

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

**DATE CRITICAL
Blue Sheet No. 20030949**

1. REQUESTED MOTION:

ACTION REQUESTED: Approve an exchange of real property interests (under §125.37, F.S.) in a portion of the County's Iona Drainage Ditch (IDD) Canal E for a replacement Perpetual Drainage Easement lying west of John Morris Road and south of Iona Road; authorize the execution of a realignment agreement governing the terms of the exchange; and 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: ~~2~~
COMMISSION DISTRICT # 3

A12A

3. MEETING DATE:

09-02-2003

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE §125.37
- 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 has received a request from Colonial Homes, Inc. (Colonial), on behalf of Colonial Shores, LLC, the owners of property lying west of John Morris Road and south of Iona Road in Section 31, Township 45 South, Range 24 East, Lee County, Florida, to exchange a portion of the County's interest in IDD Canal E for replacement drainage easement at or near the existing drainage canal.

Colonial seeks to develop Colonial Shores, a residential subdivision within which a portion of the existing IDD canal and proposed replacement Perpetual Drainage Easement are located. To facilitate development of the site, Colonial would like to relocate and reconstruct the existing IDD canal. An agreement (IDD Canal E Realignment Agreement) has been prepared to facilitate an exchange under § 125.37, F.S., 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	OM	RISK	GC	<i>[Signature]</i>
					<i>RK 8/12</i>	<i>8/12/03</i>	<i>8/12/03</i>	<i>8/12/03</i>	<i>8-13-03</i>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
8-12-03 11:20

RECEIVED BY *RV*
COUNTY ADMIN
8/12 11:20
COUNTY ADMIN
FORWARDED TO: *DS*
8/12 40

Colonial is 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 owner, or developer, to be responsible for the costs of permitting and construction of the replacement drainage canal. The property owner, or developer, will also be responsible for the permanent maintenance of the relocated and reconstructed drainage canal.

The exchange of property is the entire consideration for this transaction. The property owner or developer 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 E Realignment Agreement (without legals and sketches).
 - (3) Sketch of properties to be exchanged.

RESOLUTION NO. 03-_____

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, Colonial Shores, LLC, desires to improve drainage in its property to be developed that is located in Section 35, Township 45 South, Range 23 East, Lee County, Florida; and

WHEREAS, the existing portion of an Iona Drainage Ditch (IDD) canal (IDD Canal E) does not provide for an efficient flow of surface water in Section 35, Township 45 South, Range 23 East, Lee County, Florida; and

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

WHEREAS, Lee County owns a real property interest in IDD Canal E located in Section 35, Township 45 South, Range 23 East, Lee County, Florida; and

WHEREAS, Colonial Shores, LLC, in accordance with the terms of a document entitled "IDD Canal E Realignment Agreement," a copy of which is attached hereto and incorporated herein (the Document), will relocate, reconstruct and maintain, as necessary, a portion of IDD Canal E, located within Section 35, Township 45 South, Range 23 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 E Realignment Agreement between the parties.

The Chairman, on behalf of the Board of County Commissioners, will execute the IDD Canal E 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 "B" of the Document to Colonial Shores, LLC, by release; in exchange for Colonial Shores, LLC, as appropriate and required under the terms of the agreement, conveying the property as described in Exhibit "C" of the Document to Lee County.

This exchange has been duly noticed and complies with Section 125.37, Florida Statutes (2003).

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 September, 2003.

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 E Realignment Agreement

THIS INSTRUMENT PREPARED BY:
Lee County
Office of the County Attorney
P.O. Box 398
Fort Myers, FL 33902
Strap No. 35-45-23-00-00008.0010

IDD CANAL E REALIGNMENT AGREEMENT

This agreement ("Agreement") is entered into this _____ day of _____, 2003, between Colonial Shores, LLC, a Florida Limited Liability Company, whose address is 12601 Westlinks Drive, Unit 7, Fort Myers, Florida 33913 ("Owner"); Colonial Homes, Inc., a Florida corporation, whose address is 12601 Westlinks Drive, Unit 7, Fort Myers, Florida 33913 ("Developer"); and Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902 ("County").

