

This document prepared by:

Lee County, Florida  
Department of County Lands

Project: Littleton Road – Kismet Parkway Realignment, Project No. 200611

STRAP No. 33-43-24-00-00002.0040

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY  
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY ("*Agreement*") is made this 18<sup>th</sup> day of December, 2018 by and between **Michael Eyster and Rose Marie Eyster**, husband and wife (hereinafter referred to as "*SELLER*"), whose address is: 1828 Corbett Road, Cape Coral, FL 33909, and **Lee County, a political subdivision of the State of Florida** (hereinafter referred to as "*BUYER*"), whose address is: P.O. Box 398, Fort Myers, FL 33902-0398. Collectively, the SELLER and BUYER may be referred to as the "Parties."

WITNESSETH:

1. **AGREEMENT TO PURCHASE AND TO SELL:** SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions set forth below, a parcel of land consisting of 1.36 acres, more or less, and located at 1828 Corbett Road, Cape Coral, in Lee County, Florida, and more particularly described in attached "Exhibit A" (the "*Property*"). This Property will be acquired for the Littleton Road – Kismet Parkway Realignment, Project No. 200611 (the "*Project*").

2. **PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("*Purchase Price*") will be THREE HUNDRED THOUSAND AND XX/100 DOLLARS (\$300,000.00), payable at closing in U.S. Currency by official bank check.

3. **EVIDENCE OF TITLE:** BUYER will obtain at BUYER'S expense an American Land Title Association Form B Title Commitment and provide a title insurance Owner's Policy in the amount of the purchase price, from a title company acceptable to BUYER. The commitment will be accompanied by one copy of all documents that constitute exceptions to the title commitment. The commitment will also show title to be good and marketable with legal access, 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.

4. **CONDITION OF PROPERTY; RISK OF LOSS:** BUYER has inspected the Property and, except as is otherwise provided herein, accepts the Property in the condition inspected. Any loss and/or damage to the Property occurring between the date of this offer and the date of closing or date of possession by BUYER, whichever occurs first, will be at SELLER's sole risk and expense. However, BUYER may accept the damaged Property and deduct from the purchase price any expenses required to repair the damage, or BUYER may cancel this Agreement without obligation.

5. **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 (deed/affidavit to be prepared by BUYER'S title company);
- (b) Utility services up to, but not including the date of closing, if applicable;
- (c) ad valorem real estate 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;
- (d) any and all assessments levied against the Property must be paid in full at closing;
- (e) documentary stamps on deed;
- (f) payment of partial release of mortgage fees, if any; and
- (g) SELLER's attorney fees, if any.

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

- (a) Recording fee for deed; and
- (b) survey, (if desired by BUYER).

7. **TAXES:** SELLER will be charged for ad valorem real estate taxes and personal property taxes (if applicable) up to, but not including the date of closing. BUYER is exempt from ad valorem taxation. 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 full year's ad valorem real estate taxes for the year without proration.

8. **ASSESSMENTS:** SELLER will provide any and all notices of pending or imminent assessments. Failure to disclose assessment notices becomes a breach of agreement and SELLER will be responsible to pay the full amount due.

9. **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, 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 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.

10. **SURVEY:** BUYER may order the Property surveyed at BUYER's expense. SELLER agrees to provide access to the Property for the survey to be performed. If the survey shows a discrepancy in the size or dimensions of the Property, or shows encroachments onto the Property or that improvements located on the Property encroach onto adjacent lands, or if the survey identifies violations of recorded covenants or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat those discrepancies, violations or encroachments as a title defect.

11. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER's expense, an environmental audit of the Property. If the audit 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.

12. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER hereby warrants and represents that the Property is free from hazardous materials and does not constitute an environmental hazard under any 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 any applicable law or regulation. The SELLER further warrants that there is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the Property in violation of applicable law or regulation. There are no surface impoundments, waste piles, landfills, 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 with respect to production, disposal or storage on the Property of any hazardous materials, or of any activity 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 any governmental authority or other party for information, notices of claim, demand letters or other notification that there is any potential for responsibility with respect to any investigation or clean-up of hazardous substance releases on the Property. All warranties described herein will survive the closing of this transaction.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from all fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the Property.

