

SUBJECT: Sale of The Sandalwood Condominium Association at Wildwood, Florida, Inc.

REQUESTED ACTION:

X Regular Meeting 2/12/13

CONTRACT: Attached

BUDGET IMPACT: \$91,000.00 per acre plus fees and closing costs. (approximately 7.23 acres MOL.)

HISTORY/FACTS/ISSUES:

This contract emanates from the Sumter County Construction Project along CR-468 in Sumter County ("Project"). The Project is on schedule as of this date.

The parties have signed a Purchase and Sale Agreement for Sandalwood Condominium Association at Wildwood, Inc. and are prepared to close the transaction according to its terms. The contract is contingent upon Board Approval. Recommend Approval.

**SECTION 125.355**

**FLORIDA STATUTES**

**PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

**THE SANDALWOOD CONDOMINIUM ASSOCIATION AT WILDWOOD, INC.**

**AND**

**SUMTER COUNTY, FLORIDA**



**PURCHASE AND SALE AGREEMENT**  
**PURSUANT TO SECTION 125.355, FLORIDA STATUTES**

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **THE SANDALWOOD CONDOMINIUM ASSOCIATION AT WILDWOOD, INC.** [need exact seller name from title commitment (hereafter referred to as the "Seller"), and **SUMTER COUNTY, FLORIDA**, a subdivision of the State of Florida (hereinafter referred to as the "County").

For and in consideration of TEN and No/100ths Dollars (\$10.00), the purchase price and the mutual covenants and undertakings herein contained, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**I. SALE AND PURCHASE**

**1.01. Agreement to Sell and Convey.** Seller agrees to sell and convey to County, and County agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, certain parcels of land lying and being situated in Sumter County, Florida, and being more particularly described on that certain Sketch shown on **Exhibit A** attached hereto, and more specifically described as:

COMMENCE AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 26, TOWNSHIP 19 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA; THENCE RUN N. 89°40'00" W., ALONG THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 26, 399.92 FEET TO THE WESTERLY RIGHT OF WAY OF C-468 AND THE POINT OF BEGINNING; THENCE RUN S. 09°34'14" W., ALONG SAID WESTERLY RIGHT OF WAY 302.20 FEET; THENCE DEPARTING SAID RIGHT OF WAY RUN THE FOLLOWING EIGHT (8) COURSES; N. 80°25'46" W., 95.56 FEET; N.51°27'13" W., 529.42 FEET; N. 00°00'00" E., 160.70 FEET; N. 45°00'00" E., 74.12 FEET; N. 90°00'00" E., 115.46 FEET; N. 00°00'00" E., 131.52 FEET; N. 45°00'00" E., 74.12 FEET; N. 90°00'00" E., 413.25 FEET TO THE AFORESAID WESTERLY RIGHT OF WAY; THENCE RUN S. 09°34'14" W., ALONG SAID RIGHT OF WAY 451.13 FEET TO THE POINT OF BEGINNING.

Together with the following:

- (a) all buildings and other improvements situated thereon, if any;
- (b) all and singular the rights and appurtenances pertaining thereto including but not limited to any right, title and interest of Seller in and to adjacent streets, roads, alleys, easements and rights-of-way to the extent that such right, title and interest exist; and

(c) all of Seller's rights in and to all easements, if any, benefiting the land and improvements.

All the same being collectively referred to as the **Property**. The Property currently consists of approximately 7.23 acres MOL. The Property is being acquired as part of a comprehensive construction project along CR-468 in Sumter County, Florida for Widening C468 from the Turnpike to SR 44. ("Project"). The exact amount of property to be acquired will be determined by survey prior to closing based upon the final calculations identified by that certain Southwest Florida Water Management District ("SWFWMD") ERP Permit to be applied for and granted as a condition precedent prior to Closing ("the Pending ERP Permit").

**1.02. Deposit Payment.** There shall be no Deposit required with the execution of this Agreement by Sumter County.

**1.03. Purchase Price.** The purchase price (the "**Purchase Price**") to be paid for the Property shall be an amount equal to the sum of NINETY ONE AND NO/00 DOLLARS (91,000.00) per acre. The Purchase Price will be payable in cash, in current funds, subject to Closing pro-rations and adjustments as hereinafter set forth. The estimated square footage currently anticipated for acquisition is approximately 314,939 square feet.

