

Agenda Item Summary

1. **ACTION REQUESTED/PURPOSE:** Accept Perpetual Access and Construction Easement for the construction and maintenance of the stormwater drainage facilities along Pondella Road and authorize necessary recording fees.

2. **WHAT ACTION ACCOMPLISHES:** Secures permanent easements across Hancock Bridge Square for construction and maintenance of storm water drainage facilities adjacent to the Square and Pondella Road.

3. **MANAGEMENT RECOMMENDATION:** Approve.

4. **Departmental Category:** **C 9 B** 5. **Meeting Date:** **JAN 16 2007**

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 _____ Department of Division _____ Transportation By: <u>Scott Gilbertson, Director</u>
	<input checked="" type="checkbox"/> Statute	125	
	<input type="checkbox"/> Ordinance		
	<input type="checkbox"/> Admin. Code		
	<input type="checkbox"/> Other		

9. **Background:**

Interest to Acquire: Easement

Property Details:
 Owner: Fort Myers, LTD
 Address: N. Cleveland Avenue, North Fort Myers, FL 33903
 Strap No.: 11-44-24-00-00017.4020

Purchase Details:
 Purchase Price: Donation
 Costs to Close: Recording fees - approximately \$100.00

Account: PC5379114600

Attachments: Copy of Perpetual Access and Construction Easement.

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>[Signature]</i>				<i>[Signature]</i>					<i>[Signature]</i> 12-21-06

11. **Commission Action:**
 Approved
 Deferred
 Denied
 Other

~~Parcel: 10-45-24-23-0100A.0000~~

PARCEL: 11-44-24-00-00017.4020

PERPETUAL ACCESS AND CONSTRUCTION EASEMENT

This Perpetual Access and Construction Easement ("Easement") is made this 9TH day of October, 2006 between FORT MYERS, LTD., a Georgia limited partnership, owner, whose address is c/o Selig Enterprises, Inc., 1100 Spring Street, Suite 550, Atlanta, Georgia 30309 ("Grantor") and LEE COUNTY a political subdivision of the State of Florida, whose address is P.O. Box 398, Fort Myers, Florida 33902-0398 ("Grantee"), as follows:

1. In consideration of the sum of one dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor grants to Grantee a PERPETUAL ACCESS AND CONSTRUCTION EASEMENT in, over and across Grantor's property legally described in Exhibit "A" ("Grantor's Total Property"), which portion of Grantor's Total Property which is the subject of this Easement is depicted in Exhibit "B" ("Easement Parcel").
2. Grantee, is granted the right, privilege and authority of ingress and egress to enter the Easement Parcel in order to construct, replace, clean, service, repair, and maintain storm water drainage facilities which serve Grantor's Total Property which are not located on Grantor's Total Property ("Drainage Facilities").
3. Grantee is also granted the right and authority to remove or trim any roots, trees or other vegetation within the Easement Parcel in order to properly maintain and repair the Drainage Facilities. Grantee has a reasonable right of access across Grantor's Total Property for the purpose of gaining access to the Easement Parcel. Grantee will use

due care in accessing the easement to perform maintenance or other site condition checks, but is not responsible for the restoration of any damages.

4. Grantor warrants that Grantor is in lawful possession of Grantor's Total Property, and the Easement Parcel, subject to matters of record and otherwise, and the right of tenants and Grantor has the full right and power to convey this Easement.
5. Grantor hereby expressly reserves for all uses, rights and privileges incident to the ownership of the fee simple estate in and to Grantor's Total Property which are not inconsistent with the rights and privileges herein granted to Grantee, including, without limitation, the right to construct and maintain such improvements on Grantor's Total Property as Grantor elects, so long as such improvements do not materially prevent or unreasonably and materially hinder the beneficial usage of the Easement.
6. In the event that Grantor elects to relocate all or any portion of the Easement, then Grantor shall be entitled to relocate all of any portion of the Easement to another portion of Grantor's Total Property, at the sole cost and expense of Grantor, and Grantee shall amend this Easement to reflect such relocation upon request of Grantor. Any such relocation shall: (i) not unreasonably interfere with or materially diminish the service or utility of the Easement, (ii) not unreasonably reduce or impair the usefulness or function of the Easement, (iii) be begun only after first obtaining approval from all governmental or quasi-governmental agencies having jurisdiction thereof; (iv) be performed only after Grantor has given reasonable notice to Grantee of the commencement of construction related to such relocation, and (v)

be pursued and completed diligently and in such fashion as to minimize disruption to the business of Grantor.

