

## **BALDWIN COUNTY COMMISSION AGENDA ACTION FORM**

### **STAFF RECOMMENDATION:**

1. Authorize the Chairman to execute the contract of purchase and sale between The Stapleton Family Limited Partnership and Baldwin County, Alabama. The purchase price to be paid for the subject property is \$3,306,000.00.

STATE OF ALABAMA

CONTRACT OF PURCHASE AND SALE

COUNTY OF BALDWIN

This Contract of Purchase and Sale is entered into on the last date of execution by and between THE STAPLETON FAMILY LIMITED PARTNERSHIP, an Alabama limited partnership (hereinafter referred to as "Seller"), and BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama, by and through the Baldwin County Commission (hereinafter referred to as "Buyer").

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00) and the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer do hereby mutually covenant and agree as follows:

1. Agreement of Purchase and Sale -- Subject to the terms and conditions as hereinafter set forth, Seller agrees to sell, and Buyer agrees to purchase and pay for, according to the terms set forth below, the following described real property and improvements situated thereon in Baldwin County, Alabama, to-wit:

See map attached as Exhibit A.

LESS AND EXCEPT the following:

1. All rights to all subsurface mineral rights for oil, gas and hydrocarbons under the subject property. Notwithstanding the foregoing, the Seller, or its successors or assigns, shall have no right to disturb or undermine the surface of the property or any improvements constructed thereon by the Buyer. All remaining

mineral rights and interests, including, but not limited to, sand, gravel and clay, shall be transferred and conveyed to Buyer.

2. The property shall be deed restricted against the dumping of the material commonly referred to as sludge.

3. The Seller shall continue and complete the current timber harvest of all merchantable timber on or before the closing date in accordance with BMPs, regulations regarding the Streamside Management Zone and the Riparian Buffers Best Practices for Timber Harvesting.

Upon completion of a survey of the subject property, the survey description will be substituted for the legal description or a legal description agreed upon by the parties.

2. Payment and Amount of Purchase Price -- Seller and Buyer agree that the purchase price to be paid for the Seller's Property shall be the sum of Three Million Three Hundred Six Thousand Dollars (\$3,306,000.00). Simultaneously with the execution of this Contract, Buyer has remitted to Seller an earnest money deposit in the amount of Fifty Thousand Dollars (\$50,000.00) which shall be credited toward the purchase price. The balance of the purchase price in the amount of Three Million Two Hundred Fifty-Six Thousand Dollars (\$3,256,000.00) shall be paid by the Buyer to Seller at closing, in certified funds. Seller reserves the right to procure a tax-free like-kind exchange, if allowed under the guidelines of IRC Section 1031, at no cost to Buyer.

3. Title Insurance and Survey -- Seller shall furnish to Buyer, at Seller's expense, an ALTA Owner's Title Insurance Commitment issued by a title insurance company selected by the Buyer, insuring Seller's Property to Buyer in an amount equal to the purchase price. Said Commitment for Title Insurance shall be delivered to Buyer not later than ten (10) days from the date of this Contract, and said Commitment shall be subject only to such exceptions and other

matters which are acceptable to Buyer, in Buyer's sole discretion. In addition, Buyer may obtain a survey of the Seller's Property, at Buyer's expense, performed by a registered land surveyor in the State of Alabama, which survey shall indicate no encroachments, encumbrances, rights of way or other matters except those which are suitable to Buyer, in Buyer's sole discretion. Any existing survey in the Seller's possession shall be provided by Seller to Buyer within ten (10) days from the date of execution of this Contract. Within fifteen (15) days from the receipt by the Buyer of the survey and title commitment, the Buyer shall notify the Seller of any objections or issues with the survey or title commitment. In the event the Buyer determines that the survey and Title Commitment provided for herein are not acceptable, in Buyer's sole discretion, the Buyer shall have the right to terminate this Contract, and the parties shall have no further rights, duties or obligations hereunder. In that event, the Seller shall immediately return the earnest money deposit to the Buyer.

