

BALDWIN COUNTY COMMISSION
AGENDA ACTION FORM

DATE: June 5, 2018 / Regular Meeting

RE: Assignment of Contract and Authorization to Execute Closing Documents

RECOMMENDATION

1. Approve and authorize the Chairman to execute the Consent to Assignment of Contract between Pathway, Inc., and the Baldwin County Commission dated March 20, 2018, related to the purchase/sale of approximately 189 acres, more or less, in Baldwin County, Alabama, from Pathway, Inc. ("Assignor"), to Pathway of Baldwin County, LLC ("Assignee"). A copy of the proposed Consent to Assignment is attached as Exhibit A.

2. Authorize the Chairman and staff to take any and all action deemed necessary, including, but not limited to, the execution of any and all documents, affidavits, representations or warranties deemed necessary, to close on the sale of the subject property, including, but not limited to, the following documents, subject to any changes deemed necessary by the Chairman and the County Attorney: settlement statement, deed, owner/seller's affidavit, survey affidavit, residency affidavit, affidavit related to real estate brokers, and affidavit related to hunting leases. Copies of some of the proposed documents are attached hereto as Exhibit B and shall be subject to any changes deemed necessary by the Chairman and the County Attorney.

EXHIBIT A

ASSIGNMENT OF CONTRACT

This Assignment of Contract is effective _____, 2018, by and between Pathway, Inc. and Pathway of Baldwin County, LLC., joined, for the stated purpose below, by the Baldwin County Commission.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, Pathway, Inc. ("Assignor") does hereby assign, transfer and convey unto Pathway of Baldwin County, LLC ("Assignee") all right, title and interest in and to the Contract of Purchase and Sale between the Baldwin County Commission and Pathway, Inc. dated March 20, 2018 ("Agreement"), related to the purchase/sale of approximately 189 acres, more or less in Baldwin County, Alabama. Assignee does assume all obligations therein, as well as the benefits resulting therefrom.

As evidenced by its written consent below, the Baldwin County Commission approves this Assignment of Contract and recognizes that Assignee is, and is deemed, substituted in all respects for Assignor as the "Buyer" (as defined in the Agreement) as to said Agreement as if Assignee had been named as Buyer from the date of execution of the Agreement and Assignor had not.

This Assignment of Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties hereto agree that emailed or faxed signature pages of this Assignment of Contract shall be deemed a valid and binding execution of this agreement and that such emailed or faxed copies of such signature pages shall be sufficient to bind both sides.

Pathway, Inc. - Assignor

Witnesses:

By: _____
William H. Carr, its Chairman

Pathway of Baldwin County, LLC- Assignee

By: _____
William H. Carr, Manager

Consent to Assignment:

Baldwin County, Alabama by and through the Baldwin
County Commission, a political subdivision of the
State of Alabama

Attest:

Frank Burt, Jr.
Its Chairman

Ronald J. Cink
County Administrator/Budget Director

EXHIBIT B

This instrument was prepared by:
Marsh & Cotter, LLP
P O Box 310910
Enterprise, AL 36331

STATUTORY WARRANTY DEED

STATE OF ALABAMA)
)
BALDWIN COUNTY) *KNOW ALL MEN BY THESE PRESENTS:*

That in consideration of TEN DOLLARS & NO/100 (\$10.00) to the undersigned Grantor in hand paid by the Grantee herein, the receipt whereof is hereby acknowledged, the **Baldwin County Commission**, the county governing body of Baldwin County, Alabama, 312 Courthouse Square, Ste. 12, Bay Minette, Alabama 36507 (herein referred to as "Grantor"), does grant, bargain, sell and convey unto **Pathway of Baldwin County, LLC**, 1117 Boll Weevil Circle, Enterprise, Alabama 36330 (herein referred to as "Grantee"), the following described property situated in Baldwin County, Alabama to-wit:

See Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth.

