

RESOLUTION NO. 09-04-17

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE OPTION AGREEMENTS FOR SALE AND PURCHASE (THE "OPTION AGREEMENTS") FOR THE ACQUISITION OF THE KEY TREE-CACTUS PRESERVE PROPERTIES (THE "PRESERVE") BY THE VILLAGE; APPROVING THE MANAGEMENT PLAN (THE "PLAN") FOR THE OPERATION AND MANAGEMENT OF THE PRESERVE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE OPTION AGREEMENTS AND THE PLAN, AND TO EXECUTE ANY REQUIRED DOCUMENTS; AUTHORIZING THE VILLAGE MANAGER AND OFFICIALS TO FINALIZE THE TERMS AND CONDITIONS OF THE OPTION AGREEMENTS AND THE PLAN, AND TO EXECUTE ANY DOCUMENTS NECESSARY TO EFFECTUATE THE ACQUISITION AND MANAGEMENT OF THE PRESERVE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on November 20, 2008, the Village Council passed Resolution No. 08-11-91 approving Florida Communities Trust (FCT) Grant Contract 08-028-FF8 for the acquisition of two adjacent sites totaling nine (9) acres known as the Key Tree-Cactus Preserve (the "Preserve"), and authorizing Village officials to work with FCT and the Conservation Fund to acquire the Preserve; and

WHEREAS, in order to receive the grant funds and proceed with the acquisition of the Preserve, the Village is required to execute the Option Agreements for Sale and Purchase with the Daniel Cockerham and Mark Cockerham, as Sellers, FCT, and Fairchild Tropical Botanic Garden, Inc.; and

WHEREAS, as further required by the Grant Contract, a Management Plan was prepared and submitted to FCT for review and has received preliminary approval, which outlines how the Preserve will be managed and conserved, physical improvements to the Preserve, educational programming, and management activities; and

WHEREAS, the Village Council finds that the acquisition of the Preserve and approval of the Option Agreements and the Management Plan are in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Option Agreements. The Option Agreements for Sale and Purchase of the Preserve, copies of which are attached hereto as composite Exhibit "A," together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, are approved.

Section 3. Execution of Option Agreements. The Village Manager is authorized to execute the Option Agreements for Sale and Purchase, as attached hereto as composite Exhibit "A," and to execute any required documents to implement the terms and conditions of the Option Agreements and effectuate the acquisition and closing of the Preserve.

Section 4. Approval of Management Plan. The Management Plan, a copy of which is attached hereto as Exhibit "B," together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved.

Section 5. Execution of Management Plan. The Village Manager is authorized to execute the Management Plan, as attached hereto as Exhibit "B," and to execute any required documents to implement the terms and conditions of the Management Plan and effectuate the operation and management of the Preserve.

Section 6. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Option Agreements and the Management Plan, and to prepare, execute and submit any documents necessary to effectuate the acquisition, closing and management of the Preserve.

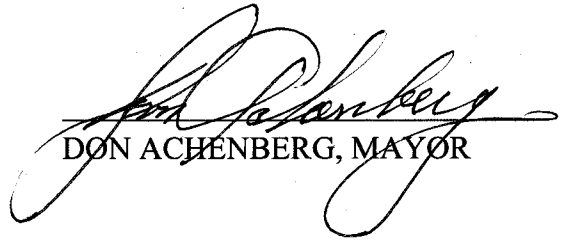
Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9th day of April, 2009.

Motion to adopt by Councilman Boerner, second by Councilwoman Zima Borski.

FINAL VOTE AT ADOPTION:

Mayor Don Achenberg	YES
Vice Mayor Michael Reckwerdt	YES
Councilman Dave Boerner	YES
Councilwoman Jill Zima Borski	YES
Councilwoman Cathi Hill	YES


DON ACHENBERG, MAYOR

ATTEST:


VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS:


VILLAGE ATTORNEY

FCT Project #: **08-028-FF8**
 FCT Project: **KEY CACTUS PRESERVE**
 Parcel #: **DANIEL R. COCKERHAM**

