

## AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT is made and entered into by and between **CITY OF NAPLES, a Florida municipal corporation** (hereinafter "Purchaser") and **COLLIER COUNTY, a political subdivision of the State of Florida** (hereinafter "Seller").

### WITNESSETH

**WHEREAS**, the Seller is the owner of that certain real property in Collier County, Florida and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, pursuant to Section 14.7, Ordinance 02-63, known as the Conservation Collier Implementation Ordinance, the purchase of land by Conservation Collier automatically extinguishes all development rights except those compatible with the purposes of this program; and

**WHEREAS**, the Purchaser desires to purchase the Property for conservation purposes on the terms and conditions hereinafter set forth in this Agreement; and

**WHEREAS**, the Seller is authorized by s. 125.38, Fla. Stat., and by Ordinance 02-63 to sell the Property, so long as the Property is used for the articulated purposes of the Ordinance; and

**WHEREAS**, in light of the Purchaser's proposed use for conservation, the Property will no longer be needed for County purposes, and the Seller desires to sell the Property to the City on the terms and conditions hereinafter set forth in this Agreement; and

**WHEREAS**, both the Seller and Purchaser find a public benefit in effectuating the purchase.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises, representations and undertakings of the parties set forth herein, the adequacy and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### I. AGREEMENT

1.01 The above recitals are true and incorporated herein by this reference.

1.02 In consideration of the purchase price and upon the terms and conditions hereinafter set forth, Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property, described in Exhibit "A".

1.03 It is understood by the parties that this Agreement is subject to, and contingent upon, the approval of both parties' governing body at a duly-noticed meeting. It is anticipated that the Board of County Commissioners will consider this Agreement for approval on June 20, 2006, and the City Council on June 14, 2006. No representations or understandings memorialized herein shall have effect unless and until both parties have executed this Agreement.

#### II. PAYMENT OF PURCHASE PRICE

2.01 The purchase price (the "Purchase Price") for the Property shall be **TEN THOUSAND NINE HUNDRED AND 00/100 Dollars (\$10,900.00)**, (U.S. Currency) payable at time of closing.

### III. CLOSING

3.01 The Closing (THE "CLOSING DATE", "DATE OF CLOSING", OR "CLOSING") of the transaction shall be held on or before ninety (90) days following the Effective Date, unless extended by mutual written agreement of the parties hereto. The Closing shall be held at the Collier County Attorney's Office, Administration Building, 3301 Tamiami Trail East, Naples, Florida. The procedure to be followed by the parties in connection with the Closing shall be as follows:

3.011 Seller shall convey a marketable title free of any liens, encumbrances, exceptions, or qualifications, other than those that are caused or accepted or waived by Purchaser under Article IV of this Agreement. Marketable title shall be determined according to applicable title standards adopted by the Florida Bar and in accordance with law. At the Closing, the Seller shall cause to be delivered to the Purchaser the items specified herein and the following documents and instruments duly executed and acknowledged, in recordable form:

3.0111 A Warranty Deed in favor of Purchaser, conveying title to the Property, free and clear of all liens and encumbrances other than:

(a) The lien for current taxes and assessments.

(b) Such other easements, restrictions, matters or conditions of record.

(c) A Conservation Easement in favor of the Seller for such purposes as set forth in Ordinance 02-63.

3.0112 Combined Purchaser-Seller closing statement.

3.0113 A "Gap," Tax Proration, Owner's and Non-Foreign Affidavit," as required by Section 1445 of the Internal Revenue Code and as required by the title insurance underwriter in order to insure the "gap" and issue the policy contemplated by the title insurance commitment.

3.0114 A W-9 Form, "Request for Taxpayer Identification and Certification" as required by the Internal Revenue Service.

3.012 At the Closing, the Purchaser, or its assignee, shall cause to be delivered to the Seller the following:

3.0121 A negotiable instrument in an amount equal to the Purchase Price. No funds shall be disbursed to Seller until the Title Company verifies that the state of the title to the Property has not changed adversely since the date of the last endorsement to the commitment, referenced in Section 4.011 thereto, and the Title Company is irrevocably committed to pay the Purchase Price to Seller and to issue the Owner's title policy to Purchaser in accordance with the commitment immediately after the recording of the deed.

