

**Florida SouthWestern State College District Board of Trustees  
Agenda Item Summary**

Meeting Date: 11/8/2022

1. **Title:** First Amendment to Agreement for Purchase and Sale
2. **Action Requested/Purpose:** Consideration of Request to Extend Due Diligence Period
3. **Fiscal Impact:**    ☐ Yes    ☒ No    ☐ N/A
4. **Funding Source:**                      Amount: \$
5. **Administration Recommendation:** Approve the Requested Extension

**6. Agenda Item Type:**

- ☒ Action Item  
☐ Consent Agenda  
☐ Information Only  
☐ Board Requested Information/Report

**7. Requirement/Purpose (Include Citation)**

- ☐ Statute  
☐ Administrative Code  
☐ Other

8. **Background Information:** FSW (seller) and Canterbury School Inc. (buyer). Buyer entered into a purchase and sale agreement for real property located at 6121 Winkler Road, Ft. Myers, FL. Buyer has requested a sixty (60) day extension of the due diligence period which would expire on January 9, 2023

**Requested by:**

  
General Counsel

**Funding Verified by:**

N/A

  
Vice President, Administrative Services

**Approved for Agenda by:**

  
President

This instrument was prepared  
without an opinion of title and  
after recording return to:

Gregory L. Urbancic, Esq.  
Coleman, Yovanovich & Koester, P.A.  
4001 Tamiami Trail North, Suite 300  
Naples, Florida 34103  
(239) 435-3535

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(space above this line for recording data)

### **AMENDMENT TO DRAINAGE EASEMENT**

**THIS AMENDMENT TO DRAINAGE EASEMENT** (this "**Amendment**") is made and entered into this \_\_\_\_\_ of \_\_\_\_\_, 2022, by and between **COLLEGE IMPROVEMENTS, LLC**, a Delaware limited liability company ("**CI**") and **DISTRICT BOARD OF TRUSTEES OF FLORIDA SOUTHWESTERN STATE COLLEGE, FLORIDA**, a subdivision of the State of Florida, its successors and assigns ("**FSW**").

#### **WITNESSETH THAT:**

**WHEREAS**, CI is the current owner of the real property in Lee County, Florida legally described on **Exhibit "A"** ("**CI Property**"); and

**WHEREAS**, FSW is the current owner of the real property in Lee County, Florida legally described on **Exhibit "B"** ("**FSW Property**"); and

**WHEREAS**, pursuant to that certain Drainage Easement recorded in Official Records Book 1667, Page 4379 of the Public Records of Lee County, Florida (the "**Original Easement**"), as amended by that certain Easement Modification Agreement recorded in Official Records Book 2725, Page 993 of the Public Records of Lee County, Florida ("**First Amendment**"), and as further amended by that certain Easement Modification Agreement recorded in Official Records Book 2765, Page 2377 of the Public Records of Lee County, Florida ("**Second Amendment**") (the Original Easement together with the First Amendment and Second Amendment are collectively referred to herein as the "**Drainage Easement**"), the predecessor in interest of FSW granted to the predecessor in interest of CI a non-exclusive drainage over a portion of the FSW Property as described in the Drainage Easement; and

**WHEREAS**, attached as Exhibit "A" to the First Amendment and Second Amendment was the amended legal description for the non-exclusive drainage easement benefitting the CI Property (the "**Easement Area**"); and

**WHEREAS**, the FSW Property is currently vacant and undeveloped. It is the intent of FSW and/or its successors in title to develop the FSW Property. However, the parties recognize that the current configuration and location of the Easement Area on the FSW Property limits efficient site planning for the FSW Property; and

**WHEREAS**, CI and FSW desire to amend the Easement Area and agree that the terms and conditions set forth in this Amendment are added to and incorporated into the Drainage Easement for the purpose of modifying, changing and revising the same.

**NOW, THEREFORE,** CI and FSW hereby declare and agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.
2. **Relocation of Easement Area.**

a. CI is currently using the Easement Area for dry detention purposes pursuant to the College Plaza South Florida Water Management District Permit No. 36-00396-S. FSW shall have the right, from time to time, to relocate the Easement Area and any associated drainage improvement on the FSW Property to another location on the FSW Property (a "**Relocation**") following the procedures set forth herein. If FSW desires to undertake a Relocation, FSW shall provide written notice to CI ("**Relocation Notice**") of its intent to relocate the Easement Area and any associated drainage improvements on the FSW Property. The Relocation Notice shall include the following: (i) the proposed modified drainage plan; (ii) a copy of the legal description for the replacement easement area ("**Replacement Easement Area**"); and (iii) a certification from an qualified Florida civil engineer that the existing permitted drainage from the CI Property will not be materially and adversely altered or affected by such relocation of the Easement Area and associated drainage improvements. Provided that there is no material and adverse impact on the existing permitted drainage from the CI Property from the Relocation, the parties acknowledge the following: (i) the Replacement Easement Area need not be the same area, size or dimensions as the Easement Area described in the Drainage Easement; (ii) any drainage improvements contemplated for the Replacement Easement Area need not be limited to dry detention; and (iii) the Replacement Easement Area will remain non-exclusive such that any drainage improvements within the Replacement Easement Area will also accommodate the FSW Property's permitted drainage. CI will have sixty (60) days from and after the receipt of the Relocation Notice ("**Review Period**") to review and approve the Relocation (including the Replacement Easement Area), which approval will not be unreasonably conditioned, withheld or delayed. In the event that CI neither approves nor disapproves the proposed Relocation on or before the expiration of the Review Period, CI shall be deemed to have approved the proposed Relocation. Once a Relocation is approved hereunder (an "**Approved Relocation**"), any modification to the Approved Relocation will be subject to the review provisions of this subsection.

b. As to any Approved Relocation, the following shall apply:

i. FSW will have the right to unilaterally record a notice in the Public Records of Lee County, Florida of the Replacement Easement Area as approved hereunder; provided, however, that upon the request of FSW, the parties will jointly execute an amendment to the Drainage Easement for the Approved Relocation containing the Replacement Easement Area. Upon either such recording, the Easement Area will thereafter be amended and replaced with the applicable Replacement Easement Area.

ii. FSW will be responsible, at its sole cost and expense, for obtaining any permits or governmental approvals necessary or appropriate for the Approved Relocation ("**Relocation Permits and Approvals**"). CI will cooperate in good faith with FSW and FSW will be expressly authorized by CI to apply for or to pursue in FSW's name (or in CI's name or both as FSW may deem necessary or appropriate) the Relocation Permits and Approvals that may be required to carry out the Relocation. CI agrees to promptly execute, acknowledge, consent to, join in, and deliver all documents, applications and other papers that may be necessary to make such applications or to obtain the Relocation Permits and Approvals.

iii. FSW shall be responsible, at its sole cost and expense, for constructing, installing and/or modifying any drainage improvements on the FSW Property necessary in connection with the Approved Relocation. All such drainage improvements will be constructed, installed and modified in accordance with applicable permits.

iv. Upon completion of the drainage improvements on the FSW Property in connection with an Approved Relocation, FSW shall be responsible, at FSW's sole cost and expense, for the ongoing maintenance of the Easement Area. Notwithstanding the same, CI shall comply with all applicable permits, rules and regulations and CI shall be liable, at CI's sole cost and expense, related to any improper discharge onto the FSW Property or the Replacement Easement Area and for any required remedial action related to any improper discharge.

