

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

Blue Sheet No. 20060594

1. ACTION REQUESTED/PURPOSE: Approve Purchase Agreement for acquisition of Parcel 126, Burnt Store Road Widening Project No. 4088, in the amount of \$150,000; authorize payment of costs to close and the Division of County Lands to handle all documentation necessary to complete transaction.

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

3. MANAGEMENT RECOMMENDATION: Approve.

4. Departmental Category: 6

CLB

5. Meeting Date:

06-13-2006

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute **125**
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner _____
 Department _____ Independent
 Division _____ County Lands
 By: Karen L.W. Forsyth, Director

[Handwritten signature]

9. Background:

Negotiated for: Lee County DOT

Interest to Acquire: Fee-simple interest in 18,600 square feet of vacant residential property.

Property Details:

Owner: Sven Milberg, a married person
Address: 23 Burnt Store Road North, Cape Coral
STRAP: 08-44-23-C4-03986.0110

Purchase Details:

Purchase Price: \$ 150,000 (\$10.00/sq. ft.)
Costs to Close: \$ 1,250

Appraisal Information: An appraisal has not been obtained on this property. Market Data indicates sales range from \$9.30 to \$11.49 per square foot for similar sites in this area. (The Market Data Grid is attached hereto).

Staff Recommendation: Staff recommends the Board approve the Action Requested.

Account: 20408830721.506110 CIP; Burnt Store Road Right of Way; TCI-Cape/Midpoint Surplus Tolls

Attachments: Market Data Grid, Purchase & Sale Agreement, Location Map, Title Commitment, 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.	
<i>K. Forsyth</i>			<i>GAO-TC</i>	<i>Robert Buchanan</i>	<i>5/27/06</i>	<i>5/30/06</i>	<i>5/30/06</i>	<i>5/30/06</i>	<i>HS 5/31/06</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*
 5-26-06 11:30
 COUNTY ADMIN FORWARDED TO: *[Signature]*
 6-1-06
 4:30 PM

Rec. by CoAtty
 Date: 5/25/06
 Time: 4:20 PM
 Forwarded To: Admin.
 5/26/06 11am

Market Data

Parcel 126
Burnt Store Road Widening Project No. 4088
08-44-23-C4-03986.0110
18,600 square feet (15,000 unencumbered)
\$150,000 (\$10.00/square foot unencumbered)

STRAP	Property Type	Purchase Date	Purchase Price	Square Footage	Price/ SqFt
05-44-23-C4-04064.0050	Vacant Non-waterfront	10/7/05	\$93,000	12,400 (10,000)	\$9.30
05-44-23-C1-04064.0530	Vacant Non-waterfront	12/15/05	\$110,000	10,000	\$11.00
08-44-23-C4-03987.0100	Vacant Non-waterfront	Listing	\$114,900 (LP)	12,400 (10,000)	\$11.49

This document prepared by

Lee County
County Lands Division
Project: Burnt Store Road Widening, Project #4088
Parcel: 126/Milberg
STRAP No.: 08-44-23-C4-03986.0110

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 ____ day of _____, 20__ by and between Sven Milberg, a married person, hereinafter referred to as SELLER, whose address is 16716 Crownsbury Way, 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 .43 acres more or less, and located at 23 Burnt Store Road North, Cape Coral, FL 33993 and more particularly described as Lots 11, 12, 13, Block 3986, Cape Coral Unit 55, Plat Book 19, Page 93, of the Public Records of Lee County, Florida, hereinafter called "the Property." This Property will be acquired for the Burnt Store Road Widening Project #4088, hereinafter called "the Project."

2. PURCHASE PRICE AND TIME OF PAYMENT: The total purchase price ("Purchase Price") will be One Hundred Fifty Thousand and no/100 dollars (\$150,000.00), payable at closing by County warrant.

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

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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 "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) 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.

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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 conditions 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.

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

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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.

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

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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.

