

**Lee County Board of County Commissioners
Agenda Item Summary**

**DATE CRITICAL
Blue Sheet No. 20020236**

1. REQUESTED MOTION:

ACTION REQUESTED: Pursuant to §125.37, F.S., to hear and act on a request to authorize an exchange of a portion of the County's real property interest in an Iona Drainage Ditch canal (IDD Canal C-5) and a certain Outfall Drainage Easement located in Section 31, Township 45 South, Range 24 East, Lee County, Florida, in return for a replacement drainage easement at or near the existing drainage canal; to authorize the execution of a realignment agreement governing the terms of the exchange; and to authorize the Chairman to sign the necessary documents to complete the exchange according to the terms of the realignment agreement.

WHY ACTION IS NECESSARY: An exchange of County-owned property under §125.37, F.S., requires approval by the Board of County Commissioners.

WHAT ACTION ACCOMPLISHES: Authorizes an exchange of County-owned property under § 125.37, F.S.

**2. DEPARTMENTAL CATEGORY: 11
COMMISSION DISTRICT #3**

A 12 B

3. MEETING DATE:

04-23-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:**
15 Minutes

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER

B. DEPARTMENT County Attorney

C. DIVISION Land Use

BY: *John J. Fredyma*
John J. Fredyma, Asst. County Atty

7. BACKGROUND:

The County Attorney's Office has received a request from Banks Engineering, Inc., on behalf of Strategic Properties of Southwest Florida, Inc. (Strategic), Gardens at Fort Myers, Inc. (Gardens) and BeachWalk Development Associates, Inc. (BeachWalk), the owners or developers of property located in Section 31, Township 45 South, Range 24 East, Lee County, Florida, to exchange a portion of the County's real property interest in a Iona Drainage Ditch canal (IDD Canal C-5) and a certain Outfall Drainage Easement, for a replacement drainage easement at or near the existing drainage canal.

Strategic, Gardens and BeachWalk seek to develop the property on which the existing drainage canal and Outfall Drainage Easement are located. To facilitate development of the site, Strategic, Gardens and BeachWalk would like to relocate and reconstruct the existing drainage canal. An agreement (IDD Canal C-5 Realignment Agreement) has been prepared to facilitate an exchange under F.S. § 125.37 and is attached.

(Continued on Page 2)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>4/3/02</i>	QM <i>4/3/02</i>	RISK <i>4/4</i>	GC <i>4/3</i>	<i>[Signature]</i> 4-4-02

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.
FORWARDED
TO CO. ADMN.
4/2/02 2PM

RECEIVED BY
COUNTY ADMIN.
4/2/02
COUNTY ADMIN.
FORWARDED TO:
4/4/02

Strategic, Gardens and BeachWalk are seeking the Lee County Board of County Commissioners' approval of the requested exchange pursuant to the terms of the submitted agreement. The agreement requires the property owners, or developers, to be responsible for the costs of permitting and construction of the replacement drainage canal. The property owners, or developers, will also be responsible for the maintenance of the relocated and reconstructed drainage canal.

The exchange of property is the entire consideration for this transaction. The property owners, or developers, will be responsible for all costs of required publication and (if approved) all costs of document recording necessary to effect the exchange. No funding is required.

The proposed exchange has been reviewed and approved by County staff (Department of Transportation, Natural Resources and Development Services).

- Attachments:
- (1) Resolution Approving Exchange of Property
 - (2) IDD Canal C-5 Realignment Agreement, Release of Easement and Easement Grant, but without Mortgagee Joinders or legals and sketches.
 - (3) Sketch of property to be exchanged.

RESOLUTION NO. _____

RESOLUTION APPROVING EXCHANGE OF PROPERTY

WHEREAS, Lee County, a political subdivision of the State of Florida (Lee County), is desirous of creating safe, effective drainage of surface waters; and

WHEREAS, BeachWalk Development Associates, Inc. (BeachWalk), Gardens at Fort Myers, Inc. (Gardens) and Strategic Properties of Southwest Florida, Inc. (Strategic) desires to improve drainage in property to be developed that is located in Section 31, Township 45 South, Range 24 East, Lee County, Florida; and

