

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

Blue Sheet No. 20060302

1. ACTION REQUESTED/PURPOSE: Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$1,900 for Parcel 85, Gladiolus Drive Widening, Project No. 4083, pursuant to the Purchase Agreement; authorize the Division of County Lands to handle all documentation necessary to complete transaction.

2. WHAT ACTION ACCOMPLISHES: Authorizes binding offer to property owner.

3. MANAGEMENT RECOMMENDATION: Approve

4. Departmental Category: 6 **CLB** **5. Meeting Date:** 04-04-2006

6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)		8. Request Initiated: Commissioner _____ Department _____ Independent Division _____ County Lands By: Karen L.W. Forsyth, Director
	<input checked="" type="checkbox"/> Statute	125	
	<input type="checkbox"/> Ordinance		
	<input type="checkbox"/> Admin. Code		
	<input type="checkbox"/> Other		

9. Background:
Negotiated for: Department of Transportation

Interest to Acquire: A slope easement consisting of 14,880 square feet.

Property Details:

Owner: Danny Kelly, Trustee and Tim Kelly, Trustee
Address: 10041 Gladiolus Drive, Fort Myers
STRAP: 32-45-24-01-000N0.0020

Purchase Details:

Binding Offer Amount: \$1,900

In order to expedite acquisition efforts, staff recommends Board make a binding offer in the amount of \$1,900, and commence Eminent Domain procedures.

Appraisal Information:

Appraised Value: \$1,900 as of October 28, 2005
Company: Hanson Real Estate Advisors, Inc.

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

Account: 20408330700.506110

Attachments: Purchase and Sale Agreement, In-House Title Search, Appraisal Summary, Location Map, Sales History

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
K. Forsyth			AD 3/17 2/23/06			MRP 3/22/06	3/22/06	3/23/06	W. [Signature]

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN: [Signature]
3/22/06
11 am
COUNTY ADMIN FORWARDED TO: [Signature]
3/23/06
[Signature]

Rec. by CoAtty
Date: 3/22/06
Time: 3:22 pm
Forwarded To: [Signature]
3/22/06 10:31 AM

EASEMENT PURCHASE AGREEMENT

This Agreement made and entered into this _____ day of _____, 2006, by and between **DANNY KELLY, INDIVIDUALLY AND AS TRUSTEE, and TIM KELLY, INDIVIDUALLY AND AS TRUSTEE**, whose address is 15775 Pine Ridge Road, Fort Myers, FL 33908,, hereinafter referred to as Owner, and **LEE COUNTY**, a political subdivision of the State of Florida, for the use and benefit of said County, hereinafter referred to as Purchaser.

Whereas, Purchaser requires a perpetual, nonexclusive slope easement located and described as set forth in Exhibit "A", attached hereto and made a part hereof by reference.

- a) Owner will grant said easement to Purchaser for the sum of \$1,900.00; Purchaser to pay recording costs, documentary stamps and title insurance.
- b) Owner agrees that said easement will be granted to Purchaser by execution of a slope easement in form and substance as provided by Purchaser and set forth in Exhibit "X".
- c) Purchaser will pay Owner the amount agreed upon in item (a) of this agreement by County Warrant within 60 days of the execution and acceptance of this Easement Purchase Agreement and the Slope Easement instrument by Purchaser.
- d) Owner agrees that Purchaser, his successors and assigns will be allowed to use said slope easement area as specified in the Slope Easement instrument.
- e) Purchaser agrees to complete construction within the easement area in a timely manner.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their respective names on the date first above written.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

WITNESSES:

SELLER:

Danny Kelly, Individually and as Trustee

Tim Kelly, Individually and as Trustee

Parcel: 85
Project: Gladiolus Drive Widening, No. 4083
STRAP No.: 32-45-24-01-000N0.0010
Page 2 of 2

CHARLIE GREEN, CLERK

BY: _____
DEPUTY CLERK (DATE)

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)

This instrument prepared by:
Lee County
Division of County Lands
Post Office Box 398
Fort Myers, Florida 33902-0398

