

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

Blue Sheet No. 20040393

1. REQUESTED MOTION:

ACTION REQUESTED: Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$154,300.00 for Parcel 103, 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

C6C

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

KLW

7. BACKGROUND:

Negotiated for: Lee County Department of Transportation
Interest to Acquire: 7,270 square feet of fee interest in vacant property

Property Details:

Owner: Motiva Enterprises LLC, a Delaware Limited Liability Company
Part of STRAP Nos.: 34-45-24-16-00000.0010

Purchase Details:

Binding Offer Amount: \$154,300.00

Appraisal Information:

Company: Maxwell & Hendry Valuation Services, Inc.
Appraised Value: \$128,590.00 as of March 12, 2004

Staff Recommendation: Staff is of the opinion that the increase of 20% above the appraised value can be justified considering the costs associated with condemnation proceedings, estimated between \$5,000 - \$7,000, 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
					QA	OM	Risk	GC	
<i>K. Forsyth</i>			<i>BAO 4/8/04</i>	<i>David Reynolds 4-8-04</i>	<i>John 1-8-04</i>	<i>4/8/04</i>	<i>4/8/04</i>	<i>4/8/04</i>	<i>AS 4/8/04</i>

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

Rec. by CoAtty
Date: *4/8/04*
Time: *1:00 PM*
Forwarded To:
*Co. Adm.
4/8/04 4PM*

RECEIVED BY
COUNTY ADMIN. *EW*
4/8/04
4:25 PM
COUNTY ADMIN
FORWARDED TO: *PR*
4-9-04
11:30 AM

This document prepared by
Division of County Lands
Project: Summerlin Road Six-Laning, Project No. 4067
Parcel: 103
Part of STRAP No.: 34-45-24-16-00000.0010

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 Motiva Enterprises LLC, a Delaware Limited Liability Company, hereinafter referred to as SELLER, whose address is 1100 Louisiana Street, Suite 1000, Houston, Texas 77002, 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 7,270 square feet, more or less, and located at 8130 Gladiolus Drive, Fort Myers, Florida 33907, 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 One Hundred Fifty-Four Thousand Three Hundred and No/100-- (\$154,300.00), 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:

Motiva Enterprises LLC, A
Delaware 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. 103
(This is not a Field Survey)

LEGAL DESCRIPTION

A parcel of land lying in Section 34, Township 45 South, Range 24 East, Lee County, Florida, also being a part of Lot 1, Summerlin Center subdivision as shown in Plat Book 49, Pages 48-49 of the Public Records of Lee County, Florida, being more particularly described as follows:

Commence at the southeast corner of said Lot 1; thence N 00°56'29" W along the east line of said Lot 1 and parallel with the east line of the Northeast Quarter (NE 1/4) of said Section 34 for 127.53 feet to the northeast corner of Parcel No. 38b, Road Right-of-Way Taking as described in Official Records Book 2476, Page 920, of the said public records of Lee County and to a non-tangent point of curvature on the existing north right-of-way line of Gladiolus Drive; thence along the north line of said parcel and along the said north right-of-way line in a westerly direction along the arc of a curve concave to the north, having a radius of 7976.32 feet, a central angle of 00°08'57", a chord bearing and distance of S 89°36'57" W, 20.75 feet, for 20.75 feet to a point of tangency with a line parallel to and 127.50 feet north of, as measured at right angles from, the south line of said Lot 1; thence S 89°41'25" W along said parallel line for 382.37 feet to the Point of Beginning; thence continue S 89°41'25" W for 31.46 feet to the intersection with the southeasterly right-of-way line of Summerlin Road (75.00 feet from center line); thence N 44°26'08" E along said southeasterly right-of-way line for 451.86 feet to the intersection with the southerly right-of-way line of Summerlin Center Drive, according to aforesaid plat, and a point of curvature; thence along said southerly right-of-way line in an easterly direction along the arc of a curve concave to the south, having a radius of 30.00 feet, a central angle of 90°00'00", a chord bearing and distance of N 89°26'08" E, 42.43 feet, for 47.12 feet to a point of tangency; thence S 45°33'52" E for 10.21 feet to a non-tangent point of curvature; thence leaving said southerly right-of-way line and in a westerly direction along the arc of a curve concave to the south, having a radius of 40.00 feet, a central angle of 68°18'10", a chord bearing and distance of S 78°35'13" W, 44.91 feet, for 47.68 feet to a point of tangency with a line parallel to and 15.00 feet southeasterly of, as measured at right angles from, the aforesaid southeasterly right-of-way line of Summerlin Road; thence S 44°26'08" W along said parallel line for 396.45 feet to a point of curvature; thence southwestwardly along the arc of a curve concave to the southeast, having a radius of 50.00 feet, a central angle of 31°26'52", a chord bearing and distance of S 28°42'42" W, 27.10 feet, for 27.44 feet to the intersection with the aforesaid existing north right-of-way line of Gladiolus Drive and the Point of Beginning. Containing 7,270 square feet (0.167 acres), more or less.

