

Lee County Board Of County Commissioners

Blue Sheet No. 20061736

Agenda Item Summary

- 1. **ACTION REQUESTED/PURPOSE:** Approve Agreement for Purchase and Sale of Real Estate in Lieu of Condemnation for acquisition of Parcel 400 (5,011 sq. ft.) Three Oaks Parkway South Extension Project No. 4043, in the amount of \$55,260; authorize payment of costs to close and the Division of County Lands to handle all documentation necessary to complete transaction.
- 2. **WHAT ACTION ACCOMPLISHES:** The acquisition of property required for the Three Oaks Parkway South Extension, without the necessity of an eminent domain action.
- 3. **MANAGEMENT RECOMMENDATION:** Approve.

| | | | | | |
|---|---|-----------------------------------|------------------------------|-----------------------------|--|
| 4. Departmental Category: 6 | | CLC | 5. Meeting Date: JAN 23 2007 | | |
| 6. Agenda: | | 7. Requirement/Purpose: (specify) | | 8. Request Initiated: | |
| <input checked="" type="checkbox"/> Consent | <input checked="" type="checkbox"/> Statute | 73 & 125 | | Commissioner | |
| <input type="checkbox"/> Administrative | <input type="checkbox"/> Ordinance | | | Department | |
| <input type="checkbox"/> Appeals | <input type="checkbox"/> Admin. Code | | | Independent | |
| <input type="checkbox"/> Public | <input checked="" type="checkbox"/> Other | BS 20060756 | | Division | |
| <input type="checkbox"/> Walk-On | | Res. 05-03-23 | | By: Karen Forsyth, Director | |

9. **Background:**
Negotiated for: Department of Transportation

Interest to Acquire: Fee-simple acquisition of vacant land from a condominium common element.

Property Details:

Owner: Lighthouse Bay Villas Four Association, Inc., a Florida non-profit corporation
Property Address: Common Element, Bonita Springs
STRAP No.: 11-47-25-32-00000.00CE

Purchase Details:

Purchase Price: \$55,260 (plus attorney and appraiser fees and costs)
 The property owner/representative originally required \$14,500 for attorney fees and costs. However, through negotiations, they have now agreed to accept \$8,250.
Initial Offer: \$53,000
Estimated Closing Costs: Approximately \$9,500 (inclusive of attorney and appraiser fees and costs of \$8,250).

County Appraisal Information:

Appraisal Firm: Carlson, Norris & Associates, Inc.
Appraised Value: \$47,950

Owner Appraisal Information:

Appraisal Firm: Coastal Engineering, Inc.
Appraised Value: \$55,260

Staff Recommendation: Staff is of the opinion that the purchase price increase over the County's initial offer (4%) can be justified, considering the additional expenses of \$5,000 - \$7,000 that would otherwise be incurred through the remaining condemnation process. This settlement agreement is supported by the County Attorney's office.

Account: 20404318824.506110

Attachments: Purchase and Sale Agreement, Appraisal Data (2), Title Data

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|----------------|-----------------|-----------------|---------------|---------------|---------------|------------------------------|
| <i>K. Forsyth</i> | | | <i>1/14/07</i> | <i>John</i> | Analyst | Risk | Grants | Mgr. | <i>1-10-07</i> |
| | | | | | <i>1-8-07</i> | <i>1-8-07</i> | <i>1-8-07</i> | <i>1-8-07</i> | |

11. Commission Action:
- Approved
 - Deferred
 - Denied
 - Other

RECEIVED BY COUNTY ADMIN:
 1/18/07 9:45 AM.
 COUNTY ADMIN FORWARDED TO:
 9:00 AM.

