

**WORKSHOP ITEM SUMMARY SHEET**  
**VILLAGE COUNCIL MEETING**  
**November 28, 2018**

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**Agenda Item:**

Land Purchase Update – Estero on the River Property

**Background:**

The Council held a special meeting on October 31, 2018 to discuss a purchase and sale agreement with The Trust for Public Land for the Estero on the River Property. The Council approved Resolution 2018-20 (copy attached) authorizing the staff to proceed with the purchase of the 62.05-acre site.

The process forward to execute on the Council's direction will be the subject of review, and ultimate Council approval at each of our upcoming Village Council meetings. Information will be provided that will likely be added to at each subsequent meeting leading up to the final approval of the purchase.

**Description:**

This workshop is intended to provide a preliminary review and update of all of the issues associated with this property purchase leading up to the Council meeting on Wednesday, December 12, 2018. At that time the Council will be asked to waive all contingencies and to proceed with the purchase.

In addition to the Council Workshop on Wednesday, November 28<sup>th</sup>, the timeline for the final review of contingencies and closing on the real estate is as follows:

- **December 5, 2018** – Council Workshop to address questions or concerns raised at the November 28 workshop and provide a final review of land use, real estate and financial issues.
- **December 12, 2018** – Council Meeting for proposed action to waive all contingencies for final approval of the purchase.

Council has also asked for a final review of the Closing and Loan Agreement. The Council Meeting of **Wednesday, January 9, 2019** provides that opportunity. The actual closing would occur on **Monday, January 14, 2018**.

## Presentation:

- Financing alternatives
  - Lisa Roberson, Finance Director memo (see Attachment “A”) regarding various decisions leading to the selection of an issuing bank
  - Public Resource Advisory Group (see Attachment “B”)
- Real estate issues
  - John Paulich, Real Estate attorney memo (see Attachment “C”) regarding Title of property to be conveyed. [Note: the full “Title Search Report” and the “Commitment for Title Insurance” prepared by the Old Republic National Title Insurance Company are available electronically, but not included in the Council Packet to save on printing.]
  - Property survey (to be available at a later date and forwarded under a separate memo and designated as Attachment “D”).
  - Estoppel Agreements: involving Estero Outfitters and the Church (to be available at a later date and to be forwarded under a separate memo and designated as Attachment “E”).
- Land use issues;
  - Mary Gibbs, Estero Community Development Director memo (see Attachment “F”) regarding zoning entitlements vested by Village Partners on Parcels “4” and “5” (not to be purchased by the Village)
  - Nancy Stroud, Estero Land-Use Attorney memo (see Attachment “G”) regarding vesting rights of Village Partners, limited obligations by Estero to Village Partners.
  - Burt Saunders, Village Attorney, presenting the three party agreement between the Village of Estero, Village Partners, and The Trust for Public Land (to be available at a later date and forwarded under a separate memo and designated as Attachment “H”) which addresses entitlements and future obligations between owners.
- Other:
  - Copy of the fully executed OPTION AGREEMENT between Village Partners and the Trust for Public Land, executed April 18, 2018 including Exhibit “A”; also included is the FIRST AMENDMENT TO THE OPTION AGREEMENT dated July 19, 2018 (see Attachment “I”).
  - Council Resolution 2018-20, dated October 31, 2018 (see Attachment “J”).

In summary, the information being provided in a public meeting is generally far more detailed than what would be provided in most circumstances. We are preparing this way for two primary purposes: 1.) we are complying with the principle of total transparency making all documents part of the public record – consistent with the way that we approached the original decision regarding the purchase of the property, and 2.) by compiling the records in an open and public format we have one source, the Council agenda, for all of the historical record for this important purchase.

**Next Steps:**

The above material represents a very large portion of the work necessary as background for the decision needed on December 12 – the *waiver of contingencies*. We will respond to Council questions and concerns with additional information to be presented at the December 5, 2018 Council meeting. However, a concern expressed here in advance, is that we have very little “turn-around” time after this meeting before we need to publish materials for the meeting on December 5.

Also, should Councilmembers wish to be more deeply involved in some aspect of this transaction we can have Special Briefings and even engage with our consultants by phone to provide the desired information.

All of this presentation is for the purpose of making the Councilmembers as comfortable as possible about this legacy decision.

Respectfully submitted.

Prepared by: Steve Sarkozy, Village Manager

**Attachments:**

1. Attachment A – Lisa Roberson, Finance Director memo
2. Attachment B – Public Resource Advisory Group
3. Attachment C – John Paulich, Real Estate attorney memo
4. Attachment D – Property survey (to be available at a later date and forwarded under a separate memo)
5. Attachment E – Estoppel Agreements (to be available at a later date and forwarded under a separate memo)
6. Attachment F – Mary Gibbs, Community Development memo
7. Attachment G – Nancy Stroud, Estero Land-Use Attorney memo

8. Attachment H – Burt Saunders, Village Attorney, Three party agreement (to be available at a later date and forwarded under a separate memo)
9. Attachment I – Copy of the fully executed OPTION AGREEMENT between Village Partners and the Trust for Public Land
10. Attachment J – Council Resolution 2018-20, dated October 31, 2018

## ATTACHMENT A



9401 CORKSCREW PALMS CIRCLE  
ESTERO, FLORIDA 33928  
TEL 239-221-5035  
FAX 239-494-5343  
www.Estero-fl.gov

To: Steven R. Sarkozy  
Village Manager

From: Lisa Griggs Roberson, CPA  
Finance Director

Date: November 16, 2018

Subject: **Financing Alternatives for Debt required to complete Estero on the River Land Purchase**

As approved in Resolution 2018-16, the Village has established its intent to maintain a large set-back on both sides of the Estero River and other environmentally significant portions of the property for public use with access to be more specifically identified after the purchase is complete, subject to a public planning process. The Village understands that it may be required to acquire title to portions of the property which are not environmentally sensitive, viable for recreational use or suited for other municipal purposes. In that event, those portions of the property not considered environmentally sensitive may be utilized for storm water retention, rights-of-way, recreation, buffering, mitigation and other public facilities, or declared as surplus and offered for sale.

As appropriated in the 2018-2019 Budget, debt will be required in order to fund the Estero on the River Land Purchase. Estero on the River is listed in the budget as Land Purchase A with total project cost of \$26,000,000 funded by a down payment of \$5,000,000 from the general fund and debt providing the remainder of \$21,000,000.

In keeping with the concept of government lite and as provided in Purchasing Ordinance 2015-06 Section 7(B), we have selected the following team to provide professional services for the bank loan:

- **Florida Municipal Loan Council (FMLC).** This financial program is administered by the Florida League of Cities and provides administrative services for various local government debt programs. Molly Button is the Senior Analyst working on our loan.
- **Public Resources Advisory Group (PRAG).** As an independent registered municipal advisor working with the Florida League of Cities, PRAG will assist the Village with evaluation of financing options. The PRAG staff providing services for us are Marianne Edmonds, Senior Managing Director, and Michael "Mickey" Johnston, Vice President.
- **Bryant Miller Olive.** This firm serves as the Florida League of Cities bond counsel and will function as the Village bond counsel with Jason Breth working on our debt issue.

### *Alternatives and Constraints on Debt Issue.*

- **Required prepayment in the event of the sale of surplus land.** Bond counsel has communicated a requirement that the proceeds received from the sale of surplus property be applied to the loan within six (6) months of the sale. This could place significant limits on the amount of time the bank can assure the debt will be outstanding. Generally speaking for a bank to offer a lower interest rate, they want a period under which debt will be outstanding with no prepayment permitted.

- **Optional prepayment from Village future surplus funds.** Financial projections indicate a potential to pay off the debt within approximately seven (7) years based upon current economic conditions and revenue projections. These forecasts do not include increases in the level of service or additions to the types of services provided by the Village beyond those included in the 2018-2019 budget; therefore, if these occur, the length of time to repay the loan will be extended. It should be noted that the financial projections do not include funding from grants or sale of surplus property which could reduce the length of time to repay the debt. In anticipation of paying the debt earlier than the 10 year term, we are requiring the banks provide a prepayment option.
- **Taxable vs Tax-exempt debt.** While governments typically have the option for tax-exempt debt, preserving the ability to sell surplus property will disqualify the debt as a tax-exempt borrowing. Proceeds from tax-exempt debt are typically restricted to non-private activity such as public use. In order to qualify any portion of the debt as tax-exempt, the public use portion would need to be known at time of purchase with appraisals by type of use. As use of the property will be identified in a future public planning process, it is not possible to complete an allocation to tax-exempt debt.

***Financial considerations.***

- **Budgeted Debt Service.** The 2018-2019 budgeted debt service estimate of \$1,600,000 was developed based upon a \$25 million taxable loan as follows: a) 30 year term at 4.4% interest and b) 10 year term with 25 year amortization at 4.3% interest rate. The interest rate is subject to change based upon debt market conditions at the time of the real estate closing which will be the anticipated date of the loan.
- **Annual Cash Flow/Debt Coverage Ratio.** Banks typically require a minimum annual debt coverage ratio. This means the Village is required to maintain a certain level of annual cash flow based upon the debt service payments. Our projected debt coverage ratio for 2018-2019 budgeted fiscal year is 3.9 as compared to the frequently used minimum of 1.5. For 2017-2018 the ratio is estimated at 4.5 and for 2016-2017 it was 5.0. These ratios are significantly above the required minimum and should assist the Village in obtaining financing.
- **Certificate of Achievement for Excellence in Financial Reporting (CAFR).** The Village has applied for and received a CAFR award for each year since its inception. This level of reporting will assist in the procurement of debt as it provides the banks consistent audited financial data. The CAFR provides both economic and financial data and is easily comparable to other local governments.
- **Strong Financial Operating Reserves.** The Village operating reserves are \$5,124,700, or 10 months of general fund operating expenditures. This level of reserves provides a considerable amount of protection for the Village against unanticipated financial challenges, such as a response to a natural disaster, revenue stabilization following a significant economic downturn or to ensure stable tax rates.

***Responses and Status of the Request for Proposal to provide Bank Loan.***

- **Responses.** We are very excited to announce that we received nine (9) responses to the request for proposals for a bank loan.
- **Presentation.** Our consultants are currently evaluating the responses and Marianne Edmonds, Senior Managing Director, and Michael “Mickey” Johnston, Vice President, with PRAG will be making a presentation to Council.

# Public Resources Advisory Group



## Review of Bank Loan RFP Responses

November 2018

# Table of Contents

- Request for Proposals
- Bank List
- Rate Structures
- Bank Responses
- Debt Service and Loan Terms Analysis,  
Preliminary Results
- Next Steps



# Request for Proposals – Distributed October 25, 2018

## Purpose & Loan Size

- Finance, in part, the purchase of approx. 62.2 acres of land adjacent to the Estero River
- Taxable Fixed Rate Bank Loan in the approximate range of \$16,000,000 to \$20,000,000

## Loan Repayment Source

- Secured solely by the Village's Covenant to Budget and Appropriate ("CBA") legally available non-ad valorem revenues
- 1.5x max. annual debt service coverage

## Flexible Prepayments

- Extraordinary Prepayment - surplus property sale proceeds must be used to pay down loan
- Optional Prepayment - ability to pay loan before its maturity

## Other Key Loan Terms

- Fixed rate proposals and alternative structures
- 20 year amortization, 10 year term
- Level debt service payments
- Assume January 14, 2019 loan closing

# Who Received the RFP?

**The RFP was sent to 50 contacts at 34 banks across the United States**

- Amtrust Bank
- Bank of America
- BankUnited
- BB&T
- BBVA Compass
- Capital Bank
- Capital One Public Funding
- Centennial Bank
- CenterState Bank
- Citizens First Bank
- City National Bank
- Encore Bank
- EverBank
- Fifth Third Bank
- FineMark Bank
- First Citizens Bank
- First Internet Bank
- Florida Community Bank
- Hancock Whitney Bank
- Iberia Bank
- JP Morgan
- Pinnacle Public Finance
- PNC Bank
- Raymond James
- Regions Bank
- Seacoast Bank
- Seaside National Bank
- Signature Public Funding
- Sterling National Bank
- Suncoast Credit Union
- SunTrust Bank
- TD Bank
- Valley National Bank
- Wells Fargo Bank

# Rate Structures: Fixed Rate vs. Variable Rate

## Fixed Rate

### Pros

- **Safe and Certain** - rate is locked for life of Village's first debt issue
- **Market Conditions** - current rates are relatively low and are expected to rise in the future
- **Credit** - Rating Agencies view fixed rate debt more favorably than variable rate

### Cons

- **Short-Term Cost** - higher rates than variable, until rates rise
- **Prepayment Cost** - most banks require make-whole provisions or higher rate options for prepayment flexibility

## Variable Rate

- **Short-Term Advantage** - current variable rates are less than fixed rates
- **Prepayment Provisions**- variable rate proposals provide prepayment options with no penalty
- **Interest Rate Risk** - in a rising rate environment, variable rate options could prove costly over the life of the loan
- **Credit Risk**- the Village's future credit ratings may be negatively affected by the uncertainty of variable rate debt

# Nine (9) Bank Responses received November 14, 2018

## Initial Review of Bank Proposals

	Bank of America	Capital Bank	Capital One Public Funding	Fifth Third Bank	FineMark Bank & Trust	Florida Community	PNC Bank	SunTrust Options #1/#6	Valley National
<b>Loan Terms</b>									
Term (Years)	10	10	20	5 or 10	10	10	10	10	10
Amortization (Years)	20	20	20	20	20	20	20	20	20
Fixed Interest Rate <sup>1</sup>	4.180%	4.103%	5.300%	4.75% or 5.00%	4.875%	5.680%	4.222%	4.17% - 4.52%	4.940%
Bank Fee	\$0	\$0	\$0	\$0	\$8K-\$10K	\$0	\$0	\$0	\$60K-\$75K
Bank Counsel Fee	\$7,500	\$6,000	\$0	\$10,000	\$10,000	\$6,000	\$10,000	\$10,000	\$9,250
<b>Prepayment Provisions</b>									
Optional Redemption	Make-Whole	0.5% penalty < 2025; At par > 2025	No call < 2027; At par > 2027 <sup>2</sup>	Make-Whole	No penalty	No penalty	Make-Whole	Prepay 15% No Penalty/Make Whole <sup>3</sup>	No penalty
Extraordinary Redemption	Make-Whole	No Penalty	102% of principal balance	Make-Whole	No penalty	No penalty	Make-Whole	Prepay 15% No Penalty/Make Whole <sup>3</sup>	No penalty
Debit/Depository Req'ts	None specified	None specified	None specified	None specified	0.10% rate reduction	None specified	\$3m on deposit	Debit with Lender-approved bank	Primary account and debit
Revenue Pledge	Direct Non-Ad Valorem	CB&A	CB&A	CB&A	CB&A	CB&A	CB&A	CB&A	CB&A

<sup>1</sup>BOA, Capital Bank, FineMark and PNC Bank rates are indicative rate as of Nov. 14, 2018 that are subject to change prior to loan closing

<sup>2</sup>Capital One offers partial prepayment at par once per year, minimum \$1,000,000; max \$5,000,000

<sup>3</sup>SunTrust Option #1 will allow up to 15% partial prepayment in a given calendar year without a prepayment penalty; Option #6 100% no penalty

# Nine (9) Bank Responses received November 14, 2018

## Bank Proposals with High Relative Interest Rates

- Fifth Third Bank - rate of 4.75% (5-year term) or 5.0% (10-year term)
- FineMark Bank - indicative rate of 4.875% for the first 5 years, then rates reset subject to market formula for remaining 5 years
- Florida Community - rate of 5.68% for a 10-year term
- Valley National - rate of 4.94% for a 10-year term

# Debt Service and Loan Terms Analysis

## Remaining Proposals: Preliminary Results, Subject to Change

Bank	Bank of America		Capital Bank		Capital One		PNC Bank		SunTrust (Option #1)		SunTrust (Option #6)	
	\$16m	\$20m	\$16m	\$20m	\$16m	\$20m	\$16m	\$20m	\$16m	\$20m	\$16m	\$20m
Approx. Loan (\$ millions)												
<b>Fixed Rate Proposals</b>												
Term (Years)	10	10	10	10	20	20	10	10	10	10	10	10
Amortization (Years)	20	20	20	20	20	20	20	20	20	20	20	20
Fixed Interest Rate <sup>1</sup>	4.180%	4.180%	4.103%	4.103%	5.300%	5.300%	4.222%	4.222%	4.170%	4.170%	4.520%	4.520%
All-In True Interest Cost	4.238%	4.227%	4.137%	4.182%	5.341%	5.333%	4.282%	4.271%	4.230%	4.218%	4.581%	4.569%
Estimated Costs of Issuance	\$62,000	\$62,000	\$60,500	\$60,500	\$54,500	\$54,500	\$64,500	\$64,500	\$64,500	\$64,500	\$64,500	\$64,500
Max. Annual Debt Service <sup>2</sup>	\$1,155,386	\$1,443,117	\$1,188,000	\$1,483,881	\$1,273,175	\$1,590,389	\$1,159,890	\$1,448,699	\$1,154,537	\$1,442,013	\$1,190,836	\$1,487,350
Principal Due at Maturity	\$10,198,475	\$12,738,252	\$9,796,758	\$12,236,721	\$1,259,638	\$1,573,478	\$10,216,516	\$12,760,390	\$10,196,142	\$12,734,943	\$10,332,734	\$12,905,545
Principal Repayment Frequency	Annual	Annual	Monthly	Monthly	Annual	Annual	Annual	Annual	Annual	Annual	Annual	Annual
Interest Frequency	Semi-annual	Semi-annual	Monthly	Monthly	Semi-annual	Semi-annual	Semi-annual	Semi-annual	Semi-annual	Semi-annual	Semi-annual	Semi-annual
<b>Prepayment Provisions</b>												
Optional Redemption	Make-Whole		0.5% penalty < 2025; At par > 2025		No call < 2027; At par > 2027 <sup>3</sup>		Make-Whole		Prepay 15% No Penalty/Make Whole <sup>4</sup>		No penalty	
Extraordinary Redemption	Make-Whole		No penalty		102% of principal balance		Make-Whole		Prepay 15% No Penalty/Make Whole <sup>4</sup>		No penalty	
Debit/Depository Requirements	None specified		None specified		None specified		\$3 million with PNC		Debit account agreement with lender-approved bank			
Revenue Pledge	Direct Non-Ad Valorem		CB&A Non-Ad Valorem		CB&A Non-Ad Valorem		CB&A Non-Ad Valorem		CB&A Non-Ad Valorem			

<sup>1</sup>BOA, Capital Bank, and PNC Bank rates are indicative rate as of Nov. 14, 2018 that are subject to change prior to loan closing

<sup>2</sup>Excluding debt service in year of final maturity

<sup>3</sup>Capital One offers partial prepayment at par once per year, minimum \$1,000,000; max \$5,000,000

<sup>4</sup>SunTrust Option #1 will allow up to 15% partial prepayment in a given calendar year without a prepayment penalty

# Debt Service and Loan Terms Analysis

## Capital Bank and SunTrust Bank: Preliminary Results, Subject to Change

Bank	Capital Bank		SunTrust (Option #1)		SunTrust (Option #6)	
	Approx. Loan (\$ millions)	\$16m	\$20m	\$16m	\$20m	\$16m
<b>Fixed Rate Proposals</b>						
Term (Years)	10	10	10	10	10	10
Amortization (Years)	20	20	20	20	20	20
Fixed Interest Rate	4.103%	4.103%	4.170%	4.170%	4.520%	4.520%
All-In True Interest Cost	4.137%	4.182%	4.230%	4.218%	4.581%	4.569%
Estimated Costs of Issuance	\$60,500	\$60,500	\$64,500	\$64,500	\$64,500	\$64,500
Max. Annual Debt Service <sup>1</sup>	\$1,188,000	\$1,483,881	\$1,154,537	\$1,442,013	\$1,190,836	\$1,487,350
Principal Due at Maturity	\$9,796,758	\$12,236,721	\$10,196,142	\$12,734,943	\$10,332,734	\$12,905,545
Principal Repayment Frequency	Monthly	Monthly	Annual	Annual	Annual	Annual
Interest Frequency	Monthly	Monthly	Semi-annual	Semi-annual	Semi-annual	Semi-annual
<b>Prepayment Provisions</b>						
Optional Redemption	0.5% penalty < 2025; At par > 2025		Prepay 15% No Penalty/Make Whole <sup>2</sup>		No penalty	
Extraordinary Redemption	No penalty		Prepay 15% No Penalty/Make Whole <sup>2</sup>		No penalty	
Debit/Depository Requirements	None specified		Debit account agreement with lender-approved bank			
Revenue Pledge	CB&A Non-Ad Valorem		CB&A Non-Ad Valorem			

<sup>1</sup>Excluding debt service in year of final maturity

<sup>2</sup>SunTrust Option #1 will allow up to 15% partial prepayment in a given calendar year without a prepayment penalty

## Next Steps

Date	Item
Wednesday, December 5, 2018	Council Meeting to Approve Award and Loan Terms
Wednesday, December 12, 2018	Council Meeting to Approve Commitment Letter
Wednesday, January 9, 2019	Council Meeting to Approve Resolution/Loan Agreement



**TITLE MEMO TO THE COMMISSIONERS OF  
THE VILLAGE OF ESTERO**

November 20, 2018

From: John Paulich III, Esq.

Re: Estero on the River Property  
Trust For Public Land  
Village Partners, LLC

The Estero on the River Property consists of fifteen (15) separate parcels legally described in the Title Insurance Commitment and the Title Search Report provided to Steve Sarkozy. Title to each of the parcels has been examined showing apparent title vested in Village Partners, LLC, a Florida limited liability company.

Upon completion of the requirements stated in Schedule B-I of the Title Commitment, title to the property will vest in The Village of Estero. Title will be subject to the Exceptions stated in Schedule B-II of the Title Insurance Commitment. Upon receipt of a satisfactory survey and closing affidavits the standard exceptions contained in B-II, 1 and 2 shall be deleted.

I have been working with TPL's attorney, Mr. Michael Siegel, to identify and prepare documentation to satisfy the B-I requirements. Included is documentation needed for termination of the reservations contained in the deed recorded at Instrument Number 2007000098020. These reservations include a 99 year lease in favor of the College Of Life Foundation, Inc. An unrecorded Amendment and Modification document from August, 2010 relating to the deed requires attention in that it seeks to amend the restrictions and offers a modified life estate to the College of Life Foundation, Inc. for benefit to the College and Charles Dauray. Appropriate releases and evidence of authority will be obtained.

Estoppels for the existing tenants on the property are being obtained by Seller's counsel. The estoppels will be reviewed to ensure that the lease or rent arrangements are not in default. They will also ensure that the tenants are not claiming any other interest in the property.

The Title Search Report tracks the title chain for each of the fifteen parcels as recorded in the Lee County Public Records. The fifteen parcels together comprise the five (5) parcels in the Estero On The River MPD.

**To be available at a later date and  
forwarded under a separate memo**

**To be available at a later date and  
forwarded under a separate memo**



## MEMORANDUM

DATE: November 19, 2018

TO: Steve Sarkozy

FROM: Mary Gibbs, Director of Community Development

RE: Estero on the River Property  
Council Workshop – November 28, 2018

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The Village's land use counsel Nancy Stroud and I have reviewed land use issues associated with the purchase of the Estero on the River Property. The purchase covers 62+ acres identified as Parcels 1, 2 and 3 of the total site. The remaining parcels that will not be purchased are Parcels 4 and 5. The staff reviewed the Zoning Resolution (Z-07-021, approved by Lee County on June 4, 2007) to ascertain which zoning conditions would apply to individual parcels, and which would apply to the property as a whole, since the property ownership will become separate. More specifically, there are 20 conditions of approval and 13 deviations. The memo from the Village land use counsel explains this in more detail.

The staff review indicates the following entitlements for Parcels 4 and 5 (parcels not being purchased by the Village).

Parcels 4 and 5 are the easternmost parcels of the property, east of the railroad right-of way and west of Sandy Lane (Via Coconut). The entitlements as shown on the approved zoning Master Concept Plan are listed below:

Parcel 4 (13.18 acres)

- Residential (single-family, townhouse, 2-family and multi-family)  
102 units plus 90 bonus density units maximum
- Mixed-use
- Lake
- Open space
- Preserve area
- Future tract (ROW for Sandy Lane)
- Building height-maximum 35/60 feet residential, 45 feet mixed-use

Parcel 5 (9.84 acres)

- Residential single-family (15 units)
- Park/preserve area
- Lake
- Open space
- Future tract (ROW for Sandy Lane)
- Building height maximum - 35 feet

Review of Zoning Conditions

A review of the zoning conditions as applied to these parcels indicates that all of the conditions would apply to Parcels 4 and 5, although a few need clarification.

For example, the Master Concept Plan shows a road crossing the Estero River between Parcels 1 and 2. This would not be the responsibility of the property owners of Parcels 4 and 5 as it would not be on their property. The requirement for indigenous preserve area would be slightly reduced for Parcels 4 and 5, because the majority of native vegetation is located on Parcels 1 and 3.

To provide clarity, these are addressed specifically in a proposed agreement between the Village, the Trust for Public Land and Village Partners LLC.

Attachment:

Zoning Resolution Z-07-021

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

WHEREAS, Land Development Group, LLC, filed an application on behalf of the property owners, Village Partners, LLC, and College of Life Foundation, Inc., to rezone a 85.07±-acre parcel from Agricultural (AG-2) and Marine Commercial District (CM) to Mixed Use Development (MPD), and to utilize the Cash Contribution Option (Option 2) of the Bonus Density Program to increase the permissible density of the property above the Lee Plan standard density range for a project known as Estero on the River; and,

WHEREAS, a public hearing was advertised and held on April 4, 2007, before the Lee County Zoning Hearing Examiner Richard A. Gescheidt. Written submissions were requested by the Hearing Examiner at the close of hearing with a due date of April 13, 2007. This date was later extended to April 20, 2007. The Hearing Examiner gave full consideration to the evidence in the record for Case Nos. DCI2005-00041 (Rezoning) and REZ2006-00018 (Bonus Density Application); and,

WHEREAS, a second public hearing was advertised and held on June 4, 2007, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record, and the testimony of all interested persons in accordance with the procedures set forth in §34-83(b) of the Land Development Code. In addition, the Board considered the proposed bonus density contract based on the criteria set forth in LDC §34-1519.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to:

1. Rezone a 85.07±-acre parcel from AG-2 and CM to MPD to allow 530 residential units and 300,000 square feet of commercial space, with a maximum height of 60 feet (habitable stories). No blasting activity is proposed.
2. Participate in the Lee County Housing Bonus Density Program. The applicant is seeking to utilize the "Cash Contribution Bonus Density Option 2" pursuant to Lee County Land Development Code (LDC), Section 34-1519, to develop 181 bonus density dwelling units, with a proposed project total of 530 dwelling units on 85.07± acres for an approximate total of 7.84 dwelling units per acre.

The property is located in the Urban Community and Outlying Suburban Future Land Use Categories and is legally described in attached Exhibit A.

The request to rezone the property to MPD is APPROVED, SUBJECT TO the conditions and deviation specified in Sections B and C below. The request to participate in the Lee County Housing Bonus Density program, LDC Section 34-1519, by utilizing the "Cash Contribution Density Bonus (Option 2)" to develop 181 Bonus Density dwelling units is APPROVED, SUBJECT TO the conditions and deviations in Sections B and C below and the terms of the Bonus Density Contract attached as Exhibit E.

SECTION B. CONDITIONS:

All references to uses are defined or listed in the Lee County LDC.

1. Development must be consistent with the two-page Master Concept Plan (MCP) entitled "Estero on the River Master Concept Plan" prepared by Wilson Miller", date stamped "Received June 7, 2007 by Community Development", attached hereto as Exhibit C-1, and the one-page Parcel Summary attached hereto as Exhibit C-2, except as modified by the conditions below.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Residential 1 (R-1)

Accessory Uses and Structures

Administrative Offices

Agricultural uses, continuation of bona fide use only

Dwelling Units

Single Family Residence

Entrance Gates and Gatehouses

Essential Services

Essential Service Facilities, Group I

Excavation, Water Retention

Fences and Walls

Home Occupation (subject to standards in Lee County Land Development Code Section 34-1772)

Model Homes, Model Units and Model Display Center, including accessory parking lots

Real Estate Sales and Rental Office - limited to sales of lots, homes or units within Estero on the River

Recreation Facilities, Personal and private On-Site and Off-Site

Residential accessory uses, including but not limited to:

Private garages, carports and parking areas

Private swimming pools and enclosures

Clubhouse including but not limited to Food and Beverage Service, Locker Rooms, Health Club and Spa

Signs

Temporary uses- limited to a sales center and construction office(s)

Residential 2 (R-2)

All uses permitted in the R-1 tracts plus:

Townhouse, Two-Family Attached and Multiple-Family Buildings

Parking Lot: accessory

Civic Use (CU)

All uses permitted in the R-2 tracts plus:

ATM

Cultural Facilities

EMS, Fire or Sheriff's station

Government agencies, office only, Library

Museums

Parking Lot

Post Office

Studios

Temporary Uses including but not limited to art and craft fairs, concerts "Taste of the Town", farmers' market, antique fairs and the like.

