

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

Blue Sheet No. 20040516

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Purchase Agreement for acquisition of Parcel 152, Burnt Store Road Widening Project No. 4088, in the amount of \$63,000; authorize payment of costs to close and the Division of County Lands to handle all documentation necessary to complete transaction.

WHY ACTION IS NECESSARY: The Board must accept all real estate conveyances to Lee County.

WHAT ACTION ACCOMPLISHES: The purchase of the property during the voluntary acquisition phase of the project.

2. DEPARTMENTAL CATEGORY: 06 **COMMISSION DISTRICT #** *C6D* **3. MEETING DATE:** *05-11-2004*

4. AGENDA:	<input checked="" type="checkbox"/> CONSENT	5. REQUIREMENT/PURPOSE: (Specify)	<input checked="" type="checkbox"/> STATUTE	125	6. REQUESTOR OF INFORMATION:
	<input type="checkbox"/> ADMINISTRATIVE		<input type="checkbox"/> ORDINANCE		
	<input type="checkbox"/> APPEALS		<input type="checkbox"/> ADMIN. CODE		
	<input type="checkbox"/> PUBLIC		<input type="checkbox"/> OTHER		
	<input type="checkbox"/> WALK ON				
TIME REQUIRED:				A. COMMISSIONER	
				B. DEPARTMENT	Independent <i>800</i>
				C. DIVISION	County Lands <i>4-21-04</i>
				BY:	<i>Karen L. W. Forsyth, Director</i>

7. BACKGROUND:

Negotiated for: Lee County DOT and the City of Cape Coral
Interest to Acquire: Fee Interest in 18,600 square feet of waterfront property.

Property Details:

Owner: Huyet Ho and Luan Ho
Address: 607 Burnt Store Road, Cape Coral
STRAP No.: 08-44-23-C1-04012.0330

Purchase Details:

Purchase Price \$63,000 (\$3.39 per square foot)
Costs to Close \$1,000

Appraisal Information:

An appraisal has not been obtained on this property. Market Data indicates sales range from \$2.96 to \$4.22 per square foot for waterfront sites in this area.

Staff Recommendation: Staff recommends the Board approve the requested motion.

Account: 20408830721.506110 CIP; Burnt Store Rd Right of Way; TCI-Surplus Capital Cape Coral; Land

Attachments: Purchase & Sale Agreement, Location Map, Title Commitment, Market Data Grid, 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>DAO 4/28/04</i>	<i>John Nelson 4-28-04</i>	<i>OA 4/28/04</i>	<i>OM 4/29/04</i>	<i>Risk 4/28/04</i>	<i>GC 4/29/04</i>	<i>HS 4/29/04</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
 Date: *4/28/04*
 Time: *2:00*
gan
 Forwarded To:
 Co. Adm.
4/28/04 3PM

**RECEIVED BY
COUNTY ADMIN:** *gan*
04/28/04
2:25 pm 507
**COUNTY ADMIN
FORWARDED TO:** *PL*
4/29/04
3pm

HS

This document prepared by

Lee County
County Lands Division
Project: **Burnt Store Road Widening Project No. 4088**
Parcel: **152**
STRAP No.: **08-44-23-C1-04012.0330**

BOARD OF COUNTY COMMISSIONERS

LEE COUNTY

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT for purchase and sale of real property is made this 28TH day of April, 2004 by and between Huyet Ho and Luan Ho, hereinafter referred to as SELLER, whose address is 15821 Bahia Court, Fort Myers, FL 33908, 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 **18,600 square feet** more or less, and located at **607 Burnt Store Road, Cape Coral, FL** and more particularly described in "Exhibit A" attached hereto and made a part hereof, hereinafter called "the Property" This property will be acquired for the Burnt Store Road Widening Project, hereinafter called "the Project."

2. **PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("Purchase Price") will be **Sixty three thousand and no/100 dollars (\$63,000.00)**, payable at closing by County Warrant.

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 \$63,000.00, 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) documentary stamps on deed;
- (c) utility services up to, but not including the date of closing;
- (d) taxes or assessments for which a bill has been rendered on or before the date of closing;
- (e) payment of partial release of mortgage fees, if any;
- (f) 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.

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 the 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 or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat those discrepancies, violations 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 hereby 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.