CO. ATTY. FORWARDED TO CO. ADMIN.
 1/15/07

Rec. by CoAtty
 Date: 1/5/07
 Time: 1:30 pm
 Forwarded To:

RECEIVED
 DEC 28 2006
 LCDOT

This document prepared by
Lee County Division of County Lands
Project: Three Oaks Parkway South, 4043
Parcel: 400/Lighthouse Bay Villas Four
STRAP No.: 11-47-25-32-00000.00CE

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE
IN LIEU OF CONDEMNATION PROCEEDINGS

THIS AGREEMENT for purchase and sale of real property is made this _____ day of _____, 20_____ by and between Lighthouse Bay Villas Four Association, Inc., a Florida non-profit corporation, whose address is 23750 Old Lighthouse Road, Bonita Springs, FL 34135, and Lee County, a political subdivision of the State of Florida, hereinafter referred to as BUYER.

WITNESSETH:

- 1. AGREEMENT TO PURCHASE AND TO SELL:** SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions set forth below, a fee-simple parcel of land consisting of ±5,011 square feet, and more particularly described in Exhibit "A", attached hereto and made a part hereof, hereinafter called the "Property" and being located in Bonita Springs, Florida 34135. This Property is being acquired for the Three Oaks Parkway South Extension, No. 4043, hereinafter called the Project, with the SELLER'S understanding that the Property, if not voluntarily sold, would have been condemned by BUYER through the exercise of its eminent domain powers.
- 2. PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("Purchase Price"), will be Fifty-Five Thousand Two Hundred Sixty Dollars (\$55,260), plus attorney and appraiser fees and costs of \$8,250, as provided in Paragraph 6, herein, payable at closing by County warrant. The Purchase Price is mutually agreeable to both the SELLER and BUYER and represents the voluntary sale and purchase of the Property in lieu of BUYER'S condemnation.

3. **EVIDENCE OF TITLE:** BUYER will obtain at BUYER'S expense an American Land Title Association Form B Title Commitment and provide title insurance Owner's Policy in the amount of the Purchase Price, from a title company acceptable to BUYER. The commitment will be accompanied by one copy of all documents that constitute exceptions to the title commitment. The commitment will also show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning and use restrictions imposed by governmental authority, and restrictions and easements common to the area.

4. **CONDITION OF PROPERTY; RISK OF LOSS:** BUYER has inspected the Property and, except as is otherwise provided herein, accepts the Property in the condition inspected. Any loss and/or damage to the Property occurring between the date of this offer and the date of closing or date of possession by BUYER, whichever occurs first, will be at SELLER'S sole risk and expense. However, BUYER may accept the damaged property or BUYER may cancel this Agreement without obligation.

5. **SELLER'S INSTRUMENTS AND EXPENSES:** SELLER will pay for and provide:

- (a) A statutory warranty deed, and an affidavit regarding liens, possession, and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance;
- (b) utility services up to, but not including the date of closing;
- (c) taxes or assessments for which a bill has been rendered on or before the date of closing;
- (d) payment of partial release of mortgage fees, if any;

6. **BUYER'S INSTRUMENTS AND EXPENSES:** BUYER will pay for:

- (a) Recording fee for deed;
- (b) survey, (if desired by BUYER);
- (c) SELLER'S attorney fees and costs of \$2,000;
- (d) SELLER'S appraiser fees and costs of \$6,250.

7. **TAXES:** SELLER will be charged for Real Estate taxes and personal property taxes (if applicable) up to, but not including the date of closing.

This voluntary sale and purchase is considered by Florida law to be exempt from the payment of Documentary Stamp Taxes because this transaction was made under the threat of an eminent domain proceeding by the BUYER.

8. **DEFECTS IN TITLE AND LEGAL ACCESS:** Prior to closing, BUYER will have a reasonable time to examine the title and documents establishing legal access to the Property. If title or legal access is found to be defective, BUYER will notify SELLER in writing of the defects and SELLER will make a prompt and diligent effort to correct such defects. If SELLER fails to make corrections within 60 days after notice, BUYER may elect to accept the Property in its existing condition with an appropriate reduction to the Purchase Price, or may terminate this Agreement without obligation.