Theater, Indoor (550 seats + 150-seat Learning Theater)

Mixed Use (MU)

All uses permitted in the R-2 tracts plus:

Accessory Apartment

Accessory Commercial Uses

Animal Clinic - outside kennels are prohibited

ATM

Bait and Tackle Shop

Banks and Financial Institutions, Groups I & II

Bar or cocktail Lounge, in conjunction with a class III & IV

Bed and Breakfast

Boat Rentals and Sales, limited to canoes and kayaks

Business Services, Group II

Caretaker's Residence

Consumption on Premises, in conjunction with Class III & IV restaurant or Liquor

Store (wine tasting events)

Convenience food and beverage store

Cultural Facilities

Cleaning and Maintenance Services, no warehouse

Clothing Stores

Clubs, Commercial, Fraternal & Private

Day Care Center, child or adult

Department Store, limited to 50,000 square feet

Drive thru Facility for any permitted use, limited to 4

Drugstore, Pharmacy

Food Stores, Group I

Garage, Public

Gift and Souvenir Shop

Grocery Store

Hardware Store, limited to 40,000 square feet



Healthcare Facilities, Groups I, II, III, and IV (limited to 100 beds)  
Hobby, Toy and Game Shops  
Hotel/Motel, limited to 100 rooms and 3 stories  
Insurance Companies  
Medical Office  
Outdoor Seating for permitted uses  
Parcel and Express Services (no warehouse)  
Package Store  
Paint, Glass and Wallpaper (no warehouse)  
Parking Lot  
Personal Services, Groups I and II  
Pet Services, no outdoor run  
Pet Shop, no outdoor run  
Rental and Leasing Facilities, Groups I & II, no outdoor storage, display or sales  
Repair Shops, Groups I and II, no outdoor storage, display or sales  
Restaurant, Fast food, limited to 8  
Restaurants, Groups I - III  
Retail and Wholesale sales, when clearly incidental and subordinate to a permitted principal uses on the same premises  
Specialty Retail, Groups I and II  
Storage, Indoor Only  
Studios  
Theater, Indoor (550 seats and 150-seat Learning Theater)  
Variety Store, limited to 20,000 square feet

Preserve/Indigenous (P and I)

Interpretive centers and Signage, rain shelters, gazebos  
Nature and foot trails including boardwalks, benches and jogging paths  
Paths, boardwalks and bridges  
Water Management Facilities  
Wildlife Management  
Mitigation and Restoration Activities

College of Life Foundation

Civic/Cultural Facilities  
Single-family residential units  
Multi-Family residential units  
Administrative Offices  
Accessory Apartment 1

**NOTE:** Agricultural uses are not a permitted use within this planned development.

b. Site Development Regulations

See the Parcel Summary attached as Exhibit C-2 and the property development regulations below.

**PROPERTY DEVELOPMENT REGULATIONS**

	MINIMUM LOT DIMENSIONS			MINIMUM STRUCTURAL SETBACKS						
	Area	Depth	Width	Side	Rear	Front Road	Water-body	(Max) Height *See Note #7 below	(Max) Number of Hab. Floors	Distance between principal structure
Single-Family (detached)	6,500 sf	100	60	10	25	25	20	35	2	20
Two-Family Attached	7,500 sf	100	75	7.5	25	0	20	35	2	15
Townhouse	1,000 sf	50	20	15	N/A	15	20	45	3	15
Multi-family	10,000 sf	N/A	N/A	.5 BH *See Note#6 Below	20	20	0 or 20' *See Note #5 Below	60	3	25
RECREATION AREA	2,500 sf	25	25	10	10	20	0 or 20' *See Note #5 Below	45	3	15
Commercial	10,000 sf	100	100	5	10	0	0 or 20' *See Note #5 Below	60	4	15

Notes:

- 1) Pie-shaped lots shall have no minimum lot width but will meet lot area requirements.
- 2) Accessory structure setbacks are to be same as principal structure except for rear setbacks, which are 50 percent of the principal structure setback.
- 3) All dimensions are in feet unless otherwise noted.
- 4) Minimum structural setbacks are as measured to an adjacent right-of-way or parcel line.
- \*5) Setback from Lake may be zero feet providing architectural bank treatment is incorporated into design.
- \*6) BH: Building Heights=  
Combined height of two adjacent buildings for the purpose of determining setback requirements. Any building in Parcel 1-A that is within 100-feet of any boundary adjacent to existing single family residential will have a 35-foot maximum height restriction. Any building in Parcel 4-A that is within 150 feet of any boundary adjacent to existing single family residential will have a 35-foot maximum height restriction.
- \*7) See Parcel Summary attached as Exhibit C-2 regarding height limitations adjacent to US 41, Estero River, Sandy Lane, Corkscrew Road and existing residential structures outside project boundaries.

3. Design Elements. Development must comply with the Design Elements submitted by the applicant and found in Exhibit D.

4. Drainage.

- a. The developer will not place an encroachment within the flood way as defined by the FEMA flood maps approved at the time of development order issuance.
- b. At the time of the first development order application, the developer will submit a drainage analysis that demonstrates that the site development plan causes no adverse impact on adjacent upstream and downstream properties in terms of drainage capacity/conveyance, storm water discharge, and flood. The drainage analysis will include, but not limited to:
  - i. a drainage map for all contributory areas within and into the development, showing flow paths/arrows, existing on site and offsite drainage structures (sizes and inverts), and sub basin areas; and,
  - ii. hydrologic and hydraulic calculations for the 5, 10, 25, and 100-year storm events in order to establish existing baseline conditions.
- c. The Developer, or its assigns, will dedicate a drainage/maintenance easement to Lee County for the purpose of Estero River maintenance. The easement will give the right, but not the obligation, to Lee County to access the property and provide maintenance of the drainage within the Estero River. The developer, or its assigns, will maintain the easement area free of debris at all times and provide perpetual monthly maintenance/mowing. The easement location and design will be jointly reviewed and approved prior to Development Order approval and recording by the County Attorney's Office, Parks and Recreation Department, the Division of Environmental Sciences, and the Division of Natural Resources.

5. Flood Regulations.

Development must be consistent with the local, State, and Federal regulations for development within any flood ways, flood plains, or properties designated that will be affected by a tropical storm event.

6. Green ways.

The developer will participate in a joint effort with Lee County Parks and Recreation Department to accommodate a "Green ways" area along the Estero River subject to obtaining all necessary permits. The "Green ways" must be approved by Lee County Parks and Recreation as part of the development order for this project. The Developer and Lee County Parks and Recreation Department have agreed that this effort will be jointly funded.

7. Open Space.

Prior to local development order approval, the landscape plan must include an open space diagram delineating the 30 acres of open space committed to on the Open Space Calculations table. Buildings within the "MU" and "CU" parcels must contain commercial

or community facility ground floor uses. Single-family lots within Parcel 5 must be a minimum 6,500 square feet with a maximum 45 percent lot coverage.

8. Landscape.

Prior to local development order approval, the landscape plan must delineate a minimum of 14 acres of indigenous plant community and native tree preservation, including areas to be restored per the Estero on the River Restoration Plan. Parcel 3 must include 3.69 acres of indigenous preservation of oak and pine scrub. All preservation areas being used to meet the 14-acre requirement must be located outside of existing or future easements. The roadway proposed within Parcel 2 that bisects the existing indigenous plant communities must be designed to provide wildlife underpass with a minimum three-foot height and six-foot width using either a box culvert, conspan, or bridge.

9. Buffer.

Prior to local development order approval, the landscape plans must delineate a minimum 50-foot wide natural waterway buffer measured from the top of bank of the Estero River. The proposed Greenway may be located within the 50-foot wide buffer area. No additional boardwalks or pathways are allowed within 25 feet of the top of bank except as delineated in Condition 10 below. The design of the proposed greenway and the extent of activity to take place within the 50-foot wide buffer will be determined at the time of local development order and approved by the Division of Natural Resources, Division of Environmental Sciences, and the Parks and Recreation Department. Any walkway will be field inspected by the Division of Environmental Sciences' staff and adjustments may be made where necessary to preserve existing trees.

10. Shoreline Structures:

Shoreline structures along the Estero River are limited to a maximum of:

- a. Two free-span bridges over the Estero River for pedestrian traffic field located to avoid impacting existing native trees; and,
- b. one dock/canoe launch; and,
- c. the existing covered boat house and dock in the northeast corner of Parcel 2; and,
- d. the existing concrete bulkhead and dock in the northwest portion of Parcel 4; and,
- e. the proposed vehicular and pedestrian bridge crossing connecting Parcels 1 and 2 to allow vehicular/pedestrian traffic. The existing structures may be restored or replaced with structures meeting the current LDC regulations provided the structure is not expanded. The shoreline structures may include river overlook areas.

11. Gopher Tortoise Management Plan.

Prior to local development order approval, the developer must submit a Gopher Tortoise Management Plan including details of the type of gopher tortoise permit secured from the

Florida Fish and Wildlife Conservation Commission for review and approval by the Division of Environmental Sciences' staff.

12. Lake Maintenance Easement.

Prior to local development order approval, any lake that is designed to utilize Deviation 5, 6, or 8 must provide a minimum 20-foot wide lake maintenance easement from the lake control elevation to an adjacent common parking lot or roadway to provide access to the lake for long term maintenance. Additionally, the use of Deviation 5, 6, or 8 is limited to a total maximum of 20 percent of the linear footage of an individual lake and compensatory littoral shelf must be provided as detailed in LDC §10-418.

13. Boat Docks.

Boat docks approved in this application are strictly limited to canoes, kayaks, and paddle boats. The developer may not permit motorized vessels, except those that are electric or battery powered, to utilize any boat docking facility located within the project boundaries. Combustion engines are prohibited.

14. Traffic Impacts.

- a. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order. Approval of this rezoning does not give the developer an undeniable right to receive local development order approval.
- b. The developer may obtain the necessary development orders for site preparation, which include, but are not limited to, site infrastructure and fill when the project meets Lee County concurrency requirements (all conditions required by the Lee County Comprehensive Plan (Lee Plan) and the LDC). However, the developer may not obtain building permits for vertical development until notification of the commencement of the U.S. 41 six-lane improvements. This condition will not be construed to prevent the developer from availing itself of the provision of Lee County Ordinance 06-20, as amended (Fair Share Ordinance). Restoration or relocation of historic resources located within the project boundaries will be deemed to be "site preparation work" for purposes of this condition and may be approved by Lee County at any time.

15. Historic Preservation.

The developer must submit an Historic Preservation Plan for the entire project to be approved by the Lee County Historic Preservation Board prior to the first local development order. The Estero Creek School and Collier Residence are scheduled for relocation pursuant to prior agreements and are not required to be included in the Historic Preservation Plan. The Smith/Alvarez residence may be relocated subject to Historical Designation at the new location. No development activity or demolition permits can be approved prior to the approval of the Historic Preservation Plan described above.

16. Local Development Order Approval.

Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee County Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16, and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix, and general function, and all other Lee County Lee Plan provisions.

17. Sandy Lane Realignment. In the event that Sandy Lane is realigned, the realignment and any resulting changes in the open space assigned to the Sandy Lane alignment within the project may be approved through an administrative amendment of the approved planned development.

INCIDENT TO PARTICIPATION IN THE HOUSING BONUS DENSITY PROGRAM:

18. Eligibility for Bonus Density.

Bonus density is approved on this property in accordance with the terms and conditions of the Bonus Density Contract attached as Exhibit E. Bonus units will be distributed throughout the site in accordance with the Parcel Summary attached as Exhibit C-2. In accordance with the terms of the Bonus Density Contract, the developer will provide ten percent of the total project units approved under local development order(s) to qualified moderate income eligible families for initial sales. Moderate income means a person or household whose annual (gross) income does not exceed 120 percent of the area's median income as determined by HUD on a year-to-year basis.

19. Landscape Plan. Prior to local development order approval, the landscape plan must delineate a minimum of 14 acres of indigenous plant community and native tree preservation including areas to be restored in accordance with the Estero on the River Restoration Plan. Parcel 3 must include 3.69 acres of indigenous preservation of oak and pine scrub. All preservation areas used to meet the 14-acre requirement must be located outside of existing or future easements. The roadway proposed within Parcel 2 that bisects the existing indigenous plant communities must be designed to provide wildlife underpass with a minimum three feet in height and six feet in width using either a box culvert, conspan, or bridge.

20. Development Order. The developer may obtain the necessary development orders for site preparation, which include, but are not limited to, site infrastructure and fill, when the project meets Lee County concurrency requirements (all conditions required by the Lee County Lee Plan and the LDC). However, the developer may not obtain building permits for vertical development until notification of the commencement of the U.S. 41 six-lane improvements. This condition will not be construed to prevent the developer from availing itself of the provision of Lee County Ordinance 06-20, as amended (Fair Share Ordinance). Restoration or relocation of historic resources located within the project boundaries will be deemed "site preparation work" for purposes of this condition and may be approved by Lee County at any time.

## SECTION C: DEVIATIONS

1. Planted Buffers within Easements. Deviation (1) seeks relief from the LDC §10-414 requirement that prohibits the planting of trees and shrubs in an easement, to allow planted buffers to be placed within 50 percent of the width of the lake maintenance easement. This DEVIATION IS APPROVED, SUBJECT TO the following condition:
  - a. Prior to local development order approval, any lake that is designed to allow buffer plantings to overlap 10 feet into the 20-foot wide lake maintenance easement encircling the lake, must provide a minimum 20-foot wide lake maintenance easement from the lake control elevation to an adjacent common parking lot or roadway to provide access to the lake for long term maintenance. All buffer plantings adjacent to lakes must consist of native vegetation.
2. Pavement Widths. Deviation (2) seeks relief from the LDC §10-296 requirement to provide a minimum 24-foot wide pavement width for privately maintained rights-of-way, to allow a 20-foot wide pavement width. This DEVIATION IS APPROVED, SUBJECT TO that no life, health, and safety issues arise due to the smaller pavement width.
3. Parking. Deviation (3) seeks relief from the LDC §34-2013(a) requirement to provide that parking lots be designed so that all vehicles exit in a forward motion, to allow individual parking spaces to back onto rights-of-way, access drives, and easements allowing on-street parking. This DEVIATION IS APPROVED.
4. Edge of Pavement Radii. Deviation (4) seeks relief from the LDC §34-296 requirement to provide a minimum edge of pavement radius of 25 feet to 30 feet, to allow a minimum edge of pavement radius of 12 feet. This DEVIATION IS APPROVED.
5. Lakes. Deviation (5) seeks relief from the LDC §10-328 requirement to provide a 20-foot lake maintenance easement around the perimeter of proposed lakes, to allow structures or bulkheads to abut the water. This DEVIATION IS APPROVED, SUBJECT TO Condition 12, above.
6. Excavation Banks. Deviation (6) seeks relief from the LDC §10-329(e)(4) requirement to provide sloped excavation banks, to allow up to 40 percent of the banks to utilize either:
  - a. a vertical slope with the condition that lake bottom slopes at the toe of any bulkhead may be no greater than 4:1; or,
  - b. a 2:1 (horizontal: vertical) slope to a depth of 6 feet below control with the condition that the 2:1 section(s) be stabilized with rip-rap.

This DEVIATION IS APPROVED, SUBJECT TO Condition 12, above.

7. Separation from Alcohol related Uses. Deviation (7) seeks relief from the LDC §34-1263(e) and §34-264(b)(1) requirement to provide a minimum 500-foot separation for on and off premises alcoholic beverages sale or consumption from any of the enumerated uses, to allow a zero-foot separation between the use located within the project's perimeter

boundaries. This DEVIATION IS APPROVED, SUBJECT TO the condition that each on-premises Consumption on Premises of alcoholic beverages requested must be approved administratively as provided for in the LDC.

8. Water Body Setback. Deviation (8) seeks relief from the LDC §34-1047 requirement to provide building setbacks for the Estero/Corkscrew Road Overlay area of 25 feet from a water body, to allow a zero- to 25-foot water-body setback. This DEVIATION IS APPROVED, SUBJECT TO Condition 12.
9. Shared Parking. Deviation (9) seeks relief from the LDC §34-2015(1) requirement to provide that all required parking spaces must be provided on the same premises as the intended use, to allow shared parking. This DEVIATION IS APPROVED, SUBJECT TO the condition that, as part of the local development order approval, the developer demonstrate that the proposed uses will operate during varying times of the day as part of a Shared Parking Agreement.
10. Indigenous Open Space. Deviation (10) seeks relief from the LDC §10-415(b)(1)(a) requirement that large developments must provide 50 percent of the required open space as indigenous preserve, to allow 4.9 acres of indigenous preserve and 10.4 acres of other native preservation areas. This DEVIATION IS APPROVED, SUBJECT TO Condition 8, above.
11. Model Homes. Deviation (11) seeks relief from the LDC §34-1954(a)(1) requirement regarding model homes and units, to allow model homes and units by right. This DEVIATION IS APPROVED.
12. Connection Separation. Deviation (12) seeks relief from the LDC §10-285(a) requirement to provide a minimum of 660 feet for connection separation between access points on Corkscrew Road, to allow the connections provided for on the MCP. This DEVIATION IS APPROVED, SUBJECT TO following condition:
  - a. Prior to local development order approval, the Developer must provide a cross-access easement connecting to the east and west property lines of STRAP#33-46-25-00-00008.0000. The cross-access easement must be recorded in the public records. The access centered 715 feet from the centerline of U.S. 41 may be realigned to an interconnection to the existing median opening 908 feet from U.S. 41 if the interconnection becomes available.
13. Buffers between Uses. Deviation (13) seeks relief from the LDC §34-372(a)(6)g. requirement to provide a minimum width and composition of all proposed buffers along the perimeter of the entire property, as well as between the individual uses, if the types of proposed uses require buffer separations between the different uses within the development, to allow the elimination of buffers between uses within the development. This DEVIATION IS APPROVED.



SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: Legal description and sketch of the property
- Exhibit B: Area Map (subject parcel identified with shading)
- Exhibit C-1: Master Concept Plan date stamped Received June 7, 2007
- Exhibit C-2: Parcel Summary
- Exhibit D: Design Elements
- Exhibit E: Bonus Density Contract

The applicant has indicated that the STRAP numbers for the property are:

28-46-25-00-00014.0020  
28-46-25-00-00015.0000  
28-46-25-00-00016.0040  
28-46-25-00-00016.0050  
28-46-25-00-00017.0000  
28-46-25-00-00018.0000  
28-46-25-00-00033.0000  
28-46-25-00-00033.0010  
33-46-25-00-00001.0000  
33-46-25-00-00005.0000  
33-46-25-00-00006.0000  
33-46-25-00-00007.0000  
33-46-25-00-00009.0000  
33-46-25-00-00010.0000  
33-46-25-00-00013.0000

SECTION E. FINDINGS AND CONCLUSIONS:

Rezoning Request:

1. The applicant has proven entitlement to the MPD rezoning by demonstrating compliance with the Lee Plan, the LDC, and other applicable codes and regulations.
2. The MPD rezoning, as approved:
  - a. meets or exceeds the performance and locational standards set forth for the potential uses allowed by the request; and,
  - b. is consistent with the densities, intensities, and general uses set forth in the Lee Plan; and,
  - c. is compatible with existing or planned uses in the surrounding area; and,

- d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and,
  - e. will not adversely affect environmentally critical areas or natural resources.
3. The MPD rezoning satisfies the following criteria:
- a. the proposed use or mix of uses is appropriate at the subject location; and
  - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
  - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, will be available and adequate to serve the proposed land use.
5. The approved deviations, as conditioned, enhance the achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

Bonus Density Request:

- 1. The bonus density request is consistent with the criteria contained in LDC §34-1516(c).
- 2. The request for bonus density is in compliance with and consistent with the Lee County Lee Plan.
- 3. The bonus density request includes only property that is zoned for the type of dwelling units to be constructed if the Mixed-Use Planned Development Zoning District is approved.
- 4. The bonus density request is less than the maximum total bonus density for the Urban Community and Outlying Future Land Use Categories.
- 5. The proposed development will not have substantially increased intensities of land uses along its perimeter.
- 6. The project is not located where additional traffic will be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road.
- 7. As conditioned by the zoning approval, the development is not in a location where existing and committed public facilities are so overwhelmed that a density increase would be contrary to the overall public interest.
- 8. The bonus density request, as conditioned, will not decrease any required open space, buffering, landscaping, and preservation areas.

9. The project is located within the Categories 2 and 3 storm surge zone for land-falling hurricanes as depicted in the 1991 Hurricane Storm Tide Atlas for Lee County. The developer will provide appropriate mitigation at the time of local development order approval.
10. The resulting development with the bonus units will be compatible with existing and planned surrounding land uses.

Commissioner Hall made a motion to adopt the foregoing resolution. The motion was seconded by Commissioner Mann. The vote was as follows:

Robert P. Janes	Absent
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 4<sup>th</sup> day of June 2007.

ATTEST:  
CHARLIE GREEN, CLERK

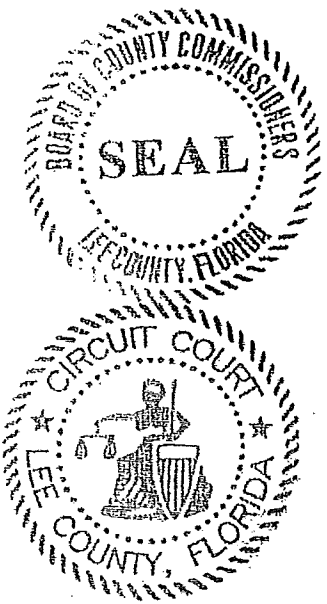
BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Marcia Wilson  
Deputy Clerk

BY: [Signature]  
Robert P. Janes, Chair

Approved as to form by:

[Signature]  
Donna Marie Collins  
County Attorney's Office



State of Florida  
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 6th day of August, A.D. 2007

CHARLIE GREEN, CLERK

By Marcia Wilson  
Deputy Clerk

**Barraco**  
and Associates, Inc.

www.barraco.net  
Civil Engineers, Land Surveyors and Planners

**DESCRIPTION**

Parcel in  
Sections 28 and 33, Township 46 South, Range 25 East  
Lee County, Florida

A tract or parcel of land lying in Sections 28 and 33, Township 46 South, Range 25 East, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

PARCELS 1 & 2

DCI 2005-00041

Commencing at the East Quarter Corner of said Section 33 run S88°26'11"W along the South line of the Northeast Quarter (NE 1/4) of said Section 33 for 1,319.50 feet to the Southwest Corner of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°08'18"W along the West line of said Fraction for 1,312.23 feet to the Northwest Corner of said Fraction; thence run N88°37'43"E along North line of said Fraction for 164.78 feet to the Southeast Corner of the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°08'42"W along the East line of said Fraction for 58.89 feet to an intersection with the Northerly right of way line of Corkscrew Road (State Road 850)(variable width)(F.D.O.T. right of way, Section No. 12640-2601) and the POINT OF BEGINNING.

From said Point of Beginning run S83°51'56"W along the said Northerly right of way line of Corkscrew Road for 263.54 feet; thence run S89°34'34"W along said Northerly right of way line for 315.90 feet; thence run N48°17'13"W along said Northerly right of way line for 75.44 feet to an intersection with the Easterly right of way of State Road 45 (Tamiami Trail)(200' wide) (F.D.O.T. right of way, Section No. 1201-203(117)); thence run N02°27'28"W along said right of way line, being 132 feet Easterly as measured perpendicular to the center line thereof for 877.98 feet; thence run S87°32'32"W along said right of way for 39.00 feet to the Southeast corner of lands described in deed recorded as Instrument No. 2006000134175, Lee County Records thence run N02°27'28"W along the Easterly line of said Lands, being 93 feet Easterly as measured perpendicular to the center line of said State Road 45 for 262.86 feet; thence run S87°23'02"W along said Easterly line for 3.46 feet; thence run N02°35'37"W along said Easterly line for 71 feet, more or less to an intersection with the Southerly top of bank of the Estero River; thence run Easterly along said Southerly top of bank of the Estero River for 743 feet more or less to an intersection with the Easterly line of the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run S01°08'42"E along the East line of said fraction for 1,095 feet more or less to the POINT OF BEGINNING.

Containing 18.24 acres, more or less

PARCEL 3

Commencing at the East Quarter Corner of said Section 33 run S88°26'11"W along the South line of the Northeast Quarter (NE 1/4) of said Section 33 for 1,319.50 feet to the Southwest Corner of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°08'18"W along the West line of said Fraction for 1,312.23 feet to the Northwest Corner of said Fraction;

**Barraco**  
and Associates, Inc.

CIVIL ENGINEERS, LAND SURVEYORS AND PLANNERS

DCI 2005-00041

DESCRIPTION (cont.)

thence run N88°37'43"E along North line of said Fraction for 329.56 feet to the Southwest Corner of the East Half (E 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°09'06"W along the West line of said Fraction for 59.94 to an intersection with the Northerly right of way line of Corkscrew Road (State Road 850)(130 feet wide)(F.D.O.T. right of way, Section No. 12640-2601) and the POINT OF BEGINNING.

From said Point of Beginning continue N01°09'06"W along the West line of said fraction for 1,164 feet more or less to an intersection with the Southerly top of bank of the Estero River; thence run Easterly along said Southerly top of bank of the Estero River for 338 feet more or less to an intersection with the East line of said Fraction; thence run S01°09'54"E along said East line for 1159 feet more or less to intersection with said Northerly right of way line of Corkscrew Road; thence run S89°34'34"W along said Northerly right of way line for 329.58 feet to the POINT OF BEGINNING. Containing 8.92 acres, more or less.

PARCEL 4

Commencing at the East Quarter Corner of said Section 33 run N01°11'31"W along the East line of the Northeast Quarter of said Section 33 for 1,307.79 feet to the Southeast Corner of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run S88°37'43"W along the South line of said Fraction for 529.13 feet to an intersection with the East line of the West 130 feet of the West Half (W 1/2) of the East Half (E 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°09'54"W along said East line for 52.34 feet to an intersection with the Northerly right of way line of Corkscrew Road (State Road 850)(130 feet wide)(F.D.O.T. right of way, Section No. 12640-2601) and the POINT OF BEGINNING.

From said Point of Beginning continue N01°09'54"W along said East line for 1155 feet more or less to an intersection with the Southerly top of bank of the Estero River; thence run Easterly along said Southerly top of bank of the Estero River for 513 feet more or less to an intersection with the Westerly right of way line of Sandy Lane (60 feet wide); thence run S01°11'31"E along said Westerly right of way line, being 30 feet Westerly as measured perpendicular to the East line of the Northeast Quarter of said Section 33 for 1,145 feet more or less to intersection with said Northerly right of way line of Corkscrew Road; thence run S89°34'34"W along said Northerly right of way line for 499.14 feet to the POINT OF BEGINNING.

Containing 13.18 acres, more or less.

PARCEL 6

Beginning at Northwest Corner of Lot 9 as shown on the Record Plat of Marshall's River Groves Unit 1 as recorded in Plat Book 12, Page 131, Lee County Records run N89°22'51"E along the Northerly line of Lot 9 and Lot 14 of said Record Plat for 240.00 feet to an intersection with the Westerly right of way line of Highlands Avenue; thence run S00°37'09"E along said Westerly right of way line for 419.88 feet to an intersection with the Northerly right of way line of County Road (50 feet wide) as shown on said Record Plat; thence run S88°12'14"W along said right of way line for 240.05 feet to an intersection with the Easterly right of way line of Estero Court (50 feet wide) as shown on said Record Plat;

**DESCRIPTION (cont.)**

thence run  $N00^{\circ}37'09''W$  along said Easterly right of way line for 424.82 feet to the POINT OF BEGINNING.  
Containing 2.33 acres, more or less.

