

**LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

BLUE SHEET NO: 20030593

1. REQUESTED MOTION:

ACTION REQUESTED: Approve an amendment to an existing bonus density contract with the Gardens at Bonita, Inc. concerning the Gardens of Bonita development.

WHY ACTION IS NECESSARY: Contract approval is required by Section 34-1516(h) of the Land Development Code (LDC) and by Administrative Code 13-12.

WHAT THE ACTION ACCOMPLISHES: Allows the Board of County Commissioners to enter into an amended Bonus Density Contract that allows the developer to exercise the "Cash-contribution" option of the Bonus Density program for the approved 79 bonus density units at \$4,000 per unit.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # 1

C4A

3. MEETING DATE:

06-10-2003

4. AGENDA

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC

TIME REQUIRED:
10 Minutes

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
 - B. DEPARTMENT Community Development
 - C. DIVISION Planning
- BY Paul O'Connor, AICP, Director *EO*

7. BACKGROUND:

The Gardens of Bonita, Inc. has submitted a request to amend an existing bonus density contract concerning the Gardens of Bonita development. The Board of County Commissioners has previously approved the rezoning of the site (Z-96-43) as well as a contract authorizing the use of 79 bonus units under the site-specific option of the bonus density program. The project is located at 11100 E. Terry Street in Bonita Springs. The project is fully developed.

The applicant is requesting to be allowed to exercise the "Cash-contribution Option" rather than the "Site-specific Option" of the Bonus Density Program described in the original contract. If this revision to the contract is approved, the developer agrees to pay \$316,000.00 which will be deposited into the Lee County Affordable Housing Trust Fund within 30 days of the execution of this agreement. The \$316,000.00 represents 79 bonus density units at \$4,000.00 per unit.

Attachments
Proposed Contract Amendment

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

A Department Director	B Purchasing or Contracts	C Human Rel.	D Other	E County Attorney	F County Administration				G County Manager
<i>Mary Gibbs</i>	N/A	N/A		<i>For 2nd meeting DMC 5-15-03</i>	<i>QA 5/15/03</i>	<i>OM 5/15/03</i>	<i>Risk 5-15-03</i>	<i>GC P.M 5/15/03</i>	<i>HAS 5-15-03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED - *to 6/10/03 MEETING*
- OTHER

5/29/03 *s/c*

06:16 AM 7:30 2003 MAY 16

RECEIVED BY COUNTY ADMIN. <i>ID</i>
<i>5-15-03</i>
<i>11:45</i>
COUNTY ADMIN. <i>HS</i>
FORWARDED TO: <i>HS</i>
<i>5/15/03</i>

5/15/03
5:30 AM
FORWARDED TO:
ADHIN
5/15/03

RECEIVED
PUBLIC RESOURCES

AGENDA UPDATE

FROM



DIVISION OF PUBLIC RESOURCES

MEETING OF MAY 27, 2003

**RE: CONSENT 4(B)-AMENDMENT TO EXISTING BONUS DENSITY
CONTRACT WITH THE GARDENS AT BONITA, INC**

**Attached please a copy of additional back up for the above referenced agenda item.
Please place this in your agenda book.**

Thank you.

**SEND TO: BOARD - ALBION COY JAMES JUDAH ST. CERNY
COMMISSION RECEPTION DESK
DONALD STILWELL, COUNTY MANAGER
BILL HAMMOND, DEPUTY COUNTY MANAGER
HOLLY SCHWARTZ, ASSISTANT COUNTY MANAGER
ANTONIO MAJUL, BUDGET SERVICES
JAMES LAVENDER, PUBLIC WORKS
JAMES YAEGER, COUNTY ATTORNEY
LISA PIERCE, MINUTES DEPARTMENT
BETTY SPENCER, FINANCE
PUBLIC RESOURCES OFFICE**

DATE AND TIME DISTRIBUTED: May 20, 2003 2:00 PM

SECOND AMENDMENT TO THE DEVELOPMENT CONTRACT

This second Amendment to the Development Contract is made by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida, whose mailing address is P. O. Box 398, Fort Myers, Florida 33902-0398 (County) and Gardens at Bonita, Inc., a Florida corporation whose mailing address is 1499 West Palmetto Park Road, Suite 200, Boca Raton, Florida 33486-3321 (Gardens at Bonita).