Exhibit "X"

Parcel: 85
Project: Gladiolus Drive Widening Project, No. 4083
STRAP No.: 32-45-24-01-000N0.0020

SLOPE/RESTORATION EASEMENT

This INDENTURE, made and entered into this _____ day of _____ 2006, between DANNY KELLY, INDIVIDUALLY AND AS TRUSTEE AND TIM KELLY, INDIVIDUALLY AND AS TRUSTEE whose address is 15775 Pine Ridge Road, Fort Myers, FL 33908, (Grantor), and LEE COUNTY, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, (Grantee):

WITNESSETH:

1. For good and valuable consideration, receipt of which is hereby acknowledged, Grantor grants to the Grantee, its successors and assigns, a slope/restoration easement situated in Lee County, Florida, and located and described as set forth in attached Exhibit "A" (Easement Parcel).
2. Grantee, its successors and assigns, are granted the right, privilege, and authority to construct, replace, repair, remove, extend, and maintain a slope/restoration easement on the Easement Parcel to support, reinforce, and stabilize the adjacent public roadway.
3. The improvements that may be placed within the Easement Parcel for roadway slope/restoration purposes are not limited to a particular type, style, material or design. These improvements may include the use of foliage.
4. Grantor may not construct or place any structures or foliage within the Easement Parcel.
5. Title to the improvements constructed by the Grantee within the Easement Parcel will remain in the Grantee, it's successors or assigns.
6. Subject to any existing easements for public highways or roads, railroads, laterals, ditches, pipelines and electrical transmission or distribution lines and telephone and cable television lines covering the land herein described, Grantors covenant they are lawfully seized and possessed of the real property described in Exhibit "A", have good and lawful right and power to convey it, and that the property is free and clear of all liens and encumbrances, except as herein stated, and accordingly, Grantor will forever warrant and defend the title and terms to this said easement and the quiet possession thereof against all claims and demands of all other entities.

Slope/Restoration Easement

Project: Gladiolus Drive Widening Project, No. 4083

Page 2 of 3

Exhibit "X"

7. Grantee has a reasonable right of access across Grantor's property for the purposes of reaching the Easement Parcel on either paved or unpaved surfaces. Any damage to Grantor's property or permitted improvements thereon resulting from Grantee's use of this access right will be restored by the Grantee, to the condition in which it existed prior to the damage.

8. This easement runs with the land and is binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, Grantor, has caused this document to be signed on the date first above written.

TWO SEPARATE WITNESSES:

1st Witness Signature

Danny Kelly, Individually and as Trustee

Printed name of 1st Witness

2nd Witness Signature

Printed name of 2nd Witness

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Danny Kelly

He/she is personally known to me or who has produced _____
(type of identification)
_____ as identification.

(Signature of Notary Public)

(Name typed, printed or stamped)
(Title or Rank)
(Serial Number, if any)

Slope/Restoration Easement

Project: Gladiolus Drive Widening Project, No. 4083

Exhibit "X"

Page 3 of 3

TWO SEPARATE WITNESSES:

1st Witness Signature

Tim Kelly, Individually and as Trustee

Printed name of 1st Witness

2nd Witness Signature

Printed name of 2nd Witness

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Tim Kelly

He/she is personally known to me or who has produced _____
(type of identification)
_____ as identification.

(Signature of Notary Public)