WHEREAS, the existing portion of an Iona Drainage Ditch Canal (IDD Canal "C-5") and a certain Drainage Outfall Easement does not provide for an efficient flow of surface water in Section 31, Township 45 South, Range 24 East, Lee County, Florida; and

WHEREAS, the parties have determined the relocation and reconstruction of the existing drainage canals will facilitate improved drainage of surface water within the subject area; and

WHEREAS, Lee County owns a real property interest in IDD Canal "C-5" and a certain Drainage Outfall Easement located in Section 31, Township 45 South, Range 24 East, Lee County, Florida; and

WHEREAS, BeachWalk, Gardens and Strategic, in accordance with the terms of a document entitled "IDD Canal C-5 Realignment Agreement," attached and incorporated herein (the Document), will relocate, reconstruct and maintain, as necessary, a portion of IDD Canal C-5, located within Section 31, Township 45 South, Range 24 East, Lee County, Florida; and

WHEREAS, each of the parties will exchange their respective interests in the real property described in the Document; and

WHEREAS, the Board believes it is in the best interest of the public to exchange the real property interests described herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that, in consideration of the mutual covenants and commitments contained herein, the parties hereby agree to the following as the operative provision to effect a property exchange addressing each of the above referenced concerns:

The Board accepts the terms and conditions of the exchange of real property interests as set forth in the IDD Canal C-5 Realignment Agreement between the parties.

The Chairman, on behalf of the Board of County Commissioners, will execute the IDD Canal C-5 Realignment Agreement, and bind the County to act in accordance with the terms and conditions as set forth therein, with Lee County to convey the property described in Exhibit "D" of the Document to BeachWalk, Gardens and Strategic by County Deed; in exchange for BeachWalk, Gardens and Strategic, as appropriate and required under the terms of the agreement, conveying the property as described in Exhibit "G" of the Document to Lee County.

This exchange has been duly noticed and complies with Section 125.37, Florida Statutes (2001).

The foregoing resolution was offered by Commissioner _____ to move its adoption. The motion was seconded by Commissioner _____, and being put to a vote, the vote was as follows:

Robert P. Janes _____
Douglas R. St. Cerny _____
Ray Judah _____
Andrew W. Coy _____
John E. Albion _____

Duly passed and adopted this _____ day of _____, 2002.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

Approved as to form by:

County Attorney's Office

Attachment: IDD Canal C-5 Realignment Agreement

This Instrument Prepared
without title review by
Anthony J. Gargano, Esquire
Gargano & Marchewka, LLP
2075 West First Street, Suite 203
Fort Myers, FL 33901

IDD CANAL C-5 REALIGNMENT AGREEMENT

THIS IDD CANAL C-5 REALIGNMENT AGREEMENT (this "Agreement") entered into this ____ of ____, 2001, by and among: **STRATEGIC PROPERTIES OF SOUTHWEST FLORIDA, INC.**, a Florida corporation (hereinafter referred to as "**Strategic**"), **GARDENS AT FORT MYERS, INC.**, a Florida corporation (hereinafter referred to as "**Gardens**"), **BEACHWALK DEVELOPMENT ASSOCIATES, LC**, a Florida limited liability company (hereinafter referred to as "**BeachWalk**") and **LEE COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as the "**County**").

RECITALS

A. Gardens is the fee simple owner and intended developer of certain real property legally described on attached **EXHIBIT A** (the "**Gardens Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida.

B. Strategic is the fee simple owner and intended developer of certain real property legally described on attached **EXHIBIT B** (the "**Strategic Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida.

C. BeachWalk is the fee simple owner of certain real property legally described on attached **EXHIBIT C** (the "**BeachWalk Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida. The Gardens Property, the Strategic Property, and the BeachWalk Property are collectively referred to as the "**Properties**."

D. County has maintenance jurisdiction over IDD Canal C-5 in Section 31, Township 45 South, Range 24 East, Lee County, Florida. Those portions of IDD Canal C-5 presently located on the Properties are legally described on attached **EXHIBIT D** (the "**Present Canal Location**").

E. The parties hereto agree and intend that the existing IDD Canal C 5 be realigned and relocated from the Present Canal Location to that location on the Properties legally described on attached **EXHIBIT E** (the "**Realigned Canal Location**").