7. Grantee agrees to indemnify, hold harmless and defend Grantor and all of Grantor's officers, agents and employees from and against any and all claims, actions, damages, and liability cost expense, including those arising from bodily injury, death and/or property damages or any other lawful expense, including, but not limited to, attorney's fees and court costs resulting from any negligent act or omission by Grantee, its officers, agents and employees while acting within the scope of their employment during the use of this easement for the purposes stated above. Neither Grantee nor any of Grantee's officers, agents or employees will be liable under this agreement for any and all claims, actions, damages, and liability cost expense, including those arising from bodily injury, death and/or property damages or any other lawful expense, including, but not limited to, attorney's fees and court costs resulting from the negligence of Grantor or any of Grantor's officers, agents or employees. This agreement is in accordance with the general laws of the State of Florida and subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.
8. This Easement runs with the land and is binding on Grantor and Grantee and Grantor's and Grantee's successors and assigns.

WITNESSES:

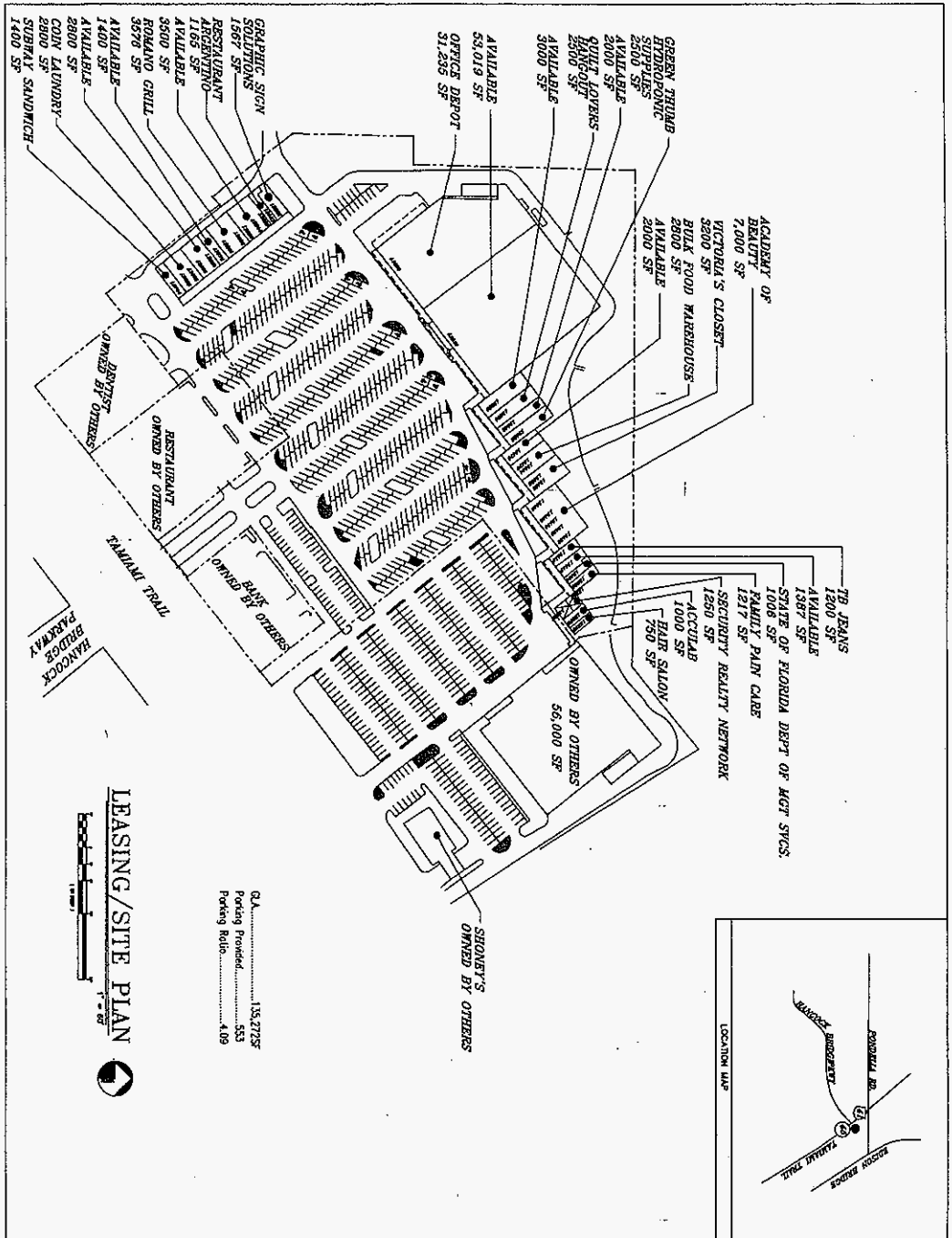
Ramiro A. Bauder
Blenda G. Clark

GRANTOR:

Fort Myers, Ltd, a Georgia limited partnership
By: Selig Enterprises, Inc., its sole managing partner

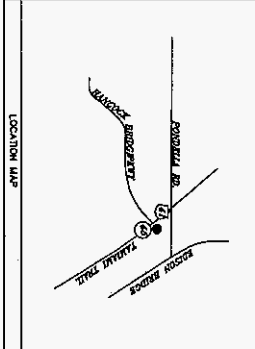
By: Bonnie N. Dean
Bonnie N. Dean
Vice President