FCT Contract #: _____
 Property Tax I.D. #: 00096350-000000

OPTION AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT is made this ___ day of _____, 2009, between **DANIEL R. COCKERHAM**, Individually and as **THE DANIEL R. COCKERHAM TRUST, DANIEL R. COCKERHAM, Trustee u/t/a dated November 22, 2005** whose address is Post Office Box 71, Islamorada, Florida 33036, as "Seller", and the **FLORIDA COMMUNITIES TRUST**, a nonregulatory agency within the Department of Community Affairs, ("Acquiring Agency") whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, and **ISLAMORADA, VILLAGE OF ISLANDS**, a Florida municipal corporation, ("Local Government") and **FAIRCHILD TROPICAL BOTANIC GARDEN, INC.**, a Florida nonprofit Corporation, ("Non Profit") whose address is 10901 Old Cutler Road, Miami, Florida 33156. Acquiring Agency, Local Government and Non Profit will be collectively referred to as "Purchaser". All approvals under this option agreement to be determined by Purchaser will be determined by Acquiring Agency and Local Government.

1. **GRANT OF OPTION.** Seller hereby grants to Purchaser the exclusive option to purchase the real property located in Monroe County, Florida, described in Exhibit "A", together with all improvements, easements and appurtenances ("Property"), in accordance with the provisions of this Agreement. This Option Agreement becomes legally binding upon execution by the parties but exercise of the option is subject to and contingent upon approval by Purchaser, including approval by Local Government's Council, and is effective only if Acquiring Agency and Local Government give written notice of exercise to Seller.

2. **OPTION TERMS.** The option payment is \$100.00 ("Option Payment"). The Option Payment, in the form of a state warrant, will be forwarded to Seller upon its receipt by Acquiring Agency from the Comptroller of the State of Florida. The option may be exercised during the period beginning with the Purchaser's approval of this Agreement and the Acquiring Agency's governing body granting project plan approval in accordance with Rule 9K-8.011, Florida Administrative Code, and ending on June 15, 2009 ("Option Expiration Date"), unless extended by other provisions of this Agreement. In the event Acquiring Agency's Purchase Price (as hereinafter defined in paragraph 3.A) or Local Government's Purchase Price (as hereinafter defined in paragraph 3.A) are not available by the Option Expiration Date the period of exercise of the option may be extended until such funds become available, not to exceed 60 days after the Option Expiration Date, by written notice to Seller.

3.A. **TOTAL PURCHASE PRICE.** The total purchase price ("Total Purchase Price") for the Property is **ONE MILLION NINE HUNDRED FIFTY THOUSAND** and no/100 Dollars (\$1,950,000.00) which, after reduction by the amount of the Option Payment, will be paid by Acquiring Agency at closing. Seller hereby authorizes Acquiring Agency to issue a state warrant directly to an escrow agent who is authorized by law to receive such payment, and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. The Total Purchase Price is subject to adjustment in accordance with paragraph 3.B. This Total Purchase Price presumes that the Property contains 3.94 total acres to be confirmed by the Survey, as provided in paragraph 5. The determination of the final Total Purchase Price can only be made after the completion and approval of the survey required in paragraph 5. This Agreement is contingent

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upon approval of Total Purchase Price by Purchaser and upon confirmation that the Total Purchase Price is not in excess of the final maximum approved purchase price of the Property as determined in accordance with Rule 9K-8.007, Florida Administrative Code ("Maximum Approved Purchase Price"). Acquiring Agency and Local Government agree that the Local Government shall take fee simple title to all of the Property at the closing notwithstanding that Acquiring Agency is required to pay all of the Total Purchase Price in the manner set forth in this Agreement. Conveyance of the Property in fee simple from Seller to Local Government will take place at the closing in accordance with the provisions of this Agreement. The Total Purchase Price is the sole responsibility of Acquiring Agency and the Local Government shall have no obligation under this Agreement to provide any portion of the Total Purchase Price, and Seller shall have no recourse whatsoever, at law or equity, against the Local Government or the Property relating to the Total Purchase Price. Should the Purchase Price not be available for any reason, Purchaser or Seller may elect to terminate this Agreement by written notice to the parties without liability to any party.

This Agreement is also contingent upon the simultaneous closing of that certain Option Agreement for Sale and Purchase between Purchaser and Mark Cockerham for that real property described in Exhibit "B" attached hereto.