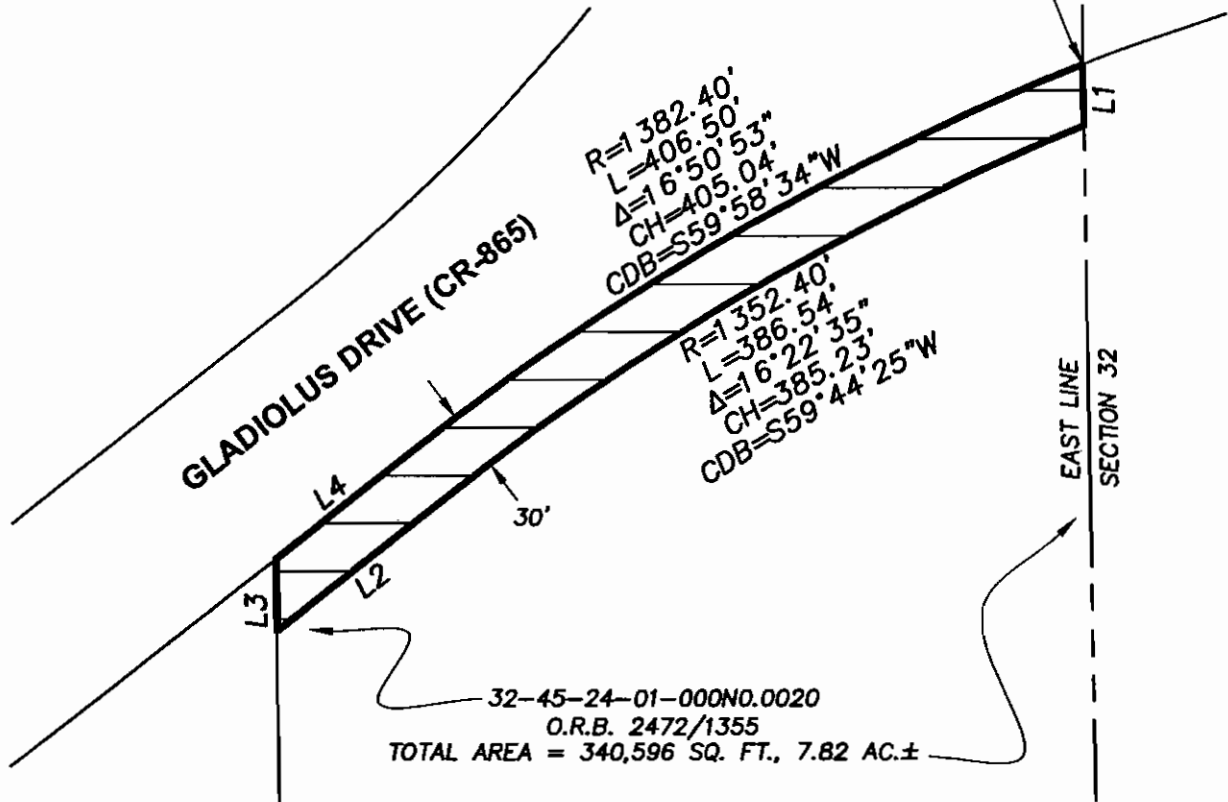
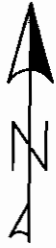
(Name typed, printed or stamped)
(Title or Rank)
(Serial Number, if any)

SKETCH OF DESCRIPTION

Exhibit "A"

OF A PARCEL LYING IN THE SE 1/4 OF THE NE 1/4 OF SECTION 32, TWP 45 S, RGE 24 E, LEE COUNTY, FLORIDA

P.O.B.
NE CORNER
OF BLOCK "N"



BLOCK "N"

LINE TABLE		
LINE	BEARING	LENGTH
L1	S01°15'41"E	32.04'
L2	S51°33'08"W	110.54'
L3	N01°15'41"W	37.66'
L4	N51°33'08"E	87.78'

PARCEL NO.: 85 SE
 PROPERTY OWNER: DANNY KELLY, TRUSTEE AND
TIM KELLY, TRUSTEE

REFERENCE: O.R.B. 2472/1355
 STRAP NO.: 32-45-24-01-000NO.0020
 AREA OF TAKE: 14,880 SQ. FT., 0.34 AC.±
 AREA OF REMAINDER: 325,716 SQ. FT., 7.48 AC.±

KEY:

- AC. = ACRES
- CDB = CHORD BEARING
- CH = CHORD
- Δ = DELTA ANGLE
- L = LENGTH
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT
- O.R.B. = OFFICIAL RECORDS BOOK
- R = RADIUS
- SQ. FT. = SQUARE FEET

James M. Wilkison
 JAMES M. WILKISON (FOR THE FIRM LB6773)
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA LICENSE NO. LS 4876
 THIS DAY OF Jan, 2005.