Basis of bearings based on the Florida State Plane Coordinate System, West Zone, NAD 83/90 being N 00°56'29" W for the east 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 6389

CLIENT: LEE CO. / T.Y. LIN

PROJECT: 20020202-H

DATE: APRIL 24, 2003



Deni Associates, Inc.

8241 ARC WAY • FORT MYERS, FLORIDA 33912 • (239) 276-8876

PROFESSIONAL SURVEYORS AND MAPPERS

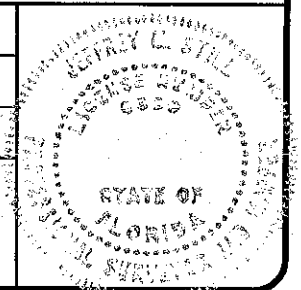
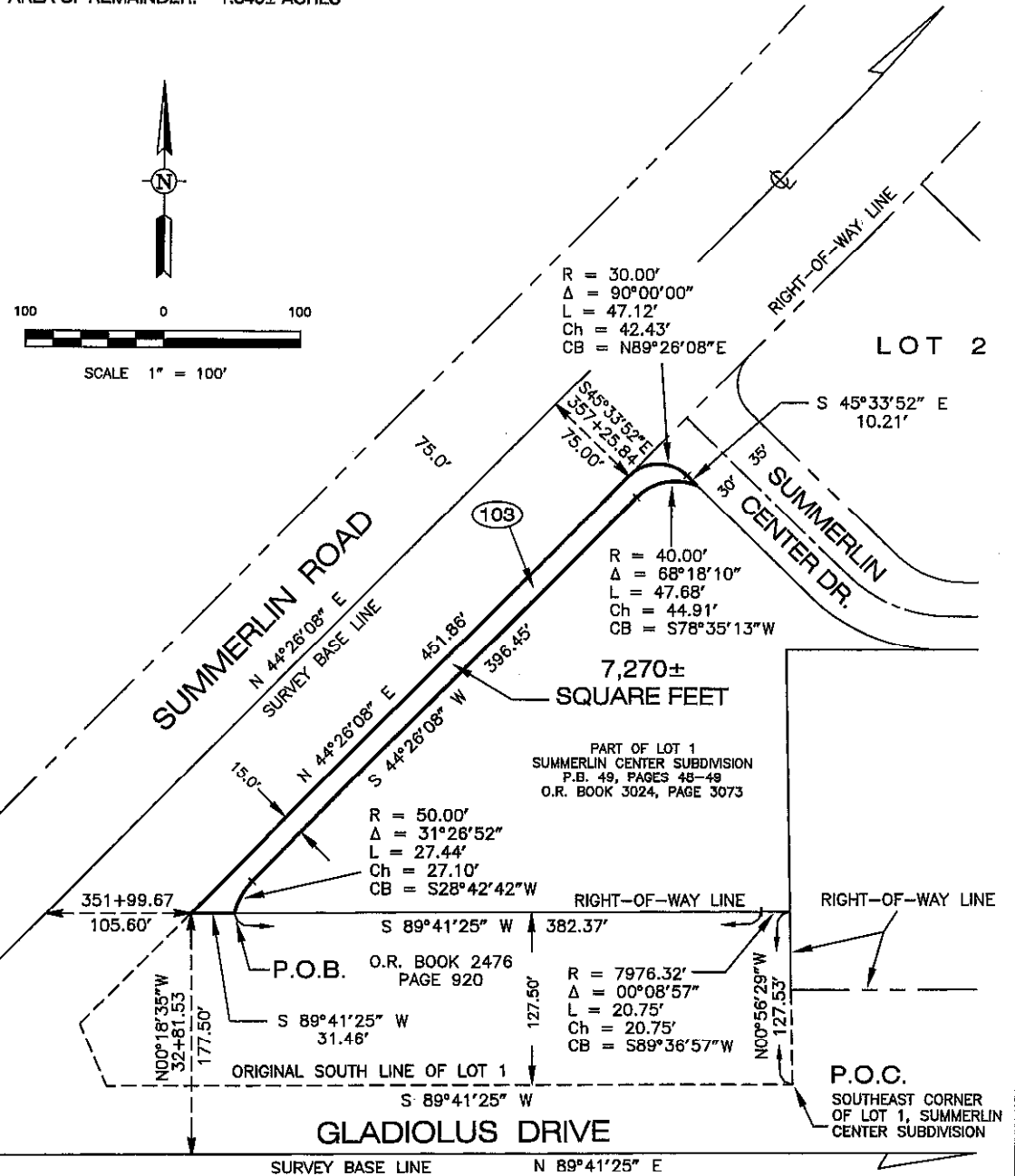


