 4

EXHIBIT "A"

LOT 2 IN THE BRIARS OF BRITTANY, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 8. TOWNSHIP 42 NORTH. RANGE 11. EAST OF THE THIRD PRINCIPAL MERIDIAN. ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 11, 1990 AS DOCUMENT NUMBER 90-591,188. IN COOK COUNTY, ILLINOIS.

PI # 03-08-303-033
↓ ↓ ↓ 034

This instrument prepared by & mailed to
Robert F. Boyko
Attorney at Law
504 N. Milwaukee Ave Suite 2H
Libertyville IL 60048

91393154