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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2019 - 02

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO RECORD IN THE LEE COUNTY RECORDS THIS RESOLUTION AND ITS ATTACHMENTS, INCLUDING A THREE PARTY AGREEMENT RELATED TO THE PURCHASE OF PROPERTY CURRENTLY SUBJECT TO THE ESTERO ON THE RIVER MPD RESOLUTION APPROVED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS ON JUNE 4, 2007, AS ZONING RESOLUTION Z-07-021; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council has purchased certain real property in Lee County, Florida, which property is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"); and

WHEREAS, the Property is a portion of and currently subject to Estero On The River MPD Resolution, approved by Lee County Board of County Commissioners on June 4, 2007, as zoning resolution Z-07-021, as amended ("MPD Resolution"); and

WHEREAS, the Village entered into a three-party agreement with the Trust For Public Land ("TPL") and Village Partners LLC, which is attached as Exhibit "B", to confirm certain responsibilities regarding the parcels described in the Master Concept Plan of the MPD Resolution; and

WHEREAS, the Village Council desires that this Resolution and its attachments be recorded in the Lee County public records.

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

Section 1. The Village Council authorizes the Village Manager to do all things necessary to record this Resolution 2019-2 in the Lee County public records.

Section 2. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 9th day of January, 2019.

46 Attest:

VILLAGE OF ESTERO, FLORIDA

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48
49 By: Kathy Hall
50 Kathy Hall, MMC, Village Clerk

By: James R. Boesch, 11/14/02
James R. Boesch, Mayor

51
52 Reviewed for legal sufficiency:

53
54 By: Burt H. Saunders
55 Burt Saunders, Esq., Village Attorney
56

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



EXHIBIT B

AGREEMENT

THIS AGREEMENT entered into this 14th day of January, 2018, between THE TRUST FOR PUBLIC LAND, a nonprofit California corporation, whose address is 306 N. Monroe St., Tallahassee, FL 32301, ("TPL"), VILLAGE PARTNERS, LLC, a Florida limited partnership, whose address is P.O. Box 2505, Bonita Springs, Florida 34133 ("VP") and THE VILLAGE OF ESTERO, whose address is 9401 Corkscrew Palms Circle, Estero, Florida, 33928, ("Estero").

RECITALS

Whereas, TPL 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;

Whereas, 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 Resolution ("MPD Resolution"), approved by Lee County Board of County Commissioners on June 4, 2007, as zoning resolution Z-07-021 ("Master Concept Plan");

Whereas, TPL has entered into a Purchase and Sale Agreement ("PSA") with Estero for the sale of the Property;

Whereas, VP is the present owner of the Property and Parcels 4 and 5 shown on the Master Plan;

Whereas, all parties recognize that the MPD Resolution applies to the properties that comprise Parcels 1, 2, 3, 4 and 5 therein;

Whereas, it is the desire of the parties to confirm certain responsibilities regarding the parcels described in the Master Plan in the event that Estero purchase the Property from TPL under the terms and conditions of the PSA;

Now, therefore, in consideration of the covenants contained herein and ten dollars (\$10.00) and other good and valuable consideration, the parties agree as follows:

1. Upon conveyance of the Property from TPL to Estero, Estero and VP agree to the following with respect to Parcels 1-5 of the Master Plan:

- a) VP or its successors, as 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 VP 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).
- b) Estero or its successors, as owner of Parcels 1, 2 and 3, will be responsible for

dedication of the drainage maintenance and all maintenance within the river buffer from US 41 to the railroad bridge as shown on the Master Concept Plan, pursuant to Condition 4, Drainage, of the MPD Resolution.

- c) The owner of Parcels 4 and 5 will be responsible for dedication of a drainage/maintenance easement to the Village, and all maintenance within the drainage/maintenance easement from the railroad bridge to Sandy Lane as shown on the Master Concept Plan, pursuant to Condition 4, Drainage, of the MPD Resolution.
- d) The owner of Parcels 1, 2 and 3 will be responsible for the maintenance of the preserves within Parcels 1, 2 and 3, as shown on the Master Concept Plan.
- e) The owner of Parcels 4 and 5 will be responsible for the maintenance of the preserves within Parcels 4 and 5, as shown on the Master Concept Plan, or other preserves required if parcels 4 and 5 are rezoned.
- f) The owner of Parcels 4 and 5 is not responsible for any infrastructure improvements (including, but not limited to, roads, bridges, river walks, drainage, sewers, or utilities) or monetary contributions associated with Parcels 1, 2 and 3 as shown on the Master Concept Plan and the MPD Resolution.
- g) The owner of Parcels 1, 2 and 3 is not responsible for infrastructure improvements (including, but not limited to, roads, bridges, river walks, drainage, sewers or utilities) or monetary contributions associated with Parcels 4 and 5 as shown on the Master Concept Plan and the MPD Resolution.
- h) The owner of Parcels 4 and 5 will retain bonus density units for Parcels 4 and 5 as shown on the Master Concept Plan and the MPD Resolution, 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 the fully executed Development Contract Between The Board of County Commissioners, Lee County, and Village Partners, LLC, attached to Lee County Resolution Z-07-021 and Village Ordinance No. 2017-03 for the use of the bonus density units allocated to Parcels 4 and 5.
- i) The owner of Parcels 4 and 5 shall participate in a joint effort with the Village, including funding its proportionate 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 as shown on the Master Concept Plan, and pursuant to Condition 6 Green ways, of the MPD Resolution and the "River Buffer Cross-section" shown on page 10 of Exhibit "D" of the MPD Resolution.
- j) The owner of Parcels 4 and 5 shall restore any areas within Parcels 4 and 5 per the Estero on the River Restoration Plan pursuant to Condition 8 Landscape, of the MPD Resolution. The owner of Parcels 1, 2 and 3 shall restore any areas within Parcels 1, 2 and 3 per the Estero on the River Restoration Plan pursuant to Condition 8 Landscape, of the MPD Resolution.
- k) Prior to development order approval, the owner of Parcels 4 and 5 shall delineate a minimum 50 foot wide natural waterway buffer from the railway bridge to Sandy Lane, as shown on the Master Concept Plan and pursuant to Condition 9 Buffer, of