NOTE:
 SEE SHEET 2 OF 2
 FOR DESCRIPTION

THIS IS NOT A SURVEY

JEFFREY C. COONER AND ASSOCIATES, INC.

SURVEYING AND MAPPING
 3900 COLONIAL BLVD., SUITE 4, FORT MYERS, FLORIDA 33912
 PHONE: (239)277-0722 FAX: (239)277-7179 EMAIL: SURVEYING@COONER.COM

CLIENT: LEE COUNTY O.O.T. ENGINEERING	DRAWN BY: JRF	CHECKED BY: J.N.W.
PARCEL DESCRIPTION: EASEMENT PARCEL IN THE SE 1/4 OF THE NE 1/4 OF SEC 32-45-24	DATE: 1/26/05	SCALE: 1"=100'
	PROJECT No: 020504	DWG No: NO_0020SKD SHEET: 1 OF 2

SKETCH OF DESCRIPTION

Exhibit "A"

OF A PARCEL LYING IN THE SE 1/4 OF THE NE 1/4 OF
SECTION 32, TWP 45 S, RGE 24 E, LEE COUNTY, FLORIDA

DESCRIPTION:

A PARCEL OF LAND BEING THE NORTHWESTERLY 30 FEET OF A PART OF BLOCK "N", HARLEM HEIGHTS, AS RECORDED IN PLAT BOOK 8, PAGE 76, IN SECTION 32, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, ALSO BEING A PART OF A PARCEL OF LAND RECORDED IN OFFICIAL RECORDS BOOK 2472, PAGE 1355, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK "N", SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF GLADIOLUS DRIVE (100 FEET WIDE) AND THE EAST LINE OF SAID SECTION 32, THENCE RUN S01°15'41"E, A DISTANCE OF 32.04 FEET ALONG SAID EAST LINE, ALSO BEING THE EAST LINE OF SAID BLOCK "N", TO A POINT ON A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES S22°04'17"E, A RADIAL DISTANCE OF 1,352.40 FEET; THENCE SOUTHWESTERLY ALONG THE ARC, SAID ARC RUNNING 30-FOOT SOUTHEASTERLY AND PARALLEL TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 16°22'35", A DISTANCE OF 386.54 FEET TO A POINT OF TANGENCY; THENCE RUN S51°33'08"W, A DISTANCE OF 110.54 FEET TO THE WEST LINE OF SAID PARCEL RECORDED IN OFFICIAL RECORDS BOOK 2472, PAGE 1355; THENCE RUN N01°15'41"W, A DISTANCE OF 37.66 FEET ALONG SAID WEST LINE; THENCE RUN N51°33'08"E, A DISTANCE OF 87.78 FEET ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF GLADIOLUS DRIVE TO A POINT OF CURVE OF RADIUS 1,382.40 FEET; THENCE AN ARC LENGTH OF 406.50 FEET ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 16°50'53" AND ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

CONTAINING 14,880 SQUARE FEET OR 0.34 ACRES, MORE OR LESS.

ALL RECORDING REFERENCES ARE FROM THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

NOTE:
SEE SHEET 1 OF 2
FOR SKETCH

THIS IS NOT A SURVEY

JEFFREY C. COONER AND ASSOCIATES, INC.

