

**PURCHASE AND SALE AGREEMENT
BETWEEN
ALACHUA COUNTY AND THE TRUST FOR PUBLIC LAND**

THIS CONTINGENT PURCHASE AND SALE AGREEMENT for the purchase and sale of land entered into this ____ day of _____, 2019, between **The Trust for Public Land, a nonprofit California corporation** ("Seller"), having an address of 306 N. Monroe St., Tallahassee, Florida, 32301-7266 and Alachua County, a charter county and political subdivision of Florida, by and through its Board of County Commissioners ("County"), having an address of 12 SE 1st Street, Gainesville, FL 32601.

WITNESSETH:

WHEREAS, Seller holds a binding Option Agreement to purchase certain real property in fee simple in Alachua County, Florida as more fully described in **Exhibit A**, which is attached hereto and incorporated by reference into this Contract (the "**Property**"); and

WHEREAS, Seller represents and County acknowledges that the Property is currently owned by: Weyerhaeuser NR Company ("**Weyerhaeuser**"), a Washington corporation, successor by merger to Plum Creek Timberlands, L.P., 100 Professional Center Drive, Brunswick, GA 31525.

WHEREAS, the County wishes to acquire approximately 1,905 acres (more or less) subject to final certified survey of the Property as depicted in **Exhibit A** in fee simple from Seller as soon as possible after Seller acquires the Property from Weyerhaeuser; and

WHEREAS, the Seller wishes to furnish the County with this Contingent Purchase and Sale Agreement ("**Agreement**") to purchase the Property in anticipation of Seller's acquisition of the Property; and

WHEREAS, the County and Seller hereby acknowledge and agree that Seller's obligation to close this transaction is CONTINGENT upon the Seller first acquiring marketable fee simple title to the Property as described in Exhibit "A"; the County shall have the right to conduct any and all due diligence (including but not limited to an environmental site assessment, survey, and title history search) investigation of the Property prior to Seller acquiring marketable fee simple title; and

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WHEREAS, the Seller shall ensure the County has all necessary authority, permission, and approval from Weyerhaeuser to enter the Property to perform due diligence inspections, surveys, appraisals, environmental assessments, and any other activity necessary to evaluate the Property pursuant to the terms and conditions of this Agreement prior to Seller acquiring title to the Property; and

WHEREAS, Seller and County specifically desire to enter into this Agreement for the primary purpose of conserving and preserving the Property's natural resources, ecological value, wildlife habitat, water resources, and wetlands occurring within the boundaries of the Property; and

WHEREAS, Seller and County specifically desire to share the costs of the survey related to the County's acquisition of the Property for the benefit of the public, as set forth in this Agreement.

NOW THEREFORE, in consideration of the covenants and promises contained herein, and other good and valuable consideration the receipt and sufficiency of is hereby acknowledged by the Parties, the Parties agree as follows:

1. **EFFECTIVE DATE.** This Agreement shall become effective as of the day and year upon which both Seller and the County have executed this Agreement as set forth on the signature page hereof ("**Effective Date**").
2. **RECITALS INCORPORATED.** The Recitals stated above are hereby incorporated into and made part of this Agreement.
3. **CONTINGENT PURCHASE AND SALE AGREEMENT.** Seller's obligation to close this transaction is contingent upon the Seller first acquiring marketable fee simple title to the Property as described in Exhibit "A" within 180 days of the Effective Date of this Agreement. Subject to the limitations set forth in this Agreement, the County shall have the right to perform any and all due diligence investigation of the Property immediately after the Effective Date of this Agreement.
4. **WAIVER OF EARNEST MONEY DEPOSIT.** County and Seller agree to waive any requirement for an earnest money deposit.
5. **DEFINITIONS.** The capitalized terms below shall have the following meanings herein:

Closing Agent shall mean the law firm of Timothy A. Burleigh, P.A.

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505 Lancaster Street, No. 7C, Jacksonville, Florida 32204; Phone 904 355-4470.

County is represented in this transaction by Salter Feiber, P.A., a Florida Corporation, with offices at 3940 NW 16th Boulevard, Building B, Gainesville, Florida, 32605; Phone (352) 376-8201.

Title Commitment shall mean the written commitment of Commonwealth Land Title Insurance Company issued by Timothy A. Burleigh, P.A., its agent, to insure the County's fee simple ownership of the Property, subject to the terms and conditions of said commitment.

Surveyed Acres shall mean the total number of acres of the Property excluding: (1) public rights of way; (2) railroad rights of way; (3) cemeteries; (4) lands under control or possession of anyone other than the Seller; and/or (5) lands below the ordinary high water line or mean high water line of any river, lake or stream, if any.

Survey shall mean the boundary survey of the Property made by a Florida licensed surveyor acceptable to the County. The surveyor shall: (1) certify the Survey to the County, the Seller, the Closing Agent, and the Florida licensed title insurance company issuing the Title Commitment; (2) meet the requirements of Chapter 472, Florida Statutes; (3) provide a "metes and bounds" legal description of the Property; and (4) list the exact number of Surveyed Acres to the hundredth decimal place or as reasonably practical.

Environmental Reports shall mean any and all environmental site assessments, audits, reports, and/or correspondence relating to any potential environmental matters on any portion of the Property.

6. **PURCHASE PRICE.** Seller agrees to sell and the County agrees to purchase the Property after Seller acquires marketable fee simple title of the Property for the amount equal to the sum of the "Surveyed Acres" multiplied by TWO THOUSAND SIX HUNDRED DOLLARS (\$2,600.00) per acre (the "**Purchase Price**"). The Purchase Price shall be paid by County to Seller via closing agent at closing.

