Lee County Board Of County Commissioners Agenda Item Summary

Blue Sheet No. 20060300

- 1. ACTION REQUESTED/PURPOSE: Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$5,100 for Parcel 69, Gladiolus Drive Widening, Project No. 4083, pursuant to the Purchase Agreement; authorize the Division of County Lands to handle all documentation necessary to complete transaction.
- 2. WHAT ACTION ACCOMPLISHES: Authorizes binding offer to property owner.

3. MANAGEMENT RECOMMENDATION: Approve 4-04-2006 4. Departmental Category: 6 5. Meeting Date: 7. Requirement/Purpose: (specify) 8. Request Initiated: 6. Agenda: 125 Statute Commissioner X Consent Independent Ordinance Department Administrative County Lands Admin. Code Division **Appeals** By: Karen L.W. Forsyth, Director

9. Background:

Public

Walk-On

Negotiated for: Department of Transportation

Interest to Acquire: Fee Interest in 6,128 square feet of vacant land.

Property Details:

Owner: Ina Johnson, Richard and Joyce Johnson and Silver Key Realty Profit Sharing Plan

Other

Address: 10280 Gladiolus Drive, Fort Myers

STRAP: 32-45-24-01-0000D.0210

Purchase Details:

Binding Offer Amount: \$5,100

In order to expedite acquisition efforts, staff recommends Board make a binding offer in the amount of \$5,100, and commence Eminent Domain procedures.

Appraisal Information:

Appraised Value: \$4,600 as of October 28, 2005 Company: Hanson Real Estate Advisors, Inc.

Staff Recommendation: Staff is of the opinion that the purchase price increase above the appraised value (10.5%) can be justified and may secure an agreement for the acquisition of the property without the full expense of an Eminent Domain action.

Account: 20408330700.506110

Attachments: Purchase and Sale Agreement, In-House Title Search, Appraisal Summary, Location Map, Sales History

10. Review for Scheduling:									
Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney		J	Services		County Manager/P.W. Director
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Agreement for Purchase and Sale of Real Estate Page 1 of 5

Lee County
County Lands Division

Project: Gladiolus Drive Widening Project

Parcel: 69

STRAP No.: Part of 32-45-24-01-0000D.0210

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 or
, 20 by Ina Johnson as to a 50% interest whose address is 2004
Johnson Road, Immokalee, FL 34142, Richard and Joyce Johnson, husband and wife as to
a 40% interest, whose address is 1222 Forrester Avenue, Immokalee, FL 34142 and Silver
Key Realty Profit Sharing Plan, as to a 10% interest, whose address is c/o Doris Swor, 6385
Presidential Court, Suite 104, Fort Myers, FL 33919, hereinafter referred to as SELLER 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 6,128 square feet more or less, and located at 10280 Gladiolus Drive, 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 Gladiolus Drive Widening Project, 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 Five thousand and no/100 dollars (\$5,100.00), 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 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 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 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.
- 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.

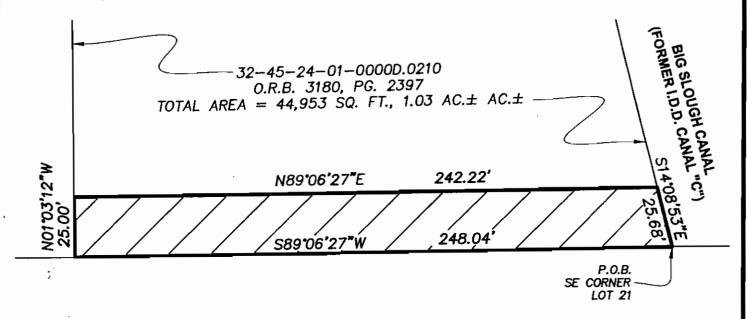
18. SPECIAL CONDITIONS: Any and all s and signed by all parties to this Agreement.	pecial conditions will be attached to this Agreement
WITNESSES:	SELLER:
	Ina Johnson
	Richard Johnson
	Joyce Johnson
	Silver Key Realty Profit Sharing Plan
	By: Title:
CHARLIE GREEN, CLERK	BUYER: LEE COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS
BY: DEPUTY CLERK (DATE)	BY:CHAIRMAN OR VICE CHAIRMAN
	APPROVED AS TO LEGAL FORM AND SUFFICIENCY
	COUNTY ATTORNEY (DATE)

SKETCH OF DESCRIPTION

Exhibit "A"