4. Seller's Representations and Warranties -- Seller hereby represents, warrants and covenants unto Buyer as follows:

- A. Seller's Property is not the subject of any representation or outstanding agreement with any party pursuant to which any such party may acquire an interest therein;
- B. Seller has received no notice of taking or condemnation, actual or proposed, with respect to the Seller's Property or any portion thereof;
- C. There are no lawsuits or legal proceedings pending or threatened regarding ownership, use or possession of Seller's Property;
- D. There are no parties in possession of any portion of Seller's Property as lessees, tenants at sufferance, trespassers or otherwise;

- E. There has been no material or labor furnished for the Seller's Property for which payment has not been made, and there are no mechanic's or materialmen's claims of nonpayment or claims of liens by any contractors, subcontractors, suppliers, mechanics, materialmen or artisans with respect to any work performed on or materials furnished to Seller's Property;
- F. Between the date hereof and the closing date, Seller shall not sell, transfer, convey or mortgage the Seller's Property, or any part thereof, or take any other action, or permit any action to be taken by any other person, that might affect title to the Seller's Property or otherwise impair the value of the Seller's Property to Buyer;
- G. All general real estate and ad valorem taxes assessed or imposed against the Seller's Property have been paid prior to closing (excepting only ad valorem taxes for the year in which the closing hereunder occurs that have not been billed prior to the closing date), and Seller shall furnish evidence of such payment to Buyer and the title company selected by Buyer. There are no proposed unusual changes in the real estate taxes applicable to the Seller's Property, and no special assessments exist, have been levied or are contemplated or pending against the Seller's Property;
- H. To the Seller's knowledge, there does not exist, nor has there ever existed, over, beneath or on the Seller's Property any hazardous substance, pollutants or contaminants, as defined, regulated and/or prohibited by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or the "Federal Superfund Act") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") 42 U.S.C. Sections 9601-9605, or hazardous waste as defined, regulated and/or prohibited by the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act, 33 U.S.C. Section 1321 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., all as the same may be from time to time amended and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance;
- I. To the Seller's knowledge, the Seller has obtained all federal, state and local environmental permits necessary or required for their use and occupancy of the Seller's Property, that the Seller is in full compliance with the terms and conditions of any such environmental permits which may have been issued, that no investigation or action regarding hazardous substances, material or

waste is pending or threatened, that Seller knows of no fact or circumstance that may give rise to any future civil, criminal or administrative proceeding relating to environmental matters, and that there are no underground storage tanks located on the Seller's Property (or if such tanks are located thereon, that the same are in compliance with all applicable laws, regulations and ordinances and that the same have been duly and timely registered with the Alabama Department of Environmental Management and any other appropriate authority).

All of the foregoing representations and warranties shall be deemed to be true as of the date hereof and shall be true on the closing date. In the event that any of the foregoing representations or warranties should not be true during the period commencing on the date hereof and ending on the closing date, Seller agrees to perform such actions as may be necessary to cure such defects prior to the closing date.

5. Seller's Representation and Warranty - Seller hereby represents and warrants that it has the authority to enter into this Contract on the terms and conditions contained herein. If necessary, Seller agrees to execute any documents required by the title insurance company in order to issue Buyer an ALTA owner's title insurance policy at closing.

6. Closing - The Closing of this transaction shall take place at the offices of the title insurance company at a location convenient to the parties, at a mutually agreeable time, not later than forty-five (45) days from the date of execution of this Contract by the Chairman of the Baldwin County Commission and Seller. At such Closing, Seller shall convey Seller's Property to Buyer by statutory warranty deed in the form customarily used in similar transactions in the State of Alabama, subject only to such exceptions or other matters deemed acceptable to Buyer, in Buyer's sole discretion. Seller shall pay for: (i) Seller's attorney's fees; (ii) deed

preparation; (iii) title insurance commitment; and (iv) all real estate commissions and brokerage fees. Buyer shall pay for: (i) cost of the survey; (ii) Buyer's attorney's fees; (iii) the ALTA Title Insurance Policy; (iv) costs and fees of closing agent; and (v) recording costs. Any closing costs not addressed herein shall be paid by the incurring party.