3.0122 Funds payable to the Seller representing the cash payment due at Closing in accordance with Article III hereof, shall be subject to adjustment for prorations as hereinafter set forth.

3.0123 A properly executed perpetual Conservation Easement over the Property in favor of Collier County for its review. This easement will be recorded by City immediately after the Warranty Deed is recorded.

3.02 Each party shall be responsible for payment of its own attorney's fees. Seller, at its sole cost and expense, shall pay at Closing the cost of recording any instruments necessary to clear Seller's title to the Property. The cost of the Owner's Form B Title Policy, issued pursuant to the Commitment provided for in Section 4.011 below, shall be paid by Purchaser.

3.03 Purchaser shall pay for the cost of recording the Warranty Deed. Real Property taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and any other applicable exemptions and paid by Seller. If Closing occurs at a date which the current year's millage is not fixed, taxes will be prorated based upon such prior year's millage.

#### IV. REQUIREMENTS AND CONDITIONS

4.01 Upon execution of this Agreement by both parties or at such other time as specified within this Article, Purchaser and/or Seller, as the case may be, shall perform the following within the times stated, which shall be conditions precedent to the Closing;

4.011 Within fifteen (15) days after the date hereof, Purchaser shall obtain as evidence of title an ALTA Commitment for an Owner's Title Insurance Policy (ALTA Form B-1970) covering the Property (the "Title Commitment"), together with hard copies of all exceptions shown thereon. Purchaser shall have thirty (30) days, following receipt of the title insurance commitment, to notify Seller in writing of any objection to title other than liens evidencing monetary obligations, if any, which obligations shall be paid at closing.

4.012 If Purchaser shall fail to advise the Seller in writing of any such objections in Seller's title in the manner herein required by this Agreement, the title shall be deemed acceptable. Upon notification of Purchaser's objection to title, Seller shall have thirty (30) days to remedy any defects in order to convey good and marketable title, except for liens or monetary obligations which will be satisfied at Closing. Seller, at its sole expense, shall use its best efforts to make such title good and marketable. In the event Seller is unable to cure said objections within said time period, Purchaser, by providing written notice to Seller within seven (7) days after expiration of said thirty (30) day period, may accept title as it then is, waiving any objection, and proceed to Closing; or Purchaser may terminate the Agreement. A failure by Purchaser to give such written notice of termination within the time period provided herein shall be deemed an election by Purchaser to accept the exceptions to title as shown in the title commitment.

4.013 Seller agrees to furnish any existing surveys of the Property in Seller's possession to Purchaser within 10 (ten) days of the Effective Date of this Agreement. Purchaser shall have the option, at its own expense, to obtain a current survey of the Property prepared by a surveyor licensed by the State of Florida. No adjustments to the Purchase Price shall be made based upon any change to the total acreage referenced in Exhibit "A," unless the difference in acreage revealed by survey exceeds 5% of the overall acreage. If the survey provided by Seller or obtained by Purchaser, as certified by a registered Florida surveyor, shows: (a) an encroachment onto the property; or (b) that an improvement located on the Property projects onto lands of others, or (c) lack of legal access to a public roadway, the Purchaser shall notify the Seller in writing of such encroachment, projection, or lack of legal access, and Seller shall have the option of curing said encroachment or projection, or obtaining legal access to the Property from a public roadway, within sixty (60) days of receipt of said written notice from Purchaser. Purchaser shall have sixty (60) days from the Effective Date of this Agreement to notify Seller of any such objections. Should Seller elect not to or be unable to remove the encroachment, projection, or provide legal access to the property within said sixty (60) day period, Purchaser, by providing written notice to Seller within seven (7) days after expiration of said sixty (60) day period, may accept the Property as it then is, waiving any objection to the encroachment, or projection, or lack of legal access, or Purchaser may terminate the Agreement. A failure by Purchaser to give such written notice of termination within the time

period provided herein shall be deemed an election by Purchaser to accept the Property with the encroachment, or projection, or lack of legal access.

