

VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2018 - 20

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AUTHORIZING THE PURCHASE OF 62.05± ACRES ADJACENT TO THE ESTERO RIVER; DETERMINING THAT IT IS IN THE BEST INTEREST AND WELFARE OF THE VILLAGE AND ITS RESIDENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Estero River is an important tributary to the Estero Bay and is designated an “Outstanding Florida Waters” by the Florida Department of Environmental Protection, which means the river is worthy of special protections because of its natural attributes; and

WHEREAS, the Estero River is listed on the Florida Department of Environmental Protection’s “Statewide Comprehensive Verified List of Impaired Waters” for impairments with dissolved oxygen, fecal coliform, iron, and nutrients. Purchasing lands along the Estero River will protect the river and its banks from development, thereby protecting waters of the Estero River from additional pollutants; and

WHEREAS, the Estero River consists of indigenous vegetative communities and heritage trees, including the majestic Live Oak, which provide habitat for numerous native and protected bird, mammal, fish, and reptile species. Purchasing lands along the Estero River will protect and preserve habitat for native species and heritage trees; and

WHEREAS, land adjacent to the Estero River are also known to contain archeological sites and artifacts of the Koreshan Unity Settlement. Purchasing lands along the Estero River complies with Policy 19.1.5.c of the Estero Transitional Comprehensive Plan by protecting and preserving the Village of Estero's unique historical and cultural resources related to Old Estero area and the Koreshans; and

WHEREAS, The Florida Greenways and Trails Council formally recognized the economic value of trails and greenways to Florida. Parks and greenways have been found to increase property values, increase municipal revenues, and increase tourism dollars. Many residents believe there is a need for more parks and greenspace in the Village of Estero. The Center for Disease Control and Prevention report that parks and trails can improve health through increased physical activity, improve mental health, and provide safe places for exercise away from busy streets. Purchasing lands along the Estero River provide opportunities for greenway trails that offer hiking and biking, access to the Great Calusa Blueway Trail for paddling and canoeing, and for future bicycle and pedestrian connections between Koreshan State Historic Site, Koreshan State Park, Estero Bay Preserve State Park, Estero Community Park, Happehatchee Center, the proposed Village Center, and the proposed CSX railway trail; and

46 **WHEREAS**, the Village also finds that in addition to environmental and recreational
47 uses, there is a present public purpose in purchasing the lands along the Estero River for future
48 municipal use and facilities; and
49

50 **WHEREAS**, the Village has identified a potential site for acquisition at the northeast
51 corner of Corkscrew Road and US 41 (the “Property”), which contains significant frontage
52 along the Estero River and adjacent to the Koreshan Unity Settlement and Koreshan State Park;
53 and
54

55 **WHEREAS**, the Village Council approved Resolution 2018-16 authorizing Village
56 staff to conduct necessary due diligence and negotiate a final purchase agreement for the
57 Property, finding that it is in the best interest and welfare of the Village and its residents to
58 explore funding sources for the purposes of purchasing lands from willing sellers adjacent to
59 the Estero River to protect water supply or quality, to protect habitat of native species and
60 heritage trees, to provide needed parks and greenways, to protect historical resources, and for
61 other valid municipal uses; and
62

63 **WHEREAS**, the Property has been offered to the Village of Estero by the Trust for
64 Public Land and the current owner, Village Partners, LLC, at a mutually acceptable purchase
65 price of \$24,562,500 for 62.05 acres; and

66 **WHEREAS**, the Village intends to maintain a large set-back on both sides of the Estero
67 River and other environmentally significant portions of the Property will be retained for public
68 use and access to be more specifically identified after the purchase is complete, subject to a
69 public planning process, to further the public purposes described above; and

70 **WHEREAS**, it is necessary, desirable, and in the best interest of the Village of Estero
71 and its residents, to proceed with the purchase of the Property, and such purchase will serve a
72 paramount public purpose for the reasons described above; and
73

74 **WHEREAS**, the Village understands that in order to achieve the purpose described
75 herein it may be required to acquire title to portions of the Property which are not
76 environmentally sensitive, viable for recreational use or suited for other municipal purposes.
77 In that event, those portions of the Property not considered environmentally sensitive may be
78 utilized for stormwater retention, rights-of-way, recreation, buffering, mitigation and other
79 public facilities, or declared surplus and offered for sale. To the extent any of the Property is
80 subsequently declared surplus and offered for sale, the proceeds of such sale shall be applied
81 to the payment of any debt obligation issued to purchase the Property.
82

