

STATE OF ALABAMA)
COUNTY OF BALDWIN)

**RESOLUTION # 2023-133
OF THE
BALDWIN COUNTY COMMISSION**

**RESOLUTION OF THE COUNTY COMMISSION OF BALDWIN COUNTY,
ALABAMA APPROVING PURCHASE AGREEMENT**

WHEREAS, it is in the best interest of Baldwin County, Alabama (the "County") to purchase certain real property located at 10 AC NW ¼ of SE ¼ of SW ¼ SEC 9-7-3 (WD), Baldwin County, Alabama and more specifically identified as PARCEL 55-02-09-0-000-005.000, PPIN: 27181; real property at 10 AC Deed NE ¼ SE ¼ SW ¼ less road R/W SEC 9-7-3 (WD), Baldwin County, Alabama and more specifically identified as PARCEL 55-02-09-0-000-006.000, PPIN: 43581; real property at 10 AC SE ¼ of SE ¼ of SW ¼ SEC 9-7-3 (WD) Baldwin County, Alabama and more specifically identified as PARCEL 55-02-09-0-000-007.000, PPIN: 38821 (the "Property"); and

WHEREAS the Baldwin County Commission desires to approve a Purchase Agreement for the Property (the "Purchase and Sale Agreement") attached hereto as Exhibit "A"; and

WHEREAS the Baldwin County Commission desires to authorize the Chairman take whatever actions are necessary to effectuate the purchase of the Property by the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BALDWIN COUNTY COMMISSION, IN REGULAR SESSION ASSEMBLED, that

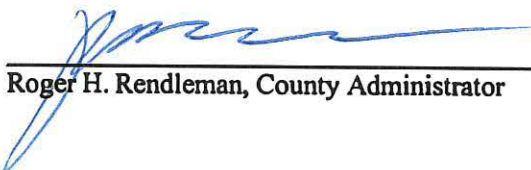
1. The Baldwin County Commission hereby approves the attached Purchase and Sale Agreement; and
2. The Baldwin County Commission authorizes the Chairman to execute the Purchase and Sale Agreement on behalf of the County and to take such other action on behalf of the County to complete the purchase of the Property, including, but not limited to, the execution of additional documents and performing the County's obligations under the Purchase and Sale Agreement.

DONE, under the Seal of Baldwin County, Alabama, as affixed on this the 6th day of June 2023.



Commissioner Charles F. Gruber, Chairman

ATTEST:



Roger H. Rendleman, County Administrator



STATE OF ALABAMA)
COUNTY OF BALDWIN)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of this _____ day of _____, 2023 ("*Effective Date*"), between **JOEL F. SMITH AND LOIS L. SMITH**, as Co-Trustees of the **SMITH LIVING TRUST, DATED MARCH 18, 2003** (the "*Seller*") and **BALDWIN COUNTY**, a political subdivision of the state of Alabama, (the "*Purchaser*").

RECITALS

WHEREAS, Seller is the owner of that certain parcel of real property located in Baldwin County, Alabama, which is more particularly described on Exhibit “A”, attached hereto and by this reference incorporated herein (the “*Property*”, as further defined in Section 1. Below).

WHEREAS, Seller desires to sell said real property to Purchaser and Purchaser desires to purchase the same from Seller, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all the parties, it is agreed as follows:

AGREEMENT

1. Purchase and Sale of Property. Subject to the terms and conditions hereinafter set forth, Seller agrees to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser agrees to purchase and accept delivery from Seller of, all of Seller's right, title and interest, in and to, certain real property located in Baldwin County, Alabama, as more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof, together with:

- a) All improvements, buildings, structures, fixtures, and appurtenances situated on said real property; and
- b) All easements, appurtenances, and hereditaments appertaining thereto; and
- c) All of Seller's right, title, and interest in and to adjacent streets, alleys, rights of way, and awards made or to be made in connection therewith.

2. **Purchase Price.** The purchase price shall be **THREE HUNDRED TWENTY-ONE THOUSAND SIX HUNDRED AND NO/100THS DOLLARS (\$321,600.00)** (“*Purchase Price*”). Upon execution of this Agreement, Purchaser shall deliver to the Title Company earnest money in the amount of **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)**, which shall be applied towards the total Purchase Price (“*Earnest Money*”). The remainder of the total Purchase Price shall be payable at Closing in cash or immediately available funds. The Earnest Money shall be held by Seller for sixty (60) days following Seller’s receipt of the same in order for Purchaser to perform and complete any desired inspections as set forth in Paragraph 14 below.

3. **Conveyance.** The Seller shall convey the Property to Purchaser by General Warranty Deed free of all liens and encumbrances except for the Permitted Exceptions, as defined and set forth in Paragraph 5 below.

