

This document prepared by
Department of County Lands
Project: **Conservation Lands Program, Project 8800**
Parcel: 257-2
STRAP Nos.: 10-44-27-00-00001.0000, 10-44-27-00-00001.0010,
10-44-27-00-00002.0000 and 10-44-27-00-00003.0000

ORIGINAL

BOARD OF COUNTY COMMISSIONERS

LEE COUNTY

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT for purchase and sale of real property is made this _____ day of _____, 201__, by and between **HARMONY ESTATES, LLC**, A Florida Limited Liability Company, whose address is 3695 Olde Cottage Lane, Bonita Springs, FL 34134, hereinafter referred to as SELLER, and **LEE COUNTY**, a political subdivision of the State of Florida, whose address is P.O. Box 398, Fort Myers, FL 33902-0398, hereinafter referred to as BUYER.

WITNESSETH:

1. **AGREEMENT TO PURCHASE AND TO SELL:** SELLER hereby agrees to sell and BUYER hereby agrees to purchase, subject to the terms and conditions hereinafter set forth, all of that certain parcel of land consisting of 624 acres, more or less, and located along Joel Boulevard in Lehigh Acres, Florida and more particularly described in attached "Exhibit A", hereinafter called the "Property". The Property will be acquired for the Conservation Lands Program, Project 8800, hereinafter called the "Project".

2. **PURCHASE PRICE AND TIME OF PAYMENT:** The purchase price ("Purchase Price") will be Three Million Eight Hundred Seventy Three Thousand Three Hundred and 00/100 ----- Dollars (\$3,873,300.00), payable at closing in U.S. currency by official bank check.

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3. **EVIDENCE OF TITLE:** (a) The SELLER will pay for and provide the BUYER with an Owner's title commitment and title insurance in the amount of the Purchase Price, from a title company acceptable to BUYER. The commitment must also show the subject premises has legal and marketable access to the County right-of-way system. This title commitment must be accompanied by one copy of all documents constituting exceptions to the commitment and, may be subject only to real estate taxes for the current year, zoning, use restrictions imposed by governmental authority, deed restrictions and easements acceptable to BUYER, as determined by BUYER.

(b) BUYER will have a reasonable time to examine the title documents provided with the commitment. If title commitment includes items that are unacceptable to the BUYER or indicative of a title defect, BUYER will notify SELLER in writing as to the items that must be addressed by SELLER. SELLER will make a prompt and diligent effort to correct defects and eliminate unacceptable title commitment provisions. If SELLER fails to make corrections within 60 days after notice, BUYER may elect to accept the Property in its existing condition with an appropriate reduction to the Purchase Price, or may terminate this Agreement without obligation.

4. **OIL, GAS AND MINERAL RIGHTS:** BUYER intends to purchase this property as part of the Conservation Lands Program Project. The purpose of this project is preservation and conservation of environmentally sensitive and desirable property. The existence of severed oil, gas and mineral rights conflicts with the BUYER's purpose. Therefore, BUYER will deem the existence of oil, gas and mineral rights or leases in a third party as a title defect.

SELLER agrees to obtain separate releases for each oil, gas and mineral rights lease or interest. In the alternative, SELLER agrees to provide a title commitment and owner's title insurance policy that does not list the separate oil, gas and mineral rights or leases as an exception.

If SELLER fails to have the separate rights or leases released of record, or if the title commitment and owner's title insurance policy provided by SELLER excludes either the separate rights or leases or the access rights necessary to exercise the oil, gas and mineral rights from coverage, BUYER may elect to accept the property in its existing condition with an appropriate reduction to the purchase price, or may terminate this Agreement without obligation.



5. **CONDITION OF PROPERTY; RISK OF LOSS:** (a) BUYER has inspected the Property and, except as provided herein, accepts the Property in the condition inspected. Any loss or damage to the Property occurring between the date of this offer and the date of closing, will be at SELLER's sole risk and expense. However, BUYER may accept the damaged property and deduct from the Purchase Price the expenses required to repair the damage, or BUYER may cancel this Agreement without obligation.

(b) SELLER warrants that the property is in substantially the same condition as it existed when the application for the nomination of the property for the Conservation Land Program Project was received on April 26, 2018. SELLER warrants that no logging, clear cutting, mining or other impacts have occurred to or on the property since that date. BUYER will inspect the property prior to closing and if, in BUYER'S opinion, detrimental activity has occurred on the property since the time it was nominated, without regard to the SELLER'S knowledge and consent, BUYER may elect to accept the damaged property in its existing condition with an appropriate reduction in the purchase price, or may terminate this agreement without obligation.

6. **SELLER'S INSTRUMENTS AND EXPENSES:** SELLER will pay for and provide:

- (a) A statutory warranty deed, and an affidavit regarding liens, possession, and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance;
- (b) documentary stamps on deed;
- (c) utility services up to, but not including the date of closing;
- (d) taxes, prorated to the day before closing, however, if closing occurs between October 31 and January 1, then the SELLER is responsible for the full year's ad valorem real estate taxes for the year;
- (e) assessments levied against the property must be paid in full at closing;
- (f) payment of partial release of mortgage fees, if any;
- (g) SELLER's attorney fees, if any;
- (h) closing fees, document preparation fees;
- (i) wire transfer fees, if desired by SELLER;
- (j) Phase II Environmental Site Assessment, if any.