**1.04. Contingency for Appraisal.** The Purchase Price is further contingent upon County obtaining a current (less than 6 month old) Certificate of Value from a Florida state certified real estate appraiser. In the event the appraised value is less than the Purchase Price stated herein, the parties agree to reduce the Purchase Price proportional to the difference between the appraised value and the Purchase Price set forth in Section 1.03 herein.

**1.05. Chapter 125.355 Contingency for Board Approval.** The enforceability of this Agreement is wholly contingent upon the approval of this Agreement by the Sumter County Board of County Commissioners and execution by the Chairman of that Board evidencing such approval after a properly noticed public hearing, as mandated by Chapter 125.355, Florida Statutes. However, all dates and timelines herein shall run from the Execution Date (as defined herein, the "Execution Date" is the date Agreement is executed by the County Administrator or Seller, whichever is later). Should the Board of County Commissioners fail to approve this Agreement, this Agreement shall be deemed null and void. The Agreement is exempt from the provisions of F.S. 119.07 (Public Records Act) until 30 days before this Agreement is considered for approval by the Board of County Commissioners or 30 days after the termination of negotiations between the parties hereto.

**1.06. Pending Actions / Environmental Audit.** Seller shall provide to County any previous, current or pending court actions or regulatory actions, environmental audit information, if any, and other such information regarding hazardous waste soil or ground water contamination on or around the Property in Seller's possession or control.

**1.07. Pending Legal Proceedings.** Seller represents and warrants that there are no private or governmental actions, suits, proceedings or investigations pending against Seller which could have an adverse effect on the Property.

## II. TITLE REQUIREMENTS, SURVEY AND PERMITTED EXCEPTIONS

**2.01. Title Insurance.** Within ten (10) days from the Execution Date hereof, Seller shall obtain a current ALTA Form owner's commitment for title insurance (the "**Title Commitment**") covering the Property and issued by Old Republic National Title Insurance Company (the "**Title Company**"), which Title Commitment shall agree to issue to County, upon the Closing of this transaction, an ALTA owner's title insurance policy in the full amount of the Purchase Price.

**2.02. Current Survey.** The current Sketch attached as Exhibit A contains the current legal description of the proposed property to be purchased by County. After the ERP permitting process has been completed, County may cause to be prepared at its expense, a current survey (the "**Survey**") of the property to be acquired. If, after the issuance of the Pending SWFWMD ERP Permit, the size of the subject Property as identified in the Survey to be purchased changes from the approximations identified herein, County shall notice Seller of the amended size of the Property, from which amended size the Purchase Price shall be computed based upon the per acre price established in Section 1.03. If Seller desires to confirm the size of the Property identified by County in the Survey, Seller may, within fifteen (15) days from the date of notice of the Property size, obtain its own survey of the Property prepared by a surveyor acceptable to County and Seller at Seller's sole cost and expense.

## III. PROVISIONS WITH RESPECT TO CLOSING

**3.01. Closing Date.** The consummation of the transaction contemplated by this Agreement (the "**Closing**") shall take place after all contingencies have been satisfied, at the offices of The Hogan Law Firm, LLC on such date as is mutually agreed upon by the parties but in no event later than December 31, 2012 (the "**Closing Date**"), unless such other place and time is mutually agreed upon by County and Seller in writing. Possession of the Property shall be granted by Seller to County no later than the Closing Date. Despite any provisions in this Agreement which could possibly be construed to the contrary, no extension to the closing date shall be granted unless mutually agreed in writing. No objection as to the title or physical status of the Property will result in an extension of closing without a mutual written agreement.