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE
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WITNESSES:

Wolfgang Mueller
Wolfgang Mueller

WITNESSES:

Stefanie Juska
Stefanie Juska

SELLER:

Sven Milberg *05-03-06*
Sven Milberg (DATE)

SELLER:

(DATE)

BUYER:

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

CHARLIE GREEN, CLERK

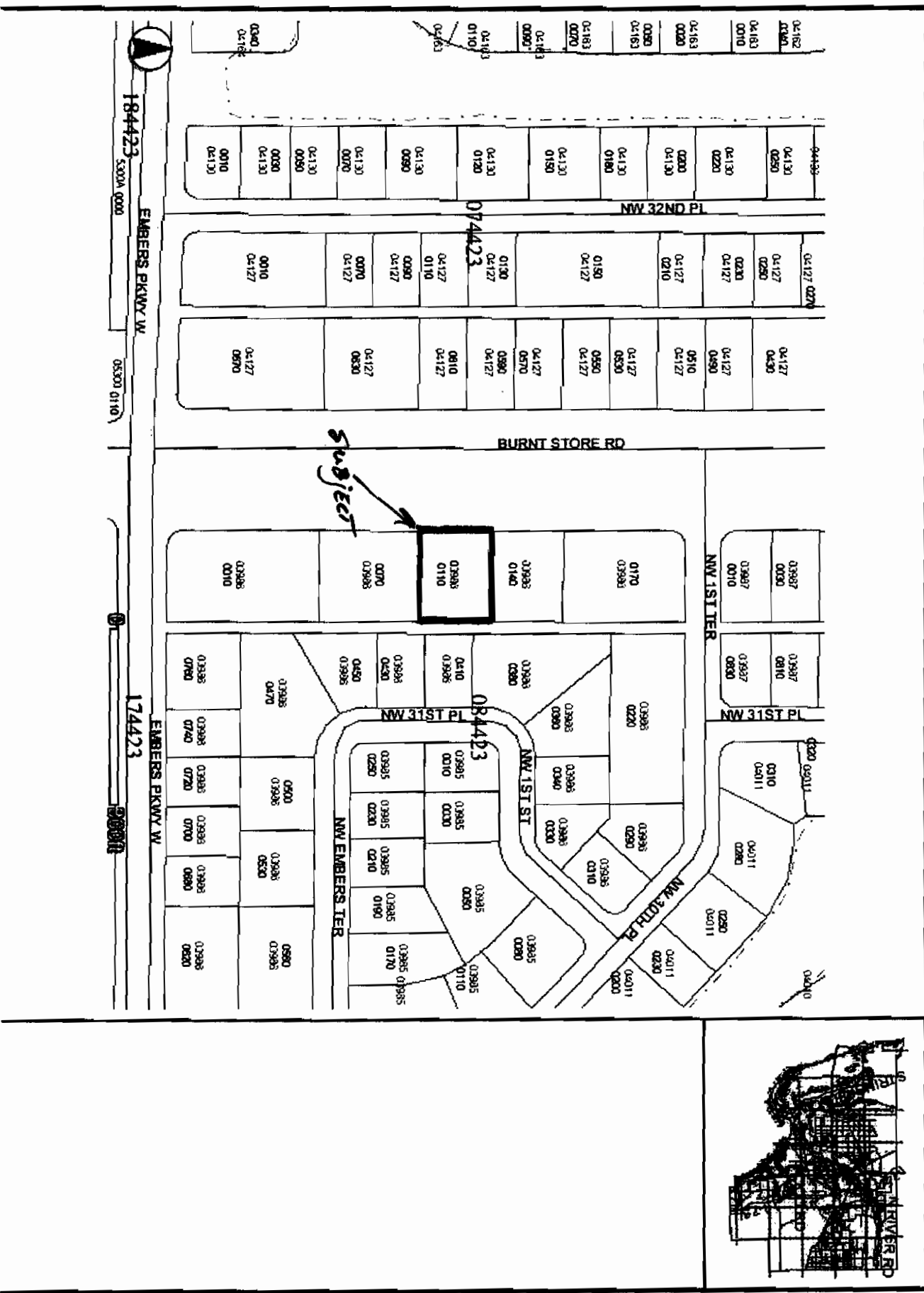
BY: _____
DEPUTY CLERK (DATE)