WHEREAS, Owner is the fee simple owner of property located in Section 35, Township 45 South, Range 23 East, Lee County, Florida and more specifically described in attached Exhibit "A" ("Colonial Shores Property"); and

WHEREAS, the Developer is the entity developing and/or intending to develop the Colonial Shores Property as a residential subdivision; and

WHEREAS, the County holds an easement interest in IDD Canal E as evidenced in a warranty deed recorded in the Lee County Public Records at Official Record Book 1885, Page 2562; and

WHEREAS, a portion of IDD Canal E, as legally described and depicted in attached Exhibit "B", is located within the boundaries of the Colonial Shores Property; and

WHEREAS, IDD Canal E, in its current location, provides outfall drainage for some of the properties located in the general area bounded by Iona Road along the north/northwest, McGregor Boulevard along the south/southeast, and John Morris Road along the west, for that portion of Lee County known as the "Iona Area;" and

WHEREAS, the County may, at some future date, pursue the widening of John Morris Road; and

WHEREAS, the Developer desires to develop the Colonial Shores Property in a manner that requires the proposed realignment and reconfiguration of IDD Canal E as depicted in attached Exhibit "C" and Exhibit "D;" and

WHEREAS, in order to facilitate the design of the Colonial Shores Property as proposed by the Developer, IDD Canal E will require both realignment and relocation; and

WHEREAS, a principal purpose of this Agreement is to provide for an exchange of real property interests as allowed by and pursuant to Section 125.37, Florida Statutes (2003); and

NOW, THEREFORE, in consideration of the covenants contained in this Agreement, the parties agree as follows:

1. The recitals set forth above are true and correct and incorporated into this Agreement.
2. During the initial development of the Colonial Shores Property the Developer will design a water management system ("Colonial Shores System") that will accommodate:
 - existing flow rates and volumes into IDD Canal E;
 - future flow rates and volumes into IDD Canal E and the needs of the Colonial Shores Property.
 - a) The Developer will provide the Lee County Department of Transportation ("DOT") and Lee County Division of Natural Resources ("Natural Resources") with the opportunity to review and comment on the design during the development order review process to ensure that the design will result in a reasonable and viable alternative to the existing IDD Canal E facility.
 - (b) The parties understand and agree that the Colonial Shores System must be designed and constructed in a manner capable of handling all flow rates and capacity originally intended to be accommodated by IDD Canal E. The parties also understand and agree that DOT and Natural Resources retain final development approval authority with respect to replacement or relocation of IDD Canal E.
3. The County agrees not to unreasonably withhold approval of the Colonial Shores System.
4. The parties understand and agree that a copy of the modification approved by South Florida Water Management District ("SWFMD") with respect to permit No. ERP 04208-S relating to development within the Colonial Shores Property must be included in SWFMD permit file # ERP 04208-S. The Modification to SWFMD permit No. ERP 04208-S must also appropriately address those items set forth in

Section 7 below. The costs associated with this requirement will be borne solely by the Developer.

5. During construction of the Colonial Shores System, the Developer agrees not to damage or otherwise suspend the function of IDD Canal E. However, the parties recognize that a temporary facility may be necessary to accommodate the existing IDD Canal E flows during the construction of the Colonial Shores System. County approval for the temporary facility is contingent on all of the following:
 - (a) The temporary facility must be in place and capable of handling the flow rates and capacity applicable to IDD Canal E during the time the temporary facility will be functioning;
 - (b) DOT and Natural Resources must inspect and approve the temporary facility; and
 - (c) The Developer must obtain approval of a Irrevocable Standby Letter of Credit for the benefit of the County, in a form reasonably acceptable to the County Attorney's office, for 110% of the Developer's Project Engineer's Certified Cost Estimate applicable to the cost of constructing the relocated and realigned IDD Canal E to its new configuration as depicted in attached Exhibit "C" and Exhibit "D." The Irrevocable Standby Letter of Credit will be released by the County upon the successful completion of the work required under the terms of the Developer's Project Engineer's Certified Cost Estimate.