TO HAVE AND TO HOLD to the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the said Grantor, by its Chairman, Frank Burt, Jr., who is authorized to execute this conveyance on behalf of the Baldwin County Commission, the county governing body of Baldwin County, Alabama, and attested to by Ronald J. Cink, its Administrator/Budget Director, has hereto set its signature and seal this ____ day of _____, 2018.

ATTEST: BALDWIN COUNTY COMMISSION, the county governing body of Baldwin County, Alabama

Ronald J. Cink, County Administrator
Budget Director

By: _____
Frank Burt, Jr., Chairman

STATE OF ALABAMA

BALDWIN COUNTY

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Frank Burt, Jr., whose name as Chairman of the Baldwin County Commission, the governing body of Baldwin County, and Ronald J. Cink, whose name as County Administrator/Budget Director of said Baldwin County Commission, 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 the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission, the governing body of Baldwin County, Alabama.

Given under my hand and official seal this day of , 2018.

Notary Public
My Commission expires:

EXHIBIT "A"

Commence at a one-inch open top iron pipe marker at the Southeast Corner of Section 1, Township 1 North, Range 4 East, St. Stephens Meridian, for a Point of Beginning: Thence run South 89° 54' 50" West, 982.25 feet to an iron pin marker on the Southern margin of "Luke Hadley Road"; thence run North 62° 29' 35" West, along the South margin of said road, 129.3 feet to an iron pin marker, thence run Northwestwardly, along the South margin of said road and along a curve to the right, having a radius of 690.37 feet, an arc distance of 277.97 feet; a chord of North 50° 57' 29" West, 276.09 feet to an iron pin marker; thence run Northwestwardly, and continue along the South margin of said road and along a curve to the left having a radius of 424.06 feet, an arc distance of 364.95 feet, a chord of North 64° 04' 40" West, 353.79 feet to an iron pin marker; thence run Southwestwardly, and continue along the South margin of said road and along a curve to the left, having a radius of 170.37 feet, an arc distance of 81.97 feet, a chord of South 77° 29' 04" West, a 81.18 feet to an iron pin marker; thence run South 63° 42' 05" West, and continue along the South margin of said road, 178.35 feet to an iron pin marker; thence run Southwestwardly, and continue along the South margin of said road and along a curve to the right, having a radius of 614.08 feet, an arc distance of 242.81 feet, a chord of South 75° 01' 42" West, 241.23 feet to an iron pin marker; thence run South 86° 21' 20" West, and continue along the South margin of said road, 191.15 feet to an iron pin marker on the East margin of Baldwin County Highway Number 61, a.k.a. "Lottie Road" a.k.a. "Perdido Road"; thence run North 04° 38' 20" West, along the East margin of said Highway, 1735.65 feet to an iron pin marker; thence run Northwestwardly, and continue along the East margin of said Highway and along a curve to the left, having a radius of 6632.10 feet, an arc distance of 603.22 feet, a chord of North 07° 14' 41" West, 603.02 feet to an iron pin marker; thence run North 09° 51' West, and continue along the East margin of said highway, 669.7 feet to an iron pin marker; thence run North 00° 21' 20" East, 314.5 feet to an iron pin marker on the South margin of "Ewing Farm Road"; thence run South 89° 53' 55" East, along the South margin of said road, 2621.6 feet to an iron pin marker on the East boundary of Section 1, Township 1 North, Range 4 East; thence run South, along the East boundary of said Section 1, 3513.6 feet to the Point of Beginning. Tract contains 189.32 acres, more or less, right-of-way on South included, and lies in the East one-half of Section 1, Township 1 North, Range 4 East, Baldwin County, Alabama.

Subject to matters stated on Exhibit "B" attached hereto and incorporated by reference herein.

