

RESOLUTION 296 – 23

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING A COMMERCIAL CONTRACT BETWEEN INTERNATIONAL CAPITAL INVESTMENT COMPANY III, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND THE CITY OF CAPE CORAL, A FLORIDA MUNICIPAL CORPORATION, FOR THE PURCHASE OF LOTS 1 THROUGH 12 AND LOTS 100 THROUGH 110, TOGETHER WITH THE VACATED ALLEY CONTIGUOUS TO LOTS 1 THROUGH 11 AND LOTS 100 THROUGH 110 AND THE WEST ½ OF THE VACATED ALLEY CONTIGUOUS TO LOT 12, BLOCK 930, CAPE CORAL UNIT 26, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 2107-2119 SANTA BARBARA BOULEVARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the subject property is approximately 2.8 acres located east of Santa Barbara Boulevard and south of SE 21st Street, Cape Coral Subdivision; and

WHEREAS, the property includes two buildings with approximately 34,843 total square feet that the City intends to use for Government Office Facilities; and

WHEREAS, the City shall obtain an appraisal pursuant to Section 2-152 of the City of Cape Coral Code of Ordinances; and

WHEREAS, City staff recommends that the City proceed with the purchase of the subject property pursuant to the terms and price set forth in the contract; and

WHEREAS, the City Manager requests approval of the Commercial Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves a Commercial Contract between International Capital Investment Company III, LLC and the City of Cape Coral, a Florida Municipal Corporation, for the purchase of Lots 1 through 12 and Lots 100 through 110, together with the vacated alley contiguous to Lots 1 through 11 and Lots 100 through 110 and the west ½ of the vacated alley contiguous to Lot 12, Block 930, Cape Coral Unit 26, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$3,800,000, plus closing costs not to exceed \$7,000. Property located at 2107-2119 Santa Barbara Boulevard. A copy of the Commercial Contract is attached hereto as Exhibit 1.

Section 2. This resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2023.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER _____
STEINKE _____
SHEPPARD _____
HAYDEN _____

CUMMINGS _____
WELSH _____
LONG _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2023.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



ALEKSANDR BOKSNER
CITY ATTORNEY

Res/Purchase Real Property – 2107-2119 Santa Barbara Blvd.



Commercial Contract

RE/MAX

1 **1. PARTIES AND PROPERTY:** City of Cape Coral, a Florida Municipal Corporation ("Buyer")2 agrees to buy and International Capital Investment Company III, LLC, a Florida limited liability company ("Seller")

3 agrees to sell the property at:

4 Street Address: 2107-2119 Santa Barbara Boulevard, Cape Coral, FL 33991, Strap: 25-44-23-C4-00930.00106 Legal Description: SEE ADDENDUM8 and the following Personal Property: Window coverings

10 (all collectively referred to as the "Property") on the terms and conditions set forth below.

11 **2. PURCHASE PRICE:** \$ 3,800,000.0012 (a) Deposit held in escrow by: Cape Coral Title Insurance Agency, Inc. \$
13 ("Escrow Agent") (checks are subject to actual and final collection)14 Escrow Agent's address: 1307 Cape Coral Pkwy E., Cape Coral Phone: 239-540-1538

15 (b) Additional deposit to be made to Escrow Agent

16 ☐ within ___ days (3 days, if left blank) after completion of Due Diligence Period or
17 ☒ within 10 days after Effective Date Seller and Buyer execute contract \$ 100,000.00

18 (c) Additional deposit to be made to Escrow Agent

19 ☐ within ___ days (3 days, if left blank) after completion of Due Diligence Period or
20 ☐ within ___ days after Effective Date \$

21 (d) Total financing (see Paragraph 5) \$

22 (e) Other SEE ADDENDUM \$ 280,000.00

23 (f) All deposits will be credited to the purchase price at closing.

24 Balance to close, subject to adjustments and prorations, to be paid
25 via wire transfer. \$ 3,420,000.0026 For the purposes of this paragraph, "completion" means the end of the Due Diligence Period or upon delivery of
27 Buyer's written notice of acceptability.28 **3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME:** September 25, 2023 TMV
29 Unless this offer is signed by Seller September 20, 2023, this offer
30 and Buyer and an executed copy delivered to all parties on or before September 20, 2023, this offer
31 will be withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be
32 3 days from the date the counter offer is delivered. The "Effective Date" of this Contract is the date on which the
33 last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer or
34 SEE ADDENDUM. Calendar days will be used when computing time periods, except time periods of 5
35 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal
36 holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next
business day. Time is of the essence in this Contract.37 **4. CLOSING DATE AND LOCATION:**38 (a) Closing Date: This transaction will be closed on SEE ADDENDUM (Closing Date), unless
39 specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods
40 including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspendedBuyer TMV () and Seller TMV () acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

on Closing Date and **Buyer** is unable to obtain property insurance, **Buyer** may postpone closing up to 5 days after the insurance underwriting suspension is lifted.

