

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

**Blue Sheet No. 20040385**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$8,500.00 for Parcel 102, Summerlin Road Six-Laning (Gladiolus Drive to Pine Ridge Road), Project No. 4067, pursuant to the Purchase Agreement; authorize the Division of County Lands to handle all documentation necessary to complete transaction.

**WHY ACTION IS NECESSARY:** The Board must authorize the making of a binding offer to a property owner prior to initiation of condemnation proceedings.

**WHAT ACTION ACCOMPLISHES:** Makes binding offer to property owner.

**2. DEPARTMENTAL CATEGORY:** 06  
**COMMISSION DISTRICT # 3 and 5**

*CL6A*

**3. MEETING DATE:** *04-27-2004*

**4. AGENDA:**

CONSENT  
 ADMINISTRATIVE  
 APPEALS  
 PUBLIC  
 WALK ON  
 TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**  
(Specify)

STATUTE *73 & 125*  
 ORDINANCE  
 ADMIN. CODE  
 OTHER

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER  
 B. DEPARTMENT *Independent*  
 C. DIVISION *County Lands TLM 4-1-04*  
 BY: *Karen L. W. Forsyth, Director*

**7. BACKGROUND:**

**Negotiated for:** Lee County Department of Transportation  
**Interest to Acquire:** 1,801 square feet of fee interest in vacant property  
**Property Details:**  
 Owner: Kuehner Properties, LLC, a Florida Limited Liability Company  
 Part of STRAP No.: 34-45-24-07-00000.00CE

**Purchase Details:**  
 Binding Offer Amount: \$8,500.00

**Appraisal Information:**  
 Company: Maxwell & Hendry Valuation Services, Inc.  
 Appraised Value: \$7,704.00 as of January 23, 2004

**Staff Recommendation:** Staff is of the opinion that the purchase price increase of \$796.00 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.

**Account:** ✓ 20-4067-18804-506110 (CIP Project, Summerlin Road, South Fort Myers Impact Fees, and Purchase of Land)

**Attachments:** Purchase and Sale Agreement, In-House Title Search, appraisal data, and Sales History

**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
<i>K. Forsyth</i>			<i>CAD</i>	<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	Risk <i>[Signature]</i>	GC <i>[Signature]</i>
			<i>8/13/04</i>	<i>4/13/04</i>	<i>4/13/04</i>	<i>4/13/04</i>	<i>4/13/04</i>	<i>HS 4/14/04</i>

**10. COMMISSION ACTION:**

- APPROVED  
 DENIED  
 DEFERRED  
 OTHER

Rec. by CoAtty  
 Date: *4/14/04*  
 Time: *1:00 PM*  
 Forwarded To:

CO. ATTY.  
 FORWARDED  
*4/14/04*

RECEIVED BY  
 COUNTY ADMIN: *[Signature]*  
 COUNTY ADMIN  
 FORWARDED TO: *[Signature]*  
*4-14-04*  
*11:30*

*HS*

This document prepared by  
Lee County Division of County Lands  
Project: Summerlin Road Six-Laning #4067  
(Gladiolus Drive to Pine Ridge Road)  
Parcel: 102  
Part of STRAP No.: 34-45-24-07-00000.00CE

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 Kuehner Properties, LLC, a Florida Limited Liability Company, hereinafter referred to as SELLER, whose address is 4301 Sanibel-Captiva Road, Sanibel, Florida 33957, 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 1,801 square feet, more or less, and located at 8162 Country Road, Fort Myers, Florida 33919, 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 Summerlin Road Six-Laning Project No. 4067, 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 Eight Thousand Five Hundred and No/100---(\$8,500.00), 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 special conditions will be attached to this Agreement and signed by all parties to this Agreement.