9. **SURVEY:** BUYER may order the Property surveyed at BUYER'S expense. SELLER agrees to provide access to the Property for such survey to be performed. If the survey shows a discrepancy in the size or dimensions of the Property, or shows encroachments onto the Property or that improvements located on the Property encroach onto adjacent lands, or if the survey identifies violations of recorded covenants and/or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat such discrepancies, violations and/or encroachments as a title defect.

10. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER'S expense, an environmental audit of the Property. If the audit identifies environmental conditions unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition or BUYER may terminate this Agreement without obligation.

11. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER, to the best of SELLER'S knowledge, warrants and represents that the Property is free from hazardous materials and does not constitute an environmental hazard under any federal, state or local law or regulation. No hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of any applicable law or regulation. The SELLER further warrants that there is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the property in violation of applicable law or regulation. There are no surface impoundments, waste piles, landfills, injection wells, underground storage areas, or other man-made facilities that have or may have accommodated hazardous materials. There is no proceeding or inquiry by any governmental agency with respect to production, disposal or storage on the property of any hazardous materials, or of any activity that could have produced hazardous materials or toxic effects on humans, flora or fauna. There are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property. There is no evidence of release of hazardous materials onto or into the Property.

The SELLER also warrants that there have been no requests from any governmental authority or other party for information, notices of claim, demand letters or other notification that there is any potential for responsibility with respect to any investigation or clean-up of hazardous substance releases on the property. All warranties described herein will survive the closing of this transaction.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from all fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the property.

12. TIME AND BINDING AGREEMENT: Time is of the essence for closing this transaction. The BUYER'S written acceptance of this offer will constitute an Agreement for the purchase and sale of the Property and will bind the parties, their successors and assigns.

13. DATE AND LOCATION OF CLOSING: The closing of this transaction will be held at the office of the insuring title company on or before 30 days from the date this Agreement is made. The time and location of closing may be changed by mutual agreement of the parties.

14. ATTORNEYS' FEES: The prevailing party in any litigation concerning this Agreement will be entitled to recover reasonable attorneys' fees and costs.

15. REAL ESTATE BROKERS: SELLER hereby agrees to indemnify and hold the BUYER harmless from and against any claims by a real estate broker claiming by or through SELLER.

16. POSSESSION: SELLER warrants that there are no parties in possession other than SELLER unless otherwise stated herein. SELLER agrees to deliver possession of Property to BUYER at time of closing unless otherwise stated herein.

17. TYPEWRITTEN/HANDWRITTEN PROVISIONS: Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all parties, will control all printed provisions in conflict therewith.

18. **SPECIAL CONDITIONS:** The Purchase Price stated herein, includes payment for landscaping improvements located on the Property. Any additional special conditions will be attached to this Agreement and signed by all parties to this Agreement.

TWO WITNESSES:

Paul Kay VP LMB V4
12-18-06

Alan Luffer CAM
12/18/06

CHARLIE GREEN, CLERK

BY: _____
DEPUTY CLERK (DATE)

Lighthouse Bay Villas Four, Inc., a Florida
non-profit corporation

BY *Samuel A. Ciralo* 12/18/06
(DATE)

SAMUEL A. CIRALO
(Print Name and Title)

PRESIDENT VILLA IV 12/18/06
(DATE)

BUYER:

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
ROBERT JANES, CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