7. **DOCUMENTS AND INFORMATION SELLER SHALL PROVIDE.** The Seller shall, within 7 days of the Effective Date, furnish to the County the following documents and information in its possession, if any:

- a. Copies of all title insurance policies for any portion of the Property in the Seller's possession.
- b. Copies of all Environmental Reports in the Seller's possession.
- c. Copies of all surveys of any portion of the Property in the Seller's possession.
- d. A completed Beneficial Interest and Disclosure Affidavit as required by §§ 286.23(1), and 380.08(2), Florida Statutes, the form of which is attached hereto as **Exhibit B**. Pursuant to §286.23(2), Florida Statutes, the disclosure must be made under oath, subject to the penalties prescribed for perjury.
- e. The Seller's Federal Tax ID number. Seller represents that it is a nonprofit California corporation.

Except for the documents or information required by paragraphs 7.d. and 7.e., Seller, will provide or make available such documents, if any, to County without representation or warranty as to the accuracy or any other aspect containing in such document, including but not limited to any information provided by any third party, and as an accommodation only. Except for the documents or information required by paragraphs 7.d. and 7.e., County hereby acknowledges, covenants and agrees that the above documents are provided to County without representation or warranty of any kind whatsoever, either express or implied, and County is without any recourse against Seller or its affiliated or related companies or their employees, officers, directors, representatives or agents with respect to the accuracy of any information or statements contained therein. County further acknowledges that it will not rely upon any such documents and will make its own independent investigation or inquiry as to the accuracy of the information or statements contained in the documents.

8. **INSPECTIONS.** The County shall have **until 5 p.m. on November 14, 2019** ("**Inspection Period**") within which to conduct any surveys, surface and subsurface explorations, soil tests, engineering studies, environmental site assessments, and any other inspections of the

Property which the County may elect to make ("**Inspections**"). Seller shall ensure that prior to and during the Inspection Period, the County, through its employees, agents and contractors may enter the Property for the purpose of making any inspections and investigations, as County deems appropriate in order to assess the condition of the Property and the improvements and any personal Property located thereon, PROVIDED that County must give Seller 10 days' written notice prior to entering the Property, so that Weyerhaeuser may be notified of such activity on the Property.

a. At any time prior to the expiration of the Inspection Period, County may terminate this Agreement if the County discovers any Title Defects or Environmental Defects as may be determined and elected by the County Manager. Additionally, if the County is unable to complete any inspections of the Property as a result of Weyerhaeuser's; (1) refusal to allow the County to inspect any portion of the Property, (2) Weyerhaeuser's failure to timely respond to the County's request to inspect the Property such that the County is unable to complete any inspections of the Property prior to expiration of the Inspection Period, or (3) Weyerhaeuser's refusal or failure to provide written consent allowing further invasive testing as provided in Paragraph 8(c) of this Agreement, then the County may terminate this Agreement prior to the end of the Inspection Period as may be determined and elected by the County Manager. The County's right to terminate this Agreement prior to or during the Inspection Period is not limited by the Permitted Exceptions enumerated in Exhibit "C" of this Agreement and shall not constitute a breach or default of this Agreement. If prior to the expiration of the Inspection Period, County notifies Seller in writing of its election not to purchase the Property and to release its rights relating to the Property, then County shall furnish Seller with all reports and studies conducted by or for County. In the event that the County elects not to purchase the Property, and so notifies Seller, this Agreement shall be terminated upon Seller's receipt of such notice and delivery of all reports and studies conducted by or for County and neither party shall have further rights, duties, obligations or liabilities under this Agreement, except that County promises to pay half the cost (fifty percent) of the cost of the survey pursuant to Paragraph 10. If County does not give any written notice prior to the expiration of the Inspection Period, then County shall be deemed to have waived such right and this Agreement shall continue in full force and effect.

b. Seller does not in any way warrant the condition of Property and County shall exercise the herein granted rights at its own risk. County acknowledges that there are certain inherent risks associated with conducting its intended activities on the Property due to the primitive/unimproved nature of the Property. County is put on notice that the Property is in a remote location, access roads may not be paved and neither the condition of the Property nor the roads are guaranteed in any way by Seller. With regard to any entry by County upon the Property prior to

closing, County shall, to the extent permitted by Florida law, be responsible during the term of this Agreement for damage or injury to persons or property resulting from County's entry upon the Property for which County or its servants, employees, representatives, consultants, contractors, or licensees, or anyone entering the Property pursuant to County's access rights hereunder are found legally responsible. This provision shall survive closing of this transaction or termination of this Agreement.

c. Upon prior notice, the Seller shall ensure that County and its agents, servants, employees, representatives, consultants, contractors, or licensees will have the right of entry upon the Property during the Inspection Period for all lawful purposes associated with this Agreement, or otherwise secure from Weyerhaeuser such right of entry and authority. Such lawful purposes shall include, but not be limited to inspecting, surveying, photographing, appraising, cruising timber, conducting environmental assessments and taking soil, water and plant samples using borings, probes and test wells, provided, that any invasive testing requires additional consent in writing from Weyerhaeuser. Consequently, County will request in writing that Seller seek and obtain such consent at least 10 calendar days prior to such invasive investigation.

d. County shall return the Property to its existing condition to the extent possible, shall repair any and all damage to the Property that occurs as a result of the County's acts on the Property for any Inspections.

