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# **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

Page 1 of 3

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

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

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

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

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

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

WHEREAS, the Village understands that in order to achieve the purpose described herein 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 stormwater retention, rights-of-way, recreation, buffering, mitigation and other public facilities, or declared surplus and offered for sale. To the extent any of the Property is subsequently declared surplus and offered for sale, the proceeds of such sale shall be applied to the payment of any debt obligation issued to purchase the Property.

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

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

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	31st day of October, 2018.
104	
105	Attest: VILLAGE OF ESTERO, FLORIDA
106	
107	12 Marsh 1 AR S War
108	By: Kathy Hall, MMC, Village Clerk  By: Kathy Hall, MMC, Village Clerk  By: Kathy Hall, MMC, Village Clerk  By: Kathy Hall, MMC, Village Clerk
109	Kathy Hall, MMC, Village Clerk / James R. Boesch, Mayor
110	
111	Denierra I fan lagal ar ffi aignau
112 113	Reviewed for legal sufficiency:
113	
115	By////MT L. //emsee
116	Burt Saunders, Esq., Village Attorney
117	y Date Suantages, Logi, Times Timesing
118	Exhibit A: Purchase Agreement

# **EXHIBIT A**

## **PURCHASE AND SALE AGREEMENT**

N. Monroe S	AGREEMENT entered into this	alifornia corpo '), and THE V	<b>pration</b> , whose address is 306 ILLAGE OF ESTERO, whose
address is 94	01 Corkscrew Palms Circle, Estero, F	Florida, 33928,	("Buyer").
	RECITA	ILS	
A. follows:	The addresses and telephone num	bers of the pa	rties to this Agreement are as
SELLER		BUYER:	
The Trust for	Public Land	Village of Este	ero
Attention:	Kate Brown	Attention:	Steve Sarkozy
Telephone:	850-222-7911 x27	Telephone:	239-221-5035
Fax:	850-222-8909	Fax:	
Email:	kate.brown@tpl.org	Email: sarkoz	y@estero-fl.gov
With a copy to	o:	With a copy to	o:
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		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:	Pete.Fodor@tpl.org	Email: john.pa	aulich@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. <u>Inspection Period</u>. 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. <u>Price</u>. 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").
- 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. <u>Method of Payment</u>. 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. <u>Master Concept Plan and MPD Ordinance.</u> 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 niver 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. <u>Closing</u>. 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;
- 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;
- the cost of the boundary survey;
- iv. the cost of the environmental site assessment; and
- iv. Seller shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of closing, based upon the current assessment and millage rates on the Property.
- c. All other expenses, including, without limitation, attorneys' fees, shall be paid by the party incurring the same.

#### 7. Condition of Title.

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

- b. Buyer may object to any matter of title that, in the opinion of Buyer, would constitute a title defect or render title unmarketable or uninsurable. Such objections to title shall be specified in writing and deliver to Seller with thirty (30) days from the date of receipt of the title commitment by Buyer.
- c. In the event Buyer timely notifies Seller of objections to title, Seller shall cure such title defects within thirty (30) days from receipt of notice.
- d. If after the exercise of reasonable due diligence Seller is unable to make title to the Property such as is required by Buyer by the closing date, then Buyer shall have the right to:
- i. terminate this Agreement, in which case all monies paid by Buyer in accordance with this Agreement shall be returned immediately to Buyer and the parties shall be relieved of any further obligations hereunder;
- ii. extend the closing date for up to thirty (30) days to allow Seller additional time to make title to the Property such as is required by the terms of this Agreement; or
  - iii. elect to accept title to the Property in its existing condition.
- 8. <u>Buyer's Right of Entry and Survey</u>. 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' surveyor discloses any state of facts which materially or adversely affect the insurability of marketability of the title to the Property, same shall be treated in the same manner as a title defect under Section 6 above.
- 9. Hazardous Materials and Audit Remediation. Seller shall provide Buyer with a Phase I Environmental Site Assessment ("ESA") performed in accordance with the requirements set forth in ASTME 1527-05. Additionally, in the State of Florida, if an ESA gives an opinion regarding geology, the report must be signed by a Professional Geologist or Professional Engineer qualified in geology. In the event that the Phase 1 Audit final report states that there is more than a low probability that Recognized Environmental Conditions are present on or beneath the surface of the Property, or further investigation are necessary to determine whether Recognized Environmental Conditions are present ("Unsatisfactory Report"), Buyer may elect to terminate this Agreement by giving notice as required herein, in which event the Seller agrees to return to Buyer the Deposit, and thereafter the parties shall have no further obligations under this Agreement.

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

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

- 10. Representations and Warranties of Seller. Seller represents and warrants to Buyer that Seller shall have good and marketable fee simple title to the Property by the time of closing. Seller has full power and authority to enter into this Agreement and to convey title to the Property in accordance with this Agreement. To Seller's actual knowledge, there is no lease, license, permit, option, right of first refusal or other agreement, which affects the Property or any portion thereof which will not be removed at closing except for the February 17, 2017 Amended and Restated Lease between Village Partners, LLC as Landlord and Estero River Outfitters, Inc. and Paula Stuller d/b/a Estero River Canoe Outfitters (collectively "Tenants") a copy of which is attached hereto as Exhibit "C;" a month to month lease to a submerged land lease for a dock that is utilized by the Tenants; and the reservation of rights set forth in the deed recorded in the Official Records of Lee County, Florida as document No. 2007000098020 (a copy of which attached hereto as Exhibit "D") as amended by the August 30, 2010 Amendment and Modification to Reservation of Right to Use Property between the College of Life Foundation, Inc. f/k/a Koreshan Unity Foundation, Inc. and Village Partners, LLC, a copy of which is attached hereto as Exhibit "E"; a lease to the Christ Community Church, a copy of which is attached hereto as Exhibit "F"; A Code Violation and lien against Village Partners LLC, and fine in the approximate amount of \$72,000.00 relating to a refrigerated truck, , which violation and lien shall be terminated by the Buyer on or before November 15, 2018, and Buyer shall deliver to Seller evidence that the Code Violation is cancelled, void and of no effect; a release of the lien filed against the Property, arising from the Code Violation, shall be recorded in the Official Records of Lee County, Florida and in the official records by Buyer, and Buyer agrees that Village Partners, LLC is indemnified, released and held harmless from any and all claims, causes of actions, losses, damages and expenses, including reasonable attorneys' fees arising from the Code Violation. If, before the conveyance to Buyer, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If the facts which cause any warranty or representation to be inaccurate are not remedied before the date of conveyance to Buyer, Buyer may elect to either:
- a. terminate this Agreement, in which case Buyer shall have no obligation to accept title to the Property, or
- b. defer the closing date for a period of up to Thirty (30) days to permit Seller to remedy the problem.
- 11. <u>Seller's Promise to Remove Personal Property</u>. 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. <u>Notices</u>. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by hand, email, first class mall, or courier service, in accordance with the information set forth in Recital "A."
- 13. <u>Binding on Successors</u>. 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. <u>Entire Agreement/Modification</u>. This Agreement shall not be modified or amended except by an instrument in writing, signed by or on behalf of both parties.
- 16. <u>Counterparts</u>. 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.
- 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. <u>Effective Date</u>. 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 Callfornia corporation
Witness	By: Peter Fodor Division Legal Director
Witness	Date:
	(COPPORATE SEAL)

# Witness By: Name: Title: Witness Date: Approved as to form and legality BY:

**BUYER: VILLAGE OF ESTERO** 

# **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