RECITALS

- A. The original Development Contract pertaining to the Site Specific Density Option of the housing bonus density program was executed on June 2, 1997, between Lee County and A.P. DeSalvo, Trustee. The substance of the agreement pertained to property described in Exhibit A attached hereto.
- B. The original agreement was subsequently amended by County and DeSalvo on March 31, 1998, to revise the Assignability clause of the contract. The amendment specifically provided for the assignment of the agreement.
- C. A. P. DeSalvo, Trustee, assigned his rights pursuant to the amended Development Contract to Royal Palm. The contract was thereafter assigned to Gardens at Bonita. Pursuant to the terms of Article V, Assignability, all successors to A. P. DeSalvo, Trustee, continued subject to the terms and conditions of the original contract, as amended.
- D. Royal Palm executed and recorded a Declaration of Covenants and Restrictions dated May 8, 1998, in Official Records Book 2957, at Page 1893, in the Public Records of Lee County.
- E. County and Gardens at Bonita desire to further amend the Development Contract to acknowledge the assignment of rights from Royal Palm to Gardens at Bonita and to allow Gardens at Bonita to exercise the "Cash Contribution Option" of the County's Housing Bonus Density Program rather than the site specific density option described in the original contract.

NOW, THEREFORE, in consideration of the terms and conditions discussed herein, the County and Gardens at Bonita agree as follows:

1. Acknowledgment of Assignment. County acknowledges and accepts the assignment of the amended Development Contract to Gardens at Bonita.

2. Release of Royal Palm. County hereby releases Royal Palm from further obligation pursuant to the original Development Contract, as amended.

3. Amendment to Article IV. Article IV of the Development Contract is hereby amended by deleting all text set forth in Section 4.4. The deleted text is hereby replaced with the following text:

4.4 Developer has elected to exercise the "Cash Contribution Option" of the Housing Bonus Density Program described in Chapter 34 of the Lee County Land Development Code.

- (a) Developer agrees to pay \$316,000.00, which will be deposited in the Lee County Affordable Housing Trust Fund within 30 days of the execution of this agreement. The \$316,000.00 represents 79 bonus density units at \$4,000.00 per unit.
- (b) If the \$316,000.00 cash contribution is not deposited in the Lee County Affordable Housing Trust Fund within 30 days of execution of this agreement, the terms and conditions of the original Development Contract as amended on March 31, 1998, will be reinstated.
- ©) Cash contributions to the Lee County Affordable Housing Trust Fund will not be refunded once made, even if the development in question fails to occur for any reason.

4. Intent to Release Declaration of Covenants and Restrictions. When the Gardens at Bonita has paid the \$316,000.00 cash contribution in accordance with Section 4.4. of the Development Contract, as amended, Lee County will deliver a fully executed Release of Declaration of Covenants and Restrictions in the form set forth in Exhibit B attached to this agreement.

In witness of the foregoing, County and Gardens at Bonita have executed this second amendment to the development contact to be effective on the date executed below.

Attest:
CHARLIE GREEN
CLERK OF COURT

Lee County, Florida
By its Board of County
Commissioners

Deputy Clerk

Ray Judah, Chairman

Date:

Approved as to form:

Donna Marie Collins
Office of the Lee County Attorney

Witnesses:

**Gardens at Bonita, Inc.
A Florida Corporation**

(Printed Name)

(Printed Name)

State of _____

County of _____

By: _____

Daniel Kodsi, President

The foregoing instrument was acknowledged before me this _____ day of _____ 2003, by Daniel Kodsi, as President of Gardens at Bonita, Inc., a Florida Corporation. He is personally known to me or has produced _____ as identification.