9. **EVIDENCE OF TITLE AND TITLE INSURANCE.** Within 30 days of the Effective Date, Seller shall provide to County a Title Commitment for an ALTA Owner's Title Insurance Policy insuring the marketable title of the Property from Commonwealth Land Title Insurance Company. The Title Commitment shall describe the Property, shall be dated later than the Effective Date, shall be in the full amount of the Purchase Price, shall have attached legible copies of all instruments referred to therein, and shall disclose the title to the Property to be good, marketable, and insurable, subject only to the exceptions set forth in **Exhibit C ("Permitted Exceptions")**. Any exceptions shown on the Title Commitment other than the Permitted Exceptions, and other than those matters that shall be discharged by the Seller at or before closing, shall constitute "**Title Defects**" for purposes of this Contract.

10. **SURVEY.** The Seller shall commission and obtain a survey with instructions to the surveyor that the survey be certified to both the Seller and to the County. Seller and County shall review the Survey during the Inspection Period. If the Survey shows (i) any encroachments on the Property, or that improvements, if any, on the Property encroach onto other lands, or (ii) that the

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Property is not contiguous to a publicly dedicated right of way, or (iii) any other facts that affect the marketability of title to the Property, then any such facts or matters so shown shall constitute a "**Title Defect**" for purposes of Paragraph 9 and 11. Should this Agreement be terminated by the County pursuant to any of its termination rights provided for in this Agreement, County agrees and promises to pay half (fifty percent) of the cost of the survey to Seller. However, County shall not be responsible to pay half (fifty percent) of the cost of the survey in the event of Seller's default, or in the event Seller's Board of Directors fails to approve Seller's acquisition of the Property.

11. **TITLE DEFECTS.** If either the Survey or the Title Commitment reveal any Title Defects, the County shall give written notice to Seller of any such Title Defects prior to the expiration of the Inspection Period. Should the County provide such notice, Seller shall have a period of 30 days after receipt of said notice to cure the Title Defects (the "**Cure Period**"). Seller shall use reasonable diligence in curing said Title Defects. In that event, the Closing Date shall be extended 30 days after the date of such notice (the "**Extended Closing Date**"). If any Title Defects, other than those that shall be cured or satisfied at closing, remain uncured by Seller at the end of Cure Period, the Seller shall then give the County written notice of Seller's failure to cure the Title Defects and describe with specificity in that notice the Title Defects that remain uncured. The County may either: (a) accept the Title Defects and close this transaction according to the terms of this Contract no later than the end of the Extended Closing Date, (b) terminate this Contract by written notice to the Seller, as may be determined and elected by the County Manager without further approval by the Board, whereupon all Parties shall be relieved of all further obligations under this Contract, except that County promises to pay half (fifty percent) of the cost of the survey, or (c) exclude the affected portion of the Property from the transaction upon mutual agreement between Seller and the County, such agreement being reduced to writing and made an amendment to this Contract. Seller's reasonable diligence in curing Title Defects will not include the bringing of legal actions. Notwithstanding anything else herein to the contrary, the Seller shall, at closing, pay off, fully satisfy, and remove all encumbrances on the title to the Property which can be paid off and discharged from the sale proceeds, including, without limitation, mortgages, judgments, claims of lien and similar items.

12. **ENVIRONMENTAL SITE ASSESSMENT.** In addition to the other provisions of this Agreement, the County's obligation to purchase the Property is contingent on either (1) the County being able to obtain its own environmental site assessment of the Property during the Inspection Period, which the County determines, in its sole discretion, to be satisfactory, or (2) accepting the results, findings, and conclusions of the Seller's environmental site assessment to be satisfactory which shall be affirmed in writing by the County. Seller has provided the County with a copy of

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its Phase 1 Environmental Site Assessment (the "Phase 1 ESA"). The County may elect, in its sole discretion to utilize the Phase 1 ESA, which will be certified to County, or obtain its own environmental site assessment. If the results of the Phase 1 ESA, or County's environmental site assessment, or any Environmental Reports furnished to the County by a third party consultant or the Seller reveal that any portion of the Property is contaminated or violates applicable federal, state or local laws, ordinances, codes, rules, orders or regulations relating to pollution or protection of the environment or to threatened or endangered species (collectively the "**Environmental Defects**"), the County's sole remedies shall be to either: 1) terminate this Agreement by providing written notice to Seller, and thereafter the Parties shall be relieved of any further obligations hereunder except the obligation to pay fifty percent of survey costs incurred by the time of County's termination; or 2) County may elect to proceed with the transaction. The Seller shall be under no obligation to remedy any of the identified Environmental Defects.

a) County acknowledges that Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Property, and Seller expressly disclaims any and all obligation and liability to County regarding any defects which may exist with respect to the condition of the Property, and County covenants not to bring any claim, suit or action against Seller in connection with, or resulting from the environmental condition of the Property.

b) Provided County does not elect to terminate this Agreement as provided herein, or fails to terminate during the inspection period after review of the Phase 1 ESA, or other environmental site assessment, County shall take the Property "as is" at Closing; assumes all risks associated with the physical or environmental condition of the Property, regardless of the cause or date of origin of such condition; and releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any physical or environmental condition.