83 **NOW, THEREFORE**, be it resolved by the Village Council of the Village of Estero,
84 Florida:
85

86 **Section 1.** The foregoing recitals are hereby ratified and confirmed as being true
87 and correct and are hereby made a part of this Resolution and adopted as policy findings.
88

EXHIBIT A

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2018, between THE TRUST FOR PUBLIC LAND, a nonprofit California corporation, whose address is 306 N. Monroe St., Tallahassee, FL 32301, ("Seller"), and THE VILLAGE OF ESTERO, whose address is 9401 Corkscrew Palms Circle, Estero, Florida, 33928, ("Buyer").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows:

SELLER

The Trust for Public Land

Attention: Kate Brown
Telephone: 850-222-7911 x27
Fax: 850-222-8909
Email: kate.brown@tpl.org

With a copy to:

Peter Fodor, Division Legal Director
THE TRUST FOR PUBLIC LAND
306 North Monroe Street
Tallahassee, FL 32301
Telephone: 850-222-7911, Ext. 29
Fax: 850-222-8909
Email: Pete.Fodor@tpl.org

BUYER:

Village of Estero

Attention: Steve Sarkozy
Telephone: 239-221-5035
Fax:
Email: sarkozy@estero-fl.gov

With a copy to:

John Paulich III, Esq.
GrayRobinson, P.A.
3838 Tamiami Trail North, Suite 410
Naples, Florida 34103
Telephone: 239-598-3601
Fax: 239-598-3164
Email: john.paulich@gray-robinson.com

B. Buyer acknowledges and agrees that Seller has a binding Option Agreement on that certain real property in Lee County, Florida, which property is more particularly described in Exhibit "A" attached hereto and incorporation herein by this reference (hereinafter referred to as the "Property") and is not presently the owner of the Property. Seller's obligations under this Agreement are contingent upon Seller, acquiring marketable fee simple title from the current owner, or arranging for a conveyance directly to Buyer from the current owner. The Property includes any and all improvements, fixtures, timber, water and minerals located thereon, and any and all appurtenant rights, including but not limited to, riparian rights, timber rights access rights and mineral rights.

C. Seller wishes to sell the Property to Buyer and Buyer wishes to purchase the property from Seller on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** In consideration of an earnest money deposit by Buyer to Seller in the amount of One Hundred Dollars and 00/100 (\$100.00) (the "Deposit") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement. The Deposit paid above shall be credit toward the Purchase Price (as defined below). Seller shall return the Deposit to Buyer if the sale of the Property is not completed under this Agreement because of Seller's failure, refusal or inability to perform any of Seller's obligations under this Agreement.

2. **Inspection Period.** Sixty (60) days from the effective date of this Agreement shall constitute Buyer's inspection period (the "Inspection Period"). During the Inspection Period, Buyer, through its employees, agents and contractors may enter upon the Property for the purpose of making any inspections and investigations, as Buyer deems appropriate in order to assess the condition of the Property. During the Inspection Period, Buyer may, in its sole discretion, terminate this Agreement by delivering written notice to Seller, prior to the end of the Inspection Period if it deems the survey, status of title, or physical or environmental condition to be unacceptable to Buyer.

3. **Purchase Terms.**

a. **Price.** The purchase price for the Property shall be Twenty Four Million Five Hundred Sixty Two Thousand Five Hundred Dollars and 00/100 (\$24,562,500) (the "Purchase Price").

b. **Financing Contingency.** Seller acknowledges that Buyer intends to obtain financing for the purchase and acquisition of the Property through the issuance of a series of bonds, notes, or other debt obligations to be issued by the Buyer (the "Debt"). Buyer's obligations to Close hereunder are expressly made contingent upon the successful issuance of the Debt and the release of the proceeds to Buyer to be applied to the purchase of the Property on or before the date that is ninety (90) days from the Effective Date of this Agreement (the "Financing Period"). In this regard, Buyer shall diligently pursue applying for and obtaining the financing through the issuance of the Debt, and will keep Seller apprised of the status of its efforts in that regard. If Buyer fails to successfully close upon the Debt financing as contemplated hereby, on or before the last day of the Financing Period, then this Agreement shall, at Buyer's option and upon written notice to Seller, terminate and the entire Deposit shall be returned to Buyer, and the parties shall be relieved of further obligation under this Agreement except that which expressly survives Closing. Notwithstanding the foregoing, Buyer has the right to extend the Financing Period by an additional thirty (30) days upon written notice to Seller prior to the expiration of the initial Financing Period.

c. **Method of Payment.** The Purchase Price shall be paid at closing by cashier's or bank check or by wire transfer of immediately available funds, subject to credits, proration and adjustments as provided in this Agreement.