**PARCEL 7**

Commencing at the Southeast Corner of said Section 28 run  $N00^{\circ}20'39''W$  along the East line of the Southeast Quarter (SE 1/4) of said Section 28 for 254.00 feet; thence run  $S89^{\circ}39'21''W$  for 30.00 feet to an intersection with the Westerly right of way line of Sandy Lane (60 feet wide) and the POINT OF BEGINNING.

From said Point of Beginning run  $S89^{\circ}39'21''W$  for 205.00 feet; thence run  $S00^{\circ}20'39''E$  for 242.50 feet; thence run  $S88^{\circ}49'17''W$  for 12.00 feet; thence run  $S00^{\circ}20'39''E$  for 47 feet more or less intersection with the Northerly top of bank of the Estero River; thence run Westerly along said Northerly top of bank of the Estero River for 260 feet more or less to an intersection with the East line of the West 165 feet of the East Half (E 1/2) of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $N00^{\circ}26'01''W$  along said East line for 1,559 feet more or less to the Northwest corner of lands described in deed recorded in Official Record Book 3314 at Page 3550, Lee County Records; thence run  $N89^{\circ}48'46''E$  along the north line of said lands for 248.39 feet; thence run  $S00^{\circ}20'39''E$  for 614.68 feet; thence run  $N89^{\circ}39'21''E$  for 12.50 feet; thence run  $S00^{\circ}20'39''E$  for 540.00 feet; thence run  $N89^{\circ}39'21''E$  for 205.00 feet to an intersection with said Westerly right of way line of Sandy Lane (60 feet wide); thence run  $S00^{\circ}20'39''E$  along said right of way line for 150.00 feet to the POINT OF BEGINNING.  
Containing 9.84 acres, more or less.

**PARCEL 5, 8 through 15**

Commencing at the East Quarter Corner of said Section 28 run  $S89^{\circ}48'51''W$  along the north line of the Southeast Quarter (SE-1/4) of said Section 28 for 662.45 feet to the Northwest corner of the East Half (E 1/2) of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $S00^{\circ}26'01''E$  along the West line of said Fraction for 993.10 feet to the POINT OF BEGINNING.

From said Point of Beginning continue  $S00^{\circ}26'01''E$  along said West line for 1,576.92 feet to the Southeast Corner of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $S01^{\circ}09'54''E$  along the East line of the East Half (E 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33 for 11 feet more or less to an intersection with the Northerly top of bank of the Estero River; thence run Westerly along said Northerly top of bank of the Estero River for 340 more or less to an intersection with West line of said Fraction; thence run  $N01^{\circ}09'06''W$  along said west line for 7 feet more or less to the North line of the Northeast Quarter (NE 1/4) of said Section 33; thence run  $S88^{\circ}49'17''W$  along said North line for 164.63 feet to the Northeast Corner of the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run  $S01^{\circ}08'42''E$  along the East line of said Fraction for 88 feet more or less to an intersection with the Northerly top of bank of the Estero River;

DCI 2005-00041

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SEP 15 2005

COMMUNITY DEVELOPMENT

**Barraco**  
and Associates, Inc.

Civil Engineers, Land Surveyors and Planners

**DESCRIPTION (cont.)**

thence run Westerly along said Northerly top of bank of the Estero River for 728 more or less to an intersection with the easterly line of lands described in deed recorded in Official Record Book 2603 at Page 1859, Lee County Records; thence run  $N00^{\circ}35'33''W$  along said easterly line for 65 feet more or less to the northeast corner of said lands; thence run  $S89^{\circ}24'27''W$  for 32.19 feet; thence run  $N01^{\circ}48'05''W$  for 2.49 feet to a point of curvature; thence run northerly along an arc of curve to the right of radius 50.00 feet (delta  $34^{\circ}26'02''$ ) (chord bearing  $N15^{\circ}24'56''E$ ) (chord 29.60 feet) for 30.05 feet to a point of reverse curvature; thence run northerly along an arc of curve to the left of radius 36.00 feet (delta  $95^{\circ}59'43''$ ) (chord bearing  $N15^{\circ}21'54''W$ ) (chord 53.50 feet) for 60.32 feet; thence run  $N63^{\circ}15'10''W$  along a non-tangent line for 3.36 feet to the Southeast corner of lands described in deed recorded as Instrument No. 2006000134177, Lee County Records; thence run the following two courses along the Easterly line of said lands:  $N02^{\circ}27'43''W$  for 367.61 feet and  $N01^{\circ}02'28''W$  for 129.57 feet to an intersection with the Southerly right of way line of County Road (50 feet wide) as shown on the Record Plat of Marshall's Estero River Groves Unit 1 as recorded in Plat Book 12, Page 131, Lee County Records; thence run  $N88^{\circ}12'14''E$  along said Southerly right of way line for 566.80 feet to and intersection the West line of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $N00^{\circ}31'19''W$  along said Fraction for 848.09 feet to the northwest corner of lands described in deed recorded in Official Record Book 3810, at Page 212, Lee County Records; thence run  $N89^{\circ}38'34''E$  along the north line of said lands for 660.91 feet to the POINT OF BEGINNING.

Containing 32.57 acres, more or less.

Parcels 1 thru 15 totally containing of 85.07 acres, more or less.

Subject to easements and restrictions of record.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (1983/90 adjustment) and are based on the East line of the Southeast Quarter (SE 1/4) of said Section 28 to bear  $S00^{\circ}20'39''E$ .

RECORDED  
SEP 15 2006

*Scott A. Wheeler* 8/28/06  
Scott A. Wheeler (For The Firm)  
Professional Surveyor and Mapper  
Florida Certificate No. 5949

COMMUNITY DEVELOPMENT  
L:\21986 - JED-Koreshan Rezoning\DESC\21986S01DESC.DOC

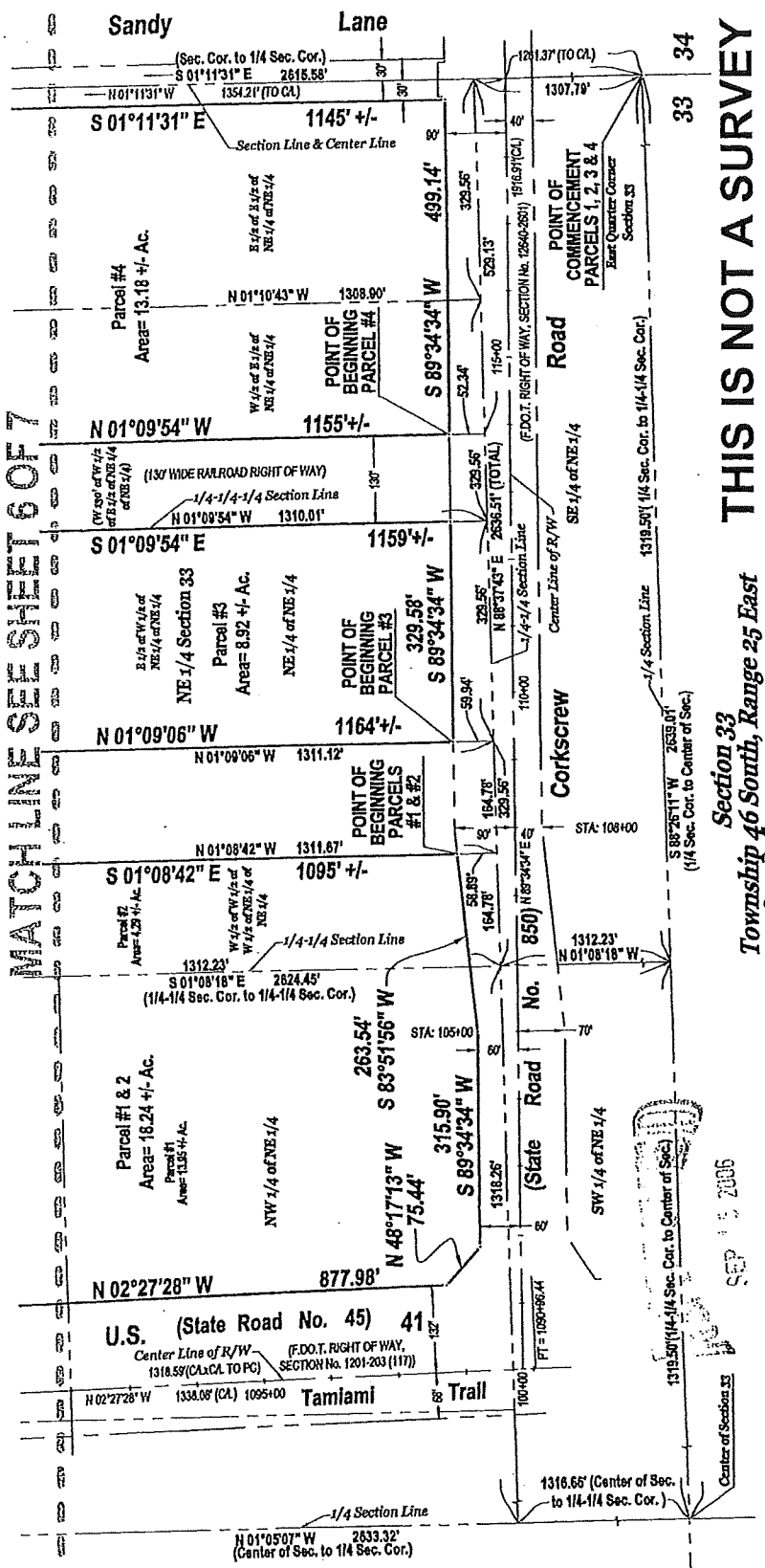
DCI 2005-00041

J.E.D. of  
 Southwest  
 Florida, Inc.

A PARCEL OF LAND IN  
 SECTIONS 28 AND 33  
 TOWNSHIP 46 SOUTH  
 RANGE 25 EAST  
 LEE COUNTY, FLORIDA



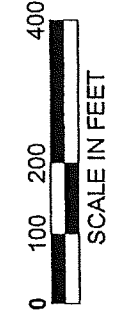
SKETCH TO ACCOMPANY DESCRIPTION	DATE	SHEET
		5 OF 7



MATCHLINE SEE SHEET 6 OF 7

**THIS IS NOT A SURVEY**

DATE SIGNED: *8/28/06*  
 SCOTT A. WHEELER (FOR THE FIRM - LB-5940)  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA CERTIFICATE NO. 5949  
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
 RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



- NOTES:
- ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
  - O.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
  - P.B. - DENOTES PLAT BOOK, LEE COUNTY PUBLIC RECORDS.
  - P.G. - DENOTES PAGE.
  - BEARINGS AS SHOWN ARE BASED ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 28 TO BEAR SOUTH 00°20'38" EAST.
  - DESCRIPTION IS ATTACHED.



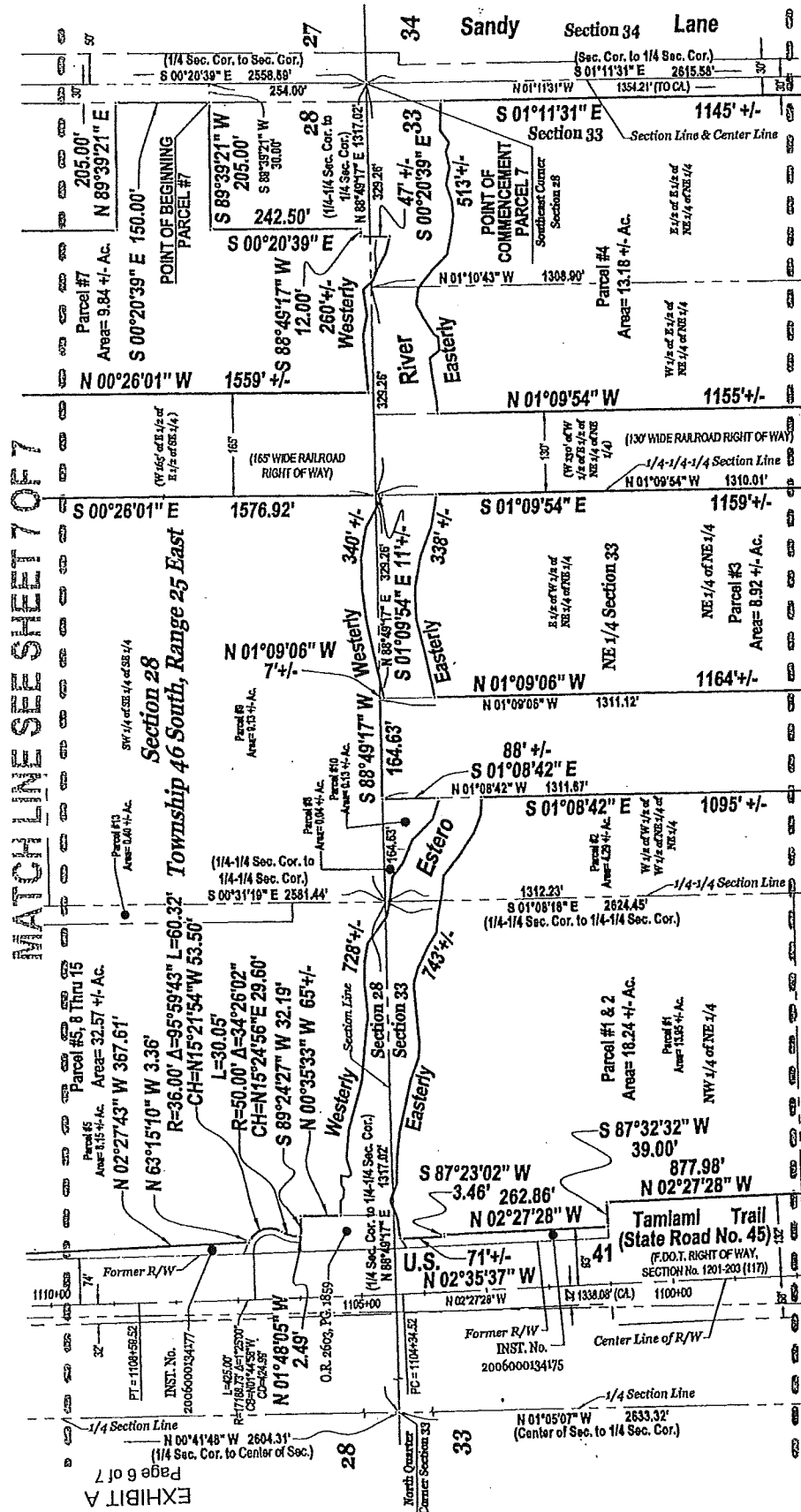
**Barraco**  
 REAL ESTATE, INC.  
 11111 BARRACO BLVD  
 SUITE 100  
 TAMPA, FLORIDA 33613  
 PHONE: (813) 971-1111  
 FAX: (813) 971-1112  
 WWW.BARRACO.COM

J.E.D. of  
 Southwest  
 Florida, Inc.

A PARCEL OF LAND IN  
 SECTIONS 28 AND 33  
 TOWNSHIP 46 SOUTH  
 RANGE 25 EAST  
 LEE COUNTY, FLORIDA



SKETCH TO  
 ACCOMPANY  
 DESCRIPTION  
 DATE: 11-14-05  
 SHEET: 6 OF 7



MATCH LINE SEE SHEET 7 OF 7

MATCH LINE SEE SHEET 5 OF 7

SEP 15 2006

DCI 2005-00041 SCALE IN FEET

- NOTES:
1. ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
  2. O.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
  3. P.B. - DENOTES PLAT BOOK, LEE COUNTY PUBLIC RECORDS.
  4. P.G. - DENOTES PAGE.
  5. BEARINGS AS SHOWN ARE BASED ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 28 TO BEAR SOUTH 00°20'39" EAST.
  6. DESCRIPTION IS ATTACHED.

EXHIBIT A  
 Page 6 of 7

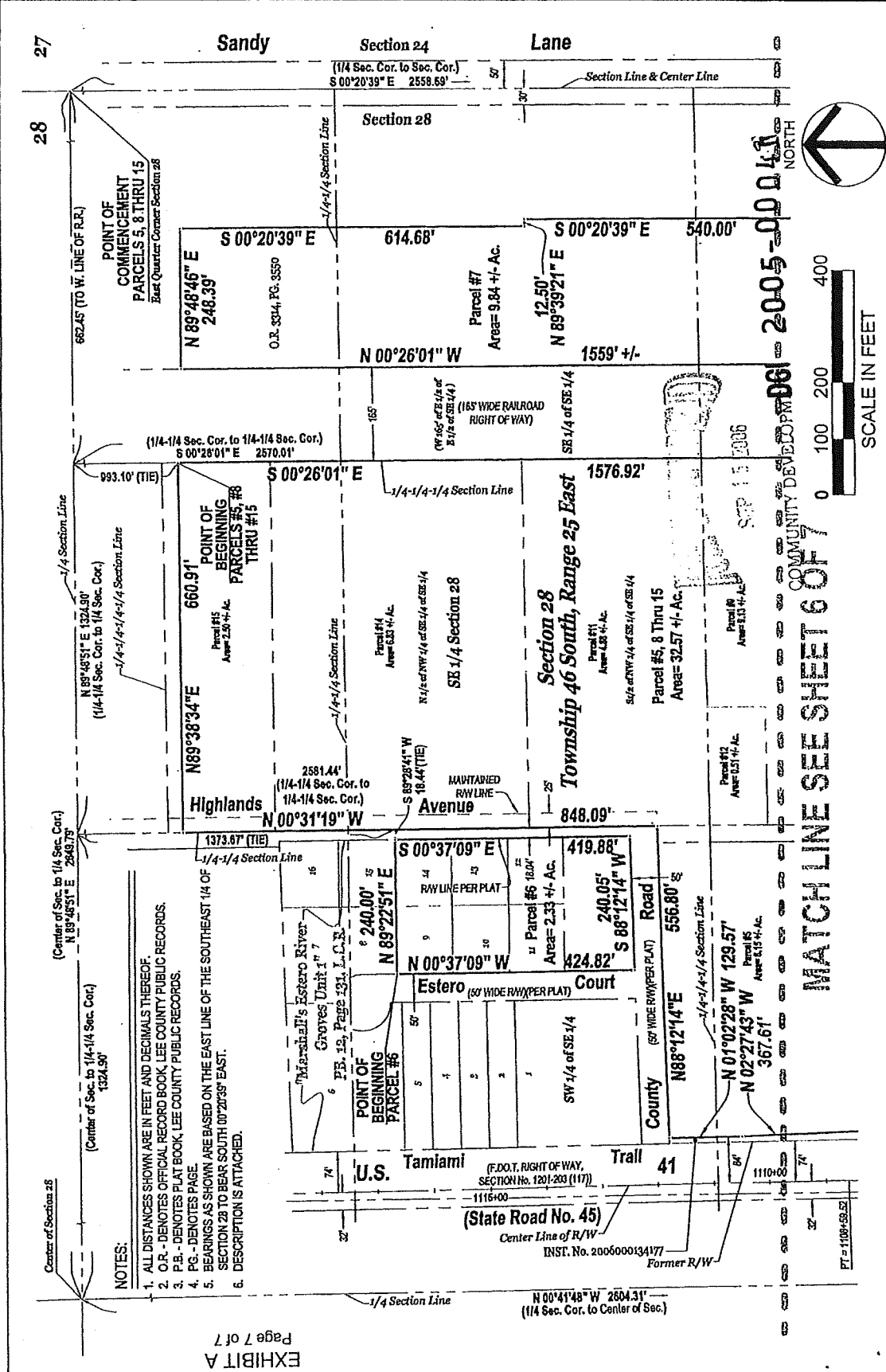
**Barraco**  
 REAL ESTATE SERVICES, Inc.  
 2711 W. UNIVERSITY BLVD SUITE 200  
 WEST PALM BEACH, FLORIDA 33411  
 WWW.BARRACO.FL.COM  
 561-833-0000

J.E.D. of  
 Southwest  
 Florida, Inc.

A PARCEL OF LAND IN  
 SECTIONS 14 AND 21  
 TOWNSHIP 26 SOUTH  
 RANGE 25 EAST  
 LEE COUNTY, FLORIDA

NO.	DESCRIPTION	DATE
1	PLAT	08/15/2006
2	PLAT	08/15/2006
3	PLAT	08/15/2006
4	PLAT	08/15/2006
5	PLAT	08/15/2006
6	PLAT	08/15/2006
7	PLAT	08/15/2006
8	PLAT	08/15/2006
9	PLAT	08/15/2006
10	PLAT	08/15/2006
11	PLAT	08/15/2006
12	PLAT	08/15/2006
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47	PLAT	08/15/2006
48	PLAT	08/15/2006
49	PLAT	08/15/2006
50	PLAT	08/15/2006

SKETCH TO  
 ACCOMPANY  
 DESCRIPTION  
 DATE  
 08/15/2006  
 SHEET NO.  
 7 OF 7



**NOTES:**

1. ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
2. O.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
3. P.B. - DENOTES PLAT BOOK, LEE COUNTY PUBLIC RECORDS.
4. P.G. - DENOTES PAGE.
5. BEARINGS AS SHOWN ARE BASED ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 28 TO BEAR SOUTH 00°20'39" EAST. DESCRIPTION IS ATTACHED.
6. DESCRIPTION IS ATTACHED.

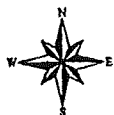
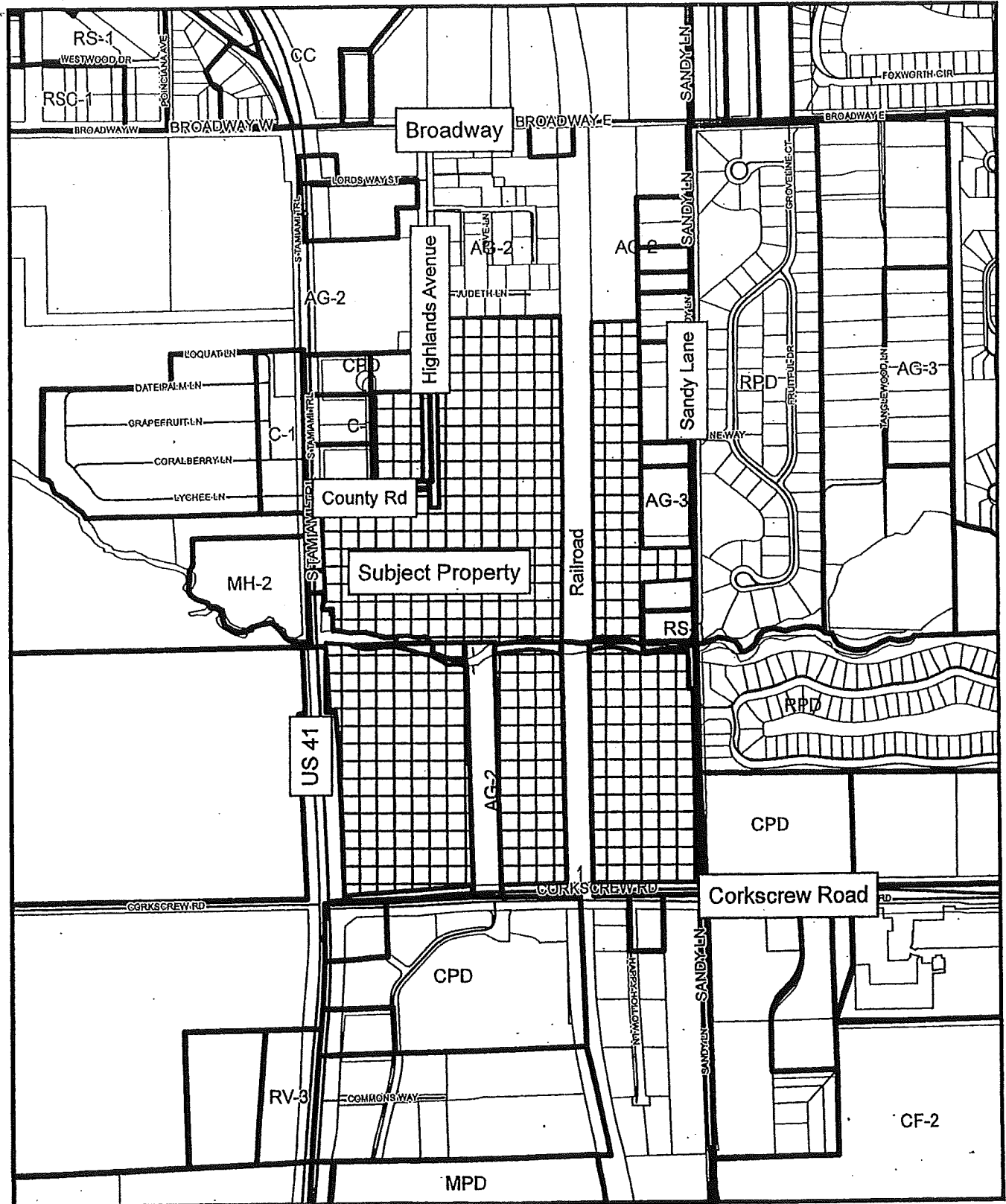


EXHIBIT B



LAND USE SUMMARY	
R-1 RESIDENTIAL-1	5.93 AC
R-2 RESIDENTIAL-2	21.07 AC
PHU PAVED USE	18.07 AC
CU CULTURAL	1.23 AC
L LAKES	7.03 AC
ROW RIGHT OF WAY	6.00 AC
PP PRESERVE/RESTORATION	10.41 AC
INDIGENOUS VEGETATION	5.21 AC
COLLEGE OF LIFE FOUNDATION	1.21 AC
BUFFERS & GREEN SPACE	6.81 AC
<b>TOTAL DEVELOPMENT AREA</b>	<b>85.07 AC</b>
FUTURE TRACT	5.30 AC

OPEN SPACE CALCULATIONS				
Parcel #	Open Space Required**	Open Space Provided	Open Space Deficit	Total Open Space Provided
Parcel #1	11.81 AC	11.35 AC	0.46 AC	11.35 AC
Parcel #2	13.31 AC	13.31 AC	0.00 AC	13.31 AC
Parcel #3	8.91 AC	1.81 AC	7.10 AC	1.81 AC
Parcel #4	13.11 AC	13.11 AC	0.00 AC	13.11 AC
Parcel #5	8.94 AC	0.00 AC	8.94 AC	0.00 AC
<b>Totals</b>	<b>56.98 AC</b>	<b>39.54 AC</b>	<b>17.44 AC</b>	<b>39.54 AC</b>

\*Single family lot coverage will not exceed 45% therefore no open space is required.  
 \*\*Parcel #2 open space is based on the following criteria: PHU & CU req. 30% open space, R1 req. 40% open space.  
 \*\*\*Existing or proposed bodies of water, including stormwater management areas and areas subject to stormwater jurisdiction, which may be used to offset up to a maximum of 25 percent of the required open space area. See County LDC Section 10-411(c)(2).  
 \*\*\*\*Additional water management areas may be used within individual parcels, at the time of Development Order Approval.