13. **TIME AND BINDING AGREEMENT:** Time is of the essence for closing this transaction. The BUYER's written acceptance of this offer will constitute an Agreement for the purchase and sale of the Property and will bind the parties, their successors and assigns. In the event the BUYER abandons this project after execution of this Agreement, but before closing, BUYER may terminate this Agreement without obligation.

14. **DATE AND LOCATION OF CLOSING:** The closing of this transaction will be held at the office of the insuring title company on or before ninety (90) days from the date this Agreement is made, being the date this Agreement is approved by the Board of County Commissioners on behalf of the County. The time and location of closing may be changed by mutual agreement of the parties.

15. **ATTORNEYS' FEES:** The prevailing party in any litigation concerning this Agreement will be entitled to recover reasonable attorneys' fees and costs.

16. **REAL ESTATE BROKERS:** SELLER hereby agrees to indemnify and hold the BUYER harmless from and against any claims by a real estate broker claiming by or through SELLER.

17. **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 time of closing unless otherwise stated herein.

18. **OTHER PROVISIONS:**

(a) BUYER and SELLER hereby covenant that the Purchase Price recited herein, except as noted below, includes payment for all fixture, including but not limited to, built-in appliances, air conditioning units, hot water heaters, ceiling fans, screen enclosures, windows, doors, floor covering and landscaping, as of the date of the BUYER'S appraisal August 2, 2018.

(b) BUYER'S authorized agent will inspect the house and all other real property and improvements prior to closing. Removal of any fixture(s) by SELLER, except as noted below, may cause a delay in closing and a reduction in the purchase price. All additional costs associated with any breach of this covenant will be paid by the SELLER. This covenant shall survive closing.

(c) Prior to closing, in consideration of the purchase and sale of the Property, SELLER may carefully remove and/or replace only those appliances, fixtures, or improvements to the Property under the terms identified below. Title to all other fixtures and improvements will remain part of the Property for the purpose of transfer.

**Items that may be removed:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

All removal and/or replacement must be done in a good and workman-like manner and no part of the structure may be damaged, including, but not limited to, holes in walls, ceilings, or exterior.

(d) SELLER, at its sole 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, and mobile homes from the Property, if any. SELLER must dispose of items and refuse in accordance with governmental regulations, and clean up areas of the Property where such removal has occurred so as to eliminate all evidence of these items. The prefabricated structural panels stored under the pole barn may remain on the premises.

(e) SELLER must clean up interior area of any structure on the Property and properly dispose of the items removed when vacating the premises.

(f) After the date of closing the Parties agree the relationship of the SELLER and BUYER will become that of a Licensee and Licensor, respectively, not one of a tenancy as would otherwise be between a tenant and landlord. Subsequent to the closing the SELLER/Licensee will be allowed to remain on the premises by the BUYER/Licensor for up to, but not more than, 180 days from the date of closing, subject to the conditions set forth in Section 18, Items (a) – (q), herein. Within 180 days from the date of closing, but in no event later than July 1, 2019, SELLER agrees to fully vacate the premises and remove all personal property.

(g) At closing, to secure the SELLER/Licensee's performance of fully vacating the premises and removing all personal property, the SELLER/Licensee authorizes the BUYER/Licensor to withhold from the sale proceeds the sum of Ten Thousand and xx/100 Dollars (\$10,000.00) in a non-interest bearing escrow account until such time as the SELLER removes all personal property and properly vacates the premises. BUYER's authorized agent will inspect the house and all other real property and improvements subsequent to SELLER vacating premises. Removal of any fixtures(s) by SELLER other than indicated in Section 18 (c) may cause a reduction in the security deposit.

(h) The premises may only be used and occupied by SELLER exclusively as a private single-family residence. The premises may not be used for the purpose of carrying on any business, profession, or trade of any kind, or for any purposes other than as a private single-family residence.

(i) Subsequent to the date of closing the SELLER will bear the full cost of water/sewer service, if any, used by the SELLER and will also bear the cost for solid waste pick-up, use of electricity, telephone services, and any other services to the space occupied up until the date the premises is properly vacated by SELLER.

(j) Subsequent to the date of closing the SELLER will provide for interior maintenance and repairs, including repairs or replacement of interior equipment as may be necessary due to normal usage. The SELLER will keep the interior of the premises in as good a state of repair as it is at the time of the closing, reasonable wear and tear and unavoidable casualties excepted.

