

STATE OF ALABAMA)
COUNTY OF BALDWIN)

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of this 20th day of November, 2023 (the "Effective Date"), between OWEN COMPANY, LLC, an Alabama limited liability company, (the "Seller") and BALDWIN COUNTY COMMISSION, a political subdivision of the State of Alabama (the "Purchaser").

WHEREAS, Seller is the owner of that certain real property located in Baldwin County, Alabama, together with any and all improvements located thereon and all rights and appurtenances thereunto appertaining, such parcel being more particularly described herein; and

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

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

1. **Purchase and Sale of Property.** Subject to the terms and conditions set forth herein, the Seller agrees to sell, convey, transfer, assign, and deliver to the Purchaser and the Purchaser agrees to purchase all of the Seller's right, title, and interest in and to the certain real property located at 161 Hand Avenue, Bay Minette, Alabama 36507 (the "Property"). This Property is more particularly described in Exhibit "A," which will be attached hereto and made a part hereof by this reference, together with:
 - a. All improvements, buildings, structures, fixtures, and appurtenances situated on said Property; and
 - b. All easements, appurtenances, and hereditaments appertaining thereto; and
 - c. All of Seller's right, title, and interest in and to adjacent streets, alleys, rights of way, and awards made or to be made in connection therewith.

2. **Purchase Price and Manner of Payment.** The purchase price shall be FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) (the "Purchase Price"), which shall be payable in the following manner:
 - a. **Escrow Money:** Upon execution of this Agreement, the Purchaser shall deliver earnest money amounting to SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$7,800.00) to the Title Company, Alabama Land Title, to be applied towards the total Purchase Price. Alabama Land Title shall hold this earnest money for a period of forty-five (45) days from the effective date of this Agreement. Within this 45-day period, the first thirty (30) days are allocated for the Purchaser to conduct and complete the Due Diligence Period, as detailed in Section 11. The closing of the transaction is scheduled to occur on the 45th day from the effective date of this Agreement, subject to the terms and conditions herein.
 - b. **Payment of Remaining Balance:** The balance of the Purchase Price, totaling FOUR

HUNDRED NINETY-TWO THOUSAND TWO HUNDRED DOLLARS (\$492,200.00), is to be paid by the Purchaser on the Closing Date (as defined in Section 5). This amount is subject to any adjustments and apportionments as outlined in this Agreement. The payment shall be made in cash or by immediately available funds.

3. **Conveyance.** The Seller shall convey the Property to the Purchaser by General Warranty Deed (the "Deed"), free of all liens and encumbrances except for the Permitted Exceptions, as defined in Section 4.
4. **Permitted Exceptions.** The Property shall be conveyed to Purchaser subject to all ad valorem taxes and assessments for the then current year and all subsequent years thereafter, all easements, restrictions, reservations, rights-of-way and other matters of record in the Probate Office of Baldwin County, Alabama, all zoning ordinances pertaining to the Property, all mineral and mining rights not owned by Seller and any matters revealed by the Title Commitment or Survey, if a survey is performed, as approved (or which are deemed to be approved) by the parties in accordance with Section 1 herein (collectively, the "Permitted Exceptions").
5. **Closing.** The closing and consummation of this transaction (the "Closing") will be concluded by an agent of Alabama Land Title and shall take place at the office of Alabama Land Title, located at 112 N Hoyle Ave, Bay Minette, AL 36507, on or about the _____ day of _____, 2023, which is fifteen (15) days after the expiration of the Due Diligence Period (as hereinafter defined in Section 12, subsection a) (the "Closing Date"). If the Closing Date shall fall on a Saturday, Sunday, or legal holiday under the laws of the State of Alabama, the Closing Date shall automatically be extended to the next day that is neither a Saturday, Sunday, nor legal holiday under Federal law and/or the laws of the State of Alabama.
6. **Closing Costs and Prorations.** In connection with this Agreement, the allocation of closing costs and prorations is as follows:
 - a. **Seller's Responsibilities:** The Seller shall be responsible for the costs associated with the Title Commitment, including related title searches and the deed tax, if any, for the deed to be delivered to the Purchaser. The Seller will also cover any real property transfer taxes and fees levied by the state, county, or municipality where the Property is located. Additionally, prorations for taxes, assessments, and insurance will be calculated and settled as of the date of Closing. The Seller shall purchase and provide the Title Policy to the Purchaser. The Seller shall cover one-half of the escrow agent fee, with Alabama Land Title serving as the escrow agent as set forth above.
 - b. **Purchaser's Responsibilities:** The Purchaser is responsible for the expenses related to updating or obtaining the Survey and all recording and filing fees associated with the filing of the deed from the Seller, if applicable. The Purchaser is obligated to pay one-half of the escrow agent's fee, with Alabama Land Title designated as the escrow agent, as previously specified.
 - c. **Attorney's Fees:** In the event of a dispute or legal action arising from this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and legal costs from the other party.

7. Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

- a. Seller has good and marketable fee simple absolute title to the Property free and clear of all easements, restrictions, conditions, reservations, liens, claims, or other encumbrances, other than those deemed Permitted Exceptions as provided herein.
- b. Seller has the full right, power, and authority to enter into this Agreement and to cause the same to create a legal and binding obligation of the Seller.
- c. There is no pending or contemplated claim, litigation, condemnation, administrative action, or other legal proceeding involving or affecting any portion of the Property.
- d. There is no oral or written lease, agreement, or contract to which Seller is a party in any way affecting or related to the Property and there are no persons possessing or having rights of possession to the Property or any portion thereof other than Seller.
- e. Seller has not received any notification of any pending municipal improvement assessments whether final or not, and this warranty shall survive the delivery of the Deed from Seller to Purchaser.

8. Conditions Precedent to Purchaser's Obligations. The obligations of the Purchaser under this Agreement are contingent upon and subject to the satisfaction of the following conditions:

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

9. Deliveries.

- a. Seller's Deliveries: At Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:
 - i. Execute, acknowledge, and deliver the Deed conveying the Property to Purchaser in a form acceptable to Purchaser which shall be insured pursuant to

the Title Commitment, subject to the Permitted Exceptions.

ii. Execute and deliver any additional documents or instruments that may reasonably be required by the Purchaser or by the Closing Agent at Alabama Land Title, as stipulated in this Agreement, to effectively carry out and memorialize the terms of this transaction.

b. **Purchaser's Deliveries:** At Closing, Purchaser shall:

i. Subject to any credits, adjustments, costs or prorations provided for herein, deliver the remaining balance of the Purchase Price required to close hereunder to Alabama Land Title closing this transaction.

ii. Execute and deliver such other documents or instruments as may reasonably be required by Seller or the title company closing this transaction by this Agreement to effectuate the Agreement memorialized herein.

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

11. **Due Diligence.**

a. **Due Diligence Period.** Following the Effective Date of this Agreement, Purchaser shall have thirty (30) days (the "Due Diligence Period") within which to conduct any and all tests, surveys, inspections, studies, examinations, and to address any other matters which Purchaser considers to affect the value of the Property, in Purchaser's sole discretion, as Purchaser may elect, in its sole judgment, to determine the suitability of the Property for Purchaser's purposes (collectively, the "Due Diligence Matters"). Such Due Diligence Matters may include, but shall not be limited to, engineering studies, environmental studies, feasibility studies, drainage plans, marketing studies, financial studies, utility availability investigations, Purchaser's ability to obtain building permits, and all other required permits or licenses and any approvals deemed necessary or important to Purchaser with respect to Purchaser's proposed utilization of the Property.

b. **Title Insurance.** Seller shall, within twenty-one (21) days of the Effective Date, furnish to Purchaser a commitment for an ALTA owner's or mortgagee's title insurance policy providing coverage in the amount of the Purchase Price and insuring the Purchaser against loss on the account of any defect or encumbrance in the title to the Property (the "Title Commitment").

c. **Survey.** Purchaser, at its sole cost and expense, may obtain a current survey ("Survey") of the Property. If the legal description set forth in the Survey varies in any material respect from the legal description described herein, then Purchaser, at its option, may terminate this Agreement, whereupon any Earnest Money paid by Purchaser shall be returned to Purchaser, and the parties hereto shall have no further obligations hereunder. In the event Purchaser elects not to terminate this Agreement, then the legal description from the Survey shall be substituted for that provided herein.

