

This document prepared by

Lee County

County Lands Department

Project: Natural Resources Lab

STRAP No.: 02-45-24-P4-02700.0070

AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

This Amendment to the Agreement for Purchase and Sale of Real Estate ("Amendment"), entered into this _____ day of _____, 2023 (the "Effective Date"), by and between:

LEE COUNTY, a political subdivision of the State of Florida (hereinafter, "County"), whose address for purposes of this Amendment is c/o Department of County Lands Director, Box 398, Fort Myers, FL 33902-0398; and **Bushwood Land Development, LLC**, a Florida limited liability company (hereinafter, "Bushwood"), whose address for purposes of this Amendment 13690 Brynwood Lane, Fort Myers, FL 33912; County and Bushwood being collectively referred to herein as "the Parties".

WHEREAS, the Parties entered into that certain Agreement for Purchase and Sale of Real Estate ("PSA") dated June 20, 2023; and

WHEREAS, the PSA provided for the purchase of certain real property between the County and Bushwood; specifically, Bushwood was to convey to the County approximately 1.2293 acres of land improved with a one-story 12,720 square foot building to be used by the County for governmental purposes; and

WHEREAS, during the due diligence period provided in paragraph 5 of the PSA, Bushwood obtained quotes for repairs to the HVAC systems and roof; and

WHEREAS, during the due diligence period provided in paragraph 8(a) and 18 of the PSA, the tenant of Unit 101 would not enter into a lease agreement with the County; and

WHEREAS, the PSA contains other provisions that have not yet been completed such that the PSA remains a valid, binding, and effective contract between the Parties as of the Effective Date of this Amendment; and

WHEREAS, the Parties desire to alter the terms of an adjustment made to the Purchase Price proceeds in favor of County for the HVAC and roof; and

WHEREAS, the Parties desire to alter the terms upon which the tenant of Unit 101 must enter into a lease agreement with the County.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and benefits contained in this Amendment, the sufficiency of which is acknowledged by the Parties, the Parties do hereby agree to amend the PSA as follows:

1. **Recitals and Purpose:** The Parties acknowledge that the above recitals are true and correct, and do hereby incorporate those recitals into this Amendment by reference. The purpose of this Amendment is to amend the terms under which the County will accept possession of the property leaving the current lease of tenant of Unit 101 in place.

2. **Terms of Tenant's Instruments:** In lieu of the terms and conditions of paragraph 8(a) of the PSA, the Parties agree that the following language will be substituted in its entirety:

Enter into a Lease Agreement with the COUNTY OR Attorn to the County as its landlord by operation of law, as is required in the existing lease.

3. **Terms of Conveyance:** In lieu of the terms and conditions of paragraph 5 and 18 of the PSA, the Parties agree that the paragraphs will be amended as follows (*Note: Language to be deleted is ~~struck through~~; Language to be added is underlined*):

5. COUNTY'S INSPECTIONS; CONDITION OF PROPERTY; RISK OF LOSS: Within 180 days of the Effective Date and in addition to COUNTY's right to obtain Phase I and Phase II Environmental Site Assessments under Section 12 below, COUNTY may perform or have performed, at COUNTY's expense, environmental, ecological audits, zoning studies, access studies and structural inspection of the Property (the "Inspection Period"). If the audits identify environmental, ecological, zoning, access or structural conditions unacceptable to the COUNTY, COUNTY may elect to terminate this Agreement with written notice to SELLER on or before the expiration of the Inspection Period, and upon such notice, the Agreement shall terminate, and the parties shall have no further obligation thereunder (except as otherwise set forth herein).

COUNTY and its contractors may, at COUNTY's expense, perform whatever other inspections of the Property COUNTY deems appropriate. SELLER will make the Property available at reasonable and mutually agreeable times for the purpose of inspection by COUNTY, its agents, employees, licensed and insured contractors or other qualified, licensed and insured professionals from the Effective Date of this Agreement through the date of Closing. COUNTY may undertake at COUNTY's sole expense, as complete a physical and environmental inspection and investigation of the Property and the premises surrounding the Property as COUNTY deems appropriate in order to determine that the Property is suitable for the development, construction, operation and use of a commercial project (the "Project"), provided, however, that COUNTY, its employees, agents, contractors

and professionals enter the Property and conduct inspections at their own risk.

To the extent permitted by law, COUNTY agrees to be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful acts(s) or omission(s) of any official, employee or agent of COUNTY while acting within the scope of the official's, employee's or agent's office or employment under circumstances under which a private person would be held liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28 Florida Statutes and other applicable law. In the event this transaction does not close, COUNTY shall repair all damage, if any, to the Property resulting from the inspections and return the Property to the condition it was in prior to the inspections.

SELLER and COUNTY acknowledges that the condition of the HVAC systems are unknown. As a condition to Closing in favor of COUNTY, SELLER and COUNTY will each obtain and provide to the COUNTY either a quote to replace any air conditioning systems that are over 10 years old or that contain R-22 refrigerant, and a quote for repairs of any other HVAC systems to bring them into good working condition. An adjustment will be made to the Purchase Price proceeds in favor of COUNTY at the Closing in an amount equal to the quoted cost referenced in this paragraph that is equal to the average of the two quotes.