(b) Location: Closing will take place in Lee County, Florida. (If left blank, closing will take place in the county where the property is located.) Closing may be conducted by mail or electronic means.

5. THIRD PARTY FINANCING:

BUYER'S OBLIGATION: On or before N/A days (5 days if left blank) after Effective Date, **Buyer** will apply for third party financing in an amount not to exceed _____% of the purchase price or \$_____, with a fixed interest rate not to exceed _____% per year with an initial variable interest rate not to exceed _____%, with points or commitment or loan fees not to exceed _____% of the principal amount, for a term of _____ years, and amortized over _____ years, with additional terms as follows:

Buyer will timely provide any and all credit, employment, financial and other information reasonably required by any lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within _____ days (45 days if left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close the loan. **Buyer** will keep **Seller** and Broker fully informed about loan application status and authorizes the mortgage broker and lender to disclose all such information to **Seller** and Broker. **Buyer** will notify **Seller** immediately upon obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within _____ days (3 days if left blank) deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract. If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If **Buyer** has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be returned to **Buyer**, whereupon both parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract as set forth above or **Buyer** fails to use good faith or reasonable diligence as set forth above, **Seller** will be entitled to retain the Deposit(s) if the transaction does not close. For purposes of this Contract, "Loan Approval" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular buyer. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Approval for purposes of this Contract.

6. TITLE: **Seller** has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty deed ☒ special warranty deed ☐ other _____, free of liens, easements and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____

provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the Property as _____ any government purpose _____

(a) Evidence of Title: The party who pays the premium for the title insurance policy will select the closing agent and pay for the title search and closing services. **Seller** will, at (check one) ☒ **Seller's** ☐ **Buyer's** expense and within 30 days after Effective Date or at least _____ days before Closing Date deliver to **Buyer** (check one) ☒ (i) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the evidence of title and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date. ☐ (ii.) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or

Buyer (MM) (_____) and **Seller** (TMV) (_____) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

Buyer's closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller** then (i.) above will be the evidence of title.

(b) Title Examination: **Buyer** will, within 15 days from receipt of the evidence of title deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (1) **Buyer** fails to deliver proper notice of defects or (2) **Buyer** delivers proper written notice and **Seller** cures the defects within 90 days from receipt of the notice ("Curative Period"). **Seller** shall use good faith efforts to cure the defects. If the defects are cured within the Curative Period, closing will occur on the latter of 10 days after receipt by **Buyer** of notice of such curing or the scheduled Closing Date. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, **Buyer** will have 10 days from receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) Survey: (check applicable provisions below)

☒ **Seller** will, within 30 days from Effective Date, deliver to **Buyer** copies of prior surveys, plans, specifications, and engineering documents, if any, and the following documents relevant to this transaction:

SEE ADDENDUM

prepared for **Seller** or in **Seller's** possession, which show all currently existing structures. In the event this transaction does not close, all documents provided by **Seller** will be returned to **Seller** within 10 days from the date this Contract is terminated.

☒ **Buyer** will, at ☐ **Seller's** ☒ **Buyer's** expense and within the time period allowed to deliver and examine title evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another, ☐ **Buyer** will accept the Property with existing encroachments ☒ such encroachments will constitute a title defect to be cured within the Curative Period.

(d) Ingress and Egress: **Seller** warrants that the Property presently has ingress and egress.

7. PROPERTY CONDITION: **Seller** will deliver the Property to **Buyer** at the time agreed in its present "as is" condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. **Seller** makes no warranties other than marketability of title. In the event that the condition of the Property has materially changed since the expiration of the Due Diligence Period, **Buyer** may elect to terminate the Contract and receive a refund of any and all deposits paid, plus interest, if applicable, or require **Seller** to return the Property to the required condition existing as of the end of Due Diligence period, the cost of which is not to exceed \$_____ (1.5% of the purchase price, if left blank). By accepting the Property "as is", **Buyer** waives all claims against **Seller** for any defects in the Property. (Check (a) or (b))

☐ **(a) As Is:** **Buyer** has inspected the Property or waives any right to inspect and accepts the Property in its "as is" condition.