Exhibit "A"
("Grantor's Total Property")



LEASING/SITE PLAN
1" = 50'
1" = 20'

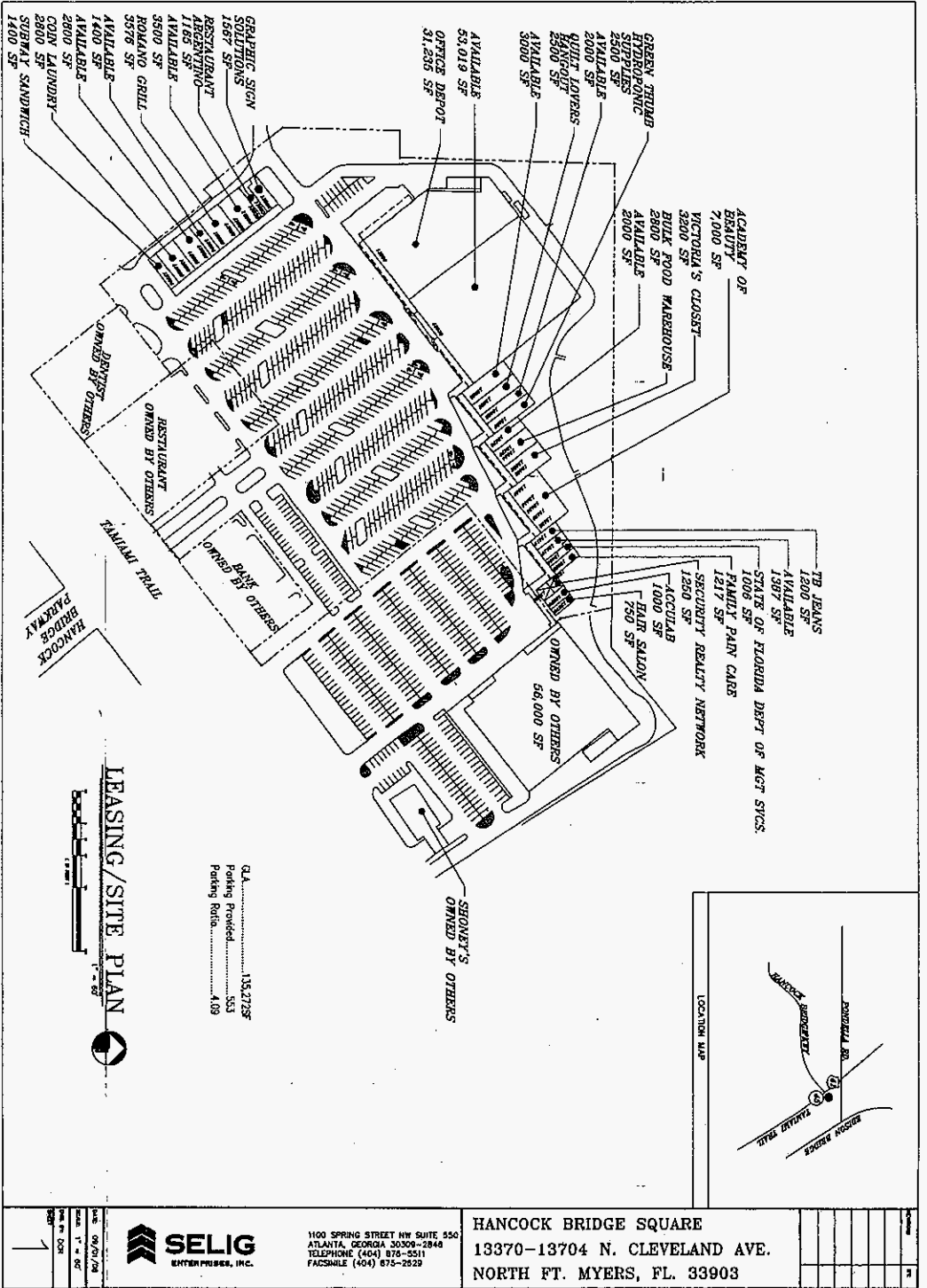
Q.A. 13,775 SF
Parking Provided 553
Parking Ratio 4.09




SELIG
 ENTERPRISES, INC.
 1100 SPRING STREET NW SUITE 850
 ATLANTA, GEORGIA 30309-2848
 TELEPHONE (404) 876-2511
 FACSIMILE (404) 876-2528

HANGCOCK BRIDGE SQUARE
 13370-13704 N. CLEVELAND AVE.
 NORTH FT. MYERS, FL. 33903

Exhibit "B"
("Easement Parcel")



1100 SPRING STREET NW SUITE 550
 ATLANTA, GEORGIA 30309-2848
 TELEPHONE (404) 876-8511
 FACSIMILE (404) 875-2829

HANCOCK BRIDGE SQUARE
 13370-13704 N. CLEVELAND AVE.
 NORTH FT. MYERS, FL. 33903