F. Colonial Bank owns and holds a first mortgage on the Gardens Property, and joins in and consents to this Agreement, for the limited purpose of consenting to the transactions that are described herein.

G. InSouth Bank owns and holds a first mortgage on the Strategic Property, and joins in and consents to this Agreement, for the limited purpose of consenting to the transactions that are described herein.

H. Ohio Savings Bank owns and holds a first mortgage on the BeachWalk Property,

and joins in and consents to this Agreement, for the limited purpose of consenting to the transactions that are described herein

I. The parties to this Agreement intend to be legally bound to its terms.

J. The principal purpose of this Agreement is to provide for an exchange of real property interests as allowed by and according to Section 125.37, Florida Statutes, 1997.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The parties acknowledge and agree that all of the above-stated Recitals A through J are true and correct.

2. In addition to its own drainage system, Strategic shall design, permit, and construct within the realigned canal location a drainage system adequate to provide the continued drainage of off-site properties which presently utilize IDD Canal C-5 for drainage (the "**Realigned IDD Canal C-5 Drainage System**"). The Realigned IDD Canal C-5 Drainage System shall be designed and constructed in compliance with all applicable County standards and shall be permitted according to the applicable requirements of the South Florida Water Management District and reviewed and approved by the Lee County Department of Transportation and Lee County Division of Natural Resources Management. All costs associated with the Realigned IDD Canal C-5 Drainage System will be borne by Strategic (and if agreed to in a separate agreement, by Gardens and BeachWalk).

3. Upon the Realigned IDD Canal C-5 Drainage System passing the applicable County inspection, the County shall release the existing IDD Canal C-5 from the Present Canal Location and shall convey to the respective fee simple owners of the Properties all of the County's right, title, and interest in and to those portions of the existing IDD Canal C-5 in the Present Canal Location, in exchange for a New Easement from Strategic, Gardens and BeachWalk over those portions of the Properties within the realigned canal location. The County shall execute and deliver to the then fee simple owners of the Properties a written release in recordable form in the form attached hereto as **EXHIBIT F** (the "**Release**"). In exchange for the Release, Strategic, Gardens and BeachWalk shall execute and deliver to the County the New Easement in recordable form utilizing the form attached hereto as **EXHIBIT G** (the "**New Easement**"). Strategic shall be responsible for the payment of all recording costs and fees associated with this exchange (including but not limited to documentary stamps and the cost of advertising required under Section 125.37). Provided, however, that the legal formation of a property owners' association, Beach Walk Homeowner's Association of Lee County, Inc., (the "**Association**") obligated to maintain in perpetuity the Realigned IDD Canal C-5 Drainage System within the Realigned Canal Location is a condition precedent to this exchange. The cost of maintenance of the Realigned IDD Canal C-5 Drainage System within the realigned canal location shall be shared by the owners of the Strategic Property and the Gardens Property by assessment of the Association pursuant to applicable deed restrictions or the provisions of another separate agreement between Strategic, Gardens, and BeachWalk. The foregoing exchange shall be accomplished pursuant to, and utilizing the procedures provided in, Section 125.37, Florida Statutes (1997). If the foregoing exchange is not consummated and the Release and New Easement are not exchanged and recorded on or before 1/22/03, then this Agreement shall terminate and be of no further force and effect.

4. Strategic, Gardens, and BeachWalk covenant and agree that at all times during this Agreement, either the existing IDD Canal C-5 or the Realigned IDD Canal C-5 Drainage System,

or both, will be in place to accommodate on-site and off-site drainage and stormwater flows in a manner and to the extent presently being accommodated by IDD Canal C-5 in the Present Canal Location, and that neither they nor their employees, contractors, or agents will: create an impediment or obstruction to the continued drainage of other properties presently utilizing IDD Canal C-5; or, divert or obstruct any drainage through the existing IDD Canal C-5 until the Realigned IDD Canal C-5 Drainage System has been constructed and accepted by the County.

5. The County accepts no legal responsibility for the Realigned IDD Canal C-5 Drainage System prior to the County's acceptance of the New Easement. Strategic agrees to indemnify, hold harmless and defend the County from and against all claims, actions, judgments, and liabilities, including reasonable litigation costs and attorney's fees, due to any act or omission by Strategic, its agents, employees, or contractors, that arise from the design, permitting, and construction of the Realigned IDD Canal C-5 Drainage System. However, Strategic's liability hereunder shall pass with the Strategic Property so that upon Strategic's conveyance of the Strategic Property the liability of Strategic shall terminate and Strategic's successor in title shall be fully liable hereunder.