**LEGEND**

**EXISTING STRUCTURES\***

- RETAIN IN PLACE
- REMOVE
- PURCHASED BY THIRD PARTY
- RELOCATE
- UNDETERMINED

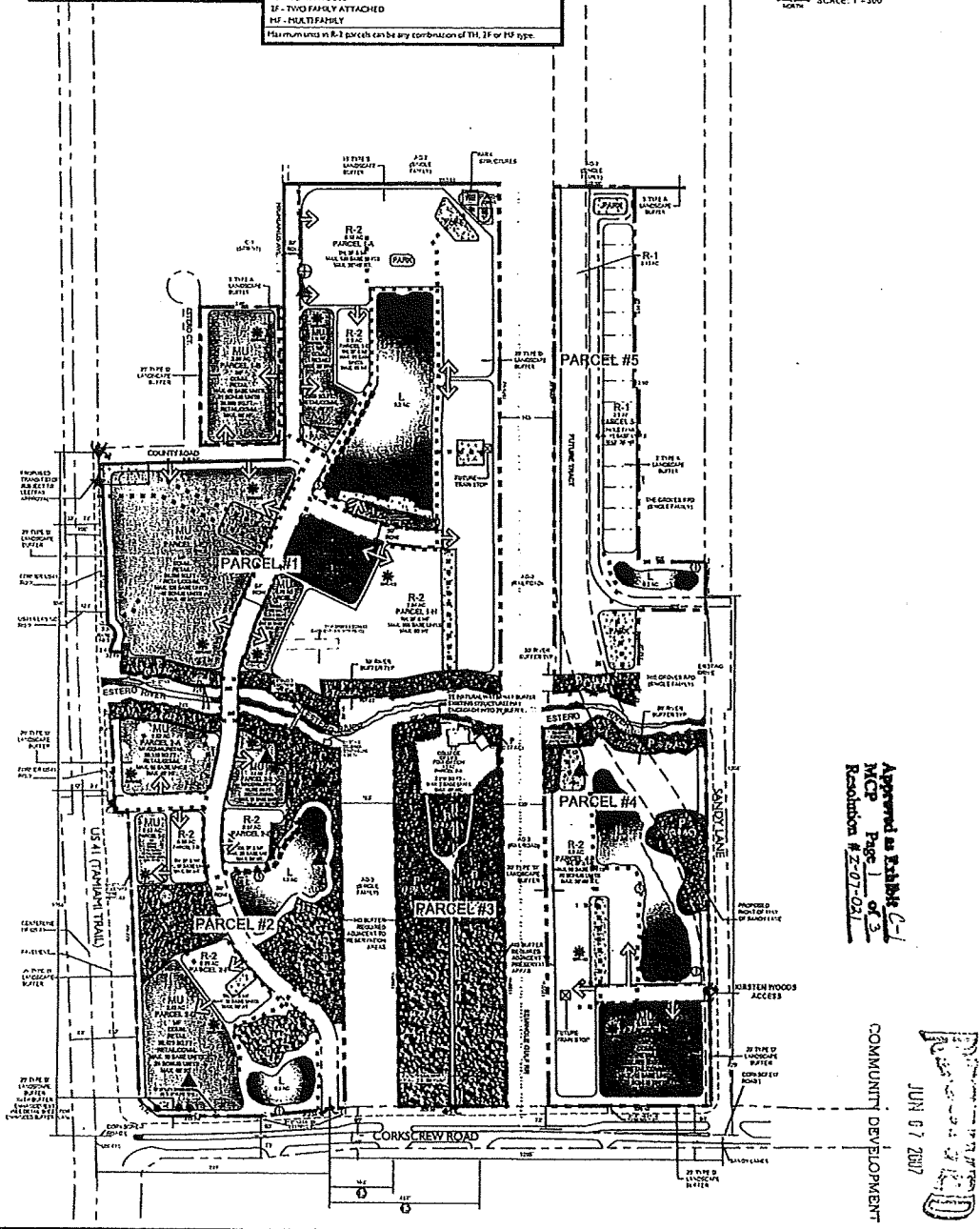
\*The determination of the status of structures is to be determined at the time of Development Order Approval (Subject to Army Corps of Engineers permitting)

SCALE: 1" = 300'

**LEGEND - BUILDING TYPES (R2 PARCELS)**

- TH - TOWNHOUSE
- 2F - TWO FAMILY ATTACHED
- MF - MULTIFAMILY

Maximum area in R-2 parcels can be any combination of TH, 2F or MF type.



Approved as Exhibit C-1  
 MCP Page 1 of 3  
 Resolution # 2007-021

JUN 07 2007

**ESTERO ON THE RIVER**  
 MASTER CONCEPT PLAN  
 PREPARED FOR: THE LAND DEVELOPMENT GROUP

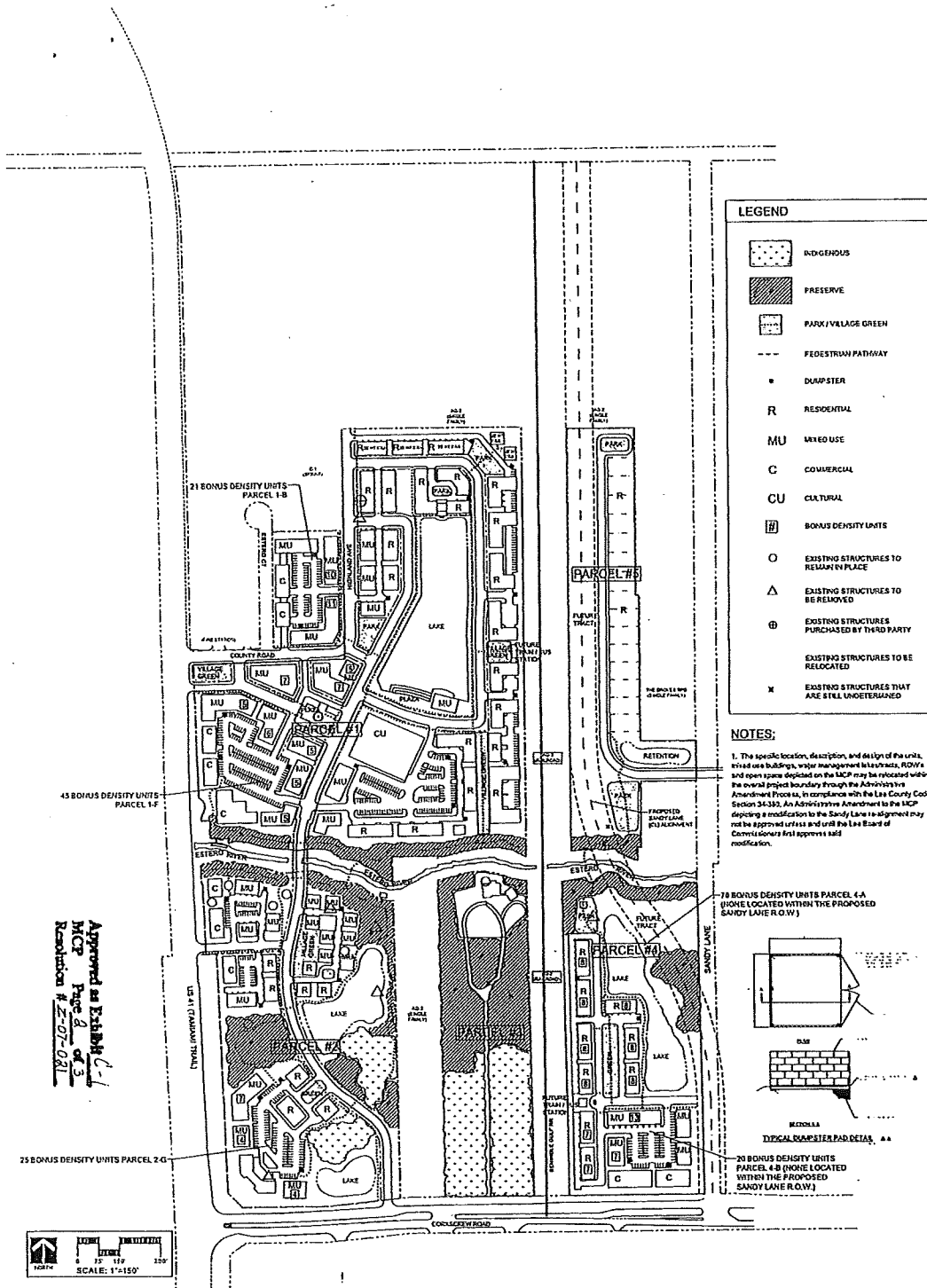
REL 2005-00041

DCI 2005-00041

Exhibit C-1  
 Page 1 of 2

**WilsonMiller**  
 Planners • Engineers • Ecologists • Surveyors  
 Landscape Architects • Transportation Consultants

WilsonMiller, Inc.  
 Planners • Engineers • Surveyors • Ecologists • Landscape Architects • Transportation Consultants  
 3366 Babcock Lane, Suite 300 • Irvine, Florida 32816-5527  
 Tel: 313-443-4543 • Fax: 313-443-3115 • WWW.WILSONMILLER.COM

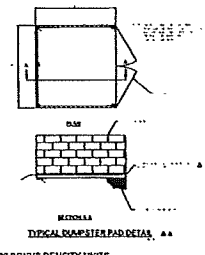


**LEGEND**

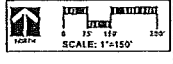
- INDIGENOUS
- PRESERVE
- PARK/VILLAGE GREEN
- PEDESTRIAN PATHWAY
- DUMPSTER
- RESIDENTIAL
- MIXED USE
- COMMERCIAL
- CULTURAL
- BONUS DENSITY UNITS
- EXISTING STRUCTURES TO REMAIN IN PLACE
- EXISTING STRUCTURES TO BE REMOVED
- EXISTING STRUCTURES PURCHASED BY THIRD PARTY
- EXISTING STRUCTURES TO BE RELOCATED
- EXISTING STRUCTURES THAT ARE STILL UNDETERMINED

**NOTES:**

1. The specific location, description, and design of the units, mixed use buildings, water management infrastructure, ROW's and open space depicted on the MCP may be relocated within the overall project boundary through the Administrative Amendment Process, in compliance with the Lee County Code Section 34-392. An Administrative Amendment to the MCP depicting a modification to the Sandy Lane realignment may not be approved unless and until the Lee Board of Commissioners first approves said modification.



Approved as Exhibit C-1  
MCP Page 2 of 3  
Resolution # Z-07-021



NO.	DATE	REVISIONS
1	06/07/07	REVISED MASTER PLAN
2		
3		

**ESTERO ON THE RIVER  
MASTER CONCEPT PLAN**

PREPARED FOR: THE LAND DEVELOPMENT GROUP L.L.C.

**WilsonMiller**  
Planners • Engineers • Architects • Surveyors  
Landscape Architects • Transportation Consultants

WilsonMiller, Inc.  
1200 E. Fort Payne • Suite 200 • Fort Payne • Alabama • 35967 • Phone: 256-845-1500  
Phone: 256-845-6666 • Fax: 256-845-6771  
E-mail: wml@wilsonmiller.com • Web: www.wilsonmiller.com

JUN 07 2007

REZ 2006-00018

Exhibit C-1  
Page 2 of 2

COMMUNITY DEVELOPMENT

DCI 2005-00041

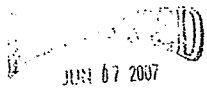
### PARCEL SUMMARY

Parcel Number	Land Use	Maximum Height	Maximum Commercial/Office/Retail Sq Ft	Maximum Base Dwelling Units	Maximum Bonus Density Units
<b>PARCEL #1</b>					
1-A	R-2	3 stories - 45' 35' maximum within 100' of any boundary adjacent to existing single family residential		120	0
1-B	MU	3 stories/ retail - 60'	30,685	40	21
1-C	MU	3 stories/ retail - 60'	16,300	20	0
1-D	R-2	3 stories - 45'		15	0
1-E	MU	3 stories - 45'	5,435	0	0
1-F	MU	3 stories/ retail 45' w/in 100' of US 41 60' for the balance of the property	93,080	120	45
1-G	CU	3 stories - 45' w/ exception for architectural tower feature	35,000	0	0
1-H	R-2	3 stories/ parking 45' w/in 100 of Estero River 60' for the balance of the property	0	105	0
1-I	MU	3 stories/ retail 45' w/in 100' of Estero River 60' for the balance of the property	11,010	25	0
Max Residential Units:					445
Bonus Residential Units:					66
Max Commercial Floor Area:					192,510 SF Total
Office					63,215 SF
Retail					103,295 SF
Cultural					36,000 SF
<b>PARCEL #2</b>					
2-A	MU	3-story - 45'	20,115	15	0
2-B	MU	3-story - 45'	13,950	14	0
2-C	MU	3 story - 45'	7,780	5	0
2-D	R-2	3-story - 45'		10	0
2-E	R-2	4-story - 60'		20	0
2-F	R-2	4-story - 60'		12	0
2-G	MU	3 story - 45'	35,675	10	25
Max Residential Units:					86
Bonus Residential Units:					25
Max Commercial Floor Area:					77,520 SF Total
Office					25,040 SF
Retail					52,480 SF

Parcel Number	Land Use	Maximum Height	Maximum Commercial/Office/Retail Sq Ft	Maximum Base Dwelling Units	Maximum Bonus Density Units
<b>PARCEL #3</b>					
3-A	College of Life	45'	2000 in addition to existing SF	2	N/A
Max Residential Units:					2
Max Commercial Floor Area:					Existing plus 2000 SF
<b>PARCEL #4</b>					
4-A	R-2	3-story - 45' w/in 200' of Corkscrew Road & 100' of Sandy Lane & Estero River 35' maximum within 150' of any boundary adjacent to existing single family residential	0	90	70
3 Stories/Parking 60' on Balance of Site					
4-B	MU	3-story - 45'	27,970	12	20
Max Residential Units:					102
Bonus Residential Units:					90
Max Commercial Floor Area:					27,970 SF Total
Office					9,745 SF
Retail					18,225 SF
<b>PARCEL #5</b>					
5-A	R-1 Single Family	2-stories - 35'	0	15	N/A
Max Residential Units:					15
<b>SUMMARY</b>					
Max Residential Units (Request) (349 Base Units + 181 Bonus Density Units):					530* Total
Max Bonus Residential Units:					181
Max Commercial Floor Area:					300,000 SF
Office					88,000 SF
Retail					176,000 SF
Cultural					36,000 SF

\*Including bonus density. The maximum number of units are shown per parcel, however, on a cumulative basis, the total of all parcels may not exceed 530 units.

Approved as Exhibit  
MCP Page 3 of 3  
Resolution # Z-07-021



ESTERO COMMUNITY DEVELOPMENT

REZ 2006-00018

PREPARED BY	DATE	CHECKED BY	DATE	APPROVED BY	DATE

**ESTERO ON THE RIVER  
MASTER CONCEPT PLAN  
PREPARED FOR: THE LAND DEVELOPMENT GROUP L.L.C.**

DCI 2005-00041 Exhibit C-2  
Page 1 of 1

### **WilsonMiller**

PLANNERS • ENGINEERS • ECOLOGISTS • SURVEYORS  
LANDSCAPE ARCHITECTS • TRANSPORTATION CONSULTANTS

**WilsonMiller, Inc.**  
4000 Bayway Lane, Suite 200 • Naples, Florida 34104-4381  
Phone 239-413-0318 • Fax 239-413-5711 • Web Site www.wilsonmiller.com

**LAND USE SUMMARY**

R-1 RESIDENT	5.93 AC
R-2 RESIDENT	33.07 AC
PMU PAVED USE	10.00 AC
CU CULTURAL	1.38 AC
L LAKE	3.00 AC
ROW RIGHT OF WAY	6.00 AC
P PRESERVE/RESTORATION	10.44 AC
I INDIGENOUS VEGETATION	5.32 AC
COLLEGE OF LIFE FOUNDATION	1.31 AC
BUSINESS & GREENSPACE	6.84 AC
<b>TOTAL DEVELOPMENT AREA</b>	<b>85.07 AC</b>
CULTE TRAIL	5.30 AC

**OPEN SPACE CALCULATIONS**

Development Area	Open Space Required**	Open Space Provided	Lot & OS % of Tot
Parcel #1	3.11 AC	11.73 AC	3.75 AC
Parcel #2	1.31 AC	1.31 AC	1.31 AC
Parcel #3	1.31 AC	1.31 AC	1.31 AC
Parcel #4	1.31 AC	1.31 AC	1.31 AC
Parcel #5	1.31 AC	1.31 AC	1.31 AC
Parcel #6	1.31 AC	1.31 AC	1.31 AC
Parcel #7	1.31 AC	1.31 AC	1.31 AC
Parcel #8	1.31 AC	1.31 AC	1.31 AC
Parcel #9	1.31 AC	1.31 AC	1.31 AC
Parcel #10	1.31 AC	1.31 AC	1.31 AC
Parcel #11	1.31 AC	1.31 AC	1.31 AC
Parcel #12	1.31 AC	1.31 AC	1.31 AC
Parcel #13	1.31 AC	1.31 AC	1.31 AC
Parcel #14	1.31 AC	1.31 AC	1.31 AC
Parcel #15	1.31 AC	1.31 AC	1.31 AC
Parcel #16	1.31 AC	1.31 AC	1.31 AC
Parcel #17	1.31 AC	1.31 AC	1.31 AC
Parcel #18	1.31 AC	1.31 AC	1.31 AC
Parcel #19	1.31 AC	1.31 AC	1.31 AC
Parcel #20	1.31 AC	1.31 AC	1.31 AC
Parcel #21	1.31 AC	1.31 AC	1.31 AC
Parcel #22	1.31 AC	1.31 AC	1.31 AC
Parcel #23	1.31 AC	1.31 AC	1.31 AC
Parcel #24	1.31 AC	1.31 AC	1.31 AC
Parcel #25	1.31 AC	1.31 AC	1.31 AC
Parcel #26	1.31 AC	1.31 AC	1.31 AC
Parcel #27	1.31 AC	1.31 AC	1.31 AC
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Parcel #31	1.31 AC	1.31 AC	1.31 AC
Parcel #32	1.31 AC	1.31 AC	1.31 AC
Parcel #33	1.31 AC	1.31 AC	1.31 AC
Parcel #34	1.31 AC	1.31 AC	1.31 AC
Parcel #35	1.31 AC	1.31 AC	1.31 AC
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Parcel #37	1.31 AC	1.31 AC	1.31 AC
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Parcel #39	1.31 AC	1.31 AC	1.31 AC
Parcel #40	1.31 AC	1.31 AC	1.31 AC
Parcel #41	1.31 AC	1.31 AC	1.31 AC
Parcel #42	1.31 AC	1.31 AC	1.31 AC
Parcel #43	1.31 AC	1.31 AC	1.31 AC
Parcel #44	1.31 AC	1.31 AC	1.31 AC
Parcel #45	1.31 AC	1.31 AC	1.31 AC
Parcel #46	1.31 AC	1.31 AC	1.31 AC
Parcel #47	1.31 AC	1.31 AC	1.31 AC
Parcel #48	1.31 AC	1.31 AC	1.31 AC
Parcel #49	1.31 AC	1.31 AC	1.31 AC
Parcel #50	1.31 AC	1.31 AC	1.31 AC
Parcel #51	1.31 AC	1.31 AC	1.31 AC
Parcel #52	1.31 AC	1.31 AC	1.31 AC
Parcel #53	1.31 AC	1.31 AC	1.31 AC
Parcel #54	1.31 AC	1.31 AC	1.31 AC
Parcel #55	1.31 AC	1.31 AC	1.31 AC
Parcel #56	1.31 AC	1.31 AC	1.31 AC
Parcel #57	1.31 AC	1.31 AC	1.31 AC
Parcel #58	1.31 AC	1.31 AC	1.31 AC
Parcel #59	1.31 AC	1.31 AC	1.31 AC
Parcel #60	1.31 AC	1.31 AC	1.31 AC
Parcel #61	1.31 AC	1.31 AC	1.31 AC
Parcel #62	1.31 AC	1.31 AC	1.31 AC
Parcel #63	1.31 AC	1.31 AC	1.31 AC
Parcel #64	1.31 AC	1.31 AC	1.31 AC
Parcel #65	1.31 AC	1.31 AC	1.31 AC
Parcel #66	1.31 AC	1.31 AC	1.31 AC
Parcel #67	1.31 AC	1.31 AC	1.31 AC
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Parcel #69	1.31 AC	1.31 AC	1.31 AC
Parcel #70	1.31 AC	1.31 AC	1.31 AC
Parcel #71	1.31 AC	1.31 AC	1.31 AC
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Parcel #75	1.31 AC	1.31 AC	1.31 AC
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Parcel #77	1.31 AC	1.31 AC	1.31 AC
Parcel #78	1.31 AC	1.31 AC	1.31 AC
Parcel #79	1.31 AC	1.31 AC	1.31 AC
Parcel #80	1.31 AC	1.31 AC	1.31 AC
Parcel #81	1.31 AC	1.31 AC	1.31 AC
Parcel #82	1.31 AC	1.31 AC	1.31 AC
Parcel #83	1.31 AC	1.31 AC	1.31 AC
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Parcel #85	1.31 AC	1.31 AC	1.31 AC
Parcel #86	1.31 AC	1.31 AC	1.31 AC
Parcel #87	1.31 AC	1.31 AC	1.31 AC
Parcel #88	1.31 AC	1.31 AC	1.31 AC
Parcel #89	1.31 AC	1.31 AC	1.31 AC
Parcel #90	1.31 AC	1.31 AC	1.31 AC
Parcel #91	1.31 AC	1.31 AC	1.31 AC
Parcel #92	1.31 AC	1.31 AC	1.31 AC
Parcel #93	1.31 AC	1.31 AC	1.31 AC
Parcel #94	1.31 AC	1.31 AC	1.31 AC
Parcel #95	1.31 AC	1.31 AC	1.31 AC
Parcel #96	1.31 AC	1.31 AC	1.31 AC
Parcel #97	1.31 AC	1.31 AC	1.31 AC
Parcel #98	1.31 AC	1.31 AC	1.31 AC
Parcel #99	1.31 AC	1.31 AC	1.31 AC
Parcel #100	1.31 AC	1.31 AC	1.31 AC

\* Single Family lot coverage will not exceed 45%. Therefore no open space is required.  
 \*\* Required open space is based on the following criteria: T10 & CU req 10% open space, R1 req 10% open space.  
 \*\*\* Existing or proposed bodies of water, including stormwater management areas and areas subject to future floodplain, which may be used to offset up to a maximum of 15 percent of the required open space area. Lake County LDC Section 10-411(e)(4)(k).  
 \*\*\*\* Additional water management areas may be used within individual parcels, at the time of Development Order Approval.

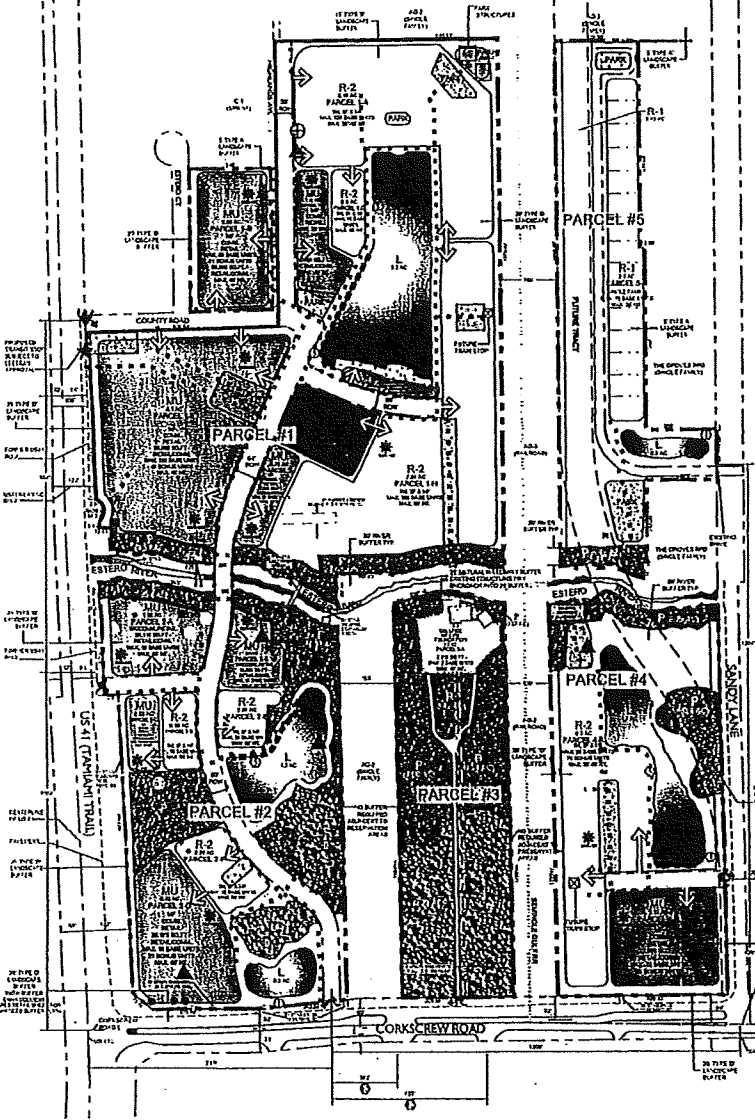
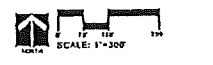
**LEGEND - BUILDING TYPES (R2 PARCELS)**

T10 - TOWNHOUSE  
 T11 - TWO FAMILY ATTACHED  
 T12 - MULTIFAMILY  
 Maximum units in R-2 parcels can be any combination of T10, T11 or T12 type.

**LEGEND EXISTING STRUCTURES\***

- RETAIN IN PLACE
- REMOVE
- PURCHASED BY THIRD PARTY
- RELOCATE
- UNDETERMINED

\* The determination of the status of the structures to be determined at the time of Development Order Approval (Subject to Army Corps of Engineers permitting)



Approved as Exhibit C-1  
 NCP Page 1 of 3  
 Resolution # 2007-021

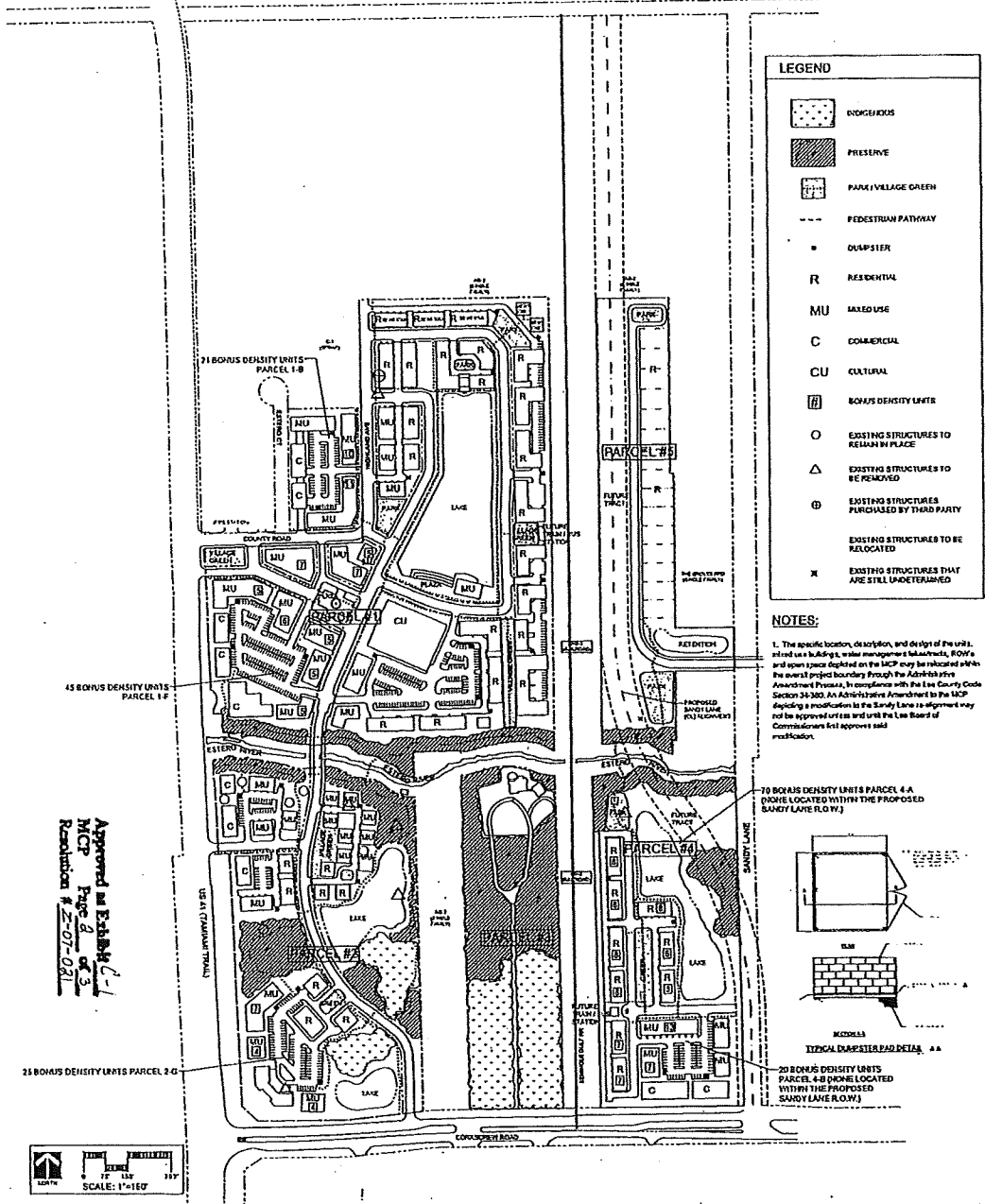
RECEIVED  
 JUN 07 2007  
 COMMUNITY DEVELOPMENT

**ESTERO ON THE RIVER**  
 MASTER CONCEPT PLAN  
 PREPARED FOR: THE LAND DEVELOPMENT GROUP  
 REL 2006-00018

**WilsonMiller**  
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 Landscape Architects • Transportation Consultants  
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DCI 2005-00041

Exhibit C-1  
 Page 1 of 2



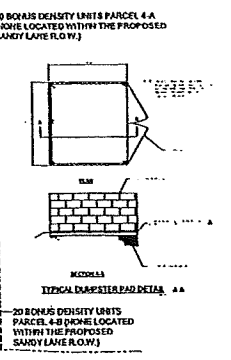
Approved in Exhibit C-1  
MCP Page 3 of 3  
Resolution # Z-07-021

**LEGEND**

- EXISTING
- PRESERVE
- PARK/VILLAGE GREEN
- PEDESTRIAN PATHWAY
- DUMPSTER
- RESIDENTIAL
- MIXED USE
- COMMERCIAL
- CULTURAL
- BONUS DENSITY UNITS
- EXISTING STRUCTURES TO REMAIN IN PLACE
- EXISTING STRUCTURES TO BE REMOVED
- EXISTING STRUCTURES PURCHASED BY THIRD PARTY
- EXISTING STRUCTURES TO BE RELOCATED
- EXISTING STRUCTURES THAT ARE STILL UNDETERMINED

**NOTES:**

1. The specific location, description, and design of the unit, and use including, but not limited to, building, ROW's and open space depicted on the MCP may be indicated within the overall project boundary through the Administrative Amendment Process, in compliance with the Lee County Code Section 34-360. An Administrative Amendment to the MCP depicting a modification to the Sandy Lane re-alignment may not be approved until and until the Lee Board of Commissioners has approved said modification.