- d. **Governmental Approvals.** In the event that the zoning affecting the Property must be amended or site plan approval or other governmental approval must be obtained in order to permit Purchaser's intended use thereof, in Purchaser's judgment, then Purchaser shall be entitled, at Purchaser's sole cost and expense, to initiate proceedings and to take all other action necessary to effect such zoning change, governmental approval, and/or site plan approval. Seller shall cooperate with Purchaser in the institution of such proceedings and action, and shall execute all authorizations and other documents necessary to cause, at Purchaser's request, the Property to be rezoned and/or site plan approval to be obtained. In the event that Purchaser fails to rezone the Property and/or obtain governmental approval or site plan approval prior to the expiration of the Due Diligence Period, such Due Diligence Period shall be extended at Purchaser's option for a reasonable period of time in order to enable the obtaining of the same.
- e. **Purchaser's Objections.** In the event Purchaser is not satisfied with the results of any Due Diligence Matter, including, but not limited to matters in the Title Commitment or the Survey or any other matter or condition that makes the Property unsuitable for Purchaser's purposes, in Purchaser's sole judgment and absolute discretion (the "Objections"), Purchaser may elect to (i) terminate this Agreement, by delivering written notice of such to Seller within five (5) days following expiration of the Due Diligence Period upon which the Earnest Money paid by Purchaser shall be returned to Purchaser, and the parties hereto shall have no further obligations hereunder; or (ii) elect to waive such Objections and proceed to Closing. All Objections approved by Purchaser or subsequently waived in writing shall hereinafter be deemed to be "Permitted Exceptions" as defined in Section 4.
- f. **Access.** Seller hereby grants to Purchaser and its agents, employees and contractors reasonable access to the Property during the Due Diligence Period necessary to conduct such Inspections. In performing its due diligence, Purchaser agrees to use reasonable, good faith efforts not to damage the Property.

12. **Default.**

- a. **Default by Seller:** In the event of Seller's breach of this Agreement, Purchaser shall have the right to either: (i) affirm this Agreement and seek to enforce its specific performance; (ii) proceed against Seller for any all damages or remedies available to Purchaser under law or in equity and/or (iii) terminate this Agreement whereupon the Earnest Money shall be refunded to Purchaser. In such event that this Agreement is terminated, neither party shall have any further obligation or liability to the other hereunder except for the indemnification obligations set forth herein.
- b. **Default by Purchaser:** In the event of a default by the Purchaser under this Agreement, the following remedies shall be available:
 - i. **If the Default is Due to Seller's Non-Compliance:** If the Purchaser's failure to consummate the transaction is due to a material breach, (For the definition of "Material Breach," refer to subsection 1. below), or non-compliance of any term, condition, or covenant of this Agreement by the Seller, then the Purchaser shall have the right to either seek specific performance of the Agreement or terminate the Agreement. Upon termination under this condition, the Purchaser shall be entitled to a full refund of the Earnest

Money deposited.

1. **Definition of Material Breach:** A significant violation of the terms of this Agreement that results in substantial harm to the aggrieved party, or which substantially defeats the purpose of this Agreement.

ii.If the Default is Due to Unforeseen Circumstances Affecting Purchaser:

If the failure to consummate the transaction is due to unforeseen circumstances beyond the reasonable control of the Purchaser (such as natural disasters, changes in law, or other force majeure events) (For the definition of "Force Majeure" refer to subsection 1. below), the Purchaser shall notify the Seller of such circumstances and may request an extension to close the transaction. The Seller shall not unreasonably withhold agreement to such an extension, provided it does not exceed [specify a reasonable period, e.g., 30 days]. If the transaction cannot be completed within the extended period, the Agreement may be terminated, and the Earnest Money shall be refunded to the Purchaser, less any actual costs (For the definition of "Actual Costs" refer to subsection 2. below) incurred by the Seller up to that point.

1. **Definition of Force Majeure:** Unforeseeable circumstances that prevent a party from fulfilling their obligations under this Agreement, including, but not limited to, natural disasters, war, terrorism, strikes, pandemics, government actions and other acts of God.
2. **Definition of Actual Costs:** Direct, out-of-pocket expenses reasonably incurred by a party as a result of entering into and preparing for the completion of this Agreement, including legal fees, survey charges, inspection fees and title search fees.