EXHIBIT "A"
 PARCEL DESCRIPTION AND SKETCH
 Road Right-of-Way Taking, Parcel No. 103
 (This is not a Field Survey)

PARCEL No. 103
 PROPERTY OWNER: MOTIVA ENTERPRISES LLC
 REFERENCE: OFFICIAL RECORDS BOOK 3024, PAGE 3073
 STRAP No. 34-45-24-16-00000.0010
 AREA OF TAKE: 7,270± SQUARE FEET
 AREA OF REMAINDER: 1.846± ACRES

Exhibit "A"



P.B. = PLAT BOOK
 P.O.B. = POINT OF BEGINNING
 P.O.C. = POINT OF COMMENCEMENT

R = RADIUS
 Δ = ANGLE
 L = ARC LENGTH
 Ch = CHORD

OR = OFFICIAL RECORDS
 CB = CHORD BEARING

SHEET 2 OF 2



Deni Associates, Inc.

8241 ARC WAY • FORT MYERS, FLORIDA 33912 • (239) 276-8875

PROFESSIONAL SURVEYORS AND MAPPERS

CLIENT: LEE CO. / T.Y. LIN

PROJECT: 20020202-H

DATE: APRIL 24, 2003

Division of County Lands

Ownership and Easement Search

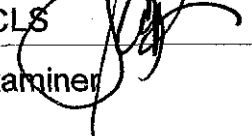
Search No. 22255

Date: September 25, 2002

Parcel: 103

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
Real Estate Title Examiner 

STRAP: 34-45-24-16-00000.0010

Effective Date: September 17, 2002, at 5:00 p.m.

Subject Property: See attached Schedule "X"

Title to the subject property is vested in the following:

Motiva Enterprises LLC, a Delaware limited liability company

by that certain instrument dated September 4, 1998, recorded October 16, 1998, in Official Record Book 3024, Page 3073, Public Records of Lee County, Florida.

Easements:

1. Ten foot public utility easement reserved along the street side of each lot for the installation and maintenance of public utilities, as recited on recorded plat of the subdivision.
2. Public utility easement in the northeasterly corner of subject property, as shown on recorded plat of the subdivision.
3. Exclusive and Perpetual Wastewater Pumping Station Easement Grant to Florida Cities Water Company, as recorded in Official Record Book 2307, Page 78, Public Records of Lee County, Florida.
4. Easement to Florida Cities Water Company, as recorded in Official Record Book 2344, Page 1452, Public Records of Lee County, Florida.

NOTE (1): Declaration of Covenants, Conditions and Restrictions for Summerlin Center, recorded in Official Record Book 2307, Page 46, as amended by instruments recorded in Official Record Book 2388, Page 2975; Official Record Book 2476, Page 911; Official Record Book 2792, Page 2988; and Official Record Book 2814, Page 3403, Public Records of Lee County, Florida.

Division of County Lands

Ownership and Easement Search

Search No. 22255

Date: September 25, 2002

Parcel:

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

NOTE (2): Notice of Development Order, recorded in Official Record Book 2321, Page 717, Public Records of Lee County, Florida.

Tax Status: 2001 Ad Valorem Taxes are PAID IN FULL.

(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.

Schedule X

Project: Summerlin Six Laning (San Carlos Blvd. to Gladiolus Drive), #4067
Search No. 22255

All that certain tract or parcel of land situated in the city of Fort Myers, County of Lee, State of Florida, with a physical address of 8130 Gladiolus/Summerlin, and more particularly described as follows:

That portion of Lot 1, Summerlin Center, as per plat thereof recorded in Plat Book 49, Pages 48 and 49 of the Public Records of Lee County, Florida described as follows:

Commence at the Southeast corner of the Northeast 1/4 of the Northeast 1/4 of said Section 34; thence N 00°56'16" W along the East boundary of the Northeast 1/4 of the Northeast 1/4 of said Section 34 a distance of 59.95 feet; thence S 89°41'37" W a distance of 611.0 feet; thence N 00°56'16" W along a line 611.0 feet West of and parallel to the East boundary of the Northeast 1/4 of the Northeast 1/4 of said Section 34 a distance of 127.53 feet to a point on curve, said point being on the proposed North right of way boundary of Gladiolus Drive for a point of beginning.