4. **Master Concept Plan and MPD Ordinance.** The Buyer and Seller acknowledge that the Property comprises Parcels 1, 2 and 3, as shown on the Estero On The River Master Concept Plan and the Estero On The River MPD Ordinance, approved by Lee County Board of County Commissioners on June 4, 2007, as zoning resolution Z-07-021. The Estero on the River Master Concept Plan is attached hereto as Exhibit "B". Upon conveyance, Buyer agrees

to the following with respect to Parcels 1-5 of the Estero on the River Master Concept Plan and the Estero on the River MPD Ordinance:

- a) The owner of Parcels 4 and 5 may rely upon the preserve areas within Parcel 3 shown on the Estero on the River Master Concept Plan and the Estero on the River Resolution for the calculation of indigenous open space requirements for Parcels 4 and 5, if those parcels are developed in accordance with the approved Estero on the River Master Concept Plan, or if under a future alternative plan by the owner no more than the same number of acres of preserve land on Parcels 4 and 5 shall be required (1.59 acres for Parcel 4 and .35 acres for Parcel 5).
- b) The owner of Parcels 1, 2 and 3 will be responsible for all maintenance within the river buffer from US 41 to the railroad bridge as shown on the Estero On The River Master Concept Plan.
- c) The owner of Parcels 1, 2 and 3 will be responsible for the maintenance of the preserves within Parcels 2 and 3, as shown on the Estero On The River Master Concept Plan.
- d) The owner of Parcels 4 and 5 is not responsible for infrastructure improvements (roads, bridges, river walks) or monetary contributions associated with Parcels 1, 2 and 3 as shown on the Estero on the River Master Concept Plan and the Estero On The River MPD Ordinance.
- e) The owner of Parcels 4 and 5 will retain bonus density units for Parcels 4 and 5 as shown on the Estero on the River Master Concept Plan and the Estero On The River MPD Ordinance, and is not responsible for bonus density units on Parcels 1, 2 or 3.

Buyer's acknowledgement and agreement shall survive the closing of the transaction contemplated by this Agreement.

5. **Closing.** In the event Buyer does not terminate this Agreement as permitted herein, the Closing shall take place on or before January 14, 2019 at a time and place mutually agreeable to the parties. The parties may arrange to close by mail. Buyer may extend the Closing Date an additional thirty (30) days upon written notice to Seller and the payment of \$2,700.00 per day in extension fees, which fees shall not be applied to the Purchase Price.

Seller shall deliver to Buyer at closing the following documents prepared by Seller's counsel:

- a. a Special warranty deed to the Property meeting the requirements as to title of Section 7 below, together with a bill of sale for the personal property appurtenant to the Property, if any, and;
- b. an owner's affidavit attesting to the absence of mechanic's or materialmen's liens, boundary line disputes, proceedings involving Seller which might affect title to the Property, or parties in possession other than the Seller and such lessees or licensees as may be in possession pursuant to ground leases or licenses and meeting the requirements of Section 6, below, and;

c. such other instruments and documents as Buyer's counsel may reasonably request for the purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Property to Buyer in accordance with this Agreement, and any of the requirements of the title insurer, including, without limitation, assignments of surviving leases and contracts affecting the Property.

d. closing statement

Possession of the Property shall pass to Buyer at time of closing.