3. **Notices.** All notices to be given pursuant to this Amendment shall be in writing and sent by United States mail, postage prepaid, hand delivery, or overnight commercial courier delivery service (such as FedEx or UPS), and shall be deemed given when placed in the mail, personally delivered or deposited with such overnight commercial courier service and addressed to the principal office of the intended recipient (as maintained with the secretary of the state of incorporation or organization of such recipient), with a copy to such recipient's registered agent.

4. **Covenants Running with Land.** All of the provisions of this Drainage Easement, as amended by this Amendment, including all of the benefits and burdens described herein, shall run with the CI Property and the FSW Property and shall be binding upon the properties and the successors in title to each of the properties. The rights and obligations in and to the Drainage Easement, as amended by this Amendment, are and shall be assignable to any and all successors in title to each of the properties, without the necessity of a formal assignment. However, should any party acquiring title to any of the properties request a formal assignment, the parties hereto agree to cooperate in the approval and execution of any such assignment.

5. **Governing Law / Venue.** The Drainage Easement, as amended by this Amendment, shall be construed in accordance with Florida law (exclusive of choice of law rules). Sole and exclusive venue for any action arising hereunder shall lie exclusively in Lee County, Florida.

6. **Prevailing Party.** The prevailing party in any litigation involving this Drainage Easement, as amended by this Amendment, shall be entitled to recover from the non-prevailing party all attorneys' fees, paralegal fees and costs incurred in connection with such litigation, at arbitration, or appeal or otherwise, including reasonable attorneys' fees and paralegal fees in the enforcement of any indemnity hereunder. The owners of the properties herein described shall only be liable for any violation of the Drainage Easement, as amended by this Amendment, during their respective periods of ownership.

7. **Conflict/Amendment.** The terms of this Amendment form a part of the Drainage Easement and shall control and take precedence over any and all terms, provisions and conditions of the Drainage Easement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof. All of the other terms, provisions and conditions of the Drainage Easement, except as expressly amended and modified by this Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.

*{Remainder of page intentionally left blank. Signatures commence on next page.}*



FSW:

**DISTRICT BOARD OF TRUSTEES  
OF FLORIDA SOUTHWESTERN  
STATE COLLEGE, FLORIDA,**  
a subdivision of the State of Florida

Signed, sealed and delivered  
in our presence:

By: \_\_\_\_\_  
Jeff Allbritten, President

\_\_\_\_\_  
Signature  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Printed Name: \_\_\_\_\_

STATE OF FLORIDA            )  
  ) ss.  
COUNTY OF LEE            )

The foregoing instrument was acknowledged before me, by means of (    ) physical presence or (    ) online notarization, this \_\_\_\_ of \_\_\_\_\_ 2022, by Jeff Allbritten, as President of the DISTRICT BOARD OF TRUSTEES OF FLORIDA SOUTHWESTERN STATE COLLEGE, FLORIDA, a subdivision of the State of Florida, who (    ) is personally known to me or (    ) has produced \_\_\_\_\_ as evidence of identification.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
Name: \_\_\_\_\_  
  (Type or Print)  
My Commission Expires:

## **FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE**

**THIS FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE** (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**") by and between the **DISTRICT BOARD OF TRUSTEES OF FLORIDA SOUTHWESTERN STATE COLLEGE, FLORIDA**, a subdivision of the State of Florida, as seller ("**Seller**"), and **THE CANTERBURY SCHOOL, INC.**, a Florida not-for-profit corporation, as buyer ("**Buyer**").

### **WITNESSETH:**

**WHEREAS**, Seller and Buyer entered into that certain Agreement for Purchase and Sale dated July 11, 2022 (the "**Agreement**"), relating to certain real property located in Lee County, Florida and having an address of 6121 Winkler Rd., Fort Myers, FL 33919; and

**WHEREAS**, Seller and Buyer desire to amend the Agreement pursuant to the terms of this Amendment.

**NOW, THEREFORE**, Buyer and Seller agree as follows:

1. **Recitals; Defined Terms.** The above recitals are true and correct and incorporated herein by reference. Capitalized terms not otherwise defined in this Amendment shall have the meanings given to them in the Agreement.
2. **Due Diligence Period.** The Due Diligence Period as set forth in Section 3.5 of the Agreement shall be extended by an additional sixty (60) days and shall expire on January 9, 2023.
3. **Conflict.** The terms of this Amendment form a part of the Agreement and shall control and take precedence over any and all terms, provisions and conditions of the Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof. All of the other terms, provisions and conditions of the Agreement, except as expressly amended and modified by this Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.
4. **Counterparts.** This Amendment may be executed in several counterparts and be transmitted by mail, facsimile, electronic mail, hand-delivery or Portable Document Format ("PDF"), each of which is an original for all purposes, but all counterparts of which when executed shall constitute one and the same instrument.

*{Remainder of the page intentionally left blank. Signatures begin on the next page.}*

IN WITNESS WHEREOF, the Amendment has been duly executed by the parties hereto as of the day and year set forth above.