6. Strategic is responsible for obtaining all required permits and approvals and for compliance with applicable and duly adopted County, State, or Federal regulations.

7. Strategic agrees, at its expense, to repair, relocate or reconstruct any public utilities, including but not limited to water, sewer, gas, power, telephone, and cable television affected by the realignment of IDD Canal C-5.

8. This Agreement binds and inures to the benefit of the parties, as well as their respective legal representatives, successors, and assigns. Upon transfer of the Strategic Property, the Gardens Property, and the BeachWalk Property, the rights, obligations, requirements, and conditions of this Agreement shall inure to and be binding on the successor in title.

9. This Agreement shall be interpreted and construed, and its performance enforced, according to the laws of the State of Florida. Venue for any action arising from or out of this Agreement shall lie only in Lee County, Florida. The parties recognize and agree that this Agreement is of a unique nature and that money damages are not adequate or appropriate as a remedy for any party due to the breach of the terms herein. As a result, the parties specifically agree that a non-defaulting party may raise in any pleadings and shall be entitled to, without objections from the alleged defaulting party, the extraordinary remedy of specific performance, in order to protect the interests and benefits contained herein.

10. The County hereby authorizes its County Manager, or his/her designee, to accept and execute all documents on behalf of the County and to do all other things prudent and necessary to effectuate the terms of this Agreement and the exchange of the real property interests contemplated herein.

11. This Agreement, including all exhibits, is the entire agreement among the parties concerning the Present Canal Location and its realignment within the realigned canal location and this Agreement may not be modified or canceled except by a written agreement made for that express purpose executed by the parties.

12. Strategic may, in its sole discretion, enter into a separate agreement, or separate agreements, between and among Strategic, Gardens and BeachWalk, wherein all or a portion of Strategic's duties, responsibilities, and obligations may be assumed or shared by Gardens and

Beachwalk. Nothing in this Agreement shall prohibit any of the foregoing agreements. The County may enforce any of the foregoing agreements as a third party beneficiary.

End of Page
Signature Pages Follow

IDD Canal C-5 Realignment Agreement Signature Page for
Strategic Properties of Southwest Florida, Inc.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this instrument
on this 14th day of FEB, 2001.

Strategic Properties of Southwest Florida,
Inc.

COPY
[Signature]

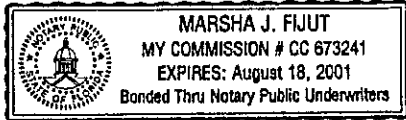
by: Richard Halpern, President

[Signature]
Witness Robert Pavlov

[Signature]
Witness Patricia L Texter

STATE OF FLORIDA)
)SS
COUNTY OF Lee)

The foregoing instrument was acknowledged before me this 14 day of February,
2001 by Richard Halpern as President of Strategic Properties of Southwest Florida, Inc.,
Inc., who is personally known to me or who has produced personally as identification
and who did not take an oath.



[Signature]
Notary Public

MARSHA J. FIJUT
Printed or Typed Name

My commissions expires:

End of Signature Page

IDD Canal C-5 Realignment Agreement Signature Page for
Gardens at Fort Myers, Inc.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this instrument
on this 16 day of FEBRUARY, 2001.

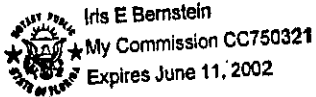
Witness DAVID TENKIV
Witness Steve Goldfarb

Gardens at Fort Myers, Inc.
By: Daniel Kodsi, President
COPY

STATE OF FLORIDA)
COUNTY OF Palm Beach)SS

The foregoing instrument was acknowledged before me this 16 day of February, 2001 by Daniel Kodsi, as President of Gardens at Fort Myers, Inc., who is personally known to me or who has produced _____ as identification and who did not take an oath.

Iris E. Bernstein
Notary Public



My commissions expires:

Iris E. Berbstein
Printed or Typed Name

End of Signature Page

IDD Canal C-5 Realignment Agreement Signature Page for
Beachwalk Development Associates, LC

IN WITNESS WHEREOF, the parties hereto have signed and sealed this instrument
on this 16th day of May, 2001.

