

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

**Blue Sheet No. 20040394**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$1,000.00 for Parcel 104, 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**

*C6D*

**3. MEETING DATE:**

*04-27-2004*

**4. AGENDA:**

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

**6. REQUESTOR OF INFORMATION:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

- STATUTE 73 & 125
- ORDINANCE
- ADMIN. CODE
- OTHER

- 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:** 299 square feet of fee interest in vacant property

**Property Details:**

**Owner:** JLB Ft. Myers, LLC, a Florida Limited Liability Company  
**Part of STRAP No.:** 34-45-24-00-00002.0140

**Purchase Details:**

**Binding Offer Amount:** \$1,000.00

**Appraisal Information:**

**Company:** Maxwell & Hendry Valuation Services, Inc.  
**Appraised Value:** \$897.00 as of January 23, 2004

**Staff Recommendation:** 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.P. Forsyth</i>			<i>DAD 4/8/04 4/12/04</i>	<i>John Reagan 4-8-04</i>	<i>OA 4-8-04</i>	<i>OM 4/8</i>	<i>Risk 4/8</i>	<i>GC 4/8</i>	<i>AS 4/12/04</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: *20*  
*4/8/04*  
*4:30 PM SLT*  
COUNTY ADMIN  
FORWARDED TO: *PP*  
*4-9-04*  
*11:30 AM*

This document prepared by  
Division of County Lands  
Project: Summerlin Road Six-Laning, Project No. 4067  
Parcel: 104  
Part of STRAP No.: 34-45-24-00-00002.0140

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 JLB Ft. Myers LLC, a Florida Limited Liability Company, hereinafter referred to as SELLER, whose address is 5050 Belmont Avenue, Youngstown, Ohio 44505, 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 299 square feet, more or less, and located at 8600-8690 Gladiolus Drive, 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 One Thousand and No/100-- (\$1,000.00), 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:**

JLB FT. MYERS LLC, A Florida  
Limited Liability Company

\_\_\_\_\_

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

(DATE)

\_\_\_\_\_

**BUYER:**

LEE COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

CHARLIE GREEN, CLERK

BY: \_\_\_\_\_

DEPUTY CLERK (DATE)

BY: \_\_\_\_\_

CHAIRMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY

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

# Exhibit "A"

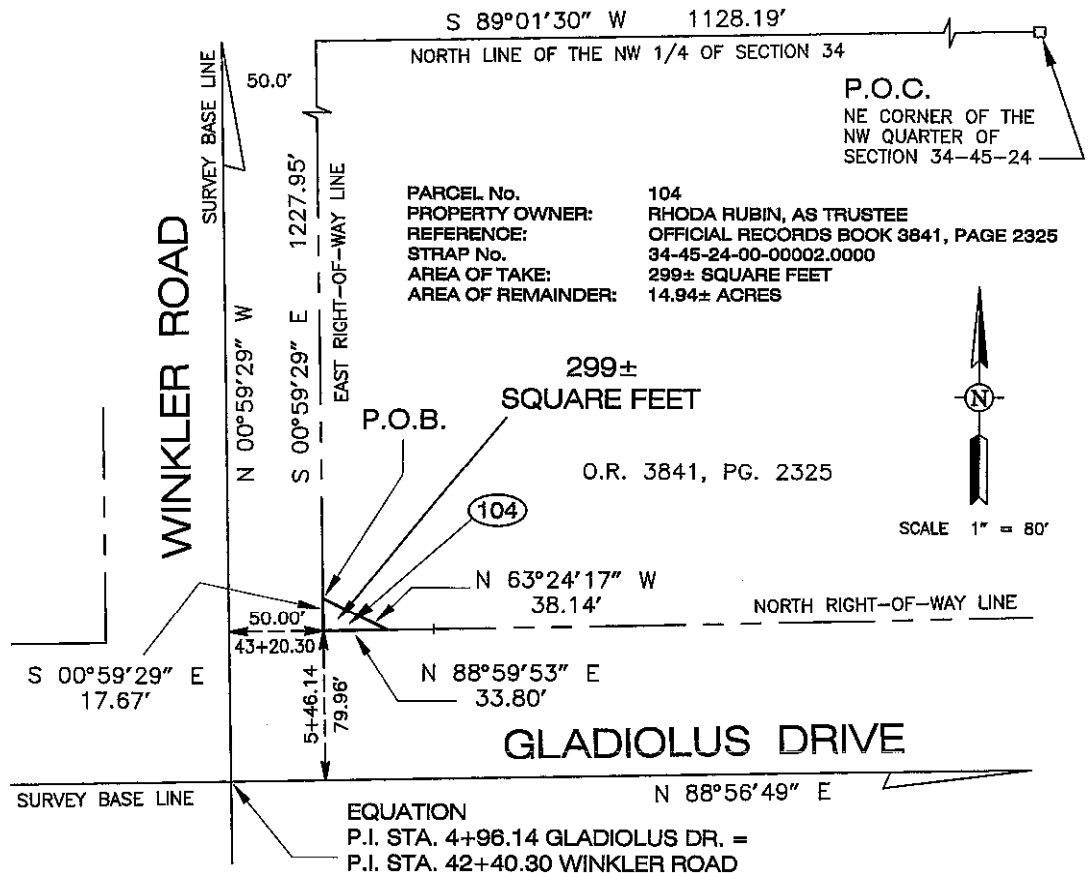
**EXHIBIT "A"**  
**PARCEL DESCRIPTION AND SKETCH**  
 Road Right-of-Way Taking, Parcel No. 104  
 (This is not a Field Survey)