6. **Closing Expenses and Prorations:**

a. Buyer's expenses:

i. the cost of title examination, preparation of the title insurance commitment, the owner's title insurance premium, and all other costs associated with the preparation and delivery of the owner's title insurance policy, including the costs or fees of the title insurance agency or attorney;

ii. If Buyer obtains financing for this transaction, including financing by the Seller, Buyer shall pay any documentary or other taxes which may be payable on the promissory note, the mortgage or deed of trust, and the recording costs of UCC statements and other security instruments, if any

b. Seller's expenses:

i. transfer or documentary taxes, if any, on the deed of conveyance;

ii. recording fees, and the cost of preparing all documents necessary to satisfy the requirements of the title insurance commitment or remove encumbrances on Seller's title;

iii. the cost of the boundary survey;

iv. the cost of the environmental site assessment; and

iv. Seller shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of closing, based upon the current assessment and millage rates on the Property.

c. All other expenses, including, without limitation, attorneys' fees, shall be paid by the party incurring the same.

7. **Condition of Title.**

a. Within Five (5) days of the effective date of this Agreement, Buyer shall obtain at its cost a Title Insurance Commitment on the Property in the amount of the Purchase Price. Buyer shall select the underwriter and the closing and title agent.

b. Buyer may object to any matter of title that, in the opinion of Buyer, would constitute a title defect or render title unmarketable or uninsurable. Such objections to title shall be specified in writing and deliver to Seller with thirty (30) days from the date of receipt of the title commitment by Buyer.

c. In the event Buyer timely notifies Seller of objections to title, Seller shall cure such title defects within thirty (30) days from receipt of notice.

d. If after the exercise of reasonable due diligence Seller is unable to make title to the Property such as is required by Buyer by the closing date, then Buyer shall have the right to:

i. terminate this Agreement, in which case all monies paid by Buyer in accordance with this Agreement shall be returned immediately to Buyer and the parties shall be relieved of any further obligations hereunder;

ii. extend the closing date for up to thirty (30) days to allow Seller additional time to make title to the Property such as is required by the terms of this Agreement; or

iii. elect to accept title to the Property in its existing condition.

8. **Buyer's Right of Entry and Survey.** Prior to closing, Seller shall provide to Buyer a current certified boundary survey performed by a registered Florida land surveyor in form acceptable to Buyer. The plat of the survey shall show the boundaries of, and state the acreage of the Property, rounded to the nearest one-hundredth (1/100) of an acre. The legal description in Exhibit "A" shall be changed, if necessary, to conform to the survey and to the requirements of the title commitment. If an accurate boundary survey by Seller's surveyor discloses any state of facts which materially or adversely affect the insurability of marketability of the title to the Property, same shall be treated in the same manner as a title defect under Section 6 above.

9. **Hazardous Materials and Audit Remediation.** Seller shall provide Buyer with a Phase I Environmental Site Assessment ("ESA") performed in accordance with the requirements set forth in ASTM E 1527-05. Additionally, in the State of Florida, if an ESA gives an opinion regarding geology, the report must be signed by a Professional Geologist or Professional Engineer qualified in geology. In the event that the Phase 1 Audit final report states that there is more than a low probability that Recognized Environmental Conditions are present on or beneath the surface of the Property, or further investigation are necessary to determine whether Recognized Environmental Conditions are present ("Unsatisfactory Report"), Buyer may elect to terminate this Agreement by giving notice as required herein, in which event the Seller agrees to return to Buyer the Deposit, and thereafter the parties shall have no further obligations under this Agreement.

Notwithstanding the foregoing, such notice of termination may be suspended by Buyer if Seller gives notice with ten (10) days of receipt of Buyer's notice of termination, that Seller agrees to promptly carry out, at Seller's sole expense, and with contractors selected or approved by Buyer, all further investigations and remediation of the Property as is necessary to make the Property acceptable to Buyer within a time period acceptable to Buyer. If Seller elects to carry out such further investigation or remediation, the inspection period shall be automatically extended until fifteen (15) days following Buyer's receipt of information from contractors that is satisfactory to Buyer, or letters of "no further action required" from the applicable regulatory agencies, indicating that either there is no more than a low probability that Recognized Environmental Conditions are present on or beneath the surface of the Property, or that the

Property has been remediated to Buyer's satisfaction and complies with all governmental regulations.

