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

Blue Sheet No. 20030081

# 1. REQUESTED MOTION:

**ACTION REQUESTED:** Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$36,200.00, for Parcel 136, Palmetto Extension, Project No. 4073, pursuant to the terms and conditions set forth in the Purchase Agreement; authorize Chairman on behalf of the BoCC to execute Purchase Agreement if offer is accepted by Seller; authorize the Division of County Lands to handle and accept all documentation necessary to complete this transaction and payment of all recording fees.

WHY ACTION IS NECESSARY: The Board must formally authorize the making of a binding offer to a property owner pursuant to F.S. §73.015 prior to initiation of condemnation proceedings.

WHAT ACTION ACCOMPLISHES: Makes binding offer to property owner as required by F.S. §73.015, as amended.

2. DEPARTMENTAL CATE COMMISSION DISTRICT #		3. <u>MEETING DATE:</u> 02-18-2003
4. <u>AGENDA</u> : X CONSENT ADMINISTRATIVE APPEALS PUBLIC WALK ON TIME REQUIRED:	5. <u>REQUIREMENT/PURPOSE</u> : (Specify) <u>X</u> STATUTE 73. 125 ORDINANCE ADMIN. <u>X</u> OTHER <u>Resolution of Necessity</u> Blue Sheet No. 20020762 and Interlocal Agreement Blue Sheet No. 20020586	6. <u>REQUESTOR OF INFORMATION</u> A. B. DEPARTMENT C. DIVISION <u>County Lands</u> () () () (-,) +

### 7. BACKGROUND:

The Division of County Lands has been requested by the Department of Transportation and the City of Fort Myers to acquire property that is necessary for the Palmetto Extension, Project No. 4073.

This acquisition consists of vacant property, further identified as part of the North ½ of Lot 6, Hansons Highland Subdivision, PB 1-57(STRAP Number 19-44-25-06-00006.0010)

F.S. §73.015, as amended, requires the County to submit a binding offer to the property owner prior to the initiation of condemnation proceedings. The County obtained an appraisal dated December 11, 2002, performed by Woodward S. Hanson, MAI, CCIM,CRE, indicating a value of \$ 34,200.00. The binding offer to the property owner, Albert James Miller, III Trust Dated December 1, 1999 and Professional Research Inc. a Florida corporation, is for \$36,200.00. Should the property owner agree to accept this offer, condemnation proceedings will not be required. If the property owner elects not to accept this offer, then condemnation proceedings may be commenced.

Staff is of the opinion that the purchase price increase of \$2,000.00 above the appraised value can be justified considering the costs associated with condemnation proceedings, estimated between \$3,000 - \$5,000 excluding land value increases and attorney fees.

Staff recommends the Board approve the Requested Motion.

Funds are available in City of Fort Myers Acct # 310-4315-541-6100

ATTACHMENTS: Purchase and Sale Agreement, In-House Title Search, Appraisal Letter, Sales History, City Engineer Approval

# 8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:							
Α	В	С	D	E	F G		
Department	Purchasing or	Human	Other	County	Budget Services		County Manager
Director	Contracts	Resources	a 1	Attorney	With 2 6/03		
K. Torsyth		N/A	NA NA	John J Ridgine 2.4-03	0A 	200 RISK GC	00-6-03
10. COMMISSION ACTION:							
APPRO DENIED				Rec. 1	y CoAtty	RECEIVED BY	EWA
DEFER	RED			Date:	131103		<u>Crv</u>
OTHER				Time:	11 AS 1	2-4-03	_ !
						COUNTY ADMIN. PORWARDED TO:	PT
-				<i>CO</i> ,	HDH.	27	e 
S:\POOL\PALMET1	OEXT\BS\PARCEL 1	36.DOC (1/23/03)	) fs		3 184		

Agreement for Purchase and Sale of Real Estate Page 1 of 5

This document prepared by Lee County Division of County Lands Project: Palmetto Extension Project Parcel: 136 STRAP No.: 19-44-25-06-00006.0010

# 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 \_\_\_\_\_\_, 2003 by and between Albert James Miller III Trust dated December 1, 1999 and Professional Research, Inc. a Florida Corporation; hereinafter referred to as SELLER, whose address is 1050 Longboat Key Club Rd., Ste. 601, Longboat Key, FL 34228, 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 parcel of land consisting of **0.52 acres** more or less, and located at Fort Myers, FL and more particularly described in "Exhibit A" attached hereto and made a part hereof, hereinafter called "the Property." This property is being acquired for the Palmetto Extension, 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 **Thirty six thousand two hundred and no/100 dollars (\$36,200.00)**, 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 **\$36,200.00**, 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 and deduct from the purchase price any expenses required to repair the damage, 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;
- (e) SELLER'S attorney fees, if any.