WITNESSES:

**SELLER:**

KUEHNER PROPERTIES, LLC, a  
Florida Limited Liability Company

By: \_\_\_\_\_  
(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

\_\_\_\_\_  
COUNTY ATTORNEY (DATE)

**Exhibit "A"**

**EXHIBIT "A"**  
**PARCEL DESCRIPTION AND SKETCH**  
**Road Right-of-Way Taking, Parcel No. 102**  
**(This is not a Field Survey)**

**LAND DESCRIPTION**

A parcel of land lying in Section 34, Township 45 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

Commence at the northeast corner of said Section 34; thence N 89°46'47" W along the north line of the Northeast Quarter (NE 1/4) of said Section 34 for 1388.25 feet to an intersection with the east line of Lakewood Boulevard as described in Official Records Book 1443, Page 541, of the Public Records of Lee County, Florida; thence S 00°58'46" E along said east line for 1065.28 feet to a point of curvature; thence continue S 00°58'46" E leaving said east line for 117.21 feet to the Point of Beginning; thence continue S 00°58'46" E for 7.60 feet to the northwest corner of Parcel No. 72, Road Right-of-Way Taking as described in Official Records Book 2519, Page 2416, of the said Public Records of Lee County, said corner also being on the existing north right-of-way line of Gladiolus Drive; thence N 89°41'27" E along the north line of said parcel and along said north right-of-way line for 57.85 feet to the intersection with the northwesterly right-of-way line of Summerlin Road (75.00 feet from center line); thence N 44°26'08" E along said northwesterly right-of-way line for 125.05 feet to a point of cusp; thence leaving said northwesterly line and in a southwesterly direction along the arc of a curve concave to the northwest, having a radius of 300.00 feet, a central angle of 32°19'45", a chord bearing and distance of S 60°36'01" W, 167.04 feet, for 169.28 feet to the Point of Beginning. Containing 1801 square feet, more or less.

Basis of bearings based on the Florida State Plane Coordinate System, West Zone, NAD 83/90 being N 89°46'47" W for the north line of the Northeast Quarter (NE 1/4) of Section 34, Township 45 South, Range 24 East, Lee County, Florida.

SHEET 1 OF 2

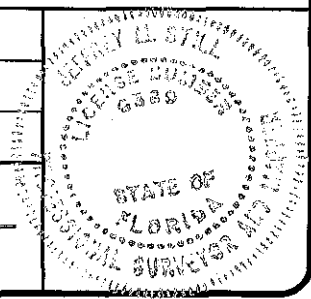
LEGAL DESCRIPTION AND SKETCH PREPARED BY DENI ASSOCIATES, INC.  
SURVEYING AND MAPPING BUSINESS, STATE OF FLORIDA CERTIFICATE  
OF AUTHORIZATION No. LB 3542.

*Jeffrey M. Still*  
JEFFREY M. STILL - PROFESSIONAL SURVEYOR AND MAPPER  
STATE OF FLORIDA REGISTRATION LICENSE No. LS 8389