10. **Representations and Warranties of Seller.** Seller represents and warrants to Buyer that Seller shall have good and marketable fee simple title to the Property by the time of closing. Seller has full power and authority to enter into this Agreement and to convey title to the Property in accordance with this Agreement. To Seller's actual knowledge, there is no lease, license, permit, option, right of first refusal or other agreement, which affects the Property or any portion thereof which will not be removed at closing except for the February 17, 2017 Amended and Restated Lease between Village Partners, LLC as Landlord and Estero River Outfitters, Inc. and Paula Stuller d/b/a Estero River Canoe Outfitters (collectively "Tenants") a copy of which is attached hereto as Exhibit "C;" a month to month lease to a submerged land lease for a dock that is utilized by the Tenants; and the reservation of rights set forth in the deed recorded in the Official Records of Lee County, Florida as document No. 2007000098020 (a copy of which attached hereto as Exhibit "D") as amended by the August 30, 2010 Amendment and Modification to Reservation of Right to Use Property between the College of Life Foundation, Inc. f/k/a Koreshan Unity Foundation, Inc. and Village Partners, LLC, a copy of which is attached hereto as Exhibit "E"; a lease to the Christ Community Church, a copy of which is attached hereto as Exhibit "F"; A Code Violation and lien against Village Partners LLC, and fine in the approximate amount of \$72,000.00 relating to a refrigerated truck, , which violation and lien shall be terminated by the Buyer on or before November 15, 2018, and Buyer shall deliver to Seller evidence that the Code Violation is cancelled, void and of no effect; a release of the lien filed against the Property, arising from the Code Violation, shall be recorded in the Official Records of Lee County, Florida and in the official records by Buyer, and Buyer agrees that Village Partners, LLC is indemnified, released and held harmless from any and all claims, causes of actions, losses, damages and expenses, including reasonable attorneys' fees arising from the Code Violation. If, before the conveyance to Buyer, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If the facts which cause any warranty or representation to be inaccurate are not remedied before the date of conveyance to Buyer, Buyer may elect to either:

a. terminate this Agreement, in which case Buyer shall have no obligation to accept title to the Property, or

b. defer the closing date for a period of up to Thirty (30) days to permit Seller to remedy the problem.

11. **Seller's Promise to Remove Personal Property.** Prior to closing Seller promises to remove or cause to be removed from the Property, at Seller's sole cost and expense, any and all personal property and/or trash, rubbish or any other unsightly or offensive materials thereon, including, but not limited to, any tanks and hazardous substance in tanks, barrels, equipment, pipelines or other containers on the Property, provided that the cost of such removal does not exceed \$10,000.00.

12. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by hand, email, first class mail, or courier service, in accordance with the information set forth in Recital "A."

13. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns and other successors in interest.

14. **Remedies upon Default.** In the event that Seller defaults in the performance of any of Seller's obligations under this Agreement, Seller shall pay to Buyer the sum of Five Thousand and 00/100 Dollars (\$5,000.00) as full liquidated damages for Seller's default. In the event of a default by Buyer, Buyer shall pay to Seller the sum of Five Thousand and 00/100 Dollars (\$5,000.00) as full liquidated damages.

15. **Entire Agreement/Modification.** This Agreement shall not be modified or amended except by an instrument in writing, signed by or on behalf of both parties.

16. **Counterparts.** The Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall be deemed an original and which, together, shall constitute one and the same agreement.

17. **Acknowledgement.** In the event temporary or permanent informational plaques or signs are placed by Buyer on sites purchased under this Agreement, such plaques will include statement indicating that the sites were acquired with the assistance of The Trust for Public Land, and shall contain The Trust for Public Land's logo, as specified in Exhibit "B" attached hereto and by reference incorporated herein. Such logo shall be readable from the distance at which the sign was intended to be read.

18. **Effective Date.** As used herein, the terms "date of this Agreement," "date hereof," and "effective date of this Agreement" shall mean the date on which the last of the parties signs this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and sealed by its duly authorized signatory(ies) on the dates set forth below.