6. The County agrees to review development orders and building permits for structures and improvements located within the existing IDD Canal E area upon full execution of this Agreement and prior to completion of the realignment and relocation of the existing canal facility. However, the parties understand and agree that the County will not issue building permits for structures within the existing IDD Canal E area until this Agreement is approved and the appropriate surety required under Section 5 has been approved by the County and established by the Developer. The County also agrees to issue a development order, based upon an application meeting county standards, for infrastructure improvements within the existing IDD Canal E area prior to the completion of the realignment and relocation process and in compliance with Section 5.

The County further agrees, subject to the approval of this Agreement and the approval of the required surety in Section 5, to allow the area of the existing IDD Canal E to be submitted for platting prior to the completion of the realignment and relocation of IDD Canal E herein.

7. The parties agree that in order for the Colonial Shores System to act as an acceptable replacement for the existing I DD Canal E facility, the system must be designed to:
 - (a) accommodate the flow rates and capacity applicable to development of the Colonial Shores Property; and
 - (b) maintain water surface elevations below elevation 5.0 feet N.G.V.D. from just upstream of Iona Road to just upstream of John Morris Road for a flow rate computed on the assumption of 0.25 feet of surcharge for a submerged culvert condition for the Iona Road culvert crossing; and
 - (c) provide up to 1.70 acre-feet of water quantity storage, to the extent required by SFWMD for any future widening of John Morris Road; and
 - (d) comply with all applicable Lee County Land Development Code ("LDC") regulations.

8. Once the Colonial Shore System is in place, functioning and approved, the Developer must execute and deliver a Perpetual Drainage Easement ("Easement") to the County in a form substantially similar to attached Exhibit "E." The easement must be reviewed and approved by the County Attorney's office prior to execution and acceptance by the Board of County Commissioners ("Board"). The purpose of this Easement is to provide the County with perpetual drainage easement rights in the Colonial Shores System similar to those previously enjoyed by the County in the IDD Canal E facility.
 - (a) The Easement must also provide the County with the right, but not the obligation, to maintain the surface water management system that replaces IDD Canal E, including necessary access rights, in the event the Developer or its successor fails to properly maintain the facility.
 - (b) In conjunction with the review and approval of the Easement and prior to acceptance by the County, the Developer must submit assurance, reasonably acceptable to the County Attorney's Office, that the Developer holds sufficient right, title and interest to convey the subject easement. Assurance may take the form of either an attorney opinion of title, prepared in accordance with the standards for opinions promulgated by the Florida Bar, or title insurance. The purpose of this provision is to establish that the County will receive an interest in the Easement area superior to all rights and interests except that of the fee title holder.

9. Upon the successful inspection of the realigned drainage and surface water management system, the County will release and convey to the owner of the Property described in Exhibit "A," the existing IDD Canal E easement in exchange for a new easement covering the new drainage and surface water

management system that has been constructed to replace existing IDD Canal E. The replacement easement will include perpetual drainage easements over the areas depicted and described in attached Exhibit "C" and Exhibit "D." The exchange is being accomplished utilizing the procedures found in Section 125.37, Florida Statutes (2003). The Owner or Developer will be responsible for all recording costs and fees associated with this exchange (including, but not limited to documentary stamps and costs of advertisement required under Section 125.37, F.S.).

10. The Owner, for itself, its successors and assigns, agrees that no lot split, subdivision or other conveyance will be made of any portion of the property described in Exhibit "A" without including the obligation to maintain in perpetuity the relocated new drainage and surface water management system that has been constructed to replace existing IDD Canal E.
11. The parties understand and agree that no impact fee credits will be issued for the drainage improvements contemplated by this Agreement.
12. The parties understand and agree that any drainage facilities constructed or maintained in accordance with this Agreement must meet SFWMD and County regulatory permitting requirements.
13. The Developer agrees, at its sole expense, to repair, relocate or reconstruct any public utilities, including but not limited to, water, sewer, gas, electric, telephone and cable, affected by construction of the Colonial Shores System as contemplated under this Agreement.
14. The Developer is responsible for obtaining all required permits and approvals necessary to achieve compliance with applicable county, state and federal regulations.
15. Subject to the terms and conditions set forth herein, the Owner, for itself, its successors and assigns, agrees to maintain IDD Canal E in perpetuity, as realigned pursuant to this Agreement.
16. This Agreement will be construed in accordance with the laws of the State of Florida. The venue for any action arising from this Agreement lies in Lee County, Florida.
17. The parties agree that the rights and obligations provided to the Developer under this Agreement are freely assignable to a purchaser for value, subject to the terms and conditions stated herein.