**ESTERO ON THE RIVER**  
**MASTER CONCEPT PLAN**

PREPARED FOR: THE LAND DEVELOPMENT GROUP L.L.C.

2.3

REVISIONS:

NO.	DATE	DESCRIPTION
1		
2		
3		

**Wilson Miller**

Planner • Engineer • Architect • Surveyor  
Landscape Architect • Transportation Consultant

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JUN 07 2007

REZ 2006-00018

COMMUNITY DEVELOPMENT

DCI 2005-00041

Exhibit C-1  
Page 2 of 2



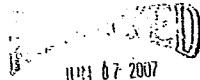
## PARCEL SUMMARY

Parcel Number	Land Use	Maximum Height	Maximum Commercial/Office/Retail Sq Ft	Maximum Base Dwelling Units	Maximum Bonus Density Units
<b>PARCEL #1</b>					
1-A	R-2	3 stories - 45' 35' maximum within 100' of any boundary adjacent to existing single family residential		120	0
1-B	MU	3 stories/retail - 60'	30,685	40	21
1-C	MU	3 stories/retail - 60'	16,300	20	0
1-D	R-2	3 stories - 45'		15	0
1-E	MU	3 stories - 45'	5,435	0	0
1-F	MU	3 stories/retail 45' w/in 100' of US 41 60' for the balance of the property	83,080	120	45
1-G	CU	3 stories - 45' w/exception for architectural tower feature	36,000	0	0
1-H	R-2	3 stories/parking 45' w/in 100' of Estero River 60' for the balance of the property	0	105	0
1-I	MU	3 stories / retail 45' w/in 100' of Estero River 60' for the balance of the property	11,010	25	0
Max Residential Units:					445
Bonus Residential Units:					68
Max Commercial Floor Area:					192,510 SF Total
Office					53,215 SF
Retail					103,295 SF
Cultural					36,000 SF
<b>PARCEL #2</b>					
2-A	MU	3-story - 45'	20,115	15	0
2-B	MU	3-story - 45'	13,950	14	0
2-C	MU	3-story - 45'	7,780	5	0
2-D	R-2	3-story - 45'		10	0
2-E	R-2	4-story - 60'		20	0
2-F	R-2	4-story - 60'		12	0
2-G	MU	3-story - 45'	35,675	10	25
Max Residential Units:					86
Bonus Residential Units:					25
Max Commercial Floor Area:					77,520 SF Total
Office					25,040 SF
Retail					52,480 SF

Parcel Number	Land Use	Maximum Height	Maximum Commercial/Office/Retail Sq Ft	Maximum Base Dwelling Units	Maximum Bonus Density Units
<b>PARCEL #3</b>					
3-A	College of Life	45'	2000 in addition to existing SF	2	N/A
Max Residential Units:					2
Max Commercial Floor Area:					Existing plus 2000 SF
<b>PARCEL #4</b>					
4-A	R-2	3-story - 45' w/in 200' of Corkscrew Road & 100' of Sandy Lane & Estero River 35' maximum within 150' of any boundary adjacent to existing single family residential 3 Stories/Parking 60' on Balance of Site	0	90	70
4-B	MU	3-story - 45'	27,970	12	20
Max Residential Units:					102
Bonus Residential Units:					90
Max Commercial Floor Area:					27,970 SF Total
Office					9,745 SF
Retail					18,225 SF
<b>PARCEL #5</b>					
5-A	R-1 Single Family	2-stories - 35'	0	15	N/A
Max Residential Units:					15
<b>SUMMARY</b>					
Max Residential Units (Request):					530 Total
(349 Base Units + 181 Bonus Density Units):					530 Total
Max Bonus Residential Units:					181
Max Commercial Floor Area:					300,000
SF					
Office					68,000
Retail					178,000
SF					
Cultural					36,000
SF					

\*Including bonus density. The maximum number of units are shown per parcel, however, on a cumulative basis, the total of all parcels may not exceed 530 units.

Approved as Exhibit  
MCP Page 3 of 3  
Resolution # Z-07-021



COMMUNITY DEVELOPMENT

REZ 2006-00018

APPROVED	
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DATE	
BY	
TITLE	

**ESTERO ON THE RIVER**  
MASTER CONCEPT PLAN  
PREPARED FOR: THE LAND DEVELOPMENT GROUP L.L.C.

DCI 2005-00041 Exhibit C-2  
Page 1 of 1

**WilsonMiller**

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EXHIBIT D

**Estero on the River  
Mixed Use Planned Development**

**Design Elements**

**DCI 2005-00041 and REZ2006-00018**

**Lee County, Florida  
March 8, 2007**

**Revised March 30, 2007**

**Prepared by:  
WilsonMiller, Inc  
3200 Bailey Lane, Suite 200  
Naples, FL 34105  
PH: 239-649-4040**

## PURPOSE

These design elements identify the site design concepts as described in the Narrative/Justification Statement, submitted with DC1 2005-00041 and REZ2006-00018, for the Estero on the River Project Mixed Use Planned Development (MPD).

These design elements are intended to ensure a compatible integration of residential, commercial, office, cultural, public and open space areas. They seek to help promote a walkable, livable, and pedestrian-friendly environment at a human scale within the main corridor of the Estero Community. This is intended to be a "true" mixed-use (neo-traditional) development in the vertical and horizontal sense. In essence, this will be the cultural gathering place for the Estero Community by creating a sense of place that embodies New Urbanist and Smart Growth concepts.

## INTEGRATION OF RESIDENTIAL, COMMERCIAL, OFFICE, CULTURAL, AND RECREATIONAL LAND USES

### **MIXED USE PARCELS**

- Parcels designated as Mixed Use will contain a mixture of residential, cultural/civic and commercial uses both horizontally and vertically.
- Parcels designated as Mixed Use (MU) include those uses listed in the schedule of uses in DCI 2005-00041.
- Parcels designated as Mixed Use (MU) may have a variety of residential housing types. The following residential unit types may include:
  - (1) Townhouse
  - (2) 2 Family Attached
  - (3) Multi-Family (rental and owner occupied)
    - Condominiums
    - Village Flats (over retail)
- The design of the mixed use areas will feature courtyards, fountains, and connected green areas as gathering spaces and activity centers.
- These areas will encourage social interaction between residents and guests utilizing the facilities.

## **CULTURAL PARCELS**

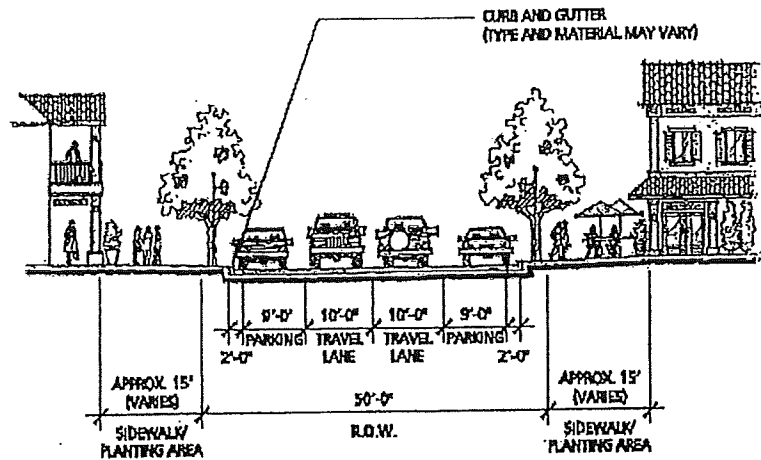
- Parcels designated as Cultural (CU) may also include those uses listed in the schedule of uses in DCI 2005-00041.
- The development will provide a cultural community component, such as the proposed regional playhouse theatre.
- The proposed theatre is located within the "Mixed Use Village" and intended to be the cultural heart of "Estero on the River." The theatre will provide entertainment and cultural enrichment for the region.

## **RESIDENTIAL PARCELS**

- Parcels designated as Residential (R1 and R2) shall be developed in accordance with the Schedule of Uses in DCI 2005-00041.
- A variety of residential units and housing types shall be provided within the development. The following housing types will be provided:
  - (1) Single-Family
  - (2) Townhouse
  - (3) 2 Family Attached
  - (4) Multi-Family (rental and owner occupied)
    - Condominiums
- Residential unit types may be available at multiple price points and may be both owner-occupied or rental.

## **PEDESTRIAN AND BICYCLE CONNECTIVITY**

- The residential and commercial parcels are designed to provide for the most extensive connectivity, encourage pedestrian activity between the various uses, thereby reducing vehicular miles.



### MIXED USE VILLAGE STREET

- The Mixed Use Village will provide a rich streetscape experience for the pedestrian and provide interconnections for automobile, bicycle and pedestrian traffic.
- Streetscape elements will include benches, lighting, sidewalk café tables, planters, signage, and decorative paving, where appropriate.
- Landscaped boulevards, traffic circles, detached sidewalks, formal lawns, narrow streets, and on-street parking shall be incorporated within the project to reduce and slow down the vehicular traffic, decreasing impervious areas and making the streets safe and pedestrian-friendly while implementing Smart Growth Concepts and Guidelines endorsed by Lee County and the State of Florida.
- Pedestrian walkways/links shall be designed to address both site security concerns and pedestrian safety.
- Sidewalks or pedestrian ways shall connect the on-site pedestrian systems to pedestrian systems on adjacent developments.
- A riverwalk and trail system is planned for the preserve areas along the Estero River, which will provide pedestrian and bicycle access that does not exist today.

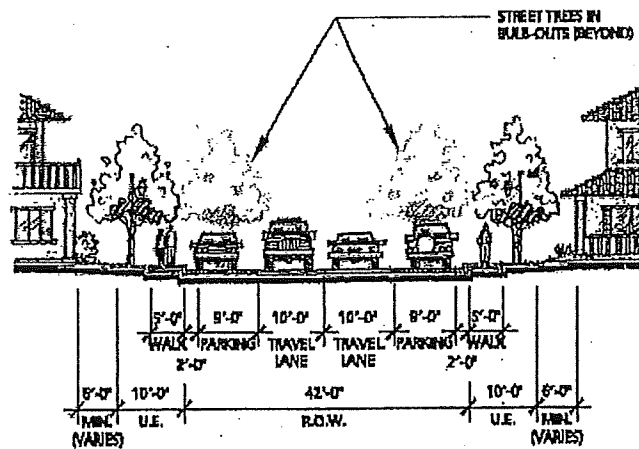
### PUBLIC SPACES

- Community elements shall be developed as passive recreational amenities, including plazas, a village green, fountains etc., to provide additional open space elements for residents, tenants, and patrons.

- A series of green spaces is provided, including village greens, parks, courtyards, plazas, greenways, etc. which are intended to provide connectivity and create neighborhood destinations and gathering spaces.

## TRANSPORTATION

- Estero on the River is designed to be open to the public and no gates are proposed.
- Multi-modal transportation is encouraged and may include walking, biking, Lee Tran, and provide the opportunity to connect to a future rapid bus/light rail system.
- The project will designate a location on the MCP to accommodate a future train/ bus / light rail stations.
- Facilities for a mass transit stop will be provided along US 41 and will be integrated into the pedestrian system.
- Convenient access to public transportation, ride-share and passenger drop off areas shall be provided. The following examples are design techniques that may be used to meet this requirement:
  - (1) Accommodate public transportation vehicles on the road network that services the development.
  - (2) Provide passenger loading/unloading facilities.
  - (3) For streets adjacent to a development, provide sidewalks and other pedestrian facilities such as bus shelters.
  - (4) Provide a convenient and safe access between building entrances and a transit or bus area, such as walkways or painted pedestrian crosswalks.

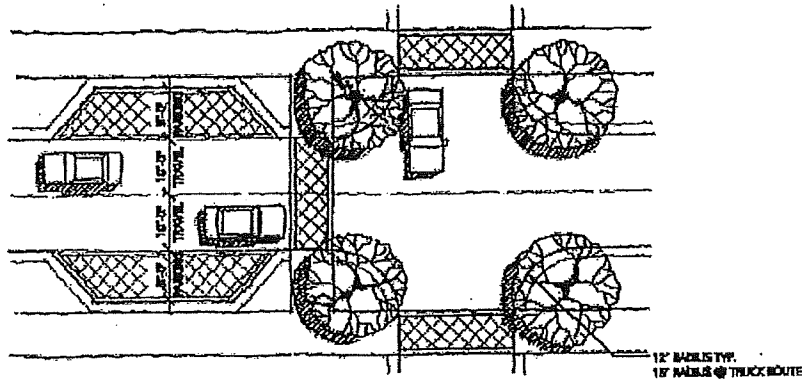


**RESIDENTIAL NEIGHBORHOOD STREET**

- Shopping, local convenience, entertainment offered in one development promotes internal capture, by reducing external trips on US 41.

### TRAFFIC CALMING TECHNIQUES

- Traffic Calming techniques will be used throughout the project. These techniques may include the following:
  - (1) Narrow streets
  - (2) Smaller radii at corners
  - (3) On-street parking
  - (4) Street Trees
  - (5) Textured paving
  - (6) Roundabouts/ Lane deflections
- Traffic calming devices, at the discretion of the developer, shall be provided at points where conflicting pedestrian and vehicular movements occur.



TYPICAL STREET DIMENSIONS AND RADIUS

- These traffic calming elements will serve to slow the vehicular traffic within the project, as well as provide internal access to each of the proposed uses.

## PARKING

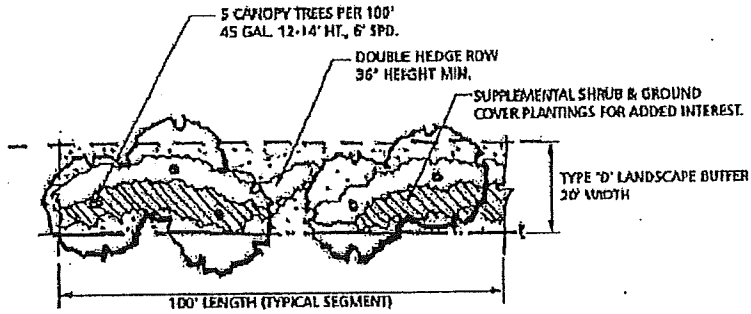
- To the extent possible the site shall be developed to create attractive parking areas that provide convenient and safe multi-modal movement of vehicular, public transportation, bicycles and pedestrian traffic.
- Proposed parking areas will be located interior to the project and will not be visible from perimeter ROW's (Corkscrew Road and US 41).
- On-street parking is encouraged on internal access roads where a main street type of development is desired.
- Shared parking may be incorporated where two uses could utilize parking at different peak times. A Shared Parking Agreement will be submitted at time of local Development Order.
- Parking Garages are also permitted within the development.
- Mixed use buildings will accommodate the required parking through the use of surface parking lots, on-street parking and shared parking.
- The residential areas will provide parking for each unit type.
- Garages are proposed for the individual townhouse units.
- The condominiums and garden apartments are planned as three-story buildings with parking located on ground level.

## LANDSCAPE

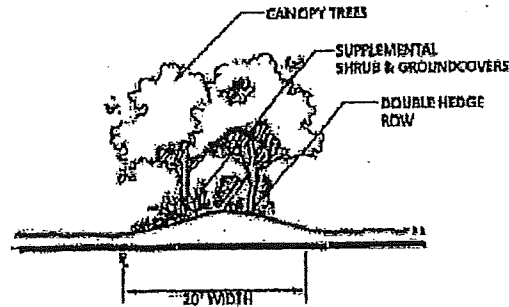
### **PERIMETER BUFFERS**

- The proposed development complies with the provisions of this section of the LDC Section 34-1044 and Chapter 33 that sets forth the design standards for the Estero Community.
- A minimum 20-foot "Type D" buffer is provided along the perimeter ROW's of the overall site.
- Supplemental plantings, as illustrated, will be provided in the US 41 buffer to increase aesthetic appeal.



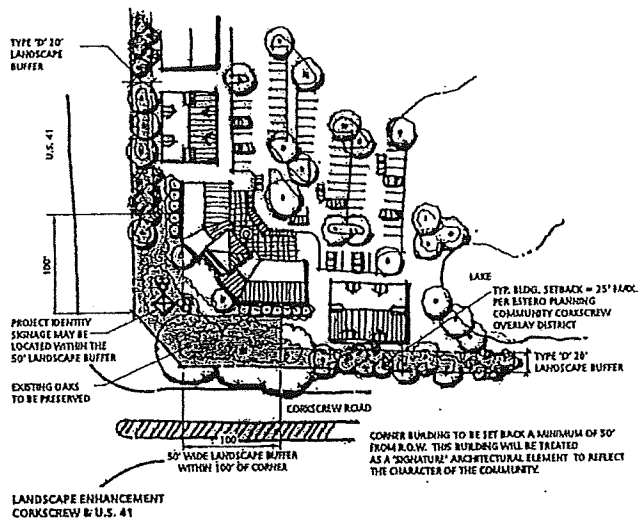


TYPICAL LANDSCAPE BUFFER DETAIL  
TYPE 'D' BUFFER



TYPICAL LANDSCAPE BUFFER DETAIL  
TYPE 'D' BUFFER

- A 20 foot landscape buffer is provided on both sides of the railroad right-of-way.
- At the corner of US 41 and Corkscrew, additional buffer width will be provided to allow for increased landscape enhancement and three Heritage Oaks, as identified on the Master Concept Plan, will be preserved.



### INTERSECTION OF CORKSCREW AND US 41

- Pursuant to Section 34-1044 (b-note 1); landscape buffers are not required between uses within a mixed use development.

#### URBAN AREAS

- Within the urban areas the landscape shall have a formal street tree pattern and organized character.

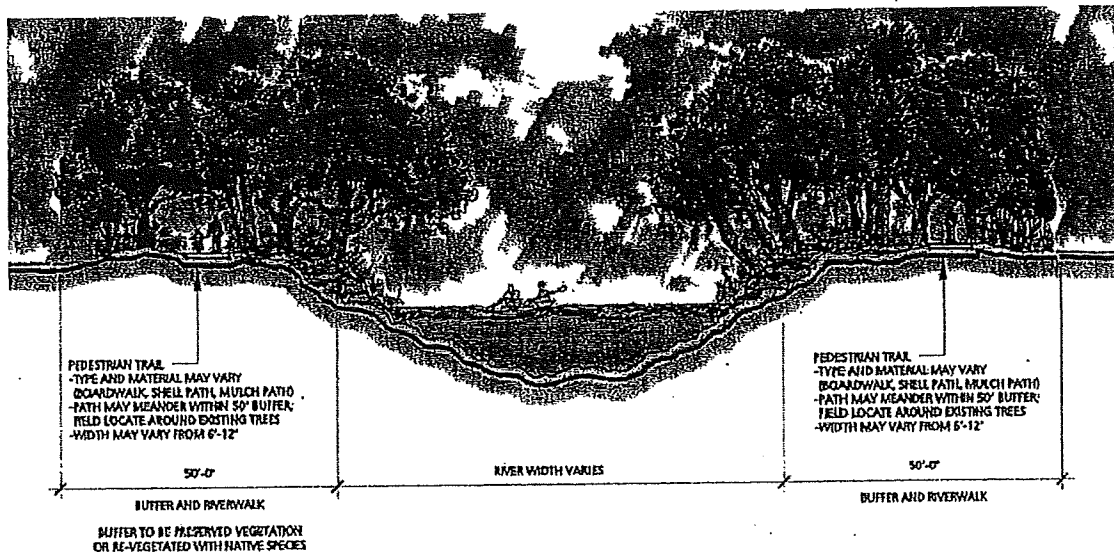
#### NATURAL AREAS

- The River buffer shall be a minimum of 50 feet from top of bank in width and will preserve and restore native vegetation. Exotic vegetation will be removed along the Estero River and this area will be replanted with native ecosystems.
- Landscape adjacent to preserve areas will utilize native plant materials and have a more organic character.

#### PUBLIC ACCESS TO RIVER

- The Estero River shall be integrated as part of the overall development and will enhance and preserve the Estero River bank to the extent possible.
- Public access to the Estero River shall be provided at multiple points within the development.
- A series of neighborhood green spaces will connect all of the residential areas to the proposed River Buffer.

- A riverwalk or trail system is planned for the preserve areas, which will provide additional public access that does not currently exist.
- Opportunities for public access will include the following, where appropriate and permissible:
  - (1) Riverwalk with seating areas (benches, picnic tables, etc.) and overlooks.
  - (2) Canoe launch facilities.
  - (3) Restaurants, outfitters, etc
- It is the intent of the developer/applicant to replant native vegetation and restore the natural buffer along the Estero River. The natural buffer along the Estero River shall be a minimum of 50 feet in width.



## RIVER BUFFER

### INDIGENOUS VEGETATION

- The development has been designed to preserve and protect indigenous vegetation to the greatest extent possible. Impacts to indigenous vegetation are limited to areas where it was necessary for access.
- A minimum of 5.22 acres of indigenous vegetation will be preserved on the site.
- The required amount of indigenous vegetation does not exist on site, therefore, significant native trees will be preserved on site to meet this requirement. Where possible, clusters of large native trees shall be preserved.

### HISTORICAL ELEMENTS

- The Applicant shall retain in place or remove the following structures:
  - (1) Rustic Tea Garden Outhouse
  - (2) Guiding Star Foundation
  - (3) Limerock Retaining Wall
  - (4) Machine Woodworking Foundations
  - (5) Boatworks and Plumbing Blacksmith Shop Foundations
  - (6) Bomb Shelter
  - (7) Campbell-Trebell Residence
- The project may be subject to U.S. Army Corps of Engineers permitting, as a result the agency may or may not require the removal of these structures.
- If it is determined that removal is mandated, the Applicant may photo-document and remove in accordance with the Department of Interior criteria and with the assistance of the State Historical Preservation Office.
- If it is determined that no removal is mandated, then these structures will be included in the preservation plans that will be submitted at the time of Development Order Approval.

Prepared by:  
Donna Marie Collins  
Assistant County Attorney  
P. O. Box 398  
Fort Myers, FL 33902-0398

INSTR # 2007000241929, Pages 17  
Date: 08/03/2007 at 09:59 AM  
Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$146.00  
Deputy Clerk AFURNIER  
#1

Exhibit E

DEVELOPMENT CONTRACT

between

THE BOARD OF COUNTY COMMISSIONERS  
Lee County, Florida

and

---

Village Partners, L.L.C.

---

The Cash Contribution Option

of the

Housing Bonus Density Program

(Estero on the River MPD)

**COPY**

## AGREEMENT

This agreement is made and entered into this 4th day of June 2007, between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and Village Partners, LLC, a Florida Limited Liability Corporation, with an address of 9130 Corsea Del Fontana Way, Naples, Florida 34109, hereinafter referred to as the "DEVELOPER."

WITNESSETH, that for a consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, County and the Developer hereby agree as follows:

### ARTICLE I

1.1 For the purpose of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS set forth in this Agreement will be consistent with those set forth in the Lee County Land Development Code (LDC), as amended.

### ARTICLE II

2.1 In order to establish the background, context, and frame of reference for this agreement, and to manifest the objectives and the intentions of the respective parties herein, the following statements, representations, and explanations are set forth. Such statements, representations, and explanations will be accepted as predicates for the undertakings and commitments included within the provisions that follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which the Agreement is based.

2.2 The "COUNTY" adopted a Comprehensive Plan pursuant to Chapter 125, Florida Statutes by Lee County Ordinance 89-02.

2.3 The Housing Element of the Comprehensive Plan includes a Goal that requires the County to develop mechanisms to encourage the provision of very low and low income housing.

2.4 The "COUNTY," created a Housing Bonus Density Program to stimulate the construction of very low and low income housing in Lee County. One option under the Program is for Developers to obtain bonus density through monetary contributions to the Affordable Housing Trust Fund.

2.5 The "DEVELOPER" desires to contribute funds to the Housing Bonus Density Program's Affordable Housing Trust Fund to support very low and low income housing in order to obtain permission to construct up to 181 bonus density units on a 85.07±-acre parcel of land described in Exhibit A. Including the 181 bonus density units, the project proposes a total of 530 multi-family dwelling units on the property. The resulting density will be 7.84 dwelling units per acre in the Outlying Suburban/Urban Community Future Land Use Categories.

### ***Cash Contribution Option Development Contract***

2.6 The "COUNTY," authorizes the development of up to 181 bonus density units upon execution of this agreement and receipt of the monetary contribution to the Affordable Housing Trust Fund described herein.

**ARTICLE III**  
**Implementation**

3.1 No development activity may begin until the local development order is approved and permits are issued.

3.2 The Developer must complete the project in accordance with the time frames for construction set forth in the development order issued by the County.

**ARTICLE IV**  
**Assurances**

4.1 The Developer enters into this contract as a condition for issuance of a final local development order that will authorize the construction of up to 181 bonus density units on the property described in Exhibit A. The Developer must comply with the terms and conditions of the development order approval.

4.2 The Developer agrees to fulfill all pre-contract conditions as a pre-requisite for participating in the Housing Density Bonus Program.

4.3 The Developer agrees to comply with all other legal requirements imposed by current or future federal, state, or local laws and regulations.

4.4 The Developer agrees to pay:

\$11,429.00 per bonus density unit in accordance with Lee County Administrative Code 13-12. The Developer's request to construct 181 bonus density units will require payment of \$2,068,649 into the Affordable Housing Trust Fund.

$\$2,068,649 = \$11,429 \times 181 \text{ units}$

4.5 The Developer and his successors are bound by the following conditions:

1. Development of the property legally described in Exhibit A must be consistent with the two-page "Estero on the River MPD Master Concept Plan" and attached as Exhibit B.
2. Development must comply with all requirements of the LDC at time of local development order approval. If changes to the plan of development are desired, appropriate approvals will be necessary in accordance with the LDC.

***Cash Contribution Option  
Development Contract***

3. This agreement is not a building permit or development order. It does not vest development rights other than an increase in density by up to 181 units. Development of the property must comply with all applicable federal, state or Lee County permitting requirements. No variances or deviations from the LDC open space, parking, or buffering has been granted by virtue of this agreement. Furthermore, the Developer will not seek variances or deviations from those specific provisions of the LDC in the future.
  4. The Developer must pay a total of \$2,068,649 into the County's Affordable Housing Trust Fund as payment for 181 bonus dwelling units (\$11,429 per bonus unit). No development orders will be issued until the contribution is paid in full. Contributions will not be refunded once made, even if the development in question fails to occur.
  5. Bonus units must be located only in the portion of the project with the Future Land Use designation of "Urban Community". Bonus units may not be located in the portion of the project designated as "Outlying Suburban" on Map 1 of the Lee County Comprehensive Plan Future Land Use Maps Series.
  6. The Developer must design the project so that it is "transit ready" and incorporate bike pathways and sidewalks into the site design.
  7. The developer will sell 10% of the total number of dwelling units constructed to qualified moderate income eligible families for initial sale. Moderate income means a person or household whose annual (gross) income does not exceed 120 percent of the area's median income, as determined by HUD on a year to year basis.
  8. Prior to local development order approval, the landscape plan must delineate a minimum of 14 acres of indigenous plant community and native tree preservation, including areas to be restored per the Estero on the River Restoration Plan. Parcel 3 must include 3.69 acres of indigenous preservation of oak and pine scrub. All preservation areas being used to meet the 14 acre requirement must be located outside of any existing or future easements. The roadway proposed within Parcel 2 that bisects the existing indigenous plant communities must be designed to provide wildlife underpass with a minimum 3-foot height and 6-foot width using either a box culvert, conspan, or bridge.
- 4.6 The County authorizes the development of 181 bonus density units provided the conditions set forth in this agreement are fully satisfied by the Developer.