**BUYER:**

**THE CANTERBURY SCHOOL, INC.,**  
a Florida not-for-profit corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

**DISTRICT BOARD OF TRUSTEES  
OF FLORIDA SOUTHWESTERN  
STATE COLLEGE, FLORIDA,**  
a subdivision of the State of Florida

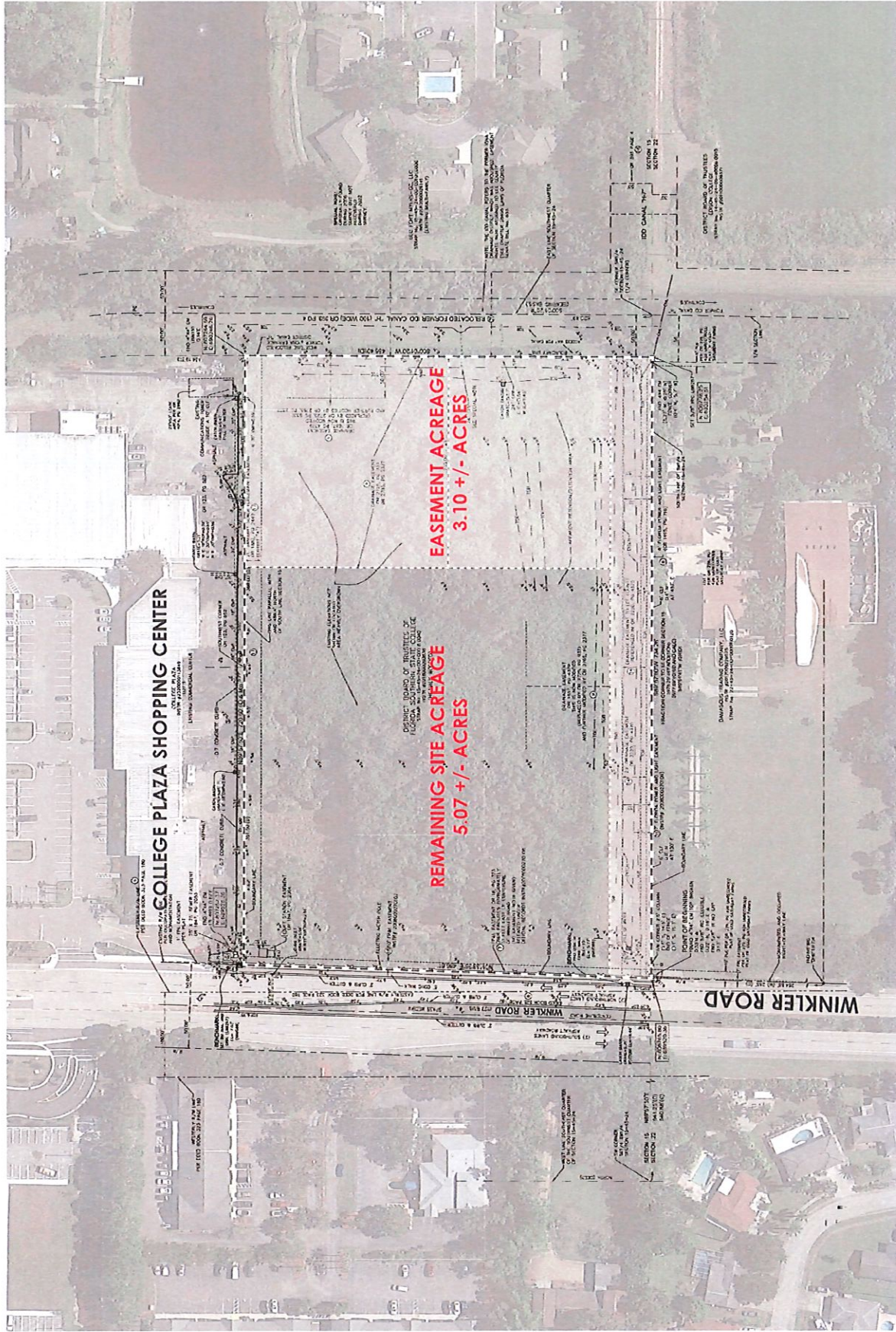
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_







DRAINAGE EASEMENT | CANTERBURY MASTER PLAN | FORT MYERS, FL



Studio Architecture

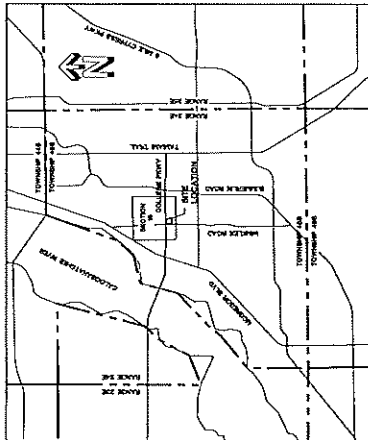


**Bowman**  
CONSULTING  
Surveying & Mapping, Inc.  
1000 West 1st Street, Suite 100  
Tallahassee, Florida 32301  
Tel: 904.438.1111 Fax: 904.438.1112  
www.bowmanconsulting.com

INSTRUMENT PREPARED BY:

# COLLEGE PLAZA

A SUBDIVISION LYING IN  
SECTION 15, TOWNSHIP 45 SOUTH, RANGE 24 EAST  
LEE COUNTY, FLORIDA



LOCATION MAP  
NOT TO SCALE

## LEGAL DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 15, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF SAID SECTION 15 WITH THE EASTERN LINE OF TOWNSHIP 45 SOUTH, RANGE 24 EAST, AND PROCEEDING EAST ALONG SAID EASTERN LINE OF TOWNSHIP 45 SOUTH, RANGE 24 EAST, A DISTANCE OF 100.00 FEET, TO THE POINT OF BEGINNING.

THENCE BEARING NORTH 30°25'30" EAST, ALONG SAID EAST LINE OF SAID SECTION 15, A DISTANCE OF 100.00 FEET, TO THE POINT OF BEGINNING.

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THENCE BEARING NORTH 30°25'30" EAST, ALONG SAID EAST LINE OF SAID SECTION 15, A DISTANCE OF 100.00 FEET, TO THE POINT OF BEGINNING.

## APPROVAL:

THIS PLAT IS ACCEPTED AND APPROVED BY THE  
CLERK OF THE CIRCUIT COURT OF LEE COUNTY,  
FLORIDA, THIS 11th DAY OF JULY, 2020.

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

**NOTICE:**  
LANDS DESCRIBED IN THIS PLAT MAY BE SUBDIVIDED  
BY THE DEVELOPER WITHOUT ROADS, DRAINAGE,  
WATER AND SEWER FACILITIES BEING ACCEPTED FOR  
MAINTENANCE BY LEE COUNTY. ANY PURCHASER OF  
A LOT IN THIS SUBDIVISION IS ADVISED TO  
DETERMINE WHETHER THE LOT MAY BE SUBJECT TO  
ASSESSMENT OR CALLED UPON TO BEAR A PORTION  
OR ALL OF THE EXPENSE OF CONSTRUCTION,  
MAINTENANCE, OR IMPROVEMENT OF ROADS,  
DRAINAGE, WATER AND SEWER FACILITIES.