OF A PARCEL LYING IN THE SW 1/4 OF THE NE 1/4 OF SECTION 32, TWP 45 S, RGE 24 E, LEE COUNTY, FLORIDA

LOT 21, BLOCK D, HARLEM HEIGHTS



GLADIOLUS DRIVE (CR-865)

PARCEL NO.: 69
PROPERTY OWNER: INA JOHNSON, RICHARD AND JOYCE JOHNSON, AND SILVER KEY REALTY PROFIT SHARING
REFERENCE: O.R.B. 3180/2397

REFERENCE: O.R.B. 3180/2397 STRAP NO.: 32-45-24-01-0000D.0210 AREA OF TAKE: 6.128 SQ. FT.. 0.14 AC.± AREA OF REMAINDER: 38.825 SQ. FT.. 0.89 AC.±

JAMES N. WILKISON (FOR THE FIRM LB6773) PROFESSIONAL SURVEYOR AND MAPPER

FLORIDA LICENSE NO. LS 4876 THIS 2 8 DAY OF 2005.

THIS IS NOT A SURVEY

KEY: AC. – ACRES

P.O.B. — POINT OF BEGINNING
P.O.C. — POINT OF COMMENCEMENT
O.R.B. — OFFICIAL RECORDS BOOK

SQ. FT. - SQUARE FEET

NOTE: SEE SHEET 2 OF 2 FOR DESCRIPTION

JEFFREY C. COONER AND ASSOCIATES, INC.

SURVEYING AND MAPPING

3900 COLONIAL BLVD., SUITE 4, FORT MYERS, FLORIDA 33912

PHONE: (239)277-0722 FAX: (239)277-7179 EMAIL: SURVEYING@COONER.COM

CLIENT: LEE COUNTY D.O.T. ENGINEERING	DRAWN BY: JRF	CHECKED BY: J.N.W.		
	DATE: 1/14/05	SCALE: 1"=40'		
TAKE PARCEL IN THE SW 1/4 OF THE NE 1/4 OF SEC 32-45-24	PROJECT No: 020504	DWG No: 0D_0210SKD SHEET: 1 OF 2		

SKETCH OF DESCRIPTION

Exhibit "A"

OF A PARCEL LYING IN THE NE 1/4 OF THE NW 1/4 OF SECTION 34, TWP 45 S, RGE 24 E, LEE COUNTY, FLORIDA

DESCRIPTION:

A PARCEL OF LAND SITUATED IN LOT 21, BLOCK D, HARLEM HEIGHTS, AS RECORDED IN PLAT BOOK 8, PAGE 76, IN SECTION 32, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, ALSO BEING A PART OF A PARCEL OF LAND RECORDED IN OFFICIAL RECORDS BOOK 3180, PAGE 2397, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 21, ALSO BEING THE INTERSECTION OF THE NORTH LINE OF GLADIOLUS DRIVE (100—FOOT WIDE) AND THE WEST LINE OF THE BIG SLOUGH CANAL, THENCE RUN S89°06'27"W, A DISTANCE OF 248.04 FEET ALONG THE SOUTH LINE OF SAID LOT 21 (SAID NORTH LINE OF GLADIOLUS DRIVE), TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND RECORDED IN OFFICIAL RECORDS BOOK 3180, PAGE 2397; THENCE RUN N01°03'12"W, A DISTANCE OF 25.00 FEET ALONG THE WEST LINE OF SAID PARCEL; THENCE RUN N89°06'27"E, A DISTANCE OF 242.22 FEET ALONG A LINE THAT IS PARALLEL TO SAID NORTH RIGHT—OF—WAY LINE; THENCE RUN S14°08'53"E, A DISTANCE OF 25.68 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.128 SQUARE FEET OR 0.14 ACRES. MORE OR LESS.

ALL RECORDING REFERENCES ARE FROM THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

<u>NOTE:</u> SEE SHEET 1 OF 2 FOR SKETCH

THIS IS NOT A SURVEY

JEFFREY C. COONER AND ASSOCIATES, INC.