Thence on an arc to the right in a Westerly direction along the proposed North right of way boundary of Gladiolus Drive a distance of 20.72 feet with a radius of 7976.32 feet subtended by a chord of 20.72 feet, chord bearing S 89°37'09" W to a point of tangency; thence S 89°41'37" W along the proposed North right of way boundary of Gladiolus Drive a distance of 413.88 feet to a point on the Southeast right of way boundary of Summerlin Road; thence N 44°26'15" E along the Southeast right of way boundary of Summerlin Road a distance of 451.93 feet to a point of curvature; thence on an arc to the right a distance of 47.12 feet with a radius of 30.0 feet subtended by a chord of 42.43 feet, chord bearing N 89°26'15" E, to a point of tangency; thence S 45°33'45" E along the South right of way boundary of proposed Summerlin Park Drive a distance of 129.32 feet to a point of curvature; thence on an arc to the left along the South right of way of proposed Summerlin Park Drive a distance of 129.32 feet to a point of curvature; thence on an arc to the left along the South right of way of proposed Summerlin Park Drive a distance of 101.52 feet with a radius of 130.00 feet subtended by chord of 98.96 feet, chord bearing S 67°56'04" E, to a point on curve; thence S 89°41'37" W a distance of 111.44 feet; thence S 00°56'16" E a distance of 192.47 feet to the point of beginning.

EXECUTIVE SUMMARY

OWNER OF RECORD: Motiva Enterprises, LLC (per 2003 Lee County tax roll).

LOCATION: 8130 Gladiolus Drive, Fort Myers, Florida 33907. The subject property is located at the northeast corner of Summerlin Road and Gladiolus Drive.

LAND AREA: The parent tract is irregular in shape and contains 87,682 square feet according to Lee County Property Appraiser records. The proposed taking is the westerly 15' of the parent tract running along Summerlin Road from the entrance at the north end of the site to Gladiolus Drive. The take area will total 7,270 square feet. The remainder tract size is 80,412 square feet.

IMPROVEMENTS: The parent tract has been improved with a Shell convenience gas outlet facility with carwash. The improvements were built in 1994 and are in excellent condition. The building improvements are not included in this limited scope assignment, only those minimal site improvements affected by the take and/or within the take area are included in this appraisal.

ZONING/LAND USE: CC (Community Commercial)/Central Urban land use

**HIGHEST AND BEST USE
(Before Take):** Commercial Development

**HIGHEST AND BEST USE
(After Take):** Commercial Development

**MARKET VALUE
BEFORE TAKE:** \$1,495,594

VALUE OF PART TAKEN: \$ 128,590

**REMAINDER VALUE AS
PART OF WHOLE:** \$1,367,004

**REMAINDER VALUE
AFTER TAKE:** \$1,367,004

SEVERANCE DAMAGES: \$ 0

AMOUNT DUE OWNER: \$ 128,590

INTEREST APPRAISED: Fee Simple

DATE OF VALUATION: 12 March 2004

DATE OF REPORT: 16 March 2004

APPRAISER: W. Michael Maxwell, MAI, SRA

SPECIAL ASSUMPTIONS: Parcel 103 does not have direct access to or from Summerlin Road or Gladiolus Drive. Access to Parcel 103 is via two driveways on Summerlin Center Drive. Access to and from Summerlin Center Drive will be unchanged.

Traffic patterns and traffic movements will be modified on Summerlin Road and Gladiolus Drive. A flyover will be constructed within the pre-existing right-of-way for westbound Gladiolus Drive to southbound Summerlin Road and for eastbound Gladiolus Drive to northbound Summerlin Road. A median opening on Summerlin Road for Summerlin Center Drive will be replaced with a u-turn median opening. A median opening allowing left turns from Gladiolus Drive onto Elderberry Lane will be closed. These changes are not compensable as to any impacts (if any) to the subject.

This appraisal also assumes that Lee County will reinstall, reconnect, contour, or otherwise recreate the retention berm as a result of the take which minimally impacts the retention areas. This appraisal also assumes that Lee County will relocate the display sign, if necessary. As of this writing, no specific cost-to-cure has been provided and therefore, these items are presumed to be handled in that manner and/or by Lee County at their expense. A report submitted by T.Y. Lin International (see Addenda) indicates that the pre-take water management system will continue to function as designed and permitted after the take with no adverse impacts.

5-Year Sales History

Parcel No. 103

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

Grantor	Grantee	Price	Date	Arms Length Y/N

NO SALES in PAST 5 YEARS