☒ **(b) Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 60 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in **Buyer's** sole and absolute discretion. During the term of this Contract, **Buyer** may conduct any tests, analyses, surveys and investigations ("Inspections") which **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that **Buyer** deems appropriate. **Buyer** will deliver written notice to **Seller** prior to the expiration of the Due Diligence Period of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property in its present "as is" condition. **Seller** grants to **Buyer**, its agents, contractors and assigns, the right to enter the Property at any time during the term of this Contract for the purpose of conducting Inspections, upon reasonable notice, at a mutually agreed upon time; provided, however, that **Buyer**, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a mechanic's lien being filed against the Property without **Seller's** prior written consent. In the event this transaction does not close, (1) **Buyer** will repair all damages to the

Buyer () () and **Seller** () () acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a result of the Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that **Buyer's** deposit will be immediately returned to **Buyer** and the Contract terminated.

(c) Walk-through Inspection: **Buyer** may, on the day prior to closing or any other time mutually agreeable to the parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all Property is on the premises.

8. OPERATION OF PROPERTY DURING CONTRACT PERIOD: **Seller** will continue to operate the Property and any business conducted on the Property in the manner operated prior to Contract and will take no action that would adversely impact the Property after closing, as to tenants, lenders or business, if any. Any changes, such as renting vacant space, that materially affect the Property or **Buyer's** intended use of the Property will be permitted ☒ only with **Buyer's** consent ☐ without **Buyer's** consent.

9. CLOSING PROCEDURE: Unless otherwise agreed or stated herein, closing procedure shall be in accordance with the norms where the Property is located.

(a) Possession and Occupancy: **Seller** will deliver possession and occupancy of the Property to **Buyer** at closing. **Seller** will provide keys, remote controls, and any security/access codes necessary to operate all locks, mailboxes, and security systems.

(b) Costs: **Buyer** will pay **Buyer's** attorneys' fees, taxes and recording fees on notes, mortgages and financing statements and recording fees for the deed. **Seller** will pay **Seller's** attorneys' fees, taxes on the deed and recording fees for documents needed to cure title defects. If **Seller** is obligated to discharge any encumbrance at or prior to closing and fails to do so, **Buyer** may use purchase proceeds to satisfy the encumbrances.

(c) Documents: **Seller** will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable service and maintenance contracts that will be assumed by **Buyer** after the Closing Date and letters to each service contractor from **Seller** advising each of them of the sale of the Property and, if applicable, the transfer of its contract, and any assignable warranties or guarantees received or held by **Seller** from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters (if applicable); tenant subordination, non-disturbance and attornment agreements (SNDAs) required by the **Buyer** or **Buyer's** lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in ownership/rental agent. If any tenant refuses to execute an estoppels letter, **Seller**, if requested by the **Buyer** in writing, will certify that information regarding the tenant's lease is correct. If **Seller** is an entity, **Seller** will deliver a resolution of its governing authority authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the requirements of local law. **Seller** will transfer security deposits to **Buyer**. **Buyer** will provide the closing statement, mortgages and notes, security agreements, and financing statements.

(d) Taxes and Prorations: Real estate taxes, personal property taxes on any tangible personal property, bond payments assumed by **Buyer**, interest, rents (based on actual collected rents), association dues, insurance premiums acceptable to **Buyer**, and operating expenses will be prorated through the day before closing. If the amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

(e) Special Assessment Liens: Certified, confirmed, and ratified special assessment liens as of the Closing Date will be paid by **Seller**. If a certified, confirmed, and ratified special assessment is payable in installments, **Seller** will pay all installments due and payable on or before the Closing Date, with any installment for any period extending beyond the Closing Date prorated, and **Buyer** will assume all installments that become due and payable after the Closing Date. **Buyer** will be responsible for all assessments of any kind which become due and owing after Closing Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially completed as of the Closing Date but has not resulted in a lien before closing, **Seller** will pay the amount of the last estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and does not apply to condominium association special assessments.

(f) Foreign Investment in Real Property Tax Act (FIRPTA): If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** agree to comply with Section 1445 of the Internal Revenue Code. **Seller** and **Buyer** will complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply

Buyer (M) () and **Seller** (MV) () acknowledge receipt of a copy of this page, which is Page 4 of 8 Pages.

with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the requirement.