This Agreement is also contingent on the Seller's and Seller's real estate broker for this transaction, making a donation totaling \$100,000.00 to the Local Government at closing. This donation will be used by the Local Government for a management endowment and/or for capital improvements on the Property.

3.B. ADJUSTMENT OF TOTAL PURCHASE PRICE. If, prior to closing, Acquiring Agency determines that the Total Purchase Price stated in paragraph 3.A. exceeds the final Maximum Approved Purchase Price of the Property, the Total Purchase Price will be reduced to the final Maximum Approved Purchase Price of the Property. If the final adjusted Total Purchase Price is less than 95% of the Total Purchase Price stated in paragraph 3.A. because of a reduction in the Maximum Approved Purchase Price of the Property, Seller shall, in his sole discretion, have the right to terminate this Agreement and neither party shall have any further obligations under this Agreement. If Seller elects to terminate this Agreement, Seller shall provide written notice to Acquiring Agency and Local Government of his election to terminate this Agreement within 10 days after Seller's receipt of written notice from Acquiring Agency of the final adjusted Total Purchase Price. In the event Seller fails to give Acquiring Agency and Local Government a written notice of termination within the aforesaid time period from receipt of Acquiring Agency's written notice, then Seller shall be deemed to have waived any right to terminate this Agreement based upon a reduction in the Total Purchase Price stated in paragraph 3.A.

4.A. ENVIRONMENTAL SITE ASSESSMENT. Seller shall, at his sole cost and expense and at least 30 days prior to the Option Expiration Date, furnish to Local Government and Acquiring Agency an environmental site assessment of the Property which meets the standard of practice of the American Society of Testing Materials ("ASTM"). Seller shall use the services of competent, professional consultants with expertise in the environmental site assessing process to determine the existence and extent, if any, of Hazardous Materials on the Property. The examination of hazardous materials contamination shall be performed to the standard of practice of the ASTM. For Phase I environmental site assessment, such standard of practice shall be the ASTM Practice E 1527. If the Findings and Conclusions section of the assessment reports evidence of recognized environmental conditions, then a Phase II Environmental Site Assessment shall be performed to address any suspicions raised in the Phase I environmental site assessment and to confirm the presence of contaminants on site. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any

kind or any other substance which is regulated by any Environmental Law (as hereinafter defined in paragraph 4.B.). The environmental site assessment shall be certified to Purchaser and the date of certification shall be within 90 days before the date of closing.

4.B. HAZARDOUS MATERIALS. In the event that the environmental site assessment provided for in paragraph 4.A. confirms the presence of Hazardous Materials on the Property, Purchaser, at its sole option, may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should Purchaser elect not to terminate this Agreement, Seller shall, at his sole cost and expense and prior to the exercise of the option and closing, promptly commence and diligently pursue any assessment, clean up and monitoring of the Property necessary to bring the Property into full compliance with any and all applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials ("Environmental Law"). However, should the estimated cost of clean up of Hazardous Materials exceed a sum which is equal to 5% of the Total Purchase Price as stated in paragraph 3.A., Seller may elect to terminate this Agreement and no party shall have any further obligations under this Agreement.

5. SURVEY. Seller shall, at his sole cost and expense and not less than 35 days prior to the Option Expiration Date, deliver to Local Government and Acquiring Agency a current boundary survey of the Property prepared by a professional land surveyor licensed by the State of Florida which meets the standards and requirements of Acquiring Agency ("Survey"). It is Seller's responsibility to ensure that the surveyor contacts the Acquiring Agency regarding these standards and requirements prior to the commencement of the Survey. The Survey shall be certified to Purchaser and the title insurer and the date of certification shall be within 90 days before the date of closing, unless this 90 day time period is waived by Purchaser and by the title insurer for purposes of deleting the standard exceptions for survey matters and easements or claims of easements not shown by the public records from the owner's title policy. If the Survey shows any encroachment on the Property or that improvements intended to be located on the Property encroach on the land of others, the same shall be treated as a title defect.