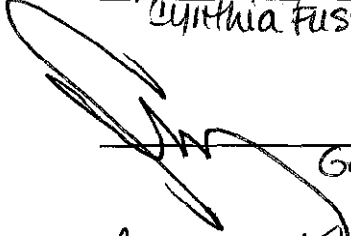
17. TYPEWRITTEN/HANDWRITTEN PROVISIONS: Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all parties, will control all printed provisions in conflict therewith.

18. **SPECIAL CONDITIONS:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.


WITNESSES:




Cynthia Fussrecker



George Eddy



Cynthia Fussrecker

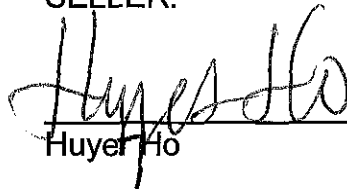


George Eddy

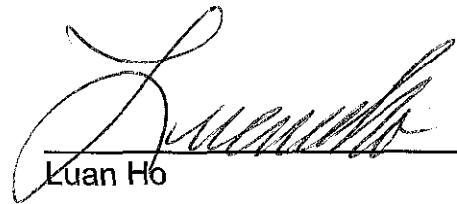
CHARLIE GREEN, CLERK

BY: _____
DEPUTY CLERK (DATE)

SELLER:



Huyes Ho (DATE)



Luan Ho (DATE) 4/8/04

BUYER:
LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
CHAIRMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

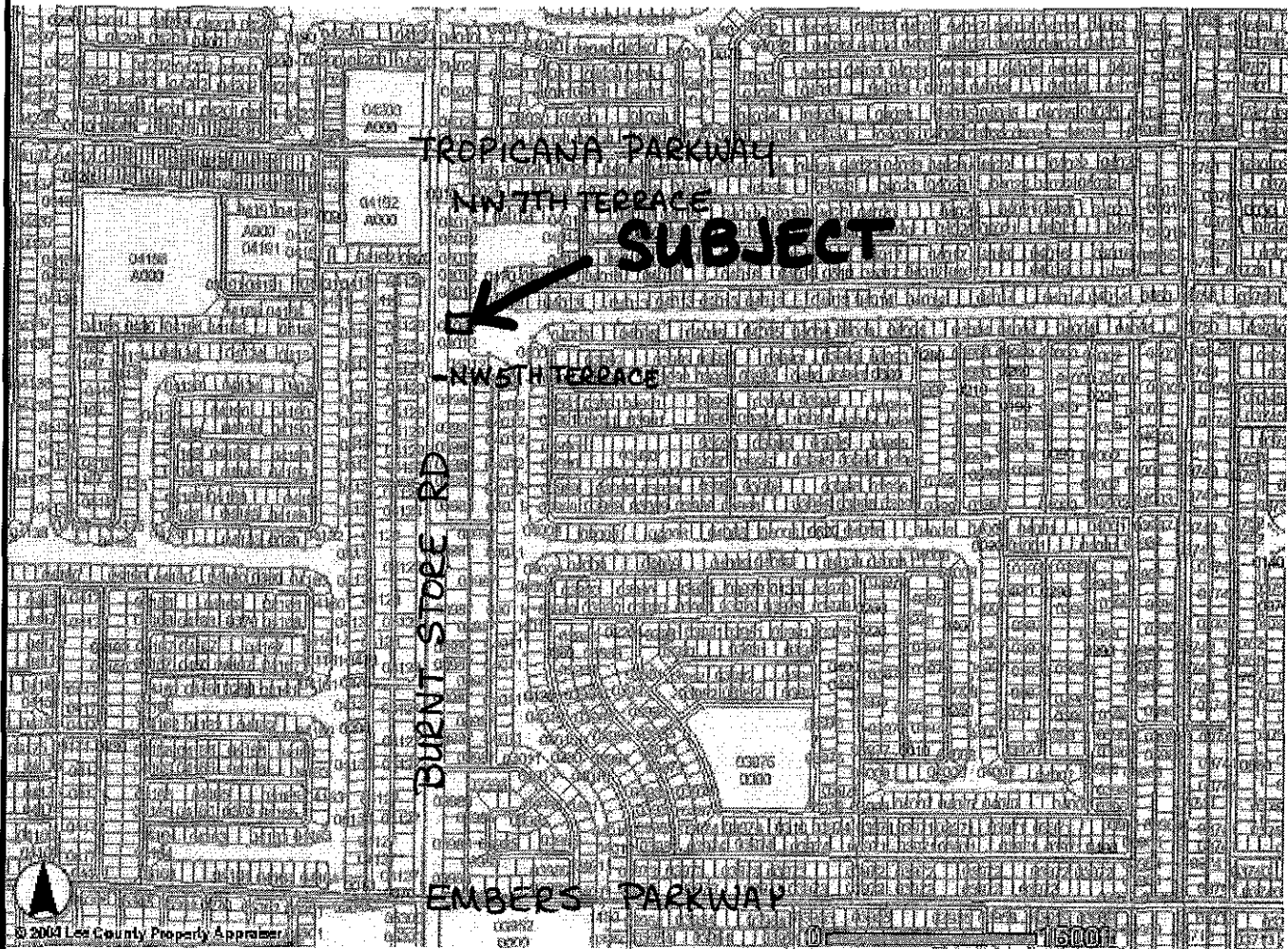
COUNTY ATTORNEY (DATE)

