

**Operations, Lands and Resource Monitoring Committee**  
**March 28, 2017**

***Discussion Item***

**Approval of Purchase and Sale Agreement, Resolution Requesting Funds from the Florida Forever Trust Fund, and Approval of Private Grant Agreement for Land Assist – Rainbow River Project, SWF Parcel No.19-593-103**

***Purpose***

The purpose of this item is to request Governing Board approval of a purchase and sale agreement, resolution requesting funds from the Florida Forever Trust Fund, and Private Grant Agreement for Land Assist from the Nature Conservancy for the acquisition of the Rainbow River Ranch tract, SWF Parcel No. 19-593-103, together with an access and utility easement from the property owner, Gerald Dodd. Exhibits 1 and 2 are general location and aerial maps.

***Background/History***

The District has negotiated the acquisition of a portion of the eastern bank of the Rainbow River below the head spring, known as the Blue Run. The parcel proposed for acquisition and access easement consist of approximately 115 acres and include approximately 2,448 feet of river frontage.

Rainbow Springs is the one of the largest first magnitude springs in Florida. Rainbow Springs is the primary source of water for the Rainbow River (AKA Blue Run) which flows for approximately 5.7 miles until it flows into the Withlacoochee River. The Rainbow River Ranch tract comprises about 16 percent of the eastern bank of the Rainbow River and is the last major undeveloped property along the eastern bank of this natural river corridor. Its shoreline includes marshes, wetlands and giant bald cypress trees.

The Nature Conservancy (TNC) has committed \$250,000 to the purchase of the Rainbow River Ranch tract through their Private Grant Agreement for Land Assist program (see Exhibit 5). This allows the District's portion of funding for the acquisition to remain within the appraisal thresholds as recommended in Florida Department of Environmental Protection (FDEP) land acquisition guidelines. The total purchase price of the transaction, including the TNC contribution, is below the appraised value of the property.

***Property Description***

The 115 acres to be acquired consists of approximately 93 percent uplands and seven percent wetlands. The property owner will retain a parcel of more or less 11 acres, with approximately 620 feet of frontage on the river and improved with a single-family residence. The transaction includes the owner placing a restrictive covenant on the 11 acres (see Exhibit 4). The covenant would limit the property to one division of not less than five acres, which would allow for one additional single family residence. The restrictive covenant also includes the establishment of a 100-foot wide protective buffer along the riverfront. The owner will also convey a 60-foot wide access and utility easement over the portion of the road to the 11 acres.

The development rights for entire property have been the subject of an ongoing lawsuit that has had victories, defeats, settlements and appeals between the property owner, the City of Dunnellon and the Rainbow River Coalition. At one point, the property was approved for development of 100,000 square feet of commercial space together with 349 residential units that included more than 24 river front lots. The approval allowed the commercial zoning to be converted to residential use adding up to 50 additional units. The most recent appeal of the

litigation regarding the development rights resulted in the property being designated with an agricultural land use. However, even at that level of zoning and with proper clustering, the property could still potentially be developed with up to 20 home sites along the river.

Both the entitled and unentitled zoning conditions were considered in the analysis of the development potential of the property. The current development density with agricultural zoning is one unit per five acres for the property. The acquisition area is based on 20 river front lots that, when accounting for the density, access, configuration and unusable areas, would support having a land area of 115 acres necessary for the development of the lots.

The acquisition will also include the transfer of the Blue Run Cemetery, which dates from the late 1880s until 1960 and includes 14 documented burials with markers. Records indicate there was also a church at the site until about 1920. The church and cemetery reportedly encompassed a site of at least one acre.

The FDEP's Florida Park Service has agreed to manage the Rainbow River Ranch tract, including the cemetery, as part of the adjoining Rainbow Springs State Park. The property will also offer some unique restoration opportunities by the District with the intent to restore natural communities and improve water quality on the Rainbow River

#### *Appraisal and Valuation Summary*

In accordance with District policy for property with a value greater than one million dollars, two independent appraisals were obtained. The appraisals were prepared by Frank Catlett MAI and Stephen Albright MAI, dated October 2016. The appraisals meet the necessary legal or District requirements and contain sufficient factual data to support the value conclusions.

The highest and best use determined by the appraisers, was based on the physically possible, legally permissible and financially feasible uses for these parcels, is for development at a density of one unit per five acres. The appraisers considered the property's location, zoning, legally permissible uses, and physical characteristics in the development of a value estimate.

The appraisers applied the Sales Comparison Approach (Market Approach) to determine the value of the property to be conveyed. Comparable sales utilized for analysis are in Marion and Citrus counties. The comparable sales ranged in size from 2.0 acres to 169.5 gross acres and are ten percent to 100 percent useable. The transactions occurred between March 2008 and August 2015. Sales were chosen to reflect the best comparisons based on their physical characteristics and development potential.

The appraisers developed a value for the parcel by applying qualitative adjustments to the comparable sales considering the differences in market conditions (time), access, size, and future land use/zoning. The appraised values are based on the property having two distinct areas: the northerly area along the river and the southerly non-water front portions along the road. The appraisal reports are available upon request and the negotiations and value conclusions are summarized as follows:

	<b>Negotiated Amount</b>	<b>Appraised Value (Avg.)</b>	<b>Appraised Value Catlett</b>	<b>Appraised Value Albright</b>
Total Price (115 ac.)	\$3,914,893.25	\$4,095,955	\$4,100,900	\$4,091,010
Price Per Acre	\$34,042.55	\$35,617	\$35,660	\$35,574

### *Value Indication*

The District conducted two appraisals. Both appraisals reached similar conclusions about the property and its value. The comparable sales researched by the appraisers indicated an overall unadjusted range of value from \$4,425 to \$89,396 per acre with an average of \$37,239 per acre. The wide range in indications was due to the appraisers' conclusion that there were different valuation characteristics for the northern 87.5 acres compared to the southern 30 acres of the property. The Albright appraisal allocated the value at \$40,000 per acre for the northern portion of the property along the river and \$10,000 per acre for the southern portion located along the road. The Catlett appraisal allocated the northern portion of the property located along the river at \$41,000 per acre and \$20,000 per acre for the southern portion located along the road. After review of each appraiser's analysis, it appears that the value conclusions based on the property as zoned at one unit per five acres is the most supportable in the current market.

### *Negotiated Transaction*

The following is a summary of the terms negotiated between the District and the property owner (see Exhibit 2):

- The District will receive 115 acres with the price subject to adjustment of surveyed acres exclusive of sovereign lands and the cemetery.
- Subject to the establishment of restrictive covenants over an estimated 11 acre parcel to limit further development to one additional single family home and establish a 100-foot protective buffer along the riverfront.
- Subject to a boundary survey that identifies a boundary based on the ordinary high or safe upland line to ensure that the District does not pay for any sovereign lands.
- Subject to acceptable title.
- Subject to an acceptable environmental site assessment.
- Contingent upon a \$250,000 funding contribution from The Nature Conservancy.
- Conveyance by the owner of a 60-foot wide access and utility easement over the portion of the road to the 11 acres.

### *Benefits/Costs*

Purchase of this property will contribute significantly to flood protection, water quality, and natural systems; is adjacent to the Rainbow River State Park; and will ensure further protection of the Rainbow River and its natural shoreline. Given the contiguity of the subject property with the existing State Park, and the affirmative response by the FDEP to assume management of the property, there will not be an increase in District direct costs associated with ongoing management of the property.