6. TITLE INSURANCE. Local Government shall, at Local Government's sole cost and expense and at least 35 days prior to the Option Expiration Date, furnish to Purchaser a marketable title insurance commitment, to be followed by an owner's marketable title insurance policy (ALTA Form "B") from a title insurance company, approved by Acquiring Agency, insuring marketable title of Purchaser to the Property in the amount of the Purchase Price. Local Government shall require that the title insurer delete the standard exceptions of such policy referring to: (a) all taxes, (b) unrecorded rights or claims of parties in possession, (c) survey matters, (d) unrecorded easements or claims of easements, and (e) unrecorded mechanics' liens.

7. DEFECTS IN TITLE. If the title insurance commitment or survey furnished to Purchaser pursuant to this Agreement discloses any defects in title which are not acceptable to Purchaser, Seller shall, within 90 days after notice from Purchaser, remove said defects in title. Seller agrees to use diligent effort to correct the defects in title within the time provided therefore, including the bringing of necessary suits. If Seller is unsuccessful in removing the title defects within said time or if Seller fails to make a diligent effort to correct the title defects, Purchaser shall have the option to either: (a) accept the title as it then is with a reduction in the Total Purchase Price by an amount determined by Acquiring Agency and agreed to by Seller, (b) accept the title as it then is with no reduction in the Total Purchase Price, (c) extend the amount of time that Seller has to cure the defects in title, or (d) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement.

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8. INTEREST CONVEYED. At closing, Seller shall execute and deliver to Local Government a statutory warranty deed in accordance with Section 689.02, Florida Statutes, conveying marketable title to the Property in fee simple free and clear of all liens, reservations, restrictions, easements, leases, tenancies and other encumbrances, except for those that are acceptable encumbrances in the opinion of Purchaser and do not impair the marketability of the title to the Property. The grantee in Seller's Warranty Deed shall be ISLAMORADA, VILLAGE OF ISLANDS.

9. PREPARATION OF CLOSING DOCUMENTS. Upon execution of this Agreement, Seller shall submit to Purchaser a properly completed and executed beneficial interest affidavit and disclosure statement as required by Sections 286.23, and 380.08(2), Florida Statutes. Seller shall prepare the deed described in paragraph 8. of this Agreement, Seller's closing statement, the title, possession and lien affidavit certified to Purchaser and title insurer in accordance with Section 627.7842, Florida Statutes, and an environmental affidavit. The deed, title, possession and lien affidavit and environmental affidavit shall be prepared on Acquiring Agency forms which will be provided by Acquiring Agency. Acquiring Agency shall prepare Purchaser's closing statement. All prepared documents shall be submitted to Local Government and Acquiring Agency for review and approval at least 30 days prior to the Option Expiration Date.

10. PURCHASER REVIEW FOR CLOSING. Purchaser will approve or reject each item required to be provided by Seller under this Agreement within 30 days after receipt by Purchaser of all of the required items. Seller will have 30 days thereafter to cure and resubmit any rejected item to Purchaser. In the event Seller fails to timely deliver any item, or Purchaser rejects any item after delivery, Purchaser may in its discretion extend the Option Expiration Date.

11. EXPENSES. Seller will pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the deed described in paragraph 8. of this Agreement and any other recordable instruments which Purchaser deems necessary to assure good and marketable title to the Property.

12. TAXES AND ASSESSMENTS. All real estate taxes and assessments which are or which may become a lien against the Property shall be satisfied of record by Seller at closing. In the event the Local Government acquires fee title to the Property between January 1 and November 1, 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 transfer, based upon the current assessment and millage rates on the Property. In the event the Local Government acquires fee title to the Property on or after November 1, Seller shall pay to the county tax collector an amount equal to the taxes that are determined to be legally due and payable by the county tax collector.

13. CLOSING PLACE AND DATE. The closing shall be on or before 15 days after Purchaser exercises the option; provided, however, that if a defect exists in the title to the Property, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing shall occur either on the original closing date or within 60 days after receipt of documentation curing the defects, whichever is later. The date, time and place of closing shall be set by Purchaser.

14. RISK OF LOSS AND CONDITION OF REAL PROPERTY. Seller assumes all risk of loss or damage to the Property prior to the date of closing and warrants that the Property shall be transferred and