13. **PERSONAL PROPERTY.** The Seller shall ensure that the County has access to the Property by obtaining permission from Weyerhaeuser so that the County may at its sole option and expense, perform visual inspections of the Property at any time prior to closing. If the results of a visual inspection reveal that any portion of the Property contains personal property, refuse, garbage, junk, rubbish, trash and debris (the "**Debris**"), the County may provide written notice to the Seller of the Debris prior to closing. The Seller shall promptly notify the County whether the Seller will remove the Debris from the Property prior to the Closing Date. Seller shall be under no obligation to remove any Debris from the Property. After receipt of the Seller's written decision as to whether it will remove the Debris, the County, in its sole discretion, may elect to terminate

this Contract prior to the end of the Inspection Period by providing written notice to Seller, in which event the parties shall be relieved of any further obligations hereunder; or 2) County may elect to proceed with the transaction.

14. **CASUALTY LOSS.** In the event any portion of the timber or improvements located on the Property is damaged or destroyed by wind, fire, casualty, disease, or by any other means or act of God, prior to closing, to an extent greater five percent (5%) of the Purchase Price, then County, as determined by the County Manager, may either: (a) accept such loss and close this transaction according to the terms of this Agreement; or (b) terminate this Agreement by written notice to the Seller, whereupon all Parties shall be relieved of all further obligations under this Agreement.

15. **CLOSING DATE.** This transaction shall be closed **on or before December 15, 2019**, **subject to the extensions as provided in this Agreement** (the "**Closing Date**"), as may be extended as provided herein, at or through the offices of the Closing Agent and all closing documents may be executed and provided electronically, unless otherwise provided for herein or agreed to by the Parties in writing. The County Manager may agree to terminate this Agreement, or to extend the Inspection Period, Curative Period, or the Closing Date, on behalf of the County without further approval by the Board.

16. **EXPENSES.** The Parties shall pay closing costs and expenses as follows:

SELLER:

- Documentary stamp tax on the deed of conveyance;
- Preparation of all closing documents necessary to cure title defects (if any);
- Past-due taxes (if any);
- Title Insurance policy for the County (including all related search and abstract fees);
- Seller's attorney's fees; and
- Closing Agent fees (including the preparation of all closing documents, except those that are necessary to cure title defects and are thus Seller's responsibility.

COUNTY:

- Environmental site assessment costs commissioned by County;
- Half the cost (fifty percent) of the survey in the form of a credit

- to Seller as reimbursement for fronting 100% of the cost of the survey;
- Recording costs; and
 - County's attorney's fees.

17. AD VALOREM TAXES AND ASSESSMENTS ON THE PROPERTY.

a. Ad valorem taxes for the year of closing shall be prorated between Seller and County as of the Closing Date, based on the amount of the latest taxes assessed against the Property for the immediately preceding calendar year. Seller shall not be responsible for any increased taxes resulting from any land use change initiated or pursued by County. Seller shall be responsible for and pay at closing its portion of all unpaid ad valorem taxes and assessments on the Property, to discharge the lien of such ad valorem taxes and assessments. The Seller may take advantage of all legal procedures for discharging such lien by paying an estimated, prorated amount into escrow with the applicable tax collector(s) as provided by Section 196.295, Florida Statutes, Rule 12D-13.016, Florida Administrative Code and other applicable provisions of law.

b. For all years prior to the year of closing, the Seller shall be responsible for and pay at closing all unpaid ad valorem taxes and assessments on the Property, to discharge any and all liens of such ad valorem taxes and assessments.

18. ASSESSMENTS AND FEES. The Seller shall fully pay the following at or prior to closing, if any: all unpaid public assessments for street, sidewalk or other improvements, if any; city or county garbage disposal fees, incineration fees, fire service fees, and the like; impact fees payable with respect to the Property; and any other fees or payments due to any governmental authority with respect to the Property.

19. CLOSING DOCUMENTS: Except as specifically provided below, the Seller shall deliver or provide the Closing Agent with information necessary to produce the following documents at or prior to closing:

a. An Affidavit of Non-Foreign Status, Notice of Non-Recognition, or Withholding Certificate to establish compliance with the Foreign Investment and Real Property Tax Act of 1980 "FIRPTA". Any such documents executed and delivered by the Seller must comply with the provisions of FIRPTA and any regulations or rules promulgated thereunder. If the Closing Agent or the County has actual knowledge or have received notice that the information contained or

representations made in such document(s) is false, or if the document(s) does not otherwise comply with FIRPTA, then the Closing Agent shall withhold 10% - 15% of the amount realized by the Seller and shall remit such amount to the IRS at closing along with the properly completed remittance form.

b. Seller shall furnish a Seller's affidavit, in form reasonably acceptable to the title insurance company sufficient to remove standard printed exceptions to title in the Policy regarding (i) rights or claims of parties in possession; and (ii) mechanic's liens.

c. Assistant Secretary's Affidavit or other documentation reasonably required by the title insurance company.

d. Seller shall deliver satisfaction(s), release(s) or estoppel letters from lenders and others holding mortgages or liens on the Property.

e. Seller shall deliver an assignment of all of Seller's rights, title and interest in all development rights, permits, licenses, benefits, consents, or approvals, surveys, soil tests, water, sewer, or other utility capacity verification or reservation, development plans, engineering plans or specifications, tests, reports, studies, appraisals, analyses and similar documents or information relating to the Property only.

f. Any other documents reasonably required to complete the transaction.