**3.02. Seller's Obligations at Closing.** At the closing Seller shall execute the following for the conveyance of their respective parcel, said parcel being separately legally described by the Survey:

- (a) Execute, acknowledge and deliver to County a Warranty Deed conveying the Property, which deed shall be in statutory form for recording;
- (b) Execute and deliver to County releases of all leases and rental agreements, if any, concerning all tenants and parties in possession of any portion of the building and property, including a current rent roll;

- (c) Execute and deliver to County a mechanic's lien and possession affidavit in sufficient form and substance so as to allow the Title Company to remove the mechanical lien exception and parties-in-possession exception from the Title Commitment;
- (d) Execute and deliver to the Title Company an affidavit that there has been no changes to the conditions of title from that shown in the Title Commitment in order for the Title Company to delete the "gap" exception;
- (e) Execute and deliver instruments satisfactory to County and the Title Company reflecting the proper power, good standing and authorization for the sale of the Property from Seller to County hereunder;
- (f) Execute and deliver to County and the Title Company a FIRPTA affidavit in form and substance acceptable to County and the Title Company;
- (g) Execute and Deliver to County a closing statement setting forth the Purchase Price, Deposit, adjustments, proration's and closing costs as set forth herein; and
- (h) Execute and deliver such other documents as may be required by this Agreement.

**3.03. County's Obligations at Closing.** Contemporaneously with the performance by Seller of its obligations set forth in Sections 1. and 3.02 above, at Closing, County shall do the following:

- (a) Execute and deliver instruments satisfactory to Seller and the Title Company reflecting the proper power, good standing and authorization for the purchase of the Property from Seller by County hereunder, and;
- (b) Execute and deliver to Seller a closing statement setting forth the Purchase Price, Deposit, adjustments, proration's and closing costs as set forth herein, and;
- (c) Execute and deliver such other documents as may be required by this Agreement.

**3.04. Closing Costs.**

- (a) Seller shall pay the following costs and expenses in connection with the Closing:
  - (i) It's own attorney's fees and costs;
  - (ii) Any costs of operating the Property which have been accrued prior to the Closing Date.
  - (iii) Any costs associated with Seller providing it's own survey of the property as detailed in this Agreement.
- (b) County shall pay all other costs arising in connection with the Closing and this Agreement, including without limitation, the following costs and expenses:

- (i) Survey costs, if any; and The promulgated rate premium payable for the owner's policy of title insurance; Seller shall not be responsible for title search, examination and related fees;
- (ii) All recording fees associated with the transaction, including those related to the recording of the Warranty Deed;
- (iii) All documentary stamps in connection with the conveyance of the Property.
- (iv) Its cost of document preparation and its attorneys' fees.
- (v) Appraisal costs.

**3.05. Prorations.** The following items shall be prorated between Seller and County as of midnight of the day immediately preceding the date of Closing; and shall be reflected on the Closing Statement:

- (a) Property Taxes. City, state and county ad valorem taxes for the calendar year of Closing based on the ad valorem tax bill for the Property, for such year. The proration for taxes and assessment, if not known for the year of Closing at the time of Closing, shall be based upon the previous year's ad valorem taxes as of the date of Closing. Seller waives any claims to adjust the prorations after closing.
- (b) Other items. Such other items, if any, as are customarily adjusted between County's and sellers of real properties, it being intended that the items set forth in this paragraph above are illustrative only and that the parties will make such other adjustments at or after closing as are necessary so that Seller shall have all the benefits and burdens of the Premises to and including midnight of the day preceding the date of closing and County shall have all the benefits and burdens of the Premises after midnight of the day preceding the date of closing. The Seller agrees to indemnify and hold the County harmless of and from any and all liabilities, claims, demands and expenses, of any kind or nature (except those items which are assumed by County or by this Agreement specifically become the obligation of the County as well as those for which County received credit by reason of the prorations provided for herein) arising or accruing prior to 12:01 a.m. on the date of closing and which are related to the ownership, maintenance or operation of the Premises, and all expenses related thereto, including, without limitation, court costs and attorney's fees. Likewise, the County agrees to indemnify and hold the Seller harmless of and from any and all liabilities, claim, demands and expenses, of any kind or nature (except those items which are agreed by County and Seller in this Agreement to remain the obligation of Seller or for which Seller has received a credit by reason of prorations or otherwise at closing) arising or accruing after 12:01 a.m. on the date of closing and which are related to the ownership, maintenance or operation of the premises, and all expenses related thereto after said time, including, without limitation, court costs and attorney's fees.