**ARTICLE V**  
**Assignability**

5.1 Density bonuses for which contributions are made will run with the specific development plan submitted and approved by the County concurrent with the request for bonus density units. The development of units pursuant to this Agreement binds all successors in interest and future owners to the terms and conditions stated herein.

***Cash Contribution Option  
Development Contract***



ARTICLE VI  
Breach

6.1 Enforcement of this Agreement will be governed by Lee County Ordinances. Waiver by the County of a breach of any provision of this agreement will not be construed to be a modification of the terms of this agreement.

ARTICLE VII  
Miscellaneous Provisions

7.1 This document incorporates all prior negotiation, correspondence, conversation, or understanding applicable to the authorization to construct up to 181 bonus density units on the 85.07±-acre property. The parties agree that there are no commitments, agreements, or understanding concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof will be predicated upon any prior representations or agreements whether oral or written.

7.2 It is understood by the Developer that the County will not be held responsible for refunding any portion of the contribution for the County's termination of the Agreement due to the Developer's failure to abide by the provisions of the Agreement or any conditions imposed by the LDC.

7.3 The Developer agrees to indemnify and hold the County harmless from or on account of injuries, damages, omissions, commissions, actions or causes of action accruing as a result of services performed, or not performed, pursuant to this Agreement.

ARTICLE VIII  
Amendments

8.1 The covenants, terms, and provisions contained in this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. The Chairman of the Lee County Board of County Commissioners, or his designated representative, will act in behalf of the COUNTY in executing amendments(s) to the Agreement. In the event of conflicts between the requirements, provision, or terms of the Agreement and written amendment(s), the provisions of the latest executed amendment(s) will take precedence.

8.2 Any changes in the terms of this Agreement are subject to the approval of the Lee County Attorney.

**Cash Contribution Option  
Development Contract**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

CLERK OF CIRCUIT COURT  
Charlie Green, Clerk

By: Marcia Wilson

By: Robert P. Janes  
Robert P. Janes, Chair



APPROVED AS TO FORM

Donna Marie Collins  
Donna Marie Collins  
Office of the County Attorney

[Signature]  
(Witness)

Jennifer D'Amos

[Signature] DENISE TRATTNER  
(Witness)

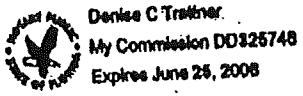
\_\_\_\_\_  
(Witness)

By: VILLAGE PARTNERS, L.L.C.  
a Florida Limited Liability Corporation

By: [Signature]  
Joseph E. D'Jamoos, Managing Member

State of Florida  
County of Collier

The foregoing contract was acknowledged before me this 23 day of July 2007, by Joseph E. D'Jamoos, Managing Member, for Village Partners, L.L.C., a Florida Limited Liability Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.



[Signature]  
(Signature of person taking acknowledgment)  
DENISE C TRATTNER  
(Name typed, printed, or stamped)  
(Title or Rank)  
(Serial Number, if any)

Approved by the Lee County Board of County Commissioners  
Hearing Date: 6/4/2007

Exhibit A: Legal Description  
Exhibit B: Master Concept Plan date stamped received at Community Development on June 7, 2007

**Cash Contribution Option  
Development Contract**

**Barraco**  
and Associates, Inc.

www.barraco.net  
Civil Engineers, Land Surveyors and Planners

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**DESCRIPTION**

Parcel in  
Sections 28 and 33, Township 46 South, Range 25 East,  
Lee County, Florida  
COMMUNITY DEVELOPMENT

A tract or parcel of land lying in Sections 28 and 33, Township 46 South, Range 25 East, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

DCI 2005-00041

PARCELS 1 & 2

Commencing at the East Quarter Corner of said Section 33 run S88°26'11"W along the South line of the Northeast Quarter (NE 1/4) of said Section 33 for 1,319.50 feet to the Southwest Corner of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°08'18"W along the West line of said Fraction for 1,312.23 feet to the Northwest Corner of said Fraction; thence run N88°37'43"E along North line of said Fraction for 164.78 feet to the Southeast Corner of the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°08'42"W along the East line of said Fraction for 58.89 feet to an intersection with the Northerly right of way line of Corkscrew Road (State Road 850)(variable width)(F.D.O.T. right of way, Section No. 12640-2601) and the POINT OF BEGINNING.

From said Point of Beginning run S83°51'56"W along the said Northerly right of way line of Corkscrew Road for 263.54 feet; thence run S89°34'34"W along said Northerly right of way line for 315.90 feet; thence run N48°17'13"W along said Northerly right of way line for 75.44 feet to an intersection with the Easterly right of way of State Road 45 (Tamiami Trail)(200' wide) (F.D.O.T. right of way, Section No. 1201-203(117)); thence run N02°27'28"W along said right of way line, being 132 feet Easterly as measured perpendicular to the center line thereof for 877.98 feet; thence run S87°32'32"W along said right of way for 39.00 feet to the Southeast corner of lands described in deed recorded as Instrument No. 2006000134175, Lee County Records thence run N02°27'28"W along the Easterly line of said Lands, being 93 feet Easterly as measured perpendicular to the center line of said State Road 45 for 262.86 feet; thence run S87°23'02"W along said Easterly line for 3.46 feet; thence run N02°35'37"W along said Easterly line for 71 feet, more or less to an intersection with the Southerly top of bank of the Estero River; thence run Easterly along said Southerly top of bank of the Estero River for 743 feet more or less to an intersection with the Easterly line of the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run S01°08'42"E along the East line of said fraction for 1,095 feet more or less to the POINT OF BEGINNING.

Containing 18.24 acres, more or less

PARCEL 3

Commencing at the East Quarter Corner of said Section 33 run S88°26'11"W along the South line of the Northeast Quarter (NE 1/4) of said Section 33 for 1,319.50 feet to the Southwest Corner of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°08'18"W along the West line of said Fraction for 1,312.23 feet to the Northwest Corner of said Fraction;

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**Barraco**  
and Associates, Inc.

COMMUNITY DEVELOPMENT ENGINEERS, Land Surveyors and Planners

DCI 2005-00041

DESCRIPTION (cont.)

thence run N88°37'43"E along North line of said Fraction for 329.56 feet to the Southwest Corner of the East Half (E 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°09'06"W along the West line of said Fraction for 59.94 to an intersection with the Northerly right of way line of Corkscrew Road (State Road 850)(130 feet wide)(F.D.O.T. right of way, Section No. 12640-2601) and the POINT OF BEGINNING.

From said Point of Beginning continue N01°09'06"W along the West line of said fraction for 1,164 feet more or less to an intersection with the Southerly top of bank of the Estero River; thence run Easterly along said Southerly top of bank of the Estero River for 338 feet more or less to an intersection with the East line of said Fraction; thence run S01°09'54"E along said East line for 1159 feet more or less to intersection with said Northerly right of way line of Corkscrew Road; thence run S89°34'34"W along said Northerly right of way line for 329.58 feet to the POINT OF BEGINNING.

Containing 8.92 acres, more or less.

PARCEL 4

Commencing at the East Quarter Corner of said Section 33 run N01°11'31"W along the East line of the Northeast Quarter of said Section 33 for 1,307.79 feet to the Southeast Corner of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run S88°37'43"W along the South line of said Fraction for 529.13 feet to an intersection with the East line of the West 130 feet of the West Half (W 1/2) of the East Half (E 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run N01°09'54"W along said East line for 52.34 feet to an intersection with the Northerly right of way line of Corkscrew Road (State Road 850)(130 feet wide)(F.D.O.T. right of way, Section No. 12640-2601) and the POINT OF BEGINNING.

From said Point of Beginning continue N01°09'54"W along said East line for 1155 feet more or less to an intersection with the Southerly top of bank of the Estero River; thence run Easterly along said Southerly top of bank of the Estero River for 513 feet more or less to an intersection with the Westerly right of way line of Sandy Lane (60 feet wide); thence run S01°11'31"E along said Westerly right of way line, being 30 feet Westerly as measured perpendicular to the East line of the Northeast Quarter of said Section 33 for 1,145 feet more or less to intersection with said Northerly right of way line of Corkscrew Road; thence run S89°34'34"W along said Northerly right of way line for 499.14 feet to the POINT OF BEGINNING.

Containing 13.18 acres, more or less.

PARCEL 6

Beginning at Northwest Corner of Lot 9 as shown on the Record Plat of Marshall's River Groves Unit 1 as recorded in Plat Book 12, Page 131, Lee County Records run N89°22'51"E along the Northerly line of Lot 9 and Lot 14 of said Record Plat for 240.00 feet to an intersection with the Westerly right of way line of Highlands Avenue; thence run S00°37'09"E along said Westerly right of way line for 419.88 feet to an intersection with the Northerly right of way line of County Road (50 feet wide) as shown on said Record Plat; thence run S88°12'14"W along said right of way line for 240.05 feet to an intersection with the Easterly right of way line of Estero Court (50 feet wide) as shown on said Record Plat;

**DESCRIPTION (cont.)**

thence run  $N00^{\circ}37'09''W$  along said Easterly right of way line for 424.82 feet to the POINT OF BEGINNING.  
Containing 2.33 acres, more or less.

**PARCEL 7**

Commencing at the Southeast Corner of said Section 28 run  $N00^{\circ}20'39''W$  along the East line of the Southeast Quarter (SE 1/4) of said Section 28 for 254.00 feet; thence run  $S89^{\circ}39'21''W$  for 30.00 feet to an intersection with the Westerly right of way line of Sandy Lane (60 feet wide) and the POINT OF BEGINNING.

From said Point of Beginning run  $S89^{\circ}39'21''W$  for 205.00 feet; thence run  $S00^{\circ}20'39''E$  for 242.50 feet; thence run  $S88^{\circ}49'17''W$  for 12.00 feet; thence run  $S00^{\circ}20'39''E$  for 47 feet more or less intersection with the Northerly top of bank of the Estero River; thence run Westerly along said Northerly top of bank of the Estero River for 260 feet more or less to an intersection with the East line of the West 165 feet of the East Half (E 1/2) of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $N00^{\circ}26'01''W$  along said East line for 1,559 feet more or less to the Northwest corner of lands described in deed recorded in Official Record Book 3314 at Page 3550, Lee County Records; thence run  $N89^{\circ}48'46''E$  along the north line of said lands for 248.39 feet; thence run  $S00^{\circ}20'39''E$  for 614.68 feet; thence run  $N89^{\circ}39'21''E$  for 12.50 feet; thence run  $S00^{\circ}20'39''E$  for 540.00 feet; thence run  $N89^{\circ}39'21''E$  for 205.00 feet to an intersection with said Westerly right of way line of Sandy Lane (60 feet wide); thence run  $S00^{\circ}20'39''E$  along said right of way line for 150.00 feet to the POINT OF BEGINNING.  
Containing 9.84 acres, more or less.

**PARCEL 5, 8 through 15**

Commencing at the East Quarter Corner of said Section 28 run  $S89^{\circ}48'51''W$  along the north line of the Southeast Quarter (SE-1/4) of said Section 28 for 662.45 feet to the Northwest corner of the East Half (E 1/2) of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $S00^{\circ}26'01''E$  along the West line of said Fraction for 993.10 feet to the POINT OF BEGINNING.

From said Point of Beginning continue  $S00^{\circ}26'01''E$  along said West line for 1,576.92 feet to the Southeast Corner of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $S01^{\circ}09'54''E$  along the East line of the East Half (E 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33 for 11 feet more or less to an intersection with the Northerly top of bank of the Estero River; thence run Westerly along said Northerly top of bank of the Estero River for 340 more or less to an intersection with West line of said Fraction; thence run  $N01^{\circ}09'06''W$  along said west line for 7 feet more or less to the North line of the Northeast Quarter (NE 1/4) of said Section 33; thence run  $S88^{\circ}49'17''W$  along said North line for 164.63 feet to the Northeast Corner of the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 33; thence run  $S01^{\circ}08'42''E$  along the East line of said Fraction for 88 feet more or less to an intersection with the Northerly top of bank of the Estero River;

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**Barraco**  
and Associates, Inc.

Civil Engineers, Land Surveyors and Planners

DESCRIPTION (cont.)

thence run Westerly along said Northerly top of bank of the Estero River for 728 more or less to an intersection with the easterly line of lands described in deed recorded in Official Record Book 2603 at Page 1859, Lee County Records; thence run  $N00^{\circ}35'33''W$  along said easterly line for 65 feet more or less to the northeast corner of said lands; thence run  $S89^{\circ}24'27''W$  for 32.19 feet; thence run  $N01^{\circ}48'05''W$  for 2.49 feet to a point of curvature;

thence run northerly along an arc of curve to the right of radius 50.00 feet (delta  $34^{\circ}26'02''$ ) (chord bearing  $N15^{\circ}24'56''E$ ) (chord 29.60 feet) for 30.05 feet to a point of reverse curvature; thence run northerly along an arc of curve to the left of radius 36.00 feet (delta  $95^{\circ}59'43''$ ) (chord bearing  $N15^{\circ}21'54''W$ ) (chord 53.50 feet) for 60.32 feet; thence run  $N63^{\circ}15'10''W$  along a non-tangent line for 3.36 feet to the Southeast corner of lands described in deed recorded as Instrument No. 2006000134177, Lee County Records; thence run the following two courses along the Easterly line of said lands:  $N02^{\circ}27'43''W$  for 367.61 feet and  $N01^{\circ}02'28''W$  for 129.57 feet to an intersection with the Southerly right of way line of County Road (50 feet wide) as shown on the Record Plat of Marshall's Estero River Groves Unit 1 as recorded in Plat Book 12, Page 131, Lee County Records; thence run  $N88^{\circ}12'14''E$  along said Southerly right of way line for 566.80 feet to and intersection the West line of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of said Section 28; thence run  $N00^{\circ}31'19''W$  along said Fraction for 848.09 feet to the northwest corner of lands described in deed recorded in Official Record Book 3810, at Page 212, Lee County Records; thence run  $N89^{\circ}38'34''E$  along the north line of said lands for 660.91 feet to the POINT OF BEGINNING.

Containing 32.57 acres, more or less.

Parcels 1 thru 15 totally containing of 85.07 acres, more or less.

Subject to easements and restrictions of record.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (1983/90 adjustment) and are based on the East line of the Southeast Quarter (SE 1/4) of said Section 28 to bear  $S00^{\circ}20'39''E$ .

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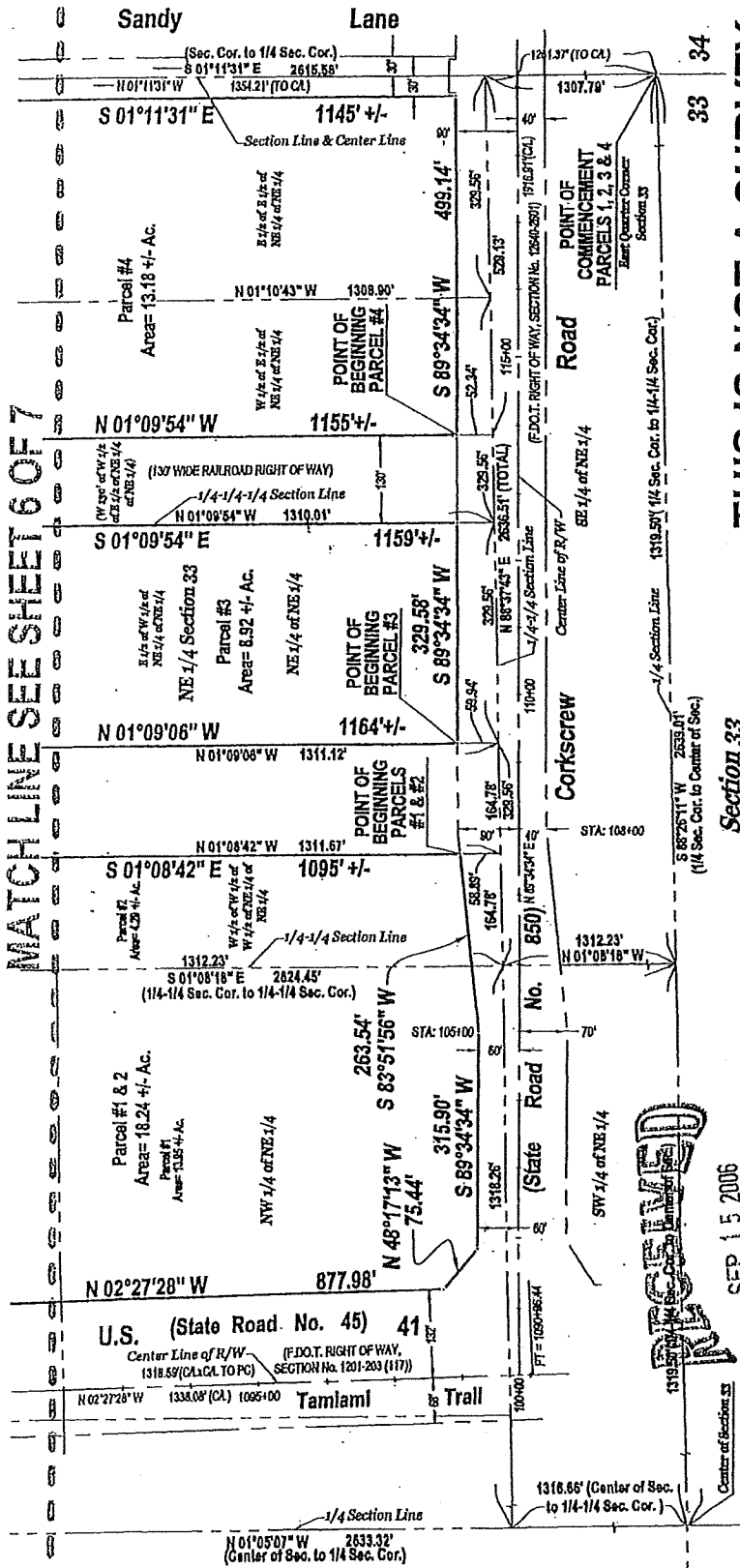
SEP 15 2006

*Scott A. Wheeler* 8/28/06  
Scott A. Wheeler (For The Firm)  
Professional Surveyor and Mapper  
Florida Certificate No. 5949

COMMUNITY DEVELOPMENT  
L:\21986 - JED-Koreshan Rezoning\DESC\21986S01DESC.DOC

DCI 2005-00041

MATCHLINE SEE SHEET 6 OF 7



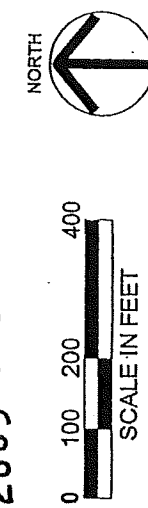
**THIS IS NOT A SURVEY**

Section 33  
Township 46 South, Range 25 East  
2005-00041

DATE SIGNED: *8/22/06*

SCOTT A. WHEELER FOR THE FIRM - EB-6840  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 5849

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



- NOTES:
- ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
  - O.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
  - P.B. - DENOTES PLAT BOOK, LEE COUNTY PUBLIC RECORDS.
  - PG. - DENOTES PAGE
  - BEARINGS AS SHOWN ARE BASED ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 26 TO BEAR SOUTH 07°29' EAST.
  - DESCRIPTION IS ATTACHED.

WWW.BUTTECO.NET 111 WASHINGTON BOULEVARD PORT WORTH, FLORIDA 33950 PHONE: 813-938-1111 FAX: 813-938-1111	J.E.D. of Southwest Florida, Inc.	A PARCEL OF LAND IN SECTIONS 26 AND 33 TOWNSHIP 46 SOUTH RANGE 25 EAST LEE COUNTY, FLORIDA		DATE SIGNED: <i>8/22/06</i> SCOTT A. WHEELER FOR THE FIRM - EB-6840 PROFESSIONAL SURVEYOR AND MAPPER FLORIDA CERTIFICATE NO. 5849
--	---	--	--	--



MATCH LINE SEE SHEET 7 OF 7

WWW.DENVERLANDRECORDS.COM  
 DENVER LAND RECORDS  
 1400 EAST COLFAX AVENUE  
 DENVER, COLORADO 80202  
 (303) 733-1000

J.E.D. of Southwest Florida, Inc.

A PARCEL OF LAND IN SECTIONS 28 AND 33 TOWNSHIP 46 SOUTH RANGE 25 EAST LEE COUNTY, FLORIDA

PROJECT: 2005-00041

DATE: 09/15/2006

SCALE: 1" = 400'

SKETCH TO ACCOMPANY DESCRIPTION

SHEET 5 OF 7

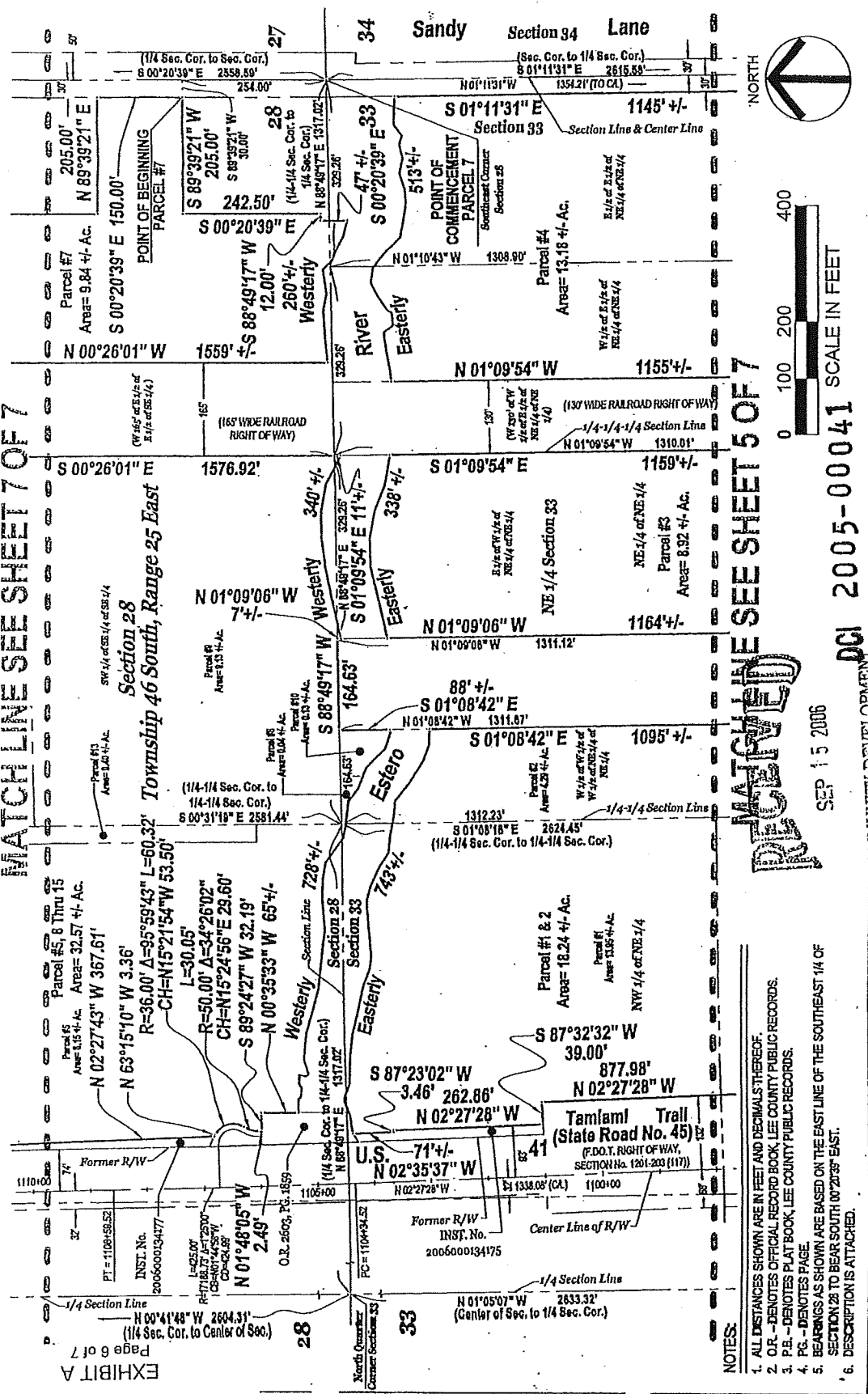


EXHIBIT A  
Page 6 of 7

SEE SHEET 5 OF 7

- NOTES:
1. ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
  2. D.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
  3. P.B. - DENOTES PLAT BOOK, LEE COUNTY PUBLIC RECORDS.
  4. P.G. - DENOTES PAGE.
  5. BEARINGS AS SHOWN ARE BASED ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 28 TO BEAR SOUTH 00°22'35" EAST.
  6. DESCRIPTION IS ATTACHED.

SEP 15 2006

COMMUNITY DEVELOPMENT

**D** ELL Associates, Inc.  
 1000 UNIVERSITY BLVD., SUITE 100  
 WILMINGTON, DE 19804  
 TEL: (302) 238-3333  
 FAX: (302) 238-3334  
 WWW.DELLASSOCIATES.COM

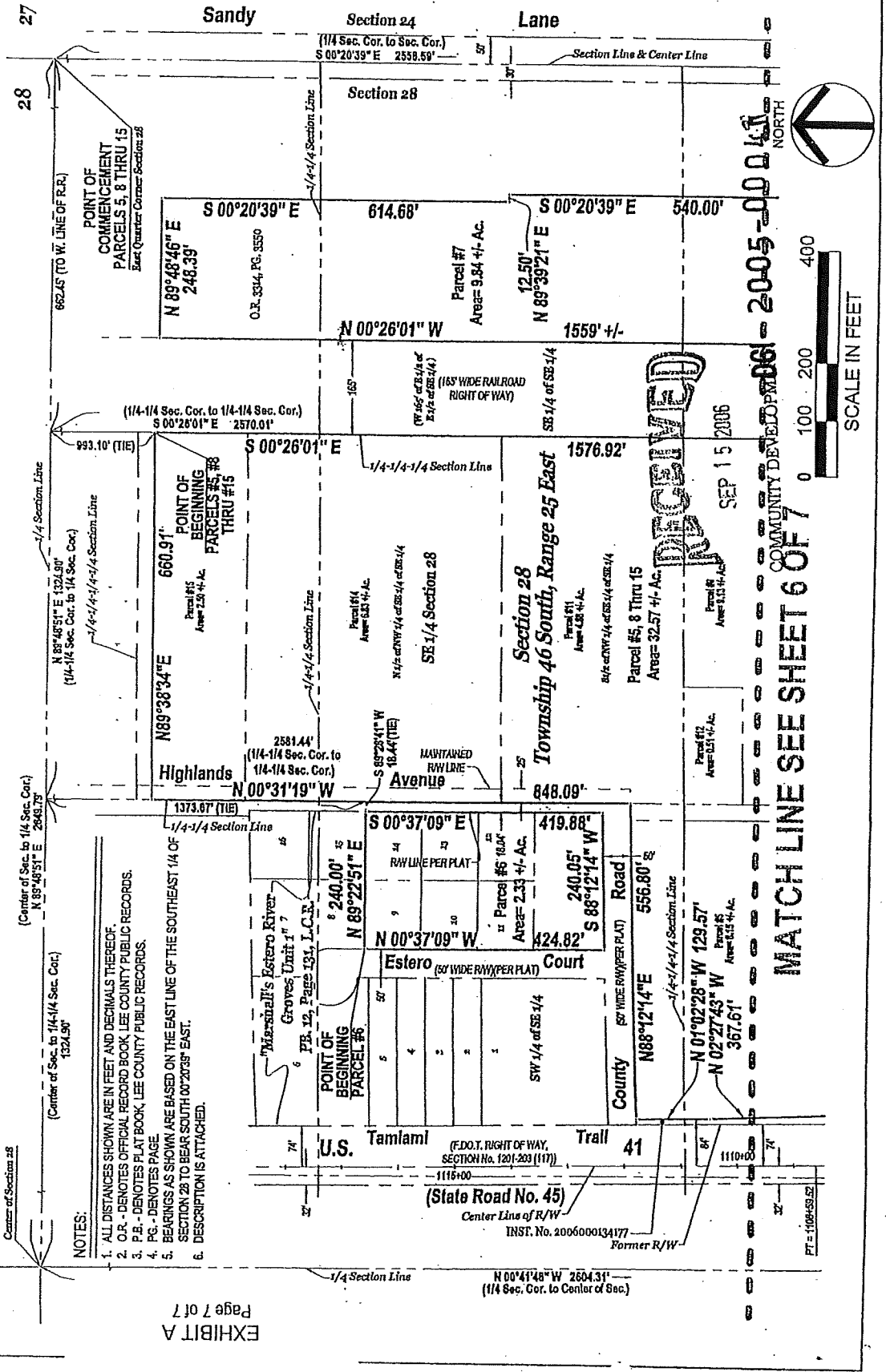
J.E.D. of  
 Southwest  
 Florida, Inc.