CLIENT: LEE CO. / T.Y. LIN

PROJECT: 20020202-D

DATE: SEPTEMBER 3, 2003



**Deni Associates, Inc.**

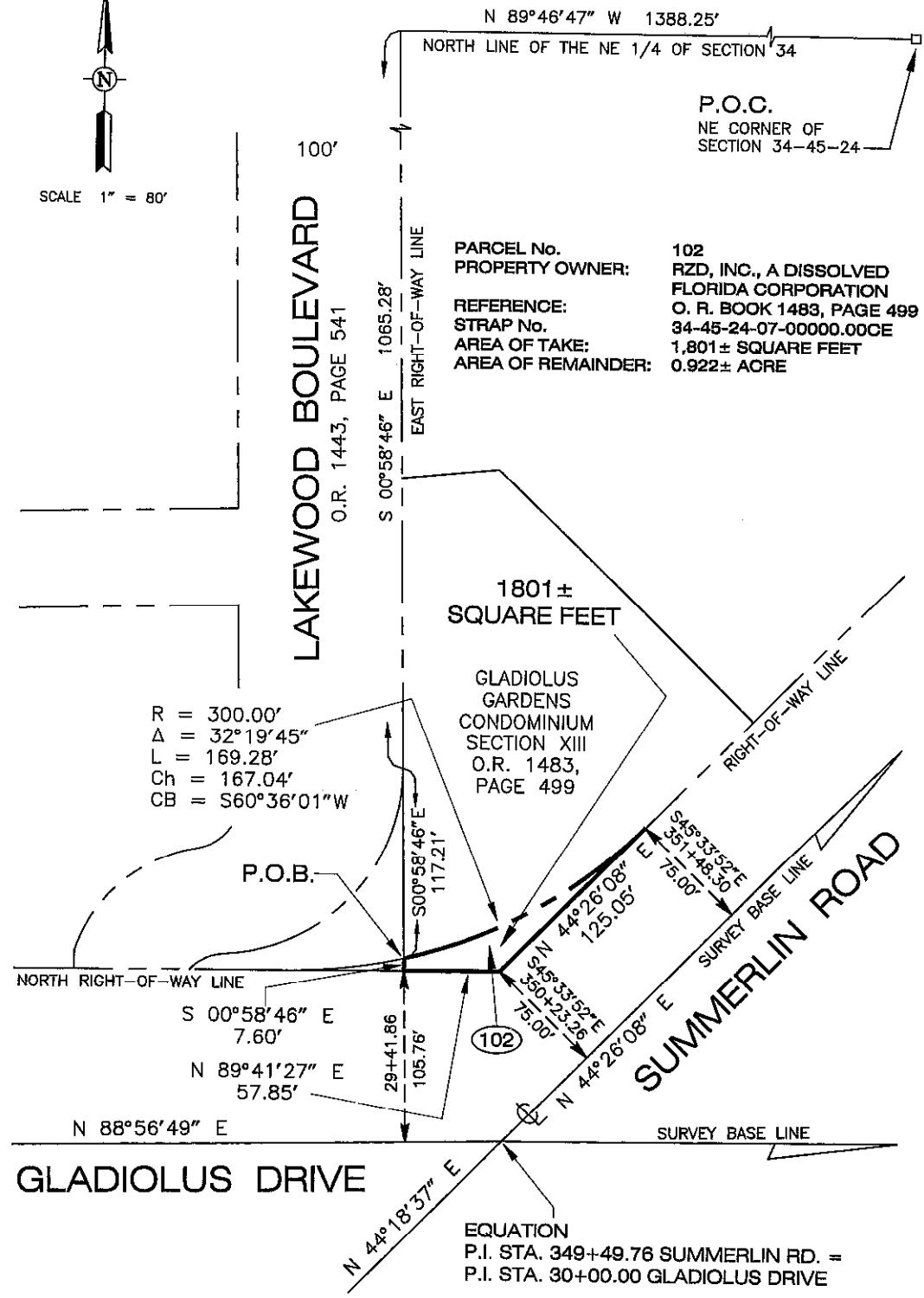
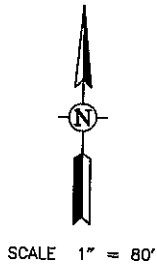
6241 ARC WAY • FORT MYERS, FLORIDA 33912 • (239) 275-8875

PROFESSIONAL SURVEYORS AND MAPPERS



# Exhibit "A"

## EXHIBIT "A" PARCEL DESCRIPTION AND SKETCH Road Right-of-Way Taking, Parcel No. 102 (This is not a Field Survey)



P.O.B. = POINT OF BEGINNING    R = RADIUS    L = ARC LENGTH    OR = OFFICIAL RECORDS  
 P.O.C. = POINT OF COMMENCEMENT    Δ = ANGLE    Ch = CHORD    CB = CHORD BEARING

SHEET 2 OF 2



**Deni Associates, Inc.**

6241 ARC WAY • FORT MYERS, FLORIDA 33912 • (239) 276-8876  
 PROFESSIONAL SURVEYORS AND MAPPERS

CLIENT: LEE CO. / T.Y. LIN  
 PROJECT: 20020202-D  
 DATE: SEPTEMBER 3, 2003

**Division of County Lands**

**Revised and Updated Ownership and Easement Search**


Search No. 22256

Date: May 22, 2003

Parcel: 102 and 107

Project: Summerlin Six Laning (San Carlos Blvd. to Gladiolus Drive) Project #4067

To: Teresa L. Mann, SR/WA  
Property Acquisition Agent

From: Shelia A. Bedwell, CLS   
Property Acquisition Assistant

STRAP: 34-45-24-07-00000.00CE

Effective Date: April 27, 2003, at 5:00 p.m.

**Subject Property:** The common elements of Gladiolus Gardens Condominium, Sections I through XIII, as per the various Declarations of Condominium recorded in the Public Records of Lee County, Florida, ~~and the parcel described on the attached Schedule "X".~~

*LESS O.R. BOOK 2519, PAGE 2416,*  
Title to the subject property is vested in the following:

**RZD, Inc., a dissolved Florida corporation**

by that certain instrument dated July 5, 1979, recorded July 17, 1979, in Official Record Book 1363, Page 965, as re-recorded in Official Record Book 1364, Page 2189, Public Records of Lee County, Florida.