#### IV. RISK OF LOSS

**4.01. Seller to Bear Risk.** The risk of loss to the Property by fire, casualty, or otherwise, prior to the Closing which materially and adversely affects the Property, in County's reasonable discretion (a "**Casualty**"), is assumed by Seller. In the event of a Casualty, County may, at its option and within ten (10) days following written notice by Seller to County of the occurrence of the Casualty, elect to terminate this Agreement and this Agreement shall thereafter be null and void, or County may elect to close the transaction (which County shall be deemed to have elected to do if no such termination notice is given by County to Seller within the aforesaid ten (10) day period) in which case at Closing Seller shall assign all of its interest to all insurance proceeds in an amount not to exceed the Purchase Price.

## V. **PROVISION WITH RESPECT TO FAILURE OF TITLE AND DEFAULT**

**5.01. Default by Seller.** If Seller fails to perform any of the covenants of this Agreement, or if Seller otherwise defaults hereunder, County may elect to terminate this Agreement or County may seek the right of specific performance. These remedies shall not be considered to be County's exclusive remedies, and County shall be entitled to proceed against Seller under any other theory of recovery allowed by law.

**5.02. Attorneys' Fees and Costs.** In the event of any litigation between the parties arising out of this Agreement or the collection of any funds due County or Seller pursuant to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs incurred, including without limitation reasonable attorneys' and paralegals' fees and costs, whether such fees and costs are incurred at trial, on appeal or in any bankruptcy proceedings.

## VI. **BROKERAGE COMMISSIONS**

**6.01. Broker.** Seller and County warrant each to the other that they have not dealt with any real estate broker or sales-person for this transaction. Any Seller's Broker shall be paid outside the Closing (POC) solely by Seller.

## VII. **ESCROW**

**7.01. Escrow Agent and Escrow Procedure.** It is expressly understood that The Hogan Law Firm, LLC shall serve as the Escrow Agent for this transaction. Escrow Agent, by acceptance of the funds paid by County hereunder, agrees to hold such funds and to disperse the same only in accordance with the terms and conditions of this Agreement. If any dispute or difference arises between County and Seller or if any conflicting demands shall be timely made upon Escrow Agent or if the Escrow Agent is in doubt as to its duties or liabilities under the provisions of this Agreement, it may, in its sole discretion, continue to hold such funds until the parties mutually agree to disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties hereto, or Escrow Agent

may deposit such funds with the Clerk of the Circuit Court of Sumter County, Florida, pursuant to interpleader procedure, whereupon after notifying all parties concerned with such action and paying all costs imposed by the Clerk as a result of such deposit, all liability on the part of Escrow Agent shall terminate except to the extent of accounting for any monies theretofore delivered out of escrow.

County and Seller hereby agree to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities and expenses, including without limitation, costs of investigation and legal counsel fees which may be imposed upon Escrow Agent or incurred by Escrow Agent in connection with the performance of its duties hereunder and including, without limitation, any litigation arising from this Agreement or involving the subject matter hereof, except for matters arising out of the gross negligence or malfeasance of Escrow Agent.

**7.02. Representation of County.** It is expressly understood that The Hogan Law Firm, LLC represents County in connection with this transaction. In the event of any disputes as to which party is entitled to the Deposit or in the event any disagreement shall arise as a result of this Agreement or the transaction contemplated hereby, the Escrow Agent shall not be excluded from representing County by virtue of its serving as Escrow Agent pursuant to this Agreement. Seller shall not object to, or request the disqualification of, The Hogan Law Firm, LLC as counsel for County because it is also acting as Escrow Agent hereunder.

## VIII. OTHER CONTRACTUAL PROVISIONS

**8.01. Assignment.** County will not assign its interests in this Agreement either in whole or in part without the prior written consent of Seller.

**8.02. Notices.** All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (notwithstanding lack of actual receipt by the addressee) (i) when delivered by personal delivery or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express or Purolator), addressed to the party to whom notice is intended to be given at the address set forth below:

County Sumter County:

Mr. Bradley Arnold  
Sumter County Administrator  
Sumter County Board of County  
Commissioners  
7375 Powell Road  
Wildwood, FL 34785

Seller:

The Sandalwood Condominium Association

At Wildwood, Inc.  
12000 Sandalwood Dr.  
Wildwood, FL 34785

Escrow Agent:

The Hogan Law Firm, LLC  
20 South Broad Street  
Brooksville, FL 34601

Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this Section, but notice of change of address is effective only upon receipt.