4. **Pending Assessments.** Seller warrants that Seller has not received any notification of any pending municipal improvement assessments whether final or not, which warranty shall survive the delivery of the Deed from Seller to Purchaser.

5. **Permitted Exceptions.** The Property shall be conveyed to Purchaser subject to all ad valorem taxes and assessments for the then current year and all subsequent years thereafter, all easements, restrictions, reservations, rights-of-way and other matters of record in the Probate Office of Baldwin County, Alabama, all zoning ordinances pertaining to the Property, all mineral and mining rights not owned by Seller and any matters revealed by the Title Commitment or Survey, if a survey is performed, as approved (or which are deemed to be approved) by the parties in accordance with Paragraph 14 herein (collectively, the "*Permitted Exceptions*").

6. **Prorations.** The taxes, assessments, rents, insurance, and accrued interest on any mortgages are to be prorated between Seller and Purchaser as of the date of Closing. Any advance payments by Seller to mortgagees for taxes, insurance, or mortgage insurance premiums shall be returned to Seller by Purchaser. Seller will keep in force any present insurance coverage now in existence on the Property to protect all interests until Closing and delivery of the Deed.

7. **Closing.** The closing of this sale and the delivery of the Deed ("Closing") shall occur on or before _____, 2023, unless the parties agree otherwise in writing and shall take place at the office of Alabama Land Title or other title company agreed upon by the parties Title Company.

8. **Closing Costs.** Seller shall pay the cost of the Title Commitment and deed preparation. Purchaser shall pay all remaining closing costs including the cost of its Survey, if any.

9. **Seller's Obligations at Closing.** At Closing, Seller shall do the following:

- a) Execute, acknowledge, and deliver the Deed conveying the Property to Purchaser which shall be insured pursuant to the Title Commitment, subject to the Permitted Exceptions.
- b) Execute and deliver such other documents or instruments as may reasonably be required by Purchaser or the title company closing this transaction by this Agreement to effectuate the agreement memorialized herein.

10. **Purchaser's Obligations at Closing.** At Closing, Purchaser shall do the following:

- a) Subject to any credits, adjustments, costs or prorations provided for herein, deliver the balance of the Purchase Price required to close hereunder to the Title Company closing this transaction.
- b) Execute and deliver such other documents or instruments as may reasonably be required by Seller or the title company closing this transaction by this Agreement

to effectuate the agreement memorialized herein.

11. **Agent Disclosure.** Seller and Purchaser warrant and represent unto each other that no realtors or brokers have been involved with either the Seller's decision to sell this Property or the Purchaser's decision to purchase this Property.

12. **Representations of Seller.** Seller represents and warrants to Purchaser that the following statements are true as of the date hereof and shall continue to be true on the Closing:

- a) Seller has good and marketable fee simple absolute title to the Property free and clear of all easements, restrictions, conditions, reservations, liens, claims or other encumbrances, other than these deemed Permitted Exceptions as provided herein.
- b) Seller has the full right, power, and authority to enter into this Agreement and to cause the same to create a legal and binding obligation of Seller.
- c) There is no pending or contemplated claim, litigation, condemnation, administrative action, or other legal proceeding involving or affecting any portion of the Property.
- d) There is no oral or written lease, agreement, or contract to which Seller is a party in any way affecting or related to the Property and there are no persons possessing or having rights of possession to the Property or any portion thereof other than Seller.

13. **Conditions to Purchaser's Obligations.** Purchaser's obligations under this Agreement shall be, unless waived in writing by Purchaser, subject to the following conditions:

- a) All covenants, agreements, actions, proceedings, instruments, and documents required to be performed, complied with, undertaken, or delivered, as the case may be, by Seller, have been performed, complied with, undertaken and delivered in accordance with the terms of this Agreement.
- b) The warranties and representations made by Seller herein hereof are true and correct (without regard to Seller's knowledge and belief) as of the date of this Agreement and as of the Closing.
- c) All actions, proceedings, instruments, and documents required to be performed, complied with, undertaken, or delivered, as the case may be, by Seller, have been approved by Purchaser's counsel, which approval shall not be unreasonably withheld.
- d) If any of the foregoing conditions in this paragraph have not been fulfilled at or prior to Closing, or prior to the end of the Due Diligence Period if so required, then Purchaser shall have the right and option to cancel this Agreement whereupon the Earnest Money shall be returned to Purchaser and neither party shall have any right or claims against the other except for any obligations that expressly survive the termination of this Agreement.