Exhibit A

Parcel 152
Burnt Store Road Widening Project

Lots 33, 34 and 35, Block 4012, Cape Coral Unit 55, a subdivision according to the map or plat thereof recorded in Plat Book 19, Pages 92 to 106, inclusive, Public Records of Lee County Florida.

Parcel 152 Burnt Store Road Widening Project



FATHC-213X
ALTA Commitment (1982)

First American Title Insurance Company

SCHEDULE A

Issuing Office File No: 040873WJ

1. Commitment Date: 03/31/04
08 : 00.00 a.m.

2. Policy or Policies to be issued:
(a) Owner's Policy (Identify policy type below) Policy Amount: \$ 63,000.00

Proposed Insured:
Lee County, a political subdivision of the State of Florida

(b) Loan Policy (Identify policy type below) Policy Amount: \$

Proposed Insured:

(c) Other (Identify policy type below) Policy Amount: \$

Proposed Insured:

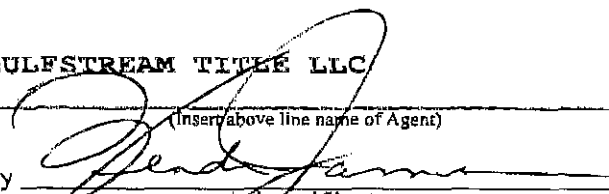
3. A Fee Simple interest in the land described in this Commitment is owned, at the
Commitment Date, by:
Huyer Ho and Luan Ho

4. The land referred to in this Commitment is described as follows:
Lots 33 thru 35, in Block 4012, Unit 55, CAPE CORAL SUBDIVISION,
according to the Plat thereof, recorded in Plat Book 19, Pages 92 to
106, inclusive, of the Public Records of Lee County, Florida.

Issue Date: 03/31/04

GULFSTREAM TITLE LLC

(Insert above line name of Agent)

By 
Authorized Signatory

THIS COMMITMENT IS FURNISHED BY FIRST AMERICAN TITLE INSURANCE COMPANY OR ITS POLICY ISSUING AGENT SOLELY FOR THE ISSUANCE OF A POLICY OR POLICIES OF TITLE INSURANCE OF FIRST AMERICAN TITLE INSURANCE COMPANY. THIS COMMITMENT IS NOT AN ABSTRACT OR AN OPINION OF TITLE. LIABILITY UNDER THIS COMMITMENT IS DEFINED BY AND LIMITED TO THE TERMS AND CONDITIONS OF THIS COMMITMENT AND THE TITLE INSURANCE POLICY TO BE ISSUED. PERSONS AND ENTITIES NOT LISTED ABOVE AS PROPOSED INSURED ARE NOT ENTITLED TO RELY UPON THIS COMMITMENT FOR ANY PURPOSE.