SURVEYING AND MAPPING

3900 COLONIAL BLVD., SUITE 4, FORT MYERS, FLORIDA 33912

PHONE: (239)277-0722 FAX: (239)277-7179 EMAIL: SURVEYING@COONER.COM

CLIENT: LEE COUNTY D.O.T. ENGINEERING	DRAWN BY: JRF	CHECKED BY: J.N. W.		
PARCEL DESCRIPTION:	DATE: 1/14/05	SCALE:		
TAKE PARCEL IN THE SW 1/4 OF THE NE 1/4 OF SEC 32-45-24	PROJECT No: 020504	DWG No: 00_0210SKD SHEET: 2 OF 2		

Division of County Lands

Ownership and Easement Search

Search No. 22281 Date: January 17, 2003

Parcel: 109

Project: Gladiolus Drive Project 4083

To: Karen L.W. Forsyth From: Shelia A. Bedwell, Ç

Director

Property Acquisition Assistant Bidwel

No change us of 3/14/as

STRAP:

32-45-24-01-0000D.0210

Effective Date: December 26, 2002, at 5:00 p.m.

Subject Property: Lot 21, LESS the West 222.41 feet thereof, Block D, HARLEM HEIGHTS. according to the map or plat thereof as recorded in Plat Book 8, Page 76, Public Records of Lee County, Florida.

Title to the subject property is vested in the following:

Ina Johnson, as to a 50% interest; Richard and Joyce Johnson, husband and wife, as to a 40% interest; and Silver Key Realty Profit Sharing Plan, o/b/o Doris Swor, as to a 10% Interest.

by that certain instrument dated October 13, 1999, recorded October 21, 1999, in Official Record Book 3180, Page 2397, Public Records of Lee County, Florida.

Easements:

1. Agreement to Enter Upon Land for Mosquito Control Work, recorded in Official Record Book 488, Page 659, Public Records of Lee County, Florida.

NOTE(1):

Deed recorded June 21, 1972 in Official Record Book 835, Page 603, Public Records of Lee County, Florida, does not contain marital status of the grantor(s), joinder by spouse, or statement regarding homestead status of subject property. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

NOTE(2):

Mortgage executed by Ina L. Johnson, individually, as Personal Representative of the Estate of Ernest L. Johnson, deceased and Ina L. Johnson and Douglas L. Johnson, as Co-Trustees of the Ernest L. Johnson, Jr. Revocable Trust dated February 14, 1989 in favor of First Bank of Immokalee, dated October 4, 1995, recorded October 26, 1995, in Official Record Book 2646, Page 1233, as amended by Partial Release of Mortgage and Disclaimer recorded in Official Record Book 2743, Page 3495, Public Records of Lee County, Florida.

Division of County Lands

Ownership and Easement Search

Search No. 22281

Date: January 17, 2003

Parcel:

Project: Gladiolus Drive Project 4083

Tax Status: 2002 taxes are due and payable (amount is less than \$5.00). (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.

HANSON REAL ESTATE ADVISORS, INC.

Real Estate Valuation and Counseling

October 28, 2005

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

Re: Complete Summary Appraisal Report No. 05-08-04.69

Project: Gladiolus Widening Project (No. 4083)

Parcel No: 69

Owner: Ina Johnson, Richard and Joyce Johnson and Silver Key Realty Profit Sharing

Plan

County: Lee County, Florida

Dear Mr. Clemens:

We are 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 estimate the market value of those property rights proposed for acquisition 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.

This assignment has been completed in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") – 2005 Edition, as published by the Appraisal Standards Board of the Appraisal Foundation; and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. In so much that the appraisers did not invoke the Departure Provision of USPAP in the development of the valuation analysis and opinions, the appraisal is identified as a Complete Appraisal. The appraisers have communicated the valuation analysis and opinions in a Summary Appraisal Report format, as defined by Standard Rule 2-2 (b) of USPAP. The market value estimate is reported subject to the Extraordinary Assumptions, General Assumptions, and Hypothetical Conditions (if any) summarized below and in the Addendum of this report.

Market value for this purpose is defined as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. buyer and seller are typically motivated;
- 2. both parties are well informed or well advised and acting in what they consider their best interests;
- 3. a reasonable time is allowed for exposure in the open market;
- 4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") of 1989.

The client and intended user of this report is identified as Robert G. Clemens, Acquisition Program Manager, Division of County Lands, whose address is P.O. Box 398, Fort Myers, Fl 33902. The intended use of the report is to provide the client and intended user an aid in estimating the amount due the owner based upon the proposed partial acquisition identified within.