- c. **If the Default is Unrelated to Seller's Non-Compliance or Unforeseen Circumstances:** If the Purchaser fails to consummate the transaction for reasons other than those mentioned in (i) or (ii) above, after the expiration of the Due Diligence Period, the Seller may, at its option, terminate this Agreement and retain the Earnest Money as liquidated damages. However, this retention of Earnest Money shall be the Seller's sole and exclusive remedy.

13. Condemnation and Casualty.

- a. **Condemnation:** If, prior to the Closing Date, any part of the Property is taken by condemnation or eminent domain by any public authority, the Seller must notify the Purchaser immediately. The Purchaser shall have the option to either (i) proceed with the purchase, in which case the Purchaser shall be entitled to all condemnation awards or payments attributable to the taking, or (ii) terminate this Agreement upon written notice to the Seller within ten (10) days after the Seller has notified the Purchaser of such taking, with the Purchaser receiving a full refund of any Earnest Money deposited.
- b. **Casualty:** If, prior to the Closing Date, the Property is damaged or destroyed by any casualty, the Seller shall notify the Purchaser immediately. The Purchaser shall have the option, to be exercised by giving notice to Seller within ten (10) days after Seller has notified Purchaser of such damage or destruction, to either (i) terminate this

Agreement and receive a full refund of any Earnest Money deposited, or (ii) proceed with the purchase at a reduced purchase price, to be mutually agreed upon, reflecting the diminished value of the Property due to such damage or destruction. If the parties cannot agree on a reduced purchase price within fifteen (15) days of Purchaser's election to proceed, Purchaser shall have the right to terminate this Agreement.

- c. **Risk of Loss:** The risk of loss due to any damage or destruction to the Property prior to the Closing shall be the responsibility of the Seller. In the event of any such damage or destruction:
- d. **Minor Damage:** If the cost of restoring the Property is less than or equal to five percent (5%) of the agreed Purchase Price, the Seller is obligated to restore the Property to its condition prior to the damage at the Seller's expense, and the Closing shall proceed as originally scheduled.
- e. **Significant Damage:** If the cost of restoration exceeds five percent (5%) of the Purchase Price, the Purchaser shall have the following options:
 - i. **Option to Terminate:** The Purchaser may choose to terminate this Agreement, in which case the Purchaser shall be entitled to a full refund of any Earnest Money deposited.
 - ii. **Option to Proceed with Adjustments:** Alternatively, the Purchaser may elect to proceed with the purchase, subject to a renegotiation of the purchase price to reflect the diminished value of the Property. This renegotiation must be completed to the satisfaction of the Purchaser. If an agreement on a new purchase price cannot be reached within fifteen (15) days of the Purchaser's decision to proceed, the Purchaser retains the right to terminate this Agreement and receive a full refund of the Earnest Money.

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

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

16. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses:

If to Seller: Owen Company, LLC
12507 Bender Rd

Foley, AL 36535

With a Copy to: Mr. L. D. Owen, III, Esq.
135 Hand Avenue
Bay Minette, AL 36507-4822
ldowenlaw@aol.com

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

With a Copy to: Mr. J. Bradford Boyd Hicks, Esq.
Stone Crosby, P.C.
8820 US-90
Daphne, AL 36526
bhicks@stonecrosby.com

Any notice which either party may be required or may desire to give under this Agreement shall be in writing and shall be deemed to have been properly given if (a) hand delivered (effective upon delivery), (b) sent by a nationally recognized overnight delivery service (effective one (1) business day after delivery to such courier for overnight delivery service) or (c) sent via the United States Postal Service, or successor governmental agency, registered or certified mail, return receipt requested (effective three (3) business days after deposit).