20. **CONVEYANCE.** At closing, Seller shall convey to County fee simple title to the Property via special warranty deed, free and clear of all liens and encumbrances except for those matters expressly allowed for herein or otherwise agreed to by the Parties in writing. The Board authorizes the County Manager to accept liens and encumbrances related to the Property without requiring further approval of the Board. The deed of conveyance shall: (1) utilize the "metes and bounds" legal descriptions of the Property; and (2) meet the standards of the Closing Agent and the County as to form. Possession of the Property shall pass to the County at the time of closing.

21. **TIME IS OF THE ESSENCE.** In all matters relating to this Agreement, **TIME IS OF THE ESSENCE.**

22. **NO ALTERATIONS PRIOR TO CLOSING.** After the Effective Date, the Seller will not, without prior written consent from the County:

- a. Cut any timber from the Property or otherwise alter the Property, or
- b. Execute or enter into any lease, Agreement, option, easement, license, mortgage, financing statement, security agreement, or similar document concerning or affecting the Property, other than usual and customary service Agreements required for maintenance of the Property until the Closing Date.

23. **GENERAL CONDITIONS TO OBLIGATIONS OF THE COUNTY.** The obligations of the County are, at the option of the County, contingent upon these conditions:

- a. The representations and warranties made by Seller herein shall be correct statements of fact as said facts exist as of the Closing Date, and at all times between the Effective Date and the Closing Date.
- b. All terms, covenants, agreements and provisions of this Agreement to be complied with and performed by the Seller on or before the Closing Date shall have been duly complied with or performed.

24. **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER.** The Seller hereby represents, warrants, and covenants to and with the County as follows:

- a. Seller has the authority and power, to enter into this Agreement. To the best of Seller's actual knowledge, without any independent inquiry, no other party has a prescriptive, common law or statutory way of necessity over or across the Property other than as reflected in the public records.
- b. From and after the Effective Date, Seller shall not enter into any agreements, encumbrances, liens, or other documents or instruments for or regarding the sale, transfer, disposition, assignment, conveyance, encumbrance, lien, pledge, of any Property, or any part thereof or any interest therein, or which may result in any lien or encumbrance with regard to the Property, or any part thereof, or an interest therein, which shall survive closing hereunder, without the prior written consent of the County.
- c. The person executing this Agreement on behalf of the Seller is fully and duly authorized to do so by Seller, and any and all actions required to enter into this Agreement have

been duly and legally taken. Prior to the closing of the transactions contemplated herein, Seller will obtain formal approval from its Board of Directors to acquire the Property from the current landowner and convey said Property to the County. If Seller's Board of Directors does not approve acquisition of the Property from Weyerhaeuser, then the Seller shall pay 100% of the cost of the survey without any contribution from the County.

d. Prior to closing, Seller will pay all monetary liens or charges against title to the Property, if any.

e. To the best of Seller's actual knowledge, without any independent inquiry, except for the liens, encumbrances, or charges against the Property specifically disclosed in this Agreement or the Title Commitment, there are no other liens, encumbrances, unpaid bills to vendors, outstanding obligations or charges (contingent or absolute) in existence against Seller, or any existing undisclosed or unrecorded liens, encumbrances or charges, which could adversely affect title to the Property after Closing Date, and Seller has no actual knowledge of any matters pending that could result in a lien against the Property, or in any way substantially adversely affect title to the Property after the Closing Date.

f. From and after the Effective Date Seller will not cause, permit, suffer, or allow any change, modification or alternation to be made to the Property, or any part or portion thereof, or its physical condition without the prior written consent of County.

g. There are no licenses or leases relating to the Property, or any portion thereof which will survive closing hereunder.

h. Seller represents that to Seller's best information and belief the Property was used as commercial forest lands by its predecessor in title. Except as may be reflected on the Phase 1 environmental site assessment, the records of Seller do not reflect use at the Property of any Hazardous Materials, other than gasoline, diesel fuel, oil and grease, solvents and/or detergents as might be used ancillary to the operation of motor vehicles and forestry equipment, and small amounts of other miscellaneous materials used in connection with commercial forestry land use.

i. To the best of Seller's actual knowledge, without independent inquiry, Seller has not received notice from any governmental agency that the Property violates any federal, state or local Environmental Laws. Seller is not a party to any actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, affecting any portion of the Property or relating to or arising

out of the ownership of the Property, in any court or before or by any federal, state, or local agency or other governmental instrumentality; to SELLER's actual knowledge, there are no such actions, suits or proceedings pending.

j. The Seller is not a "foreign person" as that term is defined in 26 U.S.C.A. §1445(f)(3), nor is the sale of the Property subject to any withholding requirements imposed by the Internal Revenue Code, including but not limited to 26 U.S.C.A. §1445.

k. To the best of Seller's actual knowledge, without any independent inquiry, no commitments have been made to any governmental authority, utility company, school board, church or other religious body, or any homeowner's association, or to any other organization, group, or individual, relating to the Property which would impose an obligation upon County, or its successors or assigns, to make any contribution or dedications or money or land, or to construct, install, or maintain any improvements of a public or private nature on or off the Property, and no governmental authority has imposed any requirement that any developer of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with any development of the Property, or any part thereof.

l. No person, firm or other legal entity other than County has any right or option whatsoever to acquire the Property or any portion thereof, or any interest therein.

m. The execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by Seller of any provision of any agreement or other instrument to which Seller is a party or to which Seller may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Seller.

n. Seller is not subject to any bankruptcy proceeding, assignment for benefit of creditors, receivership or similar proceedings and that the conveyance of the Property as set out herein will not result in the Seller becoming bankrupt or insolvent.