The parent tract, containing 1.03 acres (44,953 SF) of gross land area, is located along the north side of S.R. 865 - Gladiolus Drive, just east of the intersection of S.R. 865 - Gladiolus Drive, Alexandria Court and Hagie Drive in the Fort Myers market area of Lee County, Florida. The parent tract is slightly square-shaped with a northerly edge measuring approximately 192.67 feet, a westerly edge measuring approximately 197.67 feet, a non-linear easterly edge measuring approximately 208.10 feet along the westerly line of the Big Slough Canal and a southerly edge measuring approximately 248.04 feet along the northerly right-of-way of S.R. 865 – Gladiolus Drive. The parent tract is zoned TFC-2 (Two Family Conservation) and is designated Wetlands on the Future Land Use Map of the Lee County Comprehensive Plan. According to Laura Herrero, an ecologist with Johnson Engineering, Inc., the site is adjacent to the Big Slough Canal and is considered to be (100%) wetlands. The appraisers have estimated the highest and best use of the parent tract "as vacant" for potential residential development.

The partial acquisition area, identified as Parcel 69 (Fee Taking) contains 6,128 square feet. It is a proposed fee simple acquisition for road right-of-way for S.R. 865 – Gladiolus Drive, which is located along the southern edge of the parent tract. The taking is characterized by a northerly edge measuring 242.22 feet, a westerly edge measuring 25.00 feet, an easterly edge measuring 25.68 feet along the westerly line of the Big Slough Canal and a southerly edge measuring 248.04 feet along the northerly right-of-way of S.R. 865 – Gladiolus Drive. There are no improvements of any consequence located within this partial acquisition area.

The remainder property, containing 0.89 acres (38,825 SF) of gross land area, is a slightly square-shaped parcel, with a northerly edge measuring approximately 192.67 feet, a westerly edge measuring approximately 172.67 feet, a non-linear easterly edge measuring approximately

182.42 feet along the westerly line of the Big Slough Canal and a southerly edge measuring approximately 242.22 feet along the northerly right-of-way of S.R. 865 – Gladiolus Drive. The highest and best use remains for potential residential 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 October 28, 2005, is:

Value of Property Rights Taken:

TOTAL AMOUNT DUE OWNER:	\$4,600 *
Incurable Severance Damages:	0-
Value of Improvements Taken:	-0-
Parcel 69 (Fee Taking):	\$4,600

*Extraordinary Assumptions: USPAP defines an extraordinary assumption as "an assumption directly related to a specific assignment, which if found to be false, could alter the appraiser's opinions or conclusions." The following extraordinary assumptions were adopted by the appraiser in the development and communication of the market value estimate:

The appraisers were not provided with information as to the presence of jurisdictional wetlands, and have assumed that no conditions or restrictions exist which would prevent the property from being developed in a legally permissible manner, consistent with surrounding land uses.

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

Respectfully submitted,

Woodward S. Hanson, MAI, CRE, CCIM

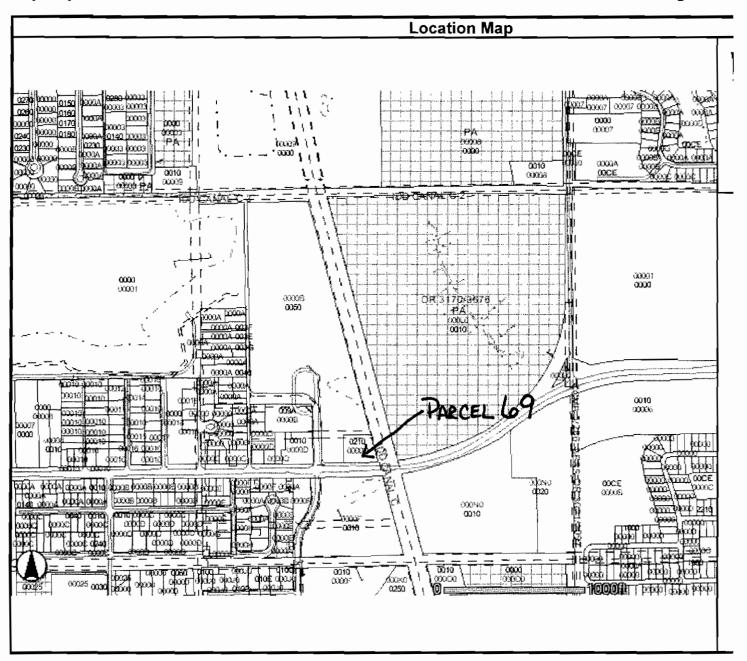
St. Cert. Gen. REA RZ 1003

Andrew D. Anderson

Registered Appraiser Trainee RI 14189

Christopher G. Reublin

Registered Appraiser Trainee RI 16310



5-Year Sales History

Parcel No. 69

Gladiolus Drive Widening Project, No. 4083

NO SALES in PAST 5 YEARS

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

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