SELLER acknowledges that the roof of the building located on the Property has sustained certain storm damage. As a condition to Closing in favor of COUNTY, SELLER and COUNTY will each obtain and provide to the COUNTY either a quote to replace the entire roof in like kind within 30 days of the Effective Date, and an adjustment will be made to the Purchase Price proceeds in favor of COUNTY at the Closing in an amount equal to the quoted cost referenced in this paragraph that is equal to the average of the two quotes.

Should any detrimental condition be identified during the Inspection Period, COUNTY will, promptly after receipt, provide SELLER with copies of all inspection reports regarding the physical condition of the Property as generated pursuant to this Section. COUNTY may, at COUNTY's discretion, (i) accept the Property with an appropriate mutually agreed upon reduction to the Purchase Price but only if agreed to by SELLER, (ii) accept the Property in its existing condition with no reduction to the Purchase Price, or (iii) COUNTY may terminate this Agreement without obligation.

SELLER will not make any changes to the condition of the Property or allow any detrimental activity to occur on the Property between the Effective Date and Closing. Risk of loss will be borne by SELLER, and in the event of loss or damage occurring prior to Closing that SELLER does not repair to COUNTY's satisfaction,

COUNTY may (i) accept the damage property and deduct from the Purchase Price the expenses required to repair the damage but only if agreement on amount is reached with SELLER, (ii) accept the Property in its existing condition with no reduction to the Purchase Price, or (iii) terminate this Agreement by written notice to SELLER, whereupon neither party will thereafter have any rights or obligations under this Agreement.

18. POSSESSION: The one-story building located on the Property is composed of three Units (hereinafter referred to as "Unit 101", "Unit 102" and "Unit 103"). Unit 101, as of the Effective Date of this Agreement, is occupied by RACHEL B. DONOVAN, D.M.D. (Tenant 1), Unit 102, as of the Effective Date of this Agreement, is vacant, and Unit 103, as of the Effective Date of this Agreement, is occupied by KELLY BROTHERS, INC, (together the "TENANTS"). COUNTY acknowledges that Unit 101 has a lease that is in effect with a current term ending on April 30, 2027 and two successive 3 year renewal periods; if exercised. COUNTY further acknowledges that Unit 103 has a lease that is in effect with a current term ending on October 31, 2024 and two successive 1 year renewal periods, if exercised. SELLER agrees during the period between the date of SELLER signing this Agreement and the Closing date that SELLER will not extend or change any of the terms of the current lease for Unit 101 or Unit 103 and not enter into a lease for Unit 102. SELLER agrees not to accelerate the rents due or enter into any new lease agreement(s) on any portion of the building. SELLER agrees to provide COUNTY with written notice of the termination of the existing leases with the TENANTS for Unit 101 and Unit 103 at the Closing.

SELLER agrees to allow COUNTY to directly contact the TENANTS, to request TENANTS to enter into a Lease Agreement with the COUNTY. ~~A condition to COUNTY'S obligation to Close hereunder is that TENANTS enter into a Lease Agreement with the COUNTY within 30 days after the Effective Date.~~ Any lease agreement agreed to or executed by COUNTY and TENANT must provide that it is contingent upon, and not effective until, Closing. SELLER will, at Closing, deliver occupancy and possession of Unit 102 free and clear of all personal items and trash from Unit 102 at SELLER's sole expense and will deliver all keys, door openers, access devices and codes, as applicable, to COUNTY for all units.

On the business day prior to the Closing Date, or on the Closing Date prior to the time of Closing, as specified by COUNTY, COUNTY's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property to confirm that all items of SELLER's personal property, and all items of personal property belonging to any former tenant or former occupant of Unit 102 has been removed from the Property as required and to verify that SELLER has maintained the Property as required and has met all other contractual obligations.

SELLER acknowledges that SELLER is in receipt of security deposits for Unit 101 and Unit 103. SELLER agrees to provide an affidavit from the tenants as to the amounts of the security deposits to the COUNTY within 30 days of the Effective Date of this Agreement. SELLER will provide as a credit at Closing the remaining amounts of any security deposits. Further, SELLER will provide copies of all lease agreements, amendments, letters and other correspondence regarding use or operation of the tenants to the COUNTY within 30 days of the Effective Date of this Agreement.

SELLER will provide a listing of all personal property and fixtures located within Unit 101 and Unit 103 to the COUNTY within 30 days of the Effective Date of this Agreement that are to remain with the Property.

4. **Remainder of PSA:** All other terms and conditions of the PSA not expressly modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

Kimberly Fisher
[1st Witness Signature]

Kimberley Fisher
[Type or print name]

William Fisher
[2nd Witness' Signature]

William Fisher
[Type or print name]

Bushwood Land Development, LLC,
a Florida limited liability company

By: Barry Fisher
Barry Fisher, Managing Member

Date: 9/28/23

Approved and accepted for and on behalf of Lee County, Florida, this ____ day
of _____ 2023.

ATTEST:
KEVIN C. KARNES, CLERK
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

By: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
County Attorney's Office