SURVEYING AND MAPPING

3900 COLONIAL BLVD., SUITE 4, FORT MYERS, FLORIDA 33912

PHONE: (239)277-0722 FAX: (239)277-7179 EMAIL: SURVEYING@COONER.COM

CLIENT: LEE COUNTY D.O.T. ENGINEERING	DRAWN BY: JRF	CHECKED BY: J.N.W.
PARCEL DESCRIPTION: EASEMENT PARCEL IN THE SE 1/4 OF THE NE 1/4 OF SEC 32-45-24	DATE: 1/14/05	SCALE:
	PROJECT No: 020504	DWG No: NO_0020SKD SHEET: 2 OF 2

Division of County Lands

Ownership and Easement Search

Search No. 22291

Date: January 31, 2003

Parcel: 85

Project: Gladiolus Drive Project 4083

To: Karen L.W. Forsyth

Director

From: Shelia A. Bedwell, CLS

Property Acquisition Assistant

STRAP: 32-45-24-01-000N0.0020

No changes as of 3/14/03
SS

Effective Date: January 14, 2003, at 5:00 p.m.

Subject Property: Part of Block N, HARLEM HEIGHTS, as shown on the plat recorded in Plat Book 8, Page 76, Public Records of Lee County, Florida, and more particularly described as the Easterly 250 feet of the Southerly 550 feet of said Block N and the Easterly 425 feet of said Block N less the Southerly 550 feet thereof.

Title to the subject property is vested in the following:

Danny Kelly and Tim Kelly, as Trustees of Kelly Brothers, Inc. Profit Sharing Plan and Trust.

by that certain instrument dated February 1, 1994, recorded February 16, 1994, in Official Record Book 2472, Page 1355, Public Records of Lee County, Florida.

Easements:

None found of record.

NOTE(1): Deed recorded April 19, 1974 in Official Record Book 1032, Page 281, and deed recorded December 31, 1974 in Official Record Book 1068, Page 735, Public Records of Lee County, Florida, does not contain marital status of the grantor(s), joinder by spouse, or statement regarding homestead status of subject property. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

Tax Status: 2002 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.

HANSON REAL ESTATE ADVISORS, INC.

Real Estate Valuation and Counseling

October 28, 2005

Robert G. Clemens
Acquisition Program Manager
Division of County Lands
P.O. Box 398
Fort Myers, Florida 33902-0398

Re: Complete Summary Appraisal Report No. 05-08-04.85
Project: Gladiolus Widening Project (No. 4083)
Parcel No: 85
Owner: Danny Kelly, Trustee & Tim Kelly, Trustee
County: Lee County, Florida

Dear Mr. Clemens:

We are pleased to transmit this summary report of a complete appraisal that was prepared on the above referenced property. The purpose of this appraisal is to estimate the market value of those property rights proposed for acquisition by Lee County, Florida together with all legally compensable diminution in value to the remaining land (if any) which can be attributed to the proposed partial taking, or the uses and/or activities proposed thereon. The attached report sets forth the data, research, analyses and conclusions for this appraisal.

This assignment has been completed in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") – 2005 Edition, as published by the Appraisal Standards Board of the Appraisal Foundation; and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. In so much that the appraisers did not invoke the Departure Provision of USPAP in the development of the valuation analysis and opinions, the appraisal is identified as a Complete Appraisal. The appraisers have communicated the valuation analysis and opinions in a Summary Appraisal Report format, as defined by Standard Rule 2-2 (b) of USPAP. The market value estimate is reported subject to the Extraordinary Assumptions, General Assumptions, and Hypothetical Conditions (if any) summarized below and in the Addendum of this report.

Market value for this purpose is defined as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised and acting in what they consider their best interests;

3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") of 1989.

The client and intended user of this report is identified as Robert G. Clemens, Acquisition Program Manager, Division of County Lands, whose address is P.O. Box 398, Fort Myers, Fl 33902. The intended use of the report is to provide the client and intended user an aid in estimating the amount due the owner based upon the proposed partial acquisition identified within.