BeachWalk Development Associates, LC

by: John T. Kinsey, its Managing Member

Debra A. Graff
Witness Debra A. Graff

Jill Solenberger
Witness Jill Solenberger

COPY

STATE OF FLORIDA)
)SS
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 16th day of ~~February~~ ^{May},
2001 by John T. Kinsey, as managing member of Beachwalk Development Associates, LC,
who is personally known to me or who has produced _____ as identification and
who did not take an oath.

Debra A. Graff
Notary Public

Debra A. Graff
Printed or Typed Name

My commissions expires: 5-1-2005



End of Signature Page

IDD Canal C-5 Realignment Agreement Signature Page for
LEE COUNTY

IN WITNESS WHEREOF, the parties hereto have signed and sealed this instrument
on this ___ day of _____, 2002.

LEE COUNTY, a Political Subdivision of
the State of Florida

By Donald D. Stilwell, County Manager

Attest:
Charlie Green, Ex Officio Clerk

Approved as to form:

By _____
[Signature]

[Type or Print Name]
Deputy Clerk

John J. Fredyma,
Assistant County Attorney

End of Signature Page

EXHIBIT F

Prepared by Anthony J. Gargano
GARGANO & MARCHEWKA, LLP
2075 West First St, Suite 203
Fort Myers, FL 33901
941-337-2280

RELEASE OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS that this Release of Easement is given by **LEE COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as "**County**"), to **STRATEGIC PROPERTIES OF SOUTHWEST FLORIDA, INC.**, a Florida corporation (hereinafter referred to as "**Strategic**"), **GARDENS AT FORT MYERS, INC.**, a Florida corporation (hereinafter referred to as "**Gardens**"), and **BEACHWALK DEVELOPMENT ASSOCIATES, LC**, a Florida limited liability corporation (hereinafter referred to as "**BeachWalk**") collectively referred to as (the "**Grantees**").

A. Gardens is the fee simple owner and intended developer of certain real property legally described on attached **EXHIBIT A** (the "**Gardens Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida.

B. Strategic is the fee simple owner and intended developer of certain real property legally described on attached **EXHIBIT B** (the "**Strategic Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida.

C. BeachWalk is the fee simple owner of certain real property legally described on attached **EXHIBIT C** (the "**BeachWalk Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida. The Gardens Property, the Strategic Property, and the BeachWalk Property are collectively referred to as the "**Properties**."

D. County has maintenance jurisdiction over IDD Canal C-5 in Section 31, Township 45 South, Range 24 East, Lee County, Florida. Those portions of the Properties encumbered by the IDD Canal C-5 are legally described on attached **EXHIBIT D** (the "**present canal easement**").

E. The County's intent is to release the present canal easement;

F. The County's intent is to release its interest in the present canal easement described in EXHIBIT D to the respective Grantees of the real property described in EXHIBITS A, B, and C.

NOW, THEREFORE, the undersigned, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby releases to Grantees, their successors and assigns, the present canal easement over and across former IDD Canal C-5 which is legally described attached EXHIBIT D, it being the intention of the parties to terminate the present canal easement and to release and convey to the respective Grantees all of the

County's right, title, and interest to the present canal easement and the Grantees' real property respectively described in EXHIBITS A, B, and C.

IN WITNESS WHEREOF, County has executed and delivered this Release of Easement on the _____ day of _____, _____.

LEE COUNTY, a Political Subdivision of the State of Florida

By Donald D. Stilwell, County Manager

Attest:
Charlie Green, Ex Officio Clerk

Approved as to form:

By _____
[Signature]

[Type or Print Name]
Deputy Clerk

John J. Fredyma,
Assistant County Attorney

EXHIBIT G

Prepared by Anthony J. Gargano
GARGANO & MARCHEWKA, LLP
2075 West First St, Suite 203
Fort Myers, FL 33901
941-337-2280

EASEMENT GRANT

THIS EASEMENT GRANT (hereinafter referred to as the "Easement") is made and entered into this _____ day of _____, _____ by and between **STRATEGIC PROPERTIES OF SOUTHWEST FLORIDA, INC.**, a Florida corporation (hereinafter referred to as "Strategic"), **GARDENS AT FORT MYERS, INC.**, a Florida corporation (hereinafter referred to as "Gardens"), **BEACHWALK DEVELOPMENT ASSOCIATES, LC**, a Florida limited liability company (hereinafter referred to as "BeachWalk") collectively referred to as the "Grantors" and **LEE COUNTY**, a political subdivision of the State of Florida (referred to as "Grantee").