## V. INSPECTION PERIOD

5.01 Purchaser shall have sixty (60) days from the Effective Date, ("Inspection Period"), to conduct engineering, feasibility and such other studies and investigations concerning the property being acquired as it desires (the "Investigation Period"). During the Investigation Period, Purchaser shall be provided with full access to the Property as deemed necessary by the inspecting party. Purchaser and/or its designated agents may enter upon the applicable property for the purpose of soil analysis, core drilling, structural examination and tests, or other studies, tests, examinations and investigations which may be deemed necessary. During the Investigation Period the parties agree to cooperate fully with one another in order that each may obtain copies of all documents pertaining to the property being acquired, including, but not limited to, plats, site plans, surveys, permits, licenses, approvals, and environmental reports. If for any reason, or no reason, Purchaser determines during the Investigation Period (in its sole discretion) that it does not desire to proceed with the transaction (the "Terminating Party"), then no later than the expiration of the Investigation Period, the Terminating Party shall notify the other party that it has elected not to proceed and desires to terminate this Agreement, and the parties shall be relieved of all liability under this Agreement. If Purchaser fails to provide to Seller notice that it has elected not to proceed on or before 5:00 p.m. on the last day of the Investigation Period, then Purchaser shall be deemed to have elected to proceed and shall have no further right to terminate this Agreement under this Section. In the event this Agreement fails to close for any reason, to the extent Purchaser's inspections resulted in alterations of the Property, Purchaser shall restore the property to the condition existing prior to the inspections. To the extent permitted by Florida law, Purchaser agrees to indemnify and hold the Seller harmless against any property damage or personal injury or claim of lien against resulting from the activities permitted by this Section (including, without limitation, reasonable attorneys' fees and expenses paid or incurred by the other party during litigation, if any). Liability under the foregoing indemnity shall survive the Closing and any termination of this Agreement.

5.02 Purchaser understands and acknowledges that it will inspect the Property and will rely solely on its own investigations of the Property and not on any information provided or to be provided by the other party, except as otherwise provided herein. Purchaser acknowledges that any documents provided to it pursuant to this Section or any prior survey provided were obtained from a variety of sources and the Seller has not made any independent investigation or verification of such information and does not make any representations as to the accuracy or completeness of such information.

## VI. POSSESSION

6.01 Purchaser shall be entitled to full possession of the Property at Closing.

## VII. TERMINATION AND REMEDIES

7.01 If Seller shall have failed to perform any of the covenants and/or agreements contained herein which are to be performed by Seller, within ten (10) days of written notification of such failure, Purchaser may, at its option, terminate this Agreement by giving written notice of termination to Seller. Purchaser shall have the right to seek and enforce all rights and remedies available at law or in equity to a contract vendee, including the right to seek specific performance of this Agreement.

7.02 If the Purchaser has not terminated this Agreement pursuant to any of the provisions authorizing such termination, and Purchaser fails to close the transaction contemplated hereby or otherwise fails to perform any of the terms, covenants and conditions of this Agreement as required on the part of Purchaser to be performed. then within ten (10) days of written notification of such failure,

provided Seller is not in default, as Seller's sole remedy, Seller shall have the right to terminate and cancel this Agreement by giving written notice thereof to Purchaser, whereupon the cost of One Thousand Dollars (\$1,000.00) shall be paid to Seller as liquidated damages which shall be Seller's sole and exclusive remedy, and neither party shall have any further liability or obligation to the other except as set forth in paragraphs 5.03 (Inspection Period) and 12.01, (Real Estate Brokers), hereof. The parties acknowledge and agree that Seller's actual damages in the event of Purchaser's default are uncertain in amount and difficult to ascertain; however, Ordinance 02-63 dictates that administrative costs be limited to the greatest extent possible and the recovery of unnecessary administrative costs meets the purpose of the ordinance. The foregoing liquidated damages amount was reasonably determined by mutual agreement between the parties based on such costs, and said sum was not intended to be a penalty in nature.