25. REPRESENTATIONS AND WARRANTIES OF COUNTY. County hereby represents and warrants to Seller as follows:

a. No consent to the transaction contemplated by this Agreement by any person or entity other than County is required.

b. No representation, warranty or covenant in this Agreement, nor any document, certificate or exhibits given or delivered to Seller pursuant to this Agreement, when read singularly or together as a whole, contains any untrue statement of material fact, or omits a material fact necessary to make the statement contained therein true in light of the circumstances under which they were made.

26. **CONTINUING REPRESENTATION AND WARRANTIES.** The representations and warranties of the Parties contained herein shall be continuing up to and including the Closing Date and at all times between the Effective Date hereof and the Closing Date, with the same force and effect as though such representations and warranties had been made as of Closing.

27. **EMINENT DOMAIN.** The Seller has no actual knowledge of any threatened or pending eminent domain proceedings affecting the Property. In the event eminent domain proceedings are pending (without Seller's knowledge) or instituted after the Effective Date, to acquire all or any part of Property, the Parties agree that:

a. The Seller shall, upon discovery, immediately notify the County of such threatened or pending eminent domain proceedings and provide to the County copies of all written correspondences, pleadings or other papers concerning the eminent domain proceeding as the Seller receives them.

b. The County may either: (i) terminate the Agreement by written notice to the Seller, whereupon the Parties shall be relieved of all further obligations under the Agreement, except that County promises to pay half (fifty percent) of the cost of the survey; or (ii) elect to keep the Agreement in full force and effect and assume sole control and direction (including settlement authority) of the eminent domain proceedings. The County shall receive the eminent domain award and the Purchase Price shall remain as defined above. The Seller shall execute all assignments or documents as are necessary to accomplish the same.

28. **REAL ESTATE COMMISSIONS.** Each party represents, covenants, and warrants to the other that except as stated otherwise herein no real estate brokers or any third parties are entitled to receive any compensation or payment in connection with the sale and purchase of the Property.

29. **AUTHORITY.** Each party hereby represents and warrants to the other party, which representations and warranties shall be true and shall be deemed to be restated at the closing:

a. Each party has full authority to enter into this Agreement, and prior to Closing bind itself to the obligations stated herein, including but not limited to, providing any necessary resolutions or like documents indicating consent and approval.

b. The execution and delivery of this Agreement and consummation of the transaction contemplated hereby shall not (i) constitute a default under any instrument, document or obligation to which it is now, or may become a party, or by which it may be bound or affected, or (ii) violate any order, writ, injunction or decree of any court in any litigation to which it is a party.

30. **FURTHER ASSURANCES.** The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of the Parties.

31. **NOTICES.** Any notice, demand, request, or other communication required or permitted by this Agreement or by law shall be in writing, and shall be deemed to be given when (a) emailed to either the Seller or the County, (b) delivered in person with signed proof of delivery, (c) delivered by United States certified or registered mail, return receipt requested, postage prepaid, or (d) delivered by a commercial courier service (such as Federal Express) to the following addresses:

SELLER:

THE TRUST FOR PUBLIC LAND
306 N. Monroe Street
Tallahassee, Florida 32301
Attention: Kate Brown, Sr. Project Manager
Telephone: (850) 222-7911, ext. 27
Facsimile: (850) 222-8909
E-mail: kate.brown@tpl.org

With a copy to:

Peter Fodor, Legal Director
THE TRUST FOR PUBLIC LAND
306 North Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 222-7911, ext. 29
Facsimile: (850) 222-8909
E-mail: pete.fodor@tpl.org

PURCHASER:

ALACHUA COUNTY BOARD OF
COMMISSIONERS

12 SE 1st Street

Gainesville, FL 32601

Attention: Michele Lieberman, County Manager

Telephone: (352) 374-5204

Facsimile: (352) 338-7363

Email: mlieberman@alachuacounty.us

With a copy to:

Sylvia Torres

County Attorney

12 SE 1st Street

Gainesville, FL 32601

Telephone: (352) 374-5218

Facsimile: (352) 374-5216

E-mail: storres@alachuacounty.us

To change or update any of the addresses above, the notifying party shall provide notice of the change in writing to the other party using the methods set out above. The date of notice shall be the date the notifying party sends notice to the receiving party. If the notifying party delivers personal notice to the receiving party, the receiving party shall have received notice upon receipt thereof.

32. DEFAULT.

a. The Parties agree that if a default were to occur by the County, it would be difficult to determine Seller's actual damage. Based on what the Parties presently know, they agree that if the County fails to consummate the purchase of the Property in accordance with the terms of this Agreement for any reason other than Seller's default or the County's termination of this Agreement as allowed herein, half the cost of the Survey is a reasonable estimate of the damages that would accrue to Seller. Therefore, Seller's sole remedy against the County shall be to retain the Property and the County shall pay 100% of the cost of the Survey (*i.e.*, the Seller's 50% and the County's 50%) as liquidated and agreed upon damages and all Parties shall be relieved from any further obligations under this Agreement. It is agreed by the Parties that such amount is a fair and

reasonable measure of the damages to be suffered by Seller in the event of such default and would not act as a penalty to the County.

b. In the event Seller breaches its covenant to convey the Property to the County or otherwise fails to perform its obligations under this Contract, for any reason except for the County's default, the County shall be entitled to, reimbursement for the cost of its Environmental Site Assessment, if any, as agreed upon liquidated damages. Furthermore, the Seller shall be required to pay 100% of the cost of the survey without contribution by the County. It is agreed by the Parties that such amount and condition are fair and reasonable measures of the damages to be suffered by County in the event of such default and that the exact amount thereof is incapable of ascertainment.

c. The parties agree not to bring any claim or suit against the other party for additional damages in the event of a default.