18. The County hereby authorizes its County Manager, or his 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 real property interests contemplated herein.
19. If the exchange or property interests contemplated herein is not consummated and the executed original of the document contained in Exhibit "E" is not recorded in the Public Records of Lee County, Florida, on or before December 31, 2005, then this Agreement will terminate and be of no further force and effect.
20. This Agreement, including all exhibits, constitutes the entire agreement of the parties and may be modified only by a written instrument executed with the same formality.
21. This Agreement is binding upon and inures to the benefit of the parties, their successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals intending to be bound on the day and year first written above.

1st Witness Signature

Printed Name

COLONIAL SHORES, LLC,
a Florida limited liability company
By Its Managing Member
Colonial Homes, Inc.,
A Florida corporation

2nd Witness Signature

Printed Name

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this ____ day of _____, 2003, by _____ as _____ of Colonial Homes, Inc., the Managing Member of COLONIAL SHORES, LLC., on behalf of the company. He/she is personally known to me or has produced the following identification

Notary Public

1st Witness Signature

COLONIAL HOMES, INC.,
a Florida corporation

Printed Name

2nd Witness Signature

By: _____
Name: _____
Title: _____

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this ____ day of _____
_____, 2003, by _____ as _____ of
COLONIAL HOMES, INC., on behalf of the corporation. He/she is personally known to
me or has produced the following identification _____.

Notary Public

ATTEST:
CHARLIE GREEN, CLERK

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

Attachments:

- Exhibit "A" - Legal Description of Colonial Shores property
- Exhibit "B" - Legal Description and sketch of existing IDD Canal E
- Exhibit "C" - Legal Description and sketch of realigned IDD Canal E - Part 1
- Exhibit "D" - Legal Description and sketch of realigned IDD Canal E - Part 2
- Exhibit "E" - Perpetual Drainage Easement

SKETCH OF DESCRIPTION

OF
A TRACT OR PARCEL OF LAND LYING IN
SECTION 2, TOWNSHIP 46 SOUTH, RANGE 23 EAST
AND
SECTION 35, TOWNSHIP 45 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA
(COLONIAL SHORES)