**NOTICE:**  
THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF  
THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL IN NO CIRCUMSTANCES BE  
SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE  
PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON  
THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

## CLERK'S CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED PLAT OF COLLEGE PLAZA, A SUBDIVISION  
LYING IN SECTION 15, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY,  
FLORIDA, WAS FILED FOR RECORD IN THE PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA, ON JULY 11, 2020, AT 10:00 AM.

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

## SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED PLAT OF COLLEGE PLAZA, A SUBDIVISION  
LYING IN SECTION 15, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY,  
FLORIDA, WAS FILED FOR RECORD IN THE PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA, ON JULY 11, 2020, AT 10:00 AM.

*[Signature]*  
NAME: JEROME J. LINDSEY  
CLERK OF THE COURT

INSTRUMENT NUMBER 2020000135612  
SHEET 1 OF 2

## DEDICATION:

KNOW ALL MEN BY THESE PRESENTS THAT COLLEGE IMPROVEMENTS, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY, HAS HEREBY DEDICATED TO THE PUBLIC THE FOLLOWING  
LANDS DESCRIBED IN THE ATTACHED PLAT OF COLLEGE PLAZA, A SUBDIVISION LYING IN  
SECTION 15, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, FOR THE  
PURPOSES SET FORTH IN THE ATTACHED PLAT.

1. DEDICATE TO LEE COUNTY (RIGHT-OF-WAY) FOR PUBLIC STREET PURPOSES  
THE FOLLOWING DESCRIBED LANDS:

A. ACCESS DEDICATED SHOWN HEREON WITH MAINTENANCE RESPONSIBILITIES.

COLLEGE IMPROVEMENTS, LLC  
A DELAWARE LIMITED LIABILITY COMPANY  
BY: COLLEGE COUNTY INVESTORS, LLC  
A DELAWARE LIMITED LIABILITY COMPANY, ITS SOLE MEMBER  
BY: FIRST MAN COLLEGE COUNTY INVESTORS CORP.,  
A DELAWARE CORPORATION, ITS MANAGER

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

WITNESSES:  
PRINT NAME: *[Signature]*  
PRINT NAME: *[Signature]*

ACKNOWLEDGEMENT:  
STATE OF New York  
COUNTY OF *[Signature]*

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME BY MEANS OF PHYSICAL  
PRESENTENCE ON COMING NOTARIZATION, THIS 11th DAY OF JULY, 2020.

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

WITNESSES AS TO BOTH:  
BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

COLLEGE PLAZA OWNERS ASSOCIATION, INC.  
MAINTENANCE RESPONSIBILITY ASSOCIATED WITH ACCEPTANCE OF THE DEDICATION.

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

ACKNOWLEDGEMENT:  
STATE OF New York  
COUNTY OF *[Signature]*

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME BY MEANS OF PHYSICAL  
PRESENTENCE ON COMING NOTARIZATION, THIS 11th DAY OF JULY, 2020.

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

ACKNOWLEDGEMENT:  
STATE OF New York  
COUNTY OF *[Signature]*

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME BY MEANS OF PHYSICAL  
PRESENTENCE ON COMING NOTARIZATION, THIS 11th DAY OF JULY, 2020.

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

ACKNOWLEDGEMENT:  
STATE OF New York  
COUNTY OF *[Signature]*

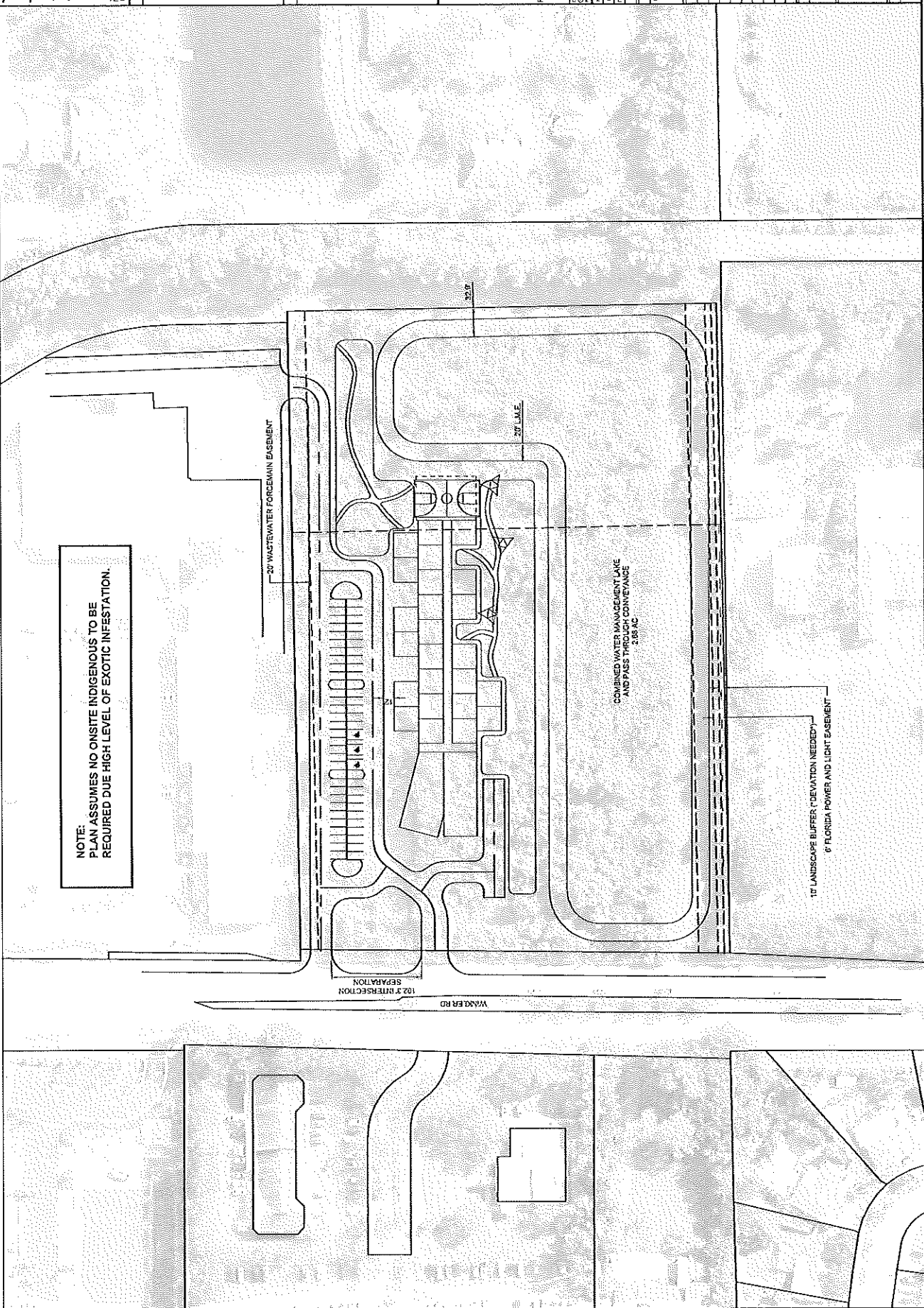
THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME BY MEANS OF PHYSICAL  
PRESENTENCE ON COMING NOTARIZATION, THIS 11th DAY OF JULY, 2020.