7. Proration of Taxes -- Ad valorem taxes applicable to Seller's Property shall be prorated between Buyer and Seller as of the date of Closing. If, on such date, the rate of taxes or amount of assessment is undetermined, such taxes shall be prorated on the basis of the rate or amount applicable for the next preceding year and promptly re-prorated upon issuance of final bills therefore.

8. Agency Disclosure -- Seller and Buyer hereby acknowledge that National Land Realty is the real estate agent or broker for the Seller, and that any commissions or brokerage fees are to be paid by Seller. With the exception of Seller's real estate agent or broker, National Land Realty, Seller and Buyer acknowledge and agree that no real estate agents or brokers are acting on behalf of either party. Each party agrees to indemnify and hold harmless the other from any claim made by brokers or agents who claim to act for the party sought to be charged for a commission, compensation, brokerage fees, or similar payment in connection with this transaction and against any and all expense or liability arising out of any such claim.

9. Assignment -- No assignment of this Contract 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.

10. Binding Effect -- This Contract 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.

11. Time of the Essence -- Time is of the essence as to all matters covered in this Contract.

12. Entire Agreement -- This Contract and the documents referred to in this Contract 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.

13. Rule of Construction -- The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Contract, 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 Contract or any amendments or exhibits hereto.

14. Miscellaneous - Words of any gender used in this Contract shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise.

The captions used in connection with the sections of this Contract are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Contract, or be used in interpreting the meanings and provisions of this Contract.

15. Governing Law -- This Contract 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, subject to and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

16. Required Approvals – This Contract shall be expressly conditioned upon and subject to the approval of the Baldwin County Commission.

IN WITNESS WHEREOF, Seller and Buyer have hereunto set their hands and seals, by and through their duly authorized representatives, on the date and year set forth below.

SELLER  
THE STAPLETON FAMILY LIMITED  
PARTNERSHIP, an Alabama limited  
partnership

By: \_\_\_\_\_

Its: \_\_\_\_\_

BUYER  
BALDWIN COUNTY, ALABAMA

By: Charles F. Gruber

CHARLES F. GRUBER  
As Chairman of the  
Baldwin County Commission

ATTEST:

Wayne Dyess  
Wayne Dyess, County Administrator

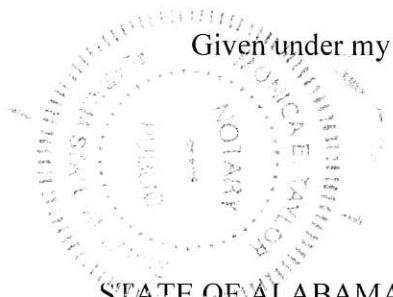


STATE OF ALABAMA

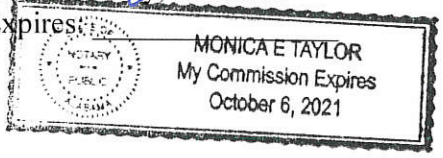
COUNTY OF BALDWIN

I, Monica E. Taylor, a Notary Public in and for said County in said State, hereby certify that CHARLES F. GRUBER, whose name as Chairman of the BALDWIN COUNTY COMMISSION, and WAYNE DYESS, whose name as County Administrator of the BALDWIN COUNTY COMMISSION, the governing body of Baldwin County, Alabama, a political subdivision of the State of Alabama, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said commission on the day the same bears date.

Given under my hand and seal this the 10th day of April, 2019.