SEE FOLLOWING PAGES FOR SIGNATURES

**SELLER: The Trust for Public Land, a
nonprofit California corporation**

Witness

By: Peter Fodor
Division Legal Director

Witness

Date: _____

(CORPORATE SEAL)

BUYER: VILLAGE OF ESTERO

Witness

Witness

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form and legality

BY: _____

EXHIBIT "A"
LEGAL DESCRIPTION

STRAP NUMBERS:

33-46-25-E2-U1926.2390
33-46-25-E2-U1937.2384
33-46-25-E2-U1936.2375
33-46-25-E2-U1936.2400
33-46-25-E2-U1948.2389
28-46-25-E3-U1926.2421
33-46-25-E2-U1935.2408
33-46-25-E2-U1937.2407

28-46-25-E3-U1944.2419
28-46-25-E3-U1939.2411
28-46-25-E3-U1937.2428
28-46-25-E3-U1944.2435
28-46-25-E3-U1944.2447
28-46-25-E3-U1944.2456
28-46-25-E3-05033.0010



ATTACHMENT 2

GRAY | **ROBINSON**
ATTORNEYS AT LAW

3838 TAMiami TRAIL NORTH
SUITE 410
NAPLES, FLORIDA 34103
TEL 239-598-3601
FAX 239-598-3164

BOCA RATON
FORT LAUDERDALE
FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

October 16, 2018

The Village of Estero
9401 Corkscrew Palms Circle
Estero, Florida 33928

Attn: Mr. Steve Sarkozy, Village Manager

Re: Proposed Purchase and Sale Agreement with
The Trust For Public Land

Dear Steve:

Here are the requested Bullet-Points relating to the proposed Purchase and Sale Agreement submitted to Kate Brown of The Trust For Public Land yesterday.

Agreement – The Purchase and Sale Agreement.

Seller – The Trust for Public Land. The Seller has an Option Agreement for the Property and is not the Owner of the Property. Seller's obligations are contingent upon its acquisition of the Property from the Owner or its ability to facilitate conveyance of the Property from the Owner to the Village. (Recitals A and B).

Price - \$24,562,500.00 (Section 3).

Effective Date (Section 18) – The date on which the last of the parties signs the Agreement.

Inspection Period (Section 2) – Commences on the Effective Date and continues for 60 days. The Village may cancel the Agreement at its discretion during the Inspection Period should it determine that the Property is unacceptable.

Financing Period (Section 3.c.) – Commences on the Effective Date and continues for 90 days. The Village can extend the Financing Period an additional 30 days with proper notice to Seller. The Village may terminate the Agreement if it is unable to successfully close on Debt Financing during the Financing Period.

Closing Date (Section 5) – January 14, 2019. The Village can extend an additional 30 days upon payment of an extension fee in the amount of \$2,700.00 per day.

Master Concept Plan and MPD Ordinance. Section 4 outlines the specific accommodations to the Owner for adjacent properties not being conveyed pursuant to the Agreement.

Closing Expenses (Section 6) – The initial proposed agreement provided for the Village to pay the title insurance premium and the Seller to do the search and provide the policy. It is common for the party paying for the title insurance policy to do the search and provide the policy allowing for that party's representative to do its own investigation rather than relying on the other party. See also Section 7.a.

Seller to provide Survey and Phase I Environmental Site Assessment (Sections 8 and 9).

Seller Representations (Section 10). The Property will be conveyed subject to the following:

1. Lease with Estero River Outfitters, Inc. and Paula Stuller.
2. Month to month submerged land lease for a dock used by Estero River Outfitters.
3. Reservation of rights (99 year lease in favor of College of Life Foundation, Inc.) set forth in deed recorded as document #2007000098020, Lee County, as amended by an unrecorded Amendment and Modification dated August 30, 2010. The Amendment purportedly terminates the 99 year lease and provides for a life estate plus 90 days to Charles Dauray, the President of the College of Life Foundation, Inc.
4. Lease to Christ Community Church.
5. Termination and release of lien for Code Violation relating to removal of a refrigeration truck.

The above matters would be reviewed during the Inspection Period. The fact that the Amendment noted in 3 above is unrecorded is concerning. Counsel is working with the title insurance underwriting counsel to ensure that proper steps are taken for termination of the 99 year lease and that the Property would only be subject to the life estate plus 90 days. In the event that the Seller's representations are inaccurate and not remedied, the Village may terminate the Agreement or defer closing for 30 days.

Remedies (Section 14) – Should either party default through no fault of the other, the non-defaulting party is entitled to liquidated damages in the amount of \$5,000.00. It has been explained by the Seller that since the Seller is a public charity they cannot pay substantial liquidated damages. With liquidated damages, other remedies would not be available in the event of default.

Sincerely yours,



John Paulich III

Cc: Ms. Lisa Griggs Roberson, Finance Director
Mr. Burt Saunders, Esq.
Mr. Derek Rooney, Esq.