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT

BY: *[Signature]*  
NAME: JEROME J. LINDSEY  
TITLE: PRESIDENT







NOTE:  
PLAN ASSUMES NO ONSITE INDIGENOUS TO BE  
REQUIRED DUE HIGH LEVEL OF EXOTIC INFESTATION.

102' INTERSECTION  
SEPARATION

20' WASTEWATER FOREMAIN EASEMENT

20' L.M.E.

COMBINED WATER MANAGEMENT LAKE  
AND PASS THROUGH CONVEYANCE  
2.00' TO 2.50'

15' LANDSCAPE BUFFER (ELEVATION NEEDED)  
6" FLORIDA POWER AND LIGHT EASEMENT

CANTERBURY  
SCHOOL

LEE COUNTY, FLORIDA

THIS PLAN IS PRELIMINARY AND  
INTENDED FOR CONCEPTUAL  
PLANNING PURPOSES ONLY.  
SITE LAYOUT AND LAND USE  
INTENSITIES OR DENSITIES MAY  
CHANGE SIGNIFICANTLY BASED  
ON VARIOUS FACTORS SUCH AS  
ENVIRONMENTAL AND/OR  
REGULATORY CONSTRAINTS AND /  
OR OPPORTUNITIES.

PREPARED BY: [Name]  
CHECKED BY: [Name]  
DATE: [Date]  
SCALE: [Scale]  
PROJECT NAME: [Project Name]  
SHEET NUMBER: [Sheet Number]

PRELIMINARY  
SITE PLAN  
OPTION 3

PROJECT NAME: [Project Name]  
SHEET NUMBER: [Sheet Number]  
24124 1

1667 164379

1658309

This instrument was prepared by:  
**ELWOOD P. SAFRON**  
**SAFRON & ROONEY**  
 808 East Olympia Avenue  
 Post Office Box 480  
 PUNTA GORDA, FLORIDA 33910-0480

# Warranty Deed

(STATUTORY FORM--SECTION 659.02 F.S.)

This Indenture, Made this **22** day of **April** 19 **83**, Between  
**PAULA F. MC QUEEN**, individually and as Trustee,

of the County of **Charlotte**, State of **Florida**, grantor\*, and  
**FLORIDA-FORT MYERS, LTD.**, a Texas Limited Partnership authorized to  
 transact business in the State of Florida

whose post office address is **550 S. Post Oak Road, Suite 500, Houston, Texas, 77027**,

of the County of **Harris**, State of **Florida**, grantee\*.

Witnesseth, That said grantor, for and in consideration of the sum of

-----TEN AND NO/100THS----- Dollars,  
 and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby  
 acknowledged, has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following  
 described land, situate, lying and being in **Lee** County, Florida, to-wit:

A non-exclusive easement for drainage purposes over and above those  
 lands described in Exhibit "A" which is attached hereto and made a  
 part hereof.

Grantor for herself and her successors and assigns, immediate and  
 remote, also retains, reserves and shall continue to enjoy the use  
 of the surface of such property for any and all purposes which do not  
 interfere with and prevent the use by Grantee of the within easement,  
 including but not limited to building, and use of surface for alleys,  
 walks, gardens, lawns, planting, and other like uses. The grantee  
 shall maintain the easement.

Grantor covenants that the above described real property is not  
 homestead property, and is not adjacent nor contiguous to any  
 homestead property owned by Grantor.

Subject to restrictions, reservations, and easements of record and  
 zoning laws applicable,  
 and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all  
 persons whomsoever.

\* "Grantor" and "grantee" are used for singular or plural, as context requires.

In Witness Whereof, Grantor has hereunto set grantor's hand and seal the day and year first above written.  
 Signed, sealed and delivered in our presence:

*[Signature]*  
 Witness #1  
*[Signature]*  
 Witness #2

*[Signature: Paula F. McQueen]* (Seal)  
 PAULA F. MC QUEEN  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ (Seal)

STATE OF FLORIDA  
 COUNTY OF CHARLOTTE

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared  
**Paula F. McQueen**, individually and as Trustee,

to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that  
 he executed the same.

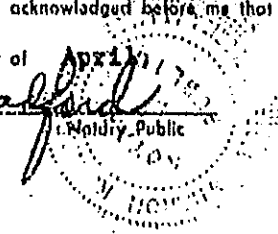
WITNESS my hand and official seal in the County and State last aforesaid this **22nd** day of **April**, 19 **83**.

My commission expires:

Notary Public, State of Florida at Large  
 My Commission Expires Sept. 17, 1983  
 Issued by American Title & Casualty Company

Doc. salary Tax Pd. \$ **45**  
 \$ \_\_\_\_\_ Intangible Tax Pd.  
**SAL GRACI, CLERK, 11th CIRCUIT**

*[Signature: Sal Graci]*



REC 1667 M4380

LEGAL DESCRIPTION

DRAINAGE EASEMENT

A parcel of land in Section 15, Township 45 South, Range 24 East, Lee County, Florida, more particularly described as follows:

COMMENCE at the point of intersection of the south line of Section 15, Township 45 South, Range 24 East, with the east right-of-way line of Winkler Road as described in Deed Book 323 at Page 180 of the Public Records of Lee County, Florida; thence N 01°38'35" E along said east right-of-way line for 50.02 feet to the point of beginning of the herein described parcel of land; thence N 89°57'50" E along a line parallel with and 50.00 feet north of, as measured at right angles to, the aforementioned south line of Section 15 for 732.85 feet to an intersection with the westerly right-of-way line of the relocated former IDD Canal "H" as described in Official Record Book 393 at Page 4 of said Public Records; thence N 00°01'20" E along said westerly right-of-way line for 496.40 feet; thence S 89°57'50" W for 50.00 feet; thence S 00°01'20" W for 336.40 feet; thence S 89°57'50" W for 680.02 feet to an intersection with the aforementioned east right-of-way line of Winkler Road; thence S 01°38'35" W along said east right-of-way line for 100.04 feet to the point of beginning. Said parcel containing 2.07 acres, more or less.