The parent tract, containing 7.82 acres (340,596 SF) of gross land area, is located along the south side of S.R. 865 - Gladiolus Drive, across from the intersection of S.R. 865 - Gladiolus Drive and A&W Bulb Road, in the Fort Myers market area of Lee County, Florida. The parent tract is irregular shaped with a northerly edge measuring 494.28 feet along the curve of the southerly right-of-way of S.R. 865 - Gladiolus Drive, a non-linear westerly edge measuring approximately 1,078 feet, a southerly edge measuring approximately 237 feet along the northerly line of the Iona Drainage Canal and an easterly edge measuring approximately 1,116 feet. The property is further identified as being 1.40 miles east of the intersection of McGregor Blvd and Gladiolus Drive, 1.32 miles west of the intersection of Winkler Road and Gladiolus Drive, 2.25 miles northeast of the intersection of Summerlin Road and San Carlos Boulevard and 1.85 miles southwest of the intersection of McGregor Boulevard and Cypress Lake Drive. The parent tract is zoned AG-2 (Agricultural). According to the Future Land Use Map of the Lee County Comprehensive Plan, the parent tract is designated as Urban Community. According to Laura Herrero, an ecologist with Johnson Engineering, Inc., the site is considered to be (70%) wetlands. The appraisers have estimated the highest and best use of the parent tract "as vacant" for potential residential development.

The partial acquisition area, identified as Parcel 85 (Slope Easement) shall encumber 14,880 square feet. This proposed acquisition area is for a slope easement. A slope easement gives the easement owner the right, privilege and authority to construct, replace, repair, remove, extend, and maintain a slope easement to support, reinforce, and stabilize the adjacent public roadway. No structures or foliage may be placed within the easement area. The easement is characterized by a westerly edge measuring 37.66 feet, a southerly edge which measures 497.08 feet, an easterly edge measuring 32.04 feet and a northerly edge measuring 494.28 feet along the southerly right-of-way of S.R. 865 - Gladiolus Drive. There are no improvements of any consequence located within this partial acquisition area.

The remainder property, containing 7.82 acres (340,596 SF) of gross land area inclusive of 14,880 square feet of area encumbered by Parcel 85 (Slope Easement), is an irregular shaped parcel, with a northerly edge measuring 494.28 feet along the curve of the southerly right-of-way of S.R. 865 - Gladiolus Drive, a non-linear westerly edge measuring approximately 1,078 feet, a southerly edge measuring approximately 237 feet along the northerly line of the Iona Drainage Canal and an easterly

edge measuring approximately 1,116 feet. The highest and best use, "as vacant" remains for potential residential development.

By reason of our investigation and analysis, data contained in this report and our experience in the real estate appraisal business, it is our opinion that the amount due the owner (as a result of the proposed partial acquisition), as of October 28, 2005, is:

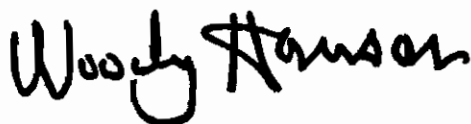
Value of Property Rights Taken:	
Parcel 85 (Slope Easement):	\$1,900
Value of Improvements Taken:	-0-
Incurable Severance Damages:	<u>-0-</u>
TOTAL AMOUNT DUE OWNER:	\$1,900*

*Extraordinary Assumptions: USPAP defines an extraordinary assumption as "an assumption directly related to a specific assignment, which if found to be false, could alter the appraiser's opinions or conclusions." The following extraordinary assumptions were adopted by the appraiser in the development and communication of the market value estimate:

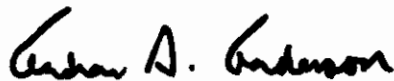
The appraisers were not provided with information as to the presence of jurisdictional wetlands, and have assumed that no conditions or restrictions exist which would prevent the property from being developed in a legally permissible manner, consistent with surrounding land uses.

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

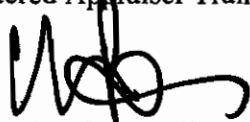
Respectfully submitted,



Woodward S. Hanson, MAI, CRE, CCIM
St. Cert. Gen. REA RZ 1003



Andrew D. Anderson
Registered Appraiser Trainee RI 14189



Christopher G. Reublin
Registered Appraiser Trainee RI 16310

5-Year Sales History

Parcel No. 85

Gladiolus Drive Widening Project,
No. 4083

NO SALES in PAST 5 YEARS

NOTE: Sale(s) relate to "parent tract" of the subject parcel.