EXHIBIT “B”

1. Rights, if any, relating to the construction and maintenance in connection with any public utility of wires, poles, pipes, conduits and appurtenances thereto, on, under or across the Property;
2. Real Property taxes, if any, due October 1, 2019. Personal Property taxes, if any, due on October 1, 2018.
3. Restrictions on Grantee’s ability to build upon or use the Property imposed by any current or future building or zoning ordinances or any other law or regulation (including environmental protection laws and regulations) of any governmental authority;
4. Any state of facts which an accurate survey or an inspection of the Property would reveal, including, but not limited to, the location of boundary lines, improvements and encroachments, if any;
5. All previous reservations, exceptions and conveyances of record of the oil, gas, associated hydrocarbons, minerals and mineral substances, and royalty and other minerals rights and interests of record, including, but not limited to, the interest of Pure Resources, LP. (“Pure Resources”) in the oil, gas and any other liquid or gaseous hydrocarbons, their constituent products and any other minerals produced in association therewith, pursuant to the mineral and royalty deed effective as of October 1, 2000;
6. All claims of governmental authorities in and to any portion of the Property lying in the bed of any streams, creeks or waterways or other submerged lands or land now or formerly subject to the ebb and flow of tidal waters or any claims of riparian rights;
7. All matters of record consisting of outstanding easements, servitudes, rights-of-way, flowage rights, restrictions, cemeteries, licenses, leases, reservations, covenants, agreements, log sale agreements, timber cutting contracts, access rights and other rights in third parties of record or acquired through prescription, adverse possession or otherwise, including, but not limited to, the interest of Pure Resources in the minerals restrictions agreement between International Paper Company, International Paper Realty Corporation, IP Farms, Inc., IP Petroleum Company, Inc., IP Timberlands Operating Company, Ltd., GCO Minerals Company, The Long-Bell Petroleum Company, Inc., American Central Corporation, Champion Realty Corporation, Sustainable Forests L.L.C. and SP Forests L.L.C. and Pure Resources, effective as of October 1, 2000;
8. Any and all restrictions of use of the Property due to environmental protection laws, including, without limitation, endangered species and wetlands protection laws, rules, regulations and orders;
9. All mineral rights reserved, claimed or owned by any third party (The Grantor makes no warranty or guaranty to Grantee with respect to mineral rights).
10. Any and all easements, restrictions, covenants, encumbrances or other matters of record in the Office of the Judge of Probate of Baldwin County, Alabama.

All references to matters and matters of record stated above, refer to records recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

First American Title Insurance Company

SELLER'S/OWNER'S AFFIDAVIT AND INDEMNITY

State of Alabama, County of _____

Issuing Office File No. _____

I, (we),
I, we, own the following described property:

being first duly sworn, on oath depose and state that

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

I/We have owned the property now being sold or mortgaged by me continuously for _____ years, and my enjoyment thereof has been peaceable and undisturbed and the title to said property has never been disputed to my knowledge, nor do I know of any facts by reason of which the title to, or possession of, said property might be disputed or by reason of which any claim to any of said property might be asserted adversely to me, and more particularly:

1. Check one:

_____ No party other than the Seller(s)/Owner(s) is in possession of all or any portion of the premises above described under any unrecorded leases, tenancy at will or otherwise;

OR

_____ Tenants in possession, under unrecorded leases, as attached on the current "Rent Roll", are as tenants only, without any options to purchase or rights of first refusal.