### *Funding*

The District has approximately \$14.8 million available in prior year funds for land acquisition from allocations held by the State of Florida in the Florida Forever Trust Fund and funds held in the District's investment accounts generated from the sale of land or interests in land. To obtain monies within the Florida Forever Trust Fund, a resolution signed by the Governing Board must be submitted to the FDEP (see Exhibit 6).

Staff Recommendation:

See Exhibits

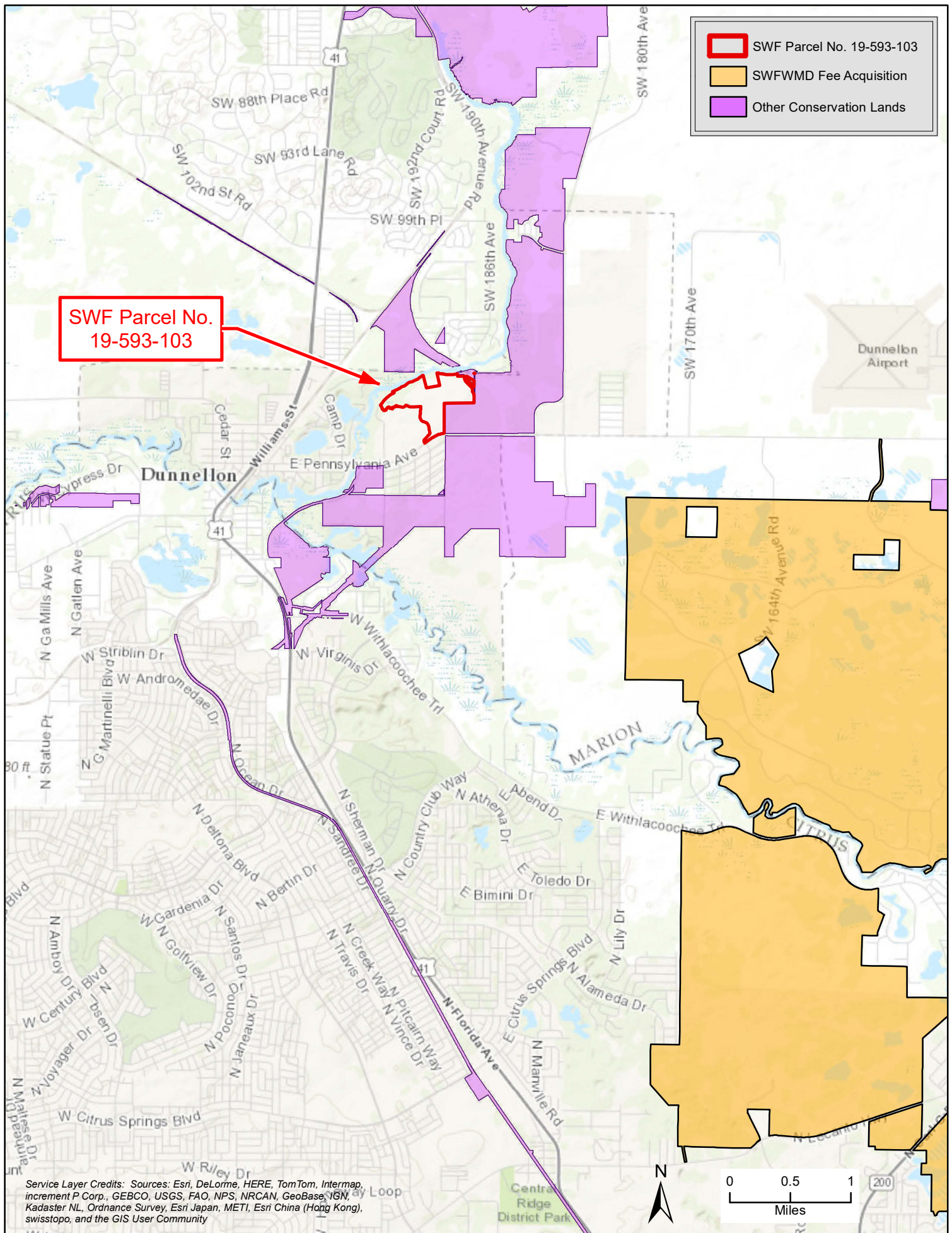
- Accept the appraisals;
- Approve the Purchase and Sale Agreement and authorize the Executive Director or designee to sign on the behalf of the District;
- Approve the resolution requesting funds from the Florida Forever Trust Fund for SWF Parcel No. 19-593-103;
- Approve and authorize the Executive Director or designee to sign the Private Grant Agreement for Land Assist from The Nature Conservancy in the amount of \$250,000;
- Designate SWF Parcel No. 19-593-103 as having been acquired for conservation purposes;
- Authorize staff to make minor changes or corrections to conform documents or correct errors; any substantive changes will be subject to Governing Board review and approval; and
- Authorize staff to execute any other documents necessary to complete the transaction in accordance with the approved terms.

Presenter: Carmen Sanders, Operations and Land Management Assistant Bureau Chief

cc: Ken Frink  
Jerry Mallams  
Steve Blaschka  
Will VanGelder



## Exhibit 1 General Location Map Rainbow River Ranch Tract





# Exhibit 2 Aerial Map Rainbow River Ranch Tract (115 acres)





### Exhibit 3 Purchase and Sale Agreement

SWF Parcel No. 19-593-103

Approved by Attorney: \_\_\_\_\_

#### **PURCHASE/SALE AGREEMENT**

This Agreement, made and entered by and between Rainbow River Ranch, LLC, a Florida limited liability company, and Conservation Land Group, LLC ("Conservation Land Group"), both having a mailing address of 130 West Superior Street, Suite 914, Duluth, Minnesota, 55802-3000, hereinafter collectively referred to as "Seller," and the Southwest Florida Water Management District, a public corporation, having an address of 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as "District" and collectively ("Parties").

#### **WITNESSETH:**

**WHEREAS**, Seller is the owner in fee simple of certain real property located in Sections 25, 26 and 30 in Marion County, Florida; and

**WHEREAS**, District desires to acquire a portion of Seller's property, hereinafter described, as an authorized project known as the Rainbow River Project.

**NOW THEREFORE**, in consideration of ten dollars and no cents (\$10.00) paid by District to Seller and the mutual covenants contained herein, together with other good and valuable consideration, the receipt of which is hereby acknowledged, Seller agrees to sell to District, and District agrees to purchase from Seller, the Property upon the following terms and conditions:

1. **PROPERTY:** Subject to the terms, covenants and conditions set forth in this Agreement, Seller agrees to sell to District, and District agrees to purchase from Seller, certain real property and real property interests situated in Marion County, Florida, as follows:

A. That certain real property as outlined on the map hereto as Exhibit 1 (the "Property"), measuring approximately 115 acres to be further described in a survey and legal description to be prepared by the surveyor in accordance with Paragraph 11 of this Contract. The description, when prepared, shall be attached to and incorporated in this Contract as Exhibit A by an amendment; and

B. A non-exclusive access and utility easement over a portion of a sixty (60) foot-wide strip of land to be retained by Conservation Land Group for a private right of way for ingress and egress and utilities to the Residence Property from E. Pennsylvania Ave., as depicted on the map attached hereto as Exhibit 1 (the "Easement Property"), to

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Purchase/Sale Agreement

Parcel Name: Rainbow River Ranch

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be further described in a survey and legal description to be prepared by the surveyor in accordance with Paragraph 11 of this Contract. The description, when prepared, shall be attached to and incorporated in this Contract by an amendment as Exhibit B. The east side of the private driveway, which will generally follow an existing dirt road, will form the southern part of the western boundary of the Property. The Easement Property will be that part of the 60-foot-wide private driveway that will be surrounded by the Property owned by the District. The exact boundaries of the Easement Property are to be approved by the Seller. The Easement will allow the District to create one or more crossing(s) to provide ingress and egress for, and utilities to, the portion of the Property lying west of the private driveway. The Easement will not allow use of the portion of the private driveway that is not part of the Easement Property; and