(Signature of person taking acknowledgment)

(Name typed, printed, or stamped)
(Title or Rank)
(Serial Number, if any)

Exhibits:

- A. Legal Description
- B. Form Release of Declaration of Covenants and Restrictions

Exhibit A
Legal Description of Property

All of those certain tracts or parcels of land lying in Section 36, Township 47 South, Range 25 East, Lee County, Florida, and more particularly described as follows:

Lot 6, Bonita Farms, according to the subdivision map or plat thereof, as recorded in Plat Book 3, Page 27, of the Public Records of Lee County, Florida;

Together with the northwest quarter (NW $\frac{1}{4}$) of the northwest quarter (NW $\frac{1}{4}$) of the northwest quarter (NW $\frac{1}{4}$) of Section 36, Township 47 South, Range 25 East, Lee County, Florida.

Exhibit B

*This instrument was prepared by,
and, after recording, please return to:*
Kurt A. Raulin, Esq.
Royal Palm Communities
1499 West Palmetto Park Road, Suite 200
Boca Raton, FL 33486-3321
(561) 347-6844

RELEASE OF DECLARATION OF COVENANTS AND RESTRICTIONS

THIS RELEASE OF DECLARATION OF COVENANTS AND RESTRICTIONS (this "**Release**"), dated this ____ day of _____, 2003, is made and declared by **GARDENS AT BONITA, INC.**, a Florida corporation whose address is 1499 West Palmetto Park Road, Suite 200, Boca Raton, Florida 33486-3321 ("**Developer**"), with the consent and joinder of the **LEE COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is Post Office 398, Fort Myers, Florida 33902-0398 ("**Lee County**").

WITNESSETH:

WHEREAS, Developer is the present holder of fee-simple title to that certain 19.8 acres of land located in Section 36, Township 37 South, Range 25 East, Lee County, Florida, more particularly described in **Exhibit A** attached to this Amendment and incorporated herein by this reference (the "**Property**").

WHEREAS, Lee County and Developer's predecessor in title to the Property, A.P. DeSalvo, Trustee, entered into that certain Development Contract, dated May 21, 1997, that mandated that the future Development of the Property would be subject to the requirements that 79 of the residential housing units to be constructed upon the Property would be restricted for lease to low and moderate income tenants (as subsequently amended, the "**Development Contract**").

WHEREAS, Developer, with the agreement of Lee County, recorded a Declaration of Covenants and Restrictions in Official Records Book 2957, at Page 1893 of the Public Records of Lee County, Florida (the "**Declaration**"), which required, among other things, that Developer would restrict 79 of the residential housing units to be constructed upon the Property for lease only to low and moderate income tenants in accordance with the terms and conditions of the Development Contract.

WHEREAS, Developer and Lee County have now agreed, pursuant to that certain Amendment to Development Contract, dated May ____, 2003, that Lee County would release Developer's obligation to restrict 79 of the residential housing units now constructed upon the Property for lease only to low and moderate income tenants in exchange for Developer's cash contribution of \$4,000.00 for each of the 79 residential housing units previously restricted, or a total of \$316,000.00.

WHEREAS, Developer having paid in full the required \$316,000.00 cash contribution, Developer and Lee County now desire to terminate and release the Declaration as a matter of public record.

NOW, THEREFORE, Developer, in consideration of the premises, and with the consent and joinder of Lee County, declares as follows:

1. **Recitals.** The foregoing recitals are true and correct, and are hereby incorporated herein by reference.

2. **Termination and Release.** The Declaration is hereby terminated and the covenants and restrictions set forth therein are hereby released.

IN WITNESS WHEREOF, Developer has caused its duly authorized officer to execute and record this Release of its behalf on the date set forth in the preamble above.

WITNESSES:
Signed and delivered in the presence of:

Signature: _____

Printed name: _____

Signature: _____

Printed name: _____

DEVELOPER:
GARDENS AT BONITA, INC.,
a Florida corporation

By: _____
Daniel Kodsi,
President

[Signatures continue on the following page of this Amendment.]

[Signatures continued from the preceding page of this Amendment.]

As evidence of its consent to the execution and recording of this Release by Developer, Lee County has caused its duly authorized representative to join in and execute this Release on its behalf.

ATTEST:
Charlie Green, Clerk of the Circuit
Court in and for Lee County, Florida

LEE COUNTY:
BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Ray Judah,
Chairman

APPROVED AS TO FORM,
OFFICE OF COUNTY ATTORNEY

By: _____
Lee County Attorney's Office