BY: _____
CHAIRWOMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

COUNTY ATTORNEY (DATE)

Burnt Store Road, Parcel 126/Milberg



First American Title Insurance Company

FATIC 213X
ALTA Commitment (1982)

SCHEDULE A

Issuing Office File No: **2006246**

1. Commitment Date: **May 01, 2006**

2. Policy (or Policies) to be issued:

(a) Owner's Policy (Identify policy type below) Policy Amount \$ **150,000.00**
ALTA Owners Policy (10-17-92)(with Florida Modifications)
Proposed Insured: **Lee County, a Political Subdivision of the State of Florida**

(b) Loan Policy (Identify policy type below) Policy Amount \$ **0.00**
ALTA Loan Policy (10-17-92)(with Florida Modifications)
Proposed Insured:

(c) Other Policy (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 :

Sven Milberg

4. The land referred to in this Commitment is described as follows :

See Attached Schedule A (Continued)

Loan Number:
Issuing Office File No: 2006246

Duncan and Tardif, P.A.
By: *Carrie Collins*
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 INSUREDS ARE NOT ENTITLED TO RELY UPON THIS COMMITMENT FOR ANY PURPOSE

First American Title Insurance Company

Schedule A (Continued)

Issuing Office File No.: **2006246**

Lots 11, 12 and 13, Block 3986 of CAPE CORAL, UNIT 55, according to the Plat thereof as recorded in Plat Book 19, Page(s) 92 through 106, inclusive, of the Public Records of Lee County, Florida.

First American Title Insurance Company

FATIC 214X
ALTA Commitment (1982)

SCHEDULE B - SECTION 1 REQUIREMENTS

Issuing Office File No.: **2006246**

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:
 - a. The Deed from Fairmont Arcadia, Inc., a New York Corporation to Sven Milberg, recorded in Book 4548, page 715, is defective in that said Corporate Warranty Deeds lack a translation of the german notary. Said instrument should be corrected, re-executed, re-acknowledged, and re-recorded; or a new instrument in proper form should be recorded (if from an individual, joinder of spouse or non-homestead statement). This Commitment should then be updated through the date of recording of said instrument, and the Company reserves the right to amend the commitment, including, but not limited to, the addition of further requirements and/or exceptions as it deems necessary based upon the matters disclosed by the update.
 - b. Warranty Deed conveying the land from Sven Milberg, as a single person or joined by spouse, if married, to Lee County, a Political Subdivision of the State of Florida.
5. Proof of payment of all City of Cape Coral assessments and/or impact fees.
6. Written evidence, from appropriate governmental authorities, that Special Taxing District, City and County Special Assessment Liens, MSBU Assessment Liens, Impact Fees, and Water, Sewer and Trash Removal Charges, if any, have been paid.
7. Note: 2005 ad valorem taxes show PAID in the gross amount of \$1,183.58 for Tax Identification No. 08-44-23-C4-03986-0110.
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

First American Title Insurance Company

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

FATIC 216X

ALTA Commitment (1982)
(with printed mineral exception)

SCHEDULE B - SECTION 2 EXCEPTIONS

Issuing Office File No.: **2006246**

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, interest 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 lien in the public records or in the records of the local tax collecting authority, at Date of Policy.
6. Any minerals or mineral rights lease, granted or retained by current or prior owners.
7. Taxes and assessments for the year 2006 and subsequent years, which are not yet due and payable.
8. 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) 92-106, 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).
9. 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.
10. 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.

First American Title Insurance Company

11. Any lien as provided for by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas systems supplying the lands described herein.
12. Easement over the 30' feet for roadway and drainage along the front boundary of property , according to the Plat recorded in Plat Book 19, Page(s) 92-106.

5-Year Sales History

Parcel 126/Milberg

Burnt Store Road Widening
Project No. 4088

Grantor	Grantee	Price	Date	Arms Length Y/N
Fairmont Arcadia, Inc. a New York corporation	Sven Milberg	\$66,500	12/17/04	Y