C. A restrictive covenant over that certain real property situated in Marion County, Florida, as depicted on the map attached hereto as Exhibit 1 (the "Residence Property"), to be retained by Conservation Land Group. The exact boundaries of the Residence Property is to be further described by the surveyor in accordance with Paragraph 11 of this Contract, with Seller assisting the surveyor in identifying the boundaries of an eleven (11) acre parcel, which shall include the existing single family home lying close to the Rainbow River, approximately 620 feet of shoreline along the Rainbow River, but shall not include the cemetery. The cemetery is located where shown on Exhibit 1 and is defined as the fenced area containing headstones and grave markers. The description, when prepared, shall be attached to and incorporated in this Contract by an amendment as Exhibit C; and

D. The Property is owned in separate parts by each of the two owners referred to herein collectively as "Seller," and the Property will be deeded under two separate deeds, but each part of the Property is being sold together under this Agreement, and this Agreement is not severable among the separate parcels or owners. The Seller will be responsible for properly allocating the purchase price and proceeds (as adjusted by costs and expenses) among the individual selling entities.

Collectively, the Property, the Easement Property and the Residence Property may be referred to hereinafter as the "Properties".

2. **EFFECTIVE DATE:** If this Agreement is not executed by Seller on or before March 31, 2017, the District's offer contained in this Agreement is withdrawn and is thereafter null and void. The date of this Agreement ("Effective Date") will be on the day and year the last of the parties has signed below.

3. **APPROVAL:** This Agreement is subject to approval by District's Governing Board. If District's Governing Board does not approve this Agreement and all the terms and conditions hereof, District will notify Seller thereof in writing and this Agreement will be null and void and all rights and liabilities arising hereunder will terminate.

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4. **FUNDING:** Since funds for acquisition of the Property and the access and utility easement will be obtained from the Florida Forever Trust Fund, funding for the purchase of the Property and the access and utility easement is subject to final approval by the Florida Department of Environmental Protection hereinafter referred to as "FDEP" pursuant to Sections 259.105 and 373.139, Florida Statutes, (F.S.), and any rules adopted thereunder. If the FDEP does not release to the District its share of the funds required to purchase the Property from the Florida Forever Trust Fund prior to closing, the District will notify the Seller thereof in writing and this Agreement will be null and void and all rights and liabilities arising hereunder will terminate. In such event the District shall pay Seller one hundred dollars (\$100.00) as consideration for Seller's entry into this Agreement.

Funds for the acquisition of the Property and the Easement Property may also be contributed by a third party. If such additional funding is obligated but not provided to the District prior to closing the District will notify the Seller thereof in writing and may terminate this Agreement or proceed to closing in its sole discretion.

5. **PURCHASE PRICE:** The total purchase price will be thirty four thousand forty two-dollars and fifty-five cents (\$34,042.55) per acre for approximately one hundred fifteen acres (115) acres of land plus an access and utility easement over the Easement Property, for a total purchase price of three million nine hundred fourteen thousand eight hundred ninety-three dollars and twenty-five cents (\$3,914,893.25) payable in cash by District to Seller; provided, however, that the total purchase price will be increased or decreased by thirty four thousand forty two dollars and fifty five cents (\$34,042.55) per acre for every acre of land more or less than one hundred fifteen acres (115) acres or any portion thereof as determined by the survey provided for in Paragraph 11 of this Agreement. Calculation of the total purchase price shall not include the Easement Property or the approximately one acre cemetery referenced in subparagraph 2.C. above.

6. **TITLE:** Seller will deliver to District, at the closing, marketable title to the fee simple interest to the one hundred fifteen (115) acre Property together with an access and utility easement on, over and across the Easement Property, and a Restrictive Covenant on the eleven (11) acre Residence Property, in accordance with Exhibit E, attached hereto, free and clear of all leases, liens, mortgages, outstanding mineral interests and other encumbrances not acceptable to District. The District, at its expense, will obtain a title insurance policy, insuring District's title to the Property, the access and utility easement on the Easement Property, and, to the extent coverage is available, the restrictive covenant on the Residence Property, in the full amount of the purchase price upon closing the transaction. If District finds the title to be unmarketable, or if District cannot obtain a commitment for a title insurance policy on fee simple title to the Property, and/or the access and utility easement on the Easement



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Property or if the Residence Property is found to have prior encumbrances requiring subordination, joinder or removal, the District will notify Seller in writing prior to the date set for the closing, specifying the defects, and Seller will have ninety (90) days after receipt of such written notice within which to cure such defects in title to the reasonable satisfaction of District, District's attorney, or District's title insurance company, and this sale will be closed within thirty (30) days after Seller cures such defects and receipt of written notice thereof to District or District's attorney. In the event Seller fails to cure such defects, of which written notice has been given by District, within the time provided herein, District may avail itself of any remedy in equity or at law including but not limited to specific performance, or the termination of this Agreement and all rights and liabilities arising hereunder, or may close the sale in the same manner as if no such defect had been found.

The District agrees to reimburse the Seller up to ten thousand dollars for the removal of five (5) existing docks as required by the Florida Department of Environmental Protection "FDEP" Consent Order, OGC File No. 09-4227. The Seller will remain solely responsible for one (1) dock identified in the Consent Order located west of the existing house on the Residence Property.

**7. A. ENVIRONMENTAL:** The Seller has provided an Environmental Site Assessment for the Property, and Easement Property (the "Properties.") The Seller, at its expense, within sixty (60) days after approval of this Agreement by District's Governing Board or not less than thirty (30) days before the closing, whichever occurs first, will obtain a review the Environmental Site Assessment (ESA) on all the Property in accordance with the requirements in Exhibit "D" attached hereto and incorporated herein by reference. If the results of the Phase 1 ESA are unsatisfactory to District, District may terminate this Agreement within fifteen (15) days after its receipt of the review of the Phase 1 ESA by providing written notice of such termination to Seller. If the review of the Phase 1 ESA indicates that a Phase 2 ESA or other investigations should be conducted, Seller will, at its expense, conduct a Phase 2 ESA. If Seller does not conduct a Phase 2 ESA and cure any resulting problems within sixty (60) days from publication of the review of the Phase I report, then District may terminate this Agreement. District may terminate this Agreement if District determines in its sole discretion that the extent of any remedial action is excessive. To accommodate the environmental consultant, Seller will provide reasonable access onto the Property. If the District terminates this Agreement pursuant to this paragraph this Agreement will be null and void and all rights and liabilities arising hereunder will terminate. Notwithstanding the foregoing, in the event the sale is not closed for any reason, each party will be solely responsible for the environmental site assessment costs it has incurred.

**B.** If at any time between execution hereof and the closing District determines in its sole discretion that there are hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including but not



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limited to those as defined by the Comprehensive Environmental Resource Compensation and Liability Act, 42 U.S.C. 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq., or any Florida Statute defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants (hereinafter collectively referred to as "Contaminants") on the Properties, District may terminate this Agreement and all rights and liabilities arising hereunder will terminate or may close the sale in the same manner as if no Contaminants had been found.

C. Seller warrants and represents to District that it is not aware of any Contaminants as defined herein deposited, located, placed or released on the Properties.