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

- (a) Recording fee for deed;
- (b) survey, (if desired by BUYER).

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 problems unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition with an appropriate abatement to the purchase price or BUYER may terminate this Agreement without obligation.

11. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER 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, land fills, 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

Agreement for Purchase and Sale of Real Estate Page 4 of 5

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. In the event the BUYER abandons this project after execution of this Agreement, but before closing, BUYER may terminate this Agreement without obligation.

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 60 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.

Agreement for Purchase and Sale of Real Estate Page 5 of 5

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:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.

WITNESSES:	SELLER:
	Albert James Miller, Trustee (DATE) Albert James Miller III Trust UTD December 1, 1999
	Professional Research, Inc., a Florida Corporation
	Patrick O'Sullivan, President
CHARLIE GREEN, CLERK	BUYER: LEE COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS
BY: DEPUTY CLERK (DATE)	BY: CHAIRMAN OR VICE CHAIRMAN
	APPROVED AS TO LEGAL FORM AND SUFFICIENCY

COUNTY ATTORNEY (DATE)



Exhibit "A"

Page \_\_\_\_ of \_\_\_\_

August 19, 2002

#### **DESCRIPTION**

### PARCEL IN SECTION 19, TOWNSHIP 44 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

### PARCEL NO. 136

#### PARENT STRAP NO. 19-44-25-06-00006.0010

A tract or parcel of land located in Lot 6, W. Stanley Hanson's Highland Subdivision as recorded in Plat Book 1 at Page 57 of the Public Records of Lee County, Florida lying in Section 19, Township 44 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

From the southeast corner of the Northeast Quarter (NE-1/4) of said section run  $N 00^{\circ} 05' 21''$  W along the east line of said section for 812.08 feet to the southeast corner of the North Half (N-1/2) of said Lot 6 and the Point of Beginning.

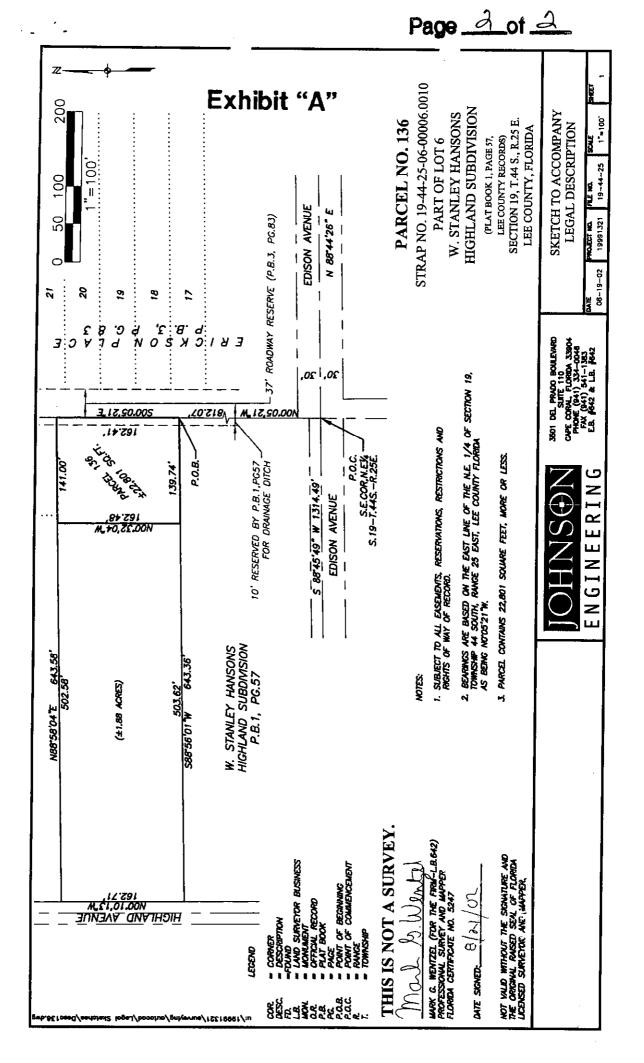
From said Point of Beginning run S 88° 56' 01" W along the south line of said North Half (N-1/2) of Lot 6 for 139.74 feet; thence run N 00° 32' 04" W for 162.48 feet to an intersection with the north line of said Lot 6; thence run N 88° 58' 04" E along said north line for 141.00 feet to the northeast corner of said Lot 6; thence run S 00° 05' 21" E along said fraction line and along the east line of said Lot 6 for 162.42 feet to the Point of Beginning.