RECITALS

A. Gardens is the fee simple owner and intended developer of certain real property legally described on attached **EXHIBIT A** (the "**Gardens Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida.

B. Strategic is the fee simple owner and intended developer of certain real property legally described on attached **EXHIBIT B** (the "**Strategic Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida.

C. BeachWalk is the fee simple owner of certain real property legally described on attached **EXHIBIT C** (the "**BeachWalk Property**") located in Section 31, Township 45 South, Range 24 East, Lee County, Florida. The Gardens Property, the Strategic Property, and the BeachWalk Property are collectively referred to as the "**Properties.**"

D. County has maintenance jurisdiction over IDD Canal C-5 in Section 31, Township 45 South, Range 24 East, Lee County, Florida. Those portions of the Properties encumbered by the IDD Canal C-5 are legally described on attached **EXHIBIT D** (the "**present canal easement**").

E. The parties hereto acknowledge and agree that the IDD Canal C 5 has been realigned and relocated from the present canal easement to that location on the Properties legally described on attached **EXHIBIT E** (the "**realigned canal location**").

F. The principal purpose of this Agreement is to provide for an exchange of real property interests as allowed by and according to Section 125.37, Florida Statutes, 1997.

NOW, THEREFORE, for and in consideration of the release of Grantee's interest in present canal easement, the sum of Ten Dollars (\$10.00) and other goods and valuable consideration, the adequacy and receipt of which is hereby acknowledged by Grantors and Grantee, the parties mutually agree as follows:

1. Grantors hereby grant and convey to Grantee, its successors and assigns, a non-exclusive easement over and across the realigned canal location legally described on attached **EXHIBIT E**, for the purpose of drainage and surface water management, including the right but not the obligation to maintain the same (this "**Easement**").

2. This Easement is perpetual.

3. The Grantors, for themselves, their successors and assigns, agree to be responsible for the proper permanent maintenance, functioning and repair of the realigned IDD Canal C-5 drainage system located within this Easement (the "maintenance responsibility"). The Grantors and the Grantee, for themselves, their successors and assigns, agree that the obligations of permanent maintenance set forth herein shall run with the land and shall bind all future owners of the Properties, until a maintenance entity acceptable to Lee County accepts maintenance responsibility. Upon the Grantors' written confirmation to Grantee of the transfer to the maintenance entity (along with the entity's authority to accept the obligation), and the maintenance entity's acceptance of, the maintenance responsibility, all of the Grantors' responsibility hereunder shall automatically terminate.

4. Grantee, its successors, appointees and assigns, are granted the right, privilege and authority to construct, and maintain a storm-water drainage system flow-way and other appurtenances, to be located under, over, across and through the realigned canal location described on attached EXHIBIT E, with the additional right, privilege, and authority to remove, replace, repair and enlarge the realigned IDD Canal C-5 drainage system within the realigned canal location, and to trim and remove roots, trees, shrubs, bushes and plants, when reasonably necessary for the proper operation of the drainage flow-way.

5. This Easement will not be limited to any one diameter size or type and/or number of connections to other storm-water systems. This Easement is in exchange for the release of the present canal easement and is reserved for storm-water drainage/maintenance purposes.

6. Title to the utilities constructed hereunder shall remain in the Grantee, Grantee's successors, appointees and assigns.

7. Grantors warrant that subject to existing easements, if any, for laterals, ditches, pipelines and electrical transmission or distribution lines and telephone and cable television lines covering their respective land, Grantors are lawfully seized and possessed of that land, have good and lawful right and power to grant this Easement, and that, except as otherwise stated herein, the Properties are free and clear of all liens and encumbrances.

8. This Easement shall be binding upon the parties hereto, their successors and assigns.

9. This Easement shall be construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Easement Grant on the day and year first above written.