**LEGAL DESCRIPTION**

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

Commence at the northeast corner of the Northwest Quarter (NW 1/4) of said Section 34; thence S 89°01'30" W along the north line of the Northwest Quarter (NW 1/4) of said Section 34 for 1128.19 feet to an intersection with the east right-of-way line of Winkler Road (50.00 feet from center line); thence S 00°59'29" E along said east line for 1227.95 feet to the Point of Beginning; thence continue S 00°59'29" E for 17.67 feet to the northwest corner of Parcel No. 26, Road Right-of-Way Taking as described in Official Records Book 2512, Page 2995, of the Public Records of Lee County, Florida and an intersection with the existing north right-of-way line of Gladiolus Drive; thence N 88°59'53" E along the north line of said parcel and along said north right-of-way line for 33.80 feet; thence N 63°24'17" W, leaving said north lines, for 38.14 feet to the Point of Beginning. Containing 299 square feet, more or less.

Basis of bearings based on the Florida State Plane Coordinate System, West Zone, NAD 83/90 being S 89°01'30" W for the north line of the Northwest Quarter (NW 1/4) of Section 34, Township 45 South, Range 24 East, Lee County, Florida.



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 1 OF 1

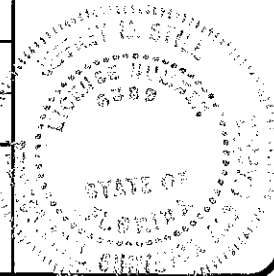
LEGAL DESCRIPTION AND SKETCH PREPARED BY DENI ASSOCIATES, INC.  
 SURVEYING AND MAPPING BUSINESS, STATE OF FLORIDA CERTIFICATE  
 OF AUTHORIZATION No. LB 3542.

*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-F

DATE: JUNE 3, 2003



**Deni Associates, Inc.**

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

PROFESSIONAL SURVEYORS AND MAPPERS



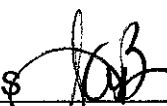
**Division of County Lands****Updated Ownership and Easement Search**

Search No. 20038/A

Date: January 29, 2004

Parcel: 104

Project: Summerlin Road Widening (San Carlos to Gladiolus), Project 4067

To: Teresa L. Mann, SR/WA  
Property Acquisition AgentFrom: Shelia A. Bedwell, CLS  
Property Acquisition Agent STRAP: 34-45-24-00-00002.0000 <sup>0140</sup> ●

Effective Date: January 10, 2004, at 5:00 p.m.