7. **BUYER'S INSTRUMENTS AND EXPENSES:** BUYER will pay for:

- (a) Recording fee for deed;
- (b) Phase I Environmental Site Assessment, (if desired by BUYER).

8. **TAXES:** BUYER is exempt from ad valorem taxation. SELLER will be charged for Real Estate taxes and personal property taxes (if applicable) up to, but not including the date of closing. SELLER will pay all taxes determined to be legally due and payable by the County Tax Collector. If closing occurs between October 31 and January 1, then the SELLER is responsible for the ad valorem real estate taxes for the full year.

9. **ASSESSMENTS:** SELLER must provide notice of pending or imminent assessments. Failure to disclose assessment notice(s) constitutes a breach of agreement and SELLER will be responsible for the full amount due. This provision will survive the closing.

10. **DEFECTS IN TITLE AND LEGAL ACCESS:** Prior to closing, BUYER will have a reasonable time to examine the title and documents establishing legal access to the Property. If title or legal access is found to be defective, or insufficient in BUYER's opinion, BUYER will notify SELLER in writing of the defects and SELLER will make a prompt and diligent effort to correct such defects. If SELLER fails to make such corrections within 60 days after notice, BUYER may elect to accept the Property in its existing condition with an appropriate reduction to the Purchase Price, or may terminate this Agreement without obligation.

11. **SURVEY:** At least 30 days prior to closing, SELLER will obtain, at SELLER's expense, a survey meeting ALTA/ACSM Land Title Survey standards and requirements depicting at minimum the boundary of the Property, improvements located on the Property, easements (recorded and unrecorded) affecting the Property and encroachments onto the Property. The field survey must occur subsequent to the date of this agreement, and be based upon the title commitment provided to the BUYER. The sealed survey must be certified to the BUYER, the Title Insurance Underwriter, and the Title Company closing the transaction, and be provided to BUYER in both printed and digital formats. The digital survey control must be tied to



the Florida State Plane coordinate system, West zone. The coordination system used by Lee County is NAD_1983_StatePlane_Florida_West_FIPS_0902_Feet. If the survey shows a discrepancy in the size or dimensions of the Property, encroachments onto the Property, improvements located on the Property encroaching onto adjacent lands, violations of recorded covenants, or violations of the provisions of this Agreement, the BUYER may elect to treat the discrepancies, violations and encroachments as a title defect subject to the provisions of Paragraph 3(b). Notice of such election will be provided to the SELLER.

12. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER's expense, a Phase I Environmental Site Assessment of the Property. If the assessment identifies environmental conditions unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition with an appropriate abatement to the Purchase Price or BUYER may terminate this Agreement without obligation. If the Phase I Environmental Site Assessment recommends further investigation due to an identified environmental condition, the BUYER may, at SELLER's expense, obtain a Phase II Environmental Site Assessment. If the Phase II Assessment identifies environmental conditions unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition with an appropriate abatement to the purchase price, or BUYER may terminate this Agreement without obligation.

13. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER warrants and represents that: The Property is free from hazardous materials and does not constitute an environmental hazard under federal, state or local law or regulation. No hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of applicable laws or regulations. There is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the property in violation of law or regulation. There are no surface impoundments, waste piles, land fills, injection wells, underground storage areas, or other man-made facilities that have or may have accommodated hazardous materials. There is no proceeding or inquiry by any governmental agency pertaining to production, disposal or storage on the property of hazardous materials, or activities that could have produced hazardous materials or toxic effects on humans, flora or fauna. There are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property. There is no evidence of release of hazardous materials onto or into the Property.

The SELLER also warrants that there have been no requests from governmental authorities or other parties for information, notices of claim, demand letters, investigations, or other notifications that there is potential responsibility for clean-up of hazardous substance releases on the property. All warranties described in this Section 13 will survive the closing of this transaction for a period of four (4) years.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the property, and also arising from any other environmental liability or claim.

14. **TIME AND BINDING AGREEMENT:** Time is of the essence with respect to all provisions of this Agreement, including the Special Conditions Addendum attached hereto. The BUYER's written acceptance of this offer constitutes an Agreement for the purchase and sale of the Property binding the parties, their successors and assigns. However, SELLER understands and agrees BUYER'S ability to close will be contingent on the timing and availability of designated funds. In the event the BUYER elects not to proceed to closing after execution of this Agreement, but before closing, BUYER may terminate this Agreement without obligation.

15. **DATE AND LOCATION OF CLOSING:** Closing will be held at the office of the insuring title company on or before 90 days from the date of this Agreement. The time and location of closing may be changed by mutual agreement of the parties. If sufficient Conservation Lands Program funds are not available on the stated closing date, either party may cancel this Agreement without obligation, or extend the closing date by mutual agreement.