10. ESCROW AGENT: **Seller** and **Buyer** authorize Escrow Agent or Closing Agent (collectively "Agent") to receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option, (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the parties of such action, Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and charged and awarded as court costs in favor of the prevailing party.

11. CURE PERIOD: Prior to any claim for default being made, a party will have an opportunity to cure any alleged default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-complying party specifying the non-compliance. The non-complying party will have 15 days (5 days if left blank) after delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

12. FORCE MAJEURE: **Buyer** or **Seller** shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to **Buyer**, thereby releasing **Buyer** and **Seller** from all further obligations under this Contract.

13. RETURN OF DEPOSIT: Unless otherwise specified in the Contract, in the event any condition of this Contract is not met and **Buyer** has timely given any required notice regarding the condition having not been met, **Buyer's** deposit will be returned in accordance with applicable Florida Laws and regulations.

14. DEFAULT:

(a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make the title marketable after diligent effort, **Buyer** may elect to receive return of Buyer's deposit without thereby waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek specific performance. If Buyer elects a deposit refund, Seller may be liable to Broker for the full amount of the brokerage fee.

(b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1) retain all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1) terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving any remedy for **Buyer's** default.

15. ATTORNEY'S FEES AND COSTS: In any claim or controversy arising out of or relating to this Contract, the prevailing party, which for purposes of this provision will include **Buyer**, **Seller** and Broker, will be awarded reasonable attorneys' fees, costs, and expenses.

16. NOTICES: All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice, document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker) representing a party will be as effective as if given by or delivered to that party.

Buyer () () and **Seller** () () acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

17. DISCLOSURES:

(a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the owner's net proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not attach to any interest in real property. This lien right cannot be waived before the commission is earned.

(b) **Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such liens, if any, shall be paid as set forth in Paragraph 9(e).

(c) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

(d) **Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by Section 553.996, Florida Statutes.

18. RISK OF LOSS:

(a) If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, Seller will bear the risk of loss and Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of purchasing the Property at the agreed upon purchase price and Seller will credit the deductible, if any and transfer to Buyer at closing any insurance proceeds, or Seller's claim to any insurance proceeds payable for the damage. Seller will cooperate with and assist Buyer in collecting any such proceeds. Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.

(b) If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the right of eminent domain, or proceedings for such taking will be pending or threatened, Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of purchasing what is left of the Property at the agreed upon purchase price and Seller will transfer to the Buyer at closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate with and assist Buyer in collecting any such award.

19. **ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise ☐ is not assignable ☒ is assignable. If this Contract may be assigned, Buyer shall deliver a copy of the assignment agreement to the Seller at least 5 days prior to Closing. The terms "Buyer," "Seller" and "Broker" may be singular or plural. This Contract is binding upon Buyer, Seller and their heirs, personal representatives, successors and assigns (if assignment is permitted).

20. **MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between Buyer and Seller. Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound. Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be construed under Florida law and will not be recorded in any public records.

21. **BROKERS:** Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to, a licensed real estate Broker other than:

(a) **Seller's Broker:** RE/MAX Realty Group Michael J. Frye CCIM
(Company Name) (Licensee)
7910 Summerlin Lakes Dr, Fort Myers, FL 239-489-0444 239-489-1504
(Address, Telephone, Fax, E-mail)

who ☐ is a single agent ☒ is a transaction broker ☐ has no brokerage relationship and who will be compensated by ☒ Seller ☐ Buyer ☐ both parties pursuant to ☒ a listing agreement ☐ other (specify) _____

(b) **Buyer's Broker:** Dawn Y Andrews Dawn Y Andrews
(Company Name) (Licensee)
1015 Cultural Park Blvd., Cape Coral, FL 239-574-0735
(Address, Telephone, Fax, E-mail)

Buyer (M) () and Seller (TW) () acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

who ☐ is a single agent ☒ is a transaction broker ☐ has no brokerage relationship and who will be compensated by
☒ **Seller's Broker** ☐ **Seller** ☐ **Buyer** ☐ both parties pursuant to ☐ an MLS offer of compensation ☒ other (specify)
SEE ADDENDUM

(collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to inquiries, introductions, consultations, and negotiations resulting in this transaction. **Seller** and **Buyer** agree to indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to Paragraph 10, (3) any duty accepted by Broker at the request of **Seller** or **Buyer**, which is beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of **Seller** or **Buyer**.