D. If after closing District discovers that Contaminants were deposited, located, placed or released on the Properties prior to the closing, Seller will indemnify and hold District harmless from and against, any and all losses, damages, fines, charges, claims, costs, penalties, assessments, expenses, fees, including consultants' fees, attorneys' fees, legal assistants' fees and costs, liabilities (including strict liability), or third party claims (collectively hereinafter the "Costs") that are asserted, levied, assessed, entered into or charged to or against District by any person, entity, agency, organization or body or against the Properties in connection with the release, discharge, presence of or cleaning up, removing, disposing or otherwise eliminating any Contaminants. District may require Seller, at Seller's expense, to remove such Contaminants from the Properties and take any remedial or other action required by any local, state or federal agency. This covenant shall survive the date of closing for a period of two years.

E. In the event, there is any trash or junk material on the Properties, Seller will be required to remove all such trash and junk material at its sole expense prior to the closing. District will notify Seller in writing of the existence of such trash and junk material on the Properties and will make a final inspection upon notification by Seller that all trash and junk material has been removed from the Properties prior to closing. Trash or junk material for the purposes of this Agreement includes, but is not limited to, abandoned automobiles, abandoned appliances, abandoned above or below ground storage tanks, metallic wastes, residential rubbish, farm equipment, deteriorated fence materials, dilapidated mobile homes, sheds, machinery, construction material or any other materials unacceptable to District.

8. **CLOSING:** Subject to the curative period provided in Paragraph 6, the sale will be closed and the deeds, access and utility easement and restrictive covenant delivered to District on or before thirty (30) days from the date of completion of the survey as set forth in Paragraph 11 below, unless extended by agreement of the parties in writing, and Seller will deliver exclusive occupancy and possession of the Property to District on

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or before the date of closing. During the period from the Seller's execution of this Agreement until Seller surrenders exclusive occupancy and possession of the Property to District, neither Seller nor anyone under Seller's control or direction will commit or allow to be committed any act which diminishes the value of the Property.

**9. TAXES AND ASSESSMENTS:** Taxes and assessments on the Property will be prorated through the date of closing. The proceeds will be increased or decreased as may be required by the proration of said items. If the amount of taxes and assessments for the year in which the closing occurs cannot be ascertained, rates, millages and assessed valuations of the previous year, with known changes, will be used, with allowance for homestead or other exemptions if allowed for either year. It is understood and agreed to by the parties that Seller is responsible for all prorated assessments and taxes that are, in fact more than the estimate that is based on valuation of previous years, and such will be promptly paid by Seller to District. All real estate taxes and assessments which are, or which may become a lien against the Property will be satisfied by Seller at closing. In the event District acquires fee title to the Property between January 1 and November 1, Seller will, in accordance with Section 196.295, F.S., place in escrow with the County Tax Collector an amount equal to the current taxes prorated to the date of closing. In the event District acquires fee title to the Property on or after November 1, Seller will pay to the County Tax Collector an amount equal to the taxes that are determined to be legally due and payable by the County Tax Collector.

Seller agrees to make timely payment of all real estate taxes on the Residence Property and shall provide written proof of payment of taxes on or before the date they would become delinquent.

**10. DEEDS:** Upon payment of the purchase price as provided in Paragraph 5, Seller will convey fee simple title to the Property to the District or its assigns by Warranty Deeds free and clear of all leases, liens, mortgages and other encumbrances not acceptable to District except taxes for the year in which the closing occurs. Conservation Land Group will also convey a non-exclusive access and utility easement over the Easement Property described in Exhibit B, and Seller will also convey to the District a restrictive covenant over the Residence Property described in Exhibit C that is substantially in the form of the document attached hereto as Exhibit E. The documentary stamp tax on the Deeds, the access and utility easement and the restrictive covenant and costs for recording the deed, the access and utility easement and the restrictive covenant will be paid equally by Seller and District.

**11. SURVEY:** Within ninety (90) days of the Effective Date, the Properties and the Residence Property will be surveyed at the expense of the District in accordance with the requirements in Exhibit "F" attached hereto and incorporated herein by reference. Buyer shall be permitted to coordinate with the surveyor to define the precise



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boundaries of the Residence Property and the Easement Property, within the parameters described in Paragraph 1 and Exhibit A. If the survey shows any encroachments on the Property or Residence Property or that the improvements located on the Property or Residence Property encroach on other lands, written notice thereof will be given to Seller, and Seller will have the same time to remove such encroachments as allowed under this Agreement for the curing of defects in title. If Seller does not remove or cure said encroachments within said time, District, at its option, may terminate this Agreement and all rights and liabilities arising hereunder or may close the sale in the same manner as if no such defect had been found; or may adjust the purchase price.

**12. WELLS:** As a condition of closing, Seller will disclose the location of all wells on the Property and the Residence Property, whether permitted or not. The purpose of this disclosure is to document well locations on the boundary survey of the Property, the Easement Property and the Residence Property. Seller, at its sole expense, agrees to bring all wells located on the Properties into compliance with Chapter 40D-3, Florida Administrative Code (F.A.C.), and in accordance with the District's established program for capping and plugging abandoned wells, before closing. This requirement includes all wells that do not meet current well construction standards.

The District will pay to replace the well located on the Property and currently utilized to supply potable water to the caretaker's residence located adjacent to the boundary of the Property as depicted in Exhibit "G," attached hereto.

**13. RISK OF LOSS:** Seller will exercise diligent and reasonable care in protecting the Property from theft and vandalism, and all buildings, fences, gates, sheds and other similar improvements on the Property will be preserved in the condition accepted by District at the time of execution of this Agreement and delivered to District in such condition at the closing. If the improvements are damaged by fire or other casualty before the closing and can be restored by Seller to substantially the same condition as at the time of Seller's execution of this Agreement before the closing and delivery of exclusive occupancy and possession, the closing will occur as provided herein. If such restoration cannot be completed before the closing, this Agreement, at the option of District, may be declared null and void and all rights and liabilities hereunder will terminate; provided, however, that if District elects to purchase the Property even though the improvements are not restored, District will be entitled to the benefits of any insurance on the Property payable to Seller, Seller's agents and assigns and may adjust the purchase price to reflect a reduction in market value.

**14. ENCROACHMENTS AND ENCUMBRANCES:** After Seller's execution of this Agreement until Seller delivers exclusive occupancy and possession of the Property and a restrictive covenant over the Residence Property to District, neither Seller nor anyone under Seller's control or direction will cause or allow any encroachments or



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encumbrances on the Properties not existing on the date of Seller's execution hereof. At the closing, Seller will furnish District with Seller's affidavit, stating that neither Seller nor anyone under Seller's control or direction have taken any action to encumber the Properties or otherwise adversely affect the status of the title thereto between the date of Seller's execution of this Agreement and the closing and stating either that there have been no improvements made to the Properties during the ninety (90) days immediately preceding the date of closing, or, if there have been any such improvements, that all contractors, materialmen, suppliers and potential lienors in connection with said improvements have been paid in full. If Seller is a corporation or other business entity, Seller will also furnish District with Seller's Non-Foreign Corporate Affidavit at or before the closing as required by Section 1445(b)(2) of the United States Revenue Code to relieve District from withholding any income or capital gains taxes on the purchase price. Seller agrees to indemnify and hold District harmless, for all fees and costs incurred including, but not limited to, any attorney's fees incurred by District, because of any misrepresentations, omissions, or errors in Seller's Affidavits.

**15. FEES/COMMISSIONS:** District is not now, nor will it be liable to Seller or to Seller's agents or representatives for any commissions, costs, or fees arising from or for the sale of the Property to District, and Seller will defend, indemnify and hold harmless the District, its agents, employees and officers from any and all actions, awards, causes, claims, damages, judgments, losses, payments, recoveries and suits therefore arising from or out of this Agreement.