33. **TERMINATION.** If this Agreement is terminated by either party as allowed herein, all Parties shall be released from any further obligation under this Agreement, except that the County promises to pay half (fifty percent) of the cost of the survey.

34. **ASSIGNMENT.** This Agreement may not be assigned by either party without the written consent of the other party.

35. **PERSONS BOUND.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, legal representatives, successors, and permitted assigns.

36. **ESCROW.** Any escrow agent receiving funds or equivalent is authorized and agrees by acceptance thereof to deposit promptly and to hold same in escrow and subject to clearance thereof to disburse same in accordance with the terms and conditions of this Agreement. Failure of clearance of funds shall not excuse performance by the County, and may be treated as a default by the County at the option of the Seller. In the event of doubt as to the escrow agent's duties or liabilities under the provisions of this Agreement, the escrow agent may in agent's sole discretion, continue to hold the funds in escrow until the Parties mutually agree to the disbursement thereof, or until a judgment or a court of competent jurisdiction shall determine the rights of the Parties thereto, or escrow agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute, and upon notifying all Parties concerned of such action, all liability on the part of the

escrow agent shall fully terminate, except to the extent of accounting for any items theretofore delivered out of escrow. In the event of any suit between County and Seller wherein the escrow agent is made a party by virtue of acting as an escrow agent hereunder, or in the event of any suit wherein escrow agent interpleads the subject matter of this escrow, the agent shall be entitled to recover reasonable attorney's fees and costs incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All Parties agree that the escrow agent shall not be liable to any party or person whomsoever for misdelivery to County or Seller of items subject to escrow, unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of the escrow agent.

37. **ENTIRE AGREEMENT.** This Agreement contains all of the agreements, representations and warranties of the Parties hereto with respect to the Property, and supersedes all other discussions, understandings or agreements in respect to the subject matter hereof. All prior discussions, understandings and agreements are merged into this Agreement, which alone fully and completely expresses the agreements and understandings of the Parties hereto. This Agreement may be amended, superseded, extended or modified only by an instrument in writing referring hereto signed by all Parties. The County Manager may extend any of the dates herein, on behalf of the County, if so requested by the Seller.

38. **APPLICABLE LAW; VENUE.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Florida. Sole and exclusive venue for any action arising from this Agreement shall be brought in Alachua County, Florida.

39. **SOVEREIGN IMMUNITY.** The County fully retains all sovereign immunity protections afforded to it as a charter county and a political subdivision of the State of Florida. The County waives nothing by entering into this Agreement. All claims against the County that are permissible pursuant to the partial waiver of sovereign immunity set forth in §768.28, Florida Statutes, must strictly comply with the procedures found in §768.28, Florida Statutes.

40. **SEVERABILITY.** In the event any portion of this Agreement is found to be unenforceable, the remainder of this Agreement shall remain in full force and effect if the deletion of such portion shall neither affect the overall intent of this Agreement, nor materially impair the benefits negotiated by each party hereunder.

41. **CONSTRUCTION.** The provisions of this Agreement have been carefully and fully negotiated between the Parties, each of which has relatively equal bargaining power. The terms of this Agreement are to be construed in accordance with their fair meaning and intent and are not to be construed against either party merely because such party or its counsel drafted this Agreement. In the event a day of performance falls on a Saturday, Sunday or legal holiday under the laws of the State of Florida, the day of performance shall be automatically extended to the next day which is not a Saturday, Sunday or legal holiday and the County is open for regular business.

42. **NO RECORDING OF AGREEMENT.** The Parties agree that neither the County nor the Seller shall cause this Agreement to be recorded in any public records relating to the Property.

43. **COUNTERPARTS.** This Agreement may be executed by the Parties hereto individually or in combination, in one or more counterparts, each of which shall be an original, and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by facsimile and/or email transmission, with the intention that such facsimile and/or email signature and delivery shall have the same effect as an original signature and actual delivery.

44. **HEADINGS.** The captions and headings contained in this Agreement are for reference purposes only, and shall not in any way affect the meaning or interpretation hereof.

45. **WAIVER.** No provision of this Agreement or any rights hereunder may be waived unless such waiver is in writing and is signed by the party waiving such provision or right. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or in the provisions of this Agreement shall not exclude other remedies unless they are expressly excluded.

46. **SURVIVAL OF PROVISIONS.** The respective representations, warranties, covenants, of Seller and County contained in this Agreement shall survive the closing of this transaction and remain in effect for a period of six (6) months from the date of closing.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

SELLER:

**The Trust for Public Land, a nonprofit
California corporation**



Witness



Witness

BY: 
By: Peter Fodor, Esq.
Its: Legal Director
Date: 9-6-2019

(CORPORATE SEAL)

**IF THE SELLER IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE
OF INCUMBANCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING
THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR
ORGANIZATION.**

ALACHUA COUNTY:

**BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA**

By: _____
Charles Chestnut, IV, Chair
Board of County Commissioners

ATTEST

J.K. "Jess" Irby, Esq.
Clerk

APPROVED AS TO FORM

Alachua County Attorney's Office

(SEAL)