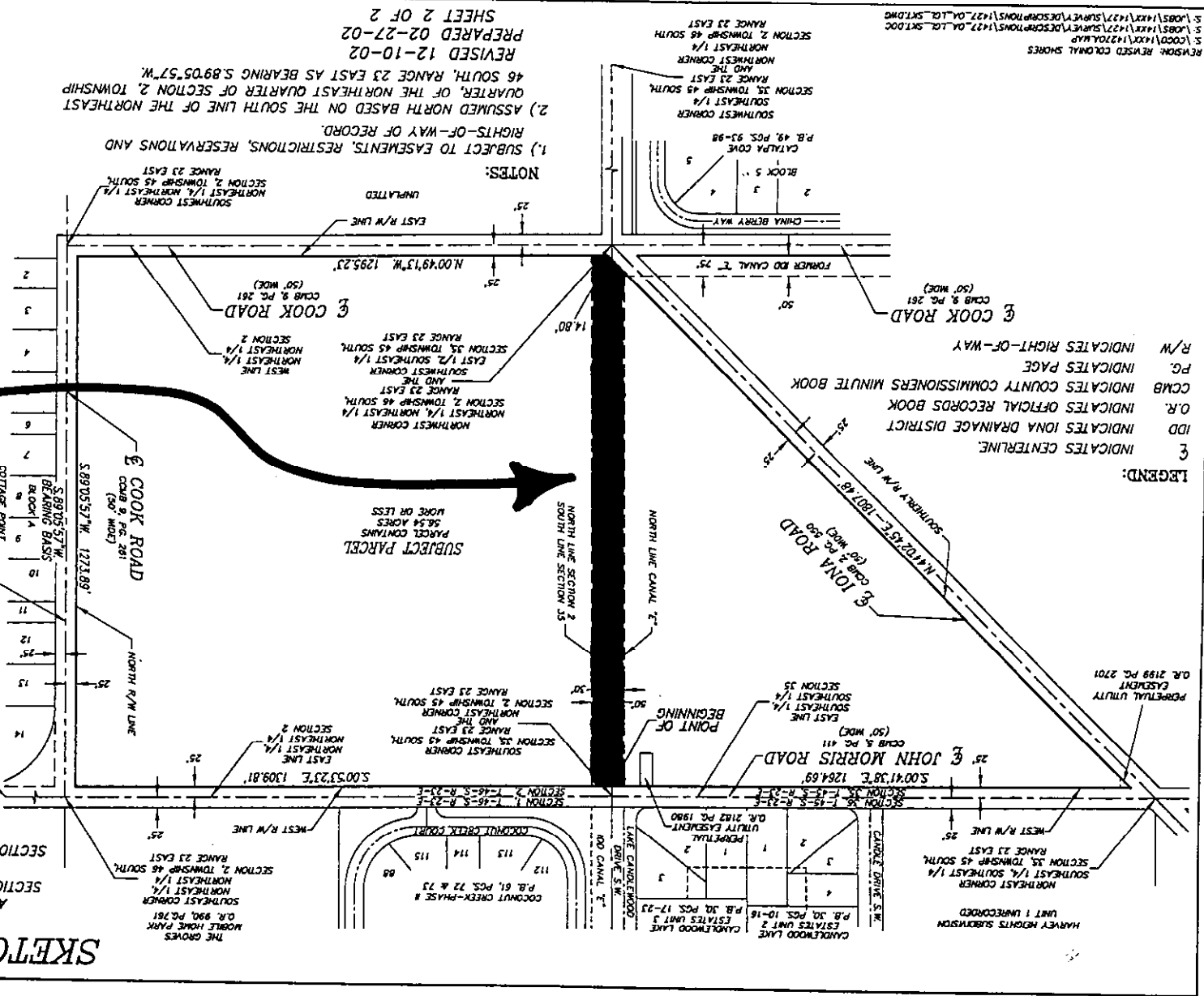


Not to Scale
EXISTING IDD
CANAL E TO BE
RECONFIGURED
BY REPLACEMENT
EASEMENTS (2)

SEE SHEET 1 FOR COMPLETE
METES AND BOUNDS DESCRIPTION
THIS SKETCH OF DESCRIPTION
IS NOT A BOUNDARY SURVEY

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009
NO. 4009
THIS SKETCH OF DESCRIPTION IS NOT VALID
WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

