

This document prepared by

County Lands Division

Project: **Conservation Lands Program, Project 8800**

Parcel: 473-4

STRAP No.: 33-44-22-00-00008.0020, 33-44-22-00-00008.002B,
33-44-22-00-00008.002C and 33-44-22-00-00008.002D

ORIGINAL

BOARD OF COUNTY COMMISSIONERS

LEE COUNTY

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is made this 16 day of APRIL, 2019, by and between **WALTCO COMMERCIAL HOLDINGS, LLC**, a Florida limited liability company, hereinafter referred to as SELLER, whose address is 1943 Maravilla Avenue, Fort Myers, FL 33901, and **LEE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, whose mailing address is P.O. Box 398, Fort Myers, FL 33901.

WITNESSETH:

1. **AGREEMENT TO PURCHASE AND TO SELL:** SELLER hereby agrees to sell and COUNTY hereby agrees to purchase, subject to the terms and conditions hereinafter set forth, all of that certain parcel of land consisting of 58 acres, more or less, and located at 9720 Stringfellow Road, Saint James City, 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 will be **EIGHT HUNDRED EIGHTY ONE THOUSAND ONE HUNDRED SIXTY FIVE AND 00/100 DOLLARS** (\$881,165.00) (the "Purchase Price"), payable at closing in U.S. currency by official bank check.

3. **EVIDENCE OF TITLE:** (a) The COUNTY will pay for and obtain an Owner's title commitment and title insurance in the amount of the Purchase Price, from a title company acceptable to COUNTY. The commitment must also show the Property 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 COUNTY, as determined by COUNTY.

(b) COUNTY will have a reasonable time to examine the title documents provided with the commitment. If title commitment includes items that are unacceptable to the COUNTY or indicative of a title defect, COUNTY 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, COUNTY 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:** COUNTY 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 COUNTY's purpose. Therefore, COUNTY will deem the existence of oil, gas and mineral rights or leases to 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, COUNTY 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) COUNTY 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, COUNTY may accept the damaged property and deduct from the Purchase Price the expenses required to repair the damage, or COUNTY 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 May 17, 2017. SELLER warrants that no logging, clear cutting, mining or other impacts have occurred to or on the Property since that date. COUNTY will inspect the Property prior to closing and if, in COUNTY'S opinion, detrimental activity has occurred on the Property since the time it was nominated, without regard to the SELLER'S knowledge and consent, COUNTY 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. **COUNTY'S INSTRUMENTS AND EXPENSES:** COUNTY will pay for:
- (a) Recording fee for deed;
 - (b) Owner's Title commitment and Title Insurance Policy
 - (c) Survey;
 - (d) Phase I Environmental Site Assessment, (if desired by COUNTY).
8. **TAXES:** COUNTY 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 this 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, COUNTY 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 COUNTY's opinion, COUNTY 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, COUNTY 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, COUNTY will obtain, at COUNTY'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 COUNTY. The sealed survey must be certified to the COUNTY, the Title Insurance Underwriter, and the Title Company closing the transaction, and be provided to COUNTY 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 COUNTY 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:** COUNTY may perform or have performed, at COUNTY's expense, a Phase I Environmental Site Assessment of the Property. If the assessment identifies environmental conditions unacceptable to the COUNTY, COUNTY may elect to accept the Property in its existing condition with an appropriate abatement to the Purchase Price or COUNTY may terminate this Agreement without obligation. If the Phase I Environmental Site Assessment recommends further investigation due to an identified environmental condition, the COUNTY may, at SELLER's expense, obtain a Phase II Environmental Site Assessment. If the Phase II Assessment identifies environmental conditions unacceptable to the COUNTY, COUNTY may elect to accept the Property in its existing condition with an appropriate abatement to the Purchase Price, or COUNTY may terminate this Agreement without obligation.

13. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER warrants and represents that: (a) The Property is free from hazardous materials and does not constitute an environmental hazard under federal, state or local law or regulation. (b) No hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of applicable laws or regulations. (c) There is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the Property in violation of law or regulation. (d) 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. (e) 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. (f) There are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property. (g) 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.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the COUNTY 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 COUNTY'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 COUNTY'S ability to close will be contingent on the timing and availability of designated funds. In the event the COUNTY elects not to proceed to closing after execution of this Agreement, but before closing, COUNTY 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 COUNTY 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 COUNTY at closing unless otherwise stated herein.