**Subject Property:** See attached Schedule "X"

Title to the subject property is vested in the following:

**JLB Ft. Myers LLC, a Florida limited liability company**

By that certain instrument dated December 10, 2003, recorded December 15, 2003, in Official Record Book 4147, Page 3522, Public Records of Lee County, Florida.

**Easements:**

1. Operation and Easement Agreement between JLB Ft. Myers LLC, a Florida limited liability company, Rhoda Rubin, individually and as Trustee, and RNJ General Partnership, a Florida general partnership, recorded in Official Record Book 4147, Page 3593, Public Records of Lee County, Florida.

NOTE (1): Covenants of Unified Control recorded in Official Record Book 3215, Page 1083 and Official Record Book 3841, Page 2323, Public Records of Lee County, Florida.

NOTE (2): Memorandum of Lease between JLB Ft. Myers LLC, a Florida limited liability company and Kash N'Karry Food Stores, Inc., a Delaware corporation, recorded in Official Record Book 4174, Page 2760, Public Records of Lee County, Florida. *DOES NOT EFFECT TAKE AREA***Tax Status:** 2003 taxes have been 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.**

**Division of County Lands****Updated Ownership and Easement Search**

Search No. 20038/A

Date: January 30, 2004

Parcel: 104

Project: Summerlin Road Widening (San Carlos to Gladiolus), Project 4067

## Schedule "X"

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 the Northwest Quarter (NW 1/4) of said Section 34; thence S 89° 01'30" W along the north line of the Northwest Quarter (NW 1/4) of said Section 34 for 1128.19 feet to an intersection with the east right-of-way line of Winkler Road (50.00 feet from center line); thence S 00° 59'29" E along said east line for 1227.95 feet to the Point of Beginning; thence continue S 00° 59'29" E for 17.67 feet to the northwest corner of Parcel No. 26, Road Right-of-Way Taking as described in Official Records Book 2512, Page 2995, of the Public Records of Lee County, Florida and an intersection with the existing north right-of-way line of Gladiolus Drive; thence N 88° 59' 53" E along the north line of said parcel and along said north right-of-way line for 33.80 feet; thence N 63° 24'17" W, leaving said north lines, for 38.14 feet to the Point of Beginning. Containing 299 square feet, more or less.

Basis of bearings based on the Florida State Plane Coordinate System, West Zone, NAD 83/90 being S 89° 01'30" W for the north line of the Northwest Quarter (NW 1/4) of Section 34, Township 45 South, Range 24 East, Lee County, Florida.

## **EXECUTIVE SUMMARY**

**OWNER OF RECORD:** JLB Fort Myers, LLC (per 2003 Lee County tax roll).

**LOCATION:** The subject property is located at the northeast corner of Gladiolus Drive and Winkler Road in Section 34-45-24, Lee County, Florida.

**LAND AREA:** The parent tract is irregular in shape and contains 14.9469 acres according to Lee County Property Appraiser records. The proposed taking is a very small corner clip at the extreme southwest corner of the site totaling 299 square feet. The remainder tract size will be 14.94 acres of 650,786 square feet.

**IMPROVEMENTS:** None.

**ZONING/LAND USE:** CPD (Commercial Planned District)/Urban Community Land Use

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

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

**MARKET VALUE BEFORE TAKE:** \$1,953,255

**VALUE OF PART TAKEN:** \$ 897

**REMAINDER VALUE AS PART OF WHOLE:** \$1,952,358

**REMAINDER VALUE AFTER TAKE:** \$1,952,358

**SEVERANCE DAMAGES:** \$ 0

**AMOUNT DUE OWNER:** \$ 897

**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 there is no major grade change after construction. This appraisal also assumes that Lee County will reinstall, reconnect, contour, or otherwise recreate any improvements lost as a result of the taking.

# 5-Year Sales History

Parcel No. 104

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

Grantor	Grantee	Price	Date	Arms Length Y/N
Rhoda Rubin, Individually and as Trustee, and RNJ Partnership	JLB Ft. Myers LLC	\$2,304,800	12/10/2003	Yes

SALE IS FOR THE PARENT TRACT