22. OPTIONAL CLAUSES: (Check if any of the following clauses are applicable and are attached as an addendum to this Contract):

- | | | |
|---|--|---|
| <input type="checkbox"/> (A) Arbitration | <input type="checkbox"/> (E) Seller Warranty | <input type="checkbox"/> (I) Existing Mortgage |
| <input type="checkbox"/> (B) Section 1031 Exchange | <input type="checkbox"/> (F) Coastal Construction Control Li | <input type="checkbox"/> (J) Buyer's Attorney Approval |
| <input type="checkbox"/> (C) Property Inspection and Repair | <input type="checkbox"/> (G) Flood Area Hazard Zone | <input type="checkbox"/> (K) Seller's Attorney Approval |
| <input type="checkbox"/> (D) Seller Representations | <input type="checkbox"/> (H) Seller Financing | <input checked="" type="checkbox"/> Other SEE ADDENDUM |

23. ADDITIONAL TERMS:

SEE ADDENDUM.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

Buyer  (_____) and Seller  (_____) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other party that such signatory has full power and authority to enter into and perform this Contract in accordance with its terms and each person executing this Contract and other documents on behalf of such party has been duly authorized to do so.

ATTENTION: SELLER AND BUYER

CONVEYANCES TO FOREIGN BUYERS: Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a "foreign country of concern", namely: the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property in violation of the Act.**

At time of purchase, Buyer must provide a signed Affidavit which complies with the requirements of the Act. Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

(Signature of Buyer) Date: 9/20/23

Michael Ilczyszyn for the City of Cape Coral Tax ID No.:
(Typed or Printed Name of Buyer)

Title: Interim City Manager Telephone: _____

(Signature of Buyer) Date: _____

Tax ID No.: _____
(Typed or Printed Name of Buyer)

Title: _____ Telephone: _____

Buyer's Address for purpose of notice _____

Facsimile: _____ Email: _____

Thea Van Arkel Date: 9/19/2023
(Signature of Seller)

International Capital Investment Co. III, LLC Tax ID No.: 83-3934033
(Typed or Printed Name of Seller)

Title: CEO Telephone: 917-306-6188

(Signature of Seller) Date: _____

Tax ID No.: _____
(Typed or Printed Name of Seller)

Title: _____ Telephone: _____

Seller's Address for purpose of notice: 20 N. Martingale Road, Suite 180, Schaumburg, IL

Facsimile: _____ Email: thea.vanarkel@icic-usa.com

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Buyer (MI) () and Seller (TV) () acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

Addendum

This is an addendum to the Commercial Contract ("Contract") between the City of Cape Coral, a Florida municipal corporation ("**Buyer**") and International Capital Investment Company III, LLC, a Florida limited liability company ("**Seller**") for the property located at 2107 – 2119 Santa Barbara Boulevard, Cape Coral, Florida 33991

The parties agree that the following terms are part of the Contract:

1. **Purchase Price:** Three Million Eight Hundred Thousand Dollars and 00/100 (\$3,800,000) subject to Cape Coral City Council approval and receipt of a state-certified appraisal, at Buyer's expense, at a market value acceptable to the Buyer.
2. **Property Legal Description ("Subject Properties"):** Parcels of land lying in Section 25, Township 44 South, Range 23 East, Lee County, Florida; and being more particularly described as follows:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, AND 110, TOGETHER WITH THE VACATED ALLEY CONTIGUOUS TO LOTS 1 THROUGH 11 AND 100 THROUGH 110 AND THE WEST ½ OF THE VACATED ALLEY CONTIGUOUS TO LOT 12, BLOCK 930, UNIT 26, CAPE CORAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 14 PAGES 117 THROUGH 148, INCLUSIVE, OF THE PUBLIC RECORD OF LEE COUNTY, FLORIDA.
3. **Buyer Deposit:** Initial deposit \$100,000 within 10 Days after contract execution by Seller and City of Cape Coral Interim City Manager. Additional deposit of \$280,000 due within ten (10) days after Cape Coral City Council approval of the Contract. The entire \$380,000 deposit shall be refundable during the due diligence period. Should Buyer find the Property suitable, it will issue a NOTICE OF SUITABILITY (NOS); at which time the deposit will become non-refundable to Buyer, except in the event of an uncured default by Seller or as otherwise provided in the Contract.
4. **Due Diligence Period:** Within three (3) days of the Effective Date, Seller to provide all due diligence materials collected by Seller to date and provide access to Seller's consultants or contractors that may have performed inspections and/or repairs of the Property. Buyer to obtain due diligence reports, at Buyers expense, including a) a building inspection report, b) termite inspection report, c) Phase I Environmental Report, and d) a state-certified appraisal report of the property value. If Buyer's due diligence reports are not received by the end of the sixty (60) day due diligence period, which shall begin after the City of Cape Coral approval of the Contract, Seller and Buyer shall agree to extend the due diligence period by an additional 30 days.