**16. DISCLOSURE:** Seller will comply with the disclosure requirements pursuant to Section 286.23, F.S., (real property conveyed to public agency; disclosure of beneficial interests), if applicable.

**17. PROCEEDS:** At closing, the distribution of the purchase amount will be made by District to the title company in the form of a check or wire transfer. Final distribution of Seller's proceeds will be made to Seller by the title company.

**18. DISBURSEMENT:** It is understood and agreed to by the parties that the funds for the purchase price may not be disbursed to Seller at the closing but may be held in escrow by District's closing agent pending recording of the deed and access and utility easement and restrictive covenant, and recertification of title by District's title insurance company showing no intervening encumbrances before the recording of the deed and access and utility easement.

**19. DEFAULT:** If either District or Seller fails to perform this Agreement, either party, at its option, may sue for specific performance of this Agreement or for damages. In the event of such suit, the prevailing party will be entitled to recover its reasonable attorney's fees and costs of suit, including on appeal. This provision does not constitute

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a waiver of District's sovereign immunity under Section 768.28, F.S., or extend District's liability beyond the limits established in Section 768.28, F.S.

**20. OTHER AGREEMENTS:** No agreement or understanding, verbal or in writing, unless incorporated herein, will be binding upon the parties.

**21. BINDING EFFECT:** The covenants herein contained will bind, and the benefits and advantages hereof will inure to, the respective heirs, personal representatives, successors and assigns of the parties hereto; whenever used herein, the singular will include the plural, the plural will include the singular, and the use of any gender will include the other.

**22. SURVIVAL OF TERMS:** The terms and conditions of this Agreement will survive the closing of the sale of the Property.

**23. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, or personal delivery. The parties agree to send all notices to the addresses specified in the introductory clause; and as to the District, such notice will be sent to the attention of its Office of General Counsel. Notice is effective upon receipt.

**24. CONSTRUCTION:** Seller and District acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

**25. INGRESS/EGRESS:** The Seller warrants and represents that there is legal ingress and egress to the Property and the Residence Property.

**26. HEADINGS:** The paragraph headings are inserted herein for convenience and reference only, and in no way, define, limit, or otherwise describe the scope or intent of any provisions hereof.

**27. WARRANTIES:** The Seller warrants that there are no facts known to the Seller materially affecting the value of the Property and access and utility easement which are not readily observable by the District or which have not been disclosed to the District.

**28. SEVERABILITY:** Should any section or any part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination will not render void, invalid or unenforceable any other section or any part of any section of this Agreement.

**29. WAIVER:** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, will be deemed to be a

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Purchase/Sale Agreement  
Parcel Name: Rainbow River Ranch  
SWF Parcel No.: 19-593-103



### Exhibit 3 Purchase and Sale Agreement

waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.

**30. PUBLIC RECORDS:** All records and documents generated or received by the parties in relation to this Agreement are subject to the Public Records Act, Chapter 119, F.S. except that appraiser reports, offers and counteroffers are confidential and exempt from the provisions of Section 119.07(1), F.S. until an option contract is executed, or if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the District Governing Board pursuant to Section 373.139(3)(a), F.S.

**31. ELECTRONIC SIGNATURE:** The District agrees that this Agreement may be executed by the Owner by electronic signature in a manner that complies with Chapter 668, Florida Statutes.

**32. DOCUMENTS:** The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will first be given to the language in the body of this Agreement.

- Exhibit 1      Parcel map
- Exhibit "A"    Property Legal Description (to be added)
- Exhibit "B"    Access and Utility Easement Legal Description (to be added)
- Exhibit "C"    Residence Property Legal Description (to be added)
- Exhibit "D"    Environmental Site Assessment Requirements
- Exhibit "E"    Draft Restrictive Covenant
- Exhibit "F"    Survey Requirements
- Exhibit "G"    Map Showing Location of Well to be Replaced by the District

Exhibit 3 Purchase and Sale Agreement

**In Witness Whereof**, the parties or the lawful representatives of the parties hereto have caused these presents to be executed in their respective names upon the day and year entered below their respective signatures.

**SELLERS:**

Rainbow River Ranch, LLC, a Florida limited liability company

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

Gerald S. Dodd, its Manager

Date: \_\_\_\_\_

Conservation Land Group, LLC, a Florida limited liability company

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

Gerald S. Dodd, its Manager

Date: \_\_\_\_\_

**Buyer(s):** Southwest Florida Water Management District

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

Brian J. Armstrong, P.G., Executive Director

Date: \_\_\_\_\_

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Purchase/Sale Agreement  
Parcel Name: Rainbow River Ranch  
SWF Parcel No.: 19-593-103

Exhibit 3 Purchase and Sale Agreement

**CERTIFICATION OF GOVERNING BOARD ACTION**

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 2017, the Governing Board of the Southwest Florida Water Management District approved the foregoing agreement.

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

Brian J. Armstrong, P.G., Executive Director

(District Seal)

APPROVED BY:	INITIALS	DATE
Attorney	_____	_____
Manager	_____	_____
Bureau Chief	_____	_____
Division Director	_____	_____

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Purchase/Sale Agreement  
Parcel Name: Rainbow River Ranch  
SWF Parcel No.: 19-593-103

## Exhibit 3 Purchase and Sale Agreement

Exhibits Available upon Request

## Exhibit 4 Restrictive Covenant

Prepared by return to:  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, FL 34604-6899  
Attn. Operations and Land Management Bureau

### RESTRICTIVE COVENANT

This Restrictive Covenant, made and entered into this 24<sup>th</sup> day of March 2017, by and between Conservation Land Group, LLC, a Florida limited liability company, whose address is P.O. Box 1822, Boca Grande, FL 33921, hereinafter referred to as "Grantor", and the Southwest Florida Water Management District, a public corporation, having an address of 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as "Grantee", collectively referred to as the "Parties."

### WITNESSETH:

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property in Marion County, Florida, more particularly described in Exhibit "A" attached hereto hereinafter referred to as the "Residence Property;" and

**WHEREAS**, Grantor has conveyed to Grantee approximately 115 acres of land and, as further consideration of that conveyance, agreed to a restrictive covenant on the Residence Property not conveyed, it being the intent of the parties to prohibit certain activity on the Residence Property as defined herein; and

**WHEREAS**, Grantee is a public entity authorized to hold restrictive covenants and conservation easements to further the preservation and protection of land in its natural, scenic, historical, agricultural, forested, or open space condition in accordance with Section 704.06, Florida Statutes (Fla. Stat.).

**NOW THEREFORE**, in further consideration of the conveyance and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including but not limited to the above and the mutual covenants, terms, conditions, and restrictions contained herein, the receipt and sufficiency of which is acknowledged, Grantor hereby voluntarily grants and conveys to Grantee a Restrictive Covenant in perpetuity over the Residence Property of the nature and character and to the extent hereinafter set forth.

### ARTICLE I. INCORPORATION OF RECITALS

The foregoing recitals are as true and correct and incorporated herein by reference.

### ARTICLE II. DURATION OF RESTRICTION; SECTION 704.06(4), FLA. STAT.

This Restrictive Covenant on the Residence Property is perpetual, and is in the nature of a negative easement, running with the title to the Residence Property or any part of the Residence Property, and is enforceable by Grantee against Grantor, and its personal representatives, heirs, successors and assigns, lessees, agents, and licensees.



## Exhibit 4 Restrictive Covenant

This Restrictive Covenant shall also be governed by the provisions of Section 704.06(4), Fla. Stat. 2017.

