

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

**Blue Sheet No.20040399**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve contract for purchase of Parcel 147, Pondella Road Widening Project.

**WHY ACTION IS NECESSARY:** Board must approve contract for it to be legally binding.

**WHAT ACTION ACCOMPLISHES:** Creates contract for sale/purchase of Parcel 147.

**2. DEPARTMENTAL CATEGORY:**

**COMMISSION DISTRICT #**

*A 12 A*

**3. MEETING DATE:**

*04-20-2004*

**4. AGENDA:**

☐ CONSENT  
☒ ADMINISTRATIVE  
☐ APPEALS  
☐ PUBLIC  
☐ WALK ON  
**TIME REQUIRED:**

**5. REQUIREMENT/PURPOSE:**

*(Specify)*

☐ STATUTE  
☐ ORDINANCE  
☐ ADMIN. CODE  
☐ OTHER

**6. REQUESTOR OF INFORMATION:**

**A. COMMISSIONER**

**B. DEPARTMENT** County Attorney

**C. DIVISION** Litigation

**BY:** John J. Renner  
Chief Assistant County Attorney

**7. BACKGROUND:** Lee County must acquire 1,568 sq. ft. of land from Parcel 147 for the Pondella Road Project. Parcel 147 is a strip of land from the property at the northwest corner of Pondella and Henkel Drive owned by Mr. and Mrs. Stellato. The site is improved and a printing business is operated in the building. During the survey process, it was discovered that a portion of the building extends into Henkel Road (approximately 12 sq. ft.). Lee County offered \$12,500.00. A settlement has been negotiated as follows: (1) Mr. and Mrs. Stellato will sell to Lee County the 1,568 sq. ft. needed to improve Pondella Road for \$15,045.00. This price includes land value, all damages and the cost to replace parking; (2) Lee County will give Mr. and Mrs. Stellato a revocable license that permits the building to remain within the Henkel Drive right-of-way; (3) Lee County will reconstruct a driveway on Pondella Road wide enough to allow two way traffic; and (4) Lee County will pay \$2,852.85 in attorney fees to Mr. and Mrs. Stellato's attorney.

The County Attorney recommends the Board approve this agreement.

Funds available in Account No.: 20465630700 .506110.

**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	OM	RISK	GC	<i>[Signature]</i>

**10. COMMISSION ACTION:**

☐ APPROVED  
☐ DENIED  
☐ DEFERRED  
☐ OTHER



RECEIVED BY	<i>[Signature]</i>
COUNTY ADMIN:	<i>04/21/04</i>
	<i>3:40pm</i>
COUNTY ADMIN	
FORWARDED TO:	<i>4-1-04</i>

*4:50pm*

This document prepared by  
Division of County Lands  
Project: Pondella Road Widening, Phase III, No. 4656  
Parcel: 147  
STRAP No.: 04-44-24-00-00070.0010

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 \_\_\_\_\_, 2004, by and between Marcellino Stellato and Lee Stellato, hereinafter referred to as SELLER, whose address is 990 Pondella Road, North Fort Myers, Florida 33903, 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 1,567 square feet, more or less, and located at 990 Pondella Road, North Fort Myers, Florida 33903, 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 Pondella Road Widening, Phase III, No. 4656 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 Fifteen Thousand Forty Five and 00/100 (\$15,045.00), inclusive of all cost to cure items, 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 \$15,045.00, 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:**

5.1 SELLER will pay for:

- (a) utility services up to, but not including the date of closing;
- (b) taxes or assessments for which a bill has been rendered on or before the date of closing;
- (e) payment of delinquent City of Cape Coral assessments, if any;

5.2 SELLER will execute:

- (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;
- (c) Revocable License Agreement.

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

- (a) Recording fee for deed;
- (b) survey, (if desired by BUYER).
- (c) Sellers' attorney fees in the amount of \$2,852.85.
- (d) payment of partial release of mortgage fees, if any.
- (e) All documents to be executed by SELLER.

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 may elect to accept the Property in its existing condition 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 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. Except as otherwise provided in paragraph 18, 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. **REVOCABLE LICENSE AGREEMENT:** The survey of the subject property revealed Sellers' building encroached into Buyer's road right of way. Incidental to the sale of the property described on Exhibit A from Sellers to Buyer, Buyer shall give Sellers a Revocable License to maintain the building within Buyer's road right of way. A copy of the Revocable License Agreement is attached as Exhibit B.

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

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
Marcellino Stellato (DATE)

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
Lee Stellato (DATE)

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

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COUNTY ATTORNEY

(DATE)

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## **REVOCABLE LICENSE AGREEMENT**

This agreement is made between LEE COUNTY, a political subdivision of the State of Florida and Marcellino Stellato and Lee Stellato, the owners of property with the address of 990 Pondella Road, North Fort Myers, Florida.

It has been discovered that the Stellatos' building encroaches into the public right of way of Henkel Drive and it is the purpose of this agreement to acknowledge the encroachment and allow for the building to remain under the conditions set forth in this License Agreement.