16. **ATTORNEYS' FEES:** The prevailing party in litigation arising from this Agreement will be entitled to recover reasonable attorneys' fees and costs.

17. **REAL ESTATE BROKERS:** SELLER agrees to indemnify and hold the BUYER harmless from and against claims by real estate brokers claiming by or through SELLER.

18. **POSSESSION:** SELLER warrants that there are no parties in possession other than SELLER, unless otherwise stated herein. SELLER agrees to deliver possession of Property to BUYER at closing unless otherwise stated herein.

19. **TYPEWRITTEN/HANDWRITTEN PROVISIONS:** Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all parties, will control printed provisions.

20. **SPECIAL CONDITIONS:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.

WITNESSES:

Wm C. Y.
Ch. N. Ball

SELLER:

Harmony Estates, LLC,
a Florida Limited Liability Company

By: Michael Ball

Print Name: Michael Ball

Title: Manager 10/20/18

LINDA DOGGETT, CLERK

BUYER:

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
DEPUTY CLERK (DATE)

BY: _____
CHAIR OR VICE CHAIR

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

OFFICE OF THE COUNTY ATTORNEY

(DATE)

SPECIAL CONDITIONS
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1. The purchase price of \$3,873,300.00 is based upon the SELLER's stated acreage of 624 acres. The acreage will be verified by the boundary survey provided by SELLER pursuant to Paragraph 11 of the Agreement. If the actual net acreage is less than 624 acres the purchase price will be adjusted downwards accordingly at the agreed price of \$6,200 per acre.
2. SELLER, at their expense, will remove all debris, waste piles, to include abandoned vehicles, tires, farm machinery and equipment, chemical and pesticide containers, hazardous material containers, culvert pipes, household appliances, buildings, structures, mobile homes, concrete slabs, pilings, and foundations. SELLER must dispose of items and refuse in accordance with governmental regulations, and clean up areas where such removal has occurred so as to eliminate all evidence of these items.
3. Within ten days of BUYER's acceptance, SELLER is to furnish names of the tenants occupying the property, and copies of all leases, licenses, and agreements, if any. Existing leases and agreements to occupy or use subject property must be canceled prior to closing.
4. At least 45 days prior to closing, SELLER, at its expense, will have all wells on the property inspected by a licensed well contractor to ensure they were properly constructed and are in good working order, if any. SELLER, at its expense, will have all wells tested for potential water contaminants (as specified by Lee County on a case by case basis) by a licensed laboratory, in accordance with government regulations. SELLER must notify BUYER of date and time of well testing, so that County staff can be present during procedure. SELLER must provide a copy of the water testing report to BUYER for review and approval prior to proceeding with Item 5 below. The report must be delivered to BUYER at least 30 days prior to closing.
5. At least 15 days prior to closing, SELLER, at its expense, will ensure that all wells on the property are properly plugged by a licensed well contractor, in accordance with government regulations, unless BUYER provides written confirmation that a well can remain on the property. SELLER must notify BUYER of date and time of well closure, so that County staff can be present during procedure.
6. SELLER must provide BUYER with all South Florida Water Management District permits. SELLER is responsible for requirements or liabilities arising from active South Florida Water Management District permits issued on the property, if any.
7. Prior to closing, SELLER, will formally withdraw or terminate pending local, state, or federal permits, if any, for the subject property.
8. This Agreement is contingent upon the BUYER entering into an Interlocal Agreement with the Lehigh Acres Municipal Services Improvement District (LA-MSID) to cooperate in a joint participation water quality project on the subject property. If BUYER is unable to negotiate an acceptable Interlocal Agreement with LA-MSID, as determined by BUYER, BUYER may terminate this Agreement with no obligation to SELLER, or BUYER may elect to close on the transaction.



SPECIAL CONDITIONS

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9. Outstanding permit violations or code violations must be satisfied or abated by the SELLER prior to closing, if any.
10. Density entitlements attributable to the subject property are included with this purchase and will transfer to the benefit of the BUYER.
11. All terms set forth in the Special Conditions will survive the closing of this transaction.

WITNESSES:

Wendy
Carl Ball

SELLER:

Harmony Estates, LLC,
a Florida Limited Liability Company

By: Michael Ball

Print Name: Michael Ball

Title: MANAGER 10/20/18

LINDA DOGGETT, CLERK

BUYER:

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
DEPUTY CLERK (DATE)

BY: _____
CHAIR OR VICE CHAIR

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

COUNTY ATTORNEY

(DATE)

EXHIBIT "A"

Conservation Lands Program, Project No. 8800

Parcel No. 257-2

All of Section 10, Township 44 South, Range 27 East, Lehigh Acres, Lee County, Florida, less road right of way.

S:\POOL\2020\ACQUISIT\200-299\257-2 (GS-10)\EXHIBIT A-Revised.docx TLM