14. Due Diligence.

- a) Due Diligence Period. Following the Effective Date of this Agreement, Purchaser shall have sixty (60) days ("Due Diligence Period") within which to conduct any and all tests, surveys, inspections, studies, examinations, and to address any other matters which Purchaser considers to affect the value of the Property, in Purchaser's sole discretion, as Purchaser may elect, in its sole judgment, to determine the suitability of the Property for Purchaser's purposes (collectively, the "Due Diligence Matters"). Such Due Diligence Matters may include, but shall not be limited to, soil tests, borings, engineering studies, environmental studies, feasibility studies, topographical surveys, drainage plans, marketing studies, financial studies, utility availability investigations, Purchaser's ability to obtain building permits, and all other required permits or licenses and any approvals deemed necessary or important to Purchaser with respect to Purchaser's proposed utilization of the Property.
- b) Title Insurance. Seller shall, within thirty (30) days of the Effective Date, furnish to Purchaser a commitment for an ALTA owner's or mortgagee's title insurance policy providing coverage in the amount of the Purchase Price and insuring the Purchaser against loss on the account of any defect or encumbrance in the title to the Property (the "Title Commitment").
- c) Survey. Purchaser, at its sole cost and expense, may obtain a current survey ("Survey") of the Property. If the legal description set forth in the Survey varies in any material respect from the legal description described herein, then Purchaser, at its option, may terminate this Agreement, whereupon any Earnest Money paid by Purchaser shall be returned to Purchaser, and the parties hereto shall have no further obligations hereunder. In the event Purchaser elects not to terminate this Agreement, then the legal description from the Survey shall be substituted for that provided herein.
- d) Governmental Approvals. In the event that the zoning affecting the Property must be amended or site plan approval or other governmental approval must be obtained in order to permit Purchaser's intended use thereof, in Purchaser's judgment, then Purchaser shall be entitled, at Purchaser's sole cost and expense, to initiate proceedings and to take all other action necessary to effect such zoning change, governmental approval, and/or site plan approval. Seller shall cooperate with Purchaser in the institution of such proceedings and action, and shall execute all authorizations and other documents necessary to cause, at Purchaser's request, the Property to be rezoned and/or site plan approval to be obtained. In the event that Purchaser fails to rezone the Property and/or obtain governmental approval or site plan approval prior to the expiration of the Due Diligence Period, such Due Diligence Period shall be extended at Purchaser's option for a reasonable period of time in order to enable the obtaining of the same.
- e) Purchaser's Objections. In the event Purchaser is not satisfied with the results of any Due Diligence Matter, including, but not limited to matters in the Title Commitment or the Survey or any other matter or condition that make the Property unsuitable for Purchaser's purposes, in Purchaser's sole judgment and absolute

discretion ("*Objections*"). Purchaser may elect to (i) terminate this Agreement, by delivering written notice of such to Seller with five (5) days following expiration of the Due Diligence Period upon which the Earnest Money paid by Purchaser shall be returned to Purchaser, and the parties hereto shall have no further obligations hereunder; or (ii) elect to waive such Objections and proceed to Closing. All Objections approved by Purchaser or subsequently waived in writing shall hereinafter be deemed to be "Permitted Exceptions."

- f) Access. Seller hereby grants to Purchaser and its agents, employees and contractors reasonable access to the Property during the Due Diligence Period necessary to conduct such Inspections. In performing its due diligence, Purchaser agrees to use reasonable, good faith efforts not to damage the Property.

15. Default.

- a) Default by Seller. In the event of Seller's breach of this Agreement, Purchaser shall have the right to either: (i) affirm this Agreement and seek to enforce its specific performance; (ii) proceed against Seller for any all damages or remedies available to Purchaser under law or in equity; and/or (iii) terminate this Agreement whereupon the Earnest Money shall be refunded to Purchaser, such sum being agreed upon as liquidated damages. In such event that this Agreement is terminated, neither party shall have any further obligation or liability to the other hereunder except for the indemnification obligations set forth herein.
- b) Default by Purchaser. In the event Purchaser should fail to consummate the transaction contemplated herein for any reason after expiration of the Due Diligence Period except default by Seller, Seller may, at Seller's option and as its sole and exclusive remedy, terminate this Agreement and retain the Earnest Money, such sum being agreed upon as liquidated damages.

16. Condemnation and Casualty. If all or a substantial part of the Property has been taken by or is threatened with condemnation or been damaged or destroyed after the Effective Date of this Agreement but before the Closing, Seller may prior to the Closing, terminate this Agreement; provided, however, if Seller elects to repair such damage and such damage may reasonably be repaired in a period not to exceed 180 days from the occurrence thereof, this Agreement shall remain in full force and effect. Seller shall give the Purchaser notice within 60 days following such damage, destruction or taking (or threat of taking) by condemnation, of Seller's election to either terminate or repair such damage and the date of Closing shall be extended to a date designated by Seller in written notice from Seller to Purchaser, which notice must be given at least 10 days prior to Closing. In the event of an actual taking in condemnation or a conveyance in lieu thereof prior to Closing or if Seller does not elect to, fails to, or cannot complete repairs of such damage within the 180-day period, then Purchaser may elect to terminate this Agreement by sending written notice of such termination to Seller. Upon Closing, all risk of loss for damage to the Property shall be assumed by Purchaser and such assumption of loss shall survive the Closing. In the event Purchaser terminates this Agreement pursuant to this paragraph, then Purchaser shall receive the Earnest Money paid by Purchaser under this Agreement, and the parties hereto shall have no further obligations hereunder and Purchaser shall not be entitled to any part of the award, as damages or otherwise for any condemnation and Seller is to receive the full amount of such award, Purchaser hereby expressly waiving any right or claim to any part thereof.