COUNTY ATTORNEY (DATE)

| CURVE DATA | | | | | |
|------------|--------------|---------|--------|----------------|-----------------|
| CURVE | DELTA | RADIUS | LENGTH | CHORD DISTANCE | CHORD BEARING |
| C31 | 101° 37' 35" | 27.00' | 47.88' | 41.85' | S 67° 29' 08" W |
| C32 | 18° 14' 01" | 200.00' | 63.65' | 63.38' | S 07° 33' 18" W |
| C33 | 89° 59' 36" | 27.00' | 42.41' | 38.18' | S 46° 33' 55" E |
| C34 | 02° 35' 15" | 325.00' | 14.68' | 14.68' | N 89° 44' 46" E |
| C35 | 68° 33' 45" | 27.00' | 32.31' | 30.42' | N 56° 44' 52" E |
| C36 | 90° 00' 07" | 27.00' | 42.41' | 38.18' | S 43° 26' 20" W |
| C37 | 05° 56' 01" | 800.00' | 82.85' | 82.81' | S 04° 31' 41" E |
| C38 | 11° 52' 03" | 320.00' | 66.28' | 66.16' | S 01° 33' 42" E |
| C39 | 05° 56' 01" | 800.00' | 82.85' | 82.81' | S 01° 24' 19" W |
| C40 | 81° 12' 06" | 30.12' | 42.69' | 39.20' | S 47° 01' 08" E |
| C41 | 14° 08' 42" | 275.00' | 67.89' | 67.72' | S 80° 44' 27" E |

| LINE DATA | | |
|-----------|-----------------|----------|
| LINE | BEARING | LENGTH |
| L1 | N 01° 33' 42" W | 1196.15' |
| L2 | N 88° 26' 17" W | 49.93' |
| L3 | S 30° 43' 15" E | 146.76' |
| L4 | S 55° 25' 04" E | 108.65' |
| L5 | S 00° 38' 33" W | 66.96' |
| L5 | S 16° 40' 24" W | 25.92' |
| L7 | S 03° 31' 58" W | 142.15' |
| L8 | S 01° 42' 47" W | 29.96' |
| L9 | S 02° 24' 43" W | 96.46' |
| L10 | N 00° 56' 13" E | 47.40' |
| L11 | S 00° 18' 14" E | 46.32' |
| L12 | N 01° 33' 42" W | 73.16' |
| L13 | N 06° 40' 36" W | 166.30' |
| L14 | N 07° 30' 47" E | 87.24' |
| L15 | N 82° 29' 18" W | 309.40' |

NOT VALID WITHOUT SHEET 3 OF 3

PARCEL 400 - THREE OAKS PARKWAY

JOHNSON
ENGINEERING

2158 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE (239) 934-0046
FAX (239) 934-3661
E.S. #642 & L.B. #642

SKETCH TO ACCOMPANY DESCRIPTION

| DATE | PROJECT NO. | FILE NO. | SCALE | SHEET |
|---------|-------------|----------|---------|--------|
| 1-19-06 | 20013033 | 11-47-25 | 1"=200' | 2 OF 3 |

Page 3 of 3

Exhibit "A"

Division of County Lands**Updated Ownership and Easement Search**

Search No. 11-47-25-32-00000.00CE

Date: May 5, 2006

Parcel: 400

Project: Three Oaks Parkway South Extension,
Project 4043To: J. Keith Gomez
Property Acquisition AgentFrom: Bill Abramovich *BA*
Real Estate Title Examiner

STRAP: 11-47-25-32-00000.00CE

Effective Date: April 26, 2006, at 5:00 p.m.

Subject Property: The common elements which are a part of Lighthouse Bay Villas Four, a Condominium, according to the Declaration of Condominium recorded in Official Record Book 3688, Page 10, Public Records of Lee County, Florida, as subsequently amended.

Title to the subject property is vested in the following:

Lighthouse Bay Villas Four Association Inc., a Florida corporation

by terms in Declaration of Condominium recorded July 18, 2002, in Official Record Book 3688, Page 10, Public Records of Lee County, Florida.

Easements:

1. Temporary Access and Utility Easement to Wallace Homes of Southwest Florida, Inc., recorded in Official Record Book 3057, Page 2739, Public Records of Lee County, Florida.
2. Grant of Utility Easement to Bonita Springs Utilities, Inc., recorded in Official Record Book 3734, Page 3165, Public Records of Lee County, Florida.