### **ARTICLE III. PURPOSE OF RESTRICTIVE COVENANT**

It is the purpose of this Restrictive Covenant to limit certain activity on the Residence Property as set forth herein.

### **ARTICLE IV. RIGHTS GRANTED TO THE GRANTEE**

To accomplish the purposes of this Restrictive Covenant, Grantee shall have the right to enforce this Restrictive Covenant in perpetuity.

### **ARTICLE V. PROHIBITED ACTIVITY**

The following activity is hereby prohibited and restricted on the Residence Property:

A. Subdivision of the Residence Property is limited to one division, with each resulting lot having not less than 5 acres.

After any such subdivision each resulting lot shall remain subject to this restrictive covenant. Grantor shall provide written notice to Grantee not less than 30 days prior to subdividing the Residence Property together with copy of any surveys or plats of the proposed subdivision. Any subdivision or conveyance of the Residence Property that is inconsistent with this Restrictive Covenant shall be null and void and of no legal force or effect.

B. Grantor may construct one additional single family residence and associated improvements on the Residence Property. "Associated Improvements" means such other buildings, structures, living quarters, recreational facilities, and improvements as are customarily appurtenant to comparable residential dwellings in the vicinity of the Residence Property, including but not limited to garages, barns, stables, paddocks, run-in sheds, storage sheds, swimming pools, tennis courts, guest quarters, energy generation or transmission facilities and utilities including electric, solar, water, and septic systems, leach fields, telecommunication receiving and transmittal devices, docks, gazebos, bird homes and nesting areas, water pipelines, and other buildings and facilities for all residential uses.

### **ARTICLE VI. PROTECTIVE BUFFER**

There shall be a Protective Buffer along the riverfront of the Residence Property. The Protective Buffer area shall be measured landward 100 feet from the Ordinary high water line or to the landward extent of the existing railroad berm, whichever distance is greater. The Protective Buffer use restrictions are set forth in Exhibit B attached hereto and incorporated herein by this reference.

### **ARTICLE VII. GRANTOR'S RESERVED RIGHTS**

Grantor reserves to itself and its successors, guests, or invitees, and assigns, the right to use the Residence Property in any manner not inconsistent with this Restrictive Covenant and in full accordance with all applicable local, state and federal laws, as amended from time to time.

## ARTICLE VIII. MISCELLANEOUS TERMS

A. **Recordation.** Grantor shall record this Restrictive Covenant and any amendments thereto in a timely fashion in the Official Records of Marion County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Restrictive Covenant in the public records.

B. **Ad Valorem Taxes.** Grantor agrees to make timely payment of all ad valorem taxes on the Residence Property. In each tax year, Grantor shall provide Grantee written proof of payment of taxes on the Residence Property on or before the date such taxes would be considered delinquent.

C. **Indemnification.** In any suit brought to enforce the terms of this Restrictive Covenant, the prevailing party shall be entitled to recover from the non-prevailing party all attorney fees and costs, including attorney's fees and costs on appeal. Nothing herein shall be construed as a waiver of Grantee's sovereign immunity under Section 768.28, Fla. Stat. or extend Grantee's liability beyond the limits established by Section 768.28, Fla. Stat.

D. **Public Access.** No right of access to any portion of the Residence Property is conveyed by this Restrictive Covenant.

E. **Notice of Violation.** If the terms and conditions of this Restrictive Covenant are violated, Grantor shall give written notice to the Grantee, which shall have the right to cease or to cure the violation without penalty. If the party in violation does not cure the violation within fifteen (15) days after receipt of written notice from the other party, the terms and conditions hereof may be enforced by Grantor or by Grantee by suit for injunctive relief or for other appropriate remedy in equity or at law. Venue for such suit shall be in the Circuit Court in and for Marion County, Florida. As a condition precedent for filing of any lawsuit, the Parties shall perform the mediation process immediately stated below.

F. **Mediation.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Restrictive Covenant promptly by confidential mediation before resorting to litigation.

G. **Notices.** Any notice, demand or request which may be or is required, or to be given under this Restrictive Covenant shall be delivered in person or sent by United States Certified Mail, postage prepaid, return receipt requested, and shall be addressed to Grantor or to Grantee at the addresses first set forth above.

H. **Forbearance Not a Waiver.** Any forbearance by Grantee to exercise its rights under this Restrictive Covenant in the event of any violation of this Restrictive Covenant shall not be deemed or construed to be a waiver by Grantee of such violation or another violation of this Restrictive Covenant or of any of Grantee's rights under this Restrictive Covenant. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

I. **Severability; Liberal Construction.** If any provision of this Restrictive Covenant or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Restrictive Covenant shall not be affected thereby. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the



Exhibit 4 Restrictive Covenant

purposes of this Restrictive Covenant shall be favored over any interpretation that would be inconsistent therewith.

J. **Entire Agreement.** This Restrictive Covenant, together with all the documents attached or otherwise incorporated herein, constitutes the entire understanding and agreement between the Parties and shall not be changed, altered, or modified. If any terms or provisions of this Restrictive Covenant are determined by competent judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or shall be construed or deleted as such authority determines, and the remainder of this Restrictive Covenant shall be construed as being in full force and effect.

K. **Assignment Limitations.** Grantee shall not assign its interest in this Restrictive Covenant except to the State of Florida, the successor in interest to the Grantee or a political subdivision of the State of Florida, without first obtaining the prior written consent of the Grantor, which may be withheld by Grantor in its sole discretion. Any assignment without such consent shall be void and have no effect. If Grantee shall cease to exist or cease to be authorized to hold conservation easements under Florida law, then Grantee's rights and obligations under this Restrictive Covenant shall immediately become vested in the State of Florida.

L. **Successors; Benefits and Burdens.** This Restrictive Covenant shall be binding upon and inure to the Parties hereto and their respective successors, personal representatives, heirs, and assigns and shall continue as a restriction running in perpetuity with the Residence Property.

M. **Representation of Authority.** Each signatory to this Restrictive Covenant represents and warrants that he or she is duly authorized to enter into and execute the terms and conditions of this Restrictive Covenant and to legally bind the party he or she represents.

N. **Effective Date.** This Restrictive Covenant and the restrictions arising hereunder shall be effective after all signatures required by law have been affixed hereto and the Restrictive Covenant has been recorded in the official records of Marion County, Florida.


**TO HAVE AND TO HOLD** unto Grantee, its successors, and assigns forever.

**IN WITNESS WHEREOF** Grantor has caused this Restrictive Covenant to be executed the day and year first above written.

  
Signature of witness

  
Printed name of witness

  
Signature of witness

  
Printed name of witness

Conservation Land Group, LLC

  
Gerald S. Dodd, Manager

Exhibit 4 Restrictive Covenant

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 3/24/17 by Gerald S. Dodd, Manager of Conservation Land Group, LLC, a Florida Limited Liability Company, on behalf of the LLC. He is personally known to me \_\_\_\_\_ or has produced Drivers license as identification.

WITNESS my hand and official seal this 24 day of March, 2017.



Elizabeth Whiting  
Signed

Elizabeth Whiting  
Printed  
NOTARY PUBLIC  
My Commission Expires:

EXHIBIT A

RESIDENCE PROPERTY LEGAL DESCRIPTION

[to be added following survey]

EXHIBIT B

PROTECTIVE BUFFER USE RESTRICTIONS

It is intended that the Protective Buffer preserve the tree canopy and the integrity of the shoreline along the Rainbow River, recognizing both the Grantor's lawful riparian rights and the goal of preservation and protection. The following shall apply to the removal and/or maintenance of vegetation within the Protective Buffer area.