Monica E. Taylor  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_



STATE OF ALABAMA

COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of THE STAPLETON FAMILY LIMITED PARTNERSHIP, an Alabama limited partnership, signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he executed the same voluntarily and with full authority on behalf of said limited partnership, on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

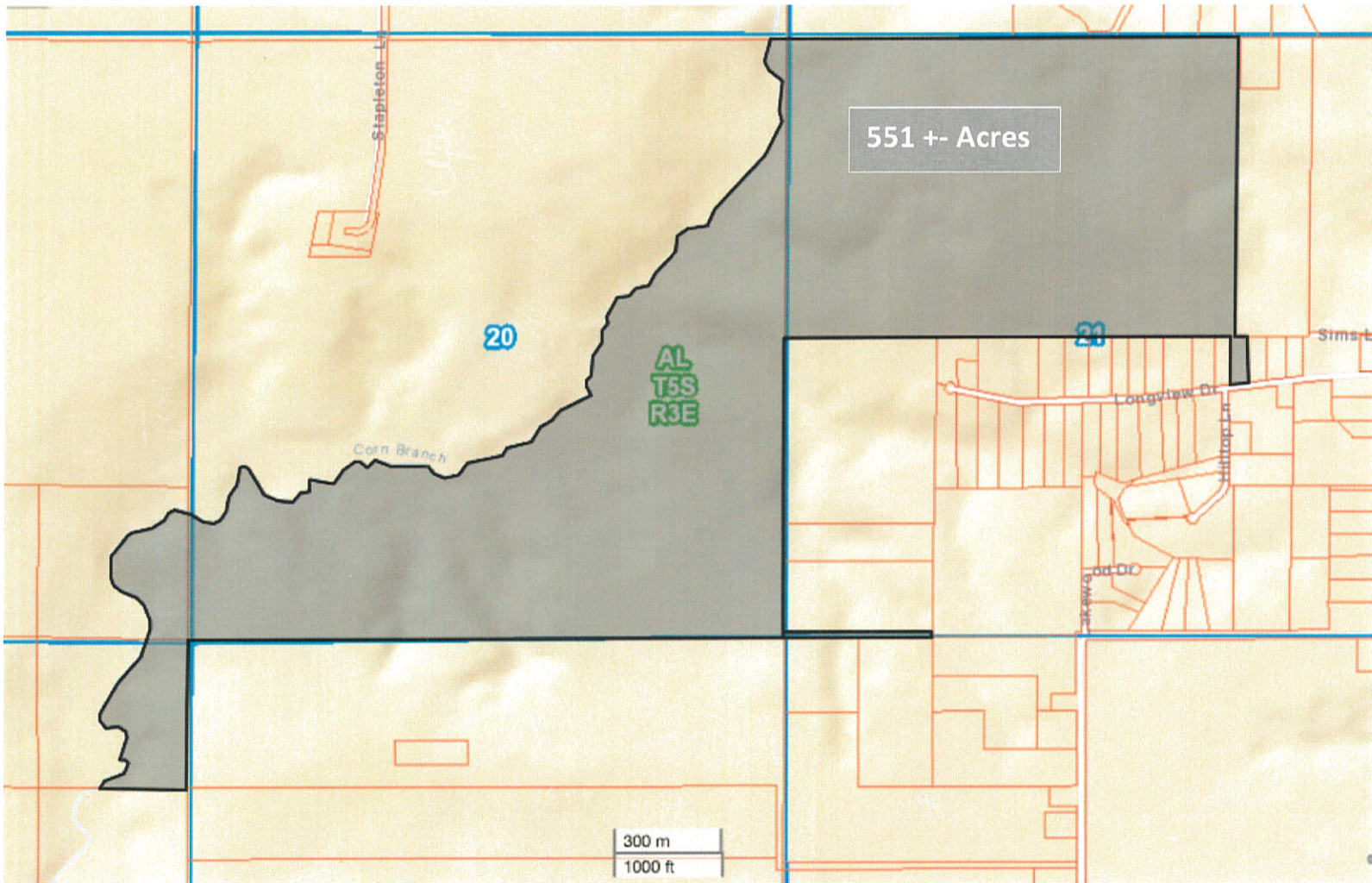
\_\_\_\_\_  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_

This instrument prepared by:  
DAVID J. CONNER of  
BLACKBURN & CONNER, P.C.  
Post Office Box 458  
Bay Minette, Alabama 36507

EXHIBIT A

Map of the Property

The division line along the northwest and west boundary shall be the center of Corn Branch