In consideration of the mutual promises contained in this agreement, the parties agree as follows:

1. LEE COUNTY grants to Marcellino Stellato and Lee Stellato a revocable license to occupy and use, subject to all terms and conditions of this agreement, the property described on the attached Exhibit "A".
2. The property described on the attached Exhibit "A" may be occupied only for continued use and maintenance of the portion of the existing building.
3. The parties recognize the building is a non-conforming use under the Lee County Land Development Code. Section 34-3241 of the Lee County Land Development Code shall apply to this building. Any future amendments or revisions to the Land Development Code or other land use regulations regarding non-conforming buildings and structures shall apply to the building.
4. This agreement may be modified or amended only in writing executed by both parties.
5. This revocable license may be assigned by Marcellino Stellato and Lee Stellato to their heirs, lessees and purchasers of the property at 990 Pondella Road.

LEE COUNTY, FLORIDA by its  
Board of County Commissioners

Approved as to Form:

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Chairman

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Office of the County Attorney

ATTEST:

Charlie Green, Clerk

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Marcellino Stellato

\_\_\_\_\_  
Lee Stellato



environmental • civil • structural

## LEGAL DESCRIPTION

### ENCROACHMENT AREA

A tract or parcel of land in Section 4, Township 44 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

**Commencing** at the southeast corner of Tract "C" of the record plat HANCOCK CREEK SOUTH CENTER, as recorded in Plat Book 63, at Pages 85 and 86, of the Public Records of Lee County, Florida, thence run S89°43'05"E along the north right-of-way line of Pondella Road for a distance of 628.71 feet to an intersection with the westerly right-of-way line of Henkel Drive; thence run N04°57'11"W along said westerly right-of-way line for a distance of 136.36 feet to the **Point of Beginning** of herein described parcel.

From said **Point of Beginning** continue N04°57'11"W along said right-of-way line for a distance of 16.44 feet; thence run S89°54'40"E for a distance of 1.51 feet; thence run S00°18'45"W for a distance of 16.37 feet to the **Point of Beginning**.

Containing 12 square feet, more or less.

Bearings herein above mentioned are based on the construction centerline of Pondella Road to bear N89°41'18"E.

This property is subject to easements, restrictions and or reservations of record.

TKW CONSULTING ENGINEERS, INC.

BY Eric V. Sandoval

Eric V. Sandoval

DATE: 9-11-03  
P.S.M. 5223 Florida

01769.00sk3desc

Page 1 of 2

EXHIBIT A

TKW CONSULTING ENGINEERS, INC.  
12553 New Brittany Boulevard, Building #32, Fort Myers, FL 33907, Tel: 239.278.1992, Fax: 239.278.0922, Website: www.tkwonline.com

DETAIL  
1" = 6'

S89°54'40"E  
1.51'

WESTERLY RIGHT-OF-WAY LINE

N04°57'11"W 16.44'

S00°18'45"W 16.37'

ENCROACHMENT AREA

CONCRETE  
BLOCK  
COMMERCIAL  
BUILDING

POINT OF BEGINNING



BUILDING WALL

**PARCEL 147**

OR 2402 PG 13

04-44-24-00-00070.0010

STELLATO, MARCELLINO  
& LEE

CONCRETE  
BLOCK  
COMMERCIAL  
BUILDING

WESTERLY RIGHT-OF-WAY LINE

SEE DETAIL

POINT OF BEGINNING

N04°57'11"W 136.36'

60' WIDE

HENKEL DRIVE

25'

25'

POINT OF COMMENCEMENT  
S.E. CORNER OF TRACT "C" OF  
"HANCOCK CREEK SOUTH CENTER"  
P.B. 63, PGS. 85 & 86, L.C.R.

PROPOSED RIGHT-OF-WAY LINE

EXISTING NORTH RIGHT-OF-WAY LINE

S89°43'05"E 628.71'

N89°41'18"E

CONSTRUCTION

**PONDELLA ROAD**

SIGNATURE

*Eric V. Sandoval*

9-11-03

DATE SIGNED:

ERIC V. SANDOVAL (FOR THE FIRM - LB-734)  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 5223

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A  
FLORIDA LICENSED SURVEYOR AND MAPPER.

EXHIBIT **A**

**TKW**  
**CONSULTING ENGINEERS, INC.**  
environmental • civil • structural  
12553 New Brittany Boulevard Building #32  
Fort Myers, Florida 33907  
(239) 278-1992 • FAX (239) 278-0922  
E-MAIL tkw@tkwonline.com  
Certification # 5782 / Survey LB 734

SKETCH TO ACCOMPANY  
ENCROACHMENT AREA  
PONDELLA ROAD WIDENING  
SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST  
LEE COUNTY, FLORIDA

DATE: 09/10/03

DRAWN BY: SER

CHECKED BY: EVS

SCALE: 1"=60'

JOB NO.: 99899.02

NOT A SURVEY

PAGE  
2 OF 2

## **SPECIAL CONDITIONS**

Lee County agrees to provide during it's widening of Pondella Road or within one year, whichever shall occur later, and at it's sole expense a driveway from Pondella Road to and on the remainder of the Seller's property of sufficient width to provide two way vehicular ingress and egress. This Special Condition shall survive closing.