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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:

SELLER:

Waltco Commercial Holdings, LLC, a Florida limited liability company

By: Walter L. Johnson 4/6/19
Name: Walter L. Johnson (date)
Title: Manager

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of _____, 2019.

COUNTY:

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____

BY: _____
[Signature]

[Type or Print Name]
Deputy Clerk

[Type or print name]
Chair / Vice-Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of County Attorney

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

EXHIBIT A

A parcel of land situated in the State of Florida, County of Lee, Pine Island, Section 33, Township 44 South, Range 22 East, and further bounded and described as follows:

Starting at the northeast corner of said Section 33; thence S01°44'39"E along the east line of said section for 860.07 feet to the Point of Beginning; thence continue S01°44'39"E along said section line for 1588.09 feet to the northeast corner of a parcel described in Official Records Book 1257, page 1937, Public Records; thence S88°59'03"W along the north line of said parcel for 1434.76 feet to the easterly right-of-way line of Stringfellow Boulevard (State Road 767 – 66 feet wide); thence N15°56'02"W along said right-of-way line for 1481.32 feet to the southwest corner of a parcel described in Official Records Book 1398 at page 1564, Public Records; thence N88°59'03"E along the south line of said parcel for 278.29 feet to the southeast corner of said parcel; thence N01°00'57"W along the east line of said parcel for 105.57 feet to the westerly prolongation of the south line of a parcel described in Official Records Book 1846, page 1687, Public Records; thence N88°59'03"E along said prolonged line and the south line of said parcel for 366.26 feet to the southeast corner of said parcel; thence N15°56'02"W along the easterly line of said parcel for 52.78 feet to the south line of a parcel described in Official Records Book 1750, page 3188, Public Records; thence N88°59'03"E along said south line for 1164.96 feet to the Point of Beginning.

Together with a non-exclusive right of ingress and egress over and upon the following described property:

Starting at the northeast corner of said Section 33; thence S88°59'03"W along the north line of said Section 33 for 1225.00 feet; thence S01°00'57"E for 715.00 feet; thence S88°59'03"W for 241.69 feet to the Point of Beginning; thence continue S88°59'03"W for 398.64 feet to the easterly right-of-way line of Pine Island Boulevard (S.R. 767 – 66 feet wide); thence S15°56'02"E along said right-of-way line for 62.09 feet; thence N88°59'03"E for 342.65 feet to the northeast corner of a parcel described in Official Records Book 1398, page 1564; thence S01°00'57"E along the easterly line of said parcel 136.00 feet to the westerly prolongation of the southerly line of a parcel described in Official Records Book 1846, page 1687; thence N88°59'03"E along said prolonged line for 40.00 feet; thence N01°00'57"W for 196.00 feet to the Point of Beginning.

Bearings are based on the east line of said Section 33 as bearing S01°44'39"E.

SPECIAL CONDITIONS

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1. The Purchase Price of \$881,165.00 is based upon the SELLER's stated acreage of 58 acres. The acreage will be verified by the boundary survey provided by SELLER pursuant to Paragraph 11 of this Agreement. If the actual net acreage is less than 58 acres the Purchase Price will be adjusted downwards accordingly at the agreed per acre price.
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 COUNTY's acceptance, SELLER is to furnish names of the tenants occupying the Property, and copies of all leases, licenses, and agreements. Existing leases and agreements to occupy or use the Property must be canceled prior to closing. After COUNTY's acceptance of this Agreement, COUNTY has SELLER's permission to contact Lessees or Licensees currently grazing cattle on the Property, to determine if they wish to enter into a license agreement with the County to continue grazing cattle.
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. 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 COUNTY 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 COUNTY for review and approval prior to proceeding with Item 6 below. The report must be delivered to COUNTY 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 COUNTY provides written confirmation that a well can remain on the Property. SELLER must notify COUNTY of date and time of well closure, so that County staff can be present during procedure.
6. SELLER must provide COUNTY 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 Property.

SPECIAL CONDITIONS

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8. Outstanding permit violations or code violations, if any, must be satisfied or abated by the SELLER prior to closing.

9. All terms set forth in Items 1-8 of the Special Conditions will survive the closing of this transaction.

WITNESSES:

SELLER:



Waltco Commercial Holdings, LLC, a Florida limited liability company

By: Walter L. Johnson 4-16-19

Name: Walter L. Johnson (DATE)

Title: Manager

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of _____, 2019.

COUNTY:

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____

BY: _____

[Signature]

[Type or Print Name]
Deputy Clerk

[Type or print name]
Chair / Vice-Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of County Attorney