17. Miscellaneous.

- a. **No Coercive Action:** Each of the parties expressly acknowledge that they are entering into this Agreement on their own accord and free will and are not entering into this Agreement as the result of any coercive action, whether by exercise of eminent domain powers or otherwise.
- b. **Assignment:** No assignment of this Agreement or any right or duty accruing under this agreement shall be made, in whole or in part, by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- c. **Binding Effect:** This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto, and their respective heirs, personal representatives, successors and assigns.
- d. **Survival:** Each and every provision of this Agreement shall survive the Closing and shall not be nullified or affected by the Closing.
- e. **Severability:** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- f. **Time of the Essence:** Time is of the essence as to all matters covered in this Agreement.

- g. **Entire Agreement:** This Agreement and the documents referred to in this Agreement constitute the entire agreement between the parties and supersedes any prior contracts or agreements, and there are no other conditions, covenants or agreements which shall be binding between the parties.
- h. **Rule of Construction:** The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
- i. **Governing Law; Venue:** This Agreement shall be deemed to have been made in the State of Alabama, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. The proper venue for any action arising hereunder or relating to the subject matter of this Agreement shall lie solely in Baldwin County, Alabama.
- j. **Counterparts:** This Agreement may be executed in counterpart and all such counterparts, taken together, shall be deemed to be one and the same instrument. An executed copy transmitted by facsimile or email shall be deemed an original.
- k. **Cooperation:** The parties agree to execute any and all documents necessary to accomplish this transaction. The parties also agree that an electronic signature to this Agreement is effective as though an original.

(Signatures and Acknowledgements on the Following Pages)

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

PURCHASER:

BALDWIN COUNTY COMMISSION,
a political subdivision of the State of Alabama,

By: _____

Print Name: _____

Its: _____

ATTEST:

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that _____ whose name as _____ of the BALDWIN COUNTY COMMISSION, a political subdivision of the state of Alabama, is signed to the to the forgoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, as such officer with full authority, executed the same voluntary for and as the act of such political subdivision on the day the same bears date.

GIVEN under my hand and seal on this the ____ day of _____, 2023.

NOTARY PUBLIC
My Commission Expires: _____

SELLER:

OWEN COMPANY, LLC
an Alabama limited liability company

By:  _____

Print Name: L.D. Owen, III

Its: Managing Member

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that L.D. Owen, III whose name as Managing mem. of OWEN COMPANY, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as _____ on the day the same bears date.

GIVEN under my hand and seal on this the 20th day of November, 2023.

Bessie A. Halliday

NOTARY PUBLIC
My Commission Expires: 5-4-2025

EXHIBIT "A"

Legal Description

The North 100' of Lots 14, 15 and 16, Block 105 in the Hand Land Company Addition to Bay Minette, according to the official map or plat thereof which is recorded in Deed Book 4 N.S., pages 158-9, Baldwin County, Alabama Records,

EXCEPTING THEREFROM the following:

Begin at Northwest corner of Lot 14, Block 105, in the Hand Land Company addition to Bay Minette according to the official map or plat thereof which is recorded in Deed Book 4 N.S., pages 158-9, Baldwin County, Alabama Records, and run East along the North line of said lot a distance of 26 feet 9 inches to a point; run thence in a Southerly direction and parallel to the West line of the said lot a distance of 100 feet; run thence in a Westerly direction and parallel with the North line of said lot a distance of 26 feet 9 inches to a point; run thence Northerly along the West line of the said lot a distance of 100 feet to the point or place of beginning.

FURTHER, LESS AND EXCEPT the following:

From the Northwest Corner of Lot 14, Block 105 in the Hand Land Company Addition to Bay Minette, according to the official map or plat thereof, which is recorded in Deed Book 4 N.S., pages 158-59, Baldwin County, Alabama Records; run East along the North line of said Lot a distance of 26 feet 9 inches to a point; run thence in a Southerly direction and parallel to the West line of said Lot a distance of 100 feet for a point; run thence in a Northerly direction and parallel with the West line of said Lot 14 a distance of 27.1 feet for a point or place of beginning; run thence in an Easterly direction and parallel with the North line of Block 105 a distance of 24.3 feet to a point; run thence in a Northerly direction and parallel with the West line of said Lot 14 a distance of 11.5 feet; run thence in a Westerly direction and parallel with the North line of Block 105 a distance of 24.3 feet; run thence in a Southerly direction parallel with the West line of said Lot 14 a distance of 11.5 feet to the point or place of beginning.