- (1) The only structures, other than existing structures shall be docks, walkways, footpaths and gazebo type structures with all applicable permits. No residential structures are permitted and no gazebo can be converted into a dwelling unit.
- (2) No invasive or non-native vegetation may be planted. The Residence Property owner may remove any invasive trees and non-native vegetation listed as such by the Invasive Plant Management Section of the Florida Fish and Wildlife Conservation Commission including, but not limited to, the following: Australian Pine, Brazilian Pepper, Camphor tree, Chinaberry, Chinese Tallow, Melaleuca and Silk Oak.
- (3) Underbrush and understory of less than 4" diameter at breast height (DBH), may be trimmed or removed to allow viewsheds of the river from the Residence Property.
- (4) The proper pruning of trees is allowed. Hat racking as a method of pruning is prohibited. The removal of fallen or downed trees caused by a storm or other natural causes is permitted.

## Exhibit 5 Private Grant Agreement for Land Assist

### PRIVATE GRANT AGREEMENT FOR LAND ASSIST

Accounting Information  
TNC Project ID: \_\_\_\_\_  
TNC Account No: \_\_\_\_\_

March 24, 2017

\_\_\_\_\_  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, FL 34604-6899

Re: Rainbow River Ranch Tract SWF Parcel No. 19-593-103  
Grant of funds for purchase of real property

Dear \_\_\_\_\_:

We are very pleased to inform you that The Nature Conservancy (the "**Conservancy**") has agreed to make this Grant (this "**Award**") to the Southwest Florida Water Management District ("**Awardee**") in the amount not to exceed \$250,000.00 (the "**Grant Funds**").

#### **I. OBJECTIVE**

The purpose of this Grant is to partially fund Awardee's acquisition of fee simple title to approximately 120 acres of land located in Marion County, Florida, and depicted and labelled as "Rainbow River Ranch Tract SWF Parcel No. 19-593-103" in the attached maps (Attachment A) (the "**Property**"). Acquisition of the Property hereinafter is the "**Land Acquisition Project**" or the "**Project**".

#### **II. TERM**

The term for performance of activities funded with Grant Funds shall commence on \_\_\_\_\_, 2017 and expire on **May 20, 2018**.

#### **III. PAYMENTS**

Subject to satisfaction of all requirements contained herein, Grant Funds shall be disbursed by the Conservancy prior to the closing of the acquisition of the Property and shall be deposited into an escrow for the transaction (the "**Escrow**") established with an escrow or title company (the "**Escrow Holder**"), pursuant to escrow instructions from the Conservancy that:

- A. limit the use of such Grant Funds to the acquisition of the Property pursuant to the terms of the Awardee's acquisition agreement for the Property; and
- B. require the Escrow Holder to return to the Conservancy any Grant Funds that have not been used for the purpose of the acquisition by the deadline established by the Conservancy in its escrow instructions; and
- C. in the event that the closing is delayed beyond December 31, 2017, require that the Grant Funds be deposited in an interest-bearing account with an institution reasonably acceptable to the Conservancy, pending the closing of the Escrow or the return of such Grant Funds to the Conservancy;
- D. require the Escrow Holder to provide the Conservancy with draft closing statements and draft deed of conveyance to Awardee to be approved by the Conservancy prior to closing; and
- E. require the Escrow Holder to provide the Conservancy with a copy of the signed deed and signed closing statements documenting the disbursement of the Grant Funds and all other funds related to the acquisition.

#### **IV. PRE-FUNDING DOCUMENTATION OF TERMS AND CONDITIONS OF LAND ACQUISITION**

As soon as possible after execution of this Grant Agreement, Awardee shall provide the Conservancy with a Conflict of Interest Disclosure Form completed and signed by the Property owner (which form shall be provided by the Conservancy). In the event that the Conflict Disclosure evidences a conflict of interest under the Conservancy's policies and procedures, the Conservancy may terminate this Grant Agreement by providing written notice to the Awardee. Additionally, true and complete copies of the following documents shall be delivered to the Conservancy prior to closing. The Escrow Holder shall not disburse any Grant Funds until all of the following have been received and approved by the Conservancy, unless such requirement to deliver has been waived, in writing, by the Conservancy:

- A. confirmation that Awardee has approved a purchase option or purchase agreement for the Awardee's purchase of the Property;
- B. a final settlement or closing statement reflecting the Grant Funds application to the Awardee's purchase of the Property; and
- C. such other information concerning the Property, or the proposed use thereof, as the Conservancy may require.

#### **V. POST-ACQUISITION DOCUMENTATION**

True and complete copies of the following shall be delivered to the Conservancy as soon as practicable following closing, but in no event more than two (2) months following closing:

- A. the recorded deed(s), and
- B. the fully executed closing or settlement statement(s).

#### **VI. EXPENDITURE LIMITED TO DESIGNATED PURPOSES**

The Grant Funds may be spent only for the purpose set forth in Section I of this Grant and for no other purpose. Any Grant Funds not expended or committed for the purposes of this Grant must be returned to the Conservancy.

#### **VII. PROVIDING FUNDS TO OTHERS**

The Awardee is prohibited from using the Grant Funds and/or assets for grants to others.

#### **VIII. RECORDS AND AUDITS**

The Awardee agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Award to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed. These records shall be maintained for a period of three years after the final expenditure report is submitted.

The Conservancy and its auditors (internal and external) will have access to all records relating to the award for three years after the termination of this Grant agreement, unless local law requires a longer retention period.

The Awardee shall be responsible for reimbursing for any disallowance of any expenditures related to the work the Awardee has performed.

The Conservancy and the Awardee shall allow public access to documents and materials made or received by either party in accordance with the Public Records Act, Chapter 119, F.S., related to the Project. To the extent required by Section 119.0701, F.S., the Conservancy will (1) keep and maintain public records related to the Project; (2) upon request from the Awardee, provide the Awardee with a copy



of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) upon completion of this Agreement, keep and maintain public records related to the Project and comply with all applicable requirements for retaining public records.

**IF THE CONSERVANCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSERVANCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS GRANT AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 352-796-7211, ext. 4825, by email at [Peggy.Meinhardt@Watermatters.org](mailto:Peggy.Meinhardt@Watermatters.org), or at the following mailing address:**

**Peggy Meinhardt, Records Manager  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, Florida 34604-6899**

Any changes to the above contact information will be provided to the conservancy in writing.

**IX. TITLE TO AND USE OF PROPERTY**

Title to any property purchased with Grant Funds vests in the Awardee.

**X. ACKNOWLEDGMENTS**

At the Conservancy's request, the Awardee agrees to acknowledge the Conservancy's support of the project, including funding contributions and sponsorship, on all media announcements, programs and publications; provided, however, that **the Awardee shall not release any public statements, announcements or news releases that mention the source of the Grant Funds or this Grant agreement without the Conservancy's prior written approval.**

**XI. ASSIGNMENT**

This Award may not be assigned by the Awardee in whole or in part.

**XII. NO AGENCY**

No legal partnership or agency is established by this Award. Neither party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other party or for the account of the other party. Neither party shall be bound by any acts, representations, or conduct of the other.

**XIII. LOBBYING AND POLITICAL CAMPAIGNING**

Awardee shall not use any portion of funds transferred under this Award to engage in any lobbying activities.

Awardee shall not use any portion of funds transferred under this Award to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private

## Exhibit 5 Private Grant Agreement for Land Assist

inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

### **XIV. LIABILITY**

Awardee shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of this Award. Nothing in this Award will be interpreted as a waiver of Awardee's sovereign immunity or an extension of its liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by Awardee to be sued by third parties in any manner arising out of this Award.