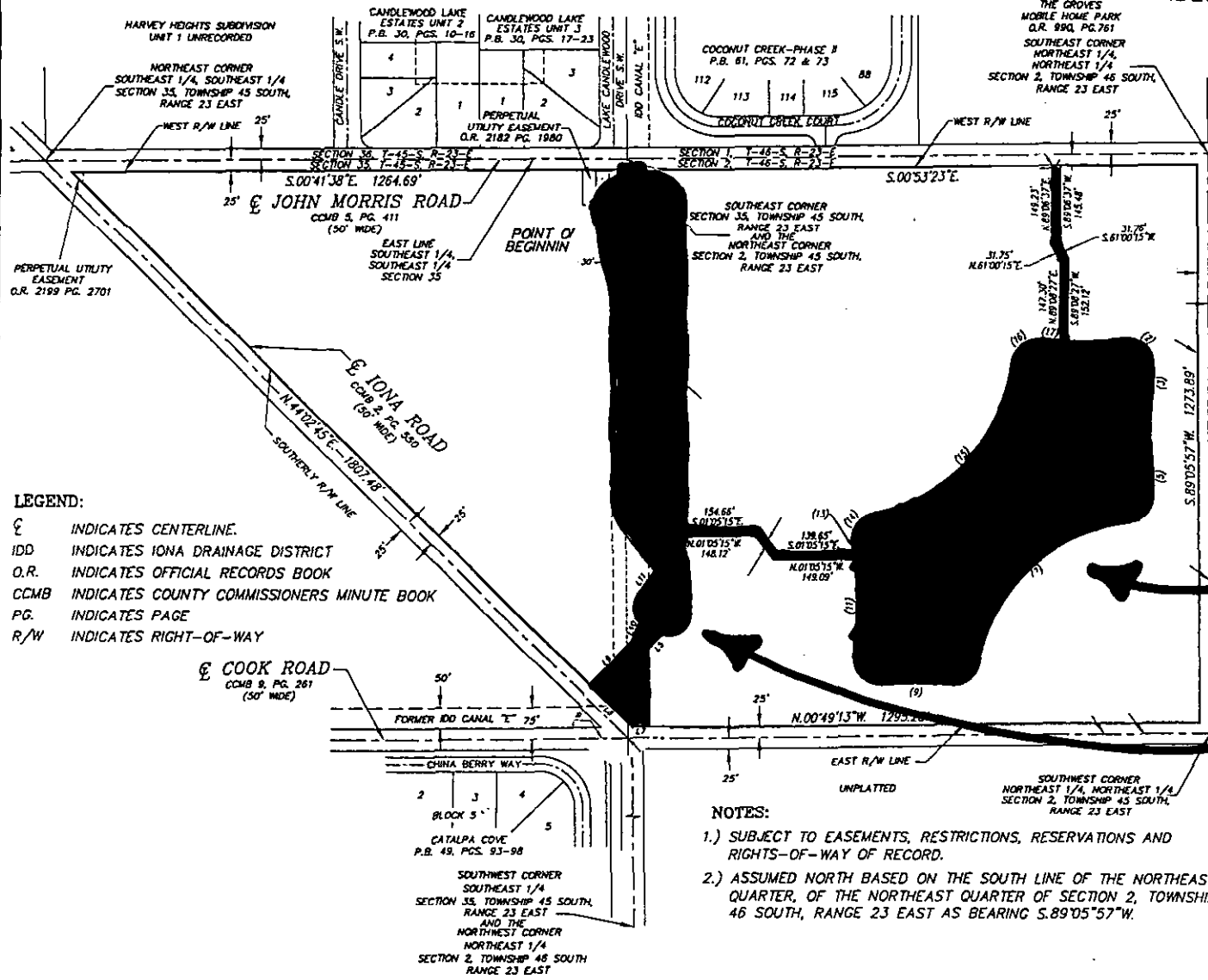
NOTES:
1.) SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
2.) ASSUMED NORTH BASED ON THE SOUTH LINE OF THE NORTHEAST QUARTER, OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 46 SOUTH, RANGE 23 EAST AS BEARING S.89°05'57"W.
REVISED 12-10-02
PREPARED 02-27-02
SHEET 2 OF 2



REVISION: REVISED COLONIAL SHORES
S:\0005\1427\142701A\REVISED DESCRIPTIONS\1427_0A_LGL_SKT.DWG
S:\0005\1427\142701A\REVISED DESCRIPTIONS\1427_0A_LGL_SKT.DWG
S:\0005\1427\142701A\REVISED DESCRIPTIONS\1427_0A_LGL_SKT.DWG

SKETCH OF DESCRIPTION

OF
A TRACT OR PARCEL OF LAND LYING IN
SECTION 2, TOWNSHIP 46 SOUTH, RANGE 23 EAST
AND
SECTION 35, TOWNSHIP 45 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA
(COLONIAL SHORES)



Not to Scale

**TWO NEW REPLACEMENT
EASEMENTS TO
REPLACE IDD
CANAL E**

- LEGEND:**
- ⊕ INDICATES CENTERLINE.
 - IDD INDICATES IONA DRAINAGE DISTRICT
 - O.R. INDICATES OFFICIAL RECORDS BOOK
 - CCMB INDICATES COUNTY COMMISSIONERS MINUTE BOOK
 - PG. INDICATES PAGE
 - R/W INDICATES RIGHT-OF-WAY

- NOTES:**
- 1.) SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
 - 2.) ASSUMED NORTH BASED ON THE SOUTH LINE OF THE NORTHEAST QUARTER, OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 46 SOUTH, RANGE 23 EAST AS BEARING S.89°05'57"W.