(k) Subsequent to the date of closing the SELLER will maintain and keep in good repair the exterior of the premises and will be responsible for the replacement or repair of windows or other exterior elements needing replacement or repair.

(l) Subsequent to the date of closing the SELLER will pay for and maintain the insurance premiums on the premises throughout the entire term of occupancy. BUYER is not required to carry fire insurance on the premises or property of the SELLER. The BUYER is also not liable for injury, loss, damages or theft to the person or property or fixtures belonging to the SELLER located on the Property. All property that may be on the premises subsequent to the date of closing will be at the sole risk of the SELLER.

(m) If the premises, or the major part thereof, is destroyed by fire, lightning, storm or other casualty, the BUYER may repair the damage at its own cost and expense but nothing contained herein requires BUYER to do so.

(n) SELLER agrees to indemnify and save the BUYER harmless from all claims or demands, including an allowance for reasonable attorney's fee incurred by BUYER in the defense thereof, for injuries to person or damage to property arising out of SELLER's negligent use of the premises asserted by or on behalf of the SELLER, SELLER's employees, agent, invitee, or any other person and from any and all injury or damage done by any of them to the premises. The BUYER will only 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 act(s) or omission(s) of any official or employee of Lee County (as the BUYER herein) while acting within the scope or the official's or employee'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 §768.28 Florida Statutes, as it may be amended or revised from time to time.

(o) Prior to closing, SELLER must purchase and maintain Premises Liability Insurance protecting his interest as tenant of the premises with insurers approved by the Lee County Risk Management Department. This policy must provide minimum limits of \$300,000 Combined Single Limit of Bodily Injury and Property Damage. The SELLER must provide evidence to the County Risk Management Department in the form of a properly executed certificate of insurance, demonstrating a minimum of thirty (30) days advance written notice of cancellation or adverse material change.

The SELLER agrees that this insurance requirement does not limit liability. BUYER does not represent that the insurance required is sufficient or adequate to protect the SELLER's interests or liabilities, but are merely minimums.

The SELLER must also furnish an appropriate certificate of insurance naming Lee County Board of County Commissioners as Certificate Holder and an Additional Insured. The SELLER agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage as excess.

(p) SELLER may not keep or have on the premises articles of dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire or that might be considered hazardous or extra hazardous by any responsible insurance company.

(q) All terms set forth in Section 18, Items (a) through (p), herein, will survive the closing of this transaction.

(r) At closing, BUYER will reimburse SELLER's expenses as set forth in Paragraph 5, Items (a), (e) and (g), in an amount not to exceed \$5,000.00.

[End of provisions – signature page follows.]

**IN WITNESS WHEREOF**, the Parties have agreed to all terms and conditions set forth above and have authorized their representatives to sign this Agreement, intending to be legally bound as of the date first written above.

**WITNESSES:**

Cindy Incardona

First Witness Signature – as to both

Cindy Incardona

First Witness Printed Name

Timothy J. Wise

Second Witness Signature – as to both

Timothy J. Wise

Second Witness Printed Name

**SELLER/Licensee:**

Michael Eyster

Michael Eyster

Rose Marie Eyster

Rose Marie Eyster

**BUYER/Licenser**

**ATTEST:**

LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Joyce Townsend

Deputy Clerk

Deputy Clerk

[Type or print name]

Deputy Clerk

BY: Brian L. Kiker

Vice Chair

Larry Kiker

[Type or print name]

Chair



Approved as to form for the  
reliance of Lee County only:

John J. Fredyma

John J. Fredyma  
Senior Assistant County Attorney  
County Attorney's Office

Attachments: Exhibit "A" – Legal Description of the Property



# **EXHIBIT "A"**

## **Littleton Road – Kismet Parkway Realignment, Project No. 200611**

**STRAP No. 33-43-24-00-00002.0040**

The North 268 feet of the West  $\frac{1}{2}$  (W  $\frac{1}{2}$ ) of the Northeast  $\frac{1}{4}$  (NE  $\frac{1}{4}$ ) of the Northwest  $\frac{1}{4}$  (NW  $\frac{1}{4}$ ) of Section 33, Township 43 South, Range 24 East, lying West of Hancock Creek and East of Corbett Road; subject to the right of way of Corbett Road on the West side of said tract and Littleton Road on the North side of said tract.