20 APR 83

300-106.12

APR 25 1 16 PM '83  
RECORDED IN OFFICIAL  
RECORDS  
LEE COUNTY, FLORIDA  
RECORDS VERIFIED

SAT. GENERAL  
CLERK OF CIRCUIT COURT  
*[Signature]*

EXHIBIT A

24.00

3996798

# EASEMENT MODIFICATION AGREEMENT

THIS AGREEMENT, executed the 21<sup>st</sup> day of JUNE, 1996, by and between ALFRED M. JOHNS, hereafter known as Grantor, whose address is: 100 Madrid, Suite 212, Punta Gorda, Florida 33950, and BERKSHIRE REALTY ENTERPRISES, LTD. PARTNERSHIP, d/b/a Berkshire Property Management, Authorized Agent for BRI OP LIMITED PARTNERSHIP, hereafter known as the Grantee, whose address is:

## WITNESSETH;

WHEREAS, Grantor's predecessor in title has given an easement to Grantee's predecessor in title on property described in that certain instrument found in O.R. Book 1667, Page 4379 of the Public Records of Lee County, Florida, under date of the 22nd day of April, 1983, which easement was on property described on Exhibit "A" attached hereto and made a part hereof, hereafter referred to as the Easement,

WHEREAS, the Grantor wishes to modify the easement to reconfigure the stormwater detention area and Grantee is willing to agree to the modification, it being understood that this will be a joint use easement and continue its non-exclusiveness,

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by each party to the other, the receipt of and sufficiency of which is hereby acknowledged and the mutual covenants hereafter set forth, the parties agree as follows:

1. The property covered by the easement is hereby modified and released by deleting the description in the prior instrument referred to above to wit, the easement recorded in O. R. Book 1667 at page 4379 and 4380 and substituting in place thereof the property described on Exhibit "B" attached hereto and made a part hereof without modifying any other provision of the easement, which is hereby confirmed by the Grantor.

2. Therefore, Grantee hereby grants and quit claims to the Grantor the land in the original easement found in O. R. Book 1667 at page 4379 and 4380 that is not included in the description set out in Exhibit B. Grantor confirms and grants to the Grantee the non-exclusive easement as set forth in the original easement in the land described in Exhibit "B".

3. Except as herein modified, all terms, covenants and conditions of the easement remain unchanged.

4. Grantor warrants and covenants that he is the fee simple owner of the above-described property.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

Signed, Sealed and Delivered  
in the presence of:

Virginia S. Hall  
First Witness

Prudence R. Hall  
Typed/Printed Name

Prudence A. Hall  
Second Witness

Prudence A. Hall  
Typed/Printed Name

ALFRED M. JOHNS  
ALFRED M. JOHNS

"Grantor"

RECORDS VERIFIED - CHARLIE GREEN, CLERK  
BY: C. MILLER, D.C.

DR2725 P60933



BERKSHIRE REALTY ENTERPRISES, LTD. PARTNERSHIP  
D/B/A BERKSHIRE PROPERTY MANAGEMENT  
AUTHORIZED AGENT  
FOR  
BRI OP LIMITED PARTNERSHIP

Maria W. Watley  
First Witness  
Maria W. Watley  
Typed/Printed Name  
Ashley Johnson  
Second Witness  
Ashley Johnson  
Typed/Printed Name

By James V. Cordellchio  
JAMES V. CORDERLICHIO  
Typed/Printed/Title/Name  
DISTRICT PROPERTY MANAGER  
COMMERCIAL GROUP  
"Grantee"

STATE OF FLORIDA  
COUNTY OF CHARLOTTE

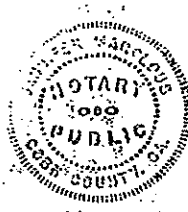
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of June, 1996 by ALFRED M. JOHNS, who is personally known to me or who has produced \_\_\_\_\_ as identification.

OFFICIAL NOTARY SEAL  
PRUDENCE A. POTTS  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC440721  
MY COMMISSION EXP. MAR. 11, 1999

Prudence A. Potts  
Signature of person taking acknowledgment  
Name typed, printed or stamped  
Commission Expiration

STATE OF Georgia  
COUNTY OF Cobb

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of June, 1996 by James V. Cordellchio as District Property Manager BERKSHIRE REALTY ENTERPRISES, LTD PARTNERSHIP, d/b/a Berkshire Property Management, Authorized Agent for BRI OP LIMITED PARTNERSHIP, a DELAWARE limited partnership, on behalf of the partnership. He/she is personally known to me or has produced a Drivers License as identification.



Jennifer Margolis  
Signature of person taking acknowledgment  
Jennifer Margolis  
Name typed, printed or stamped  
History: Cobb County, Georgia  
My Commission Expires January 9, 2000  
Commission Expiration

This Instrument Was Prepared By:  
EARL DRAYTON FARR, JR.  
Farr, Farr, Emerich, Sitt,  
Hackett and Carr, P.A.  
Attorneys at Law  
P.O. Drawer 1447  
Punta Gorda, FL 33951

082725 P60934

E 1887 #4280

## LEGAL DESCRIPTION

## DRAINAGE EASEMENT

A parcel of land in Section 15, Township 45 South, Range 31 East, Lee County, Florida, more particularly described as follows:

COMMENCE at the point of intersection of the south line of Section 15, Township 45 South, Range 31 East, with the east right-of-way line of Winkler Road as described in Deed Book 123 at Page 100 of the Public Records of Lee County, Florida; thence N 01°23'51" E along said east right-of-way line for 30.00 feet to the point of beginning of the herein described parcel of land; thence N 89°01'28" E along a line parallel with and 30.00 feet north of, as measured at right angles to, the aforementioned south line of Section 15 for 122.65 feet to an intersection with the westerly right-of-way line of the patented former LEO BAZEL "A" as described in Official Record Book 378 at Page 4 of said Public Records; thence N 80°01'50" E along said westerly right-of-way line for 122.65 feet; thence S 89°01'28" E for 30.00 feet; thence S 89°01'28" E for 122.65 feet; thence S 89°01'28" E for 30.00 feet to an intersection with the aforementioned east right-of-way line of Winkler Road; thence S 81°30'23" W along said east right-of-way line for 100.00 feet to the point of beginning. Said parcel containing 2.07 acres, more or less.