NOTE (1): Declaration of Protective Covenants, Conditions and Restrictions recorded in Official Record Book 2672, Page 3926, and Official Record Book 2672, Page 3942, as amended in Official Record Book 2801, Page 3084, Public Records of Lee County, Florida.**NOTE (2):** Notice of Adoption of The Brooks DRI Development Order, recorded in Official Record Book 2866, Page 10, as amended in Official Record Book 3206, Page 4363 and Official Record Book 3647, Page 2257, Public Records of Lee County, Florida.**NOTE (3):** Declaration of Covenants, Conditions and Restrictions for Shadow Wood, recorded in Official Record Book 2909, Page 838, Public Records of Lee County, Florida.**NOTE (4):** Declaration of Easements and Covenant to Share Costs for The Brooks, recorded in Official Record Book 2909, Page 956, as supplemented by instruments recorded in Official Record Book 3057, Page 2664 and Official Record Book 3512, Page 2182, Public Records of Lee County, Florida.

Division of County Lands**Updated Ownership and Easement Search**

Search No. 11-47-25-32-00000.00CE

Date: May 5, 2006

Parcel: 400

Project: Three Oaks Parkway South Extension,
Project 4043

NOTE (5): Declaration of Covenants that run with the Land for The Brooks Tract 7, recorded in Official Record Book 3057, Page 2605, Public Records of Lee County, Florida, as subsequently amended.

NOTE (6): Resolution 99-1, regarding The Brooks of Bonita Springs Community Development District, recorded in Official Record Book 3076, Page 157, Public Records of Lee County, Florida.

NOTE (7): Notices of Development Order Approval, recorded in Official Record Book 3119, Page 4067 and Official Record Book 3255, Page 3106, Public Records of Lee County, Florida.

NOTE (8): Declaration of Covenants, Conditions and Restrictions for Lighthouse Bay at The Brooks, recorded in Official Record Book 3204, Page 1256, as amended in Official Record Book 3677, Page 3963, Public Records of Lee County, Florida.

NOTE (9): Declaration of Condominium of Lighthouse Bay Villas Four, recorded in Official Record Book 3688, Page 10, Public Records of Lee County, Florida, as subsequently amended.

NOTE (10): Lee County Ordinances relating to garbage and solid waste collection, recorded in Official Record Book 2189, Pages 3281 and 3334, Public Records of Lee County, Florida.

Tax Status: No taxes are assessed to this parcel.

(The end user of this report is responsible for verifying tax and/or assessment information.)

The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.

EXECUTIVE SUMMARY

OWNER OF RECORD: Lighthouse Bay Villas Four Association (per 2005 Lee County tax roll).

LOCATION: The parent tract is located in the southwest quadrant of The Brooks development in Section 11, Township 47 South, Range 25 East, in south Lee County, Florida. The parent tract is considered to be the Lighthouse Bay Villas development located at the extreme south end of The Brooks development. The parent tract is situated along the eastern side of Three Oaks Parkway.

LAND AREA: The subject parent tract totals approximately 20.51 acres or 893,362 square feet, according to calculations as derived from the Lee County Property Appraiser's GIS system. The parent tract area includes all of the Lighthouse Bay Villas area which totals 64 units. The proposed taking is located at the extreme southwest corner of the Lighthouse Bay Villas development. This take area totals 5,011 square feet, thereby leaving a remainder tract size of 888,405 square feet or 20.395 acres.

IMPROVEMENTS: None being appraised except 20 palms in the take area which are valued at \$3,100 total (\$155 each). This appraisal includes land and vegetation only, as the residential improvements are located behind a large berm and fence area which is heavily landscaped. In my opinion, there is no measurable adverse impact to the adjacent development. In the before take condition, this development fronts on Three Oaks Parkway. The plan for extending, widening, and turning Three Oaks Parkway pre-dates the development; hence any potential impacts would have been reflected in prices paid for units within the development.