A PARCEL OF LAND IN  
 SECTIONS 28 AND 13  
 TOWNSHIP 46 SOUTH  
 RANGE 25 EAST  
 LEE COUNTY, FLORIDA



NO.	DESCRIPTION	DATE
1	PRELIMINARY PLAT	08/15/06
2	FINAL PLAT	09/15/06

SKETCH TO ACCOMPANY DESCRIPTION	
DATE	7 OF 7

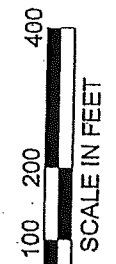


- NOTES:
1. ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
  2. O.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
  3. P.B. - DENOTES PLAT BOOK, LEE COUNTY PUBLIC RECORDS.
  4. P.C. - DENOTES PAGE.
  5. BEARINGS AS SHOWN ARE BASED ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 28 TO BEAR SOUTH 00°20'39\"/>
  - 6. DESCRIPTION IS ATTACHED.

EXHIBIT A  
 Page 7 of 7

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 SEP 15 2006

COMMUNITY DEVELOPMENT  
 MATCH LINE SEE SHEET 6 OF 7  
 2005-00043  
 NORTH



**LAND USE SUMMARY**

R-1	RESIDENTIAL-1	5.83 AC
R-2	RESIDENTIAL-2	23.07 AC
FRJ	FIXED USE	18.07 AC
CU	CULTURAL	1.31 AC
L	LAKES	7.00 AC
R/W	RIGHT OF WAY	6.00 AC
P	PRESERVE/RESTORATION/	10.64 AC
WV	WILDLIFE VEGETATION	5.21 AC
CLF	COLLEGE OF LIFE FOUNDATION	1.21 AC
BGS	BUFFERS & GREEN SPACE	4.81 AC
<b>TOTAL DEVELOPMENT AREA</b>		<b>85.07 AC</b>
<b>FUTURE TRACT</b>		<b>5.30 AC</b>

**OPEN SPACE CALCULATIONS**

Development Area	Open Space Required**	Open Space Provided	Net O.S.***	Total Open Space Provided
Parcel #1	31.85 AC	11.21 AC	5.31 AC	11.21 AC
Parcel #2	18.34 AC	5.47 AC	2.83 AC	5.47 AC
Parcel #3	8.93 AC	2.87 AC	1.33 AC	2.87 AC
Parcel #4	11.82 AC	4.35 AC	1.33 AC	4.35 AC
Parcel #5	14.15 AC	3.35 AC	0.00 AC	3.35 AC
<b>Totals</b>	<b>83.07 AC</b>	<b>27.85 AC</b>	<b>10.80 AC</b>	<b>31.00 AC</b>

\*Single Family lot coverage will not exceed 45%, therefore no open space is required.  
 \*\*Required open space is based on the following criteria: FRJ & CU req. 30% open space, R2 req. 40% open space.  
 \*\*\*Excess or proposed bodies of water, including stormwater management areas and wetland subject to adverse foundation, which may be used in offset up to a maximum of 35 percent of the required open space area. See County LDC Section 10-413(f)(2).  
 \*Additional water management tracts may be used within individual parcels, at the time of Development Order Approval.

**LEGEND EXISTING STRUCTURES\***

- RETAIN IN PLACE
- REMOVE
- PURCHASED BY THIRD PARTY
- RELOCATE
- UNDETERMINED

\*The determination of the future of the structures to be determined at the time of Development Order Approval (Subject to Army Corps of Engineers permitting).

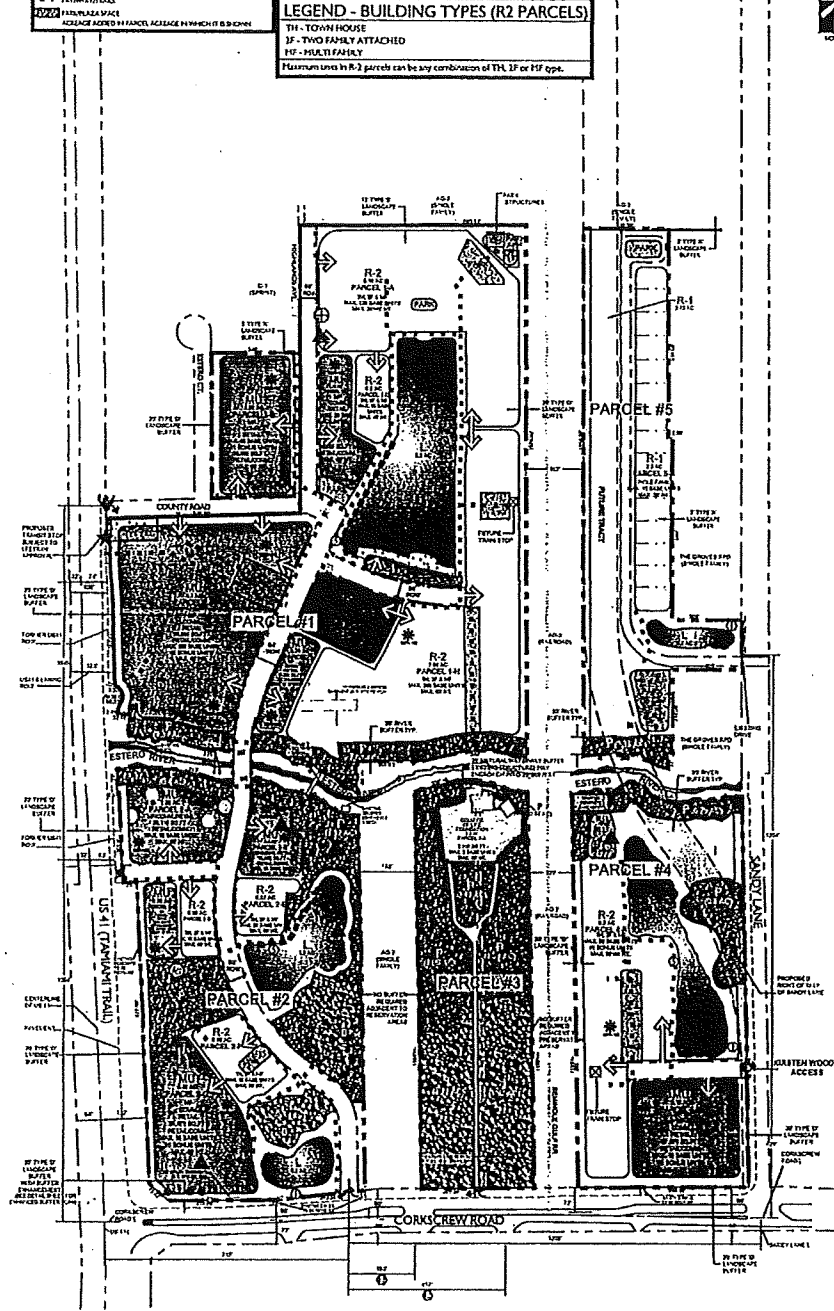
**LEGEND - BUILDING TYPES (R2 PARCELS)**

- TH - TOWN HOUSE
- 3F - TWO FAMILY ATTACHED
- 1F - SINGLE FAMILY

Maximum units in R-2 parcels can be any combination of TH, 3F or 1F opt.

**LEGEND**

- WORK
- SCALE: 1"=300'



Approved as Exhibit B  
 MDCR  
 Page 1 of 3  
 Resolution # Z-07-021

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NO. 1	DATE	DESCRIPTION
1	06/07/07	ISSUED FOR PERMITTING
2	06/07/07	ISSUED FOR PERMITTING
3	06/07/07	ISSUED FOR PERMITTING
4	06/07/07	ISSUED FOR PERMITTING
5	06/07/07	ISSUED FOR PERMITTING
6	06/07/07	ISSUED FOR PERMITTING
7	06/07/07	ISSUED FOR PERMITTING
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9	06/07/07	ISSUED FOR PERMITTING
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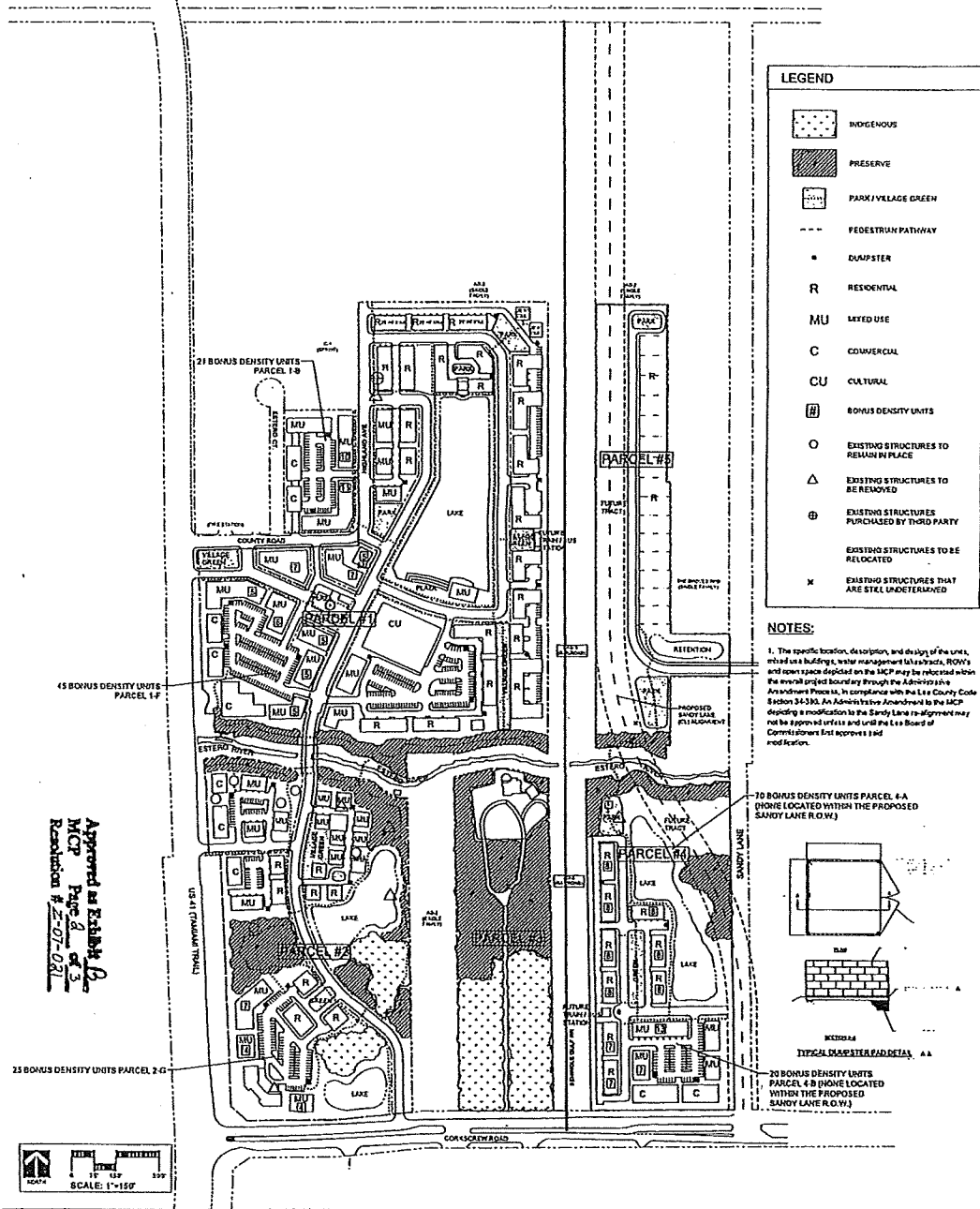
**ESTERO ON THE RIVER**  
 MASTER CONCEPT PLAN  
 PREPARED FOR: THE LAND DEVELOPMENT GROUP, DCI 8  
 REV 2006 0001

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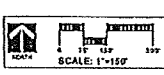
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Exhibit B  
 Page 1 of 3



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MCP Page 2 of 3  
Revision # 2-07-07



NO. 1	DATE	DESCRIPTION
1	11/14/06	PRELIMINARY
2	01/10/07	REVISED
3	02/07/07	REVISED
4	03/07/07	REVISED
5	04/07/07	REVISED
6	05/07/07	REVISED
7	06/07/07	REVISED
8	07/07/07	REVISED
9	08/07/07	REVISED
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96	11/14/14	REVISED
97	12/14/14	REVISED
98	01/15/15	REVISED
99	02/15/15	REVISED
100	03/15/15	REVISED

**ESTERO ON THE RIVER**  
**MASTER CONCEPT PLAN**  
 PREPARED FOR: THE LAND DEVELOPMENT GROUP L.L.C.

**WilsonMiller**  
 Planners • Engineers • Architects • Surveyors  
 Landscape Architects • Transportation Consultants  
 WilsonMiller, Inc.  
 2000 N. Fort Myers • Suite 200 • Fort Myers, Florida 33904  
 Phone: (813) 435-1100 • Fax: (813) 435-1101  
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JUN 07 2007

REZ 2006-00018

COMMUNITY DEVELOPMENT

DCI 2005-00041

Exhibit B  
Page 2 of 3

**PARCEL SUMMARY**

Parcel Number	Land Use	Maximum Height	Maximum Commercial/Office/Retail Sq Ft	Maximum Base Dwelling Units	Maximum Bonus Density Units
<b>PARCEL #1</b>					
1-A	R-2	3 stories - 45' 35' maximum within 100' of any boundary adjacent to existing single family residential		120	0
1-B	MU	3 stories/retail - 60'	30,685	40	21
1-C	MU	3 stories/retail - 60'	16,300	20	0
1-D	R-2	3 stories - 45'		15	0
1-E	MU	3 stories - 45'	6,435	0	0
1-F	MU	3 stories/retail 45' w/in 100' of US 41 60' for the balance of the property	83,060	120	45
1-G	CU	3 stories - 45' w/exception for architectural tower feature	36,000	0	0
1-H	R-2	3 stories/ parking 45' w/in 100' of Estero River 60' for the balance of the property	0	105	0
1-I	MU	3 stories / retail 45' w/in 100' of Estero River 60' for the balance of the property	11,010	25	0
Max Residential Units:					445
Bonus Residential Units:					66
Max Commercial Floor Area:				192,510 SF	Total
Office		53,215 SF			
Retail		103,295 SF			
Cultural		36,000 SF			
<b>PARCEL #2</b>					
2-A	MU	3-story - 45'	20,115	15	0
2-B	MU	3-story - 45'	13,950	14	0
2-C	MU	3 story - 45'	7,780	5	0
2-D	R-2	3-story - 45'		10	0
2-E	R-2	4-story - 60'		20	0
2-F	R-2	4-story - 60'		12	0
2-G	MU	3 story - 45'	35,675	10	26
Max Residential Units:					86
Bonus Residential Units:					25
Max Commercial Floor Area:				77,520 SF	Total
Office		25,040 SF			
Retail		52,480 SF			

Parcel Number	Land Use	Maximum Height	Maximum Commercial/Office/Retail Sq Ft	Maximum Base Dwelling Units	Maximum Bonus Density Units
<b>PARCEL #3</b>					
3-A	College of Life	45'	2000 in addition to existing SF	2	N/A
Max Residential Units:					2
Max Commercial Floor Area:				Existing plus 2000 SF	
<b>PARCEL #4</b>					
4-A	R-2	3-story - 45' w/in 200' of Coorscrew Road & 100' of Sandy Lane & Estero River 35' maximum within 150' of any boundary adjacent to existing single family residential 3 Stories/Parking 60' on Balance of Site	0	90	70
4-B	MU	3-story - 45'	27,970	12	20
Max Residential Units:					102
Bonus Residential Units:					90
Max Commercial Floor Area:				27,970 SF	Total
Office		9,745 SF			
Retail		18,225 SF			
<b>PARCEL #5</b>					
5-A	R-1 Single Family	2-stories - 35'	0	15	N/A
Max Residential Units:					15
<b>SUMMARY</b>					
Max Residential Units (Request)					
(349 Base Units + 181 Bonus Density Units):					530 Total
Max Bonus Residential Units:					181
Max Commercial Floor Area:				300,000	SF
Office		60,000		SF	
Retail		176,000		SF	
Cultural		36,000		SF	

\*Including bonus density. The maximum number of units are shown per parcel, however, on a cumulative basis, the total of all parcels may not exceed 530 units.

Approved as Exhibit B  
MCP Page 3 of 3  
Resolution # Z-07-021

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JUN 07 2007

COMMUNITY DEVELOPMENT

REZ 2006-00018

Exhibit B  
Page 3 of 3

APPROVED	DATE	BY

**ESTERO ON THE RIVER  
MASTER CONCEPT PLAN**  
PREPARED FOR: THE LAND DEVELOPMENT GROUP L.L.C.

DCI 2005-00041

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*Lewis Stroud & Deutsch, P.L.*

## MEMORANDUM

TO: Steven Sarkozy  
Village Manager  
Village of Estero

FROM: Nancy Stroud  
Village Land Use Counsel

RE: Estero on the River

DATE: November 20, 2018

---

You have asked me to summarize land use provisions that are included in the proposed Agreement between the Village and the Trust for Public Land and Village Partners, LLC (“Village Partners”), regarding the Estero on the River property (the “Property”). Mary Gibbs and I reviewed the existing approved zoning resolution and Master Concept Plan (the “MCP”) that currently applies to the Property to determine which conditions of the zoning and MCP need special note within the proposed Agreement.

The Property includes five tracts, and the Village plans to purchase the tracts west of the railroad tracks, which are labelled as Tracts 1, 2 and 3. Tracts 4 and 5, east of the railroad tracks, are to remain in Village Partners, LLC ownership at the time of the Village purchase. Thus, although the Property will be in two different ownerships, there may be conditions that apply more specifically to one ownership than the other. The Agreement clarifies how in this circumstance the obligations created by the MCP conditions are to be borne by the different owners. Where the conditions are standards conditions and would be required, under the Village code, of any developer, they are not specifically addressed in the Agreement. For example, the requirement to protect gopher tortoises is found in the Village code and is a matter of state law and would apply to any owner. Subsequent owners are bound by the Agreement.

The following conditions are addressed specifically in the proposed Agreement:

1. Dedication of the drainage maintenance and all maintenance within the river buffer -- the Village is responsible for the area west of the railroad tracks, and Village Partners for the area east of the railroad tracks.
2. Maintenance of the preserves -- the Village is responsible for the designated preserves west of the railroad tracks, and Village Partners for the designated preserves east of the railroad tracks.
3. Infrastructure improvements (roads, bridges, river walks) or monetary contributions associated therewith – Owners are only responsible for those improvements or monetary contributions for infrastructure on the lands they own.

*One Lincoln Place, 1900 Glades Road, Suite 251, Boca Raton, Florida 33431*

*Telephone — 561 826 2800 Facsimile — 561 826 2828*

4. Village Partners will retain bonus density units for Parcels 4 and 5 as shown on the MCP, and is not responsible for bonus density units on Parcels 1, 2 or 3. The owner of Parcels 4 and 5 shall provide the required contribution pursuant to Village Ordinance No. 2017-03 for the use of such bonus density units.
5. Village Partners shall participate in a joint effort with the Village, including funding its share of the effort applicable to Parcels 4 and 5, to accommodate a “greenway” area along the Estero River from the railroad bridge to Sandy Lane.
6. Village Partners shall restore any areas within Parcels 4 and 5 per the Estero on the River Restoration Plan.
7. Village Partners shall delineate a minimum 50 foot wide natural waterway buffer for the area along the Estero River from the railroad bridge to Sandy Lane.
8. Village Partners may rely upon the preserve areas within Parcel 3 shown on the MCP for the calculation of indigenous open space requirements for Parcels 4 and 5, if those parcels are developed in accordance with the approved MCP, or if under a future alternative plan by Village Partners or its successors 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).

The Agreement ensures that the separate development of the Village Partners’ property and the Village’s property may proceed under the existing MCP without further obligations of one party to another, except that both parties will work together to establish the Green Way along the Estero River, per Condition 6 of the zoning resolution. This condition originally anticipated the Lee County Parks and Recreation Department would establish the Green Way, but with incorporation that obligation would be assumed by the Village.

The Agreement also affirms that any owner may apply for rezoning of its respective property, and neither the Village nor Village Partners will withhold permission to file such application. The Village will consider any rezoning in the normal course of business. This anticipates that in the future the Property may be separately rezoned by either the Village or Village Partners. Thus, the Village is not restricted from adopting a rezoning for Tracts 1-3 in the future.

**To be available at a later date and  
forwarded under a separate memo**



## OPTION AGREEMENT

THIS OPTION AGREEMENT ("Agreement") dated as of April 18, 2018, is between VILLAGE PARTNERS, LLC ("Seller"), a Florida limited liability company, and THE TRUST FOR PUBLIC LAND, a California nonprofit corporation ("Buyer").

### RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows (telephone numbers are included for information only):

**SELLER:**

VILLAGE PARTNERS, LLC  
Post office Box 2505  
Bonita Springs FL 34133  
Attention: Betsy D'Jamoos  
Email: [betsydjamoo@jedswfla.com](mailto:betsydjamoo@jedswfla.com)

with copy to:  
E. Zachary Rans, Esq.  
Shutts & Bowen LLP  
1858 Ringling Boulevard, Suite 300  
Sarasota FL 34236  
Email: [ERans@shutts.com](mailto:ERans@shutts.com)

**BUYER:**

The Trust for Public Land  
306 North Monroe Street  
Tallahassee FL 32301  
Attn: Peter Fodor, Division Legal Director  
Tel: 850-222-7911 ext. 29  
Fax: 850-222-8909  
Email: [pete.fodor@tpl.org](mailto:pete.fodor@tpl.org)

with copy to:  
Kate Brown, Senior Project Manager  
The Trust for Public Land  
306 North Monroe Street  
Tallahassee, FL 32301  
Tel: 850-222-7911 ext. 27  
Email: [kate.brown@tpl.org](mailto:kate.brown@tpl.org)

B. Seller is the owner of certain real property more particularly described in EXHIBIT "A" attached hereto and by this reference incorporated herein, comprising approximately 65.05 acres, more or less, lying in Lee County, Florida, together with the following if any: all improvements located thereon and all easements and all rights, tenements, hereditaments, members, privileges, licenses and appurtenances thereto, all utility reservations, easements, strips and gores of land, rights-of-way, improvements and fixtures located thereon, all governmental licenses, permits and certificates applicable thereto, and all of Seller's right, title, and interest in and to all public and private ways adjoining or serving the same, and all riparian rights and interests in waterbodies, and the beds of waterbodies, on or adjacent to the described lands (hereinafter collectively referred to as the "Property").

C. It is the mutual intention of Seller and Buyer that the Property be preserved and used eventually for public, open space and recreational purposes. However, this intention shall not be construed as a covenant or condition to this Agreement. Buyer makes no representation

that any efforts it may undertake to secure the eventual government acquisition of the Property will be successful.

D. Seller acknowledges that Buyer is entering into this Agreement in its own right and that Buyer is not an agent of any governmental agency or entity.

E. Seller acknowledges that upon acquisition of the Property, Buyer shall be free to use and dispose of the Property in any manner Buyer deems appropriate and that Buyer may sell the Property for any price Buyer deems appropriate to any subsequent buyer provided that the proceeds of any such sale be devoted to Buyer's charitable purposes.

F. Buyer is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands. Buyer is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended from time to time, the "Code") and is included in the "Cumulative List of Organizations" described in Section 170(c) of the Internal Revenue Code published by the Internal Revenue Service. Buyer is not a private foundation within the meaning of Section 509(a) of the Code. Buyer makes no representations as to the tax consequences of any transaction contemplated herein, and Seller acknowledges that Seller is not relying upon tax or other advice provided by Buyer.

#### CONFIDENTIALITY

**The parties hereto agree that the terms of this Agreement shall remain confidential, except as otherwise provided in this Agreement, and that copies of this Agreement, or the contents thereof, shall not be provided to anyone other than the parties or their respective attorneys, accountants, tax advisers, employees or representatives without the consent of the parties hereto, unless either party is compelled to produce this Agreement pursuant to legal process, or by a requirement in connection with a sale of the Property to a governmental entity, or the Agreement hereinafter comes into the public domain through no action of either party. The terms and conditions of this paragraph shall survive the closing of the sale of the Property or the termination of this Agreement.**

#### THE PARTIES AGREE AS FOLLOWS:

1. **Option.** In consideration of the payment by Buyer to Seller of Five Thousand Dollars (\$5,000.00) (the "Option Money") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller grants to Buyer an exclusive and irrevocable option to purchase the Property on the terms and conditions set forth in this Agreement (the "Option").

2. **Term.** The Option shall be effective as of the date the Agreement is last signed (the "Effective Date") and shall expire on the ninetieth (90<sup>th</sup>) day after the Effective Date (the "Term"). Buyer may extend the Term for an additional ninety (90) days by upon payment to the Seller of Twenty Five Thousand Dollars (\$25,000.00) (the "Extension Payment") which shall be applicable to the Purchase Price at Closing. Amounts paid by Buyer to Seller as Option Money

and Extension Payment shall be credited towards the Purchase Price if Buyer exercises the Option, but shall otherwise be nonrefundable except as otherwise provided in this Agreement.

3. **Exercise.** The Option may be exercised at any time prior to the expiration of the Term by written notice from Buyer to Seller, either mailed or delivered to Seller as provided herein. If the Option is not so exercised prior to the expiration of the Term, this Agreement shall automatically terminate, and except as expressly provided to the contrary herein, Seller and Buyer shall have no further rights, obligations or duties hereunder.

4. **Purchase Terms.** In the event that Buyer exercises the Option, Seller shall sell to Buyer and Buyer shall buy from Seller the Property for a purchase price of Twenty Five Million Two Hundred Twenty Five Thousand Dollars (\$25,225,000.00) (the "Purchase Price"). The Purchase Price shall be payable by crediting the Option Money and Extension Payment paid against the Purchase Price, and the balance by cashier's check or wire transfer at closing; subject to those credits, pro-rations and adjustments provided elsewhere in the Agreement.

5. **Closing.** If Buyer timely exercises the Option, the transaction contemplated by this Agreement shall be closed not later than the tenth (10<sup>th</sup>) day following exercise of the Option by Buyer ("Closing Date") at the office of the closing agency designated by the Buyer, or such other date as may be agreed to by the parties in writing. The parties agree that Buyer may arrange a simultaneous closing with a public agency and Seller will cooperate in coordinating such a simultaneous closing. The parties may arrange to close by mail. At Buyer's request, all closing documents and the title insurance commitment shall be prepared naming a governmental entity as grantee, buyer, or insured.

a) Seller shall deliver to Buyer at closing the following documents, prepared by Buyer's counsel: (i) a special warranty deed to the Property, together with a bill of sale for the personal property appurtenant to the Property, if any; (ii) an owner's affidavit, based upon Seller's actual knowledge, 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 Seller and such lessees or licensees as may be in possession pursuant to ground leases or licenses meeting the requirements as to title set forth above; (iii) a Foreign Investment and Real Property Tax Act (FIRPTA) affidavit; (iv) a closing statement; and (v) such other instruments and documents as Buyer's counsel or the title insurer 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. For purposes of this paragraph, the term "actual knowledge" shall mean and be limited to the actual (and not imputed, implied, or constructive) current knowledge, without inquiry or investigation of Seller.

b) At closing, Seller shall pay: (i) Seller's attorneys' fees; (ii) recording fees for documents needed to cure title defects; and (iii) one-half (1/2) of the taxes on the deed.

c) At closing, Buyer shall pay: (i) Buyer's attorneys' fees; (ii) taxes and recording fees on notes, mortgages and financing statements; (iii) recording fees for the deed of conveyance; (iv) the cost of the survey; (v) the cost of the hazardous materials audits; (vi) one-half (1/2) of the taxes on the deed; and (vii) 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.