Buyer (W) and Seller (IMY) acknowledge receipt of this page of the Addendum which is 1 of 3 pages.

If the Buyer's inspections are delayed by Tenant's property usage, the due diligence period shall be extended an additional thirty (30) days. If the Seller has elected to cure any title defects objected to by the Buyer, any applicable title defect Curative Period, that extends past Buyer's due diligence period, shall automatically extend the due diligence period until the expiration of the ninety (90) day Curative Period or resolution of the title defect, whichever occurs first.

5. **Property Condition:** Buyer acknowledges there is currently a Tenant within the Property.
6. **Closing Schedule:** Closing will be within thirty (30) days after expiration of the due diligence period or within 30 days from receipt of the last due diligence report identified in Paragraph 4, whichever is greater. If Buyer requires more time to close, Buyer shall deposit additional escrow funds of \$100,000 with the Escrow Agent extending the closing date an additional sixty (60) days, applicable to the purchase price.
7. **Broker:** Buyer is not responsible for any real estate commissions and/or transaction or administrative fees to the Listing Broker. Seller shall be solely responsible for any Broker compensation. The Listing Agent's offer to pay 2.5% of the sale price as commission to a Buyer's Agent, shall be credited to the Buyer at closing.
8. **Seller's Responsibilities:** The parties agree the Seller, upon full execution of this Contract, shall take immediate steps and measures to reach agreement with the Tenant to vacate the Property no later than July 31, 2024. Seller shall provide Buyer with a fully executed copy of the Agreement to vacate the Property no later than 15 days prior to the expiration of the due diligence period. If the Seller has not reached an agreement with the Tenant to vacate during the due diligence period, the Buyer and Seller shall extend the due diligence period an additional thirty (30) days or terminate this contract and all escrow funds shall be returned to the Buyer.


Seller shall further provide fully executed lease agreement and any and all addendums thereto, payment history and ~~confirmation of security deposits~~ no later than 15 days prior to the expiration of the due diligence period. ~~All security deposits to be credited to the Buyer at closing.~~ There are no security deposits held by Seller.

9. **Conditional Contract:** This Contract is a binding contract once it is executed by the Seller and by the Interim City Manager on behalf of the Buyer. Notwithstanding the foregoing, this Contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within thirty (30) days from the date of which the last one of the Seller and Buyer has signed or initialed and delivered this Contract, or the final counteroffer, then this Contract shall be null and void.

Buyer (M) and Seller (mw) acknowledge receipt of this page of the Addendum which is 2 of 3 pages

10. **Effective Date:** The effective date of this Contract shall be the date of Seller and Buyer ~~Interim City Manager~~ execution of the Contract. Possession shall be subject to the existing Lease and its Addendum, together with the Agreement requiring the Tenant to vacate the Property no later than July 31, 2024.
11. The invalidity or unenforceability of any particular provision of this Contract shall not affect other provisions hereof, and the Contract shall be construed in all respects as if such invalid and unenforceable provisions were omitted.
12. **Disclosure of Beneficial Interests.** Seller agrees to comply with the provisions of Section 286.23(1), Florida Statutes. Said section requires that, before property that is owned by a partnership, limited partnership, corporation, trust or any other form of representative capacity whatsoever for others, is conveyed to a governmental unit, the representative of the owner/entity shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the names and addresses of every person having a beneficial interest in the Real Property, however small or minimal.

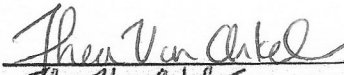
City of Cape Coral, a Florida
Municipal Corporation





Michael Ilczyszyn
Interim City Manager

9/20/23
Date

International Capital Investment
Company III, LLC, a Florida limited
liability company



Name: Jhen Van Antel Date 9/19/23
Title: CEO

Buyer  and Seller  acknowledge receipt of this page of the Addendum which is 3 of 3 pages.