the MPD Resolution. Prior to development order approval, the owner of Parcels 1, 2, and 3 shall delineate a minimum 50 foot wide natural waterway buffer on said parcels, as shown on the Master Concept Plan and pursuant to Condition 9 Buffer, of the MPD Resolution.

- l) Nothing in this agreement shall prohibit Estero, VP, or their successors from making future application for rezoning of their respective property, and neither Estero, nor VP, nor their successors will withhold permission to file such application. The Village will consider any rezoning in the normal course of business. If any owner chooses to rezone its property, it is understood that the requirements of the applicable law at the time of approval will apply.
- m) The owner of Parcels 4 and 5 shall be responsible for submitting a Historic Preservation Plan for parcels 4 and 5 to be approved by the Village prior to the issuance of the first development order pertaining to Parcels 4 and 5. The owner of Parcels 1, 2 and 3 shall be responsible for submitting a Historic Preservation Plan for Parcels 1, 2 and 3 to be approved by the Village prior to the issuance of the first development order pertaining to Parcels 1, 2 and 3.
- n) The Parties each reserve their respective mineral and mining rights that attach to the parcels which they own, if any.

2. This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns and other successors in interest. In the event that the conveyance from VP to TPL is not consummated for any reason, the parties shall have no further rights, obligations or duties pursuant to this Agreement.

3. The Agreement satisfies any obligation in the Option Agreement between TPL and Village Partners for a zoning verification letter.

4. This Agreement shall not be modified or amended except by an instrument in writing, signed by or on behalf of both parties.

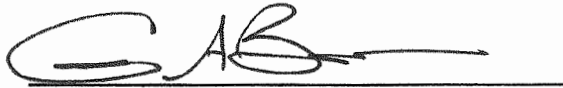
5. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall be deemed an original and which, together, shall constitute one and the same agreement.

6. The parties agree that the terms of the MPD shall control regarding any obligation under the MPD if any of the parcels are developed pursuant to the MPD and that this Agreement does not modify any obligation in the MPD.

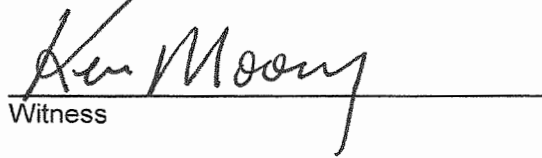
IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and sealed by its duly authorized signatory(ies) on the dates set forth below.

SEE FOLLOWING PAGES FOR SIGNATURES

The Trust for Public Land, a
nonprofit California corporation



Witness

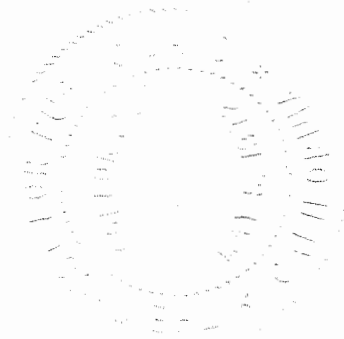

Witness




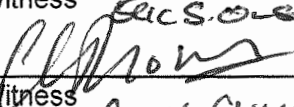
By: Peter Fodor
Division Legal Director

Date: 12/10/18

(CORPORATE SEAL)






Witness ERIC S. OLSON


Witness CHIN CHIN THOMAS

Village Partners, LLC, a Florida limited liability company



By: Elizabeth D'Jamoos, Manager
Date: 12/11/18

(CORPORATE SEAL)

Lisa Robeson
Witness
Carol A. Lee
Witness

VILLAGE OF ESTERO

By: J. P. Boesch
Name: JAMES R. BOESCH
Title: MAYOR
Date: Jan 9, 2019

Approved as to form and legality

BY: Burt H. Leland
Village Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

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28-46-25-E3-05033.0010