6. **Survey.** During the Term, Buyer, at Buyer's expense, shall cause a boundary survey (the "Survey") acceptable in form to Buyer and Seller, and any acquiring governmental entity, to be made of the Property by a land surveyor registered in the state that the Property is located. The Survey shall show the boundaries of the Property, and state the acreage of the Property, rounded to the nearest one-hundredth (1/100<sup>th</sup>) of an acre, and shall be approved by Seller in writing. The description in EXHIBIT "A" shall be changed to conform to the Survey and to the requirements of the title commitment.

7. **Title.** During the first 30 days of the Term, Buyer, at Buyer's expense, shall obtain a title insurance commitment, and after closing, a title insurance policy for owner's title insurance, issued by a qualified title insurance company acceptable to Buyer, in the amount of the Purchase Price, reflecting marketable fee simple title to the Property in Seller, subject only to the lien of current ad valorem taxes, not yet due and payable, applicable zoning ordinances, and matters of record not objected to by Buyer. Buyer may object to any matter of title which in Buyer's judgment, will preclude, impede or inhibit Buyer's intended disposition of the Property for public recreational and open space uses. At the time that the commitment is delivered to Buyer, Seller shall also provide copies of all documents referenced as exceptions to the title commitment or which must be cured. If a Survey is completed, the Survey and evidence of title may be examined together. Buyer shall have 20 days following receipt of the owner's title insurance commitment and referenced documents within which to examine it and to furnish to Seller a written statement of any objections to title. Matters reflected by the Survey, including utility easements, which are inconsistent with the preservation of the Property in its natural state, may be treated as title defects, and may be raised within 10 days of receipt of the final, sealed, Survey.

Seller shall have no obligation to cure any title defects. Title will be deemed acceptable to Buyer if Buyer elects to exercise the Option prior to the expiration of the Term. In the event that Buyer elects to exercise the Option prior to the expiration of the Term, Buyer shall close the transaction without a reduction in the Purchase Price.

If the Survey reveals encroachments on the Property or that improvements encroach on the lands of another, such encroachments shall constitute a title defect which Seller shall have no obligation to cure. The Survey shall be deemed acceptable to Buyer if Buyer exercises the Option prior to the expiration of the Term, and Buyer shall close the transaction without a reduction in the Purchase Price.

In the event that Buyer does not exercise the Option prior to expiration of the Term due to title defects, Seller shall return all Option Money and Extension Payment to Buyer and the parties shall have no further rights, obligations or duties hereunder.

8. **Hazardous Materials Audit(s) and Remediation.** During the Term, Buyer, at Buyer's expense, may obtain a report of an investigation of the Property carried out and prepared by a licensed engineer or geologist selected by Buyer employing procedures that a prudent purchaser would employ under the circumstances ("Phase I Audit"). A copy of the final report for the Phase I Audit will be delivered by Buyer to Seller. In the event that the Phase I Audit final

report states that it is likely that there are Recognized Environmental Conditions, which would include Hazardous Materials, present on or beneath the surface of the Property, or that further investigations are necessary to determine whether Recognized Environmental Conditions are present, Buyer may elect not to exercise the Option prior to the expiration of the Term. If Buyer does not exercise the Option prior to the expiration of the Term, the parties shall have no further obligations pursuant to this Agreement unless specifically set forth herein.

9. **Seller's Pre-Closing Covenants.** Seller shall not, without the prior written consent of Buyer, which consent will not be unreasonably withheld, (a) make, extend or permit any leases, mortgages or other liens or encumbrances affecting the Property which will not be removed, released or terminated at closing, or (b) take or permit any action that could reduce the value of the Property.

10. **Seller's Right to Market the Property.** Notwithstanding anything to the contrary contained in this Agreement, Seller may, during the pendency of the Term, continue to market the Property to prospective buyers and accept back-up offers for the purchase of the Property. The terms of this Section 10 and the Purchase Price may be disclosed to potential buyers but all other terms of this Agreement shall remain confidential.

11. **Seller's Representations.** Seller makes the following representations and warranties:

a) Seller has full power and authority to enter into this Agreement, and will have full power and authority to transfer and convey all right, title and interest in and to the Property in accordance with this Agreement.

b) To Seller's actual knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Property, or any portion thereof, or affect the value of the Property, or any portion thereof.

c) To Seller's actual knowledge, there are no:

i. intended public improvements or private rights which will result in the creation of any liens upon the Property or any portion thereof; or

ii. uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof, except for a pending code enforcement case relating to the fruit stand building located on the Property.

d) 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

“B;” 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 “C”) 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 “D.”

e) To Seller's actual knowledge, Seller has not received any notice of the presence of hazardous substances that presently or potentially poses a significant hazard to human health or the environment.

f) To Seller's actual knowledge neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Property is subject.

If, before the close of escrow, Seller receives notice of any information or facts that would materially change the foregoing representations and warranties, Seller shall give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Buyer may elect to terminate this Agreement, in which case Buyer shall have no obligation to purchase the Property.

For purposes of this Section 11 of the Agreement, the term “actual knowledge” shall mean and be limited to the actual (and not imputed, implied, or constructive) current knowledge, without inquiry or investigation of Seller. Each of the foregoing representations are true and correct on the date of the full execution of this Agreement and will be true and correct on the date of the closing, and shall survive the closing for a period of one (1) year. Except as is specifically set forth in this Agreement, and any documents executed by Seller at closing, Seller is making no representations or warranties, either express or implied, by operation of law or otherwise, and no representations are being made to any third-party. Buyer acknowledges that Buyer is purchasing the Property “AS IS” and “WHERE IS” with all faults and defects, latent or otherwise and Seller shall have no liability to Buyer except as otherwise provided in this Agreement.

12. **Buyer's Representations.** Buyer makes the following representations and warranties:

a) Buyer has full power and authority to execute and deliver this Agreement and any documents or instruments referenced herein and to consummate the transactions described herein and has taken all action required to be taken by or on the part of Buyer to authorize the execution, delivery, and performance of this Agreement.

b) There is no litigation, arbitration, or other legal, judicial, administrative, or governmental action currently pending or threatened against Buyer that might have an adverse effect on the transactions contemplated by this Agreement.

c) The execution of this Agreement and consummation of the transactions described herein shall not constitute a default of, or breach under (or with the giving of notice or the passage of time or both would not constitute a default or breach), any contract, agreement,

undertaking, decree, order, law, rule, regulation, or directive under or by which Buyer is subject to or bound.

13. **Remedies Upon Default.** In the event that Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall have the right of specific performance against Seller, in addition to a refund of all Option Money and Extension Payment paid to Seller. In the event that Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have, as its sole and exclusive remedy hereunder, the right to retain all Option Money and Extension Payment as full liquidated damages for such default. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Option Money and Extension Payment constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as full liquidated damages. Seller covenants not to bring any action or suit, whether legal or equitable, against Buyer for additional damages or other redress in the event of Buyer's default hereunder.

14. **Access and Right to Inspect Property.** During the term of this Agreement Buyer, through its employees and agents, may enter upon the Property for the purpose of performing the Survey and making inspections and investigations as Buyer deems appropriate, including, without limitation, performing the Phase I Audit of the soils, waters and improvements on the Property. Buyer will provide Seller with at least three (3) days prior written notice when it plans to conduct any inspection or investigations on the Property, and will schedule such investigation or inspection at a time that is convenient and agreeable to Seller. Buyer acknowledges that Buyer, its employees and agents will be entering the Property 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. Buyer will release to Seller, at Buyer's expense, all reports and other work generated as a result of the inspections. In the event the transaction does not close, Buyer will repair all damages to the Property resulting from the inspections and return the Property to the condition it was prior to the commencement of such inspections.

Prior to Buyer's entry onto the Property for any inspection, Buyer shall have or obtain, at Buyer's expense, a policy of commercial general liability insurance within insured contract coverage, with a combined single limit of not less than \$1,000,000 general liability, and \$2,000,000 excess umbrella, insuring Buyer, and naming Seller as an additional insured, against injuries or damages to persons or property that may result from or are related to: i.) Buyer's and/or Buyer's agents' entry upon the Property; and ii.) any investigations or activities conducted thereon, in such form and with an insurance company reasonably acceptable to Seller, and Buyer shall deliver a copy of such insurance policy or certificate evidencing such policy to Seller prior to the first entry onto the Property.

15. **Verification Letter.** This Agreement shall be contingent upon Buyer obtaining a verification letter from the Village of Estero to the Seller (satisfactory to the Seller) confirming each of the following upon the acquisition of the Property by the Village of Estero or containing such other terms as are mutually agreed to by the parties ("Verification Letter"):

a) Parcel 3 of the Property (as more specifically described in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E") would remain part of the Estero on the River Mixed-Use Planned Development and continue in perpetuity to be used in the calculations of the preserve and open space requirement for the entire Estero on the River Mixed-Use Planned Development.

b) The use Parcel 2 of the Property (as more specifically described in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E") would be limited to governmental uses, recreational uses, parks, and civic uses etc.

c) The Village of Estero would be responsible for all maintenance within the River buffer from US 41 to the railroad bridge as more specifically described in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E."

d) The Village of Estero would be responsible for the enhanced entrance feature of the Hapahatchee Center property as more specifically described in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E."

e) The Village of Estero would assume all responsibility for the maintenance of the preserves within Parcel 2 and Parcel 3 of the Property as more specifically described in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E."

f) The Village of Estero would be responsible for all infrastructure improvements required by the Estero on the River Mixed-Use Planned Development within Parcel 1, Parcel 2 and Parcel 3 of the Property as more specifically described in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E."

g) Seller would not be responsible for any bonus density units other than required for Parcel 4 set forth in the Estero on the River Master Concept Plan attached hereto as EXHIBIT "E"; and

h) Seller would not be responsible for contributions (monetary or otherwise) for any infrastructure on the Property (e.g. roads, bridges, river-walks etc.) regardless of whether Seller retains ownership of Parcels 4 and/or 5 set forth in Estero on the River Master Concept Plan attached hereto as Exhibit "E."

The Verification letter shall be obtained at Buyer's cost and Buyer shall use its best efforts to obtain the Verification Letter within the first thirty (30) days of the Term. In the event that the Verification Letter is not obtained prior to the expiration of the initial ninety (90) day Term, either Buyer or Seller may terminate this Agreement. Upon such termination of the Agreement, Seller and Buyer shall have no further rights, obligations, or duties hereunder, except as expressly provided in this Agreement. Should Buyer obtain the Verification Letter from the Village of Estero, Seller understands, acknowledges and agrees that Buyer shall have no obligation to enforce the above itemized covenants, undertakings, responsibilities and agreements made by the Village



of Estero in the Verification Letter. Seller's acknowledgement and agreement shall survive the closing of the transaction contemplated by this Agreement.

16. **Risk of Loss.** All risk of loss shall remain with Seller until closing. In the event the Property is destroyed or damaged after Buyer has exercised the Option and prior to close of escrow, Buyer may rescind this Agreement. Nothing in this paragraph shall be deemed to release Buyer from responsibility or liability for any damage or destruction caused by the acts of Buyer or Buyer's agents.

17. **Condemnation.** In the event that any condemnation proceedings are instituted, or notice of intent to condemn is given, with respect to all or any portion of the Property, Seller will notify Buyer in writing, in which event Buyer will have the option either to terminate this Agreement or to consummate the purchase of the Property without reduction of the Purchase Price, and the right to collect any condemnation award or compensation for such condemnation will be assigned by Seller to Buyer at closing. Buyer must make such election within ten (10) days following Seller's written notice to Buyer of the condemnation proceedings, and if such election is not timely made, Buyer will have waived its right to terminate this Agreement.

18. **Prorations and Assessments.** Real property taxes on the Property shall be prorated as of the close of escrow based upon the latest available tax bill. If the current year's assessment is not available, real estate property taxes will be prorated based on the prior year's real estate property taxes. Certified, confirmed, and ratified special assessments 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 and Buyer will pay all installments that become due and payable after the Closing Date. Buyer will be responsible for all assessments of any kind that become due and owing after the Closing Date.

19. **Notices.** All notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by facsimile transmission or email, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or, if delivered by hand, courier service or Express Mail, shall be deemed given when delivered; or, if transmitted by facsimile or email, such communications shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery. The parties may, by notice as provided above, designate a different address to which notice shall be given.

20. **Legal Costs.** If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

21. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee

against one of the parties to this Agreement, the party against whom the claim is asserted will indemnify and hold the other party harmless from said claim.

22. **Computation of Time.** Calendar days will be used when computing time periods. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 PM of the next business day. Time is of the essence of this Agreement.

23. **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.

24. **Additional Documents.** Seller and Buyer agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

25. **Modification.** No supplement, modification, or amendment of this Agreement shall be binding and no waiver of any provision in this Agreement effective, unless executed in writing by all the parties.

26. **Assignment of Buyer's Interest.** The parties hereto agree that the Buyer may assign its interest in this Agreement to an organization or entity that is a qualified organization at the time of transfer under Section 170(h) of the Code, and the applicable regulations promulgated there under. Buyer shall not assign its interest in this Agreement to any for-profit entity or organization without Seller's prior written consent.

27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any actions arising under or relating to this Agreement shall be exclusively in the court of appropriate jurisdiction for Lee County, Florida.

28. **Counterparts and Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but together shall constitute the same instrument; and signatures delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, shall be given the same legal force and effect as original signatures.


IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

Signed, sealed and delivered  
in the presence of:

Witness

Witness

SELLER: VILLAGE PARTNERS, LLC, a  
Florida limited liability company

  
By: Elizabeth A. JAMOOS  
Its: Manager  
Date: April 18, 2018

Signed, sealed and delivered  
in the presence of:



Witness



Witness

BUYER: THE TRUST FOR PUBLIC LAND,  
a nonprofit California corporation



By: Peter Fodor

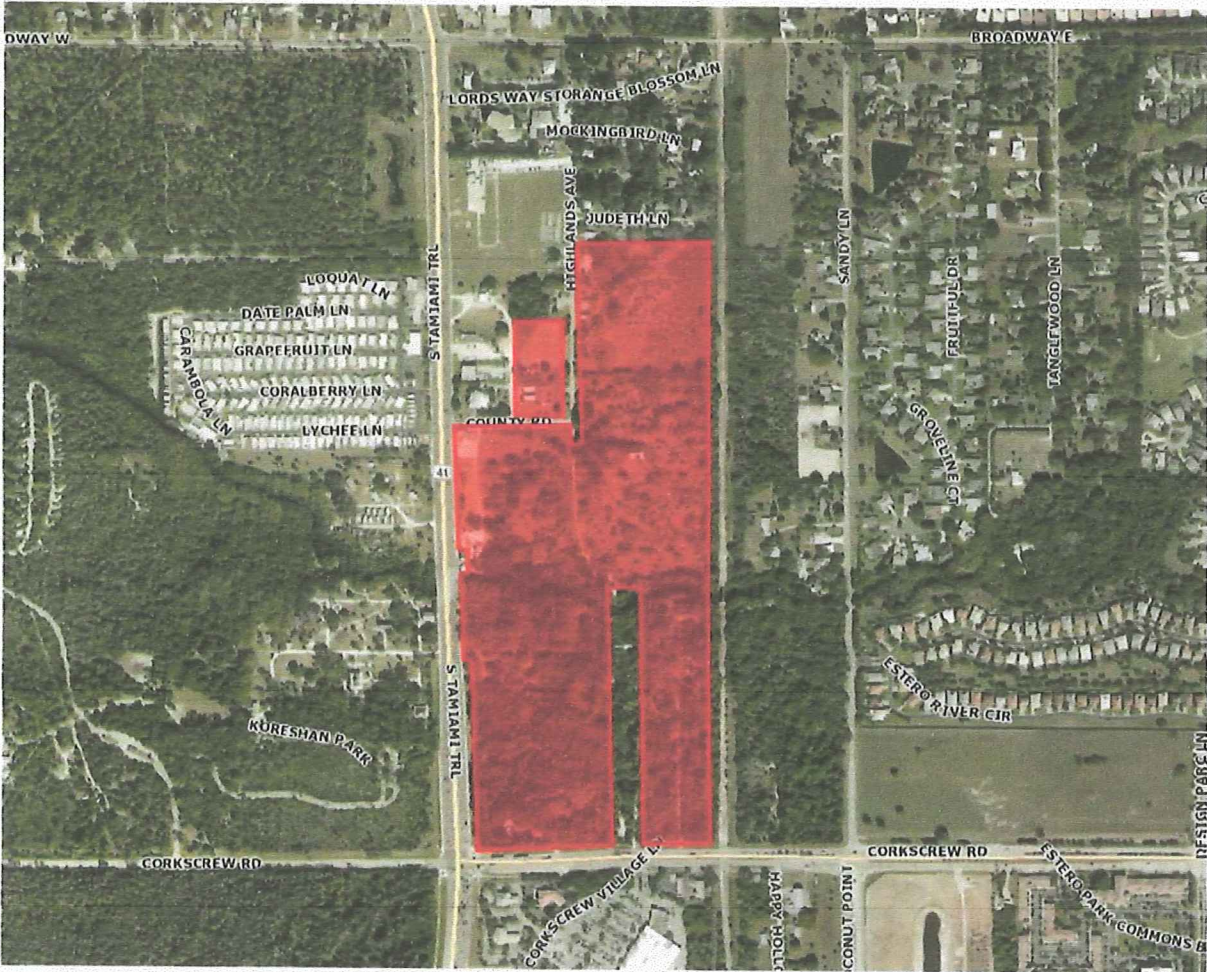
Its: Division Legal Director

Date:

4/16/15

**EXHIBIT "A"**

Property



## FIRST AMENDMENT TO OPTION AGREEMENT

This First Amendment to Option Agreement (this "Amendment"), executed as of the \_\_\_\_\_ day of July, 2018, by and between **VILLAGE PARTNERS LLC**, ("), a Florida limited liability company, (hereinafter referred to as "Seller"), and **THE TRUST FOR PUBLIC LAND**, a California nonprofit corporation, (hereinafter referred to as "Buyer").

### WITNESSETH

- A. Pursuant to the terms of an Option Agreement between Buyer and Seller dated as of April 18, 2018, (the "Option Agreement"), the Seller granted to the Buyer the option to purchase a tract or parcel of land consisting of approximately 65.05 acres, more or less, lying and being in the Village of Estero, FL, all as more particularly described in the Option Agreement (the "Property"); and
- B. Buyer and Seller wish to amend the Option Agreement to clarify certain conflicting provisions thereof, as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

- 1. **Purchase Terms.** Paragraph 4 of the Option Agreement is hereby deleted in its entirety and the following inserted in lieu thereof: "In the event that Buyer exercises the Option, Seller shall sell to Buyer and Buyer shall buy from Seller the Property for a purchase price of Twenty Four Million Five Hundred Sixty Two Thousand Five Hundred Dollars (\$24,562,500.00) (the "Purchase Price"). The Purchase Price shall be payable by crediting the Option Money and Extension Payment paid against the Purchase Price, and the balance by cashier's check or wire transfer at closing; subject to those credits, prorations and adjustments provided elsewhere in the Agreement. "
- 2. **Verification Letter.** Paragraph 15 of the Option Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

**Zoning Verification.** The parties agree that Buyer shall require as a condition of closing of the sale of the Property to the Village of Estero ("Village") that the Village agree to the following terms, or such other terms as may be agreeable to Seller:

- a) The owner of Parcels 4 and 5 may rely upon the open space and preserve areas within Parcel 3 shown on the Estero On The River Master Concept Plan and the Estero On The River MDP Ordinance for the calculation of open space and preserve requirements for Parcels 4 and 5, if those parcels are developed in accordance with the approved Estero On the River Master Concept Plan or rezoned by the owner.
- 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.

In the event that the Village does not agree to the foregoing terms or such other terms as may be agreeable to Seller, Buyer or Seller may terminate this Agreement. Upon such termination, Seller and Buyer shall have no further rights, obligations or duties hereunder, except as expressly provided in this Agreement.”

3. **Option Money and Extension Payment.** As of the execution date of this Amendment, the Buyer has paid to the Seller the Option Money and Extension Payment which the parties acknowledge are non-refundable in event the transaction does not close for any reason.

4. **Capitalized Terms.** Any capitalized terms contained in this Amendment but not defined herein shall have the same meaning as the same capitalized terms in the Option Agreement.

5. **Conflict of Terms.** In the event of any conflict of terms between this Amendment and the Option Agreement, the terms of this Amendment shall govern.

6. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute but one and the same instrument. Receipt via fax or photocopy by a party or its designated legal counsel of an executed counterpart of this Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Amendment and bind the parties to the terms hereof.

7. **Full Force and Effect.** Except as amended hereby, the Option Agreement remains unchanged, unmodified and is hereby ratified and confirmed to be in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date above written.

**BUYER: THE TRUST FOR PUBLIC  
LAND, a nonprofit California corporation**

**SELLER: VILLAGE PARTNERS  
LLC**



By: Peter Fodor  
Its: Division legal Director  
Date: 7-19-18



By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**SECOND AMENDMENT TO OPTION AGREEMENT**

15<sup>th</sup> This Second Amendment to Option Agreement (the "Second Amendment"), executed as of the day of October, 2018, by and between **VILLAGE PARTNERS LLC**, a Florida limited liability company, (hereinafter referred to as "Seller"), and **THE TRUST FOR PUBLIC LAND**, a California nonprofit corporation, (hereinafter referred to as "Buyer").

WITNESSETH

- A. Pursuant to the terms of an Option Agreement between Buyer and Seller dated as of April 18, 2018, (the "Option Agreement") as subsequently amended, the Seller granted to the Buyer the option to purchase a tract or parcel of land consisting of approximately 65.05 acres, more or less, lying and being in the Village of Estero, FL, all as more particularly described in the Option Agreement (the "Property"); and
- B. Buyer and Seller wish to amend the Option Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. **Term.** Paragraph 2 of the Option Agreement is hereby deleted in its entirety and the following inserted in lieu thereof: "The Option shall be effective as of the date the Agreement is last signed (the "Effective Date") and shall expire on the ninetieth (90<sup>th</sup>) day after the Effective Date (the "Initial Term"). Buyer shall have the option to extend the Term for two (2) successive periods. Buyer may extend the Term for an additional ninety (90) days from the date of the Initial Term (the "First Extended Term") upon payment to the Seller of Twenty-Five Thousand Dollars (\$25,000.00) (the "Extension Payment") which shall be applicable to the Purchase Price at Closing but shall otherwise be nonrefundable. Buyer may elect to extend the Term until December 13, 2018 (the "Second Extended Term") by providing written notice to Seller of such election prior to the expiration of the First Extended Term, and satisfaction by Buyer of the following three conditions on or before November 15, 2018: (1) Buyer shall obtain written confirmation from the Village of Estero, in a manner and format satisfactory to Seller at Seller's sole discretion, that the code violation fine issued against the Seller by the Village of Estero, in the approximate amount of Seventy-Two Thousand Dollars (\$72,000) is cancelled, void and of no effect (the "Code Violation"); (2) 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 in a manner and form satisfactory to Seller at Seller's sole discretion, and in the official records of any other county or governmental subdivision as shall be required by Seller; and (3) the purchase agreement between the Buyer and the Village of Estero for the purchase of the Property by the Village of Estero shall be executed and include a specific provision in a manner acceptable to Seller at Seller's sole discretion, providing that the Code Violation is cancelled, void and of no effect and that Seller 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. In the event that any of the foregoing three (3) conditions are not satisfied, on or before November 15, 2018, in a manner that is



acceptable to Seller at Seller's sole direction, the Option shall be cancelled, void and of no effect and the Agreement shall terminate and Seller shall be released from all obligations to Buyer under this Agreement and otherwise. In the event that each of the foregoing three (3) foregoing conditions are satisfied in a manner acceptable to Seller at Seller's sole discretion, Buyer shall exercise the Option by no later than December 13, 2018 and the Closing shall occur by no later than January 14, 2019. However, the Closing may be extended until February 13, 2019 provided that Seller is paid the "\$2,700 Daily Payment" pursuant to Section 3 of this Second Amendment.

2. **Zoning Verification.** The parties agree that on or before October 31, 2018, Buyer shall obtain from the Village of Estero, the Village of Estero's written agreement regarding the zoning and land use of the Property containing such terms as are acceptable to Seller at Seller's sole discretion ("Zoning Verification Agreement"). Notwithstanding anything to the contrary contained in this Second Amendment, in the event that Buyer is unable to obtain the Zoning Verification Agreement on or before October 31, 2018, containing such terms as are acceptable to Seller at Seller's sole discretion, the Option shall be cancelled, void and of no effect and the Option Agreement shall terminate and Seller shall be released from all obligations to Buyer under the Option Agreement and otherwise. The parties acknowledge that this Section 2 of this Second Amendment shall replace Section 2 of the First Amendment to Option Agreement in its entirety.

3. **Closing.** Notwithstanding anything to the contrary contained in the Option Agreement or any amendment to the Option Agreement, if the Buyer executes a purchase agreement with the Village of Estero for the purchase of the Property and such purchase by the Village of Estero does not close by January 14, 2019, Buyer shall pay to Seller \$2,700 per day, beginning January 15, 2019 which payment shall continue until the earlier of: (1) the date the purchase of the property by the Village of Estero closes or February 13, 2019 (the "\$2,700 Daily Payment"). The \$2,700 Daily Payment shall be not be applied to the Purchase Price and shall be nonrefundable. In the event that the Closing does not occur by February 13, 2019, the Option Agreement shall terminate and Seller shall be released from all obligations to Buyer under the Option Agreement and otherwise.

4. **Capitalized Terms.** Any capitalized terms contained in this Second Amendment but not defined herein shall have the same meaning as the same capitalized terms in the Option Agreement.

5. **Conflict of Terms.** In the event of any conflict of terms between this Second Amendment and the Option Agreement, the terms of this Second Amendment shall govern.

6. **Counterparts.** This Second Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute but one and the same instrument. Receipt via fax or photocopy by a party or its designated legal counsel of an executed counterpart of this Second Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Second Amendment and bind the parties to the terms hereof.

7. **Full Force and Effect.** Except as amended hereby, the Option Agreement remains unchanged, unmodified and is hereby ratified and confirmed to be in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the date above written.

**BUYER: THE TRUST FOR PUBLIC  
LAND, a nonprofit California corporation**



By: Peter Fodor  
Its: Division Legal Director  
Date: October 16, 2018

**SELLER: VILLAGE PARTNERS LLC**



By: Elizabeth D. James  
Its: Manager  
Date: 10/14/2018

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

89           **Section 2.**     The Village Council hereby authorizes the Mayor to execute the  
90 Purchase and Sale Agreement with the Trust for Public Land attached as Exhibit "A", attached  
91 hereto and incorporated herein, or an agreement in substantially similar form, finding the  
92 purchase to be in the best interest of the residents of the Village.  
93

94           **Section 3.**     The Village Manager and Village Attorney are hereby further  
95 authorized to complete any necessary due diligence or other actions to consummate and close  
96 the purchase of the Property in accordance with terms of the Purchase and Sale Agreement.  
97 The final decision to proceed with the acquisition of the property will be made by the Village  
98 Council.  
99

100           **Section 4.**     This Resolution shall take effect immediately upon adoption.  
101

102           **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this  
103 31<sup>st</sup> day of October, 2018.  
104

105 Attest:

**VILLAGE OF ESTERO, FLORIDA**

106  
107  
108 By: \_\_\_\_\_  
109     Kathy Hall, MMC, Village Clerk  
110

By: \_\_\_\_\_  
James R. Boesch, Mayor

111  
112 Reviewed for legal sufficiency:  
113

114  
115 By: \_\_\_\_\_  
116     Burt Saunders, Esq., Village Attorney  
117

118 Exhibit A: Purchase Agreement

## 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](mailto: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](mailto:Pete.Fodor@tpl.org)

#### BUYER:

Village of Estero

Attention: Steve Sarkozy  
Telephone: 239-221-5035  
Fax:  
Email: [sarkozy@estero-fl.gov](mailto: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](mailto: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, prorations 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 delivered 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 or 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 I 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 is 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).**

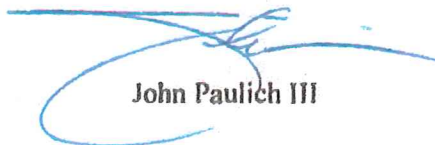
**Seller Representations (Section 10).** The Property will be conveyed subject to the following:

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.