**Easements:**

1. Grant of Easement recorded in Official Record Book 1390, Page 546, as re-recorded in Official Record Book 1411, Page 457, Public Records of Lee County, Florida.
2. Fifty foot road easement for ingress and egress to premises in common with other owners of condominium units in Sections I through XIII, recorded in Official Record Book 1470, Page 1501, Public Records of Lee County, Florida.
3. Covenants, conditions, restrictions and easements contained in the Declaration of Condominium of Gladiolus Gardens Condominium Section XIII, recorded in Official Record Book 1483, Page 499, Public Records of Lee County, Florida.
4. Exclusive and Perpetual Water Pipeline Easement Grant to Florida Cities Water Company, recorded in Official Record Book 1859, Page 999, Public Records of Lee County, Florida.

## Division of County Lands

### Revised and Updated Ownership and Easement Search

Search No. 22256

Date: May 22, 2003

Parcel: 102 and ~~107~~

Project: Summerlin Six Laning (San  
Carlos Blvd. to Gladiolus Drive) Project  
#4067

NOTE: Property Appraiser and Tax Collector records both reflect property being held by Gladiolus Gardens Condominium Association, which does not exist. No conveyance appears of record conveying property from the developer to the Association. From a review of the condominium documents, the common areas should have been conveyed to the Gladiolus Gardens Recreational and Maintenance Association, Inc. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

**Tax Status:** No taxes are assessed to this parcel.

*(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.**

**EXECUTIVE SUMMARY**

**OWNER OF RECORD:** RZD, Inc. (per 2003 Lee County tax roll).

**LOCATION:** Northwest corner of Summerlin Road and Gladiolus Drive, Lee County, Florida.

**LAND AREA:** The parent tract is approximately 0.9633 acre (41,963 square feet). The proposed taking is a small strip taking off of the extreme southerly side of the tract totaling 1,801 square feet. The remainder tract size is 0.922 acres or 40,162 square feet.

**IMPROVEMENTS:** The parent tract is improved with a 12 unit condominium building in a project known as Gladiolus Gardens. The proposed taking will not adversely impact the building improvements and therefore the units are not included in this analysis. The only improvements included in this appraisal are the minimal site improvements within the take area.

**ZONING/LAND USE:** RM-2 (Multi-Family)/Central Urban Land Use

**HIGHEST AND BEST USE (Before Take):** Multi-Family Development

**HIGHEST AND BEST USE (After Take):** Multi-Family Development

**MARKET VALUE BEFORE TAKE:** \$168,500

**VALUE OF PART TAKEN:** \$ 7,704

**REMAINDER VALUE AS PART OF WHOLE:** \$160,796

**REMAINDER VALUE AFTER TAKE:** \$160,796

**SEVERANCE DAMAGES:** \$ 0

**AMOUNT DUE OWNER:** \$ 7,704

**INTEREST APPRAISED:** Fee Simple

**DATE OF VALUATION:** 23 January 2004

**DATE OF REPORT:** 5 February 2004

**APPRAISER:** W. Michael Maxwell, MAI, SRA

**SPECIAL ASSUMPTIONS:**

This appraisal assumes that the palm trees and berming just outside of the take area are in fact outside of the proposed take area. Any improvements affected by the proposed taking will be reinstalled, reconnected, contoured, or otherwise recreated by Lee County at their cost. No severance damages are shown or found for the remainder tract. This appraisal also assumes that there are no significant grade changes.

# 5-Year Sales History

Parcel No. 102

Summerlin Road Six-Laning  
Project No. 4067  
(Gladiolus Drive to Pine Ridge Road)

Grantor	Grantee	Price	Date	Arms Length Y/N
Estate of William W. Schoo, deceased, and Paul J. Schoo	Kuehner Properties, LLC	\$870,900	6/25/2002	Yes
Patricia T. Schoo, Personal Representative of the Estate of William W. Schoo	Kuehner Properties, LLC	\$100	7/29/2002	No

SALES ARE FOR THE PARENT TRACT