2. The Seller(s)/Owner(s) during the time of ownership of the premises above described has/have conveyed no portion of the premises nor done any act or allowed any act to be done which has changed or could change the boundaries of the premises.
3. The Seller(s)/Owner(s) has/have allowed no encroachments on the premises above described by any adjoining land owners nor has/have the undersigned encroached upon any property of adjoining land owners.
4. The Seller(s) has/have allowed no easements, rights of way, continuous driveway usage, drain, sewer, water, gas or oil pipeline or other rights or passage to others over the premises above described and had/have no knowledge of such adverse rights.
5. The Seller(s)/Owner(s), at present, and for a period of **SIX MONTHS** past, has/have caused no construction, erection, alteration or repairs of any structures or improvements on the premises above cited to be done, nor has/have contracted for any material to be delivered to the premises for which charges therefore remain unpaid.
6. The Seller(s)/Owner(s) has/have no knowledge of any highways, abandoned roads, lanes, cemetery or family burial grounds, springs, streams, rivers, ponds, or lakes bordering or running through said premises.
7. The undersigned has no knowledge of any due taxes; special assessments, library dues, fire dues or sewer liens.
8. The undersigned has not allowed and knows of no violation of any covenants, restrictions, agreements, conditions or zoning ordinances affecting the premises.
9. That there are no pending suits, proceedings, judgments, bankruptcies, liens or executions against said owner, either in the aforesaid county or any other county in the aforesaid state.

This affidavit is given to induce any purchaser to purchase, any lender to accept a mortgage on the property and to induce **First American Title Insurance Company** to issue its title insurance policy or policies in reliance upon any of the statements contained herein, and should **First American Title Insurance Company**, in its sole discretion, issue insurance in reliance upon such representations, affiant agrees to indemnify and hold **First American Title Insurance Company** harmless of and from any and all loss, cost, damage and expense of every kind, including attorneys' fees, which said **First American Title Insurance Company** shall or may suffer or incur or become liable for under its said policy or policies now to be issued, or any reissue, renewal or extension thereof, directly or indirectly, as a result of any misrepresentation herewith.

DATE: _____

Seller/Owner of Property

Notary Public for _____

My Commission Expires: _____

Seller/Owner of Property

OWNER'S SURVEY AFFIDAVIT

I, _____, the undersigned affiant, after being duly sworn, deposes and says:

1. Baldwin County Commission (of which I am the _____) is the owner of the following described property:

See Exhibit "A" attached hereto and incorporated herein by reference

2. To the best of my knowledge and belief, the attached survey by Arnold & Associates Surveying Services, Inc., executed February 14, 2005 ("Survey") (attached hereto) is an accurate depiction of the above-described property and reveals the proper boundary lines and all improvements located thereon.

3. To the best of my knowledge and belief, there are no additional improvements, easements, encroachments or other matters as to said property described in Exhibit "A" which exist or which have been located on said property since the date of the Survey which could constitute encroachments onto any adjoining property and there have been no additional encroachments, alterations or modifications as to the Survey and boundary lines of said property described in Exhibit "A" which would in any way change the Survey since the date of the Survey.

This affidavit is given for the purpose of inducing First American Title Insurance Company to issue a title insurance policy to a purchaser without an exception for matters which would be reflected on an accurate survey of the property and for the purpose of inducing Pathway of Baldwin County, LLC to purchase the subject property.

Sworn to and subscribed before me this ____ day of _____, 2018.

NOTARY PUBLIC

My Commission Expires



ALABAMA DEPARTMENT OF REVENUE
INDIVIDUAL & CORPORATE TAX DIVISION
WITHHOLDING TAX SECTION

P.O. Box 327480 • Montgomery, AL 36132-7480

www.revenue.alabama.gov

Form NR-AF1

6/13

Affidavit of Seller's Residence

SELLER'S NAME (AND SPOUSE'S NAME, IF JOINTLY OWNED)

Baldwin County Commission

SELLER'S IDENTIFICATION NUMBER (SSN OR FEIN)*

SPOUSE'S IDENTIFICATION NUMBER (IF JOINTLY OWNED)*

STREET ADDRESS

312 Courthouse Square Ste. 12

CITY

Bay Minette

STATE

AL

ZIP

36507

INSTRUCTIONS

This form is to be executed by the seller and furnished to the buyer to establish Alabama residency so that the proceeds of the sale of property are not subject to the withholding laws of this state (see Section 40-18-86, *Code of Alabama 1975*). Alabama residents include both individuals and business entities domiciled in Alabama. Business entities will be considered domiciled in Alabama if they are organized under Alabama law or they have their principal place of business in Alabama. Alabama residents are not subject to the withholding provisions of Alabama Code Section 40-18-86, and are not required to complete this form; however, a buyer may wish to have an Alabama resident complete this form as proof of residency for the buyer's records. In this case, the form should not be sent to the Alabama Department of Revenue, but should be retained by the buyer.