7.03 The parties acknowledge that the remedies described herein and in the other provisions of this Agreement provide mutually satisfactory and sufficient remedies to each of the parties, and take into account the peculiar risks and expenses of each of the parties.

#### VIII. NOTICES

8.01 Any notice, request, demand, instruction or other communication to be given to either party hereunder shall be in writing, sent by facsimile with automated confirmation of receipt, or by registered, or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Purchaser: Alexandra Sulecki, Coordinator  
Conservation Collier Land Acquisition Program  
Collier County Environmental Services Department  
2800 North Horseshoe Dr.  
Naples, Florida 34104

With a copy to: Cindy M. Erb, Senior Property Acquisition Specialist  
Collier County Real Estate Services  
Administration Building  
3301 Tamiami Trail East  
Naples, Florida 34112  
Telephone number: 239-774-8991  
Fax number: 239-774-8876

If to Seller: Robert E. Lee, DPA  
City Manager  
735 8<sup>th</sup> Street South  
Naples, FL 34102  
Telephone number: 239-213-1030  
Fax number: 239-213-1033

With a copy to: Robert D. Pritt, Esq.  
Roetzel & Andress  
850 Park Shore Drive, Third Floor  
Naples, FL 34103-3587  
Telephone number: 239-649-6200  
Fax number: 239-261-3659

8.02 The addressees and numbers for the purpose of this Article may be changed by either party by giving written notice of such change to the other party in the manner provided herein. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last addressee and respective address stated herein shall be deemed to continue in effect for all purposes.

## IX. REAL ESTATE BROKERS

9.01 Purchaser and Seller warrant and represent to the other that neither party has employed or used the services of any real estate broker in connection with the negotiation of the transaction contemplated in this Agreement. If any broker, other than as provided below, shall claim compensation against either party by reason of the alleged representation of the other party, the party whom such broker purports to have represented shall, to the extent permitted by law, hold the other party harmless from, and defend such other party against, any such claim for compensation. This section shall survive closing or any termination of this Agreement.

## X. MISCELLANEOUS

10.01 This Agreement may be executed in any manner of counterparts which together shall constitute the agreement of the parties.

10.02 This Agreement and the terms and provisions hereof shall be effective as of the date this Agreement is executed by both parties and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal representatives, successors, successor trustee, and assignees whenever the context so requires or admits.

10.03 Any amendment to this Agreement shall not bind any of the parties hereof unless such amendment is in writing and executed and dated by Purchaser and Seller. Any amendment to this Agreement shall be binding upon Purchaser and Seller as soon as it has been executed by both parties.

10.04 Captions and section headings contained in this Agreement are for convenience and reference only; in no way do they define, describe, extend or limit the scope or intent of this Agreement or any provisions hereof.

10.05 All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

10.06 No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

10.07 If any date specified in this Agreement falls on a Saturday, Sunday or legal holiday, then the date to which such reference is made shall be extended to the next succeeding business day.

10.08 This Agreement is governed and construed in accordance with the laws of the State of Florida.

10.09 If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent, be declared invalid or unenforceable by a court of competent jurisdiction, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, such term or provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such term or provision shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

10.01 This Agreement and the exhibits attached hereto contain the entire agreement between the parties, and no promise, representation, warranty or covenant not included in this Agreement or any such referenced agreements has been or is being relied upon by either party.

IN WITNESS WHEREOF, the parties hereto have signed below.

Dated Project/Acquisition Approved by BCC: \_\_\_\_\_

AS TO PURCHASER:

DATED: \_\_\_\_\_

CITY OF NAPLES, a Florida municipal corporation

ATTEST:

\_\_\_\_\_  
Tara A. Norman, City Clerk

BY: \_\_\_\_\_  
DR. ROBERT E. LEE, City Manager

Approved as to form and legality:

\_\_\_\_\_  
Robert D. Pritt, City Attorney

AS TO SELLER:

DATED: \_\_\_\_\_

COLLIER COUNTY, a political subdivision of the State of Florida

ATTEST:

\_\_\_\_\_  
, Deputy Clerk

\_\_\_\_\_  
FRANK HALAS, Chairman

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Ellen T. Chadwell  
Assistant County Attorney