LEE COUNTY, a Political Subdivision of
the State of Florida

By Donald D. Stilwell, County Manager

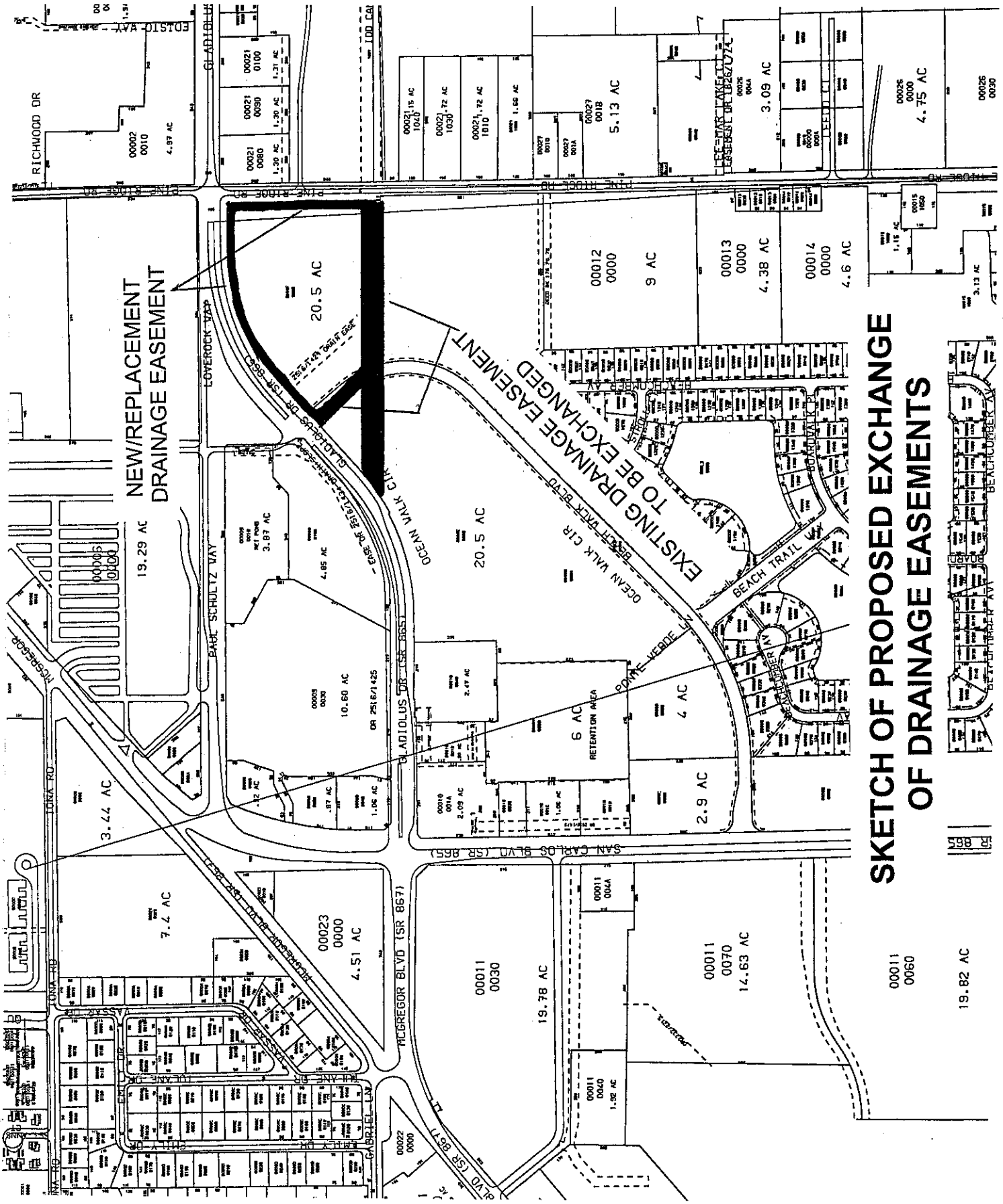
Attest:
Charlie Green, Ex Officio Clerk

Approved as to form:

By _____
[Signature]

[Type or Print Name]
Deputy Clerk

John J. Fredyma,
Assistant County Attorney



SKETCH OF PROPOSED EXCHANGE OF DRAINAGE EASEMENTS