### **XV. USE OF CONSERVANCY NAME/LOGO**

The Awardee may not use the Conservancy's name and/or logo in any way without prior written consent from the Conservancy, except for inclusion in public meeting notices relating to the Property acquisition and otherwise in accordance with the Section X.

### **XVI. COMPLIANCE WITH ANTI-TERRORISM LAWS**

Awardee must not use any funds received under this Award in violation of any applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including the USA Patriot Act of 2001 and Executive Order 13224.

### **XVII. CHOICE OF LAW/FORUM**

This Award shall be interpreted, construed and governed by the laws of Florida and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Award, the Conservancy and the Awardee agree that litigation shall be conducted in the State of Florida.

### **XVIII. BINDING EFFECT/AMENDMENTS**

This Award shall become binding when signed by the parties. This Award supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Award between the parties relating to the work set out above. No amendment shall be effective except in writing signed by both parties.

### **XIV. SEVERABILITY**

If any provision of this Award is held invalid, the other provisions shall not be affected thereby.

### **THE NATURE CONSERVANCY**

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

Title: \_\_\_\_\_

Exhibit 5 Private Grant Agreement for Land Assist

Date: \_\_\_\_\_

Attorney approval as to form: LPR 022117

The terms and conditions of the Private Grant Agreement for Land Assist are accepted as stated above and agreed to by Awardee.

**SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachments:**

Attachment A –Depiction of the Property

Exhibit 5 Private Grant Agreement for Land Assist

Attachment A – Depiction of the Property

Page 1 of 2

DRAFT

Exhibit 5 Private Grant Agreement for Land Assist

Attachment A – Depiction of the Property  
Page 2 of 2

DRAFT

Exhibit 6 - Resolution Requesting Florida Forever Funds

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
RESOLUTION NO. 17-04  
REQUESTING FUNDS FROM THE  
FLORIDA FOREVER TRUST FUND  
FOR ACQUISITION OF SWF PARCEL NO. 19-593-103  
MARION COUNTY, FLORIDA

WHEREAS, the Southwest Florida Water Management District has agreed to purchase SWF Parcel No. 19-593-103 pursuant to a purchase/sale agreement attached hereto as Exhibit "A", which is comprised of approximately 115 acres of real property in Marion County, Florida, for a total purchase price to the District of three million, nine hundred fourteen thousand, eight hundred and ninety-three dollars and twenty-five cents (\$3,914,893.25); and

WHEREAS, the general location and boundary of the parcel is shown on the maps attached hereto as Exhibits "B-1" and "B-2"; and

WHEREAS, the parcel will become a part of the District's Rainbow River project; this acquisition is consistent with the District's Florida Forever Work Plan filed with the Legislature of Florida and with the Florida Department of Environmental Protection; and this acquisition is consistent with the Florida Forever Act, Section 259.105, Florida Statutes (F.S.); and

WHEREAS, the parcel meets the criteria for land acquisition as prescribed in subsections 259.105(4)(a)(b)(c)(d)(e), F.S.; and

WHEREAS, the trust funds hereinafter requested will be used only for the costs and fees of acquisition of the parcel; and

WHEREAS, the District is hereby authorized to request the reimbursement of the District's expenses associated with acquisition of the parcel identified in the Resolution; and

WHEREAS, the parcel will be managed and maintained, to the extent practicable, in such a way as to restore and protect its natural state and condition; and

WHEREAS, the parcel being acquired has been reviewed for the presence of sovereign submerged lands and the District has taken reasonable measures to avoid paying for sovereign lands; and

WHEREAS, an environmental assessment has been performed for all lands, and the District will notify the Department of Environmental Protection and specify what measures will be taken to remove or remediate any hazardous constituents in accordance with Department-approved procedures as set forth in Chapters 62-520, 62-730 and 62-780, Florida Administrative Code; and

WHEREAS, if the District subsequently disposes of its interest in the parcel, all revenues derived therefrom will be used solely to acquire other lands for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes or for payment of debt service on revenue bonds or notes issued under Section 373.584, F.S.; and

WHEREAS, the parcel has been appraised by two independent real estate appraisers in accordance with District policy, and the purchase price is below both appraised values; and

Exhibit 6 - Resolution Requesting Florida Forever Funds

WHEREAS, funds are currently available in the Florida Forever Trust Fund to the credit of the District for use in payment of the costs and fees of acquisition of the parcel.

THEREFORE, BE IT RESOLVED that the foregoing is hereby declared to be true and correct, and that the acquisition of the parcel is hereby certified to be consistent with the District's current Florida Forever Work Plan and the Florida Forever Act; and

BE IT FURTHER RESOLVED that the Governing Board of the Southwest Florida Water Management District hereby requests the Secretary of the Florida Department of Environmental Protection to release from the Florida Forever Trust Fund three million, nine hundred fourteen thousand, eight hundred and ninety-three dollars (\$3,914,893) be used to acquire SWF Parcel No. 19-593-103, and furthermore to provide such additional funds to reimburse the District's cost and fees associated with the acquisition of the parcel as may be requested by the District from the Florida Forever Trust Fund; and

BE IT FURTHER RESOLVED that a certified copy of this resolution be transmitted to the Secretary of the Department of Environmental Protection forthwith; and

BE IT FURTHER RESOLVED that the Chairman and Secretary of the Governing Board are hereby authorized to affix their signatures to this Resolution on behalf of the Board.

PASSED AND ADOPTED in Brooksville, Hernando County, Florida on the 28<sup>th</sup> day of March, 2017.

SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT

(District Seal)

By: \_\_\_\_\_  
Randall S. Maggard, Chairman

Attest: \_\_\_\_\_  
Bryan K. Beswick, Secretary

Exhibit 6 - Resolution Requesting Florida Forever Funds

CERTIFICATE AS TO RESOLUTION NO. 17-04

STATE OF FLORIDA  
COUNTY OF HERNANDO

We, the undersigned, hereby certify that we are, Chair and Secretary, respectively, of the Southwest Florida Water Management District, organized and existing under and by virtue of the Laws of the State of Florida, and having its office and place of business at 2379 Broad Street, Brooksville, Hernando County, Florida, and that, on the 28<sup>th</sup> day of March 2017, at a duly called and properly held meeting of the Governing Board of the Southwest Florida Water Management District, at 2379 Broad Street, Brooksville, Hernando County, Florida, at which meeting a majority of the members of the Governing Board were present, the resolution, which is attached hereto and which this certificate is a part thereof, was adopted and incorporated in the minutes of that meeting.

Dated at Brooksville, Florida, this 28<sup>th</sup> day of March 2017.

SOUTHWEST FLORIDA  
WATER MANAGEMENT DISTRICT

By: \_\_\_\_\_  
Randall S. Maggard, Chair

Attest:

\_\_\_\_\_  
Bryan K. Beswick, Secretary

ACKNOWLEDGMENT

STATE OF FLORIDA  
COUNTY OF HERNANDO

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of March, by Randall S. Maggard, and Bryan K. Beswick, Chair and Secretary, respectively, of the Governing Board of the Southwest Florida Water Management District, a public corporation, on behalf of the corporation. They are personally known to me.

WITNESS my hand and official seal on this 28<sup>th</sup> day of March 2017.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Name of Notary typed, printed or stamped)  
Commission No: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

APPROVED BY:	INITIALS	DATE
Attorney	_____	_____
Asst Bureau Chief	_____	_____
Bureau Chief	_____	_____
Director	_____	_____