ZONING/LAND USE: MPD (Mixed Planned Development)/Rural Land Use

HIGHEST AND BEST USE: Residential Development

PARENT TRACT VALUE BEFORE TAKE (Land Only): \$8,003,100

VALUE OF PART TAKEN: \$ 47,950

REMAINDER VALUE AS A PART OF THE WHOLE: \$7,955,150



REMAINDER VALUE AFTER TAKE: \$7,955,150

SEVERANCE DAMAGES: \$ 0

AMOUNT DUE OWNER: \$ 47,950

INTEREST APPRAISED: Fee simple interest in the land/affected improvements plus rights associated with common elements/amenity rights in Lighthouse Bay Villas

DATE OF VALUATION: 4 May 2006

DATE OF REPORT: 17 May 2006

APPRAISER: W. Michael Maxwell, MAI, SRA

EXTRAORDINARY ASSUMPTIONS: The 20 sabal palms located within the take area are valued at \$155 each as per contractor estimates. The parent tract size has been calculated based on the Lee County Property Appraiser's GIS system for the Lighthouse Bay Villas development totaling 64 units on approximately 20.51 acres within The Brooks. These calculations are approximate and are based on scaling by computer aid.

CERTIFICATE OF VALUE

Item/Segment: N/A
 State Road: N/A
 County: Lee
 Managing District: N/A
 FAP No.: N/A
 Parcel No.: 400

I certify to the best of my knowledge and belief, that:

- The statements of fact contained in this report are true and correct
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, unbiased, professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions that were developed.
- My analyses, opinions, or conclusions were developed and this report has been prepared in conformity with the requirements of the State of Florida for state-certified appraisals.
- I have made a personal inspection of the property that is the subject of this report. I have also made a personal field inspection of the comparable sales relied upon in making this appraisal. The subject and the comparable sales relied upon in making this appraisal were as represented by the photographs contained in this appraisal.

- Michael P. Jones, State Certified General Real Estate Appraiser RZ2623 provided significant professional assistance to the person signing this report.
- This appraisal has been made in conformity with the appropriate State laws, regulations, policies and procedures applicable to appraisal of right-of-way for highway purposes; and, to the best of my knowledge, no portion of the property value entered on this certificate consists of items which are non compensable under the established law of the State of Florida.

- I have not revealed the findings or results of this appraisal to anyone other than the proper persons.

- Statements supplemental to this certificate, as required by membership or candidacy in a professional appraisal organization, are described on an addendum to this certificate and, by reference, are made a part hereof.

- As of the date of this report, I, William H. Reeve, III, MAI, SRA, have completed the requirements under the continuing education program of the Appraisal Institute and the State of Florida.

- I, William H. Reeve, III, MAI, SRA, am currently licensed pursuant to the laws of the State of Florida as a State Certified General Real Estate Appraiser, license number RZ943, through November 30, 2006.

- Acceptance and utilization of this appraisal report, or any portion thereof, constitutes acknowledgement and acceptance of all General Assumptions and Special Conditions contained herein.

Based upon my independent appraisal and the exercise of my professional judgment, my opinion of the market value for the part taken, including net severance damages after special benefits, if any, of the property appraised as of the 2nd day of October, 2006, is: \$55,260.

Market Value should be allocated as follows:

| | |
|-----------------------------------|---------------------|
| Land: | \$ 50,260 |
| Improvements: | \$ 5,000 |
| Land Use: Residential Development | |
| Land Area (Ac/SF): | 0.115 Ac / 5,011 SF |

| | |
|--------------------------------|-----------|
| Net Damages &/or Cost to Cure: | \$ n/a |
| Total: | \$ 55,260 |

Date
10/16/2006

Appraiser: William H. Reeve, III, MAI, SRA
 State Certified General Real Estate Appraiser RZ943

[Handwritten Signature]