First American Title Insurance Company

SCHEDULE B-SECTION I REQUIREMENTS

Issuing Office File No.: 040873WJ

The following requirements must be met:

1. Pay and/or disburse the agreed amounts for the interest in the land to be insured and/or according to the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.
4. The following documents, satisfactory to us, creating the interest in the land and/or the mortgage to be insured, must be signed, delivered and recorded:
 5. Warranty Deed conveying the land from Huyer Ho and Luan Ho, with a non-homestead clause, to Lee County, a political subdivision of the State of Florida.
 6. Proof of payment of any Cape Coral municipal liens and/or assessments.
 7. Written evidence, from appropriate governmental authorities, that Special Taxing District, City and County Special Assessment Liens, and Water, Sewer and Trash Removal Charges, if any, have been paid.
8. Note: Items 1, 2, 3, 4 and 5 of Schedule B, Section 2 of the Commitment, will be deleted from any policies issued pursuant thereto upon our review and acceptance of a survey acceptable to the Company, certified in accordance with Florida Statutes, or such other proof as may be acceptable to the Company, relating to any rights, interests or claims affecting the land which a correct survey would disclose, and an Affidavit of Possession and No Liens in accordance with Florida Statutes, and the Company's review of the potential exposure for construction liens. The Company reserves the right to include exceptions from coverage relating to matters disclosed by the survey or other proof, the Affidavit, or discovered in the Company's review of the potential exposure for construction liens, and to make such additional requirements as it may deem necessary.
9. Note: Immediately prior to disbursement of the closing proceeds, the search of the public records must be continued from the effective date hereof. The Company reserves the right to raise such further exceptions and requirements as an examination of the information revealed by such search requires, provided, however, that such exceptions or requirements shall not relieve the Company from its liability under this Commitment arising from the matters which would be revealed by such search, to the extent that Company, or its Agent countersigning this Commitment, has disbursed said proceeds.

First American Title Insurance Company

SCHEDULE B - SECTION 2 EXCEPTIONS

Issuing Office File No.: 040873WJ

Any policy we issue will have the following exceptions, unless they are taken care of to our satisfaction:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any rights, interests, or claims affecting the land which a correct survey would disclose and which are not shown by the public records.
3. Any lien for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records.
4. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
5. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy.
6. Any minerals or mineral rights leased, granted or retained by current or prior owners.
7. Taxes and assessments for the year 2004 and subsequent years.
8. Note: The 2003 ad valorem taxes show PAID in the gross amount of \$686.60 for Tax Identification No. 08-44-23-C1-04012.0330.
9. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of CAPE CORAL UNIT 55, as recorded in Plat Book 19, Page(s) 104, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
10. Easement dedication as shown on subject Plat: The owners of this property do hereby dedicate along each boundary of each homesite for County drainage and public utilities. Said easements shall not exceed six feet each side of said boundaries.
11. Liability under this commitment/policy as to all City of Cape Coral betterment fees, impact fees and those fees relating to sewer, water, alley and other improvement assessments is hereby limited to those which the City of Cape Coral has filed in the Public Records of Lee County, Florida and which contain the property description, name of owners and the lien amount.
12. This Policy does not insure title to the beds or bottoms of lakes, rivers or other bodies of water located on or within the land described in Schedule "A".
13. This Policy does not insure title to any part of the land lying below the mean high water line of any abutting body of water.
See Continuation Sheet

CONTINUATION SHEET
(SCHEDULE B-II CONTINUED)

FILE NO: 040873WJ

14. Riparian and/or littoral rights are not insured.

Market Data

Parcel 152
Burnt Store Road Widening Project No. 4088
08-44-23-C1-04012.0330
18,600 square feet
\$63,000 (\$3.39/square foot)

STRAP	Property Type	Purchase Date	Purchase Price	Square Footage	Price/ SqFt
08-44-23-C1-04012.0360	Lakefront	8/15/03	\$55,000	18600	\$2.96
08-44-23-C1-04012.0300	Lakefront	2/20/03	\$58,900	18600	\$3.17
08-44-23-C1-04012.0450 & .0470	Lakefront	11/18/03	\$90,000	24800	\$3.63
08-44-23-C1-04012.0510	Lakefront / corner	3/16/04	\$117,500	27900	\$4.22

No adjustment made for time.

5-Year Sales History

Parcel No. 152

Burnt Store Road Widening Project, No. 4088

Grantor	Grantee	Price	Date	Arms Length Y/N
Leroy E. & Kathryn M. Martin	Huyer and Luan Ho	\$33,700	10/29/02	Y