**8.03. Entire Agreement.** This Agreement embodies and constitutes the entire understanding among the parties with respect to the transaction contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

**8.04. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties hereby consent to jurisdiction and venue only in Sumter County, Florida, and agree that such jurisdiction and venue shall be sole and exclusive for any and all actions or disputes related to this Agreement or any related instruments.

**8.05. Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**8.06. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns (subject, however, to the restrictions of Section 8.01).

**8.07. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

**8.08. Interpretation.** Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and neuter and vice versa. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both

parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

**8.09. Severability.** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**8.10. Time of Essence.** Time is of the essence of each and every term, provision and covenant of this Agreement. The expiration of any period of time prescribed in this Agreement shall occur at 5:00 p.m. of the last day of the period. Should any period of time specified herein end on a Saturday, Sunday or legal holiday (recognized in Bushnell, Florida), the period of time shall automatically be extended to 5:00 P.M. of the next full business day. All time periods referencing number of days shall be calendar days, unless otherwise specified.

**8.11. Radon Gas and Energy Disclosures.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**8.12. Authority of Parties.** Seller and County represent to each other that each has full power and authority to enter into and perform this Agreement, all related instruments and the documentation contemplated hereby and thereby in accordance with their respective terms and that the delivery and performance of this Agreements, all related instruments and the documentation contemplated hereby and thereby has been duly authorized by all necessary action.

**8.13. No Waiver.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**8.14. IRS Reporting Requirements.** Seller and County acknowledge and agree that Section 6045(e) of the Internal Revenue Code of 1986 requires that notice of the sale and purchase of the Property described in said Contract, be provided to the Internal Revenue Service (herein "IRS") by preparation of and filing with the IRS of IRS Form 1099-B; and further, Seller and County agree to furnish and provide to the Title Company any and all information that the Title Company may require in order for the Title Company to (a) comply with all instructions to the IRS Form 1099-B in the preparation thereof, and (b) prepare and timely file with the IRS said IRS Form 1099-B with respect to this transaction.

**8.15. Agreement Not Recordable.** Neither this Agreement nor any notice thereof shall be recorded by any party hereto, or any agent of same, in any official public records.

8.16. **Computation of Time.** Whenever this Agreement makes reference to a time period which begins on or lasts for a time "from", "following" or "after" a certain date, it is expressly understood and agreed that the words "from", "following" and "after" do not imply or impute the word "including" so that no such time frames shall include such date.

8.17. **Survival of Closing.** All representations and warranties of Seller shall survive closing.

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SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their respective signatures.

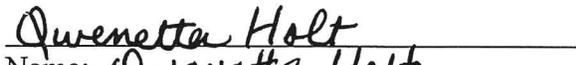
Signed, sealed and delivered in the presence of:

SELLER

THE SANDALWOOD CONDOMINIUM ASSOCIATION AT WILDWOOD, INC.

  
Name: MARIE F. COLEMAN  
(Print or Type Name)

By:   
Its: Vice President

  
Name: QUENETTA HOLT  
(Print or Type Name)

Dated: 10-24, 20 12

COUNTY

SUMTER COUNTY FLORIDA

\_\_\_\_\_  
Name: \_\_\_\_\_  
(Print or Type Name)

By: \_\_\_\_\_  
BRADLEY ARNOLD  
COUNTY ADMINISTRATOR

\_\_\_\_\_  
Name: \_\_\_\_\_  
(Print or Type Name)

Dated: \_\_\_\_\_, 20

**APPROVED AT PUBLIC HEARING:**

ATTEST: GLORIA HAYWARD, CLERK OF  
COURT, SUMTER COUNTY

BOARD OF COUNTY COMMISSIONERS  
SUMTER COUNTY, FLORIDA

\_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
CHAIRMAN

DATE: \_\_\_\_\_