Parcel contains 22,801 square feet, more or less.

SUBJECT TO easements, reservations, restrictions and right of ways of record. Bearings hereinabove are based on the east line of the Northeast Quarter (NE-1/4) of Section 19, Township 44 South, Range 25 East to bear N 00° 05' 21" W.

Mark G. Wentzel (For The Firm/LB-642) Professional Land Surveyor Florida Certificate No. 5247

19991321\Parcel No. 136 - 081902







Page 1 of 2

Updated In House Title Search Search No. 21884/D Date: July 16, 2002 Parcel: 136 Project: Palmetto Avenue Extension Project 4073

 To:
 Michele S. McNeill, SR/WA
 From:
 Shelia A. Bedwell, CLS

 Property Acquisition Agent
 Real Estate Title Examiner

STRAP: 19-44-25-06-00006.0010

An update has been requested of In House Title Search No. 21884/D which covers the period beginning January 1, 1940, at 8:00 a.m. and is now complete through July 6, 2002, at 5:00 p.m.

**Subject Property:** The North one half (N1/2) of Lot 6 of W. Stanley Hanson's Highland Subdivision according to the plat thereof on file and recorded in Plat Book 1, Page 57, of the Public Records of Lee County, Florida.

Title to the subject property is vested in the following:

# The Albert James Miller III Trust dated 12/1/99 and

Professional Redearch, Inc. & FL CORPORATION by that certain instrument dated April 16, 2002, recorded April 16, 2002, in Official Record Book 3624, Page 172, Public Records of Lee County, Florida.

### Subject to:

- 1. Title to oil, gas and mineral rights and leases on subject property is specifically omitted from this report.
- 2. Default Judgment in favor of Hospital Board of Directors of Lee County, d/b/a Lee Memorial Hospital, against Ruby Lee Horton, recorded in Official Record Book 2238, Page 963, as rerecorded in Official Record Book 2254, Page 4478, and Official Record Book 3019, Page 1911, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.
- 3. Notice of Lis Pendens, recorded in Official Record Book 3666, Page 483, Public Records of Lee County, Florida.

NOTE: The Plat of W. Stanley Hanson's High Land Subdivision recorded in Plat Book 1, Page 57, Public Records of Lee County, Florida has language describing a 10 foot drainage ditch with a fall of 9 ft. per mile. The language also states that the ditch is used for subsoil irrigation. The drainage ditch appears to abut the East line of subject property.

# **Division of County Lands**

( )

5

Updated In House Title Search Search No. 21884/D Date: July 16, 2002 Parcel: 136 Project: Palmetto Avenue Extension Project 4073

Page 2 of 2

NOTE: Instrument recorded in Official Record Book 3624, Page 172, Public Records of Lee County, Florida, does not reflect a trustee of the trust, nor does it contain trust powers. These matters must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

**Tax Status:** Tax certificate 02-004834 outstanding for 2001 taxes. (*The end user of this report is responsible for verifying tax and/or assessm ent 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.

\$



December 17, 2002

Robert G. Clemens Acquisition Program Manager Division of County Lands P.O. Box 398 Fort Myers, Florida 33902-0398

SUBJECT: File Number: 02-03-03.136 Project: Palmetto Avenue Extension Project No.: 4073 Parcel No.: 136 Owner: Albert James Miller, III, Trustee County: Lee County, Florida

Dear Mr. Clemens:

Integra Realty Resources-Southwest Florida is pleased to transmit this summary report of a complete appraisal that was prepared on the above referenced property. The purpose of this appraisal is to develop an opinion of the market value of those property rights proposed to be acquired by Lee County, Florida, together with all legally compensable diminution in value to the remaining land (if any) which can be attributed to the proposed partial taking, or the uses and/or activities proposed thereon. The attached report sets forth the data, research, analyses and conclusions for this appraisal.

The report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. Our opinion of market value is premised upon the Assumptions and Limiting Conditions contained within this report. The definition of market value is in Addendum B.