20 APR 93

500-186.12

## RECORDER'S MEMO

(Legibility of Writing, Typing or Printing Essential -  
Accuracy in this Document then Received.)

RECORDED  
INDEXED  
JUN 12 1996  
LEE COUNTY  
FLORIDA

EXHIBIT A

082725 890935

JOHNSON ENGINEERING, INC.

ENGINEERS, SURVEYORS AND ECOLOGISTS  
June 10, 1996

DESCRIPTION  
DRAINAGE EASEMENT

A tract or parcel of land for drainage easement purposes located in Section 15, Township 45 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

From the point of intersection of the south line of said Section 15 with the east right-of-way line of Winkler Road as described in Deed Book 323 at Page 180 of the Public Records of Lee County run N 89°57'50"E along said south line of Section 15 for 734.26 feet to an intersection with the westerly right-of-way line of the relocated former Iona Drainage District (IDD) Canal H as described in Official Record Book 393 at Page 4 of said Public Records; thence run N 00°01'20"E along said IDD right-of-way for 50.00 feet to the Point of Beginning.

From said Point of Beginning run S 89°57'50"W for 250.00 feet; thence run N 00°01'20"E for 436.40 feet to an intersection with the north line of parcel as described in Official Record Book 1452 at Page 1232 of said Public Records; thence run N 89°57'50"E along said north line for 250.00 feet to an intersection with the westerly line of said IDD Canal H; thence run S 00°01'20"W along said westerly line for 436.40 feet to the Point of Beginning.

Contains 2.50 acres, more or less.

Bearings shown are based on description referred to in Official Record Book 1452 at Page 1232 of the Public Records of Lee County, wherein the south line of Section 15 is shown to bear N 89°57'50" E.

OR2725 P00936

FOR INFO  
PORT CHARLOTTE

HORTON R. KOLING  
MANAGED PARTNER

SUNBANK CENTER  
2001 WARDWOOD CIRCLE  
SUITE 201  
PORT CHARLOTTE, FL 33681  
TEL: 813-853-3344  
FAX: 813-853-3344  
PORT CHARLOTTE, FLORIDA  
33681

CHAS. E. JOHNSON  
OWNER

SLP/lek  
JZ1816GASC

ARONIE T. GRANT, JR.  
REGISTERED

JOSEPH W. BANKS  
JOSEPH W. BANKS  
STEVEN N. MONTGOMERY  
JAMES C. COOPER  
CARL A. BARRAGO  
W. BRIT POMEROY  
W. BRIT POMEROY  
KEVIN M. WINTER  
GARY N. BULL

CECILIA  
STEPHEN W. ADAMS  
PATRICIA K. NEWTON  
CONSULTANT  
LESTER L. BULSON

STEVEN L. FORD (Per the Firm)  
Professional Land Surveyor No. 4992  
6-10-96

EXHIBIT "B"  
PAGE 1 OF 2

CHARLIE GREEN LEE CTY FL.  
96 JUL 15 PM 4:21

A tract or parcel of land for drainage easement purposes located in Section 25, Township 43 South, Range 24 East, Lee County, Florida, here more specifically described as follows:

[illegible]

**पान्थ**

- C/L = CENTERLINE  
R.O.W. = RIGHT-OF-WAY  
PG. = PAGE  
O.R. = OFFICIAL RECORD BOOK  
D.S. = DEED BOOK  
SEC. = SECTION  
TWP. = TOWNSHIP  
RGE. = RANGE

SKETCH TO ACCOMPANY DESCRIPTION  
DRAINAGE EASEMENT

NOTES:

1. THIS SKETCH DOES NOT MAKE ANY REPRESENTATIONS AS TO ZONE OR DEVELOPMENT RESTRICTIONS ON SUBJECT PARCEL.
2. DESIGNATIONS SHOWN ARE BASED ON DESCRIPTION REFERRED TO IN OFFICIAL RECORD BOOK 1432 AT PAGE 232 OF THE PUBLIC RECORDS OF THE COUNTY WHEREIN THE SOUTH LINE OF SECTION 13 IS SHOWN TO BEAR N 64°37'50" E.
3. DESCRIBED PARCEL CONTAINS 2.50 ACRES, MORE OR LESS.

STEVEN L. FORD (FOR THE FIRM)  
PROFESSIONAL LAND SURVEYOR NO. 4992  
DATE SIGNED: 6-20-85

ON GIBBERING MOSNOD

10-7-46 18-45-25 1' 10-11-46

EASEMENT MODIFICATION AGREEMENT

4C67891

082765 PG2377

24.00  
THIS AGREEMENT, executed the 30<sup>th</sup> day of September, 1996, by and between ALFRED M. JOHNS, hereafter known as Grantor, whose address is: 160 Madrid, Suite 212, Punta Gorda, Florida 33950, and BRI OF LIMITED PARTNERSHIP, a Delaware limited partnership, hereafter known as the Grantee, whose address is: c/o Berkshire Property Management, 1000 Parkwood Circle, Suite 900, Atlanta, Georgia 30339.

WITNESSETH:

WHEREAS, Grantor's predecessor in title has given an easement to grantee's predecessor in title on property described in that certain instrument found in O. R. Book 1667, Page 4379 of the Public Records of Lee County, Florida, under date of the 22nd day of April, 1983, which easement was on property described on Exhibit "A" attached hereto and made a part hereof, hereafter referred to as the Easement,

WHEREAS, the Grantor wishes to modify the easement to reconfigure the stormwater detention area and Grantee is willing to agree to the modification, it being understood that this will be a joint use easement and continue its non-exclusiveness.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by each party to the other, the receipt of and sufficiency of which is hereby acknowledged and the mutual covenants hereafter set forth, the parties agree as follows;

1. The property covered by the easement is hereby modified and released by deleting the description in the prior instrument referred to above to wit, the easement recorded in O. R. Book 1667 at page 4379 and 4380 and substituting in place thereof the property described on Exhibit "B" attached hereto and made a part hereof without modifying any other provision of the easement, which is hereby confirmed by the Grantor.