Sellers are not subject to withholding from the proceeds of a sale if either they are a resident of Alabama or they are deemed to be a resident of Alabama by virtue of the fact that they have filed Alabama tax returns in the preceding two years, do business or own property in Alabama, intend to file an Alabama tax return for the current year, and if they are a corporation or limited partnership, are registered to do business in Alabama.

The seller is to execute this affidavit by placing an initial in the blank preceding the statements which apply. The buyer may rely on the seller's affidavit unless the buyer knows or should know, based on the buyer's knowledge at the time of closing, that statements made on the affidavit are false. The buyer has no duty to investigate the statements made on a seller's affidavit. For a transaction where a nonresident seller is a "deemed resident," the buyer should retain a copy of the affidavit and submit the original copy to the Alabama Department of Revenue, Individual and Corporate Tax Division, Withholding Tax Section, P.O. Box 327480, Montgomery, AL 36132-7480.

***For privacy and confidentiality purposes, the SSN or FEIN of the seller and of the buyer may be omitted or deleted from copies of all documents exchanged between the parties involved. However, all documents required to be submitted to the Alabama Department of Revenue must contain the complete SSN or FEIN information on the original copy mailed to the Department.**

Seller is exempt from withholding on the sale of property because:

____ Seller is a resident of Alabama. (If this statement applies, do not submit a copy of this form to the Alabama Department of Revenue. The buyer should retain a copy of the affidavit as a record of the transaction.)

Seller is not a resident of Alabama, but is a "deemed resident" for purposes of withholding because ALL of the following apply:

____ Seller is a nonresident who has filed Alabama tax returns or appropriate extensions have been received by the Department for the preceding two years; AND

____ Seller is an established business in Alabama and will continue substantially the same business in Alabama after the sale OR the seller has real property in Alabama at the time of closing of equal or greater value than the withholding tax liability as measured by the 100% property tax assessment of such remaining property; AND

____ Seller will report the sale on an Alabama income tax return for the current year and file by its due date with extensions; AND

____ If seller is a corporation or limited partnership, seller is registered to do business in Alabama.

Under penalties of perjury, I swear that the above information is to the best of my knowledge and belief, true, correct, and complete.

SELLER'S SIGNATURE (AND TITLE, IF APPLICABLE)

DATE

SPOUSE'S SIGNATURE (AND TITLE, IF APPLICABLE)

DATE

Sworn to and subscribed before me this

____ day of _____, _____

____ Notary Public

My commission expires _____

STATE OF ALABAMA

BALDWIN COUNTY

AFFIDAVIT OF NO KNOWN HUNTING LEASES

Comes Now Frank Burt, Jr., as Chairman of the Baldwin County Commission, and after being duly sworn, states as follows:

My name is Frank Burt, Jr., I am over the age of nineteen (19) years and give this affidavit in my capacity as Chairman of the Baldwin County Commission. I give this affidavit based on my personal knowledge. The Baldwin County Commission ("Commission") has been in continuous ownership/possession of the subject property described in the attached Exhibit "A" since 2005. During the Commission's ownership/possession up until today, there have been no hunting activities by any third persons or entities on the subject property and I know of no hunting lease to "Po Folks" or any other person or entity which is applicable to the subject property.

June ___, 2018.

Attest:

Baldwin County Commission

Ronald Cink, County Administrator/Budget Director

Frank Burt, Jr., Chairman, Baldwin
County Commission

Sworn to and subscribed before me this ____ day of June, 2018.

Notary Public