The **parent tract**, containing 104,602 square feet (2.401 acres) of gross land area, is a rectangular shaped tract located 326 feet south of Thomas Street along the easterly right-of-way of Highlands Avenue in the City of Fort Myers, Florida. The property is characterized by a westerly property line which measures 162.71 feet along the easterly right-of-way of Highlands Avenue, and a depth there from along its northerly and southerly property lines of 643.58 feet and 643.36 feet respectively. The property has a rear easterly property line of 162.41 feet. The property is zoned C-2, (Commercial) and is situated within an area which has been designated as Central Urban on the Future Land Use Map ("FLUM") of the Lee County Comprehensive Plan. The appraisers have estimated the highest and best use of the parent tract to be for potential industrial development.

LOCAL EXPERTISE... NATIONALLY

Robert G. Clemens December 17, 2002 Page 2

The **partial acquisition area**, containing 22,801 square feet (0.523 acres) is a rectangular shaped taking from the easterly, rear portion of the site. The partial acquisition area measures 141.00 feet along its northerly edge, 162.41 feet along its easterly edge, 139.74 feet along its southerly edge, and 162.48 feet along its westerly edge. There are no improvements of any consequence located within the partial acquisition area.

The **remainder property**, containing 81,801 square feet (1.878 acres), is rectangular shaped and is characterized by 162.71 feet of frontage along the easterly right-of-way of Palmetto Avenue, a depth there from along its northerly and southerly property lines of 502.58 feet and 503.62 feet, respectively, and a rear easterly property line measuring 162.48 feet. The highest and best use of the remainder property is expected to remain for potential industrial development.

By reason of our investigation and analysis, data contained in this report and our experience in the real estate appraisal business, it is our opinion that the amount due the owner (as a result of the proposed partial acquisition), as of December 11, 2002, is:

Value of Part Taken :

<ul><li>Land Taken:</li><li>Improvements Taken:</li></ul>	\$34,200 	
Sub Total (Part Taken):		\$34,200
Net Cost to Cure:		-0-
Incurable Severance Damages:		-0-
AMOUNT DUE OWNER		\$34,200

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,

Tompon

Woodward S. Hanson, MAI, CCIM, CRE State-Certified General Real Estate Appraiser Florida Certificate RZ 0001003

Konneth Sworty a

Kenneth F. Swartz, Analyst State-Certified General Real Estate Appraiser Florida Certificate RZ 0001297

# 5-Year Sales History

Parcel No. 136

# Palmetto Extension Project, No. 4073

Grantor	Grantee	Price	Date	Arms Length Y/N
Clerk of the Circuit Court, Lee County, Florida	Albert James Miller III Trust dated 12/1/99 and Professional Research, Inc.	\$6,490.50	4/16/02	N (Tax Deed)

# NOTE: Sale(s) relate to "parent tract" of the subject parcel.

S:\POOL\LANDDFRM\HISTRY.WPD

Ä

#### 01/23/2003 THU 11:27 FAX 239 479 8391

#### LEE COUNTY-COUNTY LANDS

00



BOARD OF COUNTY COMMISSIONERS

January

Writer's Direct Dial Number

239.479 8505 239.479.8391 FAX

Bob Janen District One

# VIA FAX TO 332-6604

Douglas R. St. Comy District Two

Ray Judah *District Three* 

Andrew W. Coy *District Four* John E. Ablon

District Five

Saeed Kazemi, P.E. City Engineer City of Fort Myers P.O. Box 2217 Fort Myers, FL 33902-2217

2003

Doneld D. Stilwell County Managar James G. Yauger

### RE: PARCEL 136, PALMETTO EXTENSION PROJECT

Request for review and sign-off on acquisition proposal

County Attorney Diana M. Patker County Hearing

Examiner

Dear Saeed:

The appraisal for parcel 136 has been reviewed and approved by County Staff and we are preparing to request Board approval to make a binding offer. Below is the relevant data for this parcel. Please review and approve on behalf of the City as well as confirm that funds are available. Thank you.

Sincerely.

Michele S. McNeill, SR/WA Property Acquisition Agent

#### Parcel 136

Property Owner: Albert James Miller, III Trust dated 12/1/99 and Professional Research Inc. Appraiser: Integra Realty Resources (W.S. Hanson, MAI, CCIM, CRE) Appraisal Date: 12/11/02 Appraised Amount: \$34,200 Sinding Offer Amount: \$36,200

Binding Offer Approved:

Saeed Kazemi, P.E. City Engineer, City of Fort Myers

Funds are available in account:

YIOD 310-4315-541-