2. Therefore, Grantee hereby grants and quit claims to the Grantor the land in the original easement found in O. R. Book 1667 at Page 4379 and 4380 that is not included in the description set out in Exhibit "B". Grantor confirms and grants to the Grantee the non-exclusive easement as set forth in the original easement in the land described in Exhibit "B".

3. Except as herein modified, all terms, covenants and conditions of the easement remain unchanged.

4. Grantor warrants and covenants that he is the fee simple owner of the above-described property, which is vacant and unimproved and is not Grantor's homestead.

\*5. See below.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

Signed, Sealed and Delivered  
in the presence of:



First Witness  
Earl Drayton Farr, Jr.  
Typed/Printed Name



Second Witness  
Prudence A. Dotts  
Typed/Printed Name

  
ALFRED M. JOHNS

This Instrument Was Prepared By:  
EARL DRAUGHTON FARR, JR.,  
FARR, LERION, SIVAT,  
HIGHT AND LARR, P.A.  
ATTORNEYS AT LAW  
P. O. DRAW# 1437  
Punta Gorda, FL 33951

\* Grantor shall indemnify Grantee and Grantee's partners, affiliates, agents, employees, successors and assigns from and against any and all claims, damages, liabilities, suits or causes of action of every name and nature by whomsoever brought, whether now existing or hereafter arising out of or in connection with this Easement Modification Agreement, including, but not limited to reasonable attorney's fees.

BRI OP LIMITED PARTNERSHIP,  
a Delaware Limited Partnership  
By: Berkshire Realty Company, Inc.,  
a Delaware corporation,  
Its General Partner

082765 P62378

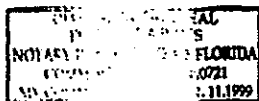
By [Signature]  
Laurence Gerber, President

[Signature]  
First Witness  
[Signature]  
Typed/Printed Name

[Signature]  
Second Witness  
[Signature]  
Typed/Printed Name

STATE OF FLORIDA  
COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 1996, by ALFRED M. JOHNS, who is personally know to me.



CC 440721  
ex 3/11/99

[Signature]  
Notary Public/State of Florida

STATE OF Massachusetts  
COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of December, 1996, by Laurence Gerber, as President of Berkshire Realty Company, Inc., a Delaware corporation, General Partner of BRI OP LIMITED PARTNERSHIP, a Delaware limited partnership. He is personally known to me or has produced as identification:

[Signature]  
Notary Public/State of

ERIN L. ABERNATHY  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires May 9, 1997

7039

**QUESTIONS**

082765 P62380

## JOHNSON ENGINEERING, INC.

ENGINEERS, SURVEYORS AND ECOLOGISTS

FORT MYERS  
PORT CHARLOTTE

June 10, 1996

NEWTON A. HOLLAND  
SUNBANK CENTERSUNBANK CENTER  
2000 WASHINGTON AVENUE  
SUITE 400 • FORT MYERS, FL  
TELEPHONE 941-825-2000  
FAX 941-825-2000  
PORT CHARLOTTE, FL 33908CARL L. JOHNSON  
200-040DESCRIPTION  
DRAINAGE EASEMENT

A tract or parcel of land for drainage easement purposes located in Section 15, Township 45 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

From the point of intersection of the south line of said Section 15 with the east right-of-way line of Winkler Road as described in Deed Book 323 at Page 180 of the Public Records of Lee County run N 89°57'50"E along said south line of Section 15 for 734.26 feet to an intersection with the westerly right-of-way line of the relocated former Iona Drainage District (IDD) Canal H as described in Official Record Book 393 at Page 4 of said Public Records; thence run N 00°01'20"E along said IDD right-of-way for 50.00 feet to the Point of Beginning.

From said Point of Beginning run S 89°57'50"W for 250.00 feet; thence run N 00°01'20"E for 436.40 feet to an intersection with the north line of parcel as described in Official Record Book 1452 at Page 1232 of said Public Records; thence run N 89°57'50"E along said north line for 250.00 feet to an intersection with the westerly line of said IDD Canal H; thence run S 00°01'20"W along said westerly line for 436.40 feet to the Point of Beginning.

Contains 2.50 acres, more or less.

Bearings shown are based on description referred to in Official Record Book 1452 at Page 1232 of the Public Records of Lee County, wherein the south line of Section 15 is shown to bear N 89°57'50" E.

*Steven L. Ford*  
STEVEN L. FORD (For the Firm)  
Professional Land Surveyor No. 4992

6-10-96

SLF/kak  
32101GARCFURNISH  
ARCHIE T. GRANT, JR.

FORRENT H. BAKER

JOSEPH W. EMMER

STEVEN E. JOHNSON

JAMES B. THYON

JEFFREY C. COOPER

CARL A. BARNARD

KEITH W. REILAND

W. PATRICK RAY, JR.

W. BRITTY PONTREAU

DAN W. BUCKLEY

KEVIN M. WINTER

GARY A. BULL

GEORGE J. KALAL

STEVEN W. ADAMS

PATRICIA M. WINTON

LESTER L. GULSON

EXHIBIT "B"  
PAGE 1 OF 2



002

SCALE: 1" = 100'

17

A union, or group of kind for changing members, appears headed by a woman, E. Young, 2000 East 24th Ave. The Council, from the past, has been particularly successful in Atlanta.

STEVEN L. KING (SEE THE FBI)  
PROFESSIONAL LAND SURVEYOR NO. 44972  
DATE BORN: 1-2-46  
NOT VALID UNLESS BORN, DATED AND  
STATED WITH EMPLOYED SURVEYOR'S SEAL.

## NOTES

1. THE SURVEY DOES NOT HAVE ANY REPRESENTATIONS AS TO LONG OR PERMANENT RESTRICTIONS ON SUBJECT PARCEL.
2. MEASUREMENTS SHOWN ARE BASED ON DISCREPANCY REFERENCE TO N. OFFICIAL RECORD BOOK 1453 AT PAGE 1272 OF THE PUBLIC RECORDS OF LAM COUNTY WHEREIN THE SOUTH LINE OF SECTION 35 IS SHOWN TO BE 461.30 FEET LONG.
3. DESCRIBED PARCEL CONTAINS 7.30 ACRES, MORE OR LESS.

**SKETCH TO ACCOMPANY DESCRIPTION  
DRAINAGE EASEMENT**

PARCEL LOCATED IN  
SEC. 13, TWP. 43 S., RGE. 24 E.  
LEF COUNTY, FLORIDA

**JOHNSON ENGINEERING, INC.**

1000

— 25 —