17. **No Assignment.** Purchaser shall not have the right to assign, transfer, pledge, mortgage or encumber this Agreement or its rights contained herein without Seller's prior written consent (that may be withheld in the sole and absolute discretion of the Seller) and any purported attempt to do so shall be a default hereunder by Purchaser and shall be void and of no effect; provided, however, that in the event Seller gives its consent, Purchaser shall remain responsible for all of Purchaser's covenants and representations in this Agreement until Purchaser's assignee shall consummate the purchase under and pursuant to this Agreement as may be amended from time to time. This provision shall survive the termination of this Agreement and the Closing.

18. **Provision of Existing Information.** Seller shall provide Purchaser within ten (10) days from the Effective Date of this Agreement, any and all existing feasibility studies, existing surveys, title policies, environmental studies, soil and other engineering studies, and the like and all governmental permits, licenses, certificates, and other approvals in Seller's possession or control regarding the Property.

19. **Notices.**

To Seller:

With a copy to:

To Purchaser:

Baldwin County Commission
Attn: _____
322 Courthouse Square
Bay Minette, Alabama 36507

With a copy to:

Brad Hicks, Esq.
Stone Crosby, P.C.
8820 US-90
Daphne, AL 36526
Phone: (251) 626-6696

To Escrow Holder:

Alabama Land Title

Attn: Aurelia Bryars

20. **Miscellaneous.**

- a) No Coercive Action. Each of the parties expressly acknowledge that they are entering into this Agreement on their own accord and free will and are not entering into this Agreement as the result of any coercive action, whether by exercise of eminent domain powers or otherwise.
- b) Assignment. No assignment of this Agreement or any right or duty accruing under this agreement shall be made, in whole or in part, by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- c) Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto, and their respective heirs, personal representatives, successors and assigns.
- d) Survival. Each and every provision of this Agreement shall survive the Closing and shall not be nullified or affected by the Closing.
- e) Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- f) Time of the Essence. Time is of the essence as to all matters covered in this Agreement.
- g) Attorney's Fees. Notwithstanding anything contained herein to the contrary, should Purchaser employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to protect any right, title, or interest created or evidenced hereby, or to recover damages for the breach of the terms and conditions hereof, or to respond to any matter raised by the other party, Purchaser shall be entitled to recover from Seller all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
- h) Entire Agreement. This Agreement and the documents referred to in this Agreement constitute the entire agreement between the parties and supersedes any prior contracts or agreements, and there are no other conditions, covenants or agreements which shall be binding between the parties.
- i) Rule of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
- j) Governing Law; Venue. This Agreement shall be deemed to have been made in the State of Alabama, and the validity of the same, its construction, interpretation, enforcement, and the rights of the parties hereunder, shall be determined under,

governed by, and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. The proper venue for any action arising hereunder or relating to the subject matter of this Agreement shall lie solely in Baldwin County, Alabama.

- k) Counterparts. This Agreement may be executed in counterpart and all such counterparts, taken together, shall be deemed to be one and the same instrument. An executed copy transmitted by facsimile or email shall be deemed an original.
- l) Cooperation. The parties agree to execute any and all documents necessary to accomplish this transaction. The parties also agree that an electronic signature to this Agreement is effective as though an original.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties executed this Agreement on the Effective Date first written above.

PURCHASER:

BALDWIN COUNTY, ALABAMA,
A Political Subdivision of the state of Alabama,

By: _____

Its: _____

ATTEST:

(Signature Page Follows)

SELLERS:

JOEL F. SMITH, as Co-Trustee of the **SMITH
LIVING TRUST, DATED MARCH 18, 2003**

LOIS L. SMITH, as Co-Trustee of the **SMITH
LIVING TRUST, DATED MARCH 18, 2003**

EXHIBIT A

Legal Description of the Property

PARCEL I:

The Northwest Quarter of the Southeast Quarter of the Southwest Quarter of Section 9, Township 7 South, Range 3 East, Baldwin County, Alabama.

PARCEL II:

The Northeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 9, Township 7 South, Range 3 East, Baldwin County, Alabama. Containing 10 acres, more or less.

PARCEL III:

The Southeast Quarter of the Southeast Quarter of the Southwest Quarter, Section 9, Township 7 South, Range 3 East.