EXHIBIT A -Description of the Property

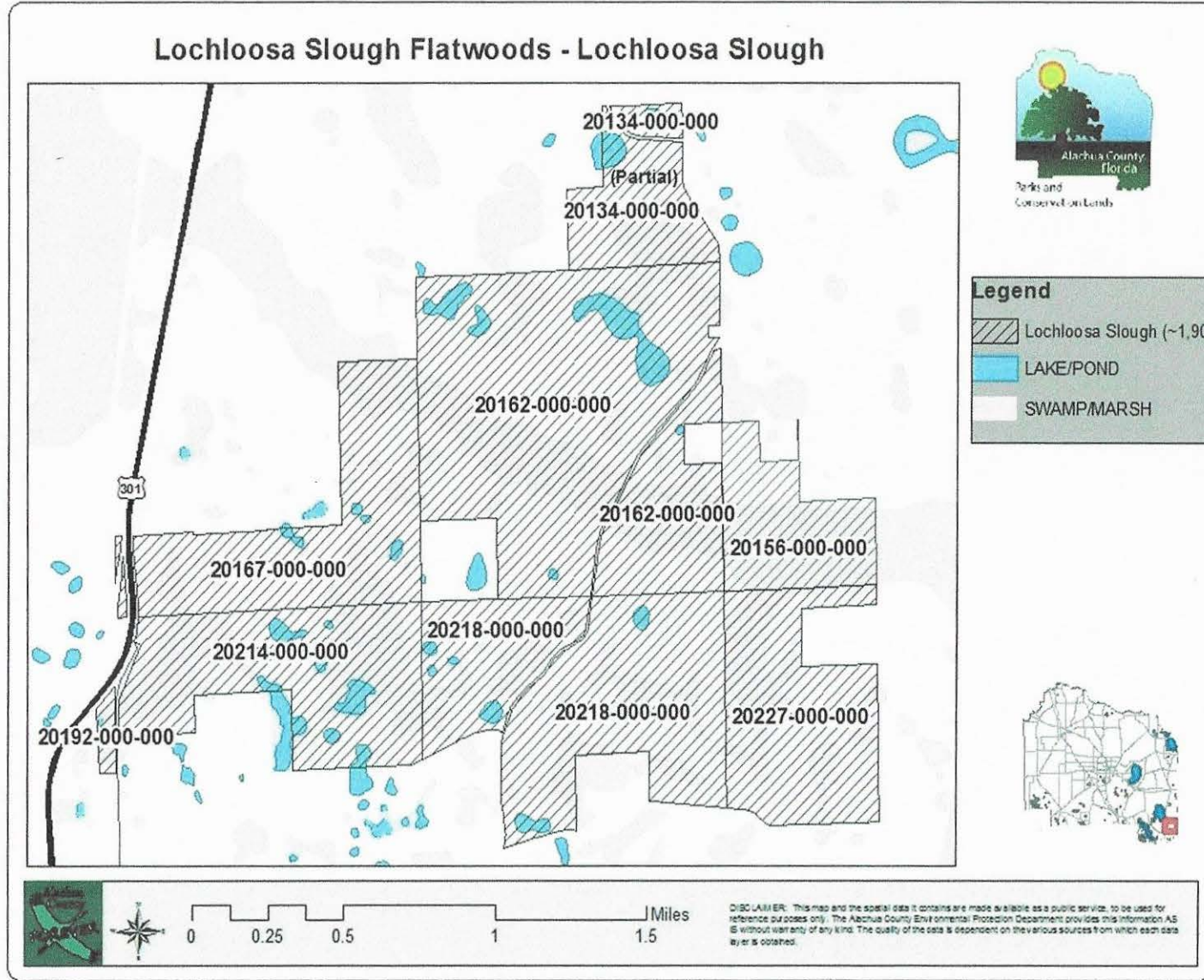


EXHIBIT B – Beneficial Interest and Disclosure Affidavit Form

This instrument prepared by:
David E. Menet, Esq.
Salter Feiber, P.A.
3940 NW 16th Blvd., Bldg. B
Gainesville, Florida 32605
352-376-8201
File No.: *

AFFIDAVIT OF DISCLOSURE OF BENEFICIAL INTEREST

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____ who was sworn and makes the following statements:

1. Affiant has personal knowledge of the facts contained herein.
2. Affiant makes this affidavit concerning the following described property (the **"Property"**) located in Alachua County, Florida which is being sold and conveyed to ALACHUA COUNTY, FLORIDA, a political subdivision of the state of Florida:

See **Exhibit "A"** attached hereto.

3. The Property is owned by _____ (the **"Owner"**).
Affiant is an Authorized Person of _____.

4. I make this affidavit pursuant to the entity disclosure requirements listed in §286.23, Florida Statutes concerning real property being conveyed to a public agency.

5. The following are the names and addresses of all parties having any beneficial interest in the Owner:

- a. _____, whose address is _____.
- b. _____, whose address is _____.
- c. _____, whose address is _____.
- d. _____, whose address is _____.
- e. _____, whose address is _____.
- f. _____, whose address is _____.

Further Affiant Sayeth Naught.

DATED: _____

SWORN TO, SUBSCRIBED AND ACKNOWLEDGED before me on
_____, by _____
who is ☐ personally known to me or ☐ who has produced _____ as
identification.

Sign: _____

{S E A L}

Print: _____

EXHIBIT C – Permitted Exceptions

There are no Permitted Exceptions.