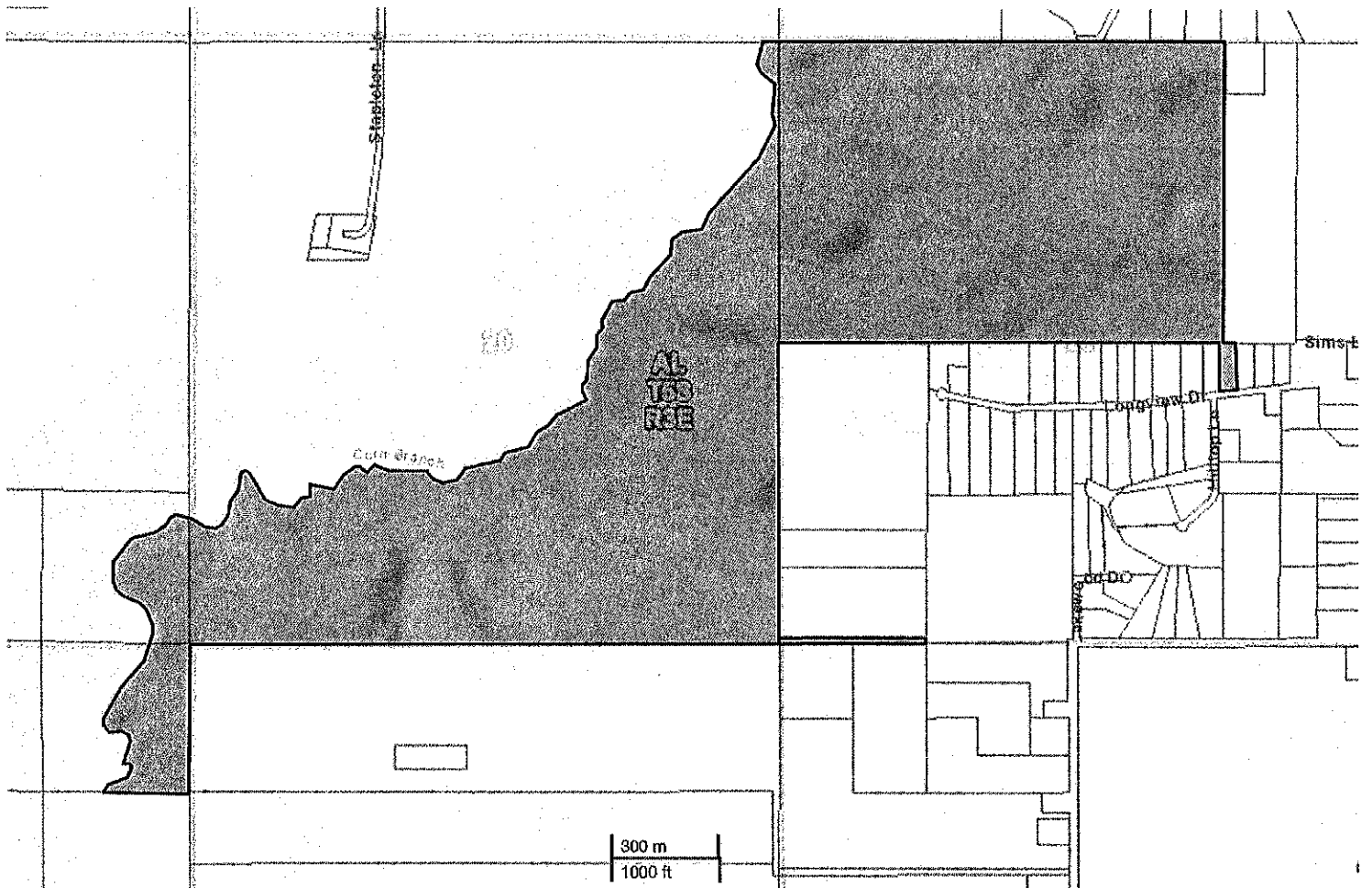


All boundary lines noted in pictures, aerials